

Merchant Credit Card Facility Agreement

general terms and conditions

Table of contents

| | |
|---|----|
| 1. Documents forming part of this agreement | 1 |
| 2. Term | 1 |
| 3. Merchant Services | 1 |
| 4. Your obligations | 1 |
| 5. Fees payable | 4 |
| 6. Preferential Rate for association members | 5 |
| 7. Termination | 5 |
| 8. Termination fee | 6 |
| 9. Warranties | 6 |
| 10. Marks/advertising | 6 |
| 11. Indemnities | 6 |
| 12. Combination and set off | 6 |
| 13. Variations | 6 |
| 14. Agent | 7 |
| 15. Disputes | 7 |
| 16. Notices | 7 |
| 17. Assignment | 7 |
| 18. Westpac's discretions and powers | 7 |
| 19. GST | 7 |
| 20. Miscellaneous | 7 |
| 21. Governing law | 8 |
| 22. Definitions and interpretation | 10 |
| SCHEDULE I – Travel and Entertainment Supplementary Schedule | 11 |
| SCHEDULE II – Card Not Present Supplementary Schedule | 16 |
| SCHEDULE III – Internet Authentication Supplementary Schedule | 19 |
| SCHEDULE IV – Westpac Virtual Solution Supplementary Schedule | 22 |
| SCHEDULE V – Westpac Internet Payment Solution Plus (“WIPS Plus”) Supplementary Schedule | 26 |
| SCHEDULE VI – Westpac Currency Choice Supplementary Schedule | 30 |

Merchant credit card facility agreement

Terms & conditions

1. Documents forming part of this agreement

- 1.1 **Agreement:** The following documents form the Agreement between you and Westpac and shall apply in the following order of precedence (the first listed having precedence in the event of any conflict over the second and so on):
- any variation notified to you in writing by Westpac;
 - the Signature Section;
 - Information Update;
 - the specific terms and conditions contained in any applicable Supplementary Schedule attached to these general terms and conditions;
 - these general terms and conditions; and
 - the Merchant Operating Guide.
- 1.2 **Acknowledgement:** You acknowledge that you have read and understood all of the terms and conditions in each of the documents listed above and that Westpac has recommended that you seek legal advice in relation to those documents.
- 1.3 **Supplementary Schedules:** The terms and conditions of a Supplementary Schedule will apply to you if you have selected the relevant transaction type to which that Supplementary Schedule applies on the Signature Section and Westpac has accepted your application on those terms.

2. Term

- 2.1 **Term:** This Agreement will commence on the date that you sign the Signature Section and will continue for the Initial Term of thirty six (36) months and each Subsequent Term, unless it is terminated earlier by either of us in accordance with clauses 2.3 or 7.
- 2.2 **Application of Supplementary Schedule:** If, at a later date, you wish to process transactions not selected by you on the Signature Section to which a Supplementary Schedule applies, you may make a request to process those transactions to Westpac. If Westpac accepts your request by advising you in writing, the terms of the relevant Supplementary Schedule will apply to you as if they were part of the Agreement from the date Westpac advised you in writing of its acceptance.
- 2.3 **Automatic extension:** At the end of the Initial Term this Agreement will automatically continue for further periods of thirty six (36) months (each a “**Subsequent Term**”), until terminated in accordance with clause 7, unless you give Westpac at least ninety (90) days written notice of termination before the end of the Initial Term or any Subsequent Term (as the case may be).

3. Merchant Services

- 3.1 **Merchant Services:** Subject to this Agreement, Westpac will provide you with the Merchant Services specified on the Signature Section and more specifically set out below.
- 3.2 **Westpac Products:** Westpac will supply you with:
- a piece of equipment which can be used to imprint a Sales Voucher and/or a Credit Voucher with the information which is embossed on a Card; and
 - stationery on which you can complete Sales Vouchers and Credit Vouchers.
- 3.3 **Title:** Title to all Westpac Products remains with Westpac.
- 3.4 **Settlement:** Westpac has the following obligations to you:
- to pay all such moneys, and do all such acts, which Westpac believes are reasonably necessary to ensure that an amount which is equal to the total dollar amount of a Valid Electronic Card Sales Transaction (as entered in the Terminal through which the Electronic Card Sales Transaction was facilitated) is credited to Your Account;

- on receipt of a Valid Sales Voucher in respect of a Valid Manual Card Sales Transaction, pay all such moneys, and do all such acts, which Westpac believes are reasonably necessary to ensure that, an amount which is equal to the total dollar amount shown on that Sales Voucher is credited to Your Account; and
 - following the end of each calendar month, Westpac will forward you a statement of all Card Sales Transactions which you have entered into during that month and of which Westpac has actual knowledge. However, Westpac will not be bound, or in any way prejudiced, by any error, mistake, omission or representation contained in any such statement.
- 3.5 **Invalid transactions:** Westpac is under no obligation to make a payment to any person, or to do any other act, in respect of a Card Sales Transaction which is not Valid.
- ### 4. Your obligations
- 4.1 **Compliance:** You must always comply with all documents forming part of this Agreement (as listed in clause 1).
- 4.2 **General obligations:** You must:
- immediately notify Westpac of any change to your financial position which may affect your ability to perform your obligations under this Agreement;
 - allow Westpac’s employees, contractors or Agents, or those of any Card Scheme, acting reasonably, to enter your premises during normal business hours to check your compliance with this Agreement or for the purposes of the relevant Card Scheme rules;
 - provide Westpac with all information and assistance it reasonably requires to perform its obligations and to deal with any queries in relation to the provision of the Merchant Services;
 - at all times have Your Account opened;
 - give Westpac at least ten (10) Business Days’ prior written notice of any proposed:
 - change in the control, management, or ownership of you or the effective control, effective management or effective ownership of you;
 - move in your principal place of business and your new address;
 - change in your business name;
 - substantial change in the type of goods and/or services you sell; or
 - change in your status as a member of an Association (if applicable); and
 - at all times comply with the terms of the EFTPOS Services Agreement if you are a party to that agreement;
 - only process the types of Card Sales Transactions authorised by Westpac by Westpac assigning you a merchant number for each authorised transaction type; and
 - comply with any laws, rules or requirements in relation to Card Sales Transactions or this Agreement.
- 4.3 **Obligations to Cardholders:** You must:
- accept any Card as selected in the Signature Section without discrimination;
 - supply goods and/or services at your normal prices to the Cardholders and must not add any surcharge to a transaction unless expressly required by law in which case the surcharge must be included in the transaction amount and not collected separately;
 - not accept a Card Sales Transaction for giving a Cardholder cash except where the Card is being used as a debit card;
 - perform all obligations to the Cardholder in connection with a sale before notifying Westpac of the Card Sales Transaction;

- (e) not use Cardholder names, account numbers or other transaction information embossed, encoded or appearing in any other manner on the card for any purpose other than for the sole purpose of assisting you with completing the Card Sales Transaction, or as specifically required by law;
 - (f) not sell, purchase, provide or exchange a Cardholder's name or account number information obtained by reason of a Card Sales Transaction to any third party, other than:
 - (i) your Agents for the purpose of assisting you in completing the Card Sales Transaction;
 - (ii) Westpac;
 - (iii) the Card Issuer;
 - (iv) the Card Scheme; or
 - (v) as required by law;
 and in each case in compliance with applicable law;
 - (g) maintain systems, records and media containing Cardholder Data or Card Sales Transaction information in a secure manner so as to prevent access by or disclosure to anyone other than as permitted by clause 4.3(f) and ensure that any information accessible from the internet is protected by a firewall and any electronic data is held in encrypted form;
 - (h) retain all information held pursuant to clause 4.3(g), including all Transaction Records, for a period of eighteen (18) months from the date of the transaction;
 - (i) ensure that if you discard or destroy any Cardholder Information or records, or any Transaction Records (including Sales Vouchers) after the time period for retaining such information has expired, it is done in a secure manner so as to prevent disclosure to anyone other than as permitted by clause 4.3(f);
 - (j) not:
 - (i) make any representation in relation to the goods and/or services provided by you that would bind Westpac, Visa or MasterCard; or
 - (ii) indicate or imply that Westpac, Visa and/or MasterCard endorses or sponsors any of your goods and/or services; or
 - (iii) refer to Westpac, Visa and/or MasterCard in stating eligibility to purchase the goods and/or services provided by you;
 - (k) prominently disclose to the Cardholder:
 - (i) your identity (at all points of interaction with the Cardholder);
 - (ii) your full responsibility for the Card Sales Transaction, the products and/or services, the terms and conditions of sale, customer service and resolution of disputes in relation to that Card Sales Transaction; and
 - (l) attempt to resolve any dispute with a Cardholder directly without the involvement of Westpac. Westpac is not a party to any agreement made between yourself and a Cardholder and should be viewed as a payment processing provider only.
- 4.4 Obligations when accepting Cards:** You must:
- (a) use reasonable care to detect forged or unauthorised signatures and fraudulent use of PINs or Cards. The Merchant Operating Guide sets out the minimum procedures you must follow to comply with this requirement;
 - (b) obtain a prior Authorisation for a transaction if you are required to under the provisions of the Merchant Operating Guide;
 - (c) not avoid the need for an Authorisation by accepting payment for goods or services via two or more Card Sale Transactions or allowing the Cardholder to purchase items separately;
 - (d) not set a minimum or maximum amount for a Card Sales Transaction;
 - (e) not ask a Cardholder to reveal their PIN or any other secret identifier not supplied by you; and
 - (f) follow the sales procedures set out in the Merchant Operating Guide.
- 4.5 Obligations with respect to Westpac Products:** You must:
- (a) only use Westpac Products when completing a Card Sales Transaction;
 - (b) keep all Westpac Products at your place of business and safe from damage, loss or theft;
 - (c) not sell, hire, part with possession or otherwise deal with any Westpac Products;
 - (d) immediately notify Westpac if any Westpac Products become damaged, lost or stolen;
 - (e) pay to Westpac any amount it requests for repairing or replacing any Westpac Products, including as a result of any failure to return Westpac Products following termination of this Agreement; and
 - (f) if you are using EFTPOS Terminal Equipment:
 - (i) comply with the equipment user guide supplied by the Terminal vendor;
 - (ii) only use equipment that has been certified by ETSL or Westpac; and
 - (iii) only use equipment that complies with EMV/3DES Card Scheme security standards; and
 - (g) immediately return any Westpac Products, including EFTPOS Terminal Equipment if you are leasing from us, following the termination of this Agreement and allow any agent or representative of Westpac on to your premises in order to reclaim any Westpac Products.
- 4.6 Obligations for securing Cardholder Information:**
- If your business or any Agent operating on your behalf, stores, processes, transmits or has access to Cardholder Information, you must ensure that it is maintained in a secure manner with access restricted to authorised personnel, and in a fashion which fully complies with the Payment Card Industry Data Security Standard (PCIDSS). For details of the PCI Data Security Standard contact Westpac at PCIDSS_Support@westpac.co.nz or visit the PCI website at www.pcisecuritystandards.org.
- The requirements of PCIDSS include, but are not limited to:
- (a) You must protect Cardholder Information by:
 - (i) never storing full contents of track data from the magnetic stripe of the Card or Card Validation Code (three-digit value printed on the signature panel of a MasterCard or Visa card) after Authorisation;
 - (ii) storing the Cardholder Information in a secure environment (as defined by PCIDSS) and only storing such information for the extent and duration required for bona fide purposes;
 - (iii) storing all data containing Cardholder Data, whether in physical or electronic format (e.g. Authorisation Logs, Transaction Reports and Transaction Receipts) in a secure manner that allows access to authorised personnel only; and
 - (iv) encrypting Card Numbers on Receipts and in databases or using only a part of the Card Number (e.g. print the first 6 and/or last few digits of the Card Number on receipts).
 - (b) securely destroying all media containing Cardholder Information that is no longer needed for business, legal or regulatory reasons;
 - (c) notify Westpac of any Agents engaged by you for processing or storing Cardholder Information;
 - (d) use only Agents that meet all Card Scheme security requirements for the processing of Cardholder Information and contractually require those Agents to

- maintain ongoing compliance with PCIDSS. A list of compliant Agents can be obtained from Westpac;
- (e) within 3 months of being requested by Westpac, undergoing certification with PCIDSS and providing documentary evidence of your compliance. You are solely liable for the accuracy of the information in the PCIDSS certification documents. Information on how to become and remain compliant with the PCIDSS can be obtained by contacting Westpac: email PCIDSS_Support@westpac.co.nz, or call the Westpac PCIDSS Support Line on 0800 888 066, or by visiting www.merchantservices.co.nz;
 - (f) rectifying at your own expense, any areas of non compliance within 6 months of being identified, or within a timeframe agreed with Westpac;
 - (g) maintaining full compliance with the PCIDSS on an ongoing basis by undergoing such certification tasks as requested by Westpac from time to time. It remains your responsibility to ensure ongoing PCIDSS compliance, regardless of any notification by Westpac. You are liable for any fees that may be charged by the Card Schemes in respect of registration for PCIDSS.
- 4.7 Obligations in the event of a Data Breach:** You must:
- (a) maintain an Incident Response Plan for immediate reporting and handling of any exposure of Cardholder Data at your site;
 - (b) if you know of or suspect a Data Breach at your company or that of any Agent:
 - (i) report the Data Breach immediately to Westpac;
 - (ii) take appropriate action, including withdrawal of internet shopping facilities if appropriate, to minimise the ongoing risk to Cardholder Information, until such time as investigation and rectification of the Data Breach is completed; and
 - (iii) implement and follow the Incident Response Plan;
 - (iv) maintain a rigorous audit trail of all actions taken to isolate and rectify the event;
 - (v) assist Westpac to the best of your abilities to provide detailed statements and schedules of Card accounts exposed by the Data Breach;
 - (vi) allow Westpac's employees, contractors or Agents, or those of any Card Scheme, acting reasonably, full access to your systems and databases for the purpose of Forensic Review and Analysis, to ascertain the cause and impact of the exposure;
 - (vii) if you use the services of an external Agent, ensure that Westpac, the Card Schemes or their Agents are given full access to necessary outsourced components such as databases, web hosting systems etc. which may be required to complete the Forensic Review and Analysis; and
 - (viii) in order to be allowed to continue processing Card Sales Transactions, you will have to undergo a full Payment Card Industry Data Security Standard ("PCIDSS") accreditation.
- 4.8 Liability for a Data Breach:** You are liable for all costs and fines imposed by the Card Schemes, as a consequence of any Data Breach, including but not restricted to:
- (a) Card Scheme fines for Data Breach;
 - (b) fines for failure to report the Data Breach in a timely fashion (as defined by the Card Schemes);
 - (c) any costs levied by the Card Schemes for monitoring and/or reissue of credit cards compromised by the Data Breach;
 - (d) all costs for Forensic Review and Analysis including following termination of this Agreement; and
 - (e) costs for corrective action to address the cause of the Data Breach and for re-certification with PCIDSS.
- 4.9 Liability for Chargebacks:** You will at all times be liable, as detailed in the Merchant Operating Guide, for the full amount of any Chargebacks validly claimed by a Cardholder.
- 4.10 Liability and Authorisation:** You are liable for and, without limiting that liability, you irrevocably and unconditionally authorise Your Bank to debit Your Account with the following amounts at any time after:
- (a) you have generated a Credit Voucher, the total dollar amount of the Credit Voucher;
 - (b) any amount was credited to Your Account in error, or as a result of any error, mistake or omission, that amount;
 - (c) any amount was credited to Your Account in respect of a Card Sales Transaction:
 - (i) which is not Valid;
 - (ii) in respect of which the Cardholder or Westpac disputes liability for any reason; or
 - (iii) in respect of which the Cardholder asserts a claim for set-off, or a counterclaim, against Westpac for any reason, that amount;
 - (d) any fee, cost, charge, liability, or expense or other amount becomes payable by you to Westpac (including MSFs, penalty fees, Chargebacks, fines imposed by Card Schemes and amounts payable under clauses 4.5, 4.6, 4.7, 4.8 and 6.2), that amount;
 - (e) any stamp duty, postage cost, commission, charge, fee, liability, expense or other amount being incurred by Westpac in connection with the Agreement, that amount; or
 - (f) any other amount is owing to Westpac by you, that amount.
- 4.11 Posting Sales/Credit Vouchers:** Within three (3) Business Days after you generate a Valid Sales Voucher and/or a Credit Voucher, you shall post it to Westpac by prepaid post to the address most recently nominated by Westpac for this purpose.
- 4.12 Representations or Warranties:** You must not make any warranty or representation on Westpac's behalf without each time obtaining Westpac's prior written consent.
- 4.13 Direct Debit Authority:** Without prejudice to the authority in clause 4.10, Westpac may, for the purposes of clause 4.10, require you to provide to Westpac a direct debit authority in a form required by Westpac. Notwithstanding the terms and conditions of any such authority, it may only be terminated or revoked if this Agreement is terminated in accordance with its terms and all amounts actually or contingently owing to Westpac by you have been satisfied.
- 4.14 Returns:** You must establish a policy for the exchange or return of goods which are sold by you in the course of your business and make customers fully aware of the terms and conditions of that policy which must be consistent with the provisions of the Merchant Operating Guide.
- 4.15 Refunds:** For any refund:
- (a) you may only give a Cardholder a refund if you have seen a valid proof of purchase;
 - (b) refunds may only be done by exchanging goods and/or services or by completing a Credit Voucher;
 - (c) in no circumstances may you give out cash as a refund; and
 - (d) when refunding using a Credit Voucher, you must use the same Credit Card Number as was used for the original transaction.
- 4.16 Access to your records:** You must allow Westpac to inspect and examine your books of account and records (including, for the avoidance of doubt, any records in respect of Card Sales Transactions and Credit Vouchers) and you must provide Westpac with any other information which Westpac may reasonably request, including (but not restricted to) your audited financial statements.

4.17 **Collection of information:** You authorise Westpac to create and maintain records in respect of you and your business and to collect information about you from any person or entity whom Westpac deems appropriate, including:

- (a) any credit reporting agency or credit rating agency;
- (b) your Bank;
- (c) a Cardholder;
- (d) your employees, Agents or advisers; and
- (e) any person or entity that Westpac believes can verify, or validly comment on, your creditworthiness or any statement or representation which you have made to Westpac; and

you authorise each such person or entity to make available to Westpac all information requested by Westpac.

4.18 **Disclosure by Westpac:** You authorise Westpac to disclose any relevant information about you held by Westpac to any party Westpac appoints to exercise any of its rights or to undertake any of its obligations in relation to this Agreement, and any other person or entity that Westpac deems appropriate in relation to the provision of the Merchant Services, including:

- (a) any Card Scheme;
- (b) Your Bank;
- (c) any Cardholder;
- (d) any supplier of Terminals;
- (e) other financial intermediaries or finance companies;
- (f) credit rating and/or reporting agencies;
- (g) any person or company that Westpac appoints to collect any outstanding amounts owed to it;
- (h) any government or governmental agency; and/or
- (i) any other bank where such disclosure is for the purpose of protecting the banking industry in relation to excessive Chargebacks or high incidence of fraud at your Merchant establishment or for the benefit of the banking industry generally.

4.19 **Use of information about you:** You authorise Westpac (and any of its related companies or Agents) to use any information that Westpac holds about you for any purpose connected with or related to this Agreement, including providing services or enforcing rights or obligations under this Agreement, informing you about the full range of financial services that Westpac provides, performing credit checks on you and disclosing appropriate details to enable market research to be conducted.

4.20 **Prepayment Merchant or Prepaid Credit Card Sales:**

If your business falls into a Prepayment merchant category or you have indicated on the Signature Section that you have Prepayment Card Sales Transactions, the following will apply:

- (a) you will be requested to provide Westpac with regular financial data information as stated in 4.16 to keep us informed of your financial viability. Information to be provided would include but will not be limited to:
 - (i) cash flow statements clearly segmenting Prepayment Card Sales Transactions to assist with Prepayment exposure assessment and monitoring. Statements will identify an appropriate running account balance of Prepayment Card Sales Transactions, including actual results for the quarter just ended and projections on a 12 month rolling basis;
 - (ii) financial reports as and when issued (e.g. annual half yearly, quarterly) including independent audit certification (where they are obtained) confirming the accuracy of Prepayment Card Sales Transactions cash flow statements you have provided periodically;
 - (iii) immediate notice to Westpac of any significant increase or decrease in the level of Prepayment Card Sales Transactions;

- (iv) liquidity reporting;
- (v) net worth reporting;
- (vi) estimate or actual transaction totals booked on prepaid basis;
- (vii) changes to your point-of-sale procedures for Authorisation, refund policy and transaction flow;

- (b) you may be required to provide a financial reserve as security for the Prepayment risk that exists for your business. If security is required you will be required to sign additional documentation for that security;
- (c) you must inform Westpac immediately if your business is experiencing difficulties honouring goods or services commitments to your customers;
- (d) your merchant facility will be subjected to regular reviews by Westpac;
- (e) you will remain liable for any Chargebacks or outstanding monies owed to Westpac after the termination of this Agreement, as stated in clause 7.7;
- (f) if you have Prepayment Card Sales Transactions, Westpac's allowing you to continue to have Prepayment Card Sales Transactions may be conditional on your entering a Prepayment Limit Agreement with Westpac, pursuant to, which Westpac will at its discretion, from time to time, determine your limit allowed for Prepayment Card Sales Transactions.

