

CARDLINK
ACCOUNT HOLDER AND CARD USER TERMS AND CONDITIONS

IMPORTANT: These Terms and Conditions apply to an Account Holder's and Card User's use of CardSmart, CardSmart +Electric, and CardSmart Flex (together "Cardsmart"). The Account Holder must read, and procure that each Card User reads, these Terms and Conditions carefully. By accepting or using Cards issued by Cardlink, the Account Holder and each Card User agree to be bound by these Terms and Conditions.

1 DEFINITIONS

"Account" means the account opened by Cardlink in the name of the Account Holder under the Agreement in respect of which transactions between Cardlink and a Card User are debited and payments made by the Account Holder to Cardlink are credited.

"Account Holder" means a person, company, corporation, firm or association who, by applying for a Card, has entered into the Agreement.

"Agreement" means:

- (a) the Application Form;
- (b) these Terms and Conditions;
- (c) the Personal Guarantee(s) (if any);
- (d) the direct debit request service agreement; and
- (e) the Special Conditions (if any),

each as may be amended from time to time in accordance with their terms.

"Application Form" means either:

- (a) an application for an Account submitted to Cardlink by the Account Holder; or
- (b) a request by the Account Holder (however expressed, whether verbally, in writing, or by electronic means) for issuing a Card.

"Authorised Supplies" means fuel and vehicle-related goods and services (including but not limited to petrol, diesel, lead replacement petrol, engine oil, electricity and other vehicle-related goods and services that Cardlink may determine from time to time).

"Business Day" means a day other than a Saturday or Sunday on which trading banks are open for normal business in Auckland.

"Card" or **"Cards"** means any Account identification item (including, without limitation, cards, digital tokens, radio frequency identifications, or other payment devices) made available by Cardlink to the Account Holder for use by Card Users from time to time.

"Cardlink" or **"CardSmart"** means Cardlink Systems Limited (NZCN 483981), its successors or assignees or related companies.

"CardSmart", is a brand name of, and may be used interchangeably in this Agreement with, Cardlink.

"Card Loss Notice Date" has the meaning set out in clause 6.2.

"Card User" means each person authorised by the Account Holder to hold and use a Card.

"Charge" means the standard fees and charges for Cardlink's services available at <https://www.cardsmart.co.nz/fee-schedule/> and any other charge, including but not limited to:

- (a) any sum from time to time determined and charged by Cardlink in connection with an Account; and/or
- (b) any sum from time to time determined and charged by Cardlink in connection with a Card; and/or
- (c) any amount incurred by an Account Holder or a Card User in respect of the purchase of Authorised Supplies using a Card, determined by application of the price payable at the point of supply of the Authorised Supplies including the Supply Price (subject to any discount that Cardlink may grant from time to time).

"Charge Period" means the period determined by Cardlink and notified to the Account Holder, in relation to which reports and Statements of Charges for the Account Holder or each Card User are provided by Cardlink.

"Claim" means a demand, action or proceeding of any nature, whether actual or threatened.

"Consumer" means an Account Holder that is a "consumer" for the purposes of the *Consumer Guarantees Act 1993* and/or the *Fair Trading Act 1986*.

"Credit Limit" means any limit imposed by Cardlink from time to time on the value of Authorised Supplies which may be purchased using the Account or any Card during a Charge Period.

"Discount" means any discount or rebate, however described, offered, or provided by Cardlink at its sole discretion to the Account Holder in connection with any Charge.

"Due Amount" has the meaning set out in clause 15.

"Due Date" has the meaning set out in clause 15.

"GST" means goods and services tax charged under the GST Act or any replacement or other relevant legislation and regulations.

"GST Act" has the meaning set out in clause 32(a).

"Loss" means any liability, cost, expense, loss, damage, or outgoing. In relation to a Claim, Loss includes amounts payable on the Claim and (whether or not the Claim is successful) legal and other professional costs and disbursements on a full indemnity basis.

"PAYG Cards" or **"Pay as you go"** mean pay-as-you-go versions of the Cards, including but not limited to the CardSmart Flex card.

"Personal Guarantee" means the guarantee (or guarantees) provided in favour of Cardlink in respect of the obligations of the Account Holder under these Terms and Conditions or the Agreement.

"Personal Identification Number" means any unique number or code assigned to a Card for security purposes.



“**Personal Information**” means personal information within the meaning of the *Privacy Act 2020*, including any successor or functionally equivalent replacement of such law.

“**Privacy Policy**” means the Cardlink privacy policy, being the Corpay Australasia Privacy Policy (applicable to both Australia and New Zealand) available on the Cardlink website (www.cardlink.co.nz/privacy-policy/).

