

CLICK

BY PAYMARK



TERMS AND CONDITIONS

**REVISION DATE:
22 MAY 2019**



Paymark

an **ingenico** company
GROUP

**Revision Date:
22 May 2019**

Contained herein are two separate legal agreements with Paymark Limited, a company incorporated in New Zealand with registered address Level 2, 162 Victoria Street West, Auckland 1010 and registered company number 438574 (referred to as “**Paymark**” “**we**” or “**our**”), as follows:

1. the terms and conditions contained on pages 3 to 6 (inclusive) which constitute a legal agreement between the person or entity using the Click test environment available through <https://demo.paymarkclick.co.nz/> (the “**Click Demo**”) (referred to as “**you**” or “**your**”) and Paymark (the “**Click Test Environment User Agreement**”); and
2. the terms and conditions contained on pages 7 to 25 (inclusive) which constitute a legal agreement between the entity registered on the Merchant Portal (referred to as “**you**,” “**your**” or “**Customer**”) and Paymark (the “**Click Agreement**”).

Please ensure you are familiar with the terms and conditions that apply to your use of Click.

Click Test Environment User Agreement

The terms and conditions described here constitute a legal agreement (hereinafter, the “**Click Test Environment User Agreement**”) between you and Paymark and applies to your use of the Click test environment available through <https://demo.paymarkclick.co.nz/> (the “**Click Demo**”).

By registering for, accessing and using the Click Demo, you acknowledge that you have read, understood and agree to be bound by these terms. If you do not agree to these terms and conditions, you must immediately cease your use of the Click Demo.

We may amend this Click Test Environment User Agreement at any time by posting a revised version at https://demo.paymarkclick.co.nz/guides/click_test_tc.pdf. The revised version will be effective at the time we post it.

For the purposes of this Click Test Environment User Agreement, unless the context indicates otherwise:

“**Click**” means the Click solution provided by Paymark;

“**Click API**” means the application programme interface for Click and the Click Demo;

“**Click Demo**” means the Click solution provided by Paymark through the Click test environment for the transmission of data relating to Test Card Transactions, and, if selected by a customer, Test Online EFTPOS Transactions, incorporating certain software owned or licensed by Paymark (including all upgrades, updates, alterations and modifications to such software by or on behalf of Paymark from time to time) and including access (via the internet) to the Click Test Server;

“**Click Documentation**” means any user, training or system manuals for Click (whether in printed or electronic form) which describes and provides guidance on Click (or any aspect of Click including how to integrate with the Click API);

“**Click Test Server**” means the Paymark host server to which you may be connected in the test environment using the software forming part of Click and which is in turn linked to a simulator to enable Test Card Transactions and Test Online EFTPOS Transactions to be processed in real time;

“**Google Pay**” means the Google service that allows a cardholder to make a transaction on a website or app using a credit or debit card saved to the cardholder’s Google account and that is made available as a method of payment through Click utilising the Google Pay API;

“**Google Pay API**” has the meaning given to it in the Google Pay Terms;

“**Google Pay Terms**” has the meaning given to it in clause 3.2;

“**Intellectual Property**” includes copyright and all rights conferred under statute, common law or equity in relation to trade marks (including logos and trade files), domain names, inventions (including patents and petty patents), utility models, designs, circuit layouts, rights in computer software, databases and lists, confidential information, trade secrets, know-how software (whether in object code or source code) and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world resulting from intellectual activity, together with all right, interest or licence in or to any of the foregoing;

“**Online EFTPOS**” means the account-to-account payment solution developed by Paymark;

“**PCI Standards**” mean the Payment Card Industry standards and requirements mandated by the Payment Card Industry Data Security Council from time to time including the Payment Card Industry Data Security Standards, PIN Transaction Security Standard and the Payment Application Data Security Standard;

“**Test Card Transactions**” means virtual transactions which relate to accepting payment for dummy goods and services by means of a Paymark designated test card;

“**Test Online EFTPOS Transactions**” means virtual transactions entered into by you which relate to accepting payment for dummy goods and services or a bona fide donation by means of Online EFTPOS and each related transaction,

attempted transaction or transaction request (including without limitation (to the extent it is supported by Online EFTPOS) a preauthorisation, verification, capture, look-up or refund) is a separate “**Test Online EFTPOS Transaction**”; and

“**Test Permitted Use**” means to determine whether Click is appropriate for your business and to test and verify your integration to the Click API.

1. TERM

This Click Test Environment User Agreement commences on the date on which we first make the Click Demo available to you (the “**Commencement Date**”) and will continue for so long as you continue to use the Click Demo (the “**Term**”).

2. LICENCE

We grant you a personal, non-exclusive, non-transferable licence to use the Click Demo, the Click API and the Click Documentation in your New Zealand operations for the Term solely for the purposes of the Test Permitted Use. Any other use or dealings with Click, the Click Demo, the Click API, the Click Documentation or any software forming part of Click without our prior written consent will be a material breach of this Click Test Environment User Agreement. You must not sub-license, transfer, assign, rent or sell any of Click, the Click Demo, the Click API or the Click Documentation or the right to use the Click Demo. You must not use the Click Demo in any manner which has the effect of causing unnecessary interference or disruption of our business operations or which results in repetitive processing of transactions with no commercial purpose.

3. TERMS OF USE

- 3.1 You must satisfy yourself as to the adequacy, appropriateness and compatibility of Click for your requirements. Without limiting clause 5, you acknowledge that you have not relied on any statements or representations on our part as to performance, functionality or suitability for your requirements except as expressly recorded in this Click Test Environment User Agreement.
- 3.2 By selecting Google Pay as a method of payment to test in the Click test environment you agree to be bound by Google’s terms of service (as may be amended from time to time) at: <https://payments.developers.google.com/terms/sellertos> (the “**Google Pay Terms**”).
- 3.3 If you are not compliant with the Security Standards (meaning (a) any data protection or data security standards issued by Paymark or any Acquirer; and (b) the PCI Standards), you should not store, process or transmit any card number, card expiry date or cardholder details (“**Cardholder Data**”) on your or a third party’s non-compliant system. If you are not compliant with the Security Standards, any storing, processing or transmitting of Cardholder Data by you is at your sole risk and responsibility and you indemnify us against all liabilities, losses or costs which we may incur, directly or indirectly, by your non-compliance with the Security Standards.
- 3.3 You must not, and must not permit any other person to, copy, reproduce, translate, adapt, vary, repair or modify all or any of Click, the Click Demo or the Click Documentation without our prior written consent.
- 3.4 If this Click Test Environment User Agreement is terminated, your right to use the Click Demo and the Click Documentation will automatically terminate and you must immediately remove all copies of the software forming part of Click or the Click Demo from your system(s).
- 3.5 You must not, and must not permit any other person to, reverse assemble or decompile the whole or any part of the software forming part of Click or the Click Demo.
- 3.6 Except as expressly provided for in this Click Test Environment User Agreement, you must not provide, or otherwise make available any component of Click or the Click Demo in any form to any third party without our prior written consent.

4. YOUR RESPONSIBILITIES

4.1 You:

- (a) represent and agree that you have full power and authority necessary to validly enter into and perform all obligations under this Click Test Environment User Agreement;
- (b) acknowledge that you have made and will continue to make your own assessment of the suitability of Click for your purposes;
- (c) will comply with our restrictions and instructions in relation to the use of the Click Demo;
- (d) will ensure that only authorised persons use the Click Demo and that the Click Demo is used only for the Test Permitted Use;
- (e) will accept all responsibility for reliance on and use of the Click Demo by you and your employees, contractors and agents;
- (f) acknowledge that any personal information concerning you or your personnel which is provided to us by you or on your behalf may be:
 - (i) used by us for the purpose of providing the Click Demo and any other services to you; and
 - (ii) disclosed by us to our service providers to enable us to provide the Click Demo and any other services to you;
- (g) will immediately notify us upon becoming aware of any third party infringing our Intellectual Property or of any breach by you or any third party of the Security Standards in connection with the Click Demo or a Test Card Transaction; and
- (h) will comply with all relevant laws in your use of the Click Demo and carrying out your obligations under this Click Test Environment User Agreement.