5. Fees payable

5.1 **Rate:** Westpac will advise you of the Rate which will be used to calculate the MSF and may change the Rate at any time by giving you written notice. Initially, the Rate is that rate specified on the Signature Section. Without limiting this section 5.1, if you have selected EFTPOS as your processing method in the Signature Section, Westpac may increase your Rate if the percentage number of manual transactions (paper and PAN Entry) you process exceeds 5% of the total number of EFTPOS transactions you process in any three (3) month period.

5.2 **MSF:** In consideration for providing the Merchant Services, you must pay Westpac the MSF each month as calculated in clause 5.3. The MSF is payable on the fifteenth (15th) day of each calendar month (or, if that day is not a Business Day, on the next Business Day). Without limiting your liability to pay the MSF, Westpac will automatically direct debit the MSF from Your Account in the manner contemplated by clause 4.10(d).

5.3 **Calculation of MSF:** Subject to clause 5.4, the MSF is calculated as follows:

- (a) the MSF for each transaction type payable for each month is equal to the Rate (or, if clause 6.1 applies, the Preferential Rate) for that transaction type multiplied by the Sales Amount for that transaction type, where:
Sales Amount: equals the total value of all Card Sales Transactions for the particular transaction type which were completed by you during the previous calendar month; minus the aggregate of:
 - (i) the total value of all Credit Vouchers for the particular transaction type delivered to Westpac by, or in respect of, you during the previous calendar month; and
 - (ii) any amount debited to Your Account in respect of the particular transaction type during the previous calendar month pursuant to clause 4.10(c) if the amount was previously used to determine a MSF which was paid by you;
- (b) the total MSF payable for each month is equal to the sum of each MSF for each transaction type calculated in clause 5.3(a).

5.4 **Minimum Monthly MSF:** If any individual MSF calculated under clause 5.3(a) is less than the Minimum Monthly MSF applicable to the relevant transaction type, the amount

for the purposes of clause 5.3(b) will be deemed to be the applicable Minimum Monthly MSF.

- 5.5 **Default interest:** You must pay interest at the Indicator Lending Rate plus 4% per annum (calculated on a daily basis) on any amount payable to Westpac under clauses 4.10, 5.2, 6.2 or 8.1 of this Agreement which is overdue from the date the payment is due until the date the payment is received in full by Westpac, unless, in Westpac's discretion, Westpac by notice in writing for each occasion waives its right to receive interest under this clause.

6. Preferential rate for Association Members

- 6.1 **Association members:** If, following receipt of written notice that includes your Association number (which can be satisfied by indicating Association membership on the Signature Section), Westpac is satisfied that you are a member of an Association, then, subject to clause 6.2, from the date of receipt of such notice the Rate will be equal to the Preferential Rate which recognises your membership in that Association, as determined by Westpac in its discretion. Westpac may, at any time, require you to provide evidence that you are an Association member.
- 6.2 **Ceasing to be an Association member:** You must immediately notify Westpac if you cease to be an Association member. If, in Westpac's opinion you cease at any time to be a member of that Association (whether you notify Westpac or not), the Rate may be increased by notice to you by an amount which Westpac, in its discretion, considers appropriate and that increase will not be an increase for the purposes of clause 7.5 and will take effect from the date on which Westpac, in its discretion, determines that you ceased to be a member of that Association ("Effective Date"). If the Effective Date precedes the date on which Westpac was notified that you had ceased to be a member of that Association, you will be liable to Westpac for, and shall immediately pay to Westpac, an amount which is equal to the difference between (a) the total amount of all MSFs paid by you on and after the Effective Date calculated at the Preferential Rate, and (b) the total amount of all MSFs which would have been payable by you on or after the Effective Date calculated using the increased Rate.

7. Termination

- 7.1 **Westpac's rights:** Westpac may terminate this Agreement, or any part of it, or EFTPOS Services Agreement, if you are a party to that agreement, at any time by notice to you, with or without cause, including, but without limiting this right of termination, if you become insolvent or bankrupt, liquidation or bankruptcy commences, you breach this Agreement, or there is a change in your ownership or control, or you have been non-compliant with PCIDSS.
- 7.2 **Your termination rights:** Subject to clause 7.4, you may, with or without cause, terminate either:
- the whole Agreement; or
 - the application of a Supplementary Schedule if you no longer wish to process the particular types of transactions to which the Supplementary Schedule applies;
- by giving Westpac ninety (90) days prior written notice, provided that if you terminate the Agreement or any Supplementary Schedule within the Initial Term or any Subsequent Term, you will be required to pay the termination fee in accordance with clause 8, except in the circumstances listed in clause 7.5.
- 7.3 **Deemed termination:** You will be deemed to have terminated this Agreement if you:
- commence processing any Card Sales Transaction with another supplier and cease processing with Westpac;

- cease to process one or more of the Cards chosen on the Signature Section, or a type of Card Sales Transaction specified on the Signature Section, unless consented to by Westpac;
- commence processing a type of Card Sales Transaction listed on the Signature Section without prior consent from Westpac; or
- process such volume of transactions (including electronic or manual transactions) under this Agreement or take any other actions which, in Westpac's opinion, indicate that you intend to terminate this Agreement (in whole or part) or intend to commence processing with another supplier.

- 7.4 **Right to terminate on increase of Rate:** If Westpac increases the Rate in accordance with clause 5.1, you object to that increase in writing to Westpac and:

- such increase is not due to you failing to achieve the agreed average transaction size (as specified on the Signature Section initially); or
- such increase is not due to you ceasing to be an Association member pursuant to clause 6.2; or
- such increase is not due to you changing Your Bank to a bank other than Westpac in circumstances where, as a condition of entering into this Agreement, Your Bank is required to be Westpac; or
- if you have chosen the EFTPOS processing method in the Signature Section and such increase is not due to you increasing your percentage number of manual transactions so that the number of manual transactions (paper or PAN Entry) exceed 5% of the total number of EFTPOS transactions you process in any three (3) month period;

you may terminate this Agreement by giving Westpac one (1) month's prior written notice.

- 7.5 **Circumstances in which no termination fee payable:** If, at any time Westpac is satisfied, in its discretion, that this Agreement or any part of it, is terminated due to:

- any event which requires notice to be given to Westpac under clause 4.2(e)(i);
- you becoming insolvent or bankrupt or you are liquidated;
- your business ceasing to operate;
- you terminating this Agreement under clause 7.4; or
- you no longer wishing to process a particular type of transaction and you have not processed, or will not in the future process, that type of transaction with another supplier;

then you will not be required to pay any termination fee payable under clause 8.

- 7.6 **Consequences of termination:** On the termination of this Agreement, you must immediately:

- return all Westpac Products to Westpac;
- cease to use or display any Mark;
- immediately pay Westpac any outstanding fees, charges, costs, liabilities or other amounts payable by you under this Agreement including the MSF; and
- comply with any other reasonable directions from Westpac.

- 7.7 **Other rights not affected:** The termination of this Agreement shall not affect any right held, or obligation incurred, by either Westpac or you prior to the date of termination. You agree that if you give notice to terminate this Agreement under clauses 7.2 or 7.4 you will continue to comply with this Agreement during the notice period until the date of termination including your continued liability for Chargebacks under clause 4.9.

8. Termination fee

8.1 **Termination Fee payable:** Subject to clause 7.5, if you terminate, or are deemed to have terminated, this Agreement, or any part of it, before the expiry of the Initial Term or any Subsequent Term (other than as a direct result of Westpac breaching this Agreement), or Westpac terminates this Agreement because you have breached this Agreement, you will immediately pay to Westpac (in addition to any other amounts which are payable by you under this Agreement) by way of liquidated damages an amount per Facility which is equal to the greater of:

- (a) $(.25 \times \text{AMSF}) \times T$; or
- (b) \$200.00,

where:

AMSF is the average of the six (6) most recent MSF payments per Facility (excluding any month where Minimum Monthly MSF payments are made) which were (or are) payable by you (to be determined by Westpac), or if fewer than six (6) MSF payments have been (or are then) payable by you, the average of all MSF payments per Facility (excluding any month where Minimum Monthly MSF payments are made) which were (or are) payable by you (to be determined by Westpac); and T is either the number of months remaining per Facility before the end of the Initial Term or Subsequent Term (as the case may be), or if the Initial Term or Subsequent Term (as the case may be) has less than three (3) months remaining, three (3),

being Westpac's current reasonable estimate of its damages, costs and expenses, which will arise from termination.

9. Warranties

9.1 **Warranty:** By delivering a Sales Voucher to Westpac, (Sales Voucher banking can only be accepted at Westpac branches), you warrant to Westpac that:

- (a) all the particulars on the Sales Voucher are true and correct;
- (b) the Sales Voucher is Valid; and
- (c) the Manual Card Sales Transaction in respect of the Sales Voucher is not subject to any dispute, claim of set-off or counterclaim.

9.2 **Acknowledgement:** You acknowledge for all purposes (including the Consumer Guarantees Act 1993) that you enter, and hold yourself out as entering, into this Agreement for the purpose of a business. You acknowledge that Westpac does not give any warranty, representation or assurance, whether express or implied, as to the creditworthiness of a Cardholder or the accuracy or reliability of the Card Payment System.

10. Marks/Advertising

10.1 **Displaying marks/advertising:** You must display the advertising and/or promotional materials which Westpac may direct you to display, and you must do so in accordance with the directions of Westpac.

10.2 **Prior Authorisation:** If you wish to use promotional materials and/or advertisements which show, use or include a Mark, you must first obtain Westpac's written approval to the advertising and/or material.

11. Indemnities

11.1 **Limitation of liability:** Without limiting clause 11.2, Westpac has no liability to you for any loss, cost, damage, expense or liability suffered or incurred by you, whether directly or indirectly as a result of:

- (a) any failure by Westpac to perform any of its obligations under this Agreement where, in the opinion of Westpac, that failure is wholly or partly a result of:
 - (i) a failure of the Card Payment System;
 - (ii) any act or omission of you, a Cardholder, Your Bank, Visa, MasterCard; or

(iii) any other event or circumstance outside Westpac's direct control; or

- (b) the failure of, or a mistake, error or omission made by, the Card Payment System.

11.2 **No liability for lost profits:** Without limiting clause 11.1, Westpac has no liability to you for any loss of business or profits, or for any other consequential loss, however arising as a result of any failure by Westpac to perform any of its obligations under this Agreement.

11.3 **Indemnity:** You must indemnify Westpac against any loss, cost, damage, expense or liability suffered or incurred by Westpac as a result (whether directly, indirectly or consequentially) of:

- (a) the execution of this Agreement, any agreement or understanding related to this Agreement, or your failure to comply with any of these;
- (b) any incorrect or misleading information supplied to Westpac by you or any information withheld from Westpac by you;
- (c) any other act of, or omission by, you or any of your employees, officers or Agents whatsoever (including, for the avoidance of doubt, the completion of a Card Sales Transaction, the use of a Terminal, the completion of a Sales Voucher or Credit Voucher and/or the use of any Ancillary Product and/or Mark);
- (d) any action taken by Westpac, Visa and/or MasterCard as a result of any act of, or omission by, you or any of your employees, officers or Agents; or
- (e) any dispute between any or all of the Cardholder, Westpac and you.

12. Combination and set off

12.1 **Authorisation to set off:** If you have any account with Westpac (including Your Account, and regardless of whether that account is held by you alone or together with any other person) (a "**Westpac Account**"), you authorise Westpac to:

- (a) transfer all or any part of the balance standing to the credit of any Westpac Account to the credit of another Westpac Account (if any);
- (b) apply all or part of the balance standing to the credit of any Westpac Account in or towards satisfaction of any amount payable by you to Westpac; and/or
- (c) apply any amount owed to you by Westpac in or towards satisfaction of any amount payable by you to Westpac and Westpac is entitled to bring forward the date for payment of any amount owing by it to you in order to do this,

in each case, without giving you (or any other person) any prior notice or demand. This clause 12.1 does not prejudice, and is in addition to, any other right of set off, combination of accounts, lien or other similar or related right to which Westpac is, or may at any time be, entitled.

13. Variations

13.1 **Westpac may vary Agreement:** Westpac may, at any time, vary any term or condition of this Agreement by notice to you in whatever form, and given in whatever manner, as Westpac thinks appropriate and any such variation will take effect fourteen (14) days after the date that Westpac gives that notice. You may not vary this Agreement unless in writing and agreed with Westpac.

13.2 **Changing Your Account:** If, at any time, you wish to change the bank which is Your Bank, or the account which is Your Account, you may do so by giving Westpac at least seven (7) days' prior written notice except where Your Account is required to be held with Westpac for the purposes of this Agreement.

13.3 **Obligations on changing account:** If you change the bank which is Your Bank, or the account which is Your

Account, then you must immediately provide Westpac with all necessary details of that account and a new authority to direct debit Your Account (as changed).

14. Agent

14.1 **Westpac may use Agents:** All or any of Westpac's functions, rights and obligations under this Agreement may be carried out by its duly authorised Agents. Any such Agent will not act in its personal capacity.

15. Disputes

15.1 **Resolving disputes:** Where any dispute between you and Westpac arises out of, or in connection with, this Agreement, you agree to meet with Westpac to attempt to resolve the dispute by good faith negotiation. If, after a period of not less than five (5) Business Days, those negotiations are unsuccessful, either you or Westpac may refer the dispute to arbitration in accordance with the Arbitration Act 1996, except that the arbitrator shall be a person agreed by you and Westpac or, in the absence of any agreement by them, a person appointed by the president or vice-president of the New Zealand Law Society. This clause does limit or affect in any way:

- (a) any right, power or discretion of Westpac specified in this Agreement including, but not limited to, Westpac's right to terminate this Agreement at any time, with or without cause; or
- (b) Westpac's right to apply to a court for any interim or preliminary relief in respect of a dispute.

16. Notices

16.1 **Form of notice:** Unless specified otherwise, every notice required to be given under this Agreement must be given in writing and may be given by facsimile, email (each subject to clause 16.3), personal delivery or prepaid letter dispatched to the facsimile number, physical address, or postal address (as the case may be) most recently nominated by the party for whom the notice is intended for the receipt of notices.

16.2 **Receipt of notice:** If a notice is dispatched pursuant to this Agreement:

- (a) by facsimile, it shall be deemed to have been given upon transmission of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety, provided that, if a transmission report is received after 4pm, or on a day which is not a Business Day, then the notice will be deemed to have been given on the next Business Day;
- (b) by post, it shall be deemed to have been given after the expiry of seven (7) Business Days, except for notification of a Chargeback. Chargeback amounts will be debited to your account two (2) days after notification has been posted. Your right under this Agreement to query any Chargeback amount is not restricted by this clause;
- (c) by hand, it shall be deemed to have been given on the Business Day on which it was actually delivered, provided that if it was delivered after 4pm, or on a day which was not a Business Day, it will be deemed to have been given on the next Business Day, or
- (d) in the case of delivery by email:
 - (i) in the case of emails sent by you to Westpac, it shall be deemed to have been given upon receipt by you of a return email from Westpac acknowledging receipt of such email (for the avoidance of doubt, an automatic or system generated acknowledgement from Westpac will not be considered a return email for the purposes of acknowledgement of receipt notice); or

- (ii) in the case of emails from Westpac to you, it shall be deemed to be given at the time specified in the email as the time the email was sent, provided that, in each case, if such deemed time of receipt is after 4pm, or on a day which is not a Business Day, then the notice will be deemed to have been given on the next Business Day.

16.3 If any notice under this Agreement is given by email or facsimile and such notice involves a value instruction over \$10,000, Westpac may decline to act on such notice and/or may require you to sign an indemnity before accepting any such notice.

17. Assignment

17.1 **Westpac may assign:** Westpac may assign and transfer all or any of its rights and obligations under this Agreement to any person or persons.

17.2 **You may not assign:** You may not assign or transfer any rights or obligations under this Agreement without Westpac's prior written consent.

18. Westpac's discretions and powers

18.1 **Other rights:** Unless this Agreement states otherwise, any power, authority, decision, determination and/or discretion which Westpac has by law and/or under this Agreement can be exercised, or not exercised, by Westpac in its absolute and uncontrolled discretion, at the time or times, upon the terms and conditions, and in the manners, which Westpac decides. The rights, powers and remedies provided to Westpac under this Agreement are in addition to, and not exclusive of, any rights, powers or remedies provided by law.

18.2 **Time:** Time shall be of the essence in respect of the performance by you of your obligations under this Agreement. However, if Westpac fails to exercise, or delays in exercising, any right, power or remedy under this Agreement, it will not have, and will not be deemed to have, waived that power, right or remedy. Further, any single or partial exercise of a right, power or remedy by Westpac shall not preclude any other, or further, exercise of that power, right or remedy, or any other power, right or remedy.

19. GST

19.1 **Subject to GST:** All fees, costs and charges payable pursuant to this Agreement will be charged plus GST (if any).

20. Miscellaneous

20.1 **Illegality etc:** If, at any time, any part of this Agreement is, or becomes, illegal, invalid, or unenforceable, it will not affect the enforceability of the provisions, or the remaining provisions (as the case may be), of this Agreement.

20.2 **No Waiver unless in writing:** Westpac will not be deemed to have waived any provision of this Agreement unless that waiver is in writing and is signed by Westpac, or an authorised officer of Westpac. Any such waiver will apply to, and operate only in, a particular dealing or matter.

20.3 **Entire agreement:** This Agreement represents the entire agreement between Westpac and you in respect of the matters to which it relates. You acknowledge that no collateral representations, warranties, or undertakings of any nature, whether oral or written, have been or will be given by Westpac in respect of the matters to which this Agreement relates.

20.4 **Survival:** Your obligations under clauses 4.3(e), (f), (g), (h), (i), 4.5, 4.6 (a),(b) 4.8, 4.9, 4.10,4.13, 4.16, 5.2, 5.5, 6.2, 8.1, 11.3, 12.1 and 15.1 and Westpac's rights under 4.16, 4.18, 11.1, 11.2 and 12.1 survive the termination of this agreement.

21. Governing Law

21.1 **New Zealand law governs:** This Agreement is to be governed by, and construed in accordance with, the laws of New Zealand.

22. Definitions and interpretation

22.1 **Definitions:** In this Agreement, unless the context otherwise requires:

“the Agreement” or **“this Agreement”** means all of the documents listed in clause 1.1.

“Agents” means any third party institution engaged by you to assist you in performing your business activities. Such Agent may store, process, transmit or have access to Card or Card Sales Transaction information. This term includes but is not restricted to Third Party Processors, gateway provider/Data Processors or Data Storage Entities.

“Association” means any industry Association that Westpac determines in its discretion is an Association for the purposes of this Agreement.

“Authorisation” means a request that is sent to the Cardholder’s bank for confirmation that the Cardholder has sufficient credit available and the account is in good order to be able to complete the Card Sales Transaction.

“Authorisation Log” means a report that records the Authorisation requests and responses that have been processed by the point of sale system.

“Business Day” means:

- (a) in respect of an act which is required to be done under this Agreement, a day (other than a Saturday or a Sunday) on which Westpac is open for business in the place where, or the place nearest to where, the act is required to be done; and
- (b) in respect of a notice, a day (other than a Saturday or a Sunday) on which Westpac is open for business in the place where, or the place nearest to where, the notice is required to be received.

“Card” means each of a Visa Card, or a MasterCard Card, as selected by you in the Signature Section.

“Cardholder” is a person who has been issued a Card.

“Card Issuer” means a bank or other institution that has a licence agreement with a Card Scheme to issue one or more Cards.

“Card Number” means the primary Cardholder account number that is assigned to a Card and is embossed on the Card plastic. The Cardholder account number will appear in a truncated format on the Transaction Receipt when a transaction is conducted.

“Card Scheme” means Visa, or MasterCard as selected on the Signature Section or later accepted for use by you in writing by Westpac following a request by you.

“Card Not Present Transaction” means the types of transactions listed in clause A(c) of Card Not Present Supplementary Schedule.

“Card Payment System” means:

- (a) Westpac’s systems (including its processing systems); and
- (b) any system of any agent of Westpac or any other third party; and
- (c) any service provided by any agent of Westpac or any other third party,

which Westpac uses, engages, relies on, or requires, in order to fully or partly comply with all or any of its obligations under this Agreement, as determined by Westpac, in its discretion.

“Card Sales Transaction” means a transaction where a Visa Card, or a MasterCard Card is used to pay you for goods and/or services on credit.

“Cardholder Data” means either of any information,

document or an account number relating to a Cardholder, a Cardholder’s nominated Card Number or a Card Sales Transaction obtained electronically or by paper method.

“Cardholder Information” means Cardholder or Card Sales Transaction information obtained by your business through the processing of Card Sales Transactions.

“Chargeback” means when a previously completed and settled sale is reversed and returned to Your Account. The validity of the sale may have been questioned directly by the Cardholder or their issuing bank. A Chargeback may arise over a dispute between the Merchant and the Cardholder, an error by the Merchant in processing the sale or fraudulent activity in regards to the sale.

“Credit Voucher” means a voucher generated by you as a refund for goods and/or services purchased from you by a Cardholder and paid for via a Card Sales Transaction.

“Data Breach” means any event whereby your business, or any Agent facilitating the transmission, storage or acceptance of credit card payments, suspects or has knowledge of unauthorised access to confidential card payment details.

“Data Processor” an entity that is engaged to provide data processing services on behalf of its clients, also known as an Agent.

“Data Storage Entity (DSE)” means an entity other than a Member or Third Party Processor that stores or has access to Cardholder Data. Examples of DSEs include, but are not limited to Web Hosting companies, payment gateways, Terminal Drivers and Processors.

“EFTPOS Services Agreement” means the Agreement between Electronic Transaction Services Limited, Westpac and you for the supply of EFTPOS services.

