

PAYMARK INSIGHTS

MERCHANT TERMS AND CONDITIONS

Version 1.1 dated 3 February 2017

These Terms apply to the registration for and use of Paymark Insights. Paymark Insights is only available to Merchants in New Zealand who are connected to the Paymark System for processing Transactions. These Terms are intended to explain the obligations of Paymark (“our”, “us” or “we”) as the owner of Paymark Insights and your obligations as a Merchant that has registered to use Paymark Insights (“you” or “your”).

By ticking the “I agree” check box on the registration page and registering to use Paymark Insights you accept and agree:

- a. that you have read and understood these Terms;
- b. to be bound by all of these Terms;
- c. that you have the authority to act on behalf of any person or entity for whom you are registering to use Paymark Insights and you are deemed to have agreed to these Terms on behalf of any entity or person for whom you use Paymark Insights.

We reserve the right to change these Terms at any time by providing you with written notice in accordance with clause 21. By choosing to continue to use Paymark Insights you are deemed to accept any amended Terms.

- 1 **Definitions:** In these Terms the following words and expressions shall have the following meanings:
 - a “Business Day” means a day on which banks are open for normal banking business in Auckland;
 - b “Device” means a computer, mobile phone or any other device used to access Paymark Insights;
 - c “Fees” means the monthly fees or charges, plus GST, for each Merchant Number registered for Paymark Insights as set out on our [Website](#) (or as otherwise agreed with you or updated by us from time to time in accordance with clause 21);
 - d “Intellectual Property Rights” includes all trademarks (including logos), domain names, inventions (including patents) service mark, copyright, moral rights, rights in a design, rights in software, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered;
 - e “Merchant” means a merchant who has a current Merchant Agreement;
 - f “Merchant Agreement” means an agreement between Paymark and a Merchant providing for the Merchant to effect Transactions through the Paymark System;
 - g “Merchant Number” means the unique merchant identification number allocated to each merchant store;
 - h “Paymark” means Paymark Limited, a company incorporated in New Zealand with registered address Level 2, 162 Victoria Street, Auckland, 1010 and registered company number 438574;

- i "Paymark Insights" means Paymark's dashboard solution which provides insights into Transaction Data as described on the Paymark [Website](#);
 - j "Paymark System" means the electronic funds transfer, payment authorisation and data capture and delivery service owned and operated by Paymark;
 - k "Terms" means these terms and conditions which apply to the registration for and use of Paymark Insights, as may be amended from time to time in accordance with clause 21;
 - l "Transaction" means an electronic transaction processed through the Paymark System as defined in the Merchant Agreement;
 - m "Transaction Data" means all data relating to Transactions and any other data or information compiled from the Paymark System;
 - n "User" means any person you have permitted to be an end user of your Paymark Insights account; and
 - o "Website" means the Paymark website www.paymark.co.nz
- 2 **Use of Paymark Insights:** We grant you and your Users the right to access and use Paymark Insights. This non-exclusive, non-transferable right is limited by and subject to these Terms and is immediately revocable at our sole discretion without notice. Use of Paymark Insights may be subject to advised limitations. We remain the owner of Paymark Insights at all times. Paymark Insights contains information from the Paymark System and our records and is provided for the purpose of assisting you to assess Transaction Data that relates to your business. Provision of Paymark Insights does not constitute accounting, tax or other financial advice whether in respect of the Transaction Data or its representation in Paymark Insights or otherwise.
- 3 **Support:** Support services in respect of Paymark Insights may be requested by sending an email to support@paymark.co.nz or by calling 0800 PAYMARK (0800 729 627) 24 hours a day, 365 days per year.
- 4 **Registration and accounts:** In registering to use Paymark Insights:
- a **Password security:** you will ensure that all usernames and passwords required to access Paymark Insights are kept secure and confidential and you will notify us immediately by email to support@paymark.co.nz of any unauthorised use of your password or any other breach of security.
 - b **Registration information:** you will provide us with all information we reasonably request to enable us to register you to use Paymark Insights. You confirm that the information you provided to us on registering for Paymark Insights was at the time you provided it current, complete and accurate, and you agree to maintain and update the information as required to keep it so. If you are not able or willing to provide information or keep information up to date then it may result in you or your Users being unable to use Paymark Insights.
 - c **Reliance upon password:** you release us from any claim arising from any reasonable reliance by us upon use of your password, including us disclosing information relating to your registration and/or affairs with us. You agree to indemnify and hold us, our directors, officers and employees harmless from any claims, actions, costs (including legal costs), or losses by us or any third party due to or arising out of reasonable reliance by us or any

third party upon any acts carried out, requests made or information provided through the use of your password.

