

Paystation Merchant Terms and Conditions

1 April 2016

1. DEFINITIONS

1.1. Definitions: In this Agreement, unless the context otherwise requires:

“Agreement” has the meaning set out at clause 1.3.

“Authorisation” means the service provided by the Bank whereby it confirms to the Merchant whether a Transaction is approved or declined (and “Authorised” will be interpreted accordingly).

“Bank Provided IP” means all Participating Bank owned Intellectual Property forming part of the Service.

“Business Day” means any day (other than a Saturday and Sunday) on which banks are open for general banking business in Auckland and Wellington.

“Confidential Information” means any fees payable pursuant to this Agreement, Member information provided to the Merchant and the Service, together with all user manuals, operating manuals and materials that are designed to assist or supplement the use and understanding of the Service and other written materials that are disclosed or delivered to the Merchant in connection with this Agreement.

“Paystation Reseller” means a Paystation approved organisation who has signed a Paystation Reseller Agreement with Paystation.

“Intellectual Property” means any right to, and any interest in, any patent, design, trade mark, copyright, know-how, trade secret or any other proprietary right or form of intellectual property (whether protectable by registration or not) in respect of any technology, concept, idea, data, program or other software, specification, formula, drawing, program, design, system, process, logo, mark, style or other matter or thing, existing or conceived, used, developed or produced by any person.

“Merchant” means the other party in this Agreement, or their agent.

“Participating Acquirer” means a supplier of acquiring services accessed via the Service, for the purpose of processing of credit card transactions, including ANZ, ASB Bank, BNZ and Westpac.

“Participating Bank” means a supplier of direct bank account transaction processing services.

“Payment Initiator” means a card holder or account holder who initiates a payment with the Service for the purpose of paying a Merchant for goods and/or services.

“Paystation” means Paystation Limited.

“Service” means the payment processing service provided by Paystation to the Merchant for the online Authorisation, processing and settlement of Transactions, and includes those services detailed in clause 3.

“Service Fee” means the fees payable by the Merchant for the Service as set out in clause 7 (or as otherwise communicated in writing by Paystation).

“Settlement Account” means the bank account nominated by the Merchant where funds due to the Merchant Transactions will be paid.

“Transaction” means a transaction entered into by a Payment Initiator to pay the Merchant via the Internet for the provision of goods and/or services which is Authorised and if approved, is settled either.

“Transaction Processing Fee” means the fee charged by Paystation for processing a Transaction of any kind.

1.2. Interpretation: In this Agreement, unless the context requires otherwise:

If more than one person is named as the Merchant, each reference to the Merchant is a reference to each Merchant separately and to all Merchants together.

References to an agreement or document includes such agreement or document as may be amended, modified or supplemented from time to time.

References to clauses are to clauses of this Agreement.

Derivatives of any defined word or term have a corresponding meaning.

A gender includes each other gender and a reference to “its” includes a reference to “his” or “her” as the context requires.

The headings to clauses and paragraphs shall be ignored in construing this Agreement.

The word including and other similar words do not imply any limitation.

A reference to any legislation includes a reference to that legislation as from time to time amended, re-enacted or substituted, includes regulations, orders in council and other instruments from time to time issued or made under that legislation and, unless otherwise stated, is a reference to New Zealand legislation.

All moneys to be paid to the Merchant in terms of this Agreement shall be paid in New Zealand currency to the Merchant’s Merchant Settlement Account.

An obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

Any party to this Agreement includes its successors and permitted transferees and assigns.

References to a person includes an individual, body corporate, an association of persons (whether corporate or not), a trust and any other entity (in each case, whether or not having a separate legal personality).

The plural includes the singular and vice versa.

1.3. Agreement: This Agreement consists of:

- (a) these Paystation Merchant Terms and Conditions;
- (b) the Paystation Merchant Application Form.

If there is any inconsistency between the above documents, Paystation shall determine in its absolute discretion which terms shall prevail.

1.4. Business Purposes: The Merchant acknowledges and agrees for all purposes (including the Consumer Guarantees Act 1993) that it is entering into this Agreement and will use the Service for the purpose of a business.

1.5. Joint and several obligations: Where any Merchant consists of more than one person, the obligations of that Merchant under this Agreement shall be both joint and several.

2. CONSTITUTION OF CONTRACT

2.1. Any contract between Paystation Limited and the Merchant shall be upon terms specified in these Terms and Conditions and referred to as the "Agreement".