“Electronic Card Sales Transaction” means a Card Sales Transaction which is effected through a Terminal or some other electronic means which Westpac has, at any time, approved for the purposes of this definition.

“EMV” means Europay, MasterCard, Visa Chip Card global processing standards for chip card transactions, as detailed in the Merchant Operating Guide.

“ETSL” means Electronic Transaction Services Limited.

“Facility” means a type of Cards Sales Transaction as specified by an individual Merchant Number set out on the Signature Section.

“Forensic Review and Analysis” means a review by Westpac, or an authorised representative of Westpac after a suspected or known Data Breach has occurred. This review may require physical site access and access to all storage and transmission systems. Cost of this analysis and any subsequent fines imposed by the Card Scheme administrators may be passed on to you.

“Incident Response Plan” means a pre-defined set of procedures and actions to be initiated by you in the event that a Data Breach has occurred, or is suspected to have occurred. The plan is aimed at minimising the impact and disruption caused by a Data Breach by defining a set of clear and effective procedures to be followed. Failure to effectively report and manage a Data Breach can result in fines from the Card Schemes. Refer to the guide for meeting Payment Card Industry Data Security Standards and Merchant Operating Guide for further information.

“Indicator Lending Rate” means, from time to time, Westpac’s base lending rate.

“Initial Term” means the period of thirty six (36) months from the Commencement Date.

“Mail or Telephone Order Transaction” is a transaction where a Cardholder orders goods or services from you by telephone, mail, or other means of telecommunication (excluding Electronic Commerce), and neither the Card nor the Cardholder is physically present.

“Manual Card Sales Transaction” means a Card Sales Transaction which is not effected through a Terminal.

“Mark” means, in respect of Visa and MasterCard, any trademark, logotype, symbol, hologram, design or other similar distinguishing emblem used by Visa or MasterCard respectively.

“MasterCard” means MasterCard International Inc, any of its successors or assigns, and any of its related companies or related bodies corporate.

“MasterCard Card” means a credit card issued by an entity pursuant to, and in accordance with, a licence granted to the entity by MasterCard and which bears:

- (a) a red circle intersecting an ochre circle;
- (b) the word “MasterCard”; and
- (c) the hologram, used by MasterCard as its symbol, which shows the image of two intersecting globes,

and/or such other words, letters, symbols, numbers, characters, logotypes, emblems, designs and/or holograms of which Westpac may advise you for the purposes of this definition.

“Member” means an entity that is a Member of MasterCard or Visa.

“Member Service Provider (MSP)” means a non-member (not a Member of MasterCard or Visa) that is registered by MasterCard International Corporation as an MSP to provide program services to a Member, or any Member that is required to register in the Corporation’s sole discretion and has been registered as an MSP to provide Third Party Processor Program Services to another Member.

“Merchant” means the entity or person names as the other party to this Agreement in the Signature Section and **“you”** and **“your”** have corresponding meaning.

“Merchant Operating Guide” means the document entitled “Merchant Operating Guide” prepared in respect of the Cards and issued to you by Westpac and any other document which Westpac, at any time, notifies you falls within the ambit of this definition, as the same may be issued, re-issued and/or amended and a reference to the **“Merchant Operating Guide”** shall be construed as a reference to all such documents.

“Merchant Services” means the services provided to you as specified on the Signature Section.

“MSF” means the monthly service fee payable by you to Westpac pursuant to clause 5.2 as calculated under clause 5.3.

“Minimum Monthly MSF” means the Minimum Monthly MSF for a transaction type that Westpac advises you will be the minimum fee payable under this Agreement. Initially, the Minimum Monthly MSF for a transaction type is the amount specified as such on the Signature Section.

“PAN Entry” is a credit card sales transaction where the credit card account number is manually entered into the EFTPOS terminal or some other electronic means which Westpac has approved.

“Payment Card Industry Data Security Standards (PCIDSS)” means global standards developed by leading payment schemes (including MasterCard, Visa, Diners, AMEX, Discover Card, JCB) to provide guidelines for secure storage and transmission of card account information. Further information can be obtained by visiting www.pcisecuritystandards.org.

“PCI” means Payment Card Industry

“Preferential Rate” means any discounted Preferential Rate determined by Westpac in its discretion.

“Prepayment” means a payment that is made for future delivery of goods or services. This is also known as ‘delayed delivery’, the payment is made up-front, but the goods or services are not delivered until a later date.

“Prepayment merchant” means a merchant that accepts payments for goods or services that will be delivered in full at a future date.

“Prepayment merchant category” means merchant types listed below and such other Merchant types that Westpac may in its discretion designate from time to time, that is:

- Travel Agents and Tour Operators – Prepaid tour packages on behalf of multiple merchants (airline travel, cruise line travel, hotel accommodations, car hire);
- Airlines – Prepaid airline fare where the ticket is issued but the flight has not taken place;
- Hotels and accommodation providers – Advance deposits;
- Cruise Lines – Advance deposits or itineraries paid prior to sailing;
- Electronic Retailers - Prepaid extended warranties;
- Furniture Companies – Delayed delivery transactions for future, or made-to-order delivered goods;
- Insurance Companies – Prepaid insurance policies;
- Health Clubs – Prepaid use of facilities and services;
- Internet Sales – Prepaid products for future delivery and software or computer warranties.

“Prepayment Limit Agreement” means an agreement setting the maximum amount of Prepayment sales Westpac allows you to have, and which may include additional conditions on your acceptance of Prepayment sales.

“Rate” means the Rate that Westpac advises you will be used to calculate the MSF and, where applicable, references to the Rate will be deemed to include references to the Preferential Rate.

“Sales Voucher” means a voucher which is completed by you:
(a) in respect of a Manual Card Sales Transaction; and
(b) on stationery supplied, or approved, by Westpac for the purpose of recording Manual Card Sales Transactions.

“Signature Section” means the Merchant service detail/application form attached to the front of this Agreement and signed by you and Westpac, which sets out, amongst other things, the types of Card Sales Transactions you will process and the details of the Merchant Services that Westpac will provide you with.

“Subsequent Term” means each further term of thirty six (36) months for which this Agreement extends pursuant to clause 2.3.

“Supplementary Schedule” means further terms and conditions attached to this Agreement (if applicable) and applying to the Merchant Services detailed on the Signature Section.

“T & E” (“Travel & Entertainment”) is the term used to describe merchants in the hospitality industry specifically Airlines, Car Rental Companies, Hotel/Motels and Cruise Lines. Only merchants in these industries are referred to as T & E Merchants and thus governed by special specific Card Scheme rules. A Supplementary Schedule applies to T & E merchants and details specific services these merchants can offer to credit card customers.

“Terminal” means a device which:

- (a) facilitates the payment of goods and/or services by the electronic transfer of funds between the bank accounts of the buyer and seller at the time at which the goods and/or services are sold; and
- (b) is approved by Westpac as a **“Terminal”** for the purposes of this Agreement; or
- (c) any other device which is approved by Westpac as a **“Terminal”** for the purposes of this Agreement.

“Terminal Drivers and Processors” means entities that are engaged to provide terminal processing services to its clients.

“Terminal Equipment” means electronic terminal hardware devices or equipment that are provided to accept and process transactions on your behalf.

“Third Party Processor (TPP)” means any business that assists in the processing of Cardholder Data on your behalf.

“Transaction Receipt” means an electronic or paper record of a Card Sales Transaction (or a copy) generated at the point of sale. Also known as a Transaction Record.

“Transaction Record” means the record of a Card transaction, a copy of which is kept by you and a copy to be provided to the Cardholder, recording the details of the transaction and includes a Sales Voucher.

“Transaction Report” means a report that provides detailed information on transactions that have been processed through your payment system.

“Triple Data Encryption Standard (3DES)” means a strong form of data security technology that uses advanced data encryption to protect card transaction information, as explained in the Merchant Operating Guide.

“Valid” means:

- (a) in respect of a Sales Voucher, a Sales Voucher which has been completed in accordance with this Agreement, does not breach any provision of this Agreement, and contains any other information which, at any time, Westpac notifies you should be recorded on it;
- (b) in respect of a Card Sales Transaction, a Card Sales Transaction which has been completed in accordance with this Agreement and does not breach any provision of this Agreement and **“Valid Electronic Card Sales Transaction”** and **“Valid Manual Card Sales Transaction”** have corresponding meanings, and, in each such instance, **“Invalid”** shall have a corresponding meaning.

“Visa” means Visa International Inc, any of its successors or assigns, and any of its related companies or related bodies corporate.

“Visa Card” means a credit card issued by an entity pursuant to, and in accordance with, a licence granted to the entity by Visa and which bears:

- (a) the Visa Flag Symbol or Visa Brand Mark;
- (b) the word “Visa”; and
- (c) the hologram, used by Visa as its symbol, which shows the image of a dove,

and/or such other words, letters, symbols, numbers, characters, logotypes, emblems, designs and/or holograms of which Westpac may advise you for the purposes of this definition.

“Westpac” means Westpac New Zealand Limited, incorporated under the Companies Act 1993, and having its principal place of business in New Zealand at 188 Quay Street, Auckland, and includes its successors and assigns.

“Westpac Products” means any product, stationery or equipment supplied to you by Westpac, and includes:

- (a) any manually operated equipment used to imprint a Sales Voucher and/or a Credit Voucher with the information which is embossed on a Card;
- (b) any unused stationery intended for the generation of Sales Vouchers or Credit Vouchers;
- (c) any advertising or promotional material including branding logos which Westpac may provide you with from time to time;
- (d) any poster, sign, sticker, notice, or promotional material, in connection with the Cards or any Card; and
- (e) any operating guide, manual and booklet in connection with the Cards or any Card.

“Westpac Internet Payment Solution Plus” or “WIPS Plus” means the merchant payment gateway developed by Direct Payment Solutions for Westpac to enable Card

Not Presents transactions to be processed, together with any Direct Payment Solutions software, the Documentation and other related Direct Payment Solutions products made available to you, including all upgrades, updates, alterations and modifications and other changes to that software developed by, or on behalf of, Direct Payment Solutions and made available to you from time to time. A Supplementary Schedule applies to WIPS Plus Merchants.

“Westpac Virtual” means an online Payment Solution which is a Westpac branded payment suite for the provision of secure online Authorisation, capture and interchange of credit card transactions with payment core supplied by Dialect and hosted by ETSL Paymark Virtual. A Supplementary Schedule applies to Westpac Virtual merchants.

“you” “your” means the entity or person named as the other party to this Agreement on the Signature Section.

“Your Account” means the account held with the Bank which you have most recently advised Westpac is the account to which amounts should, from time to time, be debited and credited pursuant to, and in accordance with, this Agreement.

“Your Bank” means the registered bank (as defined in the Reserve Bank of New Zealand Act 1989) most recently nominated by you as the bank with which you will maintain an account to which amounts can, from time to time, be debited and credited pursuant to, and in accordance with, this Agreement.

22.2 Interpretation: In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words denoting a person include a company, corporation, firm, joint venture, unincorporated body, governmental agency, Association or partnership and includes any successors, executors and assigns;
- (c) references to clauses are references to clauses of these general terms and conditions or a Supplementary Schedule unless specified otherwise;
- (d) references to one gender include the others;
- (e) section headings have been inserted for convenience only and should be ignored in construing this Agreement;
- (f) a company is related to another company or body corporate if the company would be related to that company or body corporate pursuant to section 2(3) of the Companies Act 1993, assuming that each reference to a “company” in section 2(3) of the Companies Act 1993 included a reference to a body corporate;
- (g) a body corporate is related to another company or body corporate if the company would be related to that company or body corporate pursuant to section 2(3) of the Companies Act 1993, assuming that each reference to a “company” in section 2(3) of the Companies Act 1993 included a reference to a body corporate;
- (h) any act or thing which may be or which is required to be done at any time, includes reference to it being done from time to time;
- (i) any reference to “including” shall be deemed to include reference to “without limitation” immediately thereafter; and
- (j) reference to any document includes such document as may be amended, modified or supplemented from time to time in accordance with this Agreement.

SCHEDULE I

Travel and Entertainment (T & E)

Supplementary Schedule

A. Application

- (a) The terms and conditions of this Supplementary Schedule apply to you if you have selected to process Travel and Entertainment (T & E) Transactions in the Signature Section and Westpac has approved that Signature Section.
- (b) **Applicable Industries:** Merchants in the following industries are classified as T & E Merchants:
- (i) Accommodation – applicable when full service lodging i.e. maid and room service facilities are available to the Cardholder. Bed and Breakfast Merchants may qualify as a T & E Merchant if they provide serviced accommodation;
 - (ii) Car rental agencies;
 - (iii) Airlines;
 - (iv) Cruise lines;
 - (v) Travel agents – applicable only when the travel agent clearly acts as a direct agent for a Merchant who is in an airline, accommodation, car rental or cruise line industry and accepts payment by Card Sales Transaction to pass directly on to that other Merchant. In this instance, the name of the applicable airline, accommodation, car rental agency, or cruise line Merchant will be the identifying name on the Cardholder's Card statement. Travel agents are not classified as T & E Merchants when they purchase the service themselves and on-sell the service to the Cardholder.
- (c) **Card Not Present Transactions:** Some T & E Card Sales Transactions may occur when the Card and the Cardholder are not present at the time of the Card Sales Transaction. This type of Card Sales Transaction is called a Card Not Present Transaction and for T & E Merchants can cover the following types of Card Sales Transactions:
- (i) Mail or Telephone Order Transactions;
 - (ii) Order/request received via Internet i.e. Electronic Commerce Transactions;
 - (iii) Amended or Incidental Charges.
- (d) **Special Services:** T & E Merchants covered under this Supplementary Schedule are authorised to offer the following special services to Cardholders using their Card to purchase good and services:
- (i) Reservation Guarantee Service – accommodation Merchants;
 - (ii) Advance Deposit Service – accommodation and cruise line Merchants;
 - (iii) Priority Check-out Service – accommodation and cruise line Merchants.
- (e) **Non T & E Card Sales Transactions:** Card Sales Transactions occurring at other establishments such as Restaurant or Gift Shops located at the T & E Merchant's establishment may only be classified as T & E Card Sales Transactions if billed to the Cardholder's room account. Card Sales Transactions that are not billed to a room account must be identified as non T & E Card Sales Transactions and are covered under normal terms and conditions of the Agreement. A separate Merchant number may be required to correctly identify this type of Card Sales Transaction.
- (f) **Approval:** You must obtain Westpac's prior written approval to process T & E Card Sales Transactions before you are able to process this type of Card Sales Transaction. For the avoidance of doubt, Westpac gives that written approval if you select the T & E Card Sales Transaction type on the Signature Section and Westpac signs that Signature Section.

- (g) **Revocation:** At any time, Westpac may cease to allow you to process T & E Card Sales Transactions by notice to you, in writing. You must immediately cease processing T&E Card Sales Transactions upon receiving that notice.

B. Acceptance of Risk

- (a) **You accept risk:** For some T & E Card Sales Transactions the Card and the Cardholder will not be physically present at the time of the Card Sales Transaction. This is called a Card Not Present Transaction. When the Card is not present there is an increased risk that the Cardholder's identity or authority may be later called into question. For Card Not Present Transactions you specifically acknowledge and agree that:
- (i) there is a much greater risk that a Card is being used fraudulently, or is in some other way invalid or is being used in an invalid way;
 - (ii) you accept all risks associated with processing a Card Not Present Transaction including, but not limited to, all costs, fines or penalties imposed on, loss, or liability incurred by, you or any other person in relation to the processing of that Card Not Present Transaction;
 - (iii) as with any other Card Sales Transaction, an authorisation approval and code provided by Westpac on a Card Not Present Transaction does not in any way guarantee payment by Westpac for that Card Not Present Transaction. Westpac will in no way be liable for any Chargeback, cost, fine or penalty imposed on, loss or liability incurred by, you or any person in processing that Card Not Present Transaction; and
 - (iv) where a Card Not Present Transaction has not been validly authorised by the Cardholder, or is in some other way invalid, there will be a Chargeback to Your Account of the value of that Card Not Present Transaction, in accordance with clauses 4.9 and 4.10(d) of the Agreement.

C. Completion of Transaction Records

- (a) **Details for all Transaction Records:** The Transaction Record for all Card Not Present Transactions must contain the following information:
- (i) Card account number;
 - (ii) Card expiry date;
 - (iii) Cardholder name;
 - (iv) Card Not Present Transaction date and amount;
 - (v) Authorisation Code;
 - (vi) your business name and location;
 - (vii) description of the goods and/or services; and
 - (viii) Cardholder address for delivery of the goods and/or services (if applicable).
- (b) **Additional details specific for T & E Transaction Records:** In addition to the details in clause C(a) above, you must record the following details on the Transaction Record:
- (i) for airline, accommodation or cruise line Merchants, passenger or guest name, if different than the name displayed on Card;
 - (ii) for car rental Merchant's, Cardholder's address, rental and return dates, rental and return location and rental agreement number.
- (c) **Description of goods and/ or service:** The Transaction Record must contain a detailed description of the goods and/ or services provided. You must record the following details on the Transaction Record:
- (i) for airline Merchants, airline flight information including flight numbers and dates of travel;
 - (ii) for accommodation Merchants, dates of stay, check-in, check-out and daily room rate;
 - (iii) for cruise line Merchants, cruise embarkation date, and disembarkation date;

- (iv) for car rental Merchants, type of car, mileage, rental rate, actual rate, refuelling and insurance charges, adjustments, tax, cash payments received, billing method, and rental agent ID number if applicable.
 - (d) **Itemised and Amended Charges:** For accommodation, cruise line and car rental Merchants, charges such as room rate, tax, food, beverage, petrol, damages and incidental charges must be itemised on the Transaction Record.
 - (e) **Single Card Sales Transaction only:** For all Card Sales Transactions you must include the total amount of goods and services purchased at the same time on a single Transaction Record. A Card Sales Transaction must not be divided (split) by using two or more Transaction Records.
 - (f) **Provision of receipt:** For all Card Sales Transactions you must provide a completed copy of the Transaction Record to the Cardholder at the time the purchased goods are delivered or services are performed or mail a copy within 3 business days of the Card Sales Transaction date.
 - (g) **Delivery of Transaction Record:** For all Card Sales Transactions you must not return the full Card account number to the Cardholder either online or on the Transaction Record. You may deliver the Transaction Record either:
 - (i) electronically (e.g. email or facsimile); or
 - (ii) on paper (e.g. hand-written or terminal-generated).
- D. Electronic Commerce Website Requirements**
- This section will apply to you if you are accepting Card payments over the Internet. You will be required to support a separate Merchant facility with Westpac to process E-Commerce transactions.
- (a) **Website information:** Before accepting an Electronic Commerce Transaction over the Internet you must ensure your website displays all of the following information:
 - (i) consumer data privacy policy;
 - (aa) security capabilities and policy for transmission of payment Card details;
 - (bb) complete description of the goods or services offered;
 - (cc) return/refund policy for Reservation Guarantee Service;
 - (dd) customer service contact, including electronic mail address or telephone number;
 - (ee) transaction currency (e.g. New Zealand dollars);
 - (ff) your reservation service policy including your cancellation policy;
 - (gg) exact physical address and country of Merchant's residence;
 - (hh) Merchant responsibilities in handling disputes; and
 - (ii) display of Card Scheme brand marks for Cards accepted by you wherever payment options are presented.
 - (b) **Your obligations:** To accept and process Electronic Commerce Transactions received over the Internet you must:
 - (i) maintain a relationship with an Internet Service Provider at your own expense for the purpose of maintaining the website for customers and facilitating email communications;
 - (aa) ensure that your business name corresponds with the name of your website and the name that will appear on Cardholder statements and as advised on the Transaction Record;
 - (bb) provide Westpac with reasonable access to view, monitor and audit the pages of your website;
 - (cc) protect your website payments page by Secure Sockets Layer or any other form of security method approved by us and state on your website payments page that the page is secured by Secure Sockets Layer (or, if appropriate, other form of security method approved by us);
 - (dd) ensure all Electronic Commerce Transactions are captured and transmitted using a protected website payments page through a Westpac approved e-commerce payment gateway. Card payment details must not be accepted via unprotected email; and
 - (ee) advise Westpac in writing at least ten (10) banking days prior to changing your:
 - internet address; or
 - email address; or
 - telephone or facsimile number; or
 - website name.
 - (c) **Secure E-Commerce:** Westpac may, at its discretion, require you to support and use enhanced Cardholder Authentication programmes including Verified by Visa and/or MasterCard SecureCode.
- E. Reservation Guarantee Service**
- Applicable to accommodation Merchants only:** Under this program you can accept a Card to secure and honour a reservation made by the Cardholder until checkout time the day following the scheduled arrival date. The following procedures must be complied with when accepting Card details as security for holding a reservation booking:
- (a) **Information:** You must inform the Cardholder of the following information:
 - (i) reserved accommodation rate and that the room will be made available until checkout time the day after scheduled arrival;
 - (ii) exact name and physical address of the establishment where accommodation has been reserved; and
 - (iii) one night's lodging will be billed to the Card account if the Cardholder has not registered by checkout time the day following the scheduled arrival date and/or properly cancelled the reservation in accordance with the Merchant's instructions as advised at time of reservation.
 - (b) **Reservation confirmation:** You must provide to the Cardholder a code as confirmation of the reservation and advise the Cardholder to retain the code in case of dispute. The code must be provided verbally and, if requested, you must provide written confirmation to the Cardholder including the following information:
 - (i) Card details: Cardholder name, truncated account number and Card expiry date;
 - (ii) Confirmation code and advise the Cardholder to retain this code;
 - (iii) exact name and physical address of establishment where reservation is held;
 - (iv) expected arrival and departure dates and daily room rate charges;
 - (v) your cancellation policy including exact date and time cancellation privileges expire; and
 - (vi) any other reservation details.
 - (c) **Cancellation period:** You must accept all Cardholder cancellations within the time limits you have specified and previously advised to the Cardholder. In addition:
 - (i) you must not require cancellation notification more than 72 hours prior to the scheduled arrival date unless you have previously advised in writing to the Cardholder a cancellation time in excess of the 72 hours;
 - (ii) if the reservation is made within 72 hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6.00pm (merchant establishment time) on the arrival date or date guaranteed;
 - (iii) if you require the customer Cardholder to cancel before 6.00pm (New Zealand local time) on the date guaranteed, you must mail the cancellation policy, including the date and time that cancellation privileges expire to the Cardholder.