4.2 You agree to indemnify and hold Paymark, its officers, directors and employees harmless from any claim, suit or demand (including legal fees) made or incurred by any third party due to or arising out of your breach of this Click Test Environment User Agreement or the Google Pay Terms or your violation of any law or the rights of a third party relating to your use of the Click Demo.

5. PERFORMANCE BY US

5.1 We do not make any promises or claims as to the availability or uptime of the Click Demo. The Click Demo is a test environment. You may only use anonymous, non-live data. In particular, you must ensure that any payment data that is entered on the Click Demo is not live or production data. Any accounts or transactions made on the Click Demo are not real and no real money will change hands.

5.2 To the fullest extent permitted by law, except as expressly set out in this Click Test Environment User Agreement, we exclude 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.

5.3 To the fullest extent permitted by law in no event will we be liable to you whether in contract, tort (including negligence) or otherwise:

- (a) in excess of \$500; and
- (b) in respect of any:
 - (i) loss of data, lost profits, loss of revenue, loss of goodwill, loss of business or for any indirect, consequential or special loss, damage, cost or expense suffered or incurred by you;
 - (ii) loss, damage, cost or expense suffered or incurred by you, to the extent to which this results from any act or omission by you; or
 - (iii) any event or circumstance outside our direct control, including any third party outage.

6. INTELLECTUAL PROPERTY & CONFIDENTIALITY

6.1 All Intellectual Property rights in Click, the Click Demo, the Click API and the Click Documentation are exclusively owned by us (or our licensors). You acknowledge that there is no transfer of title, Intellectual Property rights, interest or ownership of Click, the Click Demo, the Click API or the Click Documentation or any part of them to you under this Click Test Environment User Agreement. You will treat information about our Intellectual Property as our confidential information.

- 6.2 You agree that you will not, except to the extent authorised in writing by us, use the confidential information we disclose to you for any purpose other than in connection with the performance of this Click Test Environment User Agreement or disclose to any third party any such confidential information.
- 6.3 You covenant and agree that all of the confidential information will:
- (a) be kept strictly confidential;
 - (b) not, without our prior written consent, be photocopied or reproduced;
 - (c) be used exclusively, and only to the extent necessary, for the purposes of performing or obtaining the benefit of this Click Test Environment User Agreement;
 - (d) be safely and securely stored when not in use; and
 - (e) remain our absolute and exclusive property.

7. TERMINATION

- 7.1 We may end the availability of the Click Demo if the Click solution is no longer viable, is unable to be provided by us or is to be withdrawn from general availability by us.
- 7.2 We may, at any time without notice and with immediate effect, suspend your right to use and prevent you from using the Click Demo and the Click Documentation if:
- (a) you fail to comply with any term of this Click Test Environment User Agreement;
 - (b) we consider that Click is being, or is likely to be, used fraudulently or in a manner that will jeopardise the security or integrity of Click, the Click Demo or our systems;
 - (c) maintenance and/or technical upgrades are necessary; or
 - (d) it is reasonably necessary for any other reason.
- 7.3 Termination of this Click Test Environment User Agreement will not affect the rights or obligations of the parties which have accrued prior to or accrue on termination or which by their nature are intended to survive termination including, without limitation, the indemnity in clause 4.2 and clause 6.

Click Agreement

This agreement (this “**Agreement**”) is a contract between the entity registered on the Merchant Portal and Paymark.

We may amend this Agreement at any time by posting a revised version on our website and/or Merchant Portal (as defined below). The revised version will be effective at the time we post it. You are responsible for ensuring you are familiar with the latest terms and conditions. Your continued use of the Services represents your agreement to be bound by the terms and conditions as amended.

For the purposes of this Agreement, unless the context indicates otherwise:

“**Accountholder**” means a registered Accountholder Bank customer and Mobile Banking App user;

“**Accountholder Account**” means the bank account specified by the Accountholder as that from which funds will be debited for the purposes of Online EFTPOS;

“**Accountholder Bank**” means a registered bank that provides a banking and other financial services to Accountholders, including a Mobile Banking App and that has entered into an agreement with Paymark to participate in Online EFTPOS;

“**Accountholder Identifier**” means a format approved by the Accountholder Bank to uniquely identify the Accountholder for the purposes of Online Eftpos, for example a mobile phone number;

“**Acquirer**” means a bank or any financial institution or an issuer of financial or non-financial payment instruments which receives and accepts Card Transactions from the Customer;

“**AML Act**” means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (as amended, re-enacted, re-numbered or extended from time to time);

“**Authorised**” means validated as a permitted operation by Paymark or an Accountholder Bank (as applicable);

“**Authorised Payment**” means a Payment Request that has been Authorised by the Accountholder Bank;

“**Authorised Refund**” means a Refund Request that has been Authorised by Paymark;

“**Autopay**” means the Online EFTPOS functionality that enables an Accountholder to pre-approve Online Eftpos Transactions to be made to you;

“**Autopay Prerequisite Items**” means all items set out in the Click Documentation (as amended from time to time), or as otherwise specified by Paymark, that you must complete prior to offering Autopay to Accountholders;

“**Bank Agreement**” has the meaning given in paragraph 5.3 of the Online EFTPOS Addendum;

“**Business Day**” means a day except Saturday, Sunday or a statutory public holiday in Auckland, New Zealand;

“**Card Transactions**” means transactions entered into by the Customer which relate to:

- (a) accepting payment for goods and services or a bona fide donation by means of credit card, debit card, prepaid card, gift card or any other means of payment which Paymark agrees in writing to support (including payments via Google Pay) and process through the Click solution from time to time;
- (b) accepting loyalty cards, rewards cards, points cards, discount cards or club cards which Paymark agrees in writing to support and process through the Click solution from time to time; or
- (c) providing services in relation to the sale and use of any of the instruments referred to in paragraphs (a) and (b) above, including the issue of such instruments and the crediting or debiting of value to such instruments,

and each related transaction, attempted transaction or transaction request (including without limitation, a pre-authorisation, cardholder verification, capture, look-up or refund) is a separate “**Card Transaction**”;

“**Cardholder Data**” is defined in clause 3.3;

“**Click**” means the Click solution provided by Paymark for the transmission of data relating to Card Transactions, and, if selected by the Customer, Online EFTPOS Transactions, incorporating certain software owned or licensed by Paymark (including all upgrades, updates, alterations and modifications to such software by or on behalf of Paymark from time to time) and including access (via the internet) to the Click Server;

“**Click API**” means the application programming interface for Click that enables you to integrate with Click;

“**Click API Specification**” means the documentation detailing the Click API fields and definitions which is detailed at <http://docs.dev.paymark.nz/click>;

“**Click Documentation**” means any user, training or system manuals for Click (whether in printed or electronic form) which describes and provides guidance on Click (or any aspect of Click including how to integrate with the Click API);

“**Click Permitted Use**” means the transmission to, and receipt from:

- (a) an Acquirer of data relating to Card Transactions;
- (b) an Accountholder Bank of data relating to Online EFTPOS Transactions; and
- (c) Google of data relating to a Card Transaction through Google Pay,

entered into by the Customer but expressly excludes, without limitation, use for the processing of any transactions of, or for the benefit of, any person other than the Customer;