3. TERM

3.1. This Agreement shall continue until it is terminated in accordance with clause 12.

4. SERVICES PROVIDED BY PAYSTATION

- 4.1 Services: Subject to the terms of this Agreement, Paystation will provide the Merchant with the services set out in this clause 4 (or as otherwise agreed in writing by the parties from time to time).
- 4.2 Paystation's Obligations: Paystation will:
- (a) Provide a licence to use the Paystation payment processing service, including:
 - a. The right to access and transact with the service in order to process payments for goods and services that the Merchant has a lawful right or authority to undertake;
 - b. The right to access the administration portal to view transaction history and transaction details.
 - (b) Provide transaction processing services, including:
 - a. Maintaining an electronic payment gateway facility for use by those authorised for the purpose of managing payments for goods and services.
- 4.3 Paystation warrants that it is skilled in database and online service management and will undertake to maintain this expertise.
- 4.4 For the duration of this Agreement, Paystation may allow end users to transact electronic payments via the Service subject to clause 5.1(e) of this agreement.
- 4.5 Paystation shall use its best endeavours to provide adequate security on the Facility. Paystation warrants that it is skilled in issues of database and online service security and will undertake to maintain this expertise.

5. MERCHANT'S OBLIGATIONS

- 5.1 General Undertakings: The Merchant undertakes that it will:
- (a) supply to Paystation all necessary data required for the successful establishment and operation of the Service;
 - (b) supply data that is substantially clear and free of errors;
 - (c) supply required data in a timely manner and in the form specified by Paystation;
 - (d) consent to receive information from Paystation relating to Paystation products and services;
 - (e) supply to Paystation a Participating Acquirer Issued Merchant User ID and if applicable a personal password (and any updates thereof) to allow Paystation to establish a new account in the Paystation database and so as to provide the Merchant with access to the Service;
 - (f) acknowledge that if required Paystation will retain control operator management available through the Participating Acquirer's merchant administration system, and may or may not provide these details to the Merchant;
 - (g) acknowledge that for the duration of this Agreement, end users may transact using data held in the Service subject to the rights and obligations of the end users as set out in clause 6.3 License;
 - (h) at all times observe the provisions of this Agreement and any other agreements between the Merchant and Paystation;

- (i) not make any warranty or representation whatsoever in relation to any goods or services supplied by it which may bind Paystation;
- (j) subject to clause 5.1(k), display prominently in its place or places of business, including its online presence, the Paystation insignia supplied by Paystation;
- (k) use advertising or promotional material only to indicate that the Paystation service is acceptable as payment and shall not infringe upon the Paystation marks or logos in such a way as to create the impression that the Merchant's goods or services are sponsored or in any way affiliated to Paystation, unless upon such terms and conditions as otherwise agreed from time to time between the Merchant and Paystation;
- (l) permit Paystation and any of its employees, contractors or agents access to its premises at any time during normal business hours for the purpose of conducting an on-site inspection or investigation to check compliance with this Agreement;
- (m) provide Paystation with all information and assistance it reasonably requires to perform its obligations and to deal with any queries in relation to any Transaction or the provision of the Service, including copies of records, logs and purchase requests;
- (n) meet its own costs arising from the integration of its online payment system with the Service and the Merchant's use of the Service generally.

5.2 Merchant Acknowledgement: The Merchant acknowledges and agrees that:

- (a) acceptance of the Merchant's application by Paystation in no way determines the acceptance of the Merchant by any Participating Bank, Participating Acquirer, or card scheme.
- (b) non-acceptance of the Merchant by any participating bank, acquirer, or card scheme in no way releases the Merchant from any obligations under this agreement, specifically but not limited to clause 12 Termination and clause 7 Fees.
- (c) it accepts all risks associated with using the Service to process a Transaction, including all costs, loss or liability incurred by the Merchant or any other person as a consequence of the processing of that Transaction;
- (d) it accepts responsibility for the security and proper use of its user name, passwords and other security features relating to the use of the Service and it must take all steps to ensure that they are kept confidential and secure and that they are used properly and are not disclosed to other people;
- (e) It accepts responsibility for any unauthorised use of the Service and for all losses or charges, including losses or charges that may result from unauthorised or fraudulent use;
- (f) intellectual property rights in any software supplied by Paystation for your use in connection with the Service are and remain the property of Paystation;
- (g) intellectual property rights in any software supplied by a Participating Bank for your use in connection with the Service are and remain the property of that Participating Bank.
- (h) It shall not use the Service to:
 - a. conduct a fraudulent activity or a criminal offence;
 - b. send, receive, upload, download, use or reuse any material that is offensive, abusive, indecent, defamatory, and obscene or menacing or in breach of copyright, confidence, privacy or any other rights or laws;
 - c. send unsolicited advertising or promotional material;
 - d. cause annoyance to anyone with material that may have damaging or contamination effects;

- e. allow any other unauthorized person(s) to use the Service on its behalf;
 - f. interfere or attempt to interfere with any other person's use of the Service; and
- (i) it shall not:
- a. interfere with or alter the Service;
 - b. it shall not disassemble, reverse engineer or decompile or in any other way interfere with the software;
 - c. it shall not copy or modify the software;
 - d. it shall not create any new software partly or wholly based on the Service software; and
 - e. it shall not transfer, assign or sub-license any right to use the software or Service or attempt to do so.

5.3 Liability and authorisation: The Merchant is liable for and irrevocably authorises Paystation to debit the Merchant Fees Account with any fee, cost, charge, liability or expense or other amount that becomes payable by the Merchant to Paystation pursuant to this Agreement.