- (d) **Cancellation confirmation:** You must provide a cancellation code (if the reservation is properly cancelled within the cancellation period) verbally to the Cardholder and advise the Cardholder to retain the code in case of dispute. If requested by the Cardholder, you must provide written confirmation of the cancellation including the following information:
- (i) Card details: cardholder name, truncated account number and card expiry date;
 - (ii) Cancellation code and advise the Cardholder to retain this code; and
 - (iii) any other cancellation details.
- (e) **Accommodation unavailable:** If the guaranteed reservation is unavailable, you must provide the Cardholder with the following services at no charge:
- (i) comparable accommodation for one night at another establishment;
 - (ii) if requested by the Cardholder, a 3-minute telephone call and message forwarding to the alternate establishment; and
 - (iii) transportation to the alternate establishment.
- (f) **Unclaimed accommodation:** You must hold the guaranteed reservation accommodation according to the reservation request made until checkout time the following day. If the Cardholder has not claimed or cancelled the guaranteed reservation by the specified time, you may cancel any further reservation and complete a Transaction Record for a "No Show" being the cost of one night's accommodation. In no event shall the "No Show" charge exceed the quoted rate for one night's accommodation regardless of the length of time for which the original reservation was made. The Transaction Record must contain the following information:
- (i) amount of one nights lodging plus applicable tax;
 - (ii) Card details: Cardholder name, Card account number and Card expiry date;
 - (iii) the date of the guaranteed reservation and the confirmation code; and
 - (iv) the words "Guaranteed Reservation – No Show" on the signature line of the Transaction Record.
- You must follow normal authorisation and deposit procedures in accordance with the Agreement.
- (g) **Car rental Merchants:** Car rental Merchants are not eligible to accept a Card as security for holding a rental car reservation in New Zealand. This service is only applicable in the US and applies to a specialised vehicle program. If a car rental Merchant wishes to procure a bond payment before releasing the vehicle and retain it during the rental period, the Merchant must enter into an independent written agreement with the Cardholder directly. That agreement must:
- (i) disclose all terms and conditions relevant to the bond payment and provide for written consent from the Cardholder to be obtained agreeing to pay the bond and the agreed bond amount;
 - (ii) state that any bond arrangement agreed to with the Cardholder is outside the terms and conditions of the Westpac Travel and Entertainment Supplementary Schedule and as such will be treated as an agreement solely between the Merchant and the Cardholder; and
 - (iii) inform the Cardholder that payment of a bond is not a requirement of the Merchant's Bank or Credit Card Company and is charged solely at the Merchant's own discretion and entered into voluntarily by the Cardholder.
- comply with the following procedures if a Cardholder agrees to participate in the Advance Deposit Service.
- (b) **Billing information:** At the time of reservation booking, you must obtain the following information from the Cardholder (or travel agent authorised to act on behalf of the Cardholder):
- (i) Card details: Cardholder name, Card account number and Card expiry date;
 - (ii) customer name if different from the Cardholder name on the Card;
 - (iii) Cardholder contact details including telephone numbers and mailing address;
 - (iv) scheduled date of arrival for accommodation or embarkation date for a cruise line; and
 - (v) intended length of stay or voyage.
- (c) **Deposit Amount:** You must determine the amount of the advance deposit and advise the Cardholder of the amount required. The deposit amount must not exceed the following:
- (i) for lodging accommodations, the cost of the intended length of stay (not to exceed 14 nights lodging);
 - (ii) the cost of the cruise.
- The advance deposit amount must be applied against the total amount of the credit Cardholder's obligation.
- (d) **Transaction Record:** You must complete and mail the Transaction Record copy and your cancellation policy to the Cardholder within 3 business days of the Card Sales Transaction date. You must follow normal authorisation and deposit procedures in accordance with the Agreement. The Transaction Record must contain the information obtained in clause C subclauses (a), (b)(i) & (c)(ii) and additionally:
- (i) the words "Advance Deposit" on the Transaction Record signature line;
 - (ii) Confirmation Code for the reservation and advise Cardholder to retain it; and
 - (iii) date and time that cancellation privileges (if any) expire without deposit forfeiture for unused accommodations.
- (e) **Reservation confirmation:** You must provide to the Cardholder all the information listed in clause E (b) of this Supplementary Schedule.
- (i) In addition, you must also provide the following:
 - (aa) name of the cruise ship and point of embarkation;
 - (bb) your intention to hold accommodation for the number of nights paid for.
 - (ii) You must advise the Cardholder that you will retain part, or the entire Advance Deposit transaction amount, if the Cardholder has not:
 - (aa) registered by checkout time the day following the specified last night of the lodging for accommodation (the Cardholder will lose the unused amount of the reservation);
 - (bb) checked in by embarkation time for a cruise line; or
 - (cc) cancelled the reservation within the time limit specified by the Merchant.
- Under the Advance Deposit Service, a Cardholder may forfeit the advance deposit. You must not charge the Cardholder any additional 'No Show' amount.
- (f) **Cancellation period:** You must accept all Cardholder cancellations within the time limits specified. If you require notification of cancellation in excess of 72 hours you must advise in writing to the Cardholder the time and date cancellation privileges expire.
- (g) **Cancellation confirmation:** You must provide a Cancellation Code and advise the Cardholder to retain the Cancellation Code in case of dispute. You must complete a Transaction Record and include all of the following:
- (i) Card Sales Transaction amount;

F. Advance Deposit Service

- (a) **Accommodation and cruise line Merchants:** You may offer this service to a Cardholder if the Cardholder agrees to confirm their reservation by payment of a deposit. You must

- (ii) Card details: Cardholder name, Card account number and Card expiry date;
- (iii) Cardholder mailing address;
- (iv) Cancellation Code and advise Cardholder to retain in case of dispute; and
- (v) the words "Advance Deposit Cancellation" on the Transaction Record signature line.

You must deposit the Transaction Record and mail the Cardholder's copy to the Cardholder within 3 business days of the Card Sales Transaction date.

- (h) **Unavailable accommodation:** You must provide to the Cardholder the following services without charge if the reserved accommodation is unavailable:
 - (i) credit refund for the entire Card Sales Transaction amount and provide the Cardholder with a copy of the Transaction Record;
 - (ii) comparable accommodation at an alternate establishment for the number of nights specified in the reservation (not to exceed 14 nights) or until the reserved accommodation becomes available at the original establishment;
 - (iii) if requested by the Cardholder, two 3-minute telephone calls and message forwarding to the alternate establishment;
 - (iv) transportation to the alternate establishment's location and return to the original establishment. If requested, you must provide daily transportation to and from the alternate establishment.
- (i) **Unavailable cruise line accommodation:** If the reserved accommodation is unavailable, and no comparable accommodation is available on the ship, you must offer the Cardholder a comparable cruise of similar itinerary and embarkation date at no additional cost to the Cardholder.
 - (i) If the Cardholder accepts the alternate accommodations you will provide at no additional cost either of the following:
 - (aa) an additional nights accommodation; or
 - (bb) airfare to different port city.
 - (ii) If the Cardholder declines the alternate accommodations, you will provide a credit refund for the entire advance deposit transaction amount. In addition, you will provide the Cardholder all of the following without charge:
 - (aa) if the Cardholder requests it, one nights hotel accommodation;
 - (bb) transportation to the hotel and airport;
 - (cc) airline transportation to the airport nearest the Cardholder's residence;
 - (dd) reasonable out-of-pocket expenses incurred by the Cardholder.

G. Priority Check-out Service

- (a) **Accommodation and cruise line Merchants:** Accommodation and cruise line Merchants may offer a Priority Check-out Service to Cardholders to avoid delays or inconvenience at the time of checkout from the Merchant's accommodation. If the Cardholder agrees to this service you must follow the procedures listed below:
 - (i) require the Cardholder to complete, sign and return a Priority Check-out agreement that contains at a minimum the following information:
 - (aa) room number occupied and departure date from room;
 - (bb) statement authorising you to charge costs incurred by the Cardholder to their Card account by Transaction Record without the need for the Cardholder's signature;
 - (cc) Cardholder details including: Cardholder name, imprint of the Card account number and Card

expiry date, Cardholder's signature and Cardholder mailing address;

- (ii) complete a Transaction Record that has the Card details imprinted on to it or alternatively an electronic receipt where the magnetic stripe of the Card has been swiped;
- (iii) include the Cardholder's total obligation amount and the words "Priority Check-Out" on the signature line;
- (iv) follow normal authorisation and deposit procedures in accordance with the Agreement;
- (v) ensure the Card number imprinted on the Priority Check-out agreement matches the Card number imprinted on the Transaction Record;
- (vi) provide the Cardholder with a copy of the Transaction Record, itemised bill and signed Priority Check-out agreement either at time of check-out or by mail within 3 business days of the Cardholder's departure; and
- (vii) retain the itemised bill and signed Priority Check-out agreement for a minimum period of 18 months after the Card Sales Transaction date.

H. Gambling Facilities

- (a) If you are a T & E Merchant who wishes to accept Card payments at a gambling facility operating at your establishment, you must first obtain express written authority from Westpac to do so. Such authority will set out any terms and conditions that apply to that authority including a requirement that you regularly provide evidence to Westpac that you have been granted authority under any relevant legislation to accept card payments for gambling.

I. Amended Charges

- (a) An accommodation, cruise line or car rental Merchant may process delayed or amended charges to a Cardholder's Card only under the following conditions:
 - (i) the Merchant must hold an authority from the Cardholder that provides consent from the Cardholder to be liable for delayed or amended charges;
 - (ii) applicable amended charges include: room expense, food or beverages, taxes, fuel, insurance, rental fees, damage to rental vehicles, parking tickets or other traffic violations and goods and services purchased from your establishment during the cardholder's stay or rental period;
 - (iii) a delayed or amended charge must be processed to the Card account within 90 calendar days of the Card Sales Transaction date of the related transaction; and
 - (iv) you must follow normal authorisation and deposit procedures in accordance with the general terms and conditions for delayed and amended charges.
- (b) **Car Rental Amended Charges:** To claim damage costs to a rental car or obtain payment for a parking ticket or traffic violation, you must provide all of the following documentation to the Cardholder:
 - (i) a copy of Cardholder's consent accepting liability on their Card for damages;
 - (ii) a copy of the rental agreement;
 - (iii) an estimate/quote of cost to repair the damage as provided by your approved car repairer/dealer. If the estimated Card Sales Transaction amount to pay for the damages exceeds the applicable floor limit, you must obtain an Authorisation Code for that amount and for any additional estimated amount as needed;
 - (iv) the accident report by the relevant civil authority (if applicable);
 - (v) a copy of your insurance policy if the Cardholder is required to pay insurance excess for damages. Alternatively, you can provide a copy of the rental agreement where Cardholder has agreed to be responsible for insurance excess and has indicated

- same by providing his/her signature or initials in close proximity to the insurance disclosure clause;
- (vi) any other pertinent documentation available to demonstrate liability to the Cardholder; and
 - (vii) in the case of a parking ticket or other traffic violation, you must provide documentation from the appropriate authority which includes the registration number of the vehicle, date, time and location of the offence, details of the infringement and amount of the penalty in local currency.

You may be held liable for the Card Sales Transaction if the above documentation is not provided to support the validity of a delayed or amended charge and the Cardholder is disputing the Card Sales Transaction.

- (c) **Card Sales Transaction:** for damages to rental cars: Charges for damages must be processed as a separation Card Sales Transaction. You must provide a reasonable estimate of the cost to repair the damages and obtain agreement from the Cardholder. If the Cardholder chooses to pay for the repairs using his or her Card, you must:
 - (i) prepare a specific sales slip with proof of Card presence;
 - (ii) the amount will be adjusted accordingly pursuant to completion of the repairs and submission of the invoice for such repairs;
 - (iii) obtain a signature from the Cardholder (MasterCard only).

In addition, the final Card Sales Transaction amount may not exceed your estimated amount by more than 15% (or less, as directed by local ordinances). You must make a refund to the Cardholder if the cost of repairs is less than the estimated amount on the sales slip. You have thirty (30) days from the date of the subsequent Card Sales Transaction related to damages to submit the item for clearing.

J. Definitions

Terms defined in the Agreement have the same meaning in this Supplementary Schedule. In addition, in this Supplementary Schedule, unless the context otherwise requires:

“Advance Deposit Service” means a service that a Merchant who is in the accommodation or cruise Line industry offers, allowing a Cardholder to use a Card as payment of an advance deposit to reserve accommodation.

“Authorisation Code” means a code provided by Westpac at the time of the Card Sales Transaction, to confirm that the Card has not been reported as lost or stolen, or been blocked at the time, and that there are sufficient funds in the Card account for the Card Sales Transaction to proceed.

“Cancellation Code” means a code provided by the Merchant to the Cardholder when the Cardholder has properly cancelled a guaranteed reservation or Advance Deposit Service transaction. The code is retained by the Cardholder in case of dispute.

“Cardholder Authentication” means a means of verification performed by a Merchant, of the person initiating an Electronic Commerce Transaction, to check that they are an authorised Cardholder of the Card account. Verification is done using an approved payment authentication system such as Verified by Visa or MasterCard SecureCode.

“Confirmation Code” means a code provided by the Merchant to the Cardholder when the Cardholder has used a Card to secure accommodations under the Guaranteed Reservation Service or Advance Deposit Service. The code is retained by the Cardholder in case of dispute.

“Electronic Commerce Transaction” means a Card Sales Transaction initiated by a Cardholder who has interacted with a Merchant via an open Network such as the Internet.

This includes online processing and encrypted order forms. Transmission/receipt of Card details by email is classified as a non-secure e-commerce transaction.

“Guaranteed Reservation Service” means a service offered by a Merchant who is in the accommodation industry, where a Cardholder may use a Card to guarantee overnight accommodation.

“Internet Service Provider” means a company that designs and builds or hosts on behalf of the Merchant the Merchant’s web site and provides access to the Internet.

“Mail or Telephone Order Transaction” means a transaction where a Cardholder orders goods or services from a Merchant by telephone, mail, or other means of telecommunication (excluding Electronic Commerce), and neither the Card nor the Cardholder is physically present.

“MasterCard SecureCode” means a MasterCard International payment authentication product for use in Electronic Commerce Transactions. Merchants participating in MasterCard SecureCode authenticate the Cardholder’s identity at the time of the transaction via the web payment page.

“No-Show Transaction” means a transaction that a Merchant who is in the accommodation industry, and who is participating in the Guarantee Reservation Service, completes to recover lost business, resulting from a Cardholder’s alleged failure to cancel or use the reservation.

“Priority Check-out Agreement” means a written authority from the Cardholder that a Merchant in the accommodation or cruise line industry can hold, that bears a Cardholder’s signature and authorisation to charge, at the time of the Cardholder’s check-out from the Merchant’s accommodation, their Card account for expenses incurred whilst the Cardholder resided in the Merchants accommodation.

“Priority Check-out Service” means a service provided by a Merchant in the accommodation or cruise line industry, that allows a Cardholder to authorise the charging of their Card for payment of their total obligation to the Merchant, with or without prior knowledge of the total amount, by signing a completed Priority Check-out Agreement.

“Secure Electronic Commerce Transaction” means is an Electronic Commerce Transaction that meets the security level and Cardholder Authentication requirements as specified by Westpac on behalf of Visa International and MasterCard International.

“Secure Sockets Layer” means the method of encryption known in the information technology industry as “secure sockets layer” and used to keep a website page and the transmission of data to and from it, secure.

“T & E Document” means a photocopy of all documents pertaining to a T & E Transaction originating from a Car Rental Agent, Accommodation, Cruise Line or Airline merchant, including the following as applicable:

- Transaction Receipt
- Car rental agreement
- Guest Folio (if created)
- Card Imprint (if obtained)
- Cardholder signature (if obtained)

“T & E Merchant” means a Merchant who is in the airline, car rental, accommodation, or cruise line merchant industry and whose primary business function is to provide travel-related services. Merchants are usually identified as a T & E Merchant by being assigned a Merchant category code in the 3xxx range.

“Verified by Visa” means a Visa International product for use in Electronic Commerce Transactions. Merchants participating in Verified by Visa authenticate the Cardholder’s identity at the time of the transaction via the web payment page.

SCHEDULE II

Card Not Present Transactions

Supplementary Schedule

A. Application

- (a) The terms and conditions of this Supplementary Schedule apply to you if you have selected to process any Card Not Present Transactions on the Signature Section and Westpac has approved that Signature Section.
- (b) This Supplementary Schedule forms part of, and is subject to the general terms and conditions set out in the Agreement.
- (c) Card Not Present Transactions involve transactions where the Cardholder and the Card are not present when processing a transaction, and cover the following types of transactions:
 - (i) Mail or Telephone Order Transactions;
 - (ii) Electronic Commerce Transactions;
 - (iii) Recurring Transactions;
 - (iv) Instalment Transactions;
 - (v) Delayed Delivery Transactions;
 - (vi) PAN Entry Transactions.
- (d) Westpac must give you its prior written approval for each of the above transactions before you are able to process that transaction. For the avoidance of doubt, that written approval is given by Westpac if you select the transaction type in the Signature Section and Westpac signs that Signature Section.
- (e) At any time, Westpac may cease to allow you to process any one or more of the transaction types in (c) above by notice to you. You must immediately cease to process any transaction type specified in that notice upon receiving that notice.

B. Acceptance of risk

- (a) You accept risk: By selecting to process Card Not Present Transactions you accept the increased risk of processing transactions where there is no physical credit card and the Cardholders identity or authority may be later called into question. You specifically acknowledge and agree that:
 - (i) there is a much greater risk that a Card is being used fraudulently, or is in some other way invalid;
 - (ii) you accept all risks associated with processing a Card Not Present Transaction including, but not limited to, all costs, fines or penalties imposed, loss, or liability incurred by you or any other person in relation to the processing of that transaction;
 - (iii) as with any other Card Sales Transaction, an authorisation approval and code provided by Westpac of a Card Not Present Transaction does not in any way guarantee payment by Westpac for that transaction. Westpac will in no way be liable for any Chargeback, cost, fine or penalty imposed, loss or liability incurred by you or any person in processing that transaction; and
 - (iv) where a Card Not Present Transaction has not been validly authorised by the Cardholder, or is in some other way invalid, the value of that transaction will be charged back to Your Account in accordance with clauses 4.9 and 4.10(d) of the Agreement.

C. Completion of transaction record

- (a) **Details for all transaction records:** The Transaction Record for all Card Not Present Transactions must contain the following information:
 - (i) Card account number;
 - (ii) Card expiry date;

- (iii) Cardholder name;
- (iv) transaction date and amount;
- (v) authorisation code;
- (vi) your business name and location;
- (vii) description of merchandise or services; and
- (viii) address for delivery of the goods or services (if applicable).

- (b) **Additional details for specific transaction types:** In addition to the details in clause C(a) above, you must record the following details on the Transaction Record for the transaction type specified:
 - (i) for Mail and/or Telephone Order Transactions, either "MO" (mail order) or "TO" (telephone order) legibly printed on the signature line of the Transaction Receipt;
 - (ii) for Electronic Commerce Transactions:
 - (aa) your business name most recognisable to the Cardholder, such as:
 - your "doing business as" (DBA) name, as used on your website;
 - your internet website address or "universal resource locator" (URL);
 - (bb) customer service contact information including telephone country code and area code. If you deliver goods or services internationally, you must list both locally and internationally accessible telephone numbers;
 - (cc) terms and conditions of sale, if these are restricted for Electronic Commerce Transactions;
 - (dd) if a free trial is offered, the exact date the free trial ends;
 - (ee) cancellation policies; and
 - (ff) the Cardholder's internet or email address;
 - (iii) for Delayed Delivery Transactions:
 - (aa) the word "Deposit" on the Transaction Record for the first transaction payment; and
 - (bb) the word "Balance" on the Transaction Record for the second transaction payment.
- (c) **Single transaction only:** For all Card Not Present Transactions you must include the total amount of goods and services purchased at the same time on a single Transaction Record. A transaction must not be divided (split) by using two or more Transaction Records except as provided under sections D and E of this Supplementary Schedule.
- (d) **Provision of receipt:** For all Card Not Present Transactions you must provide a completed copy of the Transaction Record to the Cardholder at the time the purchased goods are delivered or services are performed.
- (e) **Delivery of Transaction Record:** For all Card Not Present Transactions you must not return the full credit card number to the Cardholder either online or on the Transaction Record. You may deliver the Transaction Record either:
 - (i) electronically (eg, email or facsimile); or
 - (ii) on paper (eg, hand-written or terminal-generated).
- (f) **Written permission for Recurring Transactions:** For Recurring Transactions the Cardholder's written permission must be obtained in a format such as email, other electronic record, or in paper form prior to the commencement of the first Recurring Transaction, and must be retained by you for not less than 18 months after the last transaction with the relevant Cardholder and provided to Westpac upon request. Card payment details must not be accepted or transmitted via email.
- (g) **Retention and inspection of records:**
 - (i) you agree to retain a copy of all Transaction Records for not less than eighteen (18) months from the date the transaction (or last transaction in the case of Recurring Transactions, Instalment Transactions or Delayed Delivery Transactions) was processed;

- (ii) Westpac has the right to request copies of the Transaction Records and any written permission obtained by you pursuant to section C(f) of this Supplementary Schedule at any time. If you are unable to supply the requested copies the transaction may be charged back to your Bank account in accordance with clause 4.10(d) of the general terms and conditions; and
- (iii) if discarding or destroying any Transaction Records after the time period for retaining them has passed, you must do so in a secure manner in accordance with clause 4.3(i) of the Agreement.