“**Sales Receipt**” means a receipt in the form provided by Cardlink or a Supplier following the use of a Card.

“**Small Business**” means an Account Holder who is a party to the Agreement, where the Agreement is a “small trade contract” as defined by section 26C of the *Fair Trading Act 1986*.

“**Special Conditions**” means any terms and conditions other than those specified in these Terms and Conditions that Cardlink and the Account Holder have agreed, in writing, to form part of the Agreement.

“**Statement**” means the consolidated tax invoice produced by Cardlink for each Charge Period that details all Charges owing to Cardlink by the Account Holder.

“**Supplier**” means a person, company, corporation, firm, or association appointed by Cardlink to deliver, provide or sell Authorised Supplies to Card Users on behalf of Cardlink.

“**Supply Price**” means a price for the purchase of the Authorised Supplies as either:

- (a) agreed between Cardlink and the Account Holder;
- (b) set or amended by Cardlink (from time to time); or
- (c) notified by Cardlink to an Account Holder (from time to time).

“**Terms and Conditions**” means these terms and conditions.

“**Vehicle**” means either:

- (a) a vehicle or piece of equipment, the particulars of which have been notified to Cardlink by the Account Holder, associated with a particular Card or by a Card User; or
- (b) a vehicle or piece of equipment hired by a Card User using a Card.

“**Withdrawn Card Receipt Date**” has the meaning set out in clause 7.3.

2 ACCEPTANCE OF THESE TERMS AND CONDITIONS (AND THE AGREEMENT)

2.1 The Agreement is a contract between the Account Holder and Cardlink.

2.2 The Account Holder acknowledges that:

- (a) each Card is issued to the Account Holder;
- (b) each Card User acts as the Account Holder’s agent when using a Card;
- (c) the Account Holder is responsible for ensuring that any person the Account Holder authorises to use a Card is aware of their obligations as the Account Holder’s agent under these Terms and Conditions and the acknowledgements given by the Account Holder on their behalf;
- (d) Cardlink does not make any commitments about the availability of or supply of Authorised Supplies; and
- (e) the acceptance of the Agreement including these Terms and Conditions during the application process or the first use of the Card (whichever is earliest),

confirms an Account Holder’s acceptance of these Terms and Conditions.

3 VARIATIONS TO THESE TERMS AND CONDITIONS (AND THE AGREEMENT)

3.1 Subject to clauses 3.2, 3.3, and 3.5, Cardlink reserves the right to, unless otherwise agreed or unless otherwise required by law and for the purposes of Cardlink’s legitimate business interests only, vary:

- (a) any Charges at any time, and
- (b) any Discounts at any time, and
- (c) any Special Conditions at any time, and
- (d) vary the Agreement at any time for one or more of the following reasons:
 - (i) to comply with any change or anticipated change in any relevant law, industry standard, guidance or general industry practice;
 - (ii) to reflect any decision of a court, ombudsman or regulator;
 - (iii) to respond to changes in the cost of providing the Account and Card;
 - (iv) to discontinue a product in which case Cardlink may change the terms of the Account Holder’s product to reflect a different product with similar features to the discontinued product;
 - (v) to introduce or modify a new product, feature, or service;
 - (vi) to make these Terms and Conditions clearer or to add features; or
 - (vii) to protect its legitimate business interests,

where Cardlink will:

- (e) publish the new or amended terms and conditions on its website (www.cardlink.co.nz/fee-schedule/ or www.cardsmart.co.nz/fee-schedule/); or
- (f) if Cardlink determines that any of the changes are unfavourable to the Account Holder, then Cardlink will give at least five (5) Business Days’ notice in writing (including by electronic means) to the Account Holder, which shall be deemed to be notice to every Card User, or such longer period as required by law, or
- (g) where the above applies to an Account Holder that is registered with Cardlink as a Consumer or Small Business, and the change is adverse to the Account Holder, Cardlink will notify the Account Holder at least 20 (twenty) Business Days before the effective date of the change, which shall be deemed to be notice to every Card User.

3.2 Subject to clauses 3.3 and 3.5, Cardlink also reserves the right to:

- (a) vary any Charges;
 - (b) apply new Charges; or
 - (c) vary any Discounts,
- charged or provided to the Account Holder following:
- (d) a breach of the Agreement by the Account Holder (and if the Account Holder is a Consumer or Small Business, that breach by its nature is material or is likely to have a materially adverse impact on, either, the Account Holder’s ability to meet their financial obligations, or Cardlink’s security risk (or Cardlink’s ability to assess



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either) and the Account Holder has not remedied that breach within the relevant 20 (twenty) Business Days (or it is not capable of being remedied); or

- (e) a change to the Account Holder's relative credit risk level (as defined by Cardlink's credit bureau) such that the Account Holder's relative credit risk level becomes less favourable,

where Cardlink will:

- (f) give at least five (5) Business Days' notice in writing (including by electronic means) to the Account Holder, which shall be deemed to be notice to every Card User, or such longer period as required by law, or
- (g) where the above applies to an Account Holder that is registered with Cardlink as a Consumer or Small Business, Cardlink will notify the Account Holder at least 20 (twenty) Business Days before the effective date of the change.