6. USE OF PAYSTATION SERVICE

- 6.1. Direct Integration: Direct integration to the Service by the Merchant must be in accordance with Paystation's certification requirements and any other requirements communicated by Paystation from time to time.
- 6.2. Paystation Disclosures: The Merchant acknowledges that Paystation may contract with other parties to provide the Service.
- 6.3. Licence: Paystation grants the Merchant a personal, non-exclusive, non-transferable licence for the term of this Agreement to connect to and use the Service in accordance with this Agreement.
- 6.4. Title: The Merchant acknowledges that the Service is confidential and copyrighted. Title to the Service and all associated Intellectual Property rights are retained by Paystation (or the participating banks, as appropriate). The Merchant will not sub-license its connectivity to the Service, or permit anyone else to connect to the Service, without Paystation's prior written consent.
- 6.5. No Merger: The Merchant will not merge all, or any part of its connectivity, to the Service with any other payment processing functionality without the prior written consent of Paystation.
- 6.6. Acknowledgement: The Merchant acknowledges and agrees that Paystation makes no representations or warranties in respect of the Service provided by Paystation and that use of, or reliance on, the Service is entirely at the Merchant's own risk.

7. FEES

- 7.1. Payment of Service Fee: The Service Fee (plus GST, if any) is calculated with reference to the sundry fees as set out in clause 7.2, Transaction processing fees as set out in clause 7.3. The Service Fee will be detailed in the monthly invoice emailed to the address supplied by the Merchant. The Invoice can be retrieved by the Merchant from within the Merchants login area within the Paystation administration website at <https://admin.paystation.co.nz>. Sundry fees and Transaction processing fees will be deducted from the Merchant Fees Account no earlier than zero (0) calendar days from the date of such invoice
- 7.2. Sundry Fees: Sundry fees are a component of the Service Fee. They represent standing and one off fees.

Online Establishment Fee of NZ\$149.00 +GST payable on acceptance of this Agreement.

Online Account Fee of NZ\$39.00 +GST (Online Starter), NZ\$99.00 +GST (Online Growth), NZ\$149.00 +GST (Online Enterprise), per month payable from acceptance of this Agreement.

Manual Payments Establishment Fee of NZ\$99.00 +GST payable on acceptance of this Agreement.

Manual Payments Account Fee of NZ\$19.00 +GST per month payable from acceptance of this Agreement.

Gateway Fee of NZ\$5.00 +GST per month per gateway loaded against the Merchant payable from the gateway going live.

Service Resumption Fee of NZ\$50.00 +GST to activate a disabled Merchant.

Payment Dishonour Fee of NZ\$15.00 +GST for dishonoured Direct Debit payments.

Copy of Account Fee of NZ\$5.00 +GST for each hard copy statement or invoice requested and supplied in the post.

Credit Letter Fee of NZ\$5.00 +GST for each letter written for an overdue account.

7.3. Transaction processing fees: Transaction processing fees are a component of the Service Fee

Transaction Fees are calculated as a set fee per Transaction that the Merchant passes through the Service, and are calculated against all successful Token Establishments, Purchase, Authorisation, Capture and Refund transaction types regardless of the success of the payment. Transactions run in test mode are not charged.

<i>Transaction type</i>	<i>Chargeable</i>	<i>Not chargeable</i>
Completed purchase transaction, whether or not the transaction is successful	✓ Yes	
Completed authorisation transaction, whether or not the transaction is successful	✓ Yes	
Completed completion (capture) transaction, whether or not the transaction is successful	✓ Yes	
Completed refund transaction, whether or not the transaction is successful	✓ Yes	
Completed reversal (void) transaction (<i>transaction type only available over Linked Gateway</i>)	✓ Yes	
Incomplete transaction that is subsequently found (<i>transaction type only relevant over Dialect based gateways</i>)	✓ Yes	
Token generation transaction	✓ Yes	
Test transaction of any type		✓ Free
Abandoned (incomplete) 3-Party / hosted transaction		✓ Free

Transaction Fee of NZ\$0.45 +GST (Online Starter) NZ\$0.39 + GST (Online Growth), NZ\$0.36 (Online Enterprise). NZ\$0.32 (Manual Payments) per Transaction processed on behalf of the Merchant.

Transaction Rebate to the value of up to 100 (Online Started), 300 (Online Growth), 500 (Online Enterprise), 75 (Manual Payments), Transactions processed on behalf of the Merchant in any given calendar month.

Transaction Volume Discounts will apply as per the following table:

<i>Transactions per month</i>	<i>Cost per transaction</i>
501-1,000	0.36
1,001-15,000	0.20
15,001-20,000	0.16
20,001+	0.13

7.4. Variation of fees: Paystation may vary the Service Fee described at clause 7.1 above, or advise the Merchant of any additional fees at any time by prior written notice to the Merchant in accordance with clause 15.2.

