

Flight Centre PaymentGate System Agreement Application

By completing the details below and submitting them to Flight Centre (NZ) Limited (**FCL**) the Supplier named below enters into an agreement with FCL under which the Supplier may access and use the Flight Centre PaymentGate System (**System**) on the terms set out below, including the Flight Centre PaymentGate Terms and Conditions, (**Agreement**).

1. Supplier details

Full legal/entity name:

NZ Company No.:

Address:

TAANZ No.:

GDS:

Pseudo City Code:

2. Authorised Representative of Supplier

The person identified below represents and warrants that they are duly authorised to enter into, and bind the Supplier to, the Agreement.

Name:

Position/title:

Email address:

Phone:

3. Authorised Users

Insert the names and email addresses of the Supplier's personnel who will be authorised to access and use the System on behalf of the Supplier. The personnel named below will be sent their Logon ID details (including a unique user login and temporary password) to the email addresses below.

First name	Last name	Position	Telephone no.	Email

4. Fees

Scope of Fees

Operating Country New Zealand

Nominated Account/Billing Currency NZD

Bank-to-Bank Fees (per transaction)

Domestic payment order (domestic electronic transfer initiated by sender) \$0.77 incl gst

Domestic payment refund (refund for domestic electronic transfer) \$0.77 incl gst

Domestic transactions are defined as transactions in the same country and same currency as the Supplier's Nominated Account.

Other Fees

Type		Fee	Reoccurrence
Setup	(initial administrative establishment fee)	Waived	one time
Monthly Access Fee	(monthly account access fee)	Waived	monthly
Minimum monthly usage fee	(minimum usage per month across all transactions)	N/A	monthly
Dishonour Funds	(dishonour fee / insufficient funds)	\$50.00 incl GST	per time

Flight Centre PaymentGate Terms and Conditions

1 This Agreement

- 1.1 These Terms and Conditions form part of the Agreement between Flight Centre (NZ) Limited (NZ Company number is 349518) and the Supplier that has completed and submitted to FCL a Flight Centre PaymentGate Agreement Application ("**Supplier**").
- 1.2 FCL may vary this Agreement, including by increasing the Fees or introducing new Fees, at any time by giving notice to the Supplier. If the Supplier does not agree with any such variation the Supplier may terminate this Agreement by giving notice to FCL within 14 days after the variation takes effect. The Supplier's continued access to and use of the System after that 14 day period will constitute acceptance of the variation.
- 1.3 The Supplier must provide to FCL all Direct Debit Request Documents and other documents required by FCL, and in the form required by FCL, for the Supplier to gain access to and use of the System as contemplated under this Agreement. FCL has no obligations to the Supplier under this Agreement, and this Agreement does not commence, unless and until the Supplier provides all such bank authority and other documents required by FCL.

2 Definitions

- 2.1 The terms below have the following meanings:
- (a) **Agreement** means the Agreement between the Supplier and FCL comprising the Flight Centre PaymentGate Agreement Application and these Terms and Conditions, as the Agreement may be varied from time to time.
- (b) **Authorised Bank to Bank Payments** means:
- (i) payments to the Supplier's Nominated Account(s) pursuant to clause 7 ("**Supplier Payments**");
 - (ii) refund payments from the Supplier's Nominated Account(s) to other Users pursuant to clause 8 ("**Refund Payments**");
 - (iii) payment of Fees from the Supplier's Nominated Account(s) to FCL pursuant to clause 11 ("**FCL Fee Payments**"),
- in each case which are either:
- (iv) completed in accordance with this Agreement; or
 - (v) are in progress, between the time they are requested pursuant to clause 7.1 or 8.1 (as the case may be) and their completion in accordance with this Agreement.
- (c) **Authorised Representative** means the employee of the Supplier identified as the Supplier's authorised representative on the Flight Centre PaymentGate System Agreement Application and any replacement of that person approved by FCL from time to time.
- (d) **Authorised User** means any employee, officer, contractor or agent of the Supplier who is authorised by the Supplier to access and use the System for the Supplier and who is given a Logon ID by FCL from time to time on application by the Supplier, including the Authorised Representative.
- (e) **Business Day** means a day that is not a Saturday, Sunday or a public holiday (as defined in the Holidays Act 2003).