- 3.3 Use of a Card by the Account Holder after the expiry of the relevant notice period will be deemed to be acceptance of the new or amended Agreement. The Account Holder (and all Card Users) are bound by any such amendment unless the Account Holder elects to terminate the Agreement.
- 3.4 Cardlink is not obliged to give the Account Holder advance notice if an immediate change to these Terms and Conditions is deemed necessary for the security of Cardlink's systems or individual accounts.
- 3.5 If the Account Holder is unhappy with any adverse change Cardlink has made to these Terms and Conditions or any Charges or Discount, the Account Holder can close their Account before the change takes effect without penalty.

4 AUTHORISED CARD USERS

- 4.1 If Cardlink accepts an Application Form, Cardlink will:
 - (a) open an Account in the Account Holder's name; and
 - (b) (at Cardlink's reasonable discretion), issue the number of Card(s) the Account Holder applied for.
- 4.2 Cardlink may (at Cardlink's reasonable discretion), issue additional Card(s) requested by the Account Holder from time to time.
- 4.3 The Account Holder shall provide Cardlink with:
 - (a) the details for each person authorised to administer to the Account Holder's Account;
 - (b) the details for each person authorised by the Account Holder to use a Card;
 - (c) if authorised only for a specific Vehicle, the registration details of that Vehicle; and
 - (d) the details for any other particulars required by Cardlink.

5 COMPLIANCE BY CARD USERS

- 5.1 The Account Holder shall:
 - (a) issue a Card to each Card User; and
 - (b) ensure that it and each Card User comply with:
 - (i) the Agreement;
 - (ii) these Terms and Conditions; and
 - (iii) any other instructions on the use of a Card as may be given by Cardlink to the Account Holder

from time to time, including keeping any Personal Identification Number secure and not exceeding any Credit Limit.

- 5.2 The Account Holder is responsible for all issued Cards and must monitor the use of the Cards by each Card User and ensure each Card is stored in a safe place.

6 LOSS, THEFT, OR DESTRUCTION OF A CARD

- 6.1 If a Card is lost, stolen, or destroyed or otherwise ceases to be in the possession of the Account Holder or a Card User, the Account Holder shall:
 - (a) promptly cancel the Card; and
 - (b) notify Cardlink by the fastest available means of communication, giving all available information as to the circumstances of such loss or theft; and
 - (c) confirm all such information to Cardlink in writing as soon as practicable; and
 - (d) If applicable, take all reasonable steps that Cardlink may require to assist in the recovery of the lost or stolen Card.
- 6.2 The Account Holder:
 - (a) may (in Cardlink's sole discretion) be liable for all Charges arising prior to receipt of the initial notification to Cardlink in accordance with clause 6.1(b) (the "**Card Loss Notice Date**"), including any purchases in excess of the Credit Limit; but
 - (b) shall not be liable for any Charges arising after the Card Loss Notice Date; and
 - (c) agrees that a Card will no longer be valid (and will be cancelled) from the Card Loss Notice Date. A new Card, in Cardlink's sole discretion, may be issued.

7 DE-AUTHORISATION OF A CARD OR A VEHICLE

- 7.1 If a Card User ceases, for any reason, to be authorised by the Account Holder to use a Card, the Account Holder shall:
 - (a) promptly cancel the Card;
 - (b) notify Cardlink; and
 - (c) if possible, return or destroy the applicable Card.
- 7.2 If any Vehicle ceases to be authorised by the Account Holder, the Account Holder shall:
 - (a) promptly de-authorise the Vehicle; and
 - (b) notify Cardlink.
- 7.3 The Account Holder:
 - (a) may (in Cardlink's sole discretion) be liable for all Charges arising prior to Cardlink being notified under clauses 7.1(b) or 7.2(b) (the "**Withdrawn Card Receipt Date**"), including any purchases in excess of the Credit Limit; but
 - (b) shall not be liable for any Charges arising after the Withdrawn Card Receipt Date; and
 - (c) agrees that a Card will no longer be valid (and will be cancelled) from the Withdrawn Card Receipt Date. A new Card, in Cardlink's sole discretion, may be issued.