8. INDEMNITY

- 8.1. Limited liability: Though Paystation will undertake best endeavours to ensure an uninterrupted and error-free service, Paystation does not warrant that the Service or any service related to it will be uninterrupted or error free; nor does Paystation make any warranty as to the results to be obtained from use of the data or any service related to it. Paystation has no liability to the Merchant for:
- (a) the intermittent failure of the Service or any component of the Service; or
 - (b) the acts or omissions of any third party provider (including but not limited to a Paystation Reseller); or
 - (c) the provision of goods and/or services by the Merchant to a payment initiator prior to Authorisation of a Transaction.
- 8.2. Networks: The Merchant acknowledges that key components of the Service are the networks or various mobile telecommunications network suppliers and Internet service providers and that where the performance of the Service is affected by these networks, Paystation shall not be regarded as being in default of its obligations to the Merchant under this Agreement, and shall have no liability accordingly for any losses suffered by the Merchant.
- 8.3. PCI liability: As a PCI compliant service provider, Paystation is responsible for the security of any card holder data stored within the Paystation system when that data has been supplied by the Merchant in accordance with our most recent application programming interface (API) specifications. No card holder data that Paystation is responsible for will be stored outside of Paystation's PCI Compliant systems.
- 8.4. Paystation shall not be liable to the Merchant for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Agreement, the Service, its use, application, support, or otherwise, except to the extent to which it is unlawful to exclude such liability and except where it is alleged that Paystation or its agents have been negligent.
- 8.5. No consequential loss: The liability of Paystation to the Merchant shall not in any circumstances extend to any indirect or consequential loss or damage or any loss of business or profits suffered by the Merchant.
- 8.6. In the event that any exclusion or provision contained in this Agreement shall be held to be invalid for any reason and Paystation becomes liable for loss or damage that it would otherwise have been lawful to limit, such liability shall be limited to the amount of Paystation's transaction charge applied to any affected Transaction(s).
- 8.7. The Merchant releases and discharges Paystation from any and all claims and demands arising out of or in connection with the design or maintenance of the Service including without limitation any and all claims for libel and invasion of privacy.

- 8.8. Where the Merchant is a business (as "business" is defined by the Consumer Guarantees Act 1993), it is agreed that it is purchasing all services from Paystation for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply.
- 8.9. Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of these Terms and Conditions will be read subject to the application of that Act, and in the case of any conflict the provisions of that Act will apply.
- 8.10. Merchant indemnity to Paystation: The Merchant indemnifies Paystation against any loss, cost, expense, damage or liability (whether direct, indirect or consequential) suffered or incurred by Paystation as a result of:
- (a) the failure of the Merchant to comply with any of its obligations under this Agreement; or
 - (b) any incorrect or misleading information supplied to Paystation by the Merchant or any information withheld by the Merchant that would have made any information provided to Paystation incorrect or misleading; or
 - (c) any other act of, or omission by, the Merchant or any of its employees, officers, or agents whatsoever (including, the completion of a Transaction); or
 - (d) any action taken by Paystation as a result of any act of, or omission by, the Merchant or any of its employees, officers or agents; or
 - (e) any dispute between any or all of the Merchant, any Payment Initiator, any Participating Bank, any Participating Acquirer and Paystation; or
 - (f) any dispute between the Merchant and any Paystation Reseller; or
 - (g) any claim by a third party that Paystation's use of any material provided to it by the Merchant infringes that third party's intellectual property rights.
- 8.11. Merchant Indemnity to Participating Banks: The Merchant indemnifies Participating Banks from and against any loss, cost, expense, damage or liability (whether direct, indirect or consequential) suffered by the Participating Bank as a result of the Merchant's breach of this Agreement.

9. CONFIDENTIAL INFORMATION

- 9.1. The Merchant shall not:
- (a) copy, reproduce or transmit any of the Confidential Information by any means or in any form, other than user manuals, operating manuals, training manuals or parts thereof that are required for its employees, agents, consultants and contractors to conduct their position related responsibilities; or
 - (b) disclose any of the Confidential Information to any person other than those of its employees, agents, consultants and contractors who need such disclosure for the conduct of their ordinary responsibilities as employees, agents, consultants and contractors; or
 - (c) use the Confidential Information in any way other than as expressly permitted under this Agreement; or
 - (d) remove any copyright, proprietary rights, ownership indication, confidentiality or non-disclosure label, notice label or notice appearing on or in the Service or any other item of Confidential Information.
- 9.2. This clause 9 will survive termination of this Agreement.

10. INTELLECTUAL PROPERTY

- 10.1. Intellectual property rights in any software supplied by Paystation for your use in connection with the Service are and remain the property of Paystation.
- 10.2. The Merchant acknowledges that any and all of the trademarks, trade names, copyrights, patents and other intellectual property rights created, developed, embodied in or in connection with the Service shall be and remain the sole property of Paystation.
- 10.3. Warranty as to Intellectual Property Rights and Content Paystation shall use its best endeavours to ensure that any know-how, techniques, media, data, information or programs contributed to or used by Paystation in designing and maintaining the Service shall be free of any claim for infringement of any intellectual property rights of any third party.
- 10.4. Except where it is alleged that Paystation or its agents have been negligent, Paystation shall have no liability for any infringement of intellectual property rights arising from the use of any know-how, techniques, media, data, information or program not provided by Paystation; or the modification of the Service by any party other than Paystation; or an allegation of infringement of intellectual property rights arising from information, data, or content supplied to Paystation by the Merchant or any representative or agent of the Merchant.
- 10.5. Paystation agrees to not make available over any service any information, software or other content which knowingly violates or infringes upon the rights of any others or which would be abusive, profane or offensive to an average person.