“**Click Server**” means the Paymark host server to which the Customer may be connected using the software forming part of Click and which is in turn linked to the Acquirer and Accountholder Banks to enable Card Transactions and Online EFTPOS Transactions to be processed in real time;

“**Condition**” is defined in clause 1.1;

“**Confidential Information**” means and includes any documentation or Information supplied by a party which by its nature is confidential including all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by a party;

“**Customer Account**” means the bank account nominated by the Customer from time to time for the settlement of Authorised Payments and Authorised Refunds and the debiting of charges under this Agreement;

“**Customer Identifier**” means the alphanumeric characters used by Paymark to uniquely identify the Customer;

“**Default Interest Rate**” means interest at the rate of 5% above the base lending rate charged by Paymark's bank from time to time;

“**Disclosing Party**” means a party who discloses Confidential Information under this Agreement;

“**Fees**” means the fees and charges for Click as set out in the following link, <https://www.paymark.co.nz/assets/Click-Pricing.pdf> or as otherwise agreed between Paymark and you, and as updated by Paymark from time to time in accordance with clause 6.1;

“**Go Live Date**” means the date on which the last of the Conditions has been fulfilled as notified by Paymark to you and production information has been sent to you;

“**Google**” means Google LLC or its affiliates;

“**Google Pay**” means the Google service that allows a cardholder to make a Card Transaction on a website or app using a credit or debit card saved to the cardholder's Google account and that is made available as a method of payment for Card Transactions through Click utilising the Google Pay API;

“**Google Pay Addendum**” means the Google Pay addendum as attached to and forming part of this Agreement;

“**Google Pay API**” has the meaning given to it in the Google Pay Terms;

“**Google Pay Terms**” has the meaning given to it in the Google Pay Addendum.

“Information” means and includes information of any nature, knowledge, technology, ideas, technical data, concepts, techniques, processes, formulas, expertise, computer programs, trade secrets, inventions, discoveries, designs, methods, know-how and data, whether recorded or not;

“Intellectual Property” includes copyright and all rights conferred under statute, common law or equity in relation to trade marks (including logos and trade files), domain names, inventions (including patents and petty patents), utility models, designs, circuit layouts, rights in computer software, databases and lists, confidential information, trade secrets, know-how software (whether in object code or source code), and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world resulting from intellectual activity, together with all right, interest or licence in or to any of the foregoing;

“Merchant Portal” means the registration and maintenance portal which may be provided by Paymark in respect of the Services at <https://client.paymarkclick.co.nz/Default/MemberLogin.aspx>;

“Mobile Banking App” means a website or mobile phone application provided by an Accountholder Bank to their customers via which the Accountholder Bank can authenticate the identity of its customers;

“Online EFTPOS” means the account-to-account payment solution developed by Paymark that enables:

- (a) merchants to send Payment Requests and Refund Requests to Paymark via ecommerce applications (whether web or mobile);
- (b) Paymark to receive authorisation responses from Accountholder Banks on the basis of authorisation procedures approved by each participating Accountholder Bank; and
- (c) Paymark to provide merchants with a response as to whether a Payment Request or Refund Request has been authorised;

“Online EFTPOS Addendum” means the Online EFTPOS addendum as attached to and forming part of this Agreement;

“Online EFTPOS Transactions” means transactions entered into by the Customer which relate to accepting payment for goods and services or a bona fide donation by means of Online EFTPOS (including transactions completed using the Autopay functionality) and each related transaction, attempted transaction or transaction request (including without limitation (to the extent it is supported by Online EFTPOS) a pre-authorisation, verification, capture, look-up or refund) is a separate **“Online EFTPOS Transaction”**;

“Paymark’s Branding Guidelines” means the branding guidelines published by Paymark and available at <http://docs.dev.paymark.nz/click> as updated from time to time;

“Paymark Logos” means the Paymark, Click and/or, if applicable, Online EFTPOS logo supplied (in electronic format) by Paymark to the Customer (as may be updated from time to time by Paymark);

“Payment Amount” means the monetary value in NZD of the Authorised Payment;

“Payment Request” means a message submitted by the Customer to Paymark in respect of a payment and consists of the payment amount in NZD, the Accountholder Identifier, the Customer Identifier and payment particulars including payment code and references in accordance with the Click API Specification;

“PCI Standards” means the Payment Card Industry standards and requirements mandated by the Payment Card Industry Data Security Council from time to time including the Payment Card Industry Data Security Standards, PIN Transaction Security Standard and the Payment Application Data Security Standard, to the extent they are applicable to the Services being provided under this Agreement;

“Privacy Act” means the Privacy Act 1993 (as amended, re-enacted, re-numbered or extended from time to time);

“Receiving Party” means a party who receives Confidential Information under this Agreement;

“Refund Request” means a Customer generated request to transfer funds to an Accountholder;

“Registration Details” means the details entered by or on behalf of the Customer in the Merchant Portal;

“Related Company” has the meaning given to that term in section 2(3) of the Companies Act 1993 (New Zealand) except that all references in that definition to a "company" will be deemed to include a company or body corporate incorporated outside of New Zealand;

“Security Standards” means each of:

- (a) any data protection or data security standards issued by Paymark, an Acquirer, Google or an Accountholder Bank; and
- (b) the PCI Standards;

“Services” means the services provided under this Agreement as selected by the Customer in the Merchant Portal from time to time;

“Settlement Period” means the 24 hour period commencing at 23.00.00 one calendar day and ending at 22.59.59 the following calendar day;

“Support Services” is defined in clause 4.2;

“Term” has the meaning given to it in clause 1.2;

“Third Party” is defined in clause 3.8; and

“Third Party Outage” means an outage or incident arising from a non-Paymark controlled network or system component including ISP server or component failures, telecommunications network failures and local area faults.

In this Agreement, unless the context indicates otherwise:

- (a) references to a "person" include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (b) the singular includes the plural and vice versa;
- (c) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (d) the term "includes" or "including" (or any similar expression) is deemed to be followed by the words "without limitation";
- (e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (f) references to "clauses" are to clauses in this Agreement;
- (g) references to any "party" are references to a party to this Agreement (including the successors and permitted assigns of that party); and
- (h) all monetary amounts are stated exclusive of tax (including any applicable goods and services tax, value added tax or similar).

1. TERM

1.1 Conditions

This Agreement and your access to the Services are conditional upon:

- (a) you establishing a merchant acquiring relationship (if you do not already have one); and
- (b) Paymark being satisfied (in its sole discretion) that all customer due diligence required under the AML Act together with any credit checks or other customer due diligence measures that Paymark requires have been successfully completed;

(together, the **“Conditions”** and each a **“Condition”**).

1.2 Term

This Agreement commences on the Go Live Date and will continue until it is terminated by either party in accordance with this Agreement (the **“Term”**).

1.3 Failure to satisfy Condition

If a Condition has not been satisfied within 90 days following your acceptance of this Agreement, Paymark will have the right to terminate this Agreement and, except as provided under clause 12.7, each party's rights and obligations under this Agreement cease immediately on termination.

2. LICENCE

2.1 Grant of licence to Click

Paymark grants to the Customer a personal, non-exclusive, non-transferable licence to use Click and the Click Documentation in the Customer's New Zealand operations for the term of this Agreement solely for the purposes of the Click Permitted Use. Except as and to the extent authorised under any applicable laws, any other use or dealings with Click, the Click Documentation or any software forming part of Click without the prior written consent of Paymark will be a material breach of this Agreement. Except to the extent specifically authorised under this Agreement, the Customer must not sub-license, transfer, assign, rent or sell any of Click or the Click Documentation or the right to use Click.

2.2 No unnecessary interference

The Customer must not use the Services in any manner which has the effect of causing unnecessary interference or disruption of the business operations of Paymark or which results in repetitive processing of transactions with no commercial purpose.

