

SimplyPOS Ltd Terms and conditions

Introduction

This booklet outlines the Terms and Conditions for your Payment Services with Simply POS. Please review this booklet carefully and keep it for future reference.

By agreeing to these Terms and Conditions, you consent to be bound by the Simply POS Services Agreement (as amended from time to time) starting from the commencement date specified in the Letter of Offer and Acceptance.

You may cancel the Services and terminate the Agreement at no cost if done before your first use of the Services or within 10 Business Days from the commencement date specified in the Letter of Offer and Acceptance, whichever comes first. Termination after this period will be subject to Clause 35 of these Terms and Conditions, and applicable fees may apply.

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Section 1: Definitions and Construction

Definitions:

In this Agreement, unless the context requires otherwise, the following terms have the meanings set out below:

- **Account** means the bank account you have designated for your fees and charges.
- **Acquiring Bank** means a bank or financial institution that provides card processing services, obtains transactions from the Merchant, and makes settlement payments to the Merchant for these transactions.
- **Agreement** refers to this agreement, including the Letter of Offer and Acceptance, any applicable Additional Service Schedules, and any Terminal User Guides, as amended by Simply POS from time to time.
- **Approved For Use** means a Payment Facility certified by Simply POS for connection to the Simply POS Network and compliant with the specifications provided by us from time to time.
- **Bank** means your bank is notified in writing by you to Simply POS from time to time.
- **Banking/Business Day** means any day in New Zealand, excluding weekends, public holidays, and days when trading banks are closed for retail business.
- **Card** refers to a credit card, charge card, debit card, dual card, or international debit card.
- **Cardholder** means a person to whom a Card has been issued and who is authorised to use it.
- **Card Issuing Organisation** means an organisation authorised to issue Cards.
- **Card Payment System** means the system involving Simply POS, banks, and Card Issuing Organisations for the payment of debt and extension of credit using Cards.
- **Card Scheme** means any organisation or scheme established to manage and set standards for the issuance, acceptance of Cards, and settlement of transactions.
- **Certification** means acknowledgment by Simply POS that the Software maintains the financial integrity of the New Zealand banking network.
- **Charges** means the fees, including any applicable fees for Equipment and other charges payable under this Agreement, as varied from time to time and detailed in the Letter of Offer and Acceptance.
- **Confidential Information** means all information about your business and Simply POS, the Card Payment System, including this Agreement, any Software, and any materials supplied by Simply POS to you relating to the Card Payment System, but excluding information that:
 - a) is published or generally available to the public at the time of disclosure;
 - b) becomes part of the public domain after its disclosure, other than through a breach of this Agreement by you or Simply POS.
- **Cost** includes any loss, expense (including legal expenses on a full indemnity basis), damages, demands, credits, relief, deductions, set-offs, or other liabilities (including loss of profit or margin).

- **Current Term** refers to the term of your Letter of Offer and Acceptance, from its commencement date until its completion, including the Initial Term and any Subsequent Term.
- **Customer** means the person named in the Letter of Offer and Acceptance under “Customer” or “Merchant,” who is bound by this Services Agreement.
- **Simply POS System** means a transaction network for processing EFTPOS payments, including networks and systems used to provide Portal Services and/or E-Commerce Gateway Solutions when utilised by you.
- **Simply POS** means Simply POS Limited.
- **Electronic Offline Transactions** refers to the capability to process EFTPOS transactions even if your terminal loses network connection, until reconnection is restored.
- **Equipment** means any device approved by Simply POS for conducting transactions on the Simply POS System, including terminals and any related equipment, software, SIM cards, or documentation supplied by Simply POS or its authorised agents.
- **Indebtedness or Debt** includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety, or otherwise) related to the payment of money.
- **Independent Party** means a supplier not a party to this Agreement who may assist in providing services under this Agreement.
- **Initial Term** has the meaning given to it in Clause 1.1.
- **Insolvent** means:
 - a) you become insolvent or unable to pay your debts as they become due;
 - b) you stop or suspend, or threaten to stop or suspend, payment of any debts, or start negotiations to reschedule any debts;
 - c) you make or propose an assignment, arrangement, or composition with, or for the benefit of, your creditors concerning any indebtedness;
 - d) a receiver, receiver and manager, administrator, or similar official is appointed for you, your business, or any of your assets;
 - e) a distress, attachment, execution, or other legal process is levied on or against your assets and not discharged within 14 days;
 - f) an order is made, a resolution passed, or another step taken for your dissolution, except for reconstruction or reorganisation approved by Simply POS before that step is taken;
 - g) you cease or threaten to cease carrying on a substantial part of your business or transfer a substantial part of your assets other than for reasonable consideration.
- **Letter of Offer and Acceptance** means the letter titled ‘Letter of Offer and Acceptance for Services,’ detailing the Services applicable to you.
- **Location** means any premises or place where Equipment is installed or where a Payment Service is provided.
- **Merchant Account** means the New Zealand bank account you designate for the settlement of transactions.

- **Merchant Acquirer** means an acquiring bank or financial institution authorised by one or more payment scheme owners to process transactions from merchants and settle funds.
- **Merchant Operating Guide** means the Terms and Conditions and operational guidelines provided by your Acquiring Bank for your merchant facility.
- **Month** means a calendar month.
- **Network Service** refers to the services provided to Simply POS by a telecommunications provider as agreed from time to time.
- **Online Transactions** means transactions processed electronically online by the Simply POS System.
- **Payment Facility** means an EFTPOS Terminal, Payment Gateway connection, or any device or service certified by us for use on the Verifone Network.
- **Payment Gateway** means a system that interfaces with the merchant's acquiring financial institution to accept payments.
- **Payment Services** means all services, subscriptions, and equipment provided by Simply POS to the customer, as detailed in the Letter of Offer and Acceptance.
- **PC EFTPOS Software Services** means all services, software, and documentation provided by Simply POS or its authorised agents as described in Section 5.
- **Personal Information** means personal information as defined under the Privacy Act 2020.
- **Portal Services** means all services, software, and documentation provided by Simply POS or its authorised agents to access and use the Portal, including the licence for Portal Software as per Section 8.
- **Portal Software** means software facilitating Portal Services and related documentation, provided to you by Simply POS or its authorised agents.
- **Serviced Premises** refers to your premises or property where the Network Service is provided.
- **Services** means the services listed in the Letter of Offer and Acceptance and any other services (including Equipment) supplied under this Agreement.
- **Settlement** means the process of advising the Acquiring Bank of funds to be deposited in the nominated bank account by settling the EFTPOS terminal.
- **Software** means the software installed on any Equipment in object code form, including revisions, replacements, modifications, and updates provided by Simply POS or its authorised agents.
- **Subsequent Term** means each term following the completion of the Initial Term, where the Agreement is renewed according to Clause 1.4.
- **Surcharge Fee** means a fee that a Merchant may apply to a transaction for accepting a Credit Card payment, which is not applied when other payment methods are used. The Surcharge Fee may be a flat fee or a percentage of the transaction.
- **Sureties or Assignees** means a person to whom some right, responsibility, or interest is transferred.
- **Telecommunication Equipment** refers to the equipment used by a telecommunications provider for providing the Network Service.
- **Telecommunications Network** includes any means by which the Network Service is provided to Simply POS by a telecommunications provider.