- (f) **Confidential Information** of a party means all confidential information of that party including:
- (i) that party's bank account details, contact details and payment and transaction records;
 - (ii) Logon IDs; and
 - (iii) in the case of FCL, the System, all software and other components of the System and any training materials provided by FCL in relation to the use of the System,
- but does not include information that:
- (iv) is or becomes part of the public domain other than through a breach of this Agreement or an obligation of confidence of which a party to this Agreement is or ought reasonably to be aware; or
 - (v) the recipient of the information can prove was already known to it at the time of disclosure to the recipient (unless such knowledge arose from disclosure of information in breach of an obligation of confidence), or was independently developed by it without reference to the Confidential Information.
- (g) **Direct Debit Request Documents** means the Direct Debit Request (completed and signed by the Supplier) and Conditions (in the Schedule to this Agreement) and includes any other documents notified by FCL, required by FCL to be completed and signed by the Supplier.
- (h) **FCL** means Flight Centre (NZ) Limited (NZ Company Number is 349518) whose registered address is at Level 2, 124 Vincent Street, Auckland 1010, New Zealand.
- (i) **Fees** means all fees, charges and other amounts payable to FCL by the Supplier under this Agreement as set out in the Flight Centre PaymentGate Agreement Application or published on FCL's website or the System from time to time, as they may be varied, changed or added to by FCL from time to time.
- (j) **Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, brand names, logos, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.
- (k) **Laws** means all laws (including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by laws, rules, requirements of regulators, mandatory codes of conduct, writs, orders, injunctions or judgments) which are applicable to the System and the functions performed using the System.
- (l) **Logon ID** means the unique identification, login and password details for each Authorised User that are provided to the Supplier by FCL.
- (m) **Nominated Account** means any New Zealand bank account nominated by the Supplier and approved by FCL for the purpose of sending or receiving Authorised Bank to Bank Payments using the System.
- (n) **Personal Information** has the meaning given in the Privacy Act 1993.
- (o) **System** means the system for facilitating electronic payments which is operated by FCL known as Flight Centre PaymentGate System as it may be changed, added to or otherwise modified by FCL from time to time.
- (p) **User** means all users approved by FCL to use the System including all FCL associated entities, joint venture interests, franchisees and licensees and their employees, officers, agents, consultants and contractors.

3 Grant of licence

- 3.1 Subject to the Supplier's compliance with this Agreement FCL grants to the Supplier a non-exclusive, non-transferable licence to access and use the System in accordance with this Agreement. The parties agree that the System is supplied for the purposes of a business, and that the Consumer Guarantees Act 1993 does not apply.

4 Access to System

- 4.1 FCL will provide the Supplier with access to the System via any communication method authorised by FCL from time to time, on the terms set out in this clause 4, subject to the Supplier and each Authorised User complying with this Agreement.
- 4.2 The Supplier may access and use the System only through its Authorised Users using the Logon IDs through the Supplier's computer network.
- 4.3 The Supplier via its Authorised Representative may from time to time apply to FCL for other employees, officers, contractors or agents of the Supplier to become Authorised Users. FCL will issue Logon IDs for any such additional Authorised Users nominated by the Supplier and approved by FCL.
- 4.4 The Supplier is responsible for each of the Logon IDs, including the security of each of the Logon IDs and any access to or use of the System by any person using the Logon IDs whether or not the Supplier has knowledge of or authorises such access or use.
- 4.5 The Supplier and its Authorised Users must keep all Logon IDs confidential and not disclose Logon IDs to any person other than the Authorised User to whom that Logon ID is allocated. The Supplier must notify FCL immediately if the Supplier suspects or becomes aware that any Logon ID has been disclosed to any person who is not an Authorised User.
- 4.6 The Supplier must notify FCL immediately if the Supplier suspects that a Logon ID has been used by any person without the Supplier's authority or if the security of a Logon ID has been compromised.
- 4.7 The Supplier must notify FCL immediately of any Authorised User who ceases to be employed by the Supplier or who ceases to be authorised to access and use the System.
- 4.8 FCL may cancel the Logon ID of any Authorised User who breaches this Agreement or is no longer employed by the Supplier.
- 4.9 FCL may from time to time change, add to or otherwise modify the System including the content, interfaces and functionality of the System.
- 4.10 The Supplier must:
- (a) comply with all directions given by FCL from time to time in relation to access to and use of the System;
 - (b) comply with all policies, procedures, guides and other materials provided by FCL from time to time (including such policies, procedures, guides and other materials published on FCL's website from time to time) in relation to access to and use of the System;
 - (c) provide all information requested by FCL from time to time, including any such information required by any financial institution, in connection with this Agreement and the System;

- (d) not introduce or pass on any virus or computer software routine which might damage or impair the normal operation of the System. The Supplier is responsible for virus protection and removal and must maintain current anti-virus software; and
- (e) not, and must ensure that its Authorised Users do not, copy, reproduce or duplicate the System, or any portion of it. Neither the Supplier nor any Authorised User may modify, alter, disassemble, reverse assemble, reverse compile, or reverse engineer the System in whole or in part, except to the extent permitted by law and only in the jurisdiction so permitted.