3. TERMS OF USE

3.1 Adequacy

The Customer must satisfy itself as to the adequacy, appropriateness and compatibility of the Services for its requirements. Without limiting clause 8, the Customer acknowledges that it has not relied on any statements or representations on the part of Paymark as to performance, functionality or suitability for the Customer's requirements, verbal or otherwise, except as expressly recorded in this Agreement.

3.2 Paymark Logos and privacy statement

The Customer agrees to comply with Paymark's Branding Guidelines as updated from time to time. The Paymark Logos must not be altered or used for any other purpose without the prior written consent of Paymark. The Customer must also display, in a readily visible position, a privacy statement that complies with the requirements of the Privacy Act. If the Customer wishes to modify the cascading style sheet ("CSS") code from Click's default CSS template to customise the payment page interface, Paymark reserves the right to refuse a CSS or insertion of a logo if we deem it inappropriate or if it does not comply with Paymark's Branding Guidelines.

3.3 Compliance

The Customer agrees to comply with the Security Standards. If the Customer is not compliant with the Security Standards, the Customer should not store, process or transmit any card number, card expiry date or cardholder details ("**Cardholder Data**") on the Customer's or a third party's non-compliant system. If the Customer is not compliant with the Security Standards, any storing, processing or transmitting of Cardholder Data by the Customer is at the Customer's sole risk and responsibility and the Customer indemnifies Paymark against all liabilities, losses or costs which Paymark may incur, directly or indirectly, by the Customer's non-compliance with the Security Standards.

3.4 No right to copy, alter or modify

The Customer must not, and must not permit any other person to, copy, reproduce, translate, adapt, vary, repair or modify all or any of Click, Online EFTPOS or the Click Documentation by any means or in any form without Paymark's prior written consent.

3.5 Permitted use

Except as and to the extent authorised under any applicable laws, the Customer may not:

- (a) use Click or the Click Documentation for any purpose other than the Click Permitted Use; or
- (b) use the software forming part of Click independently of the other components of Click unless Paymark has given its prior written consent; or
- (c) merge all or any part of Click with any other software unless Paymark has given its prior written consent.

3.6 **Termination of Agreement**

If this Agreement is terminated, the Customer's right to use Click, Online EFTPOS and the Click Documentation will automatically terminate and the Customer must immediately remove all copies of the software forming part of Click or Online EFTPOS from its system(s).

3.7 **Reverse engineering**

The Customer must not, and must not permit any other person to, reverse assemble or decompile the whole or any part of the software forming part of Click or Online EFTPOS.

3.8 **No Third Party use**

Except as expressly provided for in this Agreement, the Customer must not provide, or otherwise make available, Click, Online EFTPOS or any component of Click or Online EFTPOS in any form to any person (the "Third Party") without the prior written consent of Paymark. If Paymark grants such consent, the Customer must ensure that the Third Party complies with the provisions of clauses 2, 3, 8 and 13, paragraph 1 of the Online EFTPOS Addendum and the Google Pay Addendum (so far as those provisions relate to the Customer) as if the Third Party were a party to this Agreement. The Customer will be liable to Paymark for all acts or omissions of any Third Party in contravention of the provisions of clauses 2, 3, 8 and 13, paragraph 1 of the Online EFTPOS Addendum and the Google Pay Addendum.

3.9 **Right to suspend**

We may decline or suspend any Card Transaction or Online EFTPOS Transaction that we believe may violate this Agreement or if we believe it may expose you, Paymark or others to risks unacceptable to Paymark.

4. **SERVICES**

4.1 **Services**

Paymark will provide the Services to you in accordance with the terms of this Agreement. In no circumstance will Paymark be liable in respect of, or be responsible to resolve, a Third Party Outage.

4.2 **Support**

Paymark will provide the following support services (the "Support Services"):

- (a) Technology support in respect of technology queries regarding the use of Click, the Merchant Portal and, if applicable, Online EFTPOS, including assistance with a system down situation in which no operation can continue, the activation of maintenance releases and bug fixes and any other urgent request which does not fall into the business support category described in paragraph (b) below. Urgent user support may be requested by calling 0800 PAYMARK (0800 729 627) 24 hours a day, 365 days a year.
- (b) Business support in respect of general user queries regarding the use of Click, the Merchant Portal and, if applicable, Online EFTPOS, including support for user enquiries such as forgotten passwords and assistance with any failure in the transmission of Card Transactions and/or Online EFTPOS Transactions. Business support 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 a year.

Paymark will endeavour to acknowledge receipt of, and address, any requests for Support Services within (in each case) a reasonable timeframe.

4.3 **Other services**

If you require services additional to the Services, Paymark may, if it agrees to provide those services, charge you for those services on such terms and conditions as may be agreed between us.

4.4 **Alterations**

Paymark may, at its sole discretion, alter, upgrade, update or change Click, Online EFTPOS and/or the Click Server at any time during the term of this Agreement. Where Paymark believes that such alteration, upgrade, update or change will, or is likely to, materially affect your use of the Services, Paymark will endeavour to notify you of this in advance.

You acknowledge and agrees that, if you fail to promptly upgrade the integration of Click (as notified to you by Paymark in connection with this Agreement), you may be unable to process Card Transactions and/or Online EFTPOS Transactions and that:

- (a) Paymark will not be liable to you under this Agreement in respect of such inability; and
- (b) Paymark will be released from any obligation to supply the Support Services during any period in which you have failed to undertake any such upgrade.

4.5 **Merchant Portal**

You acknowledge and agree that Paymark may, at its sole discretion, determine what information, data, features and functionality is made available to you via the Merchant Portal. You agree to comply with any terms that Paymark may specify in relation to your use of the Merchant Portal. In the event of any inconsistency between the terms and conditions of this Agreement and those on the Merchant Portal, the terms and conditions of this Agreement will apply to the extent of that inconsistency. Paymark will supply you with user names and passwords to enable you to access the Merchant Portal. You must keep such user names and passwords secure and made known only to authorised users and will be responsible for all use of the Merchant Portal, both during and after the term of this Agreement, through use of your user names and passwords. If you breach any term of this Agreement or the terms of use of the Merchant Portal, Paymark may disable your user names and passwords.

5. **ONLINE EFTPOS AND GOOGLE PAY**

5.1 If the Services provided by Paymark under this Agreement include Online EFTPOS, the terms set out in the Online Eftpos Addendum apply in addition to the main body of this Agreement.

5.2 If you choose to offer Google Pay through Click to your customers then the terms set out in the Google Pay Addendum apply in addition to the main body of this Agreement.

6. **PAYMENT**

6.1 **Fees**

Unless otherwise agreed in writing between the Customer and Paymark, the Customer will pay Paymark the Fees for the Services as set out in the following link, <https://www.paymark.co.nz/assets/Click-Pricing.pdf>, as amended by Paymark in accordance with this clause 6.1. Paymark may review and amend the Fees provided that Paymark will give the Customer at least one month's prior written notice of any increase in any of the Fees payable by the Customer to Paymark. The Fees are based on transaction volumes as set out in the following link, <https://www.paymark.co.nz/assets/Click-Pricing.pdf>, and on Paymark's website and/or the Merchant Portal. Transactions that exceed those volume thresholds may attract an overage fee or require you to upgrade to a revised pricing arrangement.

6.2 **Payment of invoices**

Each invoice received by the Customer from Paymark will be payable, without set off or deduction, no later than the 20th day of the month following the date of invoice.

6.3 **Taxes**

The Customer is responsible for all taxes, duties and levies (including any applicable goods and services tax, value added tax or similar, but excluding Paymark's income tax) assessed in connection with its use of the Services and the provision of Services under this Agreement. Paymark is entitled to charge an additional amount equal to the charge of GST on top of the fees expressed in this Agreement.