8 INDEMNITIES FROM THE ACCOUNT HOLDER



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The Account Holder shall indemnify Cardlink against, and will immediately pay to Cardlink on demand without set-off or counter-claim (except to the extent the Account Holder has a right of set-off granted by law which Cardlink cannot exclude by agreement), any Loss or Claim suffered or incurred by Cardlink arising from:

- (a) the loss, theft or fraudulent or other misuse of a Card by a Card User or any other person, which occurs prior to the Card Loss Notice Date or Withdrawn Card Receipt Date;
- (b) a breach of contract, including a breach of these Terms and Conditions or the Agreement;
- (c) tort, including negligence, breach of statutory duty, or breach of equitable duty;
- (d) Cardlink (directly or indirectly) having agreed to supply or not supply a Card to the Account Holder, including but not limited to legal and other professional costs and disbursements on a full indemnity basis of assessing the Account Holder's credit application;
- (e) recovering (or attempting to recover) any amounts due to Cardlink under these Terms and Conditions or the Agreement from the Account Holder, a Card User, a party to a Personal Guarantee or any other person,
- (f) the supply or non-supply of Authorised Supplies;
- (g) damage caused to the property of a Supplier or third party by a Card User or the Account Holder in relation (directly or indirectly) to the Authorised Supplies,

except to the extent that the Loss or Claim is caused by Cardlink's fraud, negligence or wilful misconduct (including that of Cardlink's officers, employees, contractors or agents), where:

- (h) Cardlink need not make any payment before enforcing any right of indemnity under this clause 8; and
- (i) this clause 8 is for the benefit of and intended to be enforceable by Cardlink.

9 RETURN OF A CARD

Each Card is at all times the property of Cardlink and shall be returned or destroyed by the Account Holder promptly upon the request of Cardlink at any time, or for any reason, without an obligation on Cardlink to reissue another Card.

10 CANCELLATION OR SUSPENSION OF A CARD OR AN ACCOUNT

10.1 Cardlink may cancel or suspend any Card or Account or restrict the use of any Card or Account to the Account Holder where:

- (a) Cardlink has reason to suspect an existing or anticipated breach of these Terms and Conditions or the Agreement, or for any other reason; and
- (b) if the Account Holder is a Consumer or Small Business:
 - (i) such breach is, in Cardlink's reasonable discretion, likely to have an impact on the Account Holder's ability to continue to perform its obligations under the Agreement including the ability to pay its debts; and
 - (ii) Cardlink has given reasonable notice to the Account Holder, unless Cardlink needs to manage an immediate and material risk in which case no notice is required to be given.

10.2 Cardlink is entitled to disclose to any Supplier or any other person (as permitted by law) the reason for the suspension, restriction, or invalidity of any Card or Account. To the maximum extent permitted by law, the Account Holder waives (and, if required by Cardlink, shall procure that each Card User shall waive) all rights of action against Cardlink in relation to the disclosure of such information, unless such disclosure is given unlawfully, fraudulently, or negligently.

10.3 Cardlink may, at any time, disclose to any third party information concerning a Card or Account as may be necessary for the operation of a Card or Account (or both)

11 PURCHASING AUTHORISED SUPPLIES USING A CARD

11.1 The Account Holder shall procure that whenever using a Card each Card User:

- (a) verifies the Authorised Supplies being purchased using a Card (though a Sales Receipt, by entering a Personal Identification Number, or otherwise);
- (b) verifies all statements, amounts, and other information related to the Authorised Supplies are true and correct in all respects;
- (c) verifies the purchase reflects a genuine commercial sale and purchase transaction between Cardlink and the applicable Card User;
- (d) confirms there are no collateral contracts or other representations in existence affecting the provision of the Authorised Supplies to the applicable Card User;
- (e) is satisfied that the transaction complies in all respects with the requirements of any law or regulation; and
- (f) is satisfied that the Card is valid, and is in good physical working condition.

11.2 To the extent permitted by law and subject to clause 21, Cardlink shall not be liable to the Account Holder for any Loss arising directly or indirectly from:

- (a) a purchase made by an authorised Card User;
- (b) a failure by a Supplier to accept a Card; or
- (c) any act or omission by a Supplier (including a failure by a Supplier to charge the normal cash price for Authorised Supplies); or
- (d) any defect or deficiency in any Authorised Supplies acquired using a Card,

except to the extent that the Loss is caused by Cardlink's fraud, negligence or wilful misconduct (including that of Cardlink's officers, employees, contractors or agents).

12 COLLECTION AND HANDLING OF PERSONAL INFORMATION

The Account Holder represents and warrants that it has ensured (or will ensure) that:

- (a) each Card User; and
- (b) any person whose Personal Information the Account Holder discloses or makes accessible to Cardlink,

agrees to the collection and handling of their Personal Information by Cardlink as set out in Cardlink's Privacy Policy.