4.11 FCL may, without notice:

- (a) suspend or terminate access to the System by the Supplier or any Authorised User if the Supplier or any Authorised User breaches this Agreement (including a breach of this clause 4);
- (b) suspend access to the System by the Supplier or any Authorised User if FCL reasonably believes that something on the Supplier's or Authorised User's side of its connection with the System or their use of the System will cause technical incapacity to the System which will continue unless access or use is suspended; or
- (c) otherwise, in its sole discretion and if it deems it reasonably necessary, temporarily limit the number of Authorised Users having access to the System.

5 FCL's obligations

5.1 FCL will provide the Supplier with access to the System solely for the purposes set out in this Agreement.

5.2 FCL may in its absolute discretion at any time disable access to the System.

5.3 The Supplier must comply with all Laws and must ensure that its employees (including its Authorised Users), officers, agents and contractors comply with this Agreement and all Laws. The Supplier is responsible for all acts and omissions of its employees (including its Authorised Users), officers, agents and contractors.

5.4 All access to and use of the System under a Logon ID provided to the Supplier is deemed to be access and use by the Supplier. The Supplier is responsible for access to and use of the System using a Logon ID provided to that Supplier (including any Authorised Bank to Bank Payments using the System).

5.5 FCL is entitled to rely on and act on all instructions provided to it through the System using a Logon ID.

6 Nominated account(s)

6.1 The Supplier authorises FCL to process Authorised Bank-to-Bank Payments.

6.2 The Supplier acknowledges and agrees that:

- (a) the Supplier will provide FCL with the details of the Supplier's Nominated Account(s) in the form and manner required by FCL from time to time;
- (b) FCL is entitled to rely on the account details provided by the Supplier under clause 6.2(a) when processing Authorised Bank to Bank Payments and is under no obligation to confirm that the account details provided by the Supplier are correct;

- (c) despite any other clause in this Agreement, at least one of the Supplier's Nominated Account(s) must be at all times configured for direct debiting of all Fees and other amounts payable by the Supplier pursuant to clauses 8 and 11; and
- (d) FCL must approve a bank account before it can become a Nominated Account for the purposes of this Agreement.

6.3 The Supplier represents and warrants that:

- (a) subject to clauses 6.4 - 6.6, all of the Supplier's Nominated Account(s) are and will remain open and unencumbered to enable FCL to effect all Authorised Bank-to-Bank Payments;
- (b) subject to clauses 6.4 - 6.6, the details of all of the Supplier's Nominated Account(s) provided by the Supplier to FCL are and will remain correct;
- (c) the individuals providing the account details for the Nominated Account to FCL are those individuals nominated in the signing instruction held by the financial institution where the applicable Supplier Nominated Account is held; and
- (d) it will have sufficient cleared funds in the Nominated Account(s) to effect any Authorised Bank-to-Bank Payment.

6.4 The Supplier will immediately notify FCL if any of the Supplier's Nominated Account(s) are closed, transferred to another person or are varied in such a way that the parties to this Agreement could not perform their obligations.

6.5 The Supplier may remove an account from being a Nominated Account(s) by giving FCL 14 days prior notice (**Notice Period**). The removal will take effect at the end of the Notice Period.

6.6 The Supplier may substitute a Nominated Account for another account. This substitution will take effect when the Supplier provides the bank account details for the new account to FCL in the form and manner required by FCL from time to time.

7 Supplier Payments

7.1 Where a User processes a payment to one of the Supplier's Nominated Accounts, the Supplier authorises FCL to credit the Supplier's Nominated Account nominated by the other User with the amount of that payment.

7.2 The Supplier acknowledges that FCL makes no representations or warranties that an Authorised Bank to Bank Payment processed by another User will be processed by the relevant financial institutions or that it will be valid or in existence at the time a particular transaction is entered into by the Supplier.

7.3 The Supplier agrees to repay promptly any Supplier Payment made to the Supplier in error and the Supplier agrees that FCL may process the recovery of that Supplier Payment by processing a direct debit from the Supplier's Nominated Account(s) for the relevant amount and then crediting the account of the relevant User with that amount.