6.4 **Default interest**

If the Customer fails to pay the Fees when due, the Customer must pay the Default Interest Rate on any overdue amounts under this Agreement, calculated daily from the due date until the actual day of payment. The Customer must also pay any costs (including collection costs and legal costs on a solicitor-client basis) reasonably incurred by Paymark in attempting to recover any such overdue amounts.

6.5 **Disputed invoices**

Where the Customer has reasonable grounds to dispute any amount invoiced by Paymark to the Customer under this Agreement (the "**Disputed Amount**"):

- (a) the Customer will notify Paymark of such dispute and the grounds for such dispute within five Business Days of receiving that invoice;
- (b) any undisputed portion of the invoice will remain payable on the due date for payment;
- (c) provided that the Customer has complied with clause 6.5(a), the Customer will not be required to pay the Disputed Amount until the parties' dispute has been resolved by agreement between the parties or in accordance with clause 15 or 17.6.

7. JOINT RESPONSIBILITIES

Each party:

- (a) represents that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement; and
- (b) agrees to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice.

8. CUSTOMER RESPONSIBILITIES

8.1 Responsibilities

The Customer:

- (a) will comply with Paymark's restrictions and instructions in relation to the use of the Services, including those set out in this Agreement and instructions in respect of any breach of the Security Standards;
- (b) will ensure that only authorised persons use Click and that Click is used only for the Click Permitted Use and as expressly authorised under this Agreement;
- (c) will accept all responsibility for reliance on and use of the Services by the Customer and its employees, contractors, and agents;
- (d) will obtain and maintain all equipment, software and services needed to enable it to receive and use the Services;
- (e) will integrate with the latest Click API in accordance with the Click release schedule as published by Paymark from time to time and comply with the latest available Click API Specification;
- (f) warrants that all of the Registration Details are accurate and correct, and that the Customer will promptly notify Paymark in writing if such information changes or ceases to be accurate in any way including, without limitation, the Customer's registered address;
- (g) will ensure that sufficient information is given to Paymark to enable Paymark to comply with its obligations under this Agreement and to deal with any queries in relation to the Services and will ensure that such information is timely, complete and accurate;
- (h) acknowledges that Paymark may from time to time request certain information from the Customer for customer due diligence purposes. The Customer will at all times comply with any reasonable requests of Paymark to provide such information;
- (i) will immediately notify Paymark upon becoming aware of any third party infringing Paymark's Intellectual Property rights in any manner;
- (j) will immediately notify Paymark upon becoming aware of any breach by the Customer or any third party of the Security Standards;
- (k) is responsible for all charges and costs associated with connecting to the Click Server to operate Click and with integrating with the Click API to operate Click;
- (l) is responsible for any Cardholder Data retained on its system and any legal or financial consequences of unauthorised use or disclosure of this information;
- (m) will comply with all relevant laws, including all statutory, regulatory and common laws, in its use of the Services, and carrying out its obligations under this Agreement; and
- (n) will only process refunds where it will have adequate funds in its Customer Account at the time of settlement of such refund.

8.2 Obligation to notify

You agree to promptly notify us:

- (a) if you change registered office;
- (b) if any step is taken to appoint a receiver, a trustee in bankruptcy, a liquidator, an administrator or similar of the whole or any part of your assets or business;
- (c) if you cease to carry on business or cease to be able to pay your debts as they become due;

- (d) if any step is taken by a mortgagee to take possession or dispose of the whole or any part of your assets, operations or business;
- (e) if any step is taken to enter into any arrangement between you and your creditors;
- (f) of any adverse change in your financial condition, any planned or anticipated liquidation or substantial change in the basic nature of your business;
- (g) of any transfer or sale of 25% or more of your assets or any change in your control or ownership or your ultimate parent entity; and
- (h) of any judgment against 25% or more of your assets not later than three days after you obtain knowledge of such judgment.

8.3 **Warranty**

The Customer warrants and represents to Paymark that it will not use Click or Online EFTPOS, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of Click or Online EFTPOS. The representation and warranty set out in this paragraph are ongoing throughout the term of this Agreement.

8.4 **Indemnity**

The Customer will indemnify Paymark against all liabilities, losses and costs which Paymark may incur, directly or indirectly, as a result of:

- (a) any breach by the Customer of this Agreement; or
- (b) any fraud or negligence of the Customer or its employees or agents in using, or any misuse or unauthorised act or act causing damage by any of them in relation to Click, Online EFTPOS, any Accountholder Account or Google Pay.

8.5 **Waiver of claim against Paymark suppliers**

The Customer agrees that it will not bring any claim against any supplier to Paymark in connection with or in respect of the Services provided by Paymark under this Agreement.

9. **PERFORMANCE BY PAYMARK**

9.1 **Standard of care**

Paymark will:

- (a) perform its obligations under this Agreement with reasonable care, skill and diligence;
- (b) comply with all relevant laws and co-operate with the Customer (and the Customer's service providers) in connection with the Services; and
- (c) provide the Customer with reasonable technical information necessary to enable the Customer to connect to the Click Server and integrate with the Click API.

9.2 **PCI Standards**

Paymark confirms that Paymark will, throughout the term of this Agreement, maintain the required certification in respect of the PCI Standards. Paymark acknowledges that it is responsible for the security of cardholder data Paymark possesses, stores, processes or transmits on behalf of the Customer, or to the extent that Paymark could impact the security of the Customer's cardholder data environment. Evidence of our PCI DSS compliance is available on request.

9.3 **Limitations on warranties**

To the fullest extent permitted by law, except as expressly set out in this Agreement, Paymark excludes 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. In particular, Paymark does not warrant that:

- (a) the Services will meet the Customer's requirements; or
- (b) the Services will be uninterrupted or error free, or that all errors will be corrected.

10. **INTELLECTUAL PROPERTY**

All Intellectual Property rights in Click and Online EFTPOS are exclusively owned by Paymark (or Paymark's licensors). The Customer acknowledges that there is no transfer of title, Intellectual Property rights, interest or

ownership of Click, Online EFTPOS or any part of Click or Online EFTPOS to the Customer under this Agreement.

11. LIMITATION OF LIABILITY

To the fullest extent permitted by applicable law:

- (a) subject to clauses 11(b) and 11(c), the Customer's sole and exclusive remedy for breach of any warranty or of any of Paymark's obligations under this Agreement is (at Paymark's option) the supply or re-supply of the Services or refund or waiver of fees for the relevant part of the Services which is the subject matter of, or directly related to, the breach;
- (b) in no event will Paymark's total liability to the Customer under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, exceed the amount paid by the Customer to Paymark under this Agreement in the six months immediately preceding the breach; and
- (c) in no event will Paymark be liable to the Customer whether in contract, tort (including negligence) or otherwise in respect of any:
 - (i) loss of data, lost profits, loss of revenue, loss of goodwill, loss of business or for any indirect, consequential or special loss, damage, cost or expense suffered or incurred by the Customer arising out of or in connection with this Agreement;
 - (ii) loss, damage, cost or expense suffered or incurred by the Customer, to the extent to which this results from any act or omission by the Customer;
 - (iii) any event or circumstance outside Paymark's direct control, including any Third Party Outage; or
 - (iv) any event described in clause 14.

12. TERMINATION

12.1 Termination for convenience

The Customer may terminate this Agreement at any time on not less than one month's notice to Paymark.