13 OWNERSHIP OF AUTHORISED SUPPLIES BEFORE AND AFTER PAYMENT TO CARDLINK



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- 13.1 Cardlink acknowledges that the Account Holder shall, subject to clauses 13.2 and 13.3, have the property in the Authorised Supplies and shall be entitled to the benefit of all terms and warranties relating to the Authorised Supplies.
- 13.2 Until the Account Holder has paid for any Authorised Supplies (and whether or not the due date for payment has passed), in addition to any rights Cardlink may have, at its reasonable discretion, Cardlink is authorised by the Account Holder and Card User without notice to the Account Holder, to enter the Account Holder's premises (or any premises under the control of the Account Holder or as an agent of the Account Holder in which Authorised Supplies are stored) and use reasonable force to take possession of all the Authorised Supplies without liability for any trespass, negligence, conversion, or payment of any compensation to the Account Holder whatsoever, except to the extent that the liability is caused by Cardlink's fraud, negligence or wilful misconduct (including that of Cardlink's officers, employees, contractors or agents).
- 13.3 On retaking possession of Authorised Supplies, Cardlink may elect to:
- refund to the Account Holder any part payment that may have been made and to credit the Account Holder's account with the value of the Authorised Supplies less any charge for recovery of the Authorised Supplies; and/or
 - resell the Authorised Supplies.
- 14 CARDLINK'S LIABILITY**
- 14.1 To the maximum extent permitted by law, Cardlink shall not be liable to the Account Holder or a Card User for:
- the unavailability of, or inability to access or use, or any defects in, any Authorised Supplies;
 - any Loss or Claim, however caused, suffered, or incurred by the Account Holder or a Card User, in connection with any defects in any Authorised Supplies purchased or any Authorised Supplies improperly made or supplied by a Supplier to a Card User or for any mechanical failure of a Vehicle resulting from such defects;
 - any action to cease supply;
 - a Card User being unable to access or use any Authorised Supplies as a result of a Credit Limit being reached or exceeded;
 - any error in, omission from, or delay in the provision of any information (including data) provided, or made available, to the Account Holder or Card User in connection with the Authorised Supplies; or
 - any other Loss or Claim whatsoever in connection with the purchase or use of the Authorised Supplies by the Account Holder or a Card User,
- whether directly or indirectly caused and whether suffered by the Account Holder, a Card User or any third party, except to the extent that the liability is caused by Cardlink's fraud, negligence or wilful misconduct (including that of Cardlink's officers, employees, contractors or agents).
- 14.2 Notwithstanding any other provision of the Agreement:
- Cardlink's total liability to the Account Holder or any Card User under the Agreement (in aggregate, tort (including negligence), under statute, or otherwise) shall be limited to:
 - the cost of having the services supplied again, determined by Cardlink acting reasonably; or
 - a sum which is equivalent to the aggregate Charges paid by the Account Holder to Cardlink in the three (3) months before the incident giving rise to the liability occurred; and
 - Cardlink shall not be liable to the Account Holder or any Card User for any loss of profit, loss of opportunity, indirect loss, or consequential loss resulting from any breach by Cardlink of its obligations under the Agreement, except to the extent that the liability is caused by Cardlink's fraud, negligence or wilful misconduct (including that of Cardlink's officers, employees, contractors or agents).
- 14.3 Without limiting any other provision of the Agreement and subject to clause 21, any term, condition, warranty, statutory or otherwise that is not expressly written in the Agreement is excluded (unless the law provides that it may not be excluded)
- 15 CARDLINK CHARGES**
- 15.1 Immediately following the conclusion of each Charge Period, the Account Holder will be issued a Statement, which will set out all the Charges and activities for that Charge Period and the total amount owing to Cardlink (the "**Due Amount**").
- 15.2 Subject to clause 15.3, all Charges, including Charges from all Card Users, are due and payable to Cardlink by the date specified on the Statement (the "**Due Date**").
- 15.3 In relation to Authorised Supplies purchased using PAYG Cards, Charges for Authorised Supplies are due and payable to Cardlink immediately following the use of that Card to purchase Authorised Supplies which shall, notwithstanding clause 15.2, be the Due Date in relation to such Charges.
- 15.4 In respect of each Charge Period, the provision of Authorised Supplies and the provision of the Card and other services by Cardlink as set out in the Agreement during that Charge Period shall constitute a separate contract between Cardlink and the Account Holder for that Charge Period.
- 16 PAYMENTS BY THE ACCOUNT HOLDER TO CARDLINK**
- 16.1 The Account Holder shall make payment for the Due Amount either by:
- authorising its bankers to pay by a direct debit initiated by Cardlink;
 - a debit card or credit card, if authorised by Cardlink;
 - direct credit, if authorised by Cardlink, or
 - any other means as approved by Cardlink, excluding cash or cheque.
- 16.2 Where payment of the Due Amount is not made in full by the Account Holder on the relevant Due Date, any monies received by Cardlink shall be applied to the Due Amount in such a way as Cardlink shall determine, in its reasonable discretion.
- 16.3 Payment in full of a Due Amount must reach Cardlink no later than the Due Date. Any payment made will not be deemed to have been received by Cardlink until the date on which such payment is actually credited to Cardlink's bank account.
- 16.4 If a payment is overdue or dishonoured, Cardlink will charge the Account Holder any applicable Charges, including but not limited to:
- interest and overdue and/or dishonour fees on the overdue or dishonoured Due Amount, as set out on Cardlink's website (www.cardlink.co.nz/fee-schedule/) or www.cardsmart.co.nz/fee-schedule/); and/or