- d **Acknowledgement:** You acknowledge that registration for Paymark Insights will not be complete until you have completed the registration in full including the email verification process and creation of password for your Paymark Insights account. You further acknowledge that your log-in credentials and personal information provided to Paymark for Paymark Insights may be used to grant you access to other Paymark products and services you purchase.

5 **Users:** You agree that, subject to any applicable written terms between you and your Users, or any other applicable laws:

- a you determine who is a User of your Paymark Insights account. You control what level of access any User shall have to your Paymark Insights account and to Paymark Insights at all times. You can revoke or change a User's access, or level of access, to Paymark Insights at any time and for any reason, in which case that person or entity will cease to be a User or shall have a different level of access to the Paymark Insights account, as the case may be; and
- b if there is any dispute between you and a User regarding access or level of access to your Paymark Insights account, you shall decide what access or level of access that User shall have, if any.

6 **Privacy and personal information:** Information collected when you or your Users register or interact with us in relation to Paymark Insights or associated services may include personal information. By providing us with your personal information or continuing to use Paymark Insights or associated services you provide unconditional consent to us collecting, storing and disclosing your personal information for our business purposes, including to provide Paymark Insights and associated products and services or as otherwise stated in our Privacy Policy (as may be updated from time to time). If you decide not to provide personal information we may not be able to provide you with full access to Paymark Insights or associated services.

7 **Service Provision:** The provision of, access to, and use of, Paymark Insights is on an "as is" basis. We cannot guarantee 100% up time. We may withdraw, amend, suspend or restrict availability to Paymark Insights (or any part of it) or any associated services) at our sole discretion for any reason including, but not limited to, technical, security, legal or business reasons or for the purposes of carrying our maintenance or development. We do not warrant that the use of Paymark Insights will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing Paymark Insights, including public telephone services, computer networks and the internet, can be unpredictable and may from time to time interfere with or prevent access to Paymark Insights. We are not in any way responsible for any such interference or prevention of your access or use of Paymark Insights.

8 **Fees and Payment:** In consideration of us providing Paymark Insights to you, you will pay the Fees to us in accordance with these Terms:

- a on receipt of an invoice for Paymark Insights you will pay the Fees to us without set off or deduction no later than the 20th day of the month following the date of the invoice;
- b where you have provided a direct debit authority for us to debit your nominated bank account with fees and charges under your Merchant Agreement then we will be entitled to

debit your nominated bank account with the Fees (or any other cost, charge, liability or expense) payable under these Terms;

- c we may review and amend the Fees from time to time provided that we shall give you notice of any change to the Fees in accordance with clause 21; and
- d if you fail to pay the Fees when due we may restrict, suspend or cancel your access to Paymark Insights and we are entitled to terminate your subscription in accordance with clause 15(b).

9 **Authorities:** You warrant that:

- a where you have registered to use Paymark Insights on behalf of an organisation, you have the authority to agree to these Terms on behalf of that organisation and agree that by registering to use Paymark Insights you bind the organisation on whose behalf you act to the performance of any and all obligations that you become subject to by virtue of these Terms; and
- b if you provide information (including personal information) of other individuals or third parties to us, that you have the express consent of such individual or third party to provide such information to us and that we may use such information for the purposes disclosed to you at the time of such collection, which may include sending such individual or third party commercial electronic messages as set out in clause 30.