D. Instalment transactions

- (a) Instalment Transactions may only be offered by you if you are authorised to process Mail or Telephone Order Transactions or Electronic Commerce Transactions. For Instalment Transactions, you may process greater than one Transaction Record for a single transaction. For all Instalment Transactions you must:
 - (i) obtain prior authorisation for each payment instalment in an Instalment Transaction regardless of your authorised floor limit;
 - (ii) disclose in writing whether the instalment terms limit the goods or services that a Cardholder may purchase;
 - (iii) disclose in writing any delivery or handling charges and any applicable taxes;
 - (iv) inform a Cardholder not billed in New Zealand dollars that each instalment amount may vary due to currency conversion rate fluctuations;
 - (v) ensure that the sum of all instalment payments does not exceed the total price of the goods (excluding currency fluctuations if (iv) above applies);
 - (vi) not add finance charges to any instalment payments;
 - (vii) not deposit the first instalment payment until the date of despatch of the goods; and
 - (viii) deposit subsequent instalment payments at one of the following intervals:
 - (aa) thirty (30) days or more;
 - (bb) the monthly anniversary of the date of despatch (same day of each month); or
 - (cc) any other interval agreed with the Cardholder.

E. Delayed delivery transactions

- (a) **Application:** Delayed Delivery Transactions may only be processed when the goods and/or services to be purchased, or part of them, are not available for delivery at the time of the original transaction request from the Cardholder. In such a case you may process two Transaction Records for a single transaction. The first transaction payment is the "deposit" and the second transaction payment is the payment of the "balance".
- (b) **Single payment:** If the Cardholder is made aware of the unavailability of the goods or services at the time of authorising the transaction and agrees, you may process one Transaction Record for the total amount of the sale.
- (c) **Authorisation:** For all Delayed Delivery Transactions you must obtain prior authorisation for each transaction payment on the day of each transaction payment.
- (d) **Depositing receipts:**
 - (i) you may deposit the Transaction Record for payment of the delayed delivery deposit before delivery of the goods or services; and
 - (ii) you must not deposit the Transaction Record for payment of the balance payment before delivery of the goods or services.
- (e) **Retention of deposit:** You may only retain the deposit and not deliver the goods or services if all the following conditions apply:

- (i) you received a decline response to your authorisation request for the balance;
- (ii) the balance was not paid by any other means; and
- (iii) the Transaction Record clearly states that the deposit is non-refundable and that the Cardholder was advised of this condition of sale at the time of order.

F. Electronic commerce transactions

- (a) **Westpac account:** In order to process Electronic Commerce Transactions, your Bank must be Westpac unless Westpac consents otherwise in writing.
- (b) **Website information:** Before accepting any Electronic Commerce Transaction over the internet you must ensure your website displays all of the following information:
 - (i) consumer data privacy policy;
 - (ii) security capabilities and policy for transmission of payment card details;
 - (iii) complete description of the goods or services offered;
 - (iv) return/refund policy;
 - (v) customer service contact, including electronic mail address or telephone number;
 - (vi) transaction currency (eg New Zealand dollars);
 - (vii) export restrictions (if known);
 - (viii) delivery policy;
 - (ix) country of merchant's residence;
 - (x) cancellation policy;
 - (xi) Merchant responsibilities in handling disputes;
 - (xii) Card Scheme brand marks for Cards accepted by you wherever payment options are presented; and
 - (xiii) Verified by Visa and MasterCard SecureCode brand marks on payment pages if participating in these authentication programs.
- (c) **Your obligations:** To be able to process Electronic Commerce Transactions over the internet you must:
 - (i) maintain a relationship with an internet service provider at your own expense for the purpose of maintaining the website for customers and facilitating email communications;
 - (ii) ensure that your business name corresponds with the name of your website and the name that will appear on cardholder statements and as advised on the payment record;
 - (iii) provide us with reasonable access to view, monitor and audit the pages of your website;
 - (iv) protect your website payments page by Secure Sockets Layer or any other form of security method approved by us and state on your website payments page that the page is secured by Secure Sockets Layer (or, if appropriate, other form of security method approved by us);
 - (v) ensure all Electronic Commerce Transactions are captured and transmitted using a protected website payments page through a Westpac approved E-Commerce payment gateway. Card payment details must not be accepted or transmitted via email;
 - (vi) ensure it does not violate applicable laws governing the sale of prescription medicines, including controlled substances or other regulated products; and
 - (vii) advise us in writing at least ten (10) banking days prior to changing your:
 - (aa) internet address; or
 - (bb) email address; or
 - (cc) telephone or facsimile number; or
 - (dd) website name; or
 - (ee) nature of business.
- (d) **Secure E-Commerce:** Westpac may, at its discretion, require you to support and use enhanced Cardholder Authentication programmes including Verified by Visa and/ or MasterCard SecureCode.

G. Definitions

Definitions: In this Supplementary Schedule, unless the context otherwise requires:

“Cardholder Authentication” is a means of verification performed by you of the person initiating an Electronic Commerce Transaction that they are an authorised Cardholder of the credit card account. Verification is done using an approved payment authentication system such as Verified by Visa or MasterCard SecureCode.

“Delayed Delivery Transaction” is a single transaction where two separate transaction receipts may be completed. Delayed Delivery Transactions allow the Merchant to “split” the sale or process a single transaction for the full amount with Cardholder permission when stock is unavailable at the time of order.

“Electronic Commerce Transaction” is a transaction initiated by a Cardholder that has interacted with a Merchant via an open network such as the Internet. This includes online processing and encrypted order forms.

“Instalment Transaction” is a transaction in which the Cardholder is billed in monthly instalments until the total amount of the transaction has been repaid. Instalment Transactions allow the Merchant to offer the Cardholder a payment plan which has the option of spreading payments over an agreed upon time frame in agreed amounts.

“Internet Service Provider” Company that designs and builds or hosts on behalf of the merchant the merchant’s web site and provides access to the Internet.

“Mail or Telephone Order Transaction” is a transaction where a Cardholder orders goods or services from you by telephone, mail, or other means of telecommunication (excluding Electronic Commerce Transactions), and neither the Card nor the Cardholder is physically present.

“MasterCard SecureCode” is a MasterCard International payment authentication product for use in Electronic Commerce Transactions. Merchants participating in MasterCard SecureCode authenticate the cardholder’s identity at the time of the transaction via the web payment page.

“Non-Authenticated Security Transaction” is an Electronic Commerce Transaction that has some level of security (such as commercially available data encryption) but does not have approved Cardholder Authentication capability compliant to the Card Schemes requirements.

“Non-Secure Transaction” is an Electronic Commerce Transaction that has no data protection.

“PAN Entry Transaction” is a Card Sales Transaction where the credit card account number is manually entered into the EFTPOS terminal or some other electronic means which Westpac has approved.

“Payment Gateway” is an on line, real time Internet payment mechanism that presents a payment page to capture a Cardholder’s payment details in an E-Commerce transaction and route the details to the Merchant’s bank for authorisation and settlement.

“Payment Gateway Provider” is a business that owns or operates a Payment Gateway and facilitates the service to a Merchant to enable the Merchant to accept and process payments acquired over the Internet.

“Recurring Transaction” is a transaction for which a Cardholder grants written permission to you to periodically charge his/her credit card account number for recurring goods or services provided.

“Secure Electronic Commerce Transaction” is an Electronic Commerce Transaction that meets the Security Level and Cardholder Authentication requirements as specified by Westpac on behalf of Visa International and MasterCard International.

“Secure Sockets Layer” means the method of encryption known in the information technology industry as “secure sockets layer” and used to keep a website page and the transmission of data to and from it, secure.

“URL” Universal Resource Locator is the Internet website address.

“Verified by Visa” is a Visa International product for use in Electronic Commerce Transactions. Merchants participating in Verified by Visa authenticate the Cardholder’s identity at the time of the transaction via the web payment page.

SCHEDULE III

Internet Authentication

Supplementary Schedule

A. Application

- (a) The terms and conditions of this Supplementary Schedule apply to you if you have selected to process Internet Authentication Transactions in the Signature Section and Westpac has approved that Signature Section.
- (b) This Supplementary Schedule forms part of, and is subject to the general terms and conditions set out in the Agreement.
- (c) **Applicable Merchants:** An Electronic Commerce Merchant is permitted to use Verified by Visa and MasterCard SecureCode Internet Authentication products, if the following applies:
 - (i) the Electronic Commerce Merchant has been approved and authorised by Westpac to process Electronic Commerce Transactions; and
 - (ii) the Electronic Commerce Merchant is going to use a Westpac Approved Online Payment Gateway, via which a Cardholder enters Card payment details online with no interaction from the Merchant.
- (d) **Internet Authentication products:** Visa and MasterCard Internet Authentication products are branded as:
 - (i) *Verified by Visa™* ("VbV") – used to Authenticate Visa Cardholder Card Sales Transactions;
 - (ii) *MasterCard SecureCode™* – used to authenticate MasterCard Cardholder Card Sales Transactions.
- (e) **Online Payment Gateways:** The following online hosted Payment Gateway products have Internet authentication capability and provide the 3-D Secure software protocol technology:
 - (i) Westpac Internet Payment Solution (WIPS Plus) – provided by DPS;
 - (ii) Westpac Virtual – provided by ETSL Paymark Virtual;
 - (iii) Direct Payment Solutions (DPS) Payment Express – provided by DPS.
- (f) **3-D Secure Software Integration:** If you, as an Electronic Commerce Merchant, wish to develop your own custom software for participation in 3-D Secure, you must comply with the 3-D Secure software protocol technology and functional specifications published by Visa and MasterCard. These specifications can be obtained from Westpac. You must obtain approval from Westpac of any customised integration before implementation.
- (g) **3-D Secure Software:** Your Payment Gateway provides access to the 3-D Secure and Merchant Plug-In (MPI) software. The MPI software:
 - (i) provides access to Visa Directory Server and MasterCard Directory Server to verify Cardholder enrolment for Verified by Visa and MasterCard SecureCode;
 - (ii) identifies whether a Cardholder is participating or non-participating in VbV and MasterCard SecureCode via Verified Enrolment Request;
 - (iii) will present an Authentication window for Cardholders that are participating in internet Authentication, into which the Cardholder enters their personal password for verification and return an Authentication Response;
 - (iv) will not present an Authentication window for non-participating Cardholders but will return an Attempt Response;
 - (v) forwards successful fully-Authenticated and Attempted Authenticated Card Sales Transactions for authorisation approval;
 - (vi) does not forward a failed/denied Authentication Attempt Response for authorisation of the Card Transaction to be completed;

- (h) **Revocation:** At any time, Westpac may cease to allow you to process Internet Authentication Transactions by notice to you, in writing. You must immediately cease processing Internet Authentication Transactions upon receiving that notice. If you have been terminated or failed to comply with the requirements of this Supplementary Schedule relating to participation in 3-D Secure your Merchant number will be removed from the Visa and MasterCard Directory Servers.

B. Internet Authentication

- (a) **Verified by Visa:** To participate in Verified by Visa you must:
 - (i) not make VbV a condition of Visa credit card acceptance (you must not refuse to take non-enrolled Verified by Visa enabled credit cards);
 - (ii) not offer different terms or conditions for VbV and non-VbV Card Sales Transactions.
- (b) **Verified by Visa mark:** When incorporating the Verified by Visa mark into your Merchant website you must adhere to Verified by Visa branding requirements and Visa security requirements. These require that you:
 - (i) display the Verified by Visa mark as early in the shopping experience as possible (e.g. Merchant's home page, shopping cart);
 - (ii) wherever applicable, display the Verified by Visa mark along with other Visa security or better business marks (e.g. Verisign);
 - (iii) on the Payment Page, place the Verified by Visa mark next to, or very close to, the Card entry fields;
 - (iv) ensure that the Verified by Visa mark is clearly visible and not overshadowed by other elements on the page.
- (c) **Verified by Visa System Error:** If a Verified by Visa system error occurs, the "System Error" screen would be displayed. A message on this screen would inform the Cardholder that a system error has occurred. You can either proceed without Cardholder Authentication or request another form of payment. If you proceed without Cardholder Authentication, liability for any Chargeback remains with you.
- (d) **Verified by Visa Chargeback Liability:** By participating in VbV, you may benefit from a reduced Chargeback liability shift because the Card Issuer cannot Chargeback 'Not authorised by the Cardholder' Card Transactions if the following conditions have been met:
 - (i) The purchase was successfully Authenticated using 3-D Secure protocol software; or
 - (ii) You tried to Authenticate the Cardholder using 3-D Secure protocol software and received an Attempted Response.
- (e) **No shift in liability:** You will retain liability (liability does not shift to Card Issuer) for 'Not authorised by Cardholder' Chargebacks, which are taken at your own risk in the following situations:
 - (i) Card Transactions made on Visa Travel, or Prepaid cards; or
 - (ii) you are currently listed on the Visa Global Chargeback Monitoring Program for Chargeback level breaches, as advised by Westpac; or
 - (iii) the Authentication response indicates that the links are unavailable between VbV systems and components. This is identified as 'Undetermined or Unable to Authenticate' response in the Verify Enrolment Response message.
- (f) **MasterCard SecureCode:** To participate in MasterCard SecureCode you must:
 - (i) always refer to MasterCard SecureCode Program by its full name, "MasterCard SecureCode";
 - (ii) display the MasterCard SecureCode mark on your website.
- (g) **MasterCard SecureCode mark:** The MasterCard SecureCode program identifier mark must be used by

participating Merchants of the MasterCard SecureCode Program, subject to the following conditions:

- (i) the program identifier mark may appear in one of the three approved versions:
 - (aa) full-colour version
 - (bb) linked HTML version
 - (cc) one-colour version
 - (ii) The program identifier mark may also be used in print and Internet marketing material;
 - (iii) The program identifier mark must be reproduced only from authorised artwork provided by Westpac on behalf of MasterCard International;
 - (iv) MasterCard reserves the right to review and approve all proposed use of program identifier mark;
 - (v) When the program identifier mark is to be placed on your Merchant Website:
 - (aa) The program identifier mark is a supplemental mark recommended for use in the “trust mark” space of a Merchant website;
 - (bb) The program identifier mark must not be used in place of or directly paired with the MasterCard brand mark. (The MasterCard acceptance brand mark always must be used to indicate acceptance of MasterCard cards);
 - (cc) The program identifier mark may appear on a page that displays payment options provided substantial free space between the program identifier mark and the payment acceptance marks is maintained.
 - (h) **MasterCard SecureCode Liability Shift:** MasterCard has implemented a liability shift program for Cardholder dispute reasons ‘No Cardholder authorisation’ and ‘Cardholder not recognised’ Chargebacks for SecureCode Electronic Commerce Transactions. The liability for Chargebacks for these reason types shifts from the Merchant to the Card Issuer when the following conditions have been met:
 - (i) the merchant has implemented SecureCode, and;
 - (ii) the purchase was successfully Authenticated using 3-D Secure software protocol; or
 - (iii) the Merchant tried to Authenticate the Cardholder using 3-D Secure software protocol Secure; and
 - (iv) the Authorisation Request Response message reflected the Card Issuer’s approval of the Card Sales Transaction.
 - (i) You accept risk and responsibility for any Cardholder disputes that result in Chargebacks for reasons where receipt or quality of goods is disputed (duplicated transactions), or a failure to abide by the Agreement, notwithstanding that the Card Sales Transaction has been Authenticated.
 - (j) **Internet Authentication Exception Card Sales Transactions:** Internet Authentication cannot be performed for the following Card Sales Transaction situations:
 - (i) Electronic Commerce Transactions that have been entered into the Payment Gateway product via manual intervention by you;
 - (ii) Cardholder purchase orders received by email;
 - (iii) Cardholder purchases that have been ordered over the telephone.
 - (k) **Authentication Records:** Your Payment Gateway Provider must provide you with access to view Authentication Records. Internet purchases that have been Authenticated are recorded in your Authentication logs and databases.
- ### C. Risk Management
- (a) You must maintain your existing, or implement, best practice electronic commerce risk management functions during and after the implementation of Verified by Visa and MasterCard SecureCode. These functions should include:
 - (i) risk management procedures already in place for Internet and electronic commerce activities;

- (ii) existing policies and procedures for sensitive data storage (also known as account information security);
 - (iii) understanding of fraud and Chargeback risks and liabilities; and
 - (iv) procedures for tracking and monitoring fraud allegations and losses.
- (b) Electronic Commerce Transactions have a significantly higher level of Cardholder disputes than card present transactions (i.e. retail purchases in the physical world) and other Card Not Present transactions (e.g. mail order). The key areas you should consider for your electronic commerce business are:
 - (i) **Website Content** – Customer relationships can be strengthened by you using your website not only as a marketing tool to increase revenue, but also a risk management tool to avoid customer disputes. This includes privacy, delivery, refund, and credit policies, as well as customer service contact information (e.g. physical address, email address etc);
 - (ii) **Website Tracking and Analysis** – By tracking and analysing website activity, you can learn more about Internet visitors and identify shopping patterns with high levels of risk exposure;
 - (iii) **Data Security** – If you must store sensitive Cardholder information (e.g. account numbers, expiry dates, identity numbers, name and address, etc.), you must ensure that any sensitive information is stored in a secure manner (e.g. encrypted, scrambled or stored offline with appropriate access controls in place).

D. Definitions

3-D Secure (Three-Domain Secure): A specification developed to standardise communication between services designed to improve the security of purchases made via the Internet, enabling Issuers to verify a Cardholder’s account ownership during an online purchase. 3-D Secure uses Secure Sockets Layer (SSL) encryption to protect payment Card information.

3-D Secure Electronic Commerce Transaction

Specification: A software protocol that enables secure processing of Card Sales Transactions over the Internet and other networks.

Attempt Response: A message from the Visa or MasterCard Directory Server in response to a Verify Enrolment Request from a 3-D Secure Merchant, indicating – that the Cardholder is not participating in an Authentication program.

Authenticated and Authentication: Process where Cardholder ownership of the payment Card account is successfully validated by the Card Issuer in accordance with the Verified by Visa or SecureCode program rules and processes.

Authentication Attempt: Authentication was attempted by the Merchant to Authenticate the Cardholder, and an Attempt Response was received.

Authentication Record: A record of 3-D Secure Authentication status from a 3-D Secure Card Issuer in response to an Authentication Request from a 3-D Secure Merchant.

Authentication Request: A request for Cardholder Authentication from a 3-D Secure Merchant to a 3-D Secure Card Issuer.

Authentication Response: A message formatted, digitally signed and sent from the Card Issuer via the Visa or MasterCard Directory Server to the Merchant Server Plug-in providing results of the Card Issuer’s Authentication Request.

Authorisation Request: A request by a Merchant to the Cardholder's bank for confirmation that the Cardholder has sufficient credit available and the account is in good order to be able to complete the Card Sales Transaction.

Authorisation Request Response: A response to an Authorisation Request from the Merchant to the Cardholder's bank via Visa or MasterCard to confirm whether the Cardholder has funds available and the account is in good order to pay for goods purchased. The Authorisation Request Response will advise whether the request was declined or approved by the cardholder's bank. If approved the Card Sales Transaction can proceed to be processed financially.

Electronic Commerce Merchant: A Merchant that conducts the sale of goods or services electronically over the Internet and other open networks.

Fully-Authenticated: A Card Sales Transaction where the Cardholder is enrolled for Verified by Visa or MasterCard SecureCode and their password was Authenticated by the Card Issuer during the Authentication process.

Internet Authentication transaction: An Electronic Commerce Transaction that has been processed via an Internet Authentication product such as Verified by Visa or MasterCard SecureCode.

Mark: A symbol or logo that identifies that the Merchant is participating in Verified by Visa or MasterCard SecureCode.

MasterCard Directory Server: A server operated by MasterCard using the 3-D Secure protocol, that determines whether a specific Cardholder is participating in SecureCode and directs the Authentication request to the Card Issuer for Authentication.

Merchant Plug-In (MPI): A module integrated into the Merchants website. The module is used to process Authentication Card Sales Transactions. It is provided as part of the 3-D Secure protocol software.

Payment Gateway: A system that provides Electronic Commerce Transaction services to Merchants for the Authorisation and Clearing of Electronic Commerce Transactions.

Payment Page: The website page displayed to allow the Cardholder to enter their payment details, when they have selected to purchase goods or services over the Internet.

Secure Sockets Layer (SSL): A cryptographic protocol developed to transmit, confidentially, information over open networks such as the Internet.

Unable-to-Authenticate Response: A message from a 3-D Secure Card Issuer in response to an Authentication Request from a 3-D Secure Merchant indicating that the participating 3-D Secure Card Issuer is unable to authenticate the Cardholder for reasons other than those that result in a Response Attempt that states the Cardholder is not a participant. (E.g. communication links are unavailable between the Merchant and the Visa systems).