12.2 Termination for cause

Either party (the "**First Party**") may terminate this Agreement at any time and with immediate effect by written notice to the other party (the "**Second Party**") if the Second Party:

- (a) is in material breach of any of its obligations under this Agreement and that breach is not capable of remedy, or where it is capable of remedy, the Second Party, has failed to remedy the breach within 20 Business Days of receiving written notice from the First Party to remedy the breach; or
- (b) ceases or threatens to cease to carry on most or all of its business, makes or proposes to make any compromise, assignment, arrangement or composition with or for the benefit of any of its creditors, goes into liquidation, has a receiver, administrator, statutory manager or similar insolvency administrator appointed or is unable to pay its debts as they fall due or suffers any other similar insolvency event.

12.3 Change of control of Customer

Paymark may immediately terminate or suspend this Agreement by giving the Customer notice in writing of its intention to do so if effective management or control of the Customer is transferred to any person or company without Paymark's prior written approval.

12.4 Breach of licence terms

Any use of Click by the Customer for any purpose other than the Click Permitted Use or any breach by Customer of the provisions of clause 2, will be deemed to be a material breach of this Agreement which is not reasonably capable of remedy.

12.5 Withdrawal of Click, Online EFTPOS or Google Pay

Paymark may end the availability of any part of Click, Online EFTPOS or Google Pay if such service is no longer viable, is unable to be provided by Paymark or is to be withdrawn from general availability by Paymark. Where Paymark replaces a service with a new service that provides equivalent or better functionality at a similar price, the Customer will not unreasonably refuse to migrate to that service. If Paymark has withdrawn all Services in accordance with this clause 12.5, it will be entitled to terminate this Agreement on not less than one month's notice to the Customer.

12.6 **Right to suspend**

Paymark may, at any time without notice and with immediate effect, suspend the Customer's right to use and prevent the Customer from using the Services if:

- (a) the Customer fails to comply with any term of this Agreement (including for the avoidance of doubt, failure to pay an invoice in accordance with clause 6);
- (b) Paymark considers on reasonable grounds that serious circumstances exist and that the principles of prudential banking relevant to operation of Click so require;
- (c) Paymark believes a Card Transaction or Online EFTPOS Transaction may expose the Customer, Accountholders, Paymark, any Accountholder Bank, Google Pay or any third party to risks unacceptable to Paymark;
- (d) Paymark considers that Click is being, or is likely to be, used fraudulently or in a manner that will jeopardise the security, reputation or integrity of Click, Paymark's systems or any Accountholder Bank's systems;
- (e) if effective management or control of the Customer is transferred to any other person or entity without Paymark's prior written consent;
- (f) maintenance and/or technical upgrades are necessary;
- (g) where required pursuant to a Bank Agreement;
- (h) it is reasonably necessary for any other reason, including without limitation, for customer due diligence purposes as required pursuant to the AML Act; or.
- (i) the Customer fails to comply with any provision of the Google Pay Addendum or any requirements of Google in relation to its use of Google Pay.

12.7 **Consequences**

Termination of this Agreement will not affect the rights or obligations of the parties which have accrued prior to or accrue on termination or which by their nature are intended to survive termination (including clauses 6, 9.3, 10, 11, this 12.7, 13, 17.2 and 17.6, together with those clauses which are incidental to, and required in order to give effect to, those clauses).

13. **CONFIDENTIALITY AND PERSONAL INFORMATION**

13.1 **No unauthorised use or disclosure of Confidential Information**

Subject to paragraph 13.5, the Receiving Party agrees that it will not, except to the extent authorised by the Disclosing Party in writing, use the Confidential Information for any purpose other than in connection with the performance of this Agreement or disclose to any third party any such Confidential Information, provided that the foregoing restrictions on use and disclosure will not apply to such Confidential Information which:

- (a) at, prior or subsequent to the time of such disclosure is independently known to the Receiving Party;
- (b) was in the public domain, but not known to the Receiving Party, prior to the Commencement Date;
- (c) comes into the public domain subsequent to the Commencement Date, otherwise than as a result of a breach by the Receiving Party of its obligations hereunder;
- (d) is disclosed to the Receiving Party on a non-confidential basis by any third party having the lawful right to do so; or
- (e) is developed by the Receiving Party independently of the information disclosed by the Disclosing Party.

13.2 **Storage and security of Confidential Information**

The Receiving Party covenants and agrees in favour of the Disclosing Party that all of the Confidential Information provided to or obtained by the Receiving Party or of which the Receiving Party becomes aware as a result of the exercise of the rights granted to the Receiving Party under this Agreement:

- (a) will be kept strictly confidential;
- (b) will, having first received the Disclosing Party's authorisation in writing, before disclosing any of the Confidential Information to any third party, take all reasonable action (including if necessary, the execution of confidentiality agreements) to ensure that such third party will not use or disclose the Confidential Information except in the manner and to the extent permitted in this Agreement;
- (c) will not, without the prior written consent of the Disclosing Party, be photocopied or reproduced in any way;
- (d) will be used exclusively, and only to the extent necessary, for the purposes of performing or obtaining the benefit of this Agreement and not for any other purpose;

- (e) will be safely and securely stored when not in use; and
- (f) will remain the absolute and exclusive property of the Disclosing Party.

13.3 **Disclosure to third parties**

Where the Receiving Party is:

- (a) expressly permitted under this Agreement; or
- (b) authorised by the Disclosing Party in writing,

to disclose any Confidential Information to a third party, it will, before disclosing any of the Confidential Information to any third party, take all reasonable action (including if necessary, the execution of confidentiality agreements) to ensure that such third party will not use or disclose the Confidential Information except in the manner and to the extent permitted in this Agreement.

13.4 **Disclosure to employees**

Each Party will limit access to the Confidential Information to that Party's consultants, officers, employees, agents or advisers:

- (a) who are assigned to work pursuant to this Agreement; and
- (b) who reasonably require the Confidential Information for the purpose of this Agreement.

13.5 **Disclosure required by law**

If the Receiving Party is legally required to disclose any of the Disclosing Party's Confidential Information, the Receiving Party must (if permitted by law) advise the Disclosing Party before disclosing it. The Receiving Party must only disclose that part of the Disclosing Party's Confidential Information that the Receiving Party's legal advisers (including in-house legal counsel) reasonably believe is necessary to disclose by law.

13.6 **Paymark Intellectual Property**

Without limiting this clause, the Customer will treat information about Paymark's Intellectual Property as the Confidential Information of Paymark.

13.7 **Notification of unauthorised disclosure**

If either party becomes aware or suspects that any unauthorised person has obtained, attempted to obtain, or may obtain access to Confidential Information or has used or attempted to use such Confidential Information for purposes not authorised or permitted by the terms of this Agreement, that party will:

- (a) immediately notify the other party; and
- (b) fully cooperate with and assist the other party in dealing with the consequences of any such breach.

13.8 **Personal Information**

You acknowledge that any personal information concerning you, your personnel or any third party which is provided to Paymark at any time, whether in writing, by telephone, electronically or any other means, may be used by Paymark for the purposes of providing services to you. You acknowledge and accept Paymark's privacy policy for digital payments (including the services provided under this Agreement) available at <https://www.paymark.co.nz/privacy-policy/> as updated from time to time. You confirm and acknowledge that for the purposes of Paymark providing services to you Paymark may be required to collect personal information relating to you or your personnel from third parties including (but not limited to) credit and information bureaus and customer due diligence information collected from your bank for the purposes of the AML Act.

14. **FORCE MAJEURE**

Neither party (the "**Affected Party**") will be liable for any act, omission, failure or delay by it under this Agreement if that act, omission, failure or delay results directly from an event or circumstances beyond the reasonable control of the Affected Party, provided that:

- (a) whenever the Affected Party becomes aware that such a result has occurred or is likely to occur, the Affected Party will, as soon as practicable, notify the other party by written notice accordingly;
- (b) each party will continue to use its best endeavours to perform its obligations as required under this Agreement;
- (c) the Affected Party will resume full performance as soon as reasonably practicable;

- (d) neither party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause 14 or otherwise resulting from such act, omission, failure or delay; and
- (e) this clause 14 will not apply in respect of the Customer's obligation to pay any charges or fees payable under this Agreement.