- **Terminal** means a card-accepting device leased by Simply POS to you under this Agreement.
- **TerminalPLUS Cap** means the maximum amount payable for the repair or replacement of the Terminal as described in Section 6A.
- **TerminalPLUS Services Fees** means the fees payable for TerminalPLUS services as detailed in the Letter of Offer and applicable on a per Terminal basis.
- **Transaction** means the actual or attempted electronic exchange or transfer of money between accounts.
- **Updates** means any patches, revisions, new versions, replacements, or modifications of the Software.
- **User** means a person authorised by you in writing to use the Portal Services on your behalf as detailed in Clause 20.
- **Verifone Network** means the transaction network managed by Simply POS.
- **Verifone Network Services** means the processing of transactions on the Verifone Network.
- **We, Us, and Our** means Simply POS.
- **You and Your** means the Customer, and if the Customer consists of more than one person, means each person jointly and severally, including employees, agents, contractors, or representatives.

Construction:

In this Agreement, unless the context otherwise requires, any reference to:

- a) a gender includes each other gender;
- b) the singular includes the plural and vice versa;
- c) any legislation includes modifications, re-enactments, or substitutions of that legislation, and any regulations, Orders in Council, or other instruments issued under that legislation;
- d) a party to this Agreement or another agreement includes its successors or permitted assignees or transferees;
- e) headings shall be disregarded in interpreting this Agreement.

Section 2: Subscribing to the Services

1. Term

1.1 This Agreement will take effect from the commencement date specified in the Letter of Offer and Acceptance and will continue for an initial term as outlined in the Letter of Offer and Acceptance (Initial Term).

1.2 You may terminate the Agreement before your first use of the Services or within 10 Business Days from the commencement date specified in the Letter of Offer and Acceptance, whichever comes first, without charge. After this period, termination must follow the terms set forth in the Agreement.

1.3 Either party may terminate the Agreement at the end of the Initial Term and each Subsequent Term by providing written notice to the other party at least 30 days prior to the end of the applicable Term, or as detailed in Clause 35.

1.4 If neither party provides notice of termination under Clause 1.3, the Agreement will automatically renew for successive 12-month periods until terminated in accordance with the terms of this Agreement.

1.5 The parties may also terminate the Agreement as specified in Clause 35.

1.6 If you have selected Eftpos Terminal Services, Verifone Network Services, or PC EFTPOS Software Services, and those services include specific termination provisions, those provisions will take precedence over this Clause.

2. Obligations

Our Obligations

2.1 We agree to: a) Provide the Services as detailed in the Letter of Offer and Acceptance and further outlined in this Agreement. You acknowledge that our ability to provide these Services depends on the availability of third-party services, such as telecommunications and electricity. b) Supply a range of signs and promotional materials at no charge for display at your point of sale. c) Provide you with stationery and other supplies at costs and terms we will notify you of from time to time.

Your Obligations — Payments

2.2 You agree to: a) Pay the Charges (plus GST, if applicable) to us monthly in advance via direct debit from your Account starting from the commencement date shown in the Letter of Offer and Acceptance, and continue on the same date each month until the Agreement is terminated. b) Authorise us to instruct your Bank to debit or credit your Account for any deficiencies or overcharges identified after an audit or check by Simply POS, without prior notice. c) Cover any reasonable costs incurred due to a breach of this Agreement by you, including investigation costs if a breach is found. d) Pay interest (plus GST, if applicable) on any overdue amounts. The interest rate will be set by Simply POS based on the bank overdraft rates applicable on the first day of the month in which the payment was due. e) When Charges are fixed, we will notify you of the amount and frequency of direct debits or deductions, as well as any changes to the Charges. f) Accept that we may adjust the Charges from time to time with written notice. g) Pay any outstanding debt upon demand.

Your Obligations — Other

2.3 You agree to: a) Notify us of any changes to your banking arrangements to update your direct debit instructions. b) Inform us of any significant changes to your business, including but not limited to: i. Change of address; or ii. Significant changes in the products or services you offer. c) Never request a Cardholder to disclose their PIN verbally or in writing. d) Ensure that any EFTPOS terminal you operate is used only as permitted by this Agreement.

Section 3: Eftpos Terminal Services

This section applies only if you have subscribed to an EFTPOS terminal service from Simply POS.

3. Obligations

Our Obligations

3.1 During the term of this Agreement, we will: a) Provide you with the terminal(s) and terminal accessories as outlined in your Letter of Offer and Acceptance. b) Grant you a non-exclusive, non-transferable right to use one copy of the Software on each piece of Equipment for accessing the Services and for your internal business purposes. Any modifications to the Equipment will be made at our expense. c) Offer 24-hour daily access to our call centre for reporting faults and obtaining advice on how to correct them.