8 Refund Payments

8.1 For each Refund Payment, the Supplier must specify in the System:

- (a) the amount of the payment;
- (b) the recipient of the payment; and

- (c) the Supplier's Nominated Account(s) from which the payment is to be made, collectively a **Refund Request**.
- 8.2 The Supplier authorises FCL to process each Refund Request.
- 8.3 FCL will arrange for its bank to process the Refund Request and, promptly after the clearance period determined by FCL from time to time for that type of transaction, to make payment to the recipient nominated in the Refund Request.
- 8.4 The Supplier must ensure that each Refund Payment is debited from the correct bank account in accordance with the Direct Debit Request Documents. If a Refund Payment is debited from an incorrect bank account and is dishonoured, clause 10 will apply.
- 8.5 The Supplier must ensure that there are sufficient cleared funds available in the Supplier's Nominated Account(s) at the times set out in clause 9.1 to enable each Refund Payment to be processed. If there are insufficient funds in the Supplier's Nominated Account(s) and a Refund Payment is dishonoured, clause 10 will apply.

9 Other provisions about payment

- 9.1 Authorised Bank to Bank Payments will be processed according to the following timelines:
 - (a) on the following Business Day: if the payment request is submitted on a day that is not a Business Day;
 - (b) on the day of the request: if the payment request is submitted before the cut-off time determined by FCL from time to time on any Business Day;
 - (c) on the following Business Day: if the payment request is submitted after the cut-off time defined by FCL on any Business Day; and
 - (d) if they are to be paid on a particular day in the future, on that day, unless such a day is not a Business Day, in which case, payment will be processed on the following Business Day.
- 9.2 FCL shall determine the cut-off time for the submission of Authorised Bank to Bank Payments. The amount of an Authorised Bank to Bank Payment will be available after the clearance period advised by FCL from time to time.

10 Dishonoured payments

- 10.1 If any Authorised Bank-to-Bank Payment involving a debit to the Supplier's Nominated Account(s) cannot be completed for any reason then the Supplier will pay FCL a dishonour fee set out in the Flight Centre PaymentGate Agreement Application as varied from time to time.
- 10.2 If an Authorised Bank-to-Bank Payment involving the Supplier's Nominated Account(s) is not able to be completed for any reason:
 - (a) the Supplier must provide FCL with information reasonably requested by FCL to determine why the Authorised Bank to Bank Payment could not be completed;
 - (b) if that reason is a lack of sufficient funds in the Supplier's Nominated Account(s), the Supplier will, immediately upon receipt of notification of this fact from FCL, deposit sufficient funds into the Supplier's Nominated Account(s) to enable the Authorised Bank to Bank Payment to be re-processed by FCL;

- (c) FCL may continue to attempt to re-process the Authorised Bank-to-Bank Payment until the Authorised Bank to Bank Payment is completed. Dishonour fees will be payable in respect of each unsuccessful attempt to process the Authorised Bank to Bank Payment;
- (d) FCL may refuse to process an Authorised Bank-to-Bank Payment if it is not possible to acquire the requisite funds from the Supplier's Nominated Account(s); and
- (e) FCL may process the re-payment of funds to the Supplier's Nominated Account(s) if those funds cannot be paid to the third party nominated by the Supplier for payment in any Refund Request.

11 Fees

- 11.1 The Supplier must pay FCL the Fees at the end of each calendar month in respect of all access to and use of the System during that month. The Supplier is responsible for any fees or charges levied by their bank.
- 11.2 FCL will make available to the Supplier either through the System or by way of a report (at FCL's election from time to time) details of all Fees and other amounts payable by the Supplier in respect of the previous calendar month.
- 11.3 The Supplier authorises FCL to deduct the Fees and other amounts due to FCL under this Agreement by direct debit from the Supplier's Nominated Account(s). This direct debit will occur on or about the 15th day of each month.
- 11.4 The Supplier has no right to set off, or to withhold payments to FCL, in connection with any amounts that may be due to the Supplier by FCL.
- 11.5 The Supplier agrees that FCL may set-off or deduct from any amounts due to the Supplier, monies owing by the Supplier to FCL, whether pursuant to this Agreement or otherwise.