15. DISPUTE RESOLUTION

- 15.1 If there is a dispute between the parties in relation to this Agreement, either party may give the other party notice of the nature and details of the dispute. Within 10 Business Days of receipt of the notice of the dispute, senior managers of the parties will meet to endeavour to resolve the dispute. If the parties fail to negotiate a resolution to a dispute within a reasonable time (at most 20 Business Days from formal notice of the dispute being given by one party to the other), either party may require that the dispute be submitted to mediation, such mediation to take place in Auckland, New Zealand. The mediation will be conducted under the Resolution Institute standard mediation agreement.
- 15.2 If the parties fail to agree on a mediator within five Business Days after the submission to mediation, one will be appointed by Paymark. In the event of any submission to mediation:
- (a) the mediator will not be acting as an expert or as an arbitrator;
 - (b) the mediator will determine the procedure and timetable for the mediation; and
 - (c) the parties will share equally the cost of the mediation.
- 15.3 All discussions in mediation will be without prejudice and will not be referred to in any later proceedings (if any).
- 15.4 Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with the dispute resolution process above.

16. AUDIT AND INFORMATION RIGHTS

You must allow the employees, contractors or agents of Paymark reasonable access to your premises during normal business hours to check your compliance with this Agreement or the Security Standards.

17. GENERAL

- 17.1 **Entire agreement**
This Agreement records the entire arrangement between the parties relating to all matters dealt with in this Agreement and will supersede all previous arrangements, whether written, oral or both, relating to such matters.
- 17.2 **Assignment**
You may not transfer or assign any of your liabilities or rights under this Agreement to any other person without our prior written consent (such consent not to be unreasonably withheld provided we are satisfied as to the suitability of the assignee and you meet our reasonable costs in relation to the assignment). This Agreement binds you and your respective heirs, representatives and permitted and approved successors or any permitted assigns. Paymark may assign its rights and obligations under this Agreement to any Related Company provided we give you at least one month's prior written notice
- 17.3 **Waiver**
No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party will in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.
- 17.4 **Amendment**
Paymark has the right to change or add to the terms of this Agreement at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Services with notice that Paymark in its sole discretion deems to be reasonable in the circumstances, including such notice on Paymark's website, the Merchant Portal or any other website maintained or owned by Paymark for the purposes of providing services in terms of this Agreement. Any use of the Services after Paymark's publication of any such changes will constitute your acceptance of this Agreement as modified.

17.5 **Set-off**

Paymark may at any time without notice to you set off any Liability owed by Paymark to you on any account against any Liability owed by you to Paymark under or in connection with this agreement. For the purpose of this paragraph, "**Liability**" means any debt or monetary liability, irrespective of whether the debt or monetary liability is future or present, actual or contingent.

17.6 **Governing law and jurisdiction**

This Agreement is governed by the laws of New Zealand and, subject to clause 15, the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

17.7 **Invalidity**

If any provision of this Agreement (or portion thereof) is held to be invalid or unenforceable under applicable law, then it will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect.

17.8 **Remedies**

The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

17.9 **Subcontracting**

Paymark may appoint subcontractors to perform any of its obligations under this Agreement. Paymark will, at all times, remain primarily liable to the Customer for all acts or omissions of any subcontractor appointed by Paymark.

17.10 **Notices**

All notices or other communications to be given under this Agreement must be in writing and will be deemed validly given if:

- (a) in the case of notices to the Customer, delivered by hand, registered mail or email to Customer at the respective addresses specified in the Merchant Portal; and
- (b) in the case of notices to Paymark, sent by email to Paymark at support@paymark.co.nz.

Receipt will be deemed upon delivery by hand, four Business Days after posting, or at the time at which the email is sent unless the sender subsequently receives an email delivery failure notification or similar (whichever is applicable).

Online EFTPOS Addendum

1 CUSTOMER RESPONSIBILITIES

1.1 You:

- (a) will operate an ecommerce application (whether web or mobile);
- (b) will deliver, perform or otherwise provide the goods and/or services purchased by the Accountholder using Online EFTPOS to the Accountholder;
- (c) are responsible for any Accountholder information retained on your system and any legal or financial consequences of unauthorised use or disclosure of this information;
- (d) will take all reasonable care to prevent wrongful use of an Accountholder Account for an Authorised Payment originating at your system; and
- (e) once a Payment Request has been initiated, you agree it is your obligation to determine the final status of the Online EFTPOS Transaction and to reconcile that status with amounts settled to your Customer Account in order to determine your obligation as to whether to deliver the applicable goods or services.

1.2 You will indemnify Paymark against all liabilities, losses and costs which Paymark may incur, directly or indirectly, as a result of any liability, loss or cost arising from a disputed Payment Request or Refund Request except to the extent that the liability, loss or cost was caused or contributed to by Paymark.

2 SETTLEMENT

2.1 You confirm and agree that Paymark may debit, or procure the debiting of, your Customer Account or any other of your accounts or otherwise recover from you any amount previously credited to you in connection with this Agreement:

- (a) either in error or as a consequence of you not observing the provisions of this Agreement;
- (b) where, in breach of this Agreement, you have permitted another person (whether a purchaser of your business or otherwise) to effect an Authorised Payment through Online EFTPOS acting in the capacity of a different merchant, and as a result funds have been credited to you in respect of that Authorised Payment,

so long as Paymark promptly advises you of the details of any corrective debitings.

2.2 In the event that the net activity in your account on a day is negative, you authorise your Customer Account to be debited by the negative balance using the Bulk Electronic Clearing System (**BECS**).

2.3 Usually, settlement will take place on the Business Day following the day of the Settlement Period in which the Authorised Payment is effected. Should an Authorised Payment be effected during a Settlement Period which ends on a Saturday, a Sunday and/or a public holiday, settlement will usually take place on the next Business Day.

2.4 Provided you have complied with all aspects of this Agreement, Paymark will ensure that the process necessary to deposit value for:

- (a) Authorised Payments to your Customer Account; and
- (b) Authorised Refunds to the Accountholder Account,

is initiated.

You acknowledge that, in respect of each Authorised Payment, the obligation to interchange and make settlement payment for Authorised Payments to your bank for your benefit and Authorised Refunds to the Accountholder's Account for the benefit of the Accountholder, is your bank's and the Accountholder Bank's obligation, in accordance with the rules of Payments NZ Limited. However, provided you have complied with all aspects of this Agreement, including payment of all Fees under clause 6, Paymark will guarantee payment to you in respect of each Authorised Payment.

2.5 It is your responsibility to:

- (a) check whether or not your Customer Account can accept debit and credit transfers through BECS;
- (b) ensure that your Customer Account has sufficient funds to allow for a debit transfer; and
- (c) check your bank statement account details and to verify that all amounts are correct.

2.6 If transfers are returned to Paymark's settlement bank by your bank, we may charge you a reasonable fee, in addition to any fees your bank may charge. If a debit transfer is returned to Paymark's settlement bank because your Customer Account has insufficient funds, it is your responsibility to fund the Customer Account so that we can re-process the debit transfer.

2.7 If you believe there has been an error in debiting your account, you should notify us at support@paymark.co.nz. You can also notify your own bank. If there has been an error, we'll arrange with your bank to adjust your account and we'll notify you of the amount of the adjustment. If we don't find an error, we'll respond to your query with evidence of the correctness of the transfer.

3 RETENTION OF RECORDS

3.1 You must maintain complete and accurate records of all Payment Requests and Refund Requests and preserve all Payment Request and Refund Request records generated by your system and other records (**Records**), relating to each Payment Request and Refund Request for not less than 12 months from the date on which that Payment Request or Refund Request took place.