Your Obligations - Equipment

3.2 You agree: a) To keep the Equipment at the designated Location and provide us access to: i. Install, inspect, remove, repair, or replace the Equipment. ii. Make modifications to the Equipment, with costs covered by Simply POS. b) To immediately notify us if the Equipment is lost, stolen, destroyed, damaged, or if it is no longer in your possession or control. c) To be liable for any loss or damage to the Equipment and to indemnify us for the costs of repairing or replacing (at our discretion) any Equipment that is lost or damaged beyond normal wear and tear. We recommend obtaining full replacement insurance for these situations. d) To assist and cooperate with us in arranging for the return of Equipment at your cost and, if requested, to facilitate disconnection and removal of Equipment. Make the Equipment available for collection by us upon termination of this Agreement or as reasonably specified by us. e) To use the Equipment properly for its intended purpose and in accordance with the manufacturer's operating instructions and any Terminal Care Guide. f) To comply with all relevant laws regarding the possession, use, and maintenance of the Equipment. g) To use an EFTPOS terminal on the Eftpos System only if it has been approved by us.

3.3 You will not: a) Interfere with or alter any software within the EFTPOS terminal or attached cryptographic device (PIN pad). b) Knowingly or negligently use or attempt to use the Eftpos System with a malfunctioning EFTPOS terminal. c) Knowingly or negligently do or permit anything that might damage or interfere with the Eftpos System or compromise its security.

3.4 You agree that the Equipment remains the property of Simply POS and you will not: a) Modify, alter, or copy the Equipment. b) Affix any mark or label to the Equipment. c) Interfere in any way with the Equipment. d) Sell, let, hire, encumber, charge, or otherwise deal with the Equipment. e) Connect or link the Equipment with any other device or system without our prior written consent. f) Allow anyone other than Simply POS or its authorised agents to repair, service, or maintain the Equipment.

Your Obligations - Software

3.5 You agree to use all reasonable efforts to protect the confidentiality of the Software and to prevent unauthorised use, reproduction, distribution, or publication of the Software.

3.6 You agree that you will not: a) Copy, reverse engineer, disassemble, modify, or attempt to modify the Software in any way to duplicate or imitate its functions. b) Remove or obscure any copyright, trademark, or other proprietary notices on the Software. c) Sell, lease, sublicense, lend, assign, or transfer, in whole or in part, or provide unlicensed third parties with access to the Software.

Section 4: Verifone Network Services

This section applies only if you process EFTPOS Transactions on the Verifone Network.

4. Obligations

Our Obligations

4.1 During the term of this Agreement, we will: a) Provide you with access to and use of the Verifone Network, as outlined in this Agreement. b) Take all reasonable steps to maintain the Verifone Network in good working order to ensure continuous and accurate service. c) Offer 24-hour daily access to our call centre for reporting faults and obtaining advice on how to resolve them.

4.2 We will facilitate the deposit of funds from Transactions processed via your Payment Facility into the Merchant Account designated by the Acquiring Bank.

4.3 We will ensure that the process for settling and depositing value for approved Transactions into your Merchant Account is initiated. However, you acknowledge that the obligation to settle Transactions with you lies with the Acquiring Bank or Card Issuer, and this will be handled according to their respective agreements with you and/or their Merchant Operating Guide. We are not liable for any amounts payable to or receivable by you from any Transaction.

Your Obligations - General

4.4 You agree that your participation in processing any transaction will comply with all applicable laws and regulations in New Zealand or any other country.

4.5 You may use any Payment Facility on the Verifone Network only for as long as it remains Approved For Use.

4.6 You must cooperate with the installation of any Software or hardware upgrades provided by us to maintain the Payment Facilities Approved For Use status and follow our instructions regarding the use of terminals and Software applications.

4.7 Notify us promptly if you encounter any issues with the Verifone Network that affect your ability to access or use the Network Services.

4.8 Adhere to your Acquiring Bank's requirements for operating your Payment Facility, as outlined in their Merchant Operating Guide, including maintaining the confidentiality of Cardholder details and verifying Cardholder identity.

4.9 You will be responsible for paying any additional Network Service and communication fees, including but not limited to: a) The provision of a SIM Card for use in GPRS terminals, as specified in your Letter of Offer and Acceptance. b) Fees associated with transactions via IP, as detailed in your Letter of Offer and Acceptance.

Your Obligations - Electronic Off-line Transactions

From time to time, the Verifone Network may be unavailable due to issues such as telecommunications errors, power outages, or system faults, preventing online processing of Transactions.

4.10 You agree that: a) All Transactions will be processed as On-line Transactions when electronic authorization is available through the Eftpos System. b) Electronic Off-line Transactions may only be processed if electronic authorization is not available. c) If the Verifone Network is unavailable and Electronic Off-line Voucher (EOV) mode is available on your terminal, you may choose to process Transactions in EOV mode.

4.11 If you complete an Electronic Off-line Transaction and the Transaction is stored within a point of sale device connected to the EFTPOS terminal, ensure that the point of sale device is secure against unauthorised access.

4.12 Any Off-line Transaction must be conducted in accordance with your Acquiring Bank's requirements as described in their Merchant Operating Guide.

4.13 We are not responsible for any loss of stored Transactions if the terminal malfunctions before the Transactions are uploaded to the Verifone Network, unless such loss results directly from our willful default or negligence.

5. Settlement

5.1 You may initiate Settlement for all or any of your EFTPOS terminals as outlined in your Acquiring Bank's Merchant Operating Guide.

5.2 If Settlement is not initiated by the end of your chosen Settlement period, we will make reasonable efforts to enforce Settlement. We are not liable for any losses or costs incurred due to failure to effect Settlement.

5.3 If Settlement occurs on a day other than a Banking Day, we will strive to ensure that you receive value on the next Banking Day.

6. Suspension of the EFTPOS System

6.1 We may suspend the availability of the EFTPOS System for certain types of Cards for periods we deem appropriate if: a) We believe that prudent banking practices require such action; or b) An Authorised Institution has suspended the use of those Card types in the EFTPOS System.

6.2 We will make reasonable efforts to notify you in writing of any suspension of Card types after receiving notification. This notice may be provided by publishing a general notice on our website and in major daily metropolitan newspapers in Auckland, Wellington, Christchurch, and Dunedin.

6.3 For clarity, we are not required to notify you of the suspension of individual Cards if they are suspended due to suspected theft, fraudulent use, or abuse.

7. Use of Telecommunications Network

Use of Network Service

7.1 You will comply with any notices, whether general or specific, from us related to the use of the Telecommunications Network Service.

Change in Telecommunications Type

7.2 If you plan to connect any terminal or Equipment to the Telecommunications Network of a type or specification not previously connected, you are responsible for ensuring your Payment Services continue to operate.