11. AUDIT

- 11.1. The Merchant acknowledges that Paystation has a right to appoint professional auditors to audit certain information to determine whether the Merchant's use of the Service infringes Paystation's legal rights or the legal rights of any Participating Bank.

12. TERMINATION

- 12.1. Termination by Merchant: the Merchant may terminate this Agreement by giving Paystation 30 days' prior written notice.
- 12.2. Termination by Paystation: Paystation may terminate this Agreement, or any part of it:
 - (a) by giving the Merchant 10 days' prior written notice; or
 - (b) immediately upon written notice to the Merchant, if:
 - a. the Merchant becomes insolvent or is declared bankrupt; or
 - b. the Merchant has a receiving order made against it or shall make or negotiate for any composition or arrangement with or assignment for the benefit of its creditors.
 - c. an order is made by the Court, or the Merchant passes a resolution for the winding up of the Merchant, or a receiver, administrator or similar officer is appointed in respect of any of the Merchant's undertakings or assets; or
 - d. the Merchant breaches any term, condition or provision of this Agreement; or
 - e. without the prior written consent of Paystation, there is a change in the nature of the business undertaken by the Merchant; or
 - f. without the prior written consent of Paystation, there is a change in ownership or control of the Merchant; or
 - g. Paystation considers that the Merchant or any of its employees may have been or may be likely to use the Service fraudulently or where the security or integrity of

any Service has been, or is likely to be, in Paystation's opinion, jeopardised by the Merchant or any other person.

- h. the Merchants merchant facility with any Participating Acquirer or card scheme (the Acquirer) is closed for any reason.

12.3. Without prejudice: Termination of this Agreement shall be without prejudice to the rights of either party against the other in respect of any obligations remaining unfulfilled as at the date of termination.

12.4. Consequences of termination: Upon termination of this Agreement, the Merchant agrees to promptly:

- (a) remove from its website any and all Paystation insignia, logos and any other Paystation material;
- (b) return to Paystation any Paystation, or Participating Bank promotional material and all other related material;
- (c) disestablish connectivity to the Service and on the Paystation's request, certify to Paystation, or the relevant Paystation Reseller (as directed by Paystation) that all connectivity to the Service has been disestablished; and
- (d) agree to forgo any further rights to transact with the Service in any way or to use the software or the security systems including use of your user name, passwords and other security features relating to the use of the Service and you must take all steps to ensure that they are kept confidential at all times.

12.5. Suspension: Without prejudice to Paystation's rights of termination under clause 12.2, in the event Paystation considers that the Merchant or any of its employees may have been or may be likely to use the Service fraudulently or where the security or integrity of any Service has been, or is likely to be, in Paystation's opinion, jeopardised by the Merchant or any other person, Paystation may immediately and without notice suspend the availability of the Service to the Merchant until such time as Paystation has either:

- (a) resolved that such fraudulent use or threat to the security or integrity of the relevant Service has not occurred or is not likely to occur; or
- (b) terminated this Agreement in accordance with clause 12.2.

12.6. Termination of the Merchant's agreement(s) by any Participating Bank, Participating Acquirer, or card scheme in no way releases the Merchant from any obligations under this agreement, specifically but not limited to clause 12 Termination and clause 7 Fees.

12.7. On termination, howsoever arising, the Merchant shall pay to Paystation all costs and expenses and all arrears of charges or other payments arising from any Merchant-specific deliverables including support and the use of the system by the Merchant's authorised users under this Agreement.

12.8. If the Merchant requests a resumption of Service following termination a Service Resumption Fee will apply.

13. DISPUTES

13.1. Customer Disputes: The Merchant acknowledges that any disputes that the Merchant may have with any payment initiator or any other person in respect of any Transaction shall be settled entirely between the Merchant and the payment initiator or person.

13.2. Paystation Reseller Disputes: The Merchant acknowledges that any disputes that the Merchant may have with its Paystation Reseller and or any Participating Bank in relation to any service provided by the Paystation Reseller, Participating Bank or Participating Acquirer,

shall be settled entirely between the Merchant and the Paystation Reseller, Participating Bank or Participating Acquirer. Paystation shall have no liability in relation to such a dispute whatsoever.