3.2 If, within 120 calendar days of the date of any Payment Request or Refund Request initiated by you, the relevant Accountholder asks you for a receipt for the Payment Request or Refund Request (whether the Payment Request or Refund Request was accepted or declined), you must give the Accountholder the Payment Request or Refund Request receipt as soon as practicable after the request.

3.3 You must ensure that the Records for all Payment Requests and Refund Requests (whether the Payment Request or Refund Request is accepted or declined) contain the following minimum information:

- (a) your business name and location;
- (b) date and time of the Payment Request or Refund Request;
- (c) information that enables the Accountholder to identify the Payment Request or Refund Request;
- (d) type of Payment Request or Refund Request, e.g. 'purchase'; and
- (e) amount of the Payment Request or Refund Request.

4 CUSTOMER AND ACCOUNTHOLDER RELATIONSHIP

4.1 You agree to accurately communicate and not misrepresent the nature of any Online EFTPOS Transaction and the amount of charge in the accurate currency. You will provide customers with a meaningful way to contact you in a timely manner should they have queries or issues with an Online EFTPOS transaction. You agree to maintain a clear and fair return, refund, and cancellation policy which is easily accessible / visible to a customer during the Online EFTPOS Transaction.

- 4.2 If you are authorised by Paymark to process refunds of Online EFTPOS Transactions, you undertake to process any refund to the original bank account used by the Accountholder and in accordance with directions received from Paymark.
- 4.3 You shall not sell goods or services in a manner that is unfair or deceptive or fail to disclose material terms of purchase in advance of the transaction. You must ensure you use your best endeavours to honour the obligation you have with your customer to provide a quality product or service to your customer within industry acceptable timeframes and in accordance with best practice.
- 4.4 You will not make any warranty or representation whatsoever in relation to any goods or services supplied by you which may bind Paymark or any Accountholder Bank.
- 4.5 You must ensure that the communication to your customer of the intended use of any donations is accurate and not misleading.
- 4.6 Any dispute between you and an Accountholder about goods and services supplied will be entirely between you and that Accountholder. You indemnify Paymark and each Accountholder Bank against any loss, cost, expense, damage or liability (whether direct, indirect or consequential) suffered or incurred by Paymark or the applicable Accountholder Bank as a result of any dispute between you and your Accountholders, except to the extent that the loss, cost, expense or damage was caused or contributed to by Paymark. Paymark may be requested to provide confirmation of Authorised Payment information only. This paragraph 4.6 is intended to confer a benefit on each Accountholder Bank for the purposes of sections 12 and 13 of the Contract and Commercial Law Act 2017.
- 4.7 You represent and warrant to us that:
- (a) you are in trade selling goods or services of a nature that are ordinarily acquired for personal, domestic, or household use or consumption;
 - (b) any sales transaction submitted by you will represent a bona fide sale;
 - (c) any sales transaction submitted by you will accurately describe the goods and/or services sold and delivered to a purchaser;
 - (d) you will not accept a transaction for providing cash to a customer in lieu of, or in addition to, providing goods and services;
 - (d) you will fulfil all of your obligations to each customer for which you submit a transaction and will resolve any consumer dispute or complaint directly with your customer;
 - (e) you will only process Online EFTPOS Transactions for goods and/or services for which you are the seller or service provider unless you are an online marketplace, trading platform or broker service, in which case you will make it clear to a customer initiating an Online EFTPOS payment that you are an agent taking payment on behalf of the seller and/or service provider; and
 - (f) except in the ordinary course of business, no sales transaction submitted by you through Online EFTPOS will represent a sale to any principal, partner, proprietor or owner of your entity.

The representations and warranties set out in this paragraph are ongoing throughout the term of this Agreement.

5 PAYMARK AND ACCOUNTHOLDER BANK RELATIONSHIP

- 5.1 You acknowledge that:

- (a) Paymark maintains contractual relationships with Accountholder Banks that participate in Online EFTPOS for the purposes of providing Online EFTPOS to customers; and
 - (b) the availability of Online EFTPOS relies on the participation of Accountholder Banks and is not available for customers of all banks.
- 5.2 Paymark will maintain a list of current Accountholder Banks participating in Online EFTPOS and publish the current list on its website. If an Accountholder Bank decides to stop offering Online EFTPOS to its customers, Paymark will notify you as soon as reasonably practicable that those customers will no longer be able to make payments via Online EFTPOS.
- 5.3 You agree and acknowledge that the availability of Online EFTPOS is subject to Paymark agreeing in writing with each Accountholder Bank the terms of Online EFTPOS insofar as it relates to that Accountholder Bank (the “**Bank Agreements**”). You understand that the terms of the Bank Agreements may require Paymark to make amendments to this Agreement by posting a revised version on our website and/or Merchant Portal or suspend access to the Services pursuant to clause 12.6.
- 5.4 If there are no Accountholder Banks offering Online EFTPOS, Paymark will be entitled to withdraw the Online EFTPOS service in accordance with clause 12.5.

6 PUBLICATION

- 6.1 You will not use our name or logo or the name or logo of any Accountholder Bank in any manner other than as expressly permitted by this Agreement. You will not use any advertising or promotional material in relation to Online EFTPOS except as authorised by Paymark and, if applicable, the relevant Accountholder Bank. You will only use advertising or promotional material to show the Online EFTPOS logo and the Accountholder Banks which allow customers to authorise payments using Online EFTPOS in accordance with the marketing and brand guidelines as specified in Paymark’s Branding Guidelines. You will not use the Paymark, Online EFTPOS or Accountholder Bank marks or logos in such a way as to create the impression that your goods or services or donation request is sponsored or in any way affiliated to Paymark or any Accountholder Bank.
- 6.2 You agree that Paymark and any Accountholder Bank may use your business name, display your mark or logo and refer to you as a customer of Online EFTPOS when promoting Online EFTPOS.

7 AUTOPAY FUNCTIONALITY

If you are approved by Paymark to enable Online EFTPOS Transactions using Autopay and wish to offer that functionality to Accountholders, you agree:

- (a) that prior to offering Autopay to Accountholders, you will complete the Autopay Prerequisite Items and will continue to comply with the Autopay Prerequisite Items at all times that Autopay is enabled on your website;
- (b) you will provide Paymark with all information requested at any time in order to verify that the Autopay Prerequisite Items are satisfied; and
- (c) you will comply with any other requirements of Paymark in relation to the offering of Autopay as notified to you by Paymark (including by posting an update on our website and/or the Merchant Portal) from time to time.

Google Pay Addendum

By selecting Google Pay as a method of payment through Click for Card Transactions you agree to be bound by Google's terms of service (as may be amended from time to time) at:

<https://payments.developers.google.com/terms/sellertos> (the "**Google Pay Terms**").

1. The Google Pay Terms and any documentation applicable to Google Pay and the Google Pay APIs are subject to change at any time, and it is your responsibility to periodically review the Google Pay Terms and documentation in order to ensure that you are aware of, and comply with, the applicable requirements.
2. You will be responsible for reviewing, understanding and accepting the Google Pay Terms relating to Google Pay or the Google Pay APIs.
3. Your access to and use of Google Pay is based on your own evaluation and at your own risk.
4. Paymark disclaims all responsibility and liability for your use of Google Pay or the Google Pay APIs that are in breach of the Google Pay Terms or this Agreement. In addition to clause 8.4 of the main body of this Agreement, you will indemnify Paymark and its affiliates, directors, officers, employees against all liabilities, damages, losses, costs, fees (including legal fees) and any expenses relating to any allegation relating to your misuse of Google Pay, the Google Pay APIs or any violation or breach of the Google Pay Terms.