Maintenance and Repair

7.3 Only individuals authorised by a telecommunications provider are permitted to maintain, repair, or interfere with any part of the Telecommunications Network. You must provide access to the Serviced Premises at reasonable hours for the telecommunications provider to install,

remove, modify, repair, maintain, inspect, test, suspend, or terminate the Network Service or any part of the Telecommunications Network.

Replacement

7.4 If any part of the Telecommunications Network at the Serviced Premises is lost, stolen, destroyed, or damaged (except through fair wear and tear, inherent defect, fire, flood, earthquake, or other unavoidable events), you will, upon demand, reimburse Simply POS (on behalf of the telecommunications provider) for the cost of replacing or repairing that part of the Telecommunications Network.

Liability

7.5 Simply POS is not liable for any transaction processing issues or business interruptions resulting from connectivity failures due to faults in the Telecommunications Network.

Section 5: PC EFTPOS Software Services

If your Letter of Offer and Acceptance includes the PC EFTPOS solution, you must comply with the terms and conditions of this section as well as those of the Eftpos Services Agreement.

Terms and Conditions

8. Grant of Licence

8.1 Simply POS is the sole and exclusive owner of the PC EFTPOS solution. Upon execution of this Agreement, we grant you, and you accept: a) A perpetual, non-exclusive, non-transferable licence if you have paid a one-time licence fee; or b) A non-exclusive, non-transferable licence for a term agreed upon, if you are supplied the Software under this Agreement (a 'Term Licence').

8.2 This licence permits you to use the number of copies of the Software specified in the Letter of Offer and Acceptance on the Designated Equipment for processing electronic transactions for your own internal business purposes, according to the terms of this Agreement. If no number is specified, the default number of licences is '1'.

8.3 Simply POS may offer information on Updates at a cost, if any, which will be notified to you from time to time.

8.4 You may use the Software on computer hardware other than the Designated Equipment if the Designated Equipment is temporarily unavailable or if Simply POS provides prior written consent.

9. Fees

9.1 Upon execution of this Agreement, you must pay the licence fee (plus GST) as specified in the Letter of Offer and Acceptance.

9.2 You are responsible for any costs associated with Updates required to continue using the PC EFTPOS Software Services.

10. Your Undertakings

10.1 You must ensure that you and those under your responsibility: a) Do not copy the Software except for normal system operation or backup purposes. b) Do not translate, adapt, vary, or modify the Software. c) Do not reverse engineer, decompile, or disassemble the Software to duplicate or imitate its functions. d) Do not remove or obscure any copyright, trademark, or other proprietary notice on the Software, and ensure that any backup copies include Simply POS's copyright notice. e) Do not sell, lease, sublicense, lend, assign, host, or transfer the Software, or provide unlicensed third parties access to the Software without prior written consent from Simply POS. f) Maintain accurate and up-to-date records of the number and location of all copies of the Software. g) Use all reasonable efforts to protect the Software from unauthorised use, reproduction, distribution, or publication, and keep it confidential. h) Accept and install all Updates as notified by Simply POS.

11. Representations and Warranties

11.1 Simply POS, and any parties we are responsible for, are not liable to you for any loss, damage, or injury resulting directly or indirectly from the use or possession of the Software or from this Agreement, except in cases of our gross and material negligence, willful misconduct, or criminal conduct.

11.2 If Simply POS is found liable, despite the other provisions of this Agreement, our liability for any single event or related events is limited to the licence fee you paid for the Software.

11.3 You acknowledge that the Software is not error-free and agree that the presence of errors does not constitute a breach of this Agreement. If the Software does not substantially perform according to the documentation, Simply POS will remedy the error free of charge provided that: a) The error is reported to Simply POS. b) The error is not due to your breach of this Agreement. c) The error is not caused by third-party software or hardware. d) The error is not due to changes in your operating environment.

11.4 If you have a Term Licence or a separate service agreement or extended warranty with Simply POS, we will remedy errors in accordance with that Term Licence, service agreement, or extended warranty.

11.5 All other warranties, representations, or conditions regarding the Software, whether express or implied, are excluded to the fullest extent permitted by law.

11.6 You confirm that you are licensing and using the Software for business purposes, and that the Consumer Guarantees Act 1993 does not apply to the Software.

11.7 Except as provided above, Simply POS is not obligated to provide support or maintenance for the Software, including Certification. Any support or maintenance provided by Simply POS will be on our standard terms and at your cost.

12. Intellectual Property Rights

12.1 You confirm that ownership of the Software, and all intellectual property rights related to the Software, remain solely with Simply POS.

13. Termination

13.1 Simply POS may terminate the PC EFTPOS Software Services immediately if you breach any terms of this Section or any related service agreement.

13.2 Upon termination of the PC EFTPOS Software Services, you must immediately destroy or return to Simply POS all copies of the Software and any related information or documentation provided in connection with this Agreement.

Section 6: Credit Card Surcharge Fee

If your Letter of Offer and Acceptance includes the Surcharge solution, you must comply with the terms and conditions of this section and the Eftpos Services Agreement.

14. Terms and Conditions

14.1 Under the Nominated Card Scheme Regulations in New Zealand, you are allowed to charge Credit Card holders a Surcharge Fee when these cards are used for transactions. For the purposes of this Agreement, a Credit Card refers to a payment card issued by a Card Issuing Organisation that is used as a credit card for credit transactions.

15. Indemnification

15.1 You agree to indemnify and hold Simply POS, its employees, agents, contractors, and representatives harmless from any liability, loss, or damage you may suffer as a result of claims, demands, costs, or judgments against you arising from your obligations under Clause 14.1.