- 13.3. Any other dispute arising as to any matter provided for in this Agreement or its implementation is to be referred in the first instance to the chief executives of the respective parties who must endeavour to resolve such dispute in the spirit of achieving broad equity in respect of the agreement and its purposes.
- (c) Failing agreement between them, but only as a last resort if such agreement is not possible, the matter in dispute is to be referred to an independent referee appointed by the President of the Auckland District Law Society, who must promptly resolve such dispute and whose decision on the matter is final and binding on the parties.
 - (d) In resolving such dispute, the referee is not acting as an arbitrator and, accordingly, the provisions of the Arbitration Act 1996 do not apply. While any such dispute remains unresolved the parties agree to continue the performance of the agreement to the extent that such performance is possible given the nature of the dispute.
 - (e) Any information or material or settlement proposals disclosed or made during the preceding dispute resolution proceedings are made on a without prejudice basis and the parties agree to use their best endeavours to ensure that all such information, material and proposals and the existence of any dispute between them is kept strictly confidential.
- 13.4. Injunctive Relief: Nothing in this clause 13 shall preclude either party from taking immediate steps to seek injunctive relief before a New Zealand Court.

14. CONSENT

- 14.1. Authorisation: The Merchant authorises:
- (a) Paystation to supply to credit providers, credit reference agencies, participating banks, participating acquirers and its agents and other third parties (whether in New Zealand or overseas) that provide services to Paystation (together, its "Agents"), any information collected and held by Paystation at any time in connection with this Agreement; and
 - (b) other credit providers, credit reference agencies, and Paystation's Agents to provide any information about the Merchant to Paystation which the Bank may require in connection with this Agreement.
- 14.2. Credit information authorisation: If the Merchant is an individual then, without limiting clause 14.1, the Merchant authorises:
- (a) Paystation's credit reference agency to:
 - i. hold the Merchant's personal information on its systems and use the Merchant's personal information to provide its credit reporting services; and
 - ii. provide the Merchant's personal information to its customers when they use its credit reporting services;
 - (b) Paystation to use its credit reference agency in the future for purposes related to the provision of credit to the Merchant;
 - (c) Paystation to give its credit reference agency information about any default in the Merchant's payment obligations to Paystation; and
 - (d) Paystation's credit reference agency to give information about the Merchant's default in its payment obligations to Paystation to the credit reference agency's other customers.

- 14.3. Acknowledgement: Pursuant to the Privacy Act 1993, the Merchant understands and acknowledges that if it is an individual:
- (a) this Agreement collects personal information about it;
 - (b) the information is being collected to determine the Merchant's suitability as a Paystation merchant and to assist Paystation, participating banks, and participating acquirers in providing the Service;
 - (c) the intended recipients of the information are Paystation, participating banks, participating acquirers, Paystation's agents and contractors and credit reference agencies;
 - (d) the information is being collected and held by the Paystation at 191 Thorndon Quay, PO Box 12082, Wellington;
 - (e) failure to provide this information or unfavourable information ensuing from any credit checks may result in Paystation cancelling this Agreement; and
 - (f) the Merchant has rights of access to, and correction of, this information to the extent that it is not evaluative material pursuant to section 29(1)(b) Privacy Act 1993.

15. MISCELLANEOUS

- 15.1. Assignment: The Merchant is not entitled to assign or transfer all or any of its rights and obligations under this Agreement without the prior written consent of Paystation. Paystation may assign or transfer any of its rights and obligations under this Agreement to any person without the consent of the Merchant.
- 15.2. Variations: Paystation reserves the right to vary the terms of this Agreement from time to time and to provide a minimum of 14 days' notice of the variation to the Merchant by:
- (a) direct communication to the Merchant; or
 - (b) statements or public notices in the media.
- In addition, changes will be noted on the Paystation website: www.paystation.co.nz.
- 15.3. Entire Agreement: The Agreement constitutes the entire agreement between the parties for the subject matter referred to herein. Any prior arrangements, agreements, representations or undertakings are superseded..
- 15.4. Partial Invalidity: The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.
- 15.5. Severability: In the event that any of these terms, conditions or provisions shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.
- 15.6. Waivers and consents: No waiver by Paystation of its rights under this Agreement will be effective unless it is signed in writing by Paystation. Any consent under this Agreement must also be in writing signed by Paystation. Any such waiver or consent may be given subject to any conditions Paystation deems appropriate and shall be effective only in the instance and for the purpose for which it was given.
- 15.7. No implied waiver: No failure to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.

15.8. Paystation's Rights: Any express statement of a right of Paystation under this agreement is without prejudice to any other right of Paystation expressly stated in this agreement or arising at law.

15.9. Time: Time is of the essence for the performance by the Merchant of its obligations under this Agreement.

15.10. Survival of Covenants: The obligations and rights pursuant to clauses 5.1(m), 5.2(e), (f), (g), (i), 5.3, 5.4, 8.1, 8.6, 8.11, 8.12, 9, 10, 12.3, 12.4, 13, 15.10 and 16 will survive the termination of this Agreement.

15.11. Force Majeure: Neither party shall be under any liability to the other in respect of anything which may constitute breach of the Agreement arising by reason of force majeure, namely, circumstances beyond the control of the party.

16. GOVERNING LAW

16.1. This Agreement is governed by and is to be construed in accordance with New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts.