10 **Your responsibilities:** You are responsible for:

- a all use (including misuse) of Paymark Insights by you and any of your Users (if applicable);
- b granting permission to your Users to access your Paymark Insights account;
- c activating and deactivating any Merchant Numbers for which you wish to receive Paymark Insights (where you have authority to do so);
- d determining whether the functions of Paymark Insights as described on our [Website](#) meet your requirements and are suitable for the purposes for which you wish to use it;
- e only using Paymark Insights for your own lawful internal business purposes in accordance with these Terms;
- f ensuring that information derived from Paymark Insights is not provided to a third party (other than professional advisors or your permitted Users) without our prior written consent;
- g the security of your Devices used for accessing Paymark Insights, including maintaining an up to date browser, firewall or anti-virus and anti-spyware software and you must protect your Devices and ensure you update all security software by downloading the latest security patches from the relevant software provider; and
- h advising us of the sale of your business not less than five Business Days prior to the date of sale.

11 **Access conditions:** You must not:

- a use Paymark Insights in an unlawful manner, for any unlawful purpose or in any manner inconsistent with these Terms;

- b attempt to undermine the security or integrity of our computing systems or networks used to provide Paymark Insights;
 - c use, or misuse, Paymark Insights in any way which may impair the functionality of Paymark Insights or other systems used to deliver Paymark Insights or impair the ability of any other user to use Paymark Insights;
 - d attempt to gain unauthorised access to any materials (other than those to which you have been given express permission to access) or to the computer system on which Paymark Insights is hosted; and
 - e attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver Paymark Insights.
- 12 **Indemnity:** You indemnify us, our directors, officers and employees against all claims, actions, costs (including legal costs), damage and losses incurred by us arising from any and all breaches by you or any of your Users of any of these Terms or any other obligation you or a User may have to us or warranty you or a User may give to us.
- Intellectual Property Rights in Paymark Insights:** Nothing in these Terms, or your use of Paymark Insights, will transfer any Intellectual Property Rights in Paymark Insights, any Transaction Data or any of our associated systems or services) to you or entitle you to use any Intellectual Property Rights in Paymark Insights other than as expressly set out in these Terms. If you provide us with any suggestions, comments and feedback about Paymark Insights or associated services you grant us the right to use any feedback you provide to further develop and enhance Paymark Insights or other products and services. To the extent you create any Intellectual Property Rights relating to Paymark Insights these will on creation be owned by us and you hereby assign all such Intellectual Property Rights to us. You shall not use any of our trade names, trademarks, service marks, logos, domain names and other distinctive brand features of Paymark or Paymark Insights unless you have our prior express, written consent.
- 13 **Term:** These Terms will automatically renew monthly, provided you continue to pay the Fees, unless earlier terminated in accordance with these Terms.
- 14 **Termination:** These Terms and your Paymark Insights Account:
- a may be terminated by you at any time (or as they relate to one or more Merchant Number) by sending an email to support@paymark.co.nz.
 - b may be terminated immediately at any time by us without notice if:
 - i we consider there is a security, legal or other risk to Paymark Insights or our systems;
 - ii we consider that Paymark Insights is being, or is likely to be, used fraudulently or for any other unlawful or improper purpose;
 - iii you fail to pay the Fee when due;
 - iv you otherwise breach any of these Terms and the breach is not capable of being remedied or you do not remedy the breach within 5 days after receiving notice of a breach capable of being remedied; or