16. Your Obligations

16.1 If you add a Surcharge Fee to your normal prices when a Cardholder uses a Credit Card, you must: a) Clearly display notices, signs, or decals at your physical premises, and a notice

next to your point of sale, in a minimum of Arial 10-point font, disclosing that a Surcharge Fee will be applied when payment is made by Credit Card. If there is no physical point of sale, such notices or signs must be prominently displayed during an Internet order transaction or communicated clearly in a telephone order, prior to processing the transaction. b) Ensure the Surcharge Fee is clearly disclosed to the Cardholder before the transaction is completed, and give the Cardholder the opportunity to cancel the transaction after the Surcharge Fee has been disclosed. c) Ensure the Surcharge Fee is reasonable in relation to your cost of accepting the Credit Card and inform the Cardholder of the rate, amount, or method of calculation of the Surcharge Fee at the time of purchase. The Surcharge Fee may be applied as a fixed fee or a percentage of the transaction amount. d) Ensure the Surcharge Fee is included in the total amount of the transaction and not collected separately. e) Do not describe the Surcharge Fee as being applied by a Card Scheme, Simply POS, or a third-party financial institution. f) Be aware that you may apply a Surcharge Fee to any or all branded cards of a Card Scheme. g) For Visa Transactions, ensure the transaction receipt displays: - Merchant name - Merchant city and country - Transaction amount (or credit), indicated in the transaction currency - Surcharge Fee (or credit), indicated in the transaction currency - Total amount (or credit), indicated in the transaction currency - Transaction date (or credit) preparation date - Account Number (Cardholder copy must show Truncated Account Number) - Space for Cardholder signature or PIN Verification notation (if Chip & PIN) - Authorisation Code - Transaction type (purchase or credit)

16.2 Nothing in this Agreement prohibits you from encouraging Cardholders to use other forms of payment by offering discounts, promotions, or financial incentives. You may steer Cardholders to use other payment methods, including EFTPOS, cards from different Card Schemes, or different types of cards within a particular Card Scheme.

Section 6A: TerminalPLUS Services

This section applies if you have subscribed to an Eftpos Terminal Service from Simply POS and your Letter of Offer includes the supply of the TerminalPLUS Service.

16. TerminalPLUS Service Obligations

16.3 Simply POS's Obligations

If you return a terminal to Simply POS for repair (return of the terminal by courier is at Simply POS's cost), the charges to repair the terminal will be in accordance with Simply POS's then-current repair rates, capped at NZ\$300 plus GST per terminal. This TerminalPLUS Cap applies regardless of the cause of damage and covers spare parts and labor costs.

If the terminal is determined by Simply POS to be irreparable, Simply POS will replace the terminal with another terminal of the same model at a cost to you of up to NZ\$300 plus GST. No charge for the secure destruction of the irreparable terminal will apply.

Simply POS will return the repaired or replacement terminals to you at Simply POS's cost.

16.4 Your Obligations

In consideration of receiving the TerminalPLUS Service as described in this Section 6A, you will pay Simply POS the monthly TerminalPLUS Services Fee as outlined in the Letter of Offer.

16.5 Payment

Payment terms for the TerminalPLUS Services Fee and for the repairs under this Section 6A shall be in accordance with the payment terms described in this Agreement. Simply POS will issue invoices for the fees associated with repairs upon completion of the repairs.

Section 7: Software Maintenance Services

This section applies if you purchased your terminal(s) from Simply POS.

17. Overview

17.1 All terminals purchased from Simply POS will incur a software maintenance fee of \$5 + GST per terminal per month. This fee is charged to the customer who purchased the terminal.

17.2 If a customer chooses to lease their terminal from Simply POS, the software maintenance fee is included in the monthly rental fee.

17.3 The terminals shall automatically connect to the Simply POS terminal management system on a regular basis and download the latest version of software available.

17.4 The monthly software maintenance fee covers automatic software updates provided by the Simply POS terminal management system from time to time.

17.5 The monthly software maintenance fee applies to all terminals purchased directly from Simply POS.

17.6 Software upgrades that are manually performed by the Simply POS repair center will incur a fee at the then-current rate for manual software upgrades.

17.7 The monthly software maintenance fee does not cover upgrading or maintaining the terminals beyond automatic updates.

18. Cancellation

18.1 You may cancel the software support services provided under this Section 7 for a terminal if:

- a) the terminal and/or PIN Pad is sent for repair and cannot be repaired; or
- b) you notify Simply POS that the PIN Pad is lost, stolen, or damaged; or
- c) the terminal and/or PIN Pad reaches its PCI sunset date; or
- d) PCI approval or EMV approval is revoked.

18.2 Simply POS may end-of-life a product before one of the above events occurs and may cease to provide software support services for that product.

Section 8: Portal Services

This section applies if your Letter of Offer and Acceptance includes the use of our Portal Services.

19. Overview

19.1 These terms and conditions apply to the provision and use of the Portal Services. In the event of any conflict or inconsistency between the terms in this Section 8 and any other terms under the Agreement, these terms will prevail to the extent such conflict or inconsistency relates to the use of the Portal Services.

20. Portal Services and Grant of License

20.1 Simply POS is the sole and exclusive owner of the Portal Software. You acknowledge that the use of the Portal Services does not transfer any rights of ownership of the intellectual property rights vested in the Portal Software owned by Simply POS. Upon execution of this Agreement, Simply POS grants you, and you accept, a non-exclusive, non-transferable license (other than the right to sub-license to Users under these same terms and conditions) to use the Portal Software in conjunction with the Portal Services for the term of this Agreement ("License").

20.2 You may designate who is a User and are responsible for each User's compliance with these terms and conditions in respect to the Portal Services.

20.3 Simply POS may at any time and for any reason withdraw, revoke, or suspend access and/or terminate the right to use the Portal Services or any part of it, or any associated services if:

- a) there are technical, legal, security, or business reasons; or
- b) Simply POS considers that the Portal Services or any part thereof is being, or is likely to be, used fraudulently or for any other unlawful or improper purpose; or

- c) you fail to pay any fees due under this Agreement; or
- d) you fail to comply with your obligations under this Section 8.

In the event that access to the Portal Services is suspended under this Clause, access will be reinstated once the event causing the suspension has been resolved to Simply POS's satisfaction (acting reasonably).

20.4 You shall decide the access level for each User and are responsible at all times for all use and access (or misuse or unauthorised access) of the Portal Services by a User or other third party using your or your User's login details, including any unauthorised use.

20.5 Simply POS may, at its sole discretion, determine what information, data, features, and functionality are made available to you through the Portal Services. The contents of any information provided as part of the Portal Services should not be construed as legal or professional advice.

21. Fees

21.1 Upon execution of this Agreement, you must pay the licence fee (plus GST) as set out in the Letter of Offer and Acceptance, if applicable.