PAYSTATION PRICING PLANS

Online Starter

Includes Online payments and access to the web based administration system, including the Manual Payments payment processing screens.

- No Term Contract period is required with 1 months notice of termination.
- **Establishment Fee** of NZ\$149.00 +GST payable on acceptance of this agreement.
- **Account Fee** of NZ\$39.00 +GST per month payable from acceptance of this agreement.
- **Transaction Fee** of NZ\$0.45 +GST per transaction against the account.
- **Transaction Rebate** to the value of up to 100 transactions against the account.
- **Gateway Fee** of NZ\$5.00 +GST per month per gateway loaded against the account payable from the gateway going live, which includes one currency.
- **Service Resumption Fee** of NZ\$50.00 +GST to activate a disabled account.
- **Payment Dishonour Fee** of NZ\$15.00 +GST for dishonoured Direct Debit payments.
- **Copy of Account Fee** of NZ\$5.00 +GST for each hard copy statement or invoice requested and supplied in the post.
- **Credit Letter Fee** of NZ\$5.00 +GST for each letter written for an overdue account.

Online Growth

Includes Online payments and access to the web based administration system, including the Manual Payments processing screens.

- No Term Contract period is required with 1 months notice of termination.
- **Establishment Fee** of NZ\$149.00 +GST payable on acceptance of this agreement.
- **Account Fee** of NZ\$99.00 +GST per month payable from acceptance of this agreement.
- **Transaction Fee** of NZ\$0.39 +GST per transaction against the account.
- **Transaction Rebate** to the value of up to 300 transactions against the account.
- **Gateway Fee** of NZ\$5.00 +GST per month per gateway loaded against the account payable from the gateway going live, which includes one currency.
- **Currency Fee** of NZ\$5.00 +GST per additional currency loaded against a gateway payable from the currency going live.
- **Service Resumption Fee** of NZ\$50.00 +GST to activate a disabled account.
- **Payment Dishonour Fee** of NZ\$15.00 +GST for dishonoured Direct Debit payments.
- **Copy of Account Fee** of NZ\$5.00 +GST for each hard copy statement or invoice requested and supplied in the post.
- **Credit Letter Fee** of NZ\$5.00 +GST for each letter written for an overdue account.

Online Enterprise

Includes Online payments and access to the web based administration system, including the Manual Payments payment processing screens.

- No Term Contract period is required with 1 months notice of termination.
- **Establishment Fee** of NZ\$149.00 +GST payable on acceptance of this agreement.
- **Account Fee** of NZ\$149.00 +GST per month payable from acceptance of this agreement.

- **Transaction Fee** of NZ\$0.36 +GST per transaction against the account.
- **Transaction Rebate** to the value of up to 500 transactions against the account.
- **Gateway Fee** of NZ\$5.00 +GST per month per gateway loaded against the account payable from the gateway going live, which includes one currency.
- **Currency Fee** of NZ\$5.00 +GST per additional currency loaded against a gateway payable from the currency going live.
- **Service Resumption Fee** of NZ\$50.00 +GST to activate a disabled account.
- **Payment Dishonour Fee** of NZ\$15.00 +GST for dishonoured Direct Debit payments.
- **Copy of Account Fee** of NZ\$5.00 +GST for each hard copy statement or invoice requested and supplied in the post.
- **Credit Letter Fee** of NZ\$5.00 +GST for each letter written for an overdue account.

Paystation Manual Payments

Includes access to the web based administration system, including the Manual Payments payment processing screens.

- No Term Contract period is required with 1 months' notice of termination.
- **Establishment Fee** of NZ\$99.00 +GST payable on acceptance of this agreement.
- **Account Fee** of NZ\$19.00 +GST per month payable from acceptance of this agreement.
- **Transaction Fee** of NZ\$0.32 +GST per transaction against the account.
- **Transaction Rebate** to the value of up to 75 transactions against the account.
- **Gateway Fee** of NZ\$5.00 +GST per month per gateway loaded against the account payable from the gateway going live, which includes one currency.
- **Service Resumption Fee** of NZ\$50.00 +GST to activate a disabled account.
- **Payment Dishonour Fee** of NZ\$15.00 +GST for dishonoured Direct Debit payments.
- **Copy of Account Fee** of NZ\$5.00 +GST for each hard copy statement or invoice requested and supplied in the post.
- **Credit Letter Fee** of NZ\$5.00 +GST for each letter written for an overdue account.

Paystation / Xero Merchant Terms and Conditions (Addendum to the Paystation Merchant Terms and Conditions dated 1 April 2016)

1. DEFINITION

1.1 In this Addendum, unless the context otherwise requires:

“Agreement” means the Paystation Merchant Terms and Conditions (and includes the Paystation Merchant Application Form and any other terms and conditions applicable to the Services).

“Merchant” means the other party to the Agreement, or their agent, who accepted this Addendum.

“Xero Agreement” means the agreement between Paystation and Xero for the exchange of Merchant subscription data and transactional data between the Xero Application and Paystation’s payment processing Service.