- (b) interest and overdue and/or dishonour fees on any new amounts owing to Cardlink since the Due Date;
- (c) any other Charges (notified to the Account Holder by Cardlink from time to time) to compensate Cardlink for additional reasonable administrative, legal or borrowing costs in dealing with an overdue or dishonoured payment, and/or
- (d) removal of any, and all existing Discounts provided to the Account during the applicable Charge Period.

but without prejudice to and unrelated to the right of Cardlink to charge interest or any other rights and remedies Cardlink may have. The Account Holder's liability to pay such Charges will be in addition to the Account Holder's liability to pay Due Amounts. The right to require payment of interest is without prejudice to any other rights the Cardlink may have against the Account Holder at law or in equity.

- 16.5 A failure to pay any amount under the Agreement is not remedied until both the amount unpaid and any Charges payable have been paid in full.
- 16.6 Cardlink may, acting reasonably, agree (on request) to accept payments in respect of any Charges using an arranged instalment plan. Any such plan must:
- (a) be in writing (including by email);
 - (b) approved by both the Account Holder and Cardlink; and
 - (c) confirm that the Account Holder may be required to pay Cardlink a finance charge (as determined by Cardlink), from the time the Charges were incurred until the final payment relating to those Charges has been made.

17 UNARRANGED TEMPORARY CREDIT EXTENSIONS

If the Account Holder allows either the Account's Credit Limit to be exceeded or a Card User to continue to use a Card where the Credit Limit has been reached or exceeded:

- (a) Cardlink will deem such use to be a request for an unarranged temporary credit extension where such a request will be considered at the reasonable discretion of Cardlink, taking into consideration the Account Holder's account structure, payment history, and any credit information if available; and
- (b) the Account Holder may incur additional Charges (as set out on Cardlink's website (www.cardlink.co.nz/fee-schedule/ or www.cardsmart.co.nz/fee-schedule/); for exceeding their Credit Limit; and
- (c) Cardlink may revoke existing Discounts provided to the Account Holder during the applicable Charge Period.

18 CREDIT CHECKS AND REPORTING

- 18.1 The Account Holder consents to Cardlink, in accordance with the law and its Privacy Policy:
- (a) performing a credit check on the Account Holder
 - (b) performing a credit check on any of the Account Holder's guarantors;
 - (c) disclosing the Account Holder's or any of its guarantor's personal and credit information to credit reporting bodies and other credit providers,
- recognising that the purpose of this credit check is to assess the Account Holder's application for credit.
- 18.2 The right to perform credit checks in clause 18.1 extends to a right for Cardlink to perform credit checks in the future for the

purpose of reviewing credit increase applications, reviewing the Credit Limit on the Account, and collecting any payments owed by the Account Holder to Cardlink.

- 18.3 Where it is appropriate to do so, Cardlink may also disclose credit information relating to the Account Holder and any of its guarantors to credit reporting bodies for the purpose of reporting default and repayment history information about the Account Holder and any of its guarantors.

19 AML AND CTF CHECKS AND REPORTING

- 19.1 The Account Holder consents to Cardlink, in accordance with the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* and its Privacy Policy, performing anti-money laundering (AML) and countering the financing of terrorism (CFT) checks on the Account Holder, its directors and officers, its shareholders, its guarantors, any Card User, or any other person (as applicable).
- 19.2 The right to perform AML and CFT checks in clause 19.1 extends to a right for Cardlink to perform AML and CFT checks in the future to update any required reporting information.