12 Taxes

- 12.1 The Supplier is solely responsible for any and all applicable taxes, penalties, interest, additional tax and similar amounts (except taxes based on FCL's net income) including, without limitation, sales and use tax, value added tax, goods and services tax, consumption tax, excise tax and withholding tax that arise out of or are due as a result of the performance of obligations under this Agreement and/or any payments due to FCL under this Agreement (**Taxes**).
- 12.2 The Supplier will in a timely manner pay and discharge all Taxes and will make all payments due to FCL under this Agreement without reducing the amount of the payment for any Tax.
- 12.3 Terms used in clauses 12.1 to 12.5 have the same meaning as those defined in the relevant law in the jurisdiction that the parties to this Agreement are registered.
- 12.4 Any reference in this Agreement to fees or charges is a reference to an amount exclusive of Taxes.
- 12.5 Each party agrees to do all things, including providing invoices or other documentation in such a form and detail that may be necessary to enable or assist the other party/ies to claim or verify any input tax credit, set off, rebate or refund in relation to any Taxes payable under this Agreement or in respect of any supply under this Agreement.

13 Intellectual property rights

- 13.1 All Intellectual Property Rights in the System, including copyright in software and data forming part of the System and all routines, algorithms, codes, calculation devices, text, images and diagrams incorporated into the System, are owned or licensed by FCL. This Agreement does not transfer to the Supplier or any Authorised User ownership of any such Intellectual Property Rights in the System.
- 13.2 FCL reserves all rights not expressly licensed to the Supplier under this Agreement including all Intellectual Property Rights. No rights except those in clause 3.1 are granted either expressly or by implication to the Supplier. The Supplier must not grant or create any security interest in respect of the licence or any other rights granted to it under this Agreement.
- 13.3 The Supplier must not:
- (a) use the System in any way other than to the extent expressly permitted under this Agreement;
 - (b) rent, lend, transfer, lease, sell, distribute or sublicense the System;
 - (c) provide services to or on behalf of other persons through or using the System;
 - (d) copy, modify, adapt or communicate to any other person any part of the System; or
 - (e) reverse engineer, reverse compile, disassemble, or otherwise attempt to derive or obtain the source code for any software in the System.
- 13.4 FCL owns (or has the rights to use) all trade marks and logos in relation to FCL and the System. The Supplier must not alter, remove or obscure any copyright or trade mark notices in relation to the System.

14 Confidential information and privacy

- 14.1 Each party must keep confidential and not use or disclose the Confidential Information of the other party other than:
- (a) use and disclosure of the Confidential Information for the purposes of, and in accordance with, this Agreement, including in the case of FCL, using and disclosing Confidential Information of the Supplier to process transactions under this Agreement and using and disclosing such Confidential Information in connection with any matter or claim by any other person in connection with the System (including a claim by any party for an incorrect or wrongful debit);
 - (b) where the other party has consented to such use or disclosure of its Confidential Information;
 - (c) disclosure by FCL of statistics, on a basis that does not identify the provider of the information; or
 - (d) as required by Law or stock exchange regulation, or under the direction of court order.
- 14.2 Each party may disclose Confidential Information of the other party to those of its employees who are bound by corresponding obligations of confidence and who have a need to know the Confidential Information for the purposes of this Agreement.
- 14.3 The Supplier must ensure that each Authorised User and any other individual whose Personal Information is made available to FCL in connection with this Agreement has received all notifications and provided all consents required under Law for FCL to lawfully

collect, use and disclose their Personal Information for the purpose of fulfilling its obligations under or in any way in connection with this Agreement.

14.4 The Supplier must:

- (a) comply with all reasonable directions of FCL in relation to the collection, use, disclosure, storage and other handling of Personal Information; and
- (b) provide all reasonable assistance requested by FCL in relation to any request or complaint by any person in relation to Personal Information.

15 Suspensions

15.1 FCL may suspend the Supplier's access to and use of the System in whole or in part, with immediate effect, to:

- (a) undertake maintenance or rectification of the System, or underlying or related systems;
- (b) address any security or functionality issues that arise in relation to the System; or
- (c) to comply with any Laws or any order, instruction or request of any bank, financial institution, government or government agency, emergency services organisation, or other competent judicial, administrative or regulatory authority.

15.2 FCL will use its reasonable endeavours to promptly restore access to and use of the System after a suspension under clause 15.1.

15.3 FCL will use its reasonable endeavours to provide at least 48 hours notice of all scheduled downtime for the System.

15.4 FCL may at any time, without notice, suspend the Supplier's access to and use of the System, in whole or in part, if:

- (a) FCL believes on reasonable grounds that the System has been accessed or used by the Supplier, or any person who purports to access or use the System on the Supplier's behalf, in any way contrary to this Agreement;
- (b) an Authorised Bank-to-Bank Payment involving the Supplier's Nominated Account(s) is not able to be completed for any reason; or
- (c) the Supplier fails to pay any Fees to FCL when they are due.