22. Your Undertakings

22.1 You must ensure that you and those you are responsible for, including your Users:

- a) use the Portal Services only for the intended purpose as contemplated under this Agreement and in accordance with the Agreement and at all times only for lawful purposes;
- b) do not copy the Portal Software;
- c) do not translate, adapt, vary, or modify the Portal Software;
- d) do not reverse engineer, decompile, or disassemble the Portal Software in an attempt to duplicate it or imitate its functions;
- e) do not remove or obscure any copyright, trademark, or other proprietary notice on the Portal Software and ensure that any backup copy includes Simply POS's copyright notice;
- f) do not sell, lease, sub-license, lend, assign, host, or transfer, in whole or in part, or provide unlicensed third parties access to the Portal Software (including for hosting purposes) without Simply POS's prior written consent;
- g) use all reasonable efforts to protect the Portal Software from unauthorised use, reproduction, distribution, or publication and keep it confidential;
- h) accept and install all Updates notified to you by Simply POS at your own risk;

i) install, support, and maintain appropriate anti-virus software and other network security measures, including but not limited to the use of firewalls as appropriate, in line with PCI DSS requirements;

j) keep all login details and passwords secure at all times and ensure that the Portal Services are not accessed or used by unauthorised users;

k) notify Simply POS immediately if any login details or passwords are misused, lost, stolen, or used without authority or any other breach or potential breach of security;

l) do not access or attempt to access the Portal Services if your or a User's permission to access and use the Portal Services has been revoked; and

m) do not engage in any activities that may compromise or impair the functionality or otherwise undermine the security or integrity of the Portal Services, Portal Software, or any of Simply POS's other systems or networks.

23. Representations and Warranties

23.1 You agree that Simply POS, and anyone Simply POS is responsible for, is not liable to you in tort, contract, equity, or on any other basis for any loss, damage, or injury incurred by you arising directly or indirectly from the use or possession of the Portal Software or from the Portal Services supplied under this Agreement unless such loss is directly and solely caused by our gross and material negligence, willful misconduct, or criminal conduct.

23.2 If, despite the other provisions of this Agreement, Simply POS is found to be liable to you, then its liability for any single event or series of related events is limited in accordance with Clause 40.3.

23.3 You acknowledge that Simply POS provides the Portal Software on an "as-is" basis and makes no warranties or representations that the Portal Software is error-free or guarantees 100% uptime. The existence of errors shall not constitute a breach of this Agreement. All other warranties, representations, or conditions with respect to the Portal Services, whether express or implied, are expressly excluded to the fullest extent permitted by law.

23.4 You confirm that you are licensing and using the Portal Software for the purposes of your business activities, and that the Consumer Guarantees Act 1993 does not apply to the Software.

24. Registration and Administration

24.1 You agree to provide Simply POS with all information required to set you up and supply the Portal Services to you, and that this information is current, complete, and accurate as of the time it is sent to us.

24.2 You agree to maintain and update this information as required. You acknowledge that in order to provide the Portal Services, Simply POS may use data sourced from publicly available registers such as the New Zealand Companies Register and New Zealand Business Numbers for registration and administration purposes.

25. Sale of Business

25.1 You are responsible for advising Simply POS of the sale of your business or change of ownership at least 30 days prior to the date of sale. Simply POS will disable access to the Portal Services and cease to provide the services unless otherwise agreed between the parties.

Section 9: E-Commerce Gateway Services

This section applies if your Letter of Offer and Acceptance includes the use of our E-Commerce Gateway Services.

26. Overview

26.1 Simply POS's E-Commerce services include an E-Commerce gateway that can be used to process payment transactions where the account holder is not physically present at the point of sale, such as through websites, mobile phone applications, and other internet-connected devices and interaction channels ("E-Commerce Gateway Solution").

27. E-Commerce Gateway Solution

27.1 You may access the E-Commerce Gateway Solution through one or more methods enabled by us from time to time (each, a "Payment Interface"). Examples of Payment Interfaces include:

a) Hosted Checkout: Your websites or mobile applications link out to the Simply POS-hosted payment page.

b) Embedded Hosted Checkout: You embed Simply POS's hosted payment page in your websites or mobile applications using an iFrame.

c) Single-Use URL: You use a Simply POS portal to generate a single-use URL and email the link to your customer, allowing them to complete the payment transaction on Simply POS's hosted payment page.

d) API Integration: You collect the customer's payment information in your IT environment and transmit this information to the E-Commerce Gateway using Simply POS-provided APIs.

e) Virtual Terminal: You access a virtual terminal hosted in Simply POS's IT environment via the Simply POS portal, providing an interface for you to enter a customer's payment information and submit it for processing.

f) Pay by Link: Pay by Link is a Simply POS service allowing merchants without a website to securely accept online payments by generating a temporary payment link.

27.2 Simply POS is the sole and exclusive owner of the E-Commerce Gateway Solution, including the software provided as part of the E-Commerce Gateway Solution (the "E-Commerce Gateway Software"). The E-Commerce Gateway Solution may include components supplied by independent parties. You acknowledge that the use of the E-Commerce Gateway Solution does not transfer any rights of ownership of the intellectual property rights vested in the E-Commerce Gateway Software. Upon execution of this Agreement, Simply POS grants you a non-exclusive, non-transferable licence to use the E-Commerce Gateway Software as part of the E-Commerce Gateway Solution for the term specified in the Letter of Offer and Acceptance ("License").

27.3 This License allows you to use the number of copies of the E-Commerce Gateway Software specified in the Letter of Offer and Acceptance as part of the E-Commerce Gateway Solution. Where no number is specified, the default number of Licences shall be '1'.

27.4 Unless otherwise agreed in writing, the E-Commerce Gateway Solution is our standard, off-the-shelf service, and no special or customised versions will be provided. Simply POS may offer you updates at such cost (if any) as notified from time to time. You are responsible for ensuring that you update your IT environment to maintain compatibility with any such updates.

27.5 We will provide you with a list of Merchant Acquirers supported by us for use with the E-Commerce Gateway Solution (each, a "Supported Acquirer"). This list may change from time to time. Your use of a particular Payment Interface may be subject to the approval and/or ongoing authorization of the Supported Acquirer. You are responsible for entering into an agreement with a Supported Acquirer and obtaining any necessary approvals and/or authorizations.