Verified By Visa: A service designed to improve the security of purchases made via the Internet using a Visa credit card, enabling Card Issuers to verify Cardholder account ownership during the online purchase. Verified by Visa is based upon technical specifications called Three-Domain Secure or 3-D Secure. This protocol utilises Secure Sockets Layer (SSL) encryption to protect payment Card information. Verified by Visa supports magnetic stripe Visa cards and Visa chip cards.

Verified by Visa mark: A Visa-Owned mark used in conjunction with the Visa Authenticated Payment Program.

Verify Enrolment Request: A message sent from the MPI (Merchant Plug-In) software to the Card Issuer via the Visa Directory Server to verify whether the Cardholder participates in the Authentication program.

Verify Enrolment Response: A message sent from the Card Issuer or the Visa Directory Server on its behalf in response to a Verify Enrolment Request. This message will indicate whether the Cardholder is or is not participating in the authentication program.

Visa Directory Server: A server operated by Visa using the 3-D Secure protocol, that determines whether a Cardholder is participating in Verified by Visa and directs Authentication Requests from Merchants to the Card Issuer for Authentication.

SCHEDULE IV Westpac Virtual Solution

Supplementary Schedule

A. Application

- (a) The terms and conditions of this Supplementary Schedule apply to you and Westpac if you have chosen to process Internet acquired transactions using the Westpac Virtual payment gateway in the Signature Section. Westpac Virtual can be integrated directly with your web server or utilised via a Host (see clause F).
- (b) This Supplementary Schedule forms part of, and is subject to the general terms and conditions set out in the Agreement.
- (c) Westpac Virtual is an electronic funds transfer payment authorisation, data capture and delivery system for Electronic Commerce transactions and Mail or Telephone order transactions. Westpac Virtual is obtained via ETSL under license from Dialect, the owner and developer of the software. Westpac is entitled to sub-license Westpac Virtual to you under the ETSL Licence. If, for any reason, the ETSL Licence is terminated or varied, then, without limiting Westpac's termination or variation rights generally, Westpac may terminate or vary this Supplementary Schedule at its sole discretion.

B. Grant of licence

- (a) **Licence:** Westpac grants you a personal, non-exclusive, non-transferable licence to:
 - (i) use Westpac Virtual and Associated Materials in your New Zealand Operations; and
 - (ii) install Westpac Virtual within either your own System, or via a Host's infrastructure (in accordance with clause F of this Supplementary Schedule), and in accordance with any further requirements of Westpac as notified to you.

C. Terms and conditions of licence

- (a) **Sub-licence:** The licence granted in clause B is only valid if you comply with the provisions of this Supplementary Schedule. You must hold a valid licence agreement in respect of Westpac Virtual with Westpac to utilise the Paymark Virtual payment gateway.
- (b) **Use only with ETSL Payment Server:** You must use Westpac Virtual with the ETSL Payment Server only, unless agreed otherwise in writing by Westpac.
- (c) **Intellectual Property Rights:** You acknowledge that this Supplementary Schedule confers no right, title or interest in Westpac Virtual or any Intellectual Property Rights on you. All right, title and interest in Westpac Virtual and any Intellectual Property Rights is retained by Dialect.
- (d) **Negative obligations:** You must not, and must not permit anyone else to:
 - (i) reproduce, communicate, adapt, decompile, reverse engineer, modify, develop, sublicense, use for promotion or otherwise deal with Westpac Virtual or any Intellectual Property Rights otherwise than in accordance with the Agreement including this Supplementary Schedule, without the prior written consent of Westpac;
 - (ii) merge all or any part of Westpac Virtual with any other software without the prior written consent of Westpac; and
 - (iii) use Westpac Virtual in any manner which has the effect of causing unnecessary interference or disruption of the business operations of Westpac or which results in repetitive processing of transactions with no commercial purpose.

- (e) **Copies:** You may make one copy of the Westpac Virtual software that must be used for back up purposes only. This copy must clearly state in the relevant file name field that ownership of Paymark Virtual software is held by Dialect.
- (f) **Installation:** You are solely responsible for:
 - (i) verifying the suitability of your System for the proper functioning of Westpac Virtual; and
 - (ii) installing and integrating Westpac Virtual into your System in accordance with clause C(h) of this Supplementary Schedule.
- (g) **One System only:** Subject to clause F of this Supplementary Schedule, you may only install Westpac Virtual in one System which must be:
 - (i) owned or leased by you and operated from your business premises or;
 - (ii) owned or leased by a Host.
- (h) **Integration:** Prior to using Westpac Virtual for productive purposes, Integration must be performed by either:
 - (i) a member of the Certified Solutions Provider Programme – www.paymark.co.nz/partner-centre/certified-solutions-provider; or
 - (ii) yourself or your nominated technology provider, in which case the Integration must be certified by ETSL, and Integration will be completed, and Westpac Virtual will only be able to be used, once ETSL has issued a testing certificate at which stage a password will be provided to you. (Where Westpac Virtual is installed on a Host a testing certificate will not be required and Westpac Virtual may be used once a password is provided.)
- (i) **Integration fee:** Where you or any other person Integrate Westpac Virtual onto your own system, you must pay an integration fee to Westpac on behalf of ETSL. ETSL will provide up to 4 hours telephone support to you during Integration in partial consideration for the integration fee. You must pay any fee charged by ETSL for any extra telephone support in excess of the 4 hours provided as part of the integration fee. Westpac will specify the amount of the integration fee and rate for any extra telephone support prior to Integration commencing or upon application to Westpac.
- (j) **On-going testing:** You must permit ETSL to access the relevant pages on your website to:
 - (i) perform work at any time to enable ETSL to remedy any fault in Westpac Virtual advised by your customers or the ETSL help desk; and
 - (ii) perform work to ensure correct operation of Westpac Virtual following an upgrade of Westpac Virtual, or a change in your business application software that may impact on Westpac Virtual, which may be done at ETSL's sole discretion. You must pay any fee charged by ETSL for performing this work.
- (k) **Protection:** Once Westpac Virtual is Integrated into your System, you must ensure that you protect Westpac Virtual from any computer viruses and unauthorised access by maintaining the most up-to-date virus protection software reasonably available to you. You are also responsible for any cardholder information retained on your System and any legal or financial consequences of unauthorised use or disclosure of this information.
- (l) **Updates:** If requested by Westpac, you must purchase updates for Westpac Virtual. Updates are intended to ensure that:
 - (i) Westpac Virtual continues to be operable;
 - (ii) ETSL continues to provide payment support; and/or
 - (iii) Westpac Virtual continues to be compatible with the ETSL Payment Server.

Without limiting the foregoing, you shall not use or host any version of Westpac Virtual that is older than the third most recent version of Westpac Virtual made available by Dialect. Westpac ceases to have any obligations under this Supplementary Schedule if you fail to purchase such updates.

- (m) **Compliance:** You must, and must ensure, your employees, agents and contractors:
- (i) comply with the Agreement and this Supplementary Schedule and any operational procedures and standards required and notified to you by Westpac from time to time;
 - (ii) co-operate with Westpac's other contractors including any other resellers, merchants, suppliers, ETSL or Dialect as reasonably requested by Westpac from time to time; and
 - (iii) display in accordance with Westpac's directions any notice of terms or conditions of use or warning notices which Westpac requires to be displayed by notice in writing to you from time to time.

D. Westpac's obligations

- (a) **Support Obligations:** Westpac will use its best endeavours to supply the support services via ETSL in accordance with the service targets in clause H of this Supplementary Schedule, provided that Westpac will only provide the support services (other than in respect of an Integration Issue) after you have completed Integration. Westpac is, at all times, under no obligation to support Westpac Virtual whether by providing advice, training, error-correction, modification, updates, new releases, enhancements or otherwise other than the support services specified in clause H of this Supplementary Schedule.

E. Suspension of access

- (a) **Right to suspend:** Westpac may, at any time without notice, suspend access to Westpac Virtual by you if Westpac, ETSL or Dialect consider that:
- (i) Westpac Virtual is, or is likely to be, used fraudulently or in a manner that will jeopardise the security or integrity of Westpac Virtual;
 - (ii) continued access to Westpac Virtual will damage or interfere with Westpac's ability to licence Westpac Virtual or provide the transaction processing via Westpac Virtual to any merchant;
 - (iii) maintenance and/or technical upgrades are necessary; or
 - (iv) it is reasonably necessary for any other reason, and, in the case of (i) above, Westpac may redirect transaction settlement proceeds received or due to you into a suspense account until such time as Westpac, ETSL and Dialect have resolved that such fraudulent use or threat to security is not likely to occur.
- (b) **No liability indemnity:** You acknowledge that Westpac is not liable for, and indemnify Westpac against any liability for, any cost, loss, expense or other liability, directly or indirectly, arising as a result of any suspension or redirection of any settlement proceeds in accordance with clause E(a) above.

F. External hosting

- (a) **Hosting:** Should you engage a Host, or if a third party provides any service relevant to your ability to accept Card payments, you acknowledge and agree that:
- (i) you cannot transfer any of your obligations as described in this Supplementary Schedule or the Agreement or any subsequent addition, amendment or iteration, to the Host or such third party service provider; and
 - (ii) Westpac and ETSL have no obligations to the Host or such third party service provider.
- (b) **Liability:** You will, at all times and in all respects, be liable to Westpac for the acts and omissions of any Host, and its employees, agents and contractors, and will procure that, to the extent applicable, the Host complies with the obligations under this Agreement including this Supplementary Schedule as if the Host were you.

G. Information, privacy and confidentiality

- (a) **No responsibility for content of information:** Westpac is not responsible for the content of any information in relation to a Card Sales Transaction produced by or in relation to Westpac Virtual and is under no obligation to store and/or monitor that information.
- (b) **Security, privacy, confidentiality:** You must:
- (i) comply with all reasonable security and operation procedures which Westpac, ETSL or Dialect may require from time to time in relation to Westpac Virtual;
 - (ii) ensure the security of your System into which Westpac Virtual is Integrated;
 - (iii) comply with any law and or privacy requirements in respect of any information produced by Westpac Virtual or used in relation to it; and
 - (iv) keep confidential the terms of the Agreement and any information in relation to Westpac Virtual obtained by you pursuant to this Supplementary Schedule .
- (c) **Disclosure:** For the avoidance of doubt, in addition to Westpac's disclosure rights under clause 4 of the Agreement, Westpac may disclose any relevant information it holds about you to Dialect and ETSL.

H. Support services

- (a) **Definitions:** In this clause H, unless the context otherwise requires:
- "**After Hours**" means not during Business Hours.
- "**Availability**" means the percentage amount of time per calendar month that Westpac Virtual is available for transaction processing ignoring any Scheduled Outages and/or Third Party Outages.
- "**Business Hours**" means 8:30 to 17:30 each Business Day.
- "**Fault**" means any Outage that is preventing you from processing transactions using Westpac Virtual, excluding a Scheduled Outage, Unscheduled Outage, Third Party Outage or Integration Issue.
- "**Incident Report**" means a report sent to you after resolution of certain Scheduled Outages or Unscheduled Outages that details the Westpac Virtual Issue that occurred.
- "**Integration Issue**" means, a fault or failure with Westpac Virtual that occurs during Integration.
- "**Outage**" means an event that causes Westpac Virtual to not be available for transaction processing for any reason.
- "**Scheduled Outage**" means an Outage of Westpac Virtual where Westpac provides you with prior notification regarding the Outage and excludes any outage or failure of third party services affecting Westpac Virtual.
- "**Software Issue**" means any one or more of a Fault, Integration Issue, Unscheduled Outage or Third Party Outage.
- "**Third Party Outage**" means an Outage of Westpac Virtual which is caused by an external third party and not by you, Westpac, ETSL or Dialect.
- "**Unscheduled Outage**" means an Outage of Westpac Virtual which affects more than one merchant that is not a Fault, Integration Issue, Third Party Outage or a Scheduled Outage.
- (b) **Support Services:** Westpac will arrange for ETSL to provide support services in accordance with this clause H to you for the following incident types:
- (i) Fault;
 - (ii) Integration Issue;
 - (iii) Unscheduled Outage; and
 - (iv) Third Party Outage;
- provided that Westpac and ETSL will not be required to provide the support services to the targets specified if such services are required due to:
- (v) Outages or other issues caused by you or due to your System, infrastructure, network or equipment;

- (vi) a failure by a third party (other than ETSL or Dialect) to provide services or information of any kind to you or your customers;
 - (vii) any modifications to Westpac Virtual requested by you; or
 - (viii) any unauthorised use of Westpac Virtual by you or any third party.
- (c) **Availability:** Westpac, through ETSL, will endeavour to provide Availability of 99.7%.
- (d) **Notification:**
- (i) You must notify the ETSL helpdesk upon becoming aware of any Fault, Integration Issue, Unscheduled Outage or Third Party Outage by:
 - (aa) Email: vps-support@etsl.co.nz; or
 - (bb) Telephone: 0800 387 554.
 - (ii) Any notification by Westpac to you pursuant to this Supplementary Schedule will be given by email to the email address set out in section A of the Signature Section.
- (e) **Faults:**
- (i) If, at any time, you experience a Fault, you must notify ETSL in accordance with clause H(d) of this Supplementary Schedule detailing the Fault.
 - (ii) Following notification of any Fault, Westpac will procure that ETSL provides the following service targets:
 - (aa) **Response:** ETSL will endeavour to respond to you to discuss the Fault:
 - (A) in the case of a Fault notified during Business Hours, within 1 hour of receipt of notification; or
 - (B) in the case of a Fault notified After Hours, by 9:30am the next Business Day, but a call may be logged with ETSL After Hours.
 - (bb) **Progress Reports:** ETSL will endeavour to provide you with an update on the progress of resolution of the Fault:
 - (A) within one hour after the response provided in (aa) above; and
 - (B) then every four hours during Business Hours.
- (f) **Integration Issue:**
- (i) If, during the process of Integration, you experience an Integration Issue, you must notify ETSL in accordance with clause H(d) of this Supplementary Schedule, specifying that it is an Integration Issue and detailing the Integration Issue.
 - (ii) Following notification of any Integration Issue, Westpac will procure that ETSL provides the following service targets:
 - (aa) **Response:** ETSL will endeavour to respond to you to discuss the Integration Issue:
 - (A) in the case of an Integration Issue notified during Business Hours, within two hours of receipt of notification; or
 - (B) in the case of an Integration Issue notified After Hours, prior to 10.30am the next Business Day, but a call may be logged with ETSL After Hours.
 - (bb) **Progress Reports:** Provide you with an update on the progress of the resolution of the Integration Issue to you or the person performing the Integration every eight hours (during Business Hours) following the response in (aa) above up until the issue is resolved.
- (g) **Unscheduled Outage:**
- (i) If at any time an Unscheduled Outage occurs you must notify ETSL in accordance with clause H(d) of this Supplementary Schedule specifying the Unscheduled Outage that has occurred, unless ETSL or Westpac has already provided notification to you of the Unscheduled Outage.
 - (ii) Following the first notification of an Unscheduled Outage, Westpac will procure that ETSL provides the following service targets:
 - (aa) **Response:** Westpac will endeavour to respond to you to discuss the Unscheduled Outage:
 - (A) in the case of an Unscheduled Outage notified during Business Hours, within one hour of receipt of notification; or
 - (B) in the case of an Unscheduled Outage notified After Hours, within three hours of receipt of notification.
 - (bb) **Progress Reports:** Westpac will provide you with an update on the restoration progress, via email to your nominated address, up until such time as the issue is resolved and Westpac Virtual is restored.
 - (cc) **Incident Report:** If the Unscheduled Outage lasts for more than one hour, Westpac will provide you with an Incident Report in respect of the outage within two Business Days of the Outage being resolved.
- (h) **Third Party Outages:** Westpac will notify you of any Third Party Outage within 48 hours of receiving notice from ETSL of such Third Party Outage.
- (i) **Scheduled Outages:** You acknowledge and agree that ETSL, as and when required:
- (i) has a regular Scheduled Outage for a period of approximately two hours between the hours of 00:30 and 5:30 on Tuesday mornings; and
 - (ii) may have other Scheduled Outages at any time provided that ETSL is obliged under the ETSL Licence to:
 - (aa) provide Westpac with at least 48 hours notice of such other Scheduled Outage; and
 - (bb) endeavour to keep the duration of the maintenance under 2 Hours.
- (j) **No liability/indemnity:** Without limiting any other limitation of liability in the Agreement, you acknowledge that Westpac is not liable in any way, and indemnify Westpac, for any cost, loss, expense or other liability, directly or indirectly arising as a result of any Scheduled Outage carried out in accordance with clause I(i) above.
- (k) **Your assistance required:** You acknowledge that provision of support services may require timely assistance, including actions, access to premises and/or information from you and you agree that Westpac and/or ETSL has not failed to meet service targets where you do not provide the required assistance in a timeframe specified by Westpac or ETSL.
- I. Termination**
- (a) **No termination fee if breach:** Westpac will, and will procure that ETSL will, use its best endeavours to meet the service targets specified in clause H of this Supplementary Schedule. If Westpac and/or ETSL fails to deliver the specified service levels on two or more occasions ("**Service Target Default**"), you may terminate the application of this Supplementary Schedule and no termination fee will be payable in respect of that termination only under clause 8 of the Agreement. This shall be your sole remedy in the event of a Service Target Default. For the avoidance of doubt, a termination fee will still be payable if the service targets are not met due to the circumstances described in clause H(l) of this Supplementary Schedule .
- (b) **Consequences of Termination:** Upon termination of the Agreement or this Supplementary Schedule without limitation to any other rights or remedies provided under this Supplementary Schedule, the Agreement or by law, you must:
- (i) immediately cease to use Westpac Virtual and any Associated Materials in your business;

- (ii) immediately pay any outstanding fees, charges, costs, liabilities or other amounts payable by you under this Supplementary Schedule;
- (iii) deliver all copies of Westpac Virtual and Associated Materials held by you, or any Host, to Westpac;
- (iv) allow Westpac, ETSL, Dialect or any agent of them to enter onto your premises at any reasonable time to remove Westpac Virtual and any Associated Materials held by you or any Host; and
- (v) comply with any reasonable directions of Westpac, ETSL or Dialect.

J. Miscellaneous

- (a) **No liability:** Notwithstanding any other clause in this Supplementary Schedule or the Agreement, Westpac and ETSL have no liability to you, or any other person (including, without limitation, your customers) for any cost, loss, expense or any other amount arising as a result of any failure by ETSL or Westpac to meet the service targets or perform any other obligation under this Supplementary Schedule.
- (b) **Privity extended:** The parties acknowledge that the provisions of this Supplementary Schedule, and, to the extent necessary for the efficiency of this Supplementary Schedule, the Agreement, are also for the benefit of and intended to be enforceable by ETSL and Dialect under the Contracts (Privity) Act 1982.
- (c) **No representations or warranties:** Except as expressly stated in this Supplementary Schedule or the Agreement, Westpac makes no representation or warranties with respect to Westpac Virtual and its use in your business.
- (d) **Survival:** Clauses C(c), C(d), C(i), E(b), F(b), G(b), H(j), I(a), I(b), J(a) and J(c) of this Supplementary Schedule survive termination of this Supplementary Schedule.

K. Definitions

Definitions: Terms defined in the Agreement have the same meaning in this Supplementary Schedule. In addition, in this Supplementary Schedule, unless the context otherwise requires:

“Associated Materials” means the materials provided by Westpac, ETSL or Dialect in relation to or associated with Westpac Virtual, including any operations manual or establishment instructions.

“Certified Solutions Provider” means a Company that host's Westpac Virtual payment gateway on behalf of you or assists you with Integration.

“Certified Solutions Provider Programme” means the programme in which ETSL certifies individuals or organisations to provide hosting and/or Integration services to Merchants and licenses those individuals or organisations to use the Paymark trade mark.

“Dialect” means Dialect Solutions Holdings Pty Ltd.

“ETSL” means Electronic Transaction Services Limited.

“ETSL Licence” means the agreement between ETSL and Westpac authorising Westpac to sub-licence Westpac Virtual to Merchants.

“ETSL Payment Server” means the server operated by ETSL that, when used in conjunction with the Westpac Virtual, routes E-Commerce transactions for online authorisation and financial settlement with Westpac.

“Host” means a person/company certified by ETSL to host Westpac Virtual on behalf of you in accordance with clause F of this Supplementary Schedule.

“Integration” means the process whereby Westpac Virtual is installed on to your system to enable you to process transactions over the Westpac Virtual payment gateway, and **“Integrate”**, **“Integrated”** and **“Integrating”** have a corresponding meaning.

“Intellectual Property Rights” means all intellectual property rights in respect of Westpac Virtual, including all patents, copyright, rights in circuit layouts, registered designs, trade marks and the right to have confidential information kept confidential, and any application or right to apply for registration of any of those rights, and, in respect of Westpac, includes any intellectual property owned or licensed by it in respect of the Associated Materials.

“New Zealand Operations” means the operations of that part of your business located in New Zealand and, for the avoidance of doubt, includes selling goods and/or services to overseas customers where you are using Westpac Virtual installed on a System located in New Zealand.

“Paymark Virtual” means an online payment gateway solution provided by ETSL under licence from Dialect Solutions Holdings Pty Ltd.

“System” means the computer equipment and associated software owned or leased by you and used to provide information technology services to your New Zealand Operations.