16 Limitation of liability

16.1 FCL does not warrant that:

- (a) access to and use of the System will be uninterrupted, error free or secure; or
- (b) the System and use of the System will be free from external intruders (including hackers), viruses or other unauthorised attacks, or that it will be free from access by unauthorised persons.

16.2 FCL excludes all conditions, warranties and terms implied by statute, general law or custom.

16.3 FCL excludes all liability whether arising in contract, tort (including negligence) or otherwise under or in connection with:

- (a) the settlement of Authorised Bank to Bank Payments including as between a User (including the Supplier), a financial institution at which any of the Supplier's Nominated Account(s) is held, the Supplier or FCL;
- (b) any failure or delay in providing the System, regardless of the reason for such failure or delay;
- (c) any failure of any financial institution to make payment of any amount;
- (d) FCL acting on an instruction from the Supplier to make or receive an Authorised Bank to Bank Payment;
- (e) the suspension, cancellation or reversal of any payment for any reason whatsoever; and
- (f) the loss, alteration or corruption of any of the Supplier's data held electronically in any system used by FCL,

provided that if any funds belonging to the Supplier are incorrectly transmitted to another person or entity due to an error made by FCL, the Supplier's sole and exclusive remedy shall be for FCL to take reasonable steps to remedy the error and use reasonable endeavours to assist the Supplier to recover such funds.

16.4 FCL:

- (a) limits its liability to the Supplier for all claims in aggregate, whether arising in contract, tort (including negligence) or otherwise under or in connection with this Agreement, to the amount of the Fees actually paid by the Supplier to FCL under this Agreement during the month before the first such claim by the Supplier; and
- (b) excludes all liability to the Supplier, whether arising in contract, tort (including negligence) or otherwise, under or in connection with this Agreement, for all loss of profits, loss of revenue, loss of savings, loss of business opportunity, loss of data, and any indirect or consequential loss, even if FCL knew the loss was possible or the loss was otherwise foreseeable.

17 Indemnities

17.1 The Supplier must indemnify FCL against any and all losses, damages, liabilities, costs (including reasonable legal costs) and expenses claimed from, or suffered or incurred by, FCL or any of its officers, directors, employees, agents and contractors by any person or entity (including any electronic payment system providers and/or financial institutions) arising, directly or indirectly from or in connection with:

- (a) any Authorised Bank-to-Bank Payment to or from the Supplier, provided FCL acted in good faith in purported execution of any instruction received from the Supplier to effect the payment;
- (b) any Authorised Bank-to-Bank Payment directed to an incorrect financial institution (in respect of which the Supplier has the obligation, in addition, to recover the payment from the recipient);
- (c) any breach by the Supplier of this Agreement or any negligence by the Supplier or on the Supplier's behalf in performing or omitting to perform the Supplier's obligations under or in connection with this Agreement;
- (d) improper use by the Supplier of the System or any Logon ID or any of the Supplier's Nominated Account(s), including stopping or dishonouring any payment; and
- (e) use of the Supplier's Logon IDs by any third party.

18 Term and termination

- 18.1 Subject to clause 1.3, this Agreement commences on the date FCL provides the Logon IDs to the Supplier and continues for an initial term of 12 months thereafter (the “**Initial Term**”), unless terminated earlier in accordance with this clause 18.
- 18.2 After the Initial Term, either party may terminate this Agreement in its absolute discretion by giving the other party 60 days notice.
- 18.3 Either party (**first party**) may immediately terminate this Agreement by giving notice to the other party if:
- (a) the other party is in breach of this Agreement and has failed to remedy that breach within 14 days of notice from the first party;
 - (b) the other party is in breach of this Agreement and that breach is not capable of remedy;
 - (c) the other party repeatedly breaches this Agreement (whether or not such breaches are remedied); or
 - (d) the other party is subject to an Insolvency Event.
- 18.4 In this Agreement **Insolvency Event** in relation to a party means:
- (a) a receiver, receiver and manager, liquidator, trustee, administrator or similar official is appointed, or steps taken for such appointment, over any of the assets or undertaking of the party;
 - (b) the party suspends payment of its debts generally;
 - (c) the party is or becomes unable to pay its debts when they are due or is or becomes unable to satisfy the solvency test in section 4 of the Companies Act 1993;
 - (d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (e) the party ceases or threatens to cease to carry on business;
 - (f) any step is taken to appoint, or with a view to appointing, a statutory manager (including the making of any recommendation in that regard by the Financial Markets Authority) under the Corporations (Investigation and Management) Act 1989 in respect of that party, or any party or any associated person (as that term is defined in that Act) of any of them is declared at risk pursuant to the provisions of that Act; or
 - (g) an application or order is made for the winding up or dissolution of the party or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the party otherwise than for the purpose of an amalgamation or reconstruction which has the prior written consent of the other party, such consent not to be unreasonably withheld.
- 18.5 On expiration or termination of this Agreement for any reason whatsoever:
- (a) the Supplier’s rights to access and use the System cease and the Supplier must immediately cease accessing and using the System;
 - (b) the Supplier must return to FCL or delete or destroy all Confidential Information of FCL, including all Logon IDs and any other information in its possession or control in connection with the System.