28. Fees

28.1 In addition to any Licence fee that may be applicable, a per-Transaction charge will apply to the E-Commerce Gateway Solution as detailed in the Letter of Offer and Acceptance.

29. Your Undertakings

29.1 You must ensure that you and those you are responsible for:

- a) use the E-Commerce Gateway Software solely for facilitating E-Commerce Transactions;
- b) do not copy the E-Commerce Gateway Software;

- c) do not translate, adapt, vary, or modify the E-Commerce Gateway Software;
- d) do not reverse engineer, decompile, or disassemble the E-Commerce Gateway Software in an attempt to duplicate it or imitate its functions;
- e) do not remove or obscure any copyright, trademark, or other proprietary notice on the Software, and ensure that any backup copy includes Simply POS's copyright notice;
- f) do not sell, lease, sub-license, lend, assign, host, or transfer, in whole or in part, or provide unlicensed third parties access to the E-Commerce Gateway Software (including for hosting purposes) without Simply POS's prior written consent;
- g) use all reasonable efforts to protect the E-Commerce Gateway Software from unauthorised use, reproduction, distribution, or publication and keep it confidential;
- h) accept and install all updates notified to you by Simply POS at your own risk;
- i) resolve any dispute between you and your customers involving or relating to any Transactions, provided that if the dispute relates to the authorization of any Transactions using the E-Commerce Gateway Solution, Simply POS agrees to provide reasonable assistance in resolving the dispute if you require it;
- j) install, support, and maintain appropriate anti-virus software and other network security measures, including but not limited to the use of firewalls as appropriate, in line with PCI DSS requirements.

29.2 You will not conduct, attempt to conduct, or solicit a third party to conduct penetration testing or other vulnerability assessments of the E-Commerce Gateway Solution. You will not access or use, or attempt to access or use, the E-Commerce Gateway Solution in a manner intended to or with the effect of negatively impacting its performance. We may disable your access to the E-Commerce Gateway Solution without notice should you violate these restrictions.

30. Representations and Warranties

30.1 You acknowledge that Simply POS provides the E-Commerce Gateway Solution on an "as-is" basis and makes no warranties or representations that the E-Commerce Gateway Solution will be uninterrupted or error-free. You agree that the existence of such errors shall not constitute a breach of this Agreement. In the event that the E-Commerce Gateway Solution does not perform substantially in accordance with the documentation provided due to an error or defect, Simply POS will remedy such error free of charge, provided:

- a) it is notified to Simply POS within 14 days of the error or defect being known to you;
- b) it is not a result of your breach of this Agreement;

- c) it is not attributable to any third-party software or hardware;
- d) it is not attributed to a change in your operating environment.

30.2 All other warranties, representations, or conditions with respect to the E-Commerce Gateway Solution, whether express or implied, are expressly excluded to the fullest extent permitted by law. Simply POS is not responsible for interference with or access to the E-Commerce Gateway Solution outside of its control or responsibility. Simply POS may, in its sole discretion, suspend the E-Commerce Services for any reason.

30.3 You confirm that you are licensing and using the E-Commerce Software for the purposes of your business activities, and that the Consumer Guarantees Act 1993 does not apply to the Software.

30.4 Subject to Clause 30.1, you agree that Simply POS is not obliged to provide any support or maintenance for the E-Commerce Gateway Solution (including certification). Any support and maintenance Simply POS does provide will be at your cost as agreed.

31. Set Up and Administration

31.1 You agree to provide us with all information required to set up and supply the E-Commerce Gateway Solution and to comply with any other reasonable setup instructions. You warrant that the information you provide is current, complete, and accurate as of the time it is sent to us. You agree to maintain and update this information as required. You acknowledge that Simply POS may use data sourced from publicly available registers such as the New Zealand Companies Register and New Zealand Business Numbers for registration and administration purposes.

31.2 You are responsible for separately procuring all IT infrastructure necessary to access and use the E-Commerce Gateway Solution and for the security and integrity of your IT environment.

31.3 With respect to Payment Interfaces that require integration between your IT environment and the E-Commerce Gateway Solution, we reserve the right to require testing of the integration prior to your production use. In such cases, you will cooperate with us to schedule and complete such testing and are responsible for complying with our relevant instructions regarding the integration and setup.

32. Sale of Business

32.1 You are responsible for advising Simply POS of the sale of your business or change of ownership at least 30 days prior to the date of sale. We will disable access to the E-Commerce Services and cease providing the services unless otherwise agreed between the parties.

33. Tokenized Data

33.1 Simply POS will not be obligated to decrypt and transmit tokenized data unless expressly required by law. Requests to do so will be handled on a case-by-case basis.

33.2 You acknowledge and agree that Simply POS may collect and use technical and usage data and related information in connection with your use of the E-Commerce Gateway Solution, including information about payment transactions. This data may be gathered for analytics and optimization, to facilitate the provision of the E-Commerce Gateway Solution, and to improve Simply POS Products and Services. This data (including personal information) may be transferred, hosted, or accessed outside of New Zealand for these purposes. You authorise Simply POS to provide such data and information as required to third-party suppliers providing services in connection with the E-Commerce Gateway Solution and represent and warrant that you have obtained all necessary rights, permissions, and consents for Simply POS to lawfully transmit such data to the service provider.

Section 10

34. Promotion of the Services

- **34.1:** Use only authorised advertising or promotional materials.
- **34.2:** Continuously promote the Eftpos System and display all related material prominently in your outlets.
- **34.3:** Non-exclusive licence to use the EFTPOS New Zealand logo for promotion, which ends five business days after agreement termination.
- **34.4:** Get approval for any promotional material not supplied by EFTPOS New Zealand before use. Follow guidelines for logo usage.
- **34.5:** The licence to use the logo ends five business days after termination of the agreement.

35. How Can This Agreement Be Terminated?

- **35.1:** You can terminate without penalty if done:
 - According to Clause 1.2.
 - According to Clause 1.3.
 - Within 14 days of a notice of an increase in charges or changes in costs or fees, unless aligned with the New Zealand Consumer Price Index.
- **35.2:** If terminated outside Clause 35.1, EFTPOS New Zealand may authorise your bank to debit your account for fees as outlined in Clause 37.
- **35.3:** EFTPOS New Zealand may terminate immediately:
 - If a termination event under Clause 36 occurs.
 - If continued service could damage reputation or cause loss.
 - If unable to continue providing services.
- **35.4:** Upon termination, you must:
 - Return any Equipment at your cost.