“Westpac Virtual” means an online payment solution which is a Westpac branded payment suite for the provision of secure online authorisation, capture and interchange of credit card transactions with payment core supplied by Dialect and hosted by ETSL Paymark Virtual.

SCHEDULE V

Westpac Internet Payment Solution Plus (“WIPS Plus”)

Supplementary Schedule

A. Application

- (a) The terms and conditions of this Supplementary Schedule apply to you and Westpac if you have chosen to use Westpac Internet Payment Solution Plus.
- (b) This Supplementary Schedule forms part of, and is subject to, the general terms and conditions set out in the Agreement. Together, this Supplementary Schedule and the general terms and conditions set out in the Agreement record the entire arrangement between you and Westpac in relation to the provision of Westpac Internet Payment Solution Plus to you and supersedes all previous arrangements, whether written, oral or both, relating to such matters.
- (c) Westpac licences the software that comprises Westpac Internet Payment Solution Plus, from DPS, and is authorised by that licence to sub-licence Westpac Internet Payment Solution Plus to Westpac Merchants. A Westpac Merchant must have a valid sub-licence agreement with Westpac to utilise Westpac Internet Payment Solution Plus. Therefore your right to use Westpac Internet Payment Solution Plus as a Westpac Merchant is subject to this Supplementary Schedule being in effect between you and Westpac. If, for any reason, the DPS Licence is terminated or varied, without limiting Westpac's termination or variation rights generally, Westpac may terminate or vary the terms of this Supplementary Schedule at its sole discretion (and if varied, you agree to be bound by such varied terms of this Supplementary Schedule).
- (d) Westpac Internet Payment Solution Plus is an online payment system providing the following products for processing Electronic Commerce, Mail Order/Telephone Order, Batch and Recurring Transactions, as per the Card Not Present Supplementary Schedule. The products are known as:
 - (i) Hosted Plus;
 - (ii) Batch Plus; and
 - (iii) Payline® Plus.

B. Grant of licence

- (a) Licence: Westpac grants to you a personal, non-exclusive, non-transferable, and non-sublicensable licence to:
 - (i) use Westpac Internet Payment Solution Plus and the Documentation in your New Zealand Operations; and
 - (ii) install Westpac Internet Payment Solution Plus within your own infrastructure;on the terms and conditions of this Supplementary Schedule.

C. Terms and conditions of licence

- (a) **Licence for Permitted Use only:** The licence granted in clause B is only valid if you comply with the provisions of this Supplementary Schedule. You may use Westpac Internet Payment Solution Plus and the Documentation, solely for the purposes of the Permitted Use, for the term of this Supplementary Schedule, and on the terms and conditions of this Supplementary Schedule.
- (b) **Intellectual Property Rights:** All Intellectual Property rights or ownership of Westpac Internet Payment Solution Plus and the Documentation are exclusively owned by DPS (or DPS's licensors or suppliers). You acknowledge that there is no transfer of title, Intellectual Property rights or ownership of Westpac Internet Payment Solution Plus or the Documentation, or any part of the same. You will not dispute DPS's Intellectual Property rights or ownership of Westpac Internet Payment Solution Plus or the Documentation, or any part of Westpac Internet Payment Solution Plus or the Documentation.

- (c) **Negative obligations:** You must not, and must not permit anyone else to:
 - (i) reproduce, communicate, adapt, decompile, reverse engineer, modify, develop, sublicense, use for promotion or otherwise deal with the Westpac Internet Payment Solution Plus software, the Documentation or any Intellectual Property rights of DPS or Westpac otherwise than in accordance with this Supplementary Schedule, without the prior written consent of Westpac;
 - (ii) merge all or any part of the Westpac Internet Payment Solution Plus software with any other software; or
 - (iii) use the Westpac Internet Payment Solution Plus software in any manner which has the effect of causing unnecessary interference or disruption of the business operations of Westpac or which results in repetitive processing of transactions with no commercial purpose.
- (d) **Your obligations, warranties and undertakings:** You:
 - (i) must satisfy yourself as to the adequacy, appropriateness and compatibility of Westpac Internet Payment Solution Plus for your requirements, and you acknowledge that you have not relied on any statements or representations on the part of Westpac or DPS as to performance or functionality, verbal or otherwise, except as expressly recorded in this Supplementary Schedule;
 - (ii) warrant that you have the full power and authority necessary to validly enter into and perform your obligations under this Supplementary Schedule;
 - (iii) will comply with Westpac's restrictions and instructions in relation to the use of Westpac Internet Payment Solution Plus and the Documentation, including those set out in this Supplementary Schedule and as may otherwise be communicated to you by Westpac from time to time;
 - (iv) will ensure that only authorised persons use Westpac Internet Payment Solution Plus and the Documentation and ensure that Westpac Internet Payment Solution Plus and the Documentation is used only for the Permitted Use and as expressly authorised under this Supplementary Schedule;
 - (v) must not sublicense, transfer, assign, rent, sell, provide, or otherwise make available, Westpac Internet Payment Solution Plus or the Documentation, or any component of Westpac Internet Payment Solution Plus or the Documentation, in any form to any other person;
 - (vi) will accept all responsibility for the reliance on and use of Westpac Internet Payment Solution Plus and the Documentation by you and your employees, contractors and agents;
 - (vii) will immediately notify Westpac upon becoming aware of any third party infringing DPS's Intellectual Property rights in any manner;
 - (viii) will comply with all relevant laws, including all statutory, regulatory and common laws, in your use of Westpac Internet Payment Solution Plus and the Documentation and in carrying out your obligations under this Supplementary Schedule;
 - (ix) subject to clause (C)(d)(xi) of this Supplementary Schedule, must not, and must not permit any other person to, copy, reproduce, translate, adapt, vary, repair or modify Westpac Internet Payment Solution Plus or the Documentation;
 - (x) must not, and must not permit any other person to, use Westpac Internet Payment Solution Plus to operate a bureau service or otherwise process transactions for the benefit of any other person than you; and
 - (xi) may make a reasonable number of copies of the software comprised in Westpac Internet Payment Solution Plus for backup and disaster recovery purposes

only. Such copies must clearly state that ownership of the software is held solely by DPS.

- (e) **Installation:** You are solely responsible for:
- (i) verifying the suitability of your system(s) for the proper functioning of Westpac Internet Payment Solution Plus; and
 - (ii) installing and integrating Westpac Internet Payment Solution Plus into your system in accordance with clause C(f) of this Supplementary Schedule.
- (f) **Integration:** Prior to using Westpac Internet Payment Solution Plus for productive purposes, Integration must be performed by yourself or your nominated technology provider, with such Integration being subject to verification and written certification by DPS.
- (g) **Protection:** Once Westpac Internet Payment Solution Plus is Integrated into your system(s), you must ensure that you protect Westpac Internet Payment Solution Plus from any computer viruses and unauthorised access by maintaining the most up-to-date virus protection software reasonably available to you. You are also solely responsible for any cardholder information retained on your system and any legal or financial consequences of unauthorised use or disclosure of this information.
- (h) **Updates:** If requested by Westpac, you must purchase and integrate updates for Westpac Internet Payment Solution Plus at the first reasonable opportunity following their release by DPS. Updates to Westpac Internet Payment Solution Plus are intended to ensure that:
- (i) Westpac Internet Payment Solution Plus continues to be operable; and
 - (ii) DPS continues to provide support for Westpac Internet Payment Solution Plus.
- (i) **Compliance:** You must, and must ensure, your employees, agents and contractors:
- (i) comply with the Agreement and this Supplementary Schedule and any operational procedures and standards required and notified to you by Westpac from time to time;
 - (ii) co-operate with Westpac's other contractors including, but not limited to, DPS, as reasonably requested by Westpac from time to time; and
 - (iii) display, in accordance with Westpac's directions, any notice of terms or conditions of use or warning notices which Westpac requires to be displayed by notice in writing to you from time to time.

D. Westpac's obligations

Westpac will use its best endeavours to ensure that Westpac Internet Payment Solution Plus operates in accordance with the service levels recorded in clause J of this Supplementary Schedule. Westpac is, at all times, under no obligation to support Westpac Internet Payment Solution Plus or to meet service levels, other than those specified in clause J of this Supplementary Schedule.

E. Liability

- (a) **No Warranties:** To the fullest extent permitted by law, except as expressly set out in this Supplementary Schedule, Westpac excludes, on its own behalf and on behalf of DPS, all warranties, conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise, including without limitation, any condition or warranty of merchantability or fitness for a particular purpose. Neither Westpac nor DPS warrant that:
- (i) Westpac Internet Payment Solution Plus and/or the Documentation will meet your requirements; or
 - (ii) Westpac Internet Payment Solution Plus will be uninterrupted or error-free, or that all errors will be corrected.
- (b) **Limitation of Liability:** To the fullest extent permitted by applicable law, in no event will DPS or Westpac be liable

to you, whether in contract, tort (including negligence) or otherwise, for any (direct or indirect) loss, damage, cost or expense suffered or incurred by you arising out of, or in connection with, this Supplementary Schedule or your use of Westpac's Internet Payment Solution Plus or the Documentation.

- (c) **Consumer Guarantees Act:** It is expressly acknowledged and agreed by you that Westpac Internet Payment Solution Plus and the Documentation is supplied to you for business purposes and that the provisions of the Consumer Guarantees Act 1993 do not apply.

F. Suspension and termination by Westpac

- (a) **Right to suspend:** Westpac may, at any time without notice, and with immediate effect, suspend your right to use, and prevent you from using, Westpac Internet Payment Solution Plus and the Documentation, if:
- (i) you fail to comply with any term of this Supplementary Schedule or the Agreement;
 - (ii) Westpac considers that Westpac Internet Payment Solution Plus is, or is likely to be, used fraudulently or in a manner that will jeopardise the security or integrity of the Westpac Internet Payment Solution Plus or Westpac's or DPS's systems;
 - (iii) Westpac considers that continued access to Westpac Internet Payment Solution Plus will damage or interfere with Westpac's ability to licence Westpac Internet Payment Solution Plus or provide transaction processing via Westpac Internet Payment Solution Plus to any Westpac Merchant;
 - (iv) maintenance and/or technical upgrades are necessary; or
 - (v) it is reasonably necessary for any other reason, and, in the case of (ii) above, Westpac may redirect transaction settlement proceeds received or due to you into a suspense account until such time as Westpac has resolved that such fraudulent use or threat to security is not likely to occur.
- (b) **No liability indemnity:** You acknowledge that Westpac is not liable for, and you will indemnify Westpac for any liability for, any cost, loss, expense or other liability, directly or indirectly arising as a result of any suspension or redirection of any settlement proceeds in accordance with clause F (a) above.
- (c) **Termination:** Westpac may immediately terminate this Supplementary Schedule by giving notice to you if:
- (i) you breach any of the terms this Supplementary Schedule and Westpac is of the view that the breach cannot be remedied, or where Westpac is of the view that the breach can be remedied, you do not remedy the breach within 7 days after Westpac has notified you of the breach; or
 - (ii) you become or are deemed to become insolvent, bankrupt or unable to pay your debts in the ordinary course of business; go into liquidation; have a receiver or statutory manager appointed in respect of you or any material part of your assets; or make any assignment to, or enter into an arrangement for the benefit of, your creditors.

In addition, this Supplementary Schedule will terminate, immediately on notice from Westpac, if Westpac ceases to be authorised by DPS to use Westpac Internet Payment Solution Plus and the Documentation and/or to sub-licence and make available to you Westpac Internet Payment Solution Plus and the Documentation.

- (d) **Consequences of Termination:** Upon termination of this Supplementary Schedule by Westpac, without limitation to any other rights or remedies provided under this Supplementary Schedule or by law, you must:

- (i) immediately cease to use Westpac Internet Payment Solution Plus the Documentation and any associated materials;
- (ii) immediately pay any outstanding fees, charges, costs, liabilities or other amounts payable by you under this Supplementary Schedule;
- (iii) deliver all copies of Westpac Internet Payment Solution Plus, the Documentation and associated materials held by you, or on your behalf, to Westpac;
- (iv) allow Westpac or DPS, or any agent of them to enter onto your or your host's premises at any reasonable time to remove Westpac Internet Payment Solution Plus the Documentation and any associated materials held by you or on your behalf; and
- (v) comply with any reasonable directions of Westpac or DPS from time to time.

G. Termination by merchant

- (a) **No termination fee if breach:** Westpac will use its best endeavours to meet and to procure DPS to meet, the service levels specified in clause J of this Supplementary Schedule. If Westpac and/or DPS fails to deliver the service levels set out in clause J of this Supplementary Schedule on two or more occasions, you may terminate the application of this Supplementary Schedule and no termination fee will be payable in respect of that termination only under clause 8 of the Agreement.
- (b) **Consequences of Termination:** Upon termination of this Supplementary Schedule by you, without limitation to any other rights or remedies provided under this Schedule or by law, you must:
 - (i) immediately cease to use Westpac Internet Payment Solution Plus, the Documentation and any associated materials;
 - (ii) immediately pay any outstanding fees, charges, costs, liabilities or other amounts payable by you under this Supplementary Schedule;
 - (iii) deliver all copies of Westpac Internet Payment Solution Plus, the Documentation and associated materials held by you, or on your behalf, to Westpac;
 - (iv) allow Westpac or DPS, or any agent of them to enter onto your or your host's premises at any reasonable time to remove Westpac Internet Payment Solution Plus, the Documentation and any associated materials held by you or on your behalf; and
 - (v) comply with any reasonable directions of Westpac or DPS from time to time.

H. Indemnity

You shall indemnify both Westpac and DPS fully against all damages, costs, losses and expenses which Westpac and/or DPS may incur to a third party as a result of your breach of any of the provisions of this Supplementary Schedule.

I. Information, privacy and confidentiality

- (a) **No responsibility for content of information:** Westpac is not responsible for the content of any information in relation to a Card Sales Transaction produced by or in relation to Westpac Internet Payment Solution Plus and is under no obligation to store and/or monitor that information.
- (b) **Security, privacy, confidentiality:** You must:
 - (i) comply with all reasonable security and operation procedures which Westpac may require from time to time in relation to Westpac Internet Payment Solution Plus and the Documentation;
 - (ii) ensure the security of your system(s) which hold(s) the software that comprises Westpac Internet Payment Solution Plus; and

- (iii) comply with any law and or privacy requirements in respect of any information produced by your use of Westpac Internet Payment Solution Plus or used in relation to it;
- (iv) keep confidential the terms of this Supplementary Schedule and any information in relation to Westpac Internet Payment Solution Plus and the Documentation obtained by you pursuant to this Supplementary Schedule.

- (c) **Disclosure:** For the avoidance of doubt, in addition to Westpac's disclosure rights under clause 4 of the Agreement, Westpac may disclose any relevant information it holds about you to DPS.

J. Service levels

- (a) **Definitions:** In this clause J, unless the context otherwise requires:
 - "Acquirer"** means a bank or financial institution or other member of Visa, MasterCard or other card which has a contract with a merchant to provide Card processing services. Westpac is the Acquirer for your MasterCard and Visa transactions processed on Westpac Internet Payment Solution Plus;
 - "Fault"** means any unavailability of Westpac Internet Payment Solution Plus that is preventing you from processing transactions, excluding any unavailability due to Scheduled Maintenance, a Third Party Outage or Integration Issue;
 - "General Support"** means enquiries of a non urgent nature relating to financial business queries and Westpac Internet Payment Solution Plus functional support, including password resets and modification of existing facilities and services;
 - "Implementation Issue"** means, a Fault or failure with the Westpac Internet Payment Solution Plus that occurs during the process of installing the Westpac Internet Payment Solution Plus in your, or your host's computer;
 - "Scheduled Maintenance"** means maintenance of the Westpac Internet Payment Solution Plus where Westpac provides you with prior notification regarding the maintenance and outage or reduced availability or performance of Westpac Internet Payment Solution Plus;
 - "Software Outage"** means, a Fault or failure with the Westpac Internet Payment Solution Plus software that occurs and prevents the normal operation of the Westpac Internet Payment Solutions Plus in your, or your host's computer;
 - "Third Party Outage"** means unavailability of the Westpac Internet Payment Solution Plus, which is caused by an external third party and not by you, Westpac or DPS;
 - "Transaction"** means a message pair consisting of a message transmitted by you to Westpac or other Acquirer through Westpac Internet Payment Solution Plus and a response to that message from Westpac or other Acquirer to you through Westpac Internet Payment Solution Plus.
- (b) **Service Levels:** Westpac agrees to the following service levels in relation to Westpac Internet Payment Solutions Plus:

Service Levels

| Service | KPI |
|---------------------------------------|---|
| System Availability | 99.9% system availability excluding any periods of Scheduled Maintenance. |
| Processing Times | 80% of Transaction authorisations processed within five seconds. 99% of Transaction authorisations processed within eight seconds. |
| Merchant Implementation Support Hours | 8am to 6pm, Monday to Friday, excluding holidays in Auckland. |
| Emergency Technical Support Hours | 24 hours a day, 7 days a week. |

- (c) **Notification:** You must notify Westpac upon becoming aware of any Fault or Third Party Outage by:
- (aa) Telephone: 0800 888 066
 - (i) You must notify Westpac upon becoming aware of any Implementation Issue by:
 - (aa) Email: wipsplus@paymentexpress.com; or
 - (bb) Telephone: 0800 947 775 (for 0800 WIPSPPLUS)
 - (ii) You may contact Westpac for any General Support by:
 - (aa) Telephone: 0800 888 066
 - (iii) Any notification by Westpac to you pursuant to this Supplementary Schedule will be given by email from the email address, wipsplusnotices@westpac.co.nz, to the email address notified by you to Westpac in writing from time to time.
- (d) **Faults:** If, at any time, you experience a Fault, you must notify Westpac in accordance with clause J(c) of this Supplementary Schedule and give details of the Fault.
- (e) **Scheduled Maintenance:** You acknowledge and agree that Westpac or DPS, as and when required may have periods of Scheduled Maintenance at any time provided that Westpac or DPS will endeavour to provide prior written notice of such maintenance and to minimise the duration of maintenance.
- (f) **No liability/indemnity:** You acknowledge that neither Westpac nor DPS is liable in any way, and indemnify Westpac and DPS, for any cost, loss, expense or other liability, directly or indirectly arising as a result of any Fault, Integration Issue, Scheduled Maintenance or Third Party Outages.
- (g) **Your assistance required:** You acknowledge that achievement of the above service levels may require timely assistance, including actions, access to premises and/or information from you and agree that Westpac and/or DPS has not failed to meet service levels where you do not provide the requested assistance in a timeframe specified by Westpac or DPS.

K. Miscellaneous

- (a) **Privity extended:** The parties acknowledge that the provisions of this Supplementary Schedule, and, to the extent necessary for the efficiency of this Supplementary Schedule, are also for the benefit of and intended to be enforceable by DPS under the Contracts (Privity) Act 1982.
- (b) **Survival:** Clauses C(b), C(c), E(b), F(b), G(b), H and I, of this Supplementary Schedule survive termination of this Supplementary Schedule.

L. Definitions

“Agreement” means the Merchant Agreement between you and Westpac of which this Supplementary Schedule forms part;

“Batch Plus” means a web-based product that provides the ability to process Card Not Present Transactions as part of a multiple transaction batch upload process;

“Documentation” means any user, training or system manuals for Westpac Internet Payment Solution Plus (whether in printed or electronic form) which describe and provide guidance on the use of Westpac Internet Payment Solution Plus (or any aspect of Westpac Internet Payment Solution Plus);

“DPS” means Direct Payment Solutions Limited;

“DPS Licence” means the licence pursuant to which DPS grants to Westpac a licence to Westpac Internet Payment Solution Plus;

“Hosted Payments Page” means a website page that is available as part of Westpac Internet Payment Solution Plus to allow the Cardholder to enter their payment details, when they have selected to purchase goods or services over the Internet;

“Hosted Plus” means a product that is designed for processing Electronic Commerce Transactions online in real time;

“Intellectual Property” means all industrial and intellectual property of any kind including but not limited to, copyright, registered and unregistered trade marks, registered and unregistered designs, circuit layouts, all rights conferred under statute, common law or equity in relation to inventions (including patents and patent applications), domain names, database rights, confidential information, know-how and trade secrets, company names or other proprietary rights and all rights and forms of protection having equivalent or similar effect to the foregoing which might subsist anywhere in the world now or in the future, and all rights of action, powers and benefits of the same;

“Integration” means installing components of the Westpac Internet Payment Solution Plus software on your system(s) to enable your business to use Westpac Internet Payment Solution Plus for the Permitted Use and “Integrated” has a corresponding meaning;

“New Zealand Operations” means the operations of your business located in New Zealand and, for the avoidance of doubt, includes selling goods and/or services to overseas customers where you are using Westpac Internet Payment Solution Plus installed on a system located in New Zealand;

“Payline® Plus” means a product that provides a web-based data entry system used to process Credit Card transactions manually, process refunds and generates reports.

“Permitted Use” means use of Westpac Internet Payment Solution Plus for the purposes of processing, via the merchant payment gateway developed by DPS for Westpac, Card Not Present Transactions entered into by you in the course of conducting your New Zealand Operations and obtaining authorisation for those transactions from Westpac; and

“Supplementary Schedule” means this supplementary schedule;

“Westpac Internet Payment Solution Plus” means the merchant payment gateway developed by DPS for Westpac to enable Card Not Present Transactions to be processed, together with any DPS software, the Documentation and other related DPS products made available to you, including all upgrades, updates, alterations and modifications and other changes to that software developed by, or on behalf of, DPS and made available to you from time to time.