19 Dispute resolution

- 19.1 Neither party may commence arbitration or court proceedings in relation to this Agreement (except proceedings seeking urgent interlocutory relief) in respect of any dispute in relation to this Agreement (**Dispute**) unless it has first complied with this clause 19. If a party fails to comply with this clause 19, the other party need not comply with this clause 19 before commencing court proceedings or arbitration.
- 19.2 Where a party claims a Dispute has arisen, that party must give notice to the other party nominating a representative to negotiate and settle the dispute (**Notice**). The other party must, within 10 days after receiving the Notice, reply in writing nominating its representative to negotiate and settle the dispute (**Reply**). The representatives of each party must use their reasonable endeavours to negotiate and settle the Dispute, which settlement must be recorded in writing and signed by both representatives.
- 19.3 If the Dispute is not resolved under this clause 19 within 30 days (or such other period as may be agreed by the parties) after the issue of the Reply, the Dispute must be referred to the mediation of a single mediator. The referral to mediation will be commenced by a party giving notice to the other party stating the subject matter and details of the Dispute and requiring the Dispute to be referred to a mediator to be appointed by the parties. Failing agreement within 5 Business Days after the date of giving the notice, the mediator will be appointed at the request of a party by the president (or his or her nominee) for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc (**AMINZ**). The mediation will be conducted in accordance with the AMINZ mediation protocol.

20 General

- 20.1 This Agreement is governed by New Zealand law. Each party submits to the non-exclusive jurisdiction of the courts in New Zealand.
- 20.2 FCL may give notice to the Supplier by publishing the content of the notice on FCL's website or by email to an email address of the Supplier. For the purposes of the Direct Debit Request Documents, the Supplier agrees and irrevocably consents to receive notice of the net amount of each direct debit (as per the Direct Debit Request Documents) by email. Notices by the Supplier under this Agreement will be sufficient only if in writing and personally delivered or mailed by prepaid post to FCL at its registered office address.
- 20.3 If any provision of this Agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not. This clause 20.3 does not apply where enforcement of the provision of this Agreement in accordance with this would materially affect the nature or effect of the parties' obligations under this Agreement.
- 20.4 Except as otherwise agreed, this Agreement (including all documents incorporated into this Agreement by reference) states all the express terms of the Agreement between the parties in respect of its subject matter, and supersedes any previous representations, warranties, arrangements and agreements between the parties in respect of its subject matter.
- 20.5 This Agreement does not create any agency or partnership relationship between the parties, and nothing in this Agreement creates a relationship of principal and agent, partnership, joint venture or employment between FCL and the Supplier or any of their respective employees, consultants, agents or sub-contractors.
- 20.6 FCL may, without the Supplier's consent assign its rights and obligations under this Agreement to any other person and the Supplier must execute any deed of novation provided to the Supplier for the purpose of giving effect to such transfer. The Supplier

must not assign any of its rights under this Agreement without the prior written consent of FCL.