- v you become insolvent or go into liquidation or have a receiver or manager appointed of any of your assets or make any arrangement with your creditors, or become subject to any similar insolvency event in any jurisdiction.
 - c If you sell your business or part of your business you must notify us not less than five Business Days prior to the date of sale. You acknowledge that (a) your Paymark Insights account for the relevant Merchant Number(s) for the business being sold will be terminated and any new owner will need to register for a new Paymark Insights account and (b) if the Merchant Number(s) is transferred to a new owner of the business then the historic Transaction data prior to the date of sale for the Merchant Number(s) being transferred will be available to the new business owner to view if they register for Paymark Insights.
 - d If your Merchant Agreement terminates (or terminates as it relates to one or more Merchant Numbers) you acknowledge that your Paymark Insights account for the relevant Merchant Numbers will also terminate.
- 15 **Consequences of Termination:** Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of these Terms, for any reason:
- a all rights granted to you under these Terms will cease. You will not be able to access or use Paymark Insights; and
 - b clauses 4(c) (Reliance upon password), 7 (Service Provision), 11 (Access Conditions), 12 (Indemnity), 13 (Intellectual Property Rights in Paymark Insights), 16 (Consequences of Termination), 17 (No Warranties), 18 (Limitation of Liability), 19 (Links) and 29 (Law) will survive termination.
- 16 **No warranties:** Except as expressly provided in these Terms all representations or warranties (statutory, express or implied), except any which may not lawfully be excluded, are expressly excluded, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement of Intellectual Property Rights. In particular, we do not warrant that Paymark Insights will meet your requirements or will be uninterrupted or error free or that all errors have been corrected. You acknowledge that Paymark Insights is a service intended solely for the purposes of businesses and accordingly the Consumer Guarantees Act 1993 will not apply.
- 17 **Limitation of Liability:** Except as expressly provided in these Terms, to the maximum extent permitted by law, we exclude all liability and responsibility to you, your Users or any organisation (or any other person) in contract, tort (including negligence), equity, statute or otherwise, for any loss (including without limitation loss of information, data, profits and savings) or damage resulting, directly or indirectly, from the supply of, any use of, or reliance on, Paymark Insights or any associated services. Without limiting this, if loss or damage is suffered which cannot be so excluded, any claim against us will be limited in aggregate, to the extent legally permissible, to an amount equivalent to the Fee charged to you under these Terms during the month immediately preceding the date on which the loss or damage first arose. If you are not satisfied with Paymark Insights, to the maximum extent permitted by law, your sole remedy is to terminate your account in accordance with clause 15(a).
- 18 **Links:** We may include links on our Website to other websites or resources operated by parties other than us. We are not responsible for any of the content or accuracy of external websites or pages. Furthermore we are not responsible for the availability of external websites or pages

and do not endorse them, nor are we liable or responsible for the privacy practices or the content of the external websites. You will need to make your own independent judgement regarding interaction with any third-party websites

- 19 **Delays:** Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay Fees.
- 20 **Amendment and Notices of Variation of Fees:** We may amend the Terms, advise you of any variation or supplement to the Fees, or of a proposed assignment by giving written notice to you. The amendment, notification or assignment will take effect in accordance with its terms but in any event not earlier than one month after the date of service of the notice. However, we reserve the right to urgently change these Terms if required by law or where necessary for security reasons, to prevent fraud or for technical reasons.
- 21 **No Relationship:** These Terms will not be deemed to create a partnership, joint venture, agency or employment relationship of any kind between the parties.
- 22 **Notices:** Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given and received when it passes the point in the senders computer system that the transmission could not be retrieved or stopped by the sender from being transmitted to the correct email address of the recipient, provided that any communication received, or deemed received after 5pm, or on a day which is not an ordinary Business Day, shall be deemed not to have been received until the next Business Day. Contract notices to us must be sent to support@paymark.co.nz or to any other email address notified by email to you by us or updated on our Website. Notices to you will be sent to the email address which you provided when setting up your access to Paymark Insights or as otherwise amended on notice us.
- 23 **Rights of Third Parties:** A person who is not a party to these Terms has no right to benefit under or to enforce these Terms.
- 24 **Assignment:** You may not assign or transfer rights or obligations under these Terms to any other person. We may assign our rights and obligations under these Terms to any other person on notice to you.
- 25 **General:** If at any time we do not enforce any of these Terms or grant you time or other indulgence, we will not be construed as having waived that term or condition or our rights to later enforce that or any other term or condition. Further, if any part or provision of these Terms is deemed to be invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose. The remaining Terms will be binding on the parties.
- 26 **Dispute Resolution:** In the event of a dispute between us relating to Paymark Insights, we shall first attempt to resolve the dispute by good faith negotiations. If those negotiations are unsuccessful either party 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 us or, in the absence of any agreement, shall be appointed (at the request of either party) by the President for the time being of the New Zealand Law Society.
- 27 **Entire agreement:** These Terms and the terms of any other notices or instructions given to you under these Terms, supersede all prior agreements, representations (whether oral or

written), and understandings and constitute the entire agreement between you and us relating to Paymark Insights.

- 28 **Law:** These terms and conditions are governed by and will be construed in accordance with the laws of New Zealand and you submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 29 **Email Communications:** By registering to use Paymark Insights you agree to be contacted by us by email which includes sending you commercial electronic messages. You will have the option to unsubscribe from any contact list that is not essential to provision of Paymark Insights at any time using the “unsubscribe” link that appears in the email you receive from us.