M. Interpretation

In addition, in this Supplementary Schedule, unless the context otherwise requires:

References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities, in each case whether or not having separate legal personality; and Words importing the singular number include the plural and vice versa.

SCHEDULE VI

Westpac Currency Choice

Supplementary Schedule

Westpac Currency Choice allows you to automatically offer your customers the choice of using their foreign currency credit card to pay for goods and services in the currency of their card or in NZD, while you to continue to receive financial settlement for those credit card transactions in NZD. This Supplementary Schedule sets out the terms that apply.

A. Application

- (a) The terms and conditions of this Supplementary Schedule apply to you and Westpac if you have applied to use Westpac Currency Choice and Westpac has accepted your application to do so.
- (b) This Supplementary Schedule forms part of, and is subject to, the general terms and conditions set out in the Agreement. Together, this Supplementary Schedule and the general terms and conditions set out in the Agreement record the entire arrangement between you and Westpac in relation to the provision of Westpac Currency Choice to you and supersedes all previous arrangements, whether written, oral or both, relating to such matters.
- (c) Westpac licences the intellectual property that comprises Westpac Currency Choice, from Fintrax, and is authorised by that licence to sub-licence Westpac Currency Choice to Merchants. A Merchant must have a valid sub-licence agreement with Westpac to utilise Westpac Currency Choice. Therefore your right to use Westpac Currency Choice is subject to this Supplementary Schedule being in effect between you and Westpac. If, for any reason, the Fintrax Licence is terminated or varied, without limiting Westpac's termination or variation rights generally, Westpac may terminate or vary the terms of this Supplementary Schedule at its sole discretion by notice to you (and if varied, you agree to be bound by such varied terms of this Supplementary Schedule).
- (d) Westpac Currency Choice applies to Eligible Electronic Card Sales Transactions using Currency Choice Enabled EFTPOS Terminals and Terminal Equipment. Westpac Currency Choice may be extended, by notice in writing from Westpac, to Eligible Mail or Telephone Order Transactions and Eligible Electronic Commerce Transactions using the Internet.
- (e) Chargebacks and refunds of Card Sales Transactions are only able to be processed in NZD, unless Westpac notifies you otherwise in writing.

B. Grant of licence

Westpac grants to you a personal, non-exclusive, non-assignable, non-transferable, and non-sublicensable licence to use Westpac Currency Choice in your New Zealand Operations on the terms and conditions of this Supplementary Schedule.

C. Terms and conditions of licence

- (a) **Licence for Permitted Use only:** The licence granted in clause B is only valid if you comply with the provisions of this Supplementary Schedule. You may use Westpac Currency Choice, solely for the purposes of the Permitted Use, for the term of this Supplementary Schedule, and on the terms and conditions of this Supplementary Schedule.
- (b) **Intellectual Property Rights:** All Intellectual Property rights in or to Westpac Currency Choice are exclusively owned by Fintrax and/or Westpac (or their respective licensors). You acknowledge that there is no transfer of title, Intellectual Property rights or ownership of Westpac Currency Choice, or any part of the same. You will not dispute the validity of, or Fintrax's or Westpac's rights to

or ownership of, the Intellectual Property rights in Westpac Currency Choice or any part Westpac Currency Choice. Nor will you engage in any conduct that will, or would be likely to, impair or jeopardise the rights of Fintrax or Westpac in or to Westpac Currency Choice.

- (c) **Negative obligations:** You must not, and must not (directly or indirectly) permit anyone else to:
 - (i) reproduce, copy, communicate, adapt, alter, decompile, reverse engineer, modify, develop, sublicense, use or otherwise deal with Westpac Currency Choice or any Intellectual Property rights of Fintrax or Westpac relating to Westpac Currency Choice or this Supplementary Schedule otherwise than in accordance with this Supplementary Schedule; or
 - (ii) use Westpac Currency Choice in any manner that has the effect of causing unnecessary interference or disruption of the business operations of Westpac or that results in repetitive processing of transactions with no commercial purpose.
- (d) **Your obligations, warranties and undertakings:** You:
 - (i) must satisfy yourself as to the adequacy, appropriateness and compatibility of Westpac Currency Choice for your requirements, and you acknowledge that you have not relied on any statements or representations on the part of Westpac or Fintrax as to performance or functionality, verbal or otherwise, except as expressly recorded in this Supplementary Schedule;
 - (ii) warrant that you have the full power and authority necessary to validly enter into and perform your obligations under this Supplementary Schedule;
 - (iii) will comply with Westpac's restrictions and instructions in relation to the use of Westpac Currency Choice, including those set out in this Supplementary Schedule and as may otherwise be communicated to you by Westpac from time to time;
 - (iv) must not sublicense, transfer, assign, rent, sell, provide, or otherwise make available, Westpac Currency Choice, or any component of Westpac Currency Choice, in any form to any other person;
 - (v) will accept all responsibility for the reliance on and use of Westpac Currency Choice by you and your employees, contractors and agents;
 - (vi) will immediately notify Westpac upon becoming aware of any infringement or potential infringement, improper or wrongful use, or misuse, of any Intellectual Property rights in or to Westpac Currency Choice;
 - (vii) will comply with all relevant laws, including all statutory, regulatory and common laws, in your use of Westpac Currency Choice and in carrying out your obligations under this Supplementary Schedule;
 - (viii) may only use any Westpac Intellectual Property, including any logo, trademark, trade name or brand name (including "Westpac Currency Choice") strictly in accordance with Westpac's instructions from time to time and will immediately cease any such use on termination of this Supplementary Schedule; and
 - (ix) must not, and must not permit any other person under your direct or indirect control or influence to, use any transaction process using dynamic recognition of the currency of a Card and dynamic currency conversion of a transaction amount, other than Westpac Currency Choice.
- (e) **Terminal Equipment:** You are solely responsible for obtaining, Integrating and maintaining, at your cost, all Currency Choice Enabled Terminal Equipment that is required for the proper functioning of Westpac Currency Choice on your systems.

- (f) **Protection:** You must ensure that you protect Westpac Currency Choice from any unauthorised access, including by maintaining the most up to date virus protection software reasonably available to you. Without limiting any other provision of this Agreement, you are also solely responsible for any Cardholder Information or Cardholder Data retained on your system and any legal or financial consequences of unauthorised use or disclosure of this information or data.
- (g) **Updates:** If requested by Westpac, you must purchase and Integrate updates, upgrades or new releases for Currency Choice Enabled Terminal Equipment used by you at the first reasonable opportunity following their release by Fintrax and/or your terminal provider. Updates, upgrades and new releases for Currency Choice Enabled Terminal Equipment are intended to ensure that:
 - (i) Westpac Currency Choice continues to be operable; and
 - (ii) Fintrax continues to provide support for Westpac Currency Choice.
- (h) **Compliance:** You must, and must ensure, your employees, agents and contractors:
 - (i) comply with the Agreement and this Supplementary Schedule and any security and operational procedures and standards required and notified to you by Westpac from time to time, including the Documentation and any user guides or manuals for any Currency Choice Enabled Terminal Equipment;
 - (ii) co-operate with Westpac's other contractors including, but not limited to, Fintrax, as reasonably requested by Westpac from time to time;
 - (iii) display, in accordance with Westpac's directions, any notice of terms or conditions of use, ownership of Intellectual Property, or warning notices which Westpac requires to be displayed by notice in writing to you from time to time; and
 - (iii) use, in accordance with Westpac's directions, only the marketing materials, brand name(s), trade mark(s), designation(s) and/or description(s) which Westpac requires to be used in respect of Westpac Currency Choice.

D. Westpac's undertakings

- (a) **Service levels:** Westpac will use its best endeavours to ensure that Westpac Currency Choice operates in accordance with the service levels recorded in clause J of this Supplementary Schedule. Westpac is, at all times, under no obligation to support Westpac Currency Choice or to meet service levels, other than those specified in clause J of this Supplementary Schedule.
- (b) **Rebate:** Westpac will pay you a rebate for Eligible Electronic Card Sales Transactions acquired by you during any month. The rebate will be set-off against the MSF. The rebate will be calculated at the rate or rates notified by Westpac from time to time (which may be zero).
- (c) **Website:** Westpac will use all reasonable endeavours to provide you with access to a website containing information in respect of Eligible Electronic Card Sales Transactions acquired by you using Westpac Currency Choice. You will comply with any aspect of the Documentation relevant to the website. The website may provide you with secure access in which case you will comply with relevant provisions of the Documentation and otherwise take all reasonable steps to maintain such security of access, including by only permitting authorised individuals to access the website and at all times maintaining the secrecy of any user names, passwords or other access details. While Westpac will endeavour to regularly update the website, neither Westpac nor Fintrax is responsible or liable for the accuracy or completeness of any data or information contained on the website.

E. Liability

- (a) **No Warranties:** To the fullest extent permitted by law, except as expressly set out in this Supplementary Schedule, Westpac excludes, on its own behalf and on behalf of Fintrax, all warranties, conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise in relation to or in connection with Westpac Currency Choice or the services provided under this Supplementary Schedule, including without limitation, any condition or warranty of merchantability or fitness for a particular purpose. Neither Westpac nor Fintrax warrant that the:
 - (i) Westpac Currency Choice will meet your requirements; or
 - (ii) Westpac Currency Choice will be uninterrupted or error-free, or that all errors will be corrected.
- (b) **Limitation of Liability:** To the fullest extent permitted by applicable law, in no event will Fintrax or Westpac be liable to you, whether in contract, tort (including negligence) or otherwise, for any (direct or indirect) loss, damage, cost or expense suffered or incurred by you arising out of, or in connection with, this Supplementary Schedule or your use of Westpac Currency Choice.
- (c) **Consumer Guarantees Act:** It is expressly acknowledged and agreed by you that Westpac Currency Choice is supplied to you for business purposes and that the provisions of the Consumer Guarantees Act 1993 do not apply.

F. Suspension and termination by Westpac

- (a) **Right to suspend:** Westpac may, at any time without notice, and with immediate effect, suspend your right to use, and prevent you from using, Westpac Currency Choice, if:
 - (i) you fail to comply with any term of this Supplementary Schedule or the Agreement;
 - (ii) Westpac considers that Westpac Currency Choice is, or is likely to be, used fraudulently or in a manner that will jeopardise the security or integrity of Westpac Currency Choice or Westpac or Fintrax systems;
 - (iii) Westpac considers that continued access to Westpac Currency Choice will damage or interfere with Westpac's ability to licence Westpac Currency Choice or provide transaction processing via Westpac Currency Choice to any Merchant;
 - (iv) maintenance and/or technical upgrades are necessary; or
 - (v) it is reasonably necessary for any other reason; and in the case of (ii) above, Westpac may redirect transaction settlement proceeds received or due to you into a suspense account until such time as Westpac is satisfied that such fraudulent use or threat to security or integrity has been remedied or is not likely to occur.
- (b) **No liability indemnity:** You acknowledge that Westpac is not liable for, and you will indemnify Westpac for any liability for, any cost, loss, expense or other liability, directly or indirectly, arising as a result of any suspension or redirection of any settlement proceeds in accordance with clause F (a) above.
- (c) **Termination:** Westpac may immediately terminate this Supplementary Schedule by giving notice to you if:
 - (i) you breach any of the terms of this Supplementary Schedule and Westpac is of the view that the breach cannot be remedied, or where Westpac is of the view that the breach can be remedied, you do not remedy the breach within 7 days after Westpac has notified you of the breach; or
 - (ii) you become or are deemed to become insolvent, bankrupt or unable to pay your debts in the ordinary course of business; go into liquidation; have a receiver

or statutory manager appointed in respect of you or any material part of your assets; or make any assignment to, or enter into an arrangement for the benefit of, your creditors.

In addition, this Supplementary Schedule will terminate, immediately on notice from Westpac, if Westpac ceases to be authorised by Fintrax to use Westpac Currency Choice and/or to sub-licence and make available to you Westpac Currency Choice.

- (d) **Consequences of Termination:** Upon termination of this Supplementary Schedule by Westpac, without limitation to any other rights or remedies provided under this Supplementary Schedule or by law, you must:
- (i) immediately cease to use Westpac Currency Choice, the Intellectual Property forming part of Westpac Currency Choice and any associated materials;
 - (ii) immediately pay any outstanding fees, charges, costs, liabilities or other amounts payable by you under this Supplementary Schedule;
 - (iii) deliver all copies of the Documentation and any marketing and other materials associated with Westpac Currency Choice held by you, or on your behalf, to Westpac;
 - (iv) allow Westpac or Fintrax, or any agent of them to enter onto your premises at any reasonable time to remove the materials referred to in clause F(d)(iii) above;
 - (v) comply with any reasonable directions of Westpac or Fintrax from time to time.
- (e) **Accrued rights:** Any termination of this Supplementary Schedule will not prejudice any accrued rights or remedies of either party as at the date of termination.

G. Termination by merchant

- (a) **No termination fee if breach:** If Westpac fails to deliver, or procure the delivery of, the service levels set out in clause J of this Supplementary Schedule on two or more occasions, you may terminate the application of this Supplementary Schedule and no termination fee will be payable in respect of that termination only under clause 8 of the Agreement.
- (b) **Consequences of Termination:** Upon termination of this Supplementary Schedule by you, without limitation to any other rights or remedies provided under this Schedule or by law, you must:
- (i) immediately cease to use Westpac Currency Choice, the Intellectual Property forming part of Westpac Currency Choice and any associated materials;
 - (ii) immediately pay any outstanding fees, charges, costs, liabilities or other amounts payable by you under this Supplementary Schedule;
 - (iii) deliver all copies of the Documentation and marketing and other material associated with Westpac Currency Choice held by you, or on your behalf, to Westpac;
 - (iv) allow Westpac or Fintrax, or any agent of them to enter onto your premises at any reasonable time to remove the materials referred to in clause G(b)(iii) above;
 - (v) comply with any reasonable directions of Westpac or Fintrax from time to time.
- (c) **Accrued rights:** Any termination of this Supplementary Schedule will not prejudice any accrued rights or remedies of either party as at the date of termination.

H. Indemnity

You shall indemnify both Westpac and Fintrax fully against all damages, costs, losses and expenses which Westpac and/or Fintrax may incur as a result of your breach of any of the provisions of this Supplementary Schedule.

I. Information, privacy and confidentiality

- (a) **No responsibility for content of information:** Westpac is not responsible for the content of any information in relation to a Card Sales Transaction processed using Westpac Currency Choice and is under no obligation to store and/or monitor that information.
- (b) **Privacy, confidentiality:** You must:
- (i) comply with any law and or privacy requirements in respect of any information produced by your use of Westpac Currency Choice or used in relation to it;
 - (ii) keep confidential the terms of this Supplementary Schedule and any information in relation to Westpac Currency Choice obtained by you pursuant to this Supplementary Schedule.
- (c) **Disclosure:** For the avoidance of doubt, in addition to Westpac's disclosure rights under clause 4 of the Agreement, Westpac may disclose any relevant information it holds about you to Fintrax.

J. Service levels

- (a) **Definitions:** In this clause J, unless the context otherwise requires:
- "Currency Recognition Table"** means a table of card and currency identifiers to identify and distinguish Eligible Cards from other cards, as well as to determine the precise currency in which an Eligible Card has been issued.
- "Rate Availability Time"** means 7:00 am local time in New Zealand or other such time as may be notified by Westpac from time to time.
- "Schedule of Transaction Rates"** means the schedule of exchange rates for the conversion of the NZD amount of any transaction into the equivalent amount in each of the Nominated Currencies.
- (b) **Supply of Schedules of Rates:**
- (i) Each day at the Rate Availability Time, Westpac will procure that the Schedule of Transaction Rates is made available for access electronically by relevant Currency Choice Enabled Terminal Equipment.
 - (ii) If the Schedule of Transaction Rates is not made available at the Rate Availability Time, Westpac will use all reasonable endeavours to procure that it is made available within eight hours of the relevant Rate Availability Time.
 - (iii) **Service Level:** Westpac shall procure the availability of the Schedule of Transaction Rates in accordance with clause J(b)(i) or clause J(b)(ii), 99.5% of the time during each calendar month.
- (c) **Provision of Currency Recognition Tables:**
- (i) Westpac shall procure that Currency Recognition Tables are available for access electronically by relevant Currency Choice Enabled Terminal Equipment as often as is required for accurate and error free operation of Westpac Currency Choice. Westpac shall ensure that the Currency Recognition Tables contain the complete and up-to-date card and currency identifiers which qualify for use at point-of-sale, to enable identification by relevant Currency Choice Enabled Terminal Equipment of Eligible Cards and the currency in which a Card has been issued.
 - (ii) If the Currency Recognition Tables containing complete and up-to-date card and currency identifiers are not made available as and when required for accurate and error free operation of Westpac Currency Choice, Westpac will use all reasonable endeavours to procure that they are made available within eight hours of that time.

- (iii) **Service Level:** Westpac shall procure the availability of the Currency Recognition Tables in accordance with clause J(c)(i) or clause J(c)(ii), 100% of the time during each calendar month.
- (d) **Scheduled Maintenance:** You acknowledge and agree that Westpac or Fintrax, as and when required, may have periods of scheduled maintenance at any time, in which case the service levels set out in this clause J will not apply provided that Westpac or Fintrax provide prior written notice of such maintenance and endeavour to minimise the duration of maintenance.
- (e) **No liability/indemnity:** You acknowledge that Westpac or Fintrax is not liable in any way for any cost, loss, expense or other liability, arising, directly or indirectly, as a result of any failure to comply with any service level set out in this clause J. Your sole remedy for failure to meet the service levels is termination of this Supplementary Schedule only in accordance with clause G(a).
- (f) **Your assistance required:** You acknowledge that achievement of the above service levels may require timely assistance, including actions, access to premises and/or information from you and agree that Westpac and/or Fintrax has not failed to meet service levels where you do not provide the requested assistance in a timeframe specified by Westpac or Fintrax.

K. Miscellaneous

- (a) **Privity extended:** The parties acknowledge that the provisions of this Supplementary Schedule, and, to the extent necessary for the efficiency of this Supplementary Schedule, are also for the benefit of and intended to be enforceable by Fintrax under the Contracts (Privity) Act 1982.
- (b) **Survival:** Clauses C(b), C(c), E(b), F(d), G(b), H and I, of this Supplementary Schedule survive termination of this Supplementary Schedule.

L. Definitions

Terms defined elsewhere in the Agreement will have the same meaning when used in this Supplementary Schedule unless the context requires otherwise. In addition, in this Supplementary Schedule:

“Agreement” means the Merchant Agreement between you and Westpac of which this Supplementary Schedule forms part;

“Currency Choice Enabled” means suitable for use for multiple currency transaction processing using Westpac Currency Choice (as advised by Westpac from time to time);

“Documentation” means any user, training or system manuals, guidelines, recommendations, requirements and related material for Westpac Currency Choice, whether in printed or electronic form, that describes and provides guidance on the use of Westpac Currency Choice (or any aspect of Westpac Currency Choice);

“Eligible” means a Card Sales Transaction using a Visa Card or a MasterCard Card which is issued in a Nominated Currency (or as otherwise notified by Westpac from time to time in accordance with clause 13 of the general terms and conditions of this Agreement);

“Fintrax” means Fintrax Group Holdings Limited and/or its related bodies corporate;

“Fintrax Licence” means the licence granted to Westpac by Fintrax, pursuant to which Westpac Currency Choice is offered;

“Intellectual Property” means all industrial and intellectual property of any kind including but not limited to, copyright, registered and unregistered trade marks,

registered and unregistered designs, circuit layouts, all rights conferred under statute, common law or equity in relation to inventions (including patents and patent applications), domain names, database rights, confidential information, know-how and trade secrets, company names, business names or other proprietary rights and all rights and forms of protection having equivalent or similar effect to the foregoing which might subsist anywhere in the world now or in the future, and all rights of action, powers and benefits of the same;

“Integration” means installing components of Westpac Currency Choice on your system(s) to enable your business to use Westpac Currency Choice for the Permitted Use and “Integrated” has a corresponding meaning;

“New Zealand Operations” means the operations of your business located in New Zealand and, for the avoidance of doubt, includes selling goods and/or services to overseas customers where you are using Westpac Currency Choice installed on a system located in New Zealand;

“Nominated Currency” means Euro (EUR), Australian dollars (AUD), United States dollars (USD), Japanese Yen (JPY), Singapore dollars (SGD), Hong Kong dollars (HKD), British Pounds Sterling (GBP), Canadian dollars (CAD) and South African Rand (ZAR) (or such other currencies as may be notified by Westpac from time to time in accordance with clause 13 of the general terms and conditions of this Agreement);

“Supplementary Schedule” means this supplementary schedule;

“Permitted Use” means use of Westpac Currency Choice for the purposes of enabling Cardholders to elect to pay you by Card for good and services in the course of your New Zealand operations either in New Zealand dollars or the Nominated Currency in which the card was issued and obtaining processing of those transactions by or on behalf of Westpac; and

“Westpac Currency Choice” means the solution developed by Fintrax to enable dynamic currency recognition and conversion of Eligible Electronic Card Sales Transactions at point of sale, and includes the software, patent process, know how, trademarks, and any other Intellectual Property developed by or on behalf of Fintrax or Westpac which is embodied in or forms part of that solution, together with any Documentation and other related products made available to you, including all upgrades, updates, alterations and modifications and other changes to that solution developed by, or on behalf of, Fintrax and/or Westpac and made available to you from time to time.

M. Interpretation:

In addition, in this Supplementary Schedule, unless the context otherwise requires:

References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities, in each case whether or not having separate legal personality; and Words importing the singular number include the plural and vice versa.