“Xero” means Xero (NZ) Limited.

“Xero Application” means the software application that provides online accounting and related services operating within the xero.com domain.

“Xero Integration” means the integration between the Xero Application and Paystations’s payment processing Service for the purposes set out in this Addendum.

Capitalised terms that are not otherwise defined in this Addendum shall have the same meaning as set out in the Agreement.

1.2 Clauses 1.2 and 1.5 of the Agreement apply to this Addendum with all necessary modifications and, except as expressly defined in clause 1.1 of this Addendum, defined terms shall have the meaning given to them in the Agreement.

1.3 For the purposes of this Addendum, “Transaction” as defined in the Agreement shall be interpreted to mean transactions entered into by a Payment Initiator to pay the Merchant via the Internet for the provision of goods and/or services which is Authorised and if approved, is settled either by a Participating Acquirer or card scheme.

2. GENERAL

2.1 This Addendum sets out the terms and conditions under which Paystation offers the Xero Integration to the Merchant. The Merchant must not agree to, or use, the Xero Integration unless it has first agreed to the Agreement.

2.2 By agreeing to the Xero Integration or otherwise using the Xero Integration, the Merchant agrees to be bound by this Addendum.

2.3 This Addendum is subject to, and forms part of, the Agreement and the Merchant agrees:

- a. To comply with the Agreement when using the Xero Integration.
- b. Nothing in this Addendum is intended to limit or restrict Paystation’s rights or obligations under the Agreement.
- c. To the extent of any conflict between this Addendum and the Agreement, this Addendum will prevail.

3. TERM

3.1 This Addendum shall come into effect upon the Merchant agreeing to the Xero Integration or otherwise using the Xero Integration (whichever is earlier), and shall continue until it is terminated in

accordance with clause 9.

4. SERVICES

4.1 Subject to the terms of this Addendum, Paystation will provide transaction processing services as set out in the Agreement via the Xero Integration for the purposes of enabling Payment Initiators to settle the Merchant's invoices set out in the Xero Application.

5. AUTHORISATION

5.1 In addition to the authorisations granted in clause 14 of the Agreement, the Merchant authorises Paystation, in respect of this Addendum, to:

- a. prior to any applicable Transaction being undertaken, access information from the Merchant's subscriptions with the Xero Application to enable the Payment Initiator to settle the Merchant's online invoices set out in the Xero Application directly using Paystation's payment processing Service;
- b. subject to clause 7, share transactional data with Xero, in respect of any payment Transactions processed by Paystation using the Xero Integration, for the purpose of enabling Xero to update and import accurate data into the Merchant's relevant subscription on the Xero Application.

6. FEES

6.1 The Merchant's use of the Xero Integration in accordance with this Agreement is free of charge. The Merchant acknowledges and agrees that Paystation may in future, by amending this Agreement in accordance with clause 10, require the Merchant to pay a fee (on such terms as Paystation sees fit) for access to the Xero Integration or any related service.

6.2 The Merchant acknowledges that Paystation may pay a commission to Xero in respect of any Transactions made by a Payment Initiator to the Merchant using the Xero Integration.

7. XERO APPLICATION

7.1 The Xero Application (including any transaction data imported into the Xero Application in accordance with clause 5.1.b) is provided and administered solely by Xero in accordance with the Xero terms and conditions, and any other applicable terms, agreed between Xero and the Merchant.

7.2 To the extent permitted by law, Paystation is not responsible for the Merchant's or a Payment Initiator's use of the Xero Application in any way whatsoever and will have no liability in respect of:

- a. the Merchant's or a Payment Initiator's use of the Xero Application; or
- b. any transactional data that has been imported into the Xero Application.

8. LIABILITY AND INDEMNITY

8.1 The Merchant acknowledges the exclusion of liability and indemnity contained in clause 8 of the Agreement and agrees that these apply to this Addendum, with all necessary modification.

9. SUSPENSION AND TERMINATION

9.1 Paystation may suspend or cancel the Merchant's use of the Xero Integration, or the payment processing service, immediately by notice to the Merchant if the Merchant breaches the Agreement (including this Addendum), or as otherwise permitted under the Agreement. For the avoidance of doubt, any breach of this Addendum will be deemed to be a breach of the Agreement and Paystation may (at its discretion) exercise any applicable rights of termination set out in clause 12 of the Agreement.

9.2 This Addendum will terminate immediately, and Paystation may without notice suspend the Merchant's use of or access to the Xero Integration if:

- a. the Agreement is terminated or expires;
- b. the Xero Agreement is terminated or expires;
- c. the Merchant's account with either Xero or Paystation is terminated or ends for any reason;
or
- d. the Merchant requests that the Xero Integration be suspended.

10. AMENDMENT

10.1 Paystation reserves the right, at its discretion, to amend this Addendum or the Xero Integration from to time to time, including as required to reflect any changes in the Xero Integration or Agreement, or as otherwise directed by Xero, and Paystation will provide notice of the variation to the Merchant by direct communication to the Merchant or via statements on its website(s) or public notice.