20 TERM AND TERMINATION

- 20.1 The Agreement shall start from the date on which Cardlink accepts a completed Application Form from the Account Holder.
- 20.2 Notwithstanding any other provision relating to termination, the Agreement shall continue unless or until terminated by 20 (twenty) Business Days' notice by either Cardlink or the Account Holder, or such lesser period as either agreed by the parties, or as determined by Cardlink where Cardlink needs to manage a material and immediate risk, including a risk of loss to the Account Holder or Cardlink.
- 20.3 Notwithstanding any prior waiver of its rights, Cardlink may terminate the Agreement immediately and without notice in respect of the Account Holder in any of the following circumstances:
- (a) failure by the Account Holder to pay a Due Amount by the date which is three (3) Business Days after the Due Date for that Due Amount, unless Cardlink has agreed otherwise;
 - (b) breach by the Account Holder or a Card User of the Agreement where, in the reasonable opinion of Cardlink:
 - (i) the breach cannot be remedied; or
 - (ii) the breach can be remedied, but has not been remedied by the Account Holder or the applicable Card User within seven (7) Business Days after Cardlink gives notice specifying the default to the Account Holder;
 - (c) the Account Holder or a Card User:
 - (i) suspends payment of its debts generally;
 - (ii) is or becomes unable to pay its debts when they are due;
 - (iii) is or becomes unable to pay its debts or satisfy the solvency test (within the meaning given to that term in section 4 of the *Companies Act 1993*, including any successor or functionally equivalent replacement of such law);
 - (iv) becomes insolvent;
 - (v) ceases or threatens to cease business;



- (vi) has a receiver, statutory manager, administrator, controller, liquidator, trustee or similar official appointed over any of the assets or undertakings;
- (vii) has an application or order is made for the winding up or dissolution of the Account Holder (or Card User, if applicable);
- (viii) has a resolution passed, or any steps are taken to pass a resolution for the winding up or dissolving of the Account Holder (or Card User, if applicable), except for the purpose of an amalgamation or reconstruction;
- (ix) enters into or attempts to enter into any arrangement, composition or compromise with, or assignment for the benefit of its creditors or any class of them; or
- (x) enters into or attempts to enter into a compromise with creditors or (in the case of a limited liability company) going into liquidation except for a voluntary liquidation for the purposes of amalgamation or solvent reconstruction of the Account Holder.

- 20.4 The termination of the Agreement shall not affect the rights or liabilities of any party against the other to the date of such termination.
- 20.5 The outstanding balance on the Account shall immediately become due and payable on the termination of the Agreement, and the Account Holder shall promptly return all Cards to Cardlink.
- 20.6 All parties acknowledge that any provisions of the Agreement which, expressly or by implication, are intended to survive termination which shall continue in full force and effect notwithstanding the termination of the Agreement.

21 NEW ZEALAND CONSUMER LAW

- 21.1 To the extent that the Account Holder is a Consumer and:
- (a) the Authorised Supplies are purchased or obtained for personal, domestic or household use or consumption; and
 - (b) the Account Holder is not purchasing or obtaining the Authorised Supplies for the purpose of a business or in trade;
- nothing in this Agreement will restrict, negate, modify or limit any of the Account Holder's rights under the *Consumer Guarantees Act 1993* or the *Fair Trading Act 1986*.
- 21.2 To the extent that the Account Holder is not a Consumer:
- (a) the parties acknowledge and agree that:
 - (i) the Cards are a product intended to be used for business purposes; and
 - (ii) the goods and services supplied by Cardlink to the Account Holder or any Card User, and the Authorised Supplies acquired by the Account Holder or a Card User, are all "supplied and acquired in trade"; and
 - (b) to the maximum extent possible, the Account Holder and each Card User, acknowledge and agree that:
 - (i) they are in trade and using the Cards in trade;
 - (ii) any credit provided to the Account Holder is to be used, wholly or predominantly for business purposes; and

- (iii) the provisions of the *Consumer Guarantees Act 1993* and sections 9,12A and 13 of the *Fair Trading Act 1986*, do not apply to the Agreement and that it is fair and reasonable to exclude their application.

22 RESALE RESTRICTION

Unless and except to the extent otherwise agreed between Cardlink and the Account Holder in writing, the Account Holder must not:

- (a) promote, resell, or pass on the use or any pricing benefit of Cardlink to the Account Holder's related entities or any third parties; and/or
- (b) represent or otherwise imply that the Account Holder is a reseller or promoter of Cardlink's or any Cardlink services or that the Account Holder is otherwise entitled to pass on any pricing benefit of Cardlink to the Account Holder's related entities or any third party.

23 ACCOUNT HOLDER IS LIABLE FOR ALL CHARGES

The Account Holder acknowledges and agrees that it is liable for all purchases made with, or Charges incurred by, the use of, a Card issued to the Account Holder and, subsequently, a Card User, except to the extent that the liability is caused by Cardlink's fraud, negligence or wilful misconduct (including that of Cardlink's officers, employees, contractors or agents).