- 20.7 No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver. Any waiver by either party of any breach of this Agreement shall not be construed as a waiver of any continuing or succeeding breach, a waiver of the breach itself or a waiver of any right under this Agreement.
- 20.8 All terms of this Agreement, which are expressed to or by their nature are intended to survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.
- 20.9 Either party shall be excused from performing hereunder (except for the payment of money) to the extent that it is prevented from performing as a result of any act or event which is beyond its reasonable control, including acts of God, war, action of a government or government agency, strikes, lockouts, insurrection, protest, security breaches or other hostilities, embargos, blockades, fuel or energy shortages, transportation delays or the inability to obtain necessary labour, materials or utilities from usual sources, provided that the party experiencing the relevant act or event provides the other with prompt notice thereof and uses all reasonable efforts to remove or avoid such causes.
- 20.10 In this Agreement:
- (a) Headings and bold type are for convenience only and do not affect the interpretation of this Agreement.
 - (b) The singular includes the plural and the plural includes the singular.
 - (c) Words of any gender include all genders.
 - (d) Other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning.
 - (e) An expression importing a person includes any company, firm, partnership, joint venture, association, unincorporated body of persons, trust, corporation or other body corporate and any government agency as well as an individual.
 - (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause, of, and a party, schedule, attachment or exhibit to, this Agreement.
 - (g) A reference to any legislation includes any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendments, replacements or re enactments of any of them.
 - (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
 - (i) A reference to a party to a document includes that party's successors and permitted assignees.
 - (j) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this Agreement or that provision.
 - (k) A reference to a body, other than a party to this Agreement (including an institute, association or authority), whether statutory or not which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
 - (l) A reference to \$ or dollars is to New Zealand dollars.

- (m) Specifying anything in this Agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

21 Anti-money laundering

- 21.1 The Supplier must provide all information which FCL reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in New Zealand, Australia or any other country. The Supplier agrees that FCL may disclose any information concerning the Supplier to any law enforcement, regulatory agency or court where required by any such law or regulation in New Zealand, Australia or any other country.
- 21.2 With respect to FCL managing their money laundering risk, the Supplier covenants that it will immediately notify FCL if the Supplier should become aware that it, or a User on its behalf has become involved, or might become involved, in any act which breaches any laws or regulations in New Zealand, Australia or any other country or involves any sanctioned person.

SCHEDULE

CONDITIONS OF THIS AUTHORITY TO ACCEPT DIRECT DEBITS

1. The Initiator:

- (a) Has agreed to send notice of the net amount of each Direct Debit no later than the day the Direct Debit is initiated. This notice will be provided either:
 - (i) in writing; or
 - (ii) by electronic mail where the Customer has provided prior written consent to the Initiator

The notice will include the following message:- "The amount \$....., was direct debited to your Bank account on (initiating date)."

- (b) May, upon the relationship which gave rise to this Authority being terminated, give notice to the Bank that no further Direct Debits are to be initiated under the Authority. Upon receipt of such notice the Bank may terminate this Authority as to future payments by notice in writing to me/us.

2. The Customer may:-

- (a) At any time, terminate this Authority as to future payments by giving written notice of termination to the Bank and to the Initiator.
- (b) Stop payment of any Direct Debit to be initiated under this Authority by the Initiator by giving written notice to the Bank **prior** to the Direct Debit being paid by the Bank.
- (c) Where a variation to the amount agreed between the Initiator and the Customer from time to time to be direct debited has been made without notice being given in terms of 1(a) above, request the Bank to reverse or alter any such Direct Debit initiated by the Initiator by debiting the amount of the reversal or alteration of the Direct Debit back to the Initiator through the Initiator's Bank, PROVIDED such request is made not more than 120 days from the date when the Direct Debit was debited to my/our account

3. The Customer acknowledges that:-

- (a) This authority will remain in full force and effect in respect of all Direct Debits passed to my/our account in good faith notwithstanding my/our death, bankruptcy or other revocation of this authority until actual notice of such event is received by the Bank.
- (b) In any event this authority is subject to any arrangement now or hereafter existing between me/us and the Bank in relation to my/our account.
- (c) Any dispute as to the correctness or validity of an amount debited to my/our account shall not be the concern of the Bank except in so far as the Direct Debit has not been paid in accordance with this authority. Any other disputes lies between me/us and the Initiator.
- (d) Where the Bank has used reasonable care and skill in acting in accordance with this authority, the Bank accepts no responsibility in respect of:
 - the accuracy of information about Direct Debits on Bank statements
 - any variations between notices given by the Initiator and the amounts of Direct Debits
- (e) The Bank is not responsible for, or under any liability in respect of the Initiator's failure to give written advance notice correctly nor for the non-receipt or late receipt of notice by me/us for any reason whatsoever. In any such situation the dispute lies between me/us and the Initiator.

4. - The Bank may:-

- (a) In it's absolute discretion conclusively determine the order of priority of payment by it of any monies pursuant to this or any other authority, cheque or draft properly executed by me/us and given to or drawn on the Bank.
- (b) At any time terminate this authority as to future payments by notice in writing to me/us.
- (c) Charge its current fees for this service in force from time-to-time.