- Return all information and promotional material.
- Cancel automatic payments to EFTPOS New Zealand.

36. What Is a Termination Event?

- **36.1:** EFTPOS New Zealand may terminate immediately if:
 - Payments are overdue or you are unlikely to meet obligations.
 - You breach the agreement and do not remedy it within 14 days.
 - You become insolvent.
 - You cease or materially alter your business, or transfer ownership/control.
 - You lose possession of Equipment.
 - You act fraudulently or illegally.
 - You default on a lease or licence related to the Location.
 - Your card processing facility is terminated and you cannot replace it.

37. What Are the Consequences of Termination?

- **37.1:** If you terminate improperly, pay the lesser of remaining charges up to the end of the term or 12 months' charges.
- **37.2:** Post-termination, you cannot use Equipment for transactions.
- **37.3:** Continue charges until Equipment is returned.
- **37.4:** EFTPOS New Zealand may reclaim Equipment using reasonable force and you must cover costs.
- **37.5:** EFTPOS New Zealand can take steps at your cost to remedy breaches and protect interests.
- **37.6:** Termination does not affect pre-existing obligations or liabilities.
- **37.7:** EFTPOS New Zealand can disclose termination details to any person.

38. What Warranties Do I Provide to EFTPOS New Zealand?

- **38.1:** Warrant that you are acting on your own behalf unless disclosed otherwise.
- **38.2:** Use Equipment and Services in compliance with all applicable laws and Card Scheme rules.

39. In What Circumstances Will I Have to Indemnify EFTPOS New Zealand?

- **39.1:** Indemnify against losses, claims, and damages from breaches, use of Equipment, or loss/damage to Equipment (excluding reasonable wear and tear).
- **39.2:** Indemnify against losses from:
 - Failure to meet obligations.
 - Fraudulent data input or activity.
- **39.3:** Indemnify for breaches of Card Scheme regulations, laws, or any material provision.

40. What Is Our Liability?

- **40.1:** EFTPOS New Zealand will maintain system operation but cannot guarantee uptime.
- **40.2:** Not liable for:
 - Supply or non-supply of Services.
 - Loss of business, profits, or consequential damages.
 - Failure of the Card Payment System or Eftpos System.
 - Interruption due to non-EFTPOS New Zealand services.
 - Issues from non-Verifone Networks.
- **40.3:** Total liability is limited to two months' Charges.
- **40.4:** Release EFTPOS New Zealand from liability for erroneous data and indemnify against claims from inaccurate data.
- **40.5:** Not liable for losses from your actions or third-party supplier issues.

41. Variations

- **41.1:** EFTPOS New Zealand can amend the Agreement terms by written notice.

42. Disputes

- **42.1:** Resolve disputes through good faith negotiations.
- **42.2:** Continue performing obligations during dispute resolution.
- **42.3:** EFTPOS New Zealand can seek injunctive relief from a New Zealand Court.

Disputes with a Cardholder

- **42.4:** Disputes between you and a Cardholder are your responsibility. Refer disputes to the Card Issuing Organisation or Acquiring Bank if unresolved.
- **42.5:** Refer unresolved disputes to Card Issuing Organisation or contact Acquiring Bank.

43. Title

- **43.1:** Ownership of Equipment and Software remains with EFTPOS New Zealand.

44. Intellectual Property

- **44.1:** All intellectual property in Equipment, Software, and related items remains with EFTPOS New Zealand.

45. Inconsistency

- **45.1:** In case of inconsistency between this Section and PC EFTPOS Software Services, the latter prevails.

46. Fraudulent Activity

- **46.1:** EFTPOS New Zealand may investigate suspected fraudulent activity at its discretion.

47. Waiver

- **47.1:** Rights cannot be waived except in writing. Non-exercise of a right does not constitute a waiver.

48. Consumer Guarantees Act

- **48.1:** If you are a business, the Consumer Guarantees Act 1993 does not apply to the goods or services.

49. Warranties

- **49.1:** All implied warranties, conditions, or representations are excluded to the extent permitted by law.

50. Other Arrangements

- **50.1:** This Agreement does not affect existing or future arrangements with third parties.

51. Assignment

- **51.1:** EFTPOS New Zealand can assign rights and obligations with written notice. No notice needed for assignments to related companies.
- **51.2:** You need prior written consent to assign or transfer your rights or obligations.

52. Additional Services

- **52.1:** EFTPOS New Zealand may offer additional services with notification of Charges.
- **52.2:** New services will be set out in new Sections. Acceptance of new services means compliance with their terms.

53. Address and Notices

- **53.1:** Notify EFTPOS New Zealand of address changes immediately.
- **53.2:** Notices from EFTPOS New Zealand are deemed received after specified periods. Notices from you must be sent to the provided address.

54. Confidentiality and Personal Information

- **54.1:** Keep Confidential Information private unless required by law.
- **54.2:** Personal Information will be securely held and can be accessed or corrected by you. It may be transferred outside New Zealand.
- **54.3:** EFTPOS New Zealand may obtain and verify information from various sources.
- **54.4:** Personal Information may be used for application processing, contract management, and marketing. Unsubscribe options may not always be provided.
- **54.5:** Information may be disclosed to agents, Card Issuing Organisations, or potential sureties.
- **54.6:** Information may be disclosed to credit reference or debt collection agencies for defaults in payments.
- **54.7:** Disclosure may occur to law enforcement, regulatory agencies, or for fraud prevention.
- **54.8:** Collection of Personal Information is subject to Verifone's privacy policy.

55. Other

- **55.1:** Invalid provisions do not affect the rest of the Agreement.
- **55.2:** No partnership or joint venture is created. Neither party binds the other.
- **55.3:** Covenants related to Card Issuing Organisations benefit them and are enforceable by them.
- **55.4:** The Agreement is governed by New Zealand law.
- **55.5:** Do not export, resell, or transfer services to prohibited countries or entities. EFTPOS New Zealand may terminate the Agreement if you violate this clause.