24 FORCE MAJEURE

Cardlink shall be under no liability to the Account Holder for failure to perform its obligations outlined in the Agreement if such failure is due to conditions beyond the reasonable control of Cardlink, its agents, subcontractors, or employees.

25 WAIVER

A failure to exercise, a delay in exercising, or a partial exercise of a right created under or arising from a breach of the Agreement or on the occurrence of a termination event does not result in a waiver of that right.

26 ASSIGNMENT

- 26.1 Cardlink may, without the consent of the Account Holder by notice to the Account Holder, assign, transfer, subcontract, or otherwise deal with all or any part of its rights or obligations under the Agreement to any person.
- 26.2 The Account Holder may not assign or transfer any of its rights or obligations under the Agreement without the consent, in writing, of Cardlink, which will not be unreasonably withheld. Any change in the effective management or control of the Account Holder shall be deemed to be an assignment for the purposes of this clause 26.2.
- 26.3 If the Account Holder assigns its rights under the Agreement, and Cardlink either inadvertently or otherwise makes a payment in respect of any changes to the assignor instead of the assignee or vice versa, any dispute concerning entitlement to the receipt of such payment shall be settled directly between the assignor and the assignee without recourse to Cardlink.

27 NOTICES



P: 0800 655 866



A: Private Bag 99918
Newmarket, Auckland,
1149



E: merchants@cardlink.co.nz
W: cardlink.co.nz

27.1 All communications between the parties shall be given in legible writing in English and be deemed to have been given by the sender and received by the addressee:

- (a) if delivered in person, when delivered to the addressee;
- (b) if posted, seven (7) Business Days from and including the date of posting to the addressee, provided that the notice is addressed to the last known business address of the other party;
- (c) if emailed, on the next Business Day after the day on which notice is sent to the last known electronic address of the other party.

27.2 The Account Holder must notify Cardlink of any change to its name, registered office or principal place of business, address details (including address details associated with any Card), or of any change in its directors or officers as soon as possible upon a change being effected.

27.3 The Account Holder acknowledges and agrees that it is responsible for all expenses and/or fees incurred in relation to its use of the Cards where Cardlink has relied on information provided by the Account Holder, and the Account Holder has not notified Cardlink that such information is incorrect, out-of-date, needs to be updated, or needs to be changed. Cardlink is not liable to the Account Holder for any loss suffered where this occurs, except to the extent that the liability is caused by Cardlink's fraud, negligence or wilful misconduct (including that of Cardlink's officers, employees, contractors or agents).

28 GOVERNING LAW AND JURISDICTION

These Terms and Conditions (and the Agreement) are governed by the laws of New Zealand. Each party irrevocably submits to the exclusive jurisdiction of the courts of New Zealand.

29 UNENFORCEABLE PROVISIONS

A provision of, or the application of a provision of, the Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction. Where a clause in the Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the Agreement.

30 FURTHER ASSURANCES

The Account Holder will, and will procure that each Card User will, when requested by Cardlink, promptly do, sign and deliver everything reasonably required to give full effect to these terms and conditions and the transactions contemplated by the Agreement.

31 SPECIAL CONDITIONS

Special Conditions (if any) are part of and incorporated into the Agreement. If there is any inconsistency between these terms and conditions and the Special Conditions, the Special Conditions will prevail to the extent of the inconsistency.

32 GST

- (a) Any reference in this clause 32 to a term defined or used in the *Goods and Services Tax Act 1985* ("**GST Act**"), including any successor or functionally equivalent replacement of such law, is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with the Agreement does not include an amount on account of GST payable or notionally payable in respect of the supply (being "**GST Exclusive Consideration**") except as provided under this clause 32.
- (c) Any amount referred to in the Agreement (other than an amount referred to in clause 32(h) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party ("**First Party**") under or in connection with the Agreement, the consideration to be provided by the other party (the "**Second Party**") under the Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The Second Party must pay the additional amount payable under clause 32(d) to the First Party at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The First Party must issue a tax invoice to the Second Party at or before the time of payment of the consideration for the supply as increased on account of GST under clause 32(d) or at such other time as the parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with the Agreement, the First Party must determine the net GST in relation to the supply (taking into account any adjustment), and if the net GST differs from the amount previously paid under clause 32(e), the amount of the difference must be paid by, refunded to or credited to the Second Party, as applicable. The entitlement to be paid, refunded, or credited the amount of the difference is subject to the First Party issuing an adjustment note to the Second Party.
- (h) If one of the parties to the Agreement is entitled to be reimbursed or indemnified for a Loss incurred in connection with the Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that Loss and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 32(d).

