

1. Definitions and Interpretation

1.1 Definitions: In this Agreement, unless the context indicates otherwise:

Acquirer means a bank or any financial institution or a card issuer of financial or non-financial transactions which receives and transmits Transactions via the Windcave Solution;

Agreement means this Agreement, including the Application Form and these General Terms and Conditions, and any attachments that may be agreed between the parties, as each may be amended in writing from time to time;

Application Form means Customer's online Windcave application form submitted to Windcave via the Windcave Website;

Business Day means any day of the week except Saturday, Sunday or a statutory holiday in London, United Kingdom;

Commencement Date means the date when Customer consents to this Agreement's terms;

Confidential Information means, in relation to either party, any information:

- (a) relating to the terms of this Agreement;
- (b) relating directly or indirectly to research or development by, accounting for, or the marketing of, the business of that party or its suppliers or customers;
- (c) disclosed by that party to the other party on the express basis that such information is confidential; or
- (d) which might reasonably be expected by the other party to be confidential in nature;

Customer means the customer recorded in the corresponding Application Form submitted along with the acceptance to this Agreement;

Customer Personal Data means all Personal Data subsisting in the data provided by the Customer, the users of the Windcave Solution, the Documentation, the Goods, or the Software, or input by Windcave on the Customer's behalf and which comes into the possession of Windcave as a result of or in connection with the supply of the Windcave Solution, the Documentation, the Goods, or the Software;

Data Protection Law means the EU Data Protection Directive 95/46/EC, the Data Protection Act 2018 and any other legislation in force from time to time which implements that Directive, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and any laws that replace or amend any of these (including without limitation the General Data Protection Regulation 2016 (Regulation (EU) 2016/679) (GDPR)), together with the equivalent legislation of any other applicable jurisdiction and all other applicable law, regulations, guidance and codes of conduct in any relevant jurisdiction relating to the processing of personal data and privacy including the guidance and codes of practice issued by the Information Commissioner's Office (ICO), the Article 29 Working Party, the European Data Protection Board or any other relevant supervisory authority from time to time;

Default Interest Rate means interest at the rate of 2% above the base lending rate charged by Windcave's bankers to Windcave from time to time;

Delivery takes place when the Customer receives the Goods from Windcave, or, in the case of returns, when the Goods arrive at Windcave's premises;

Documentation means any user, training or system manuals for the Windcave Solution (whether in printed or electronic form) which describes and provides guidance on the use of the Windcave Solution (or any aspect of the Windcave Solution);

Emergency Support Services means telephone support provided by Windcave for emergency breakdowns resulting in repeated failures in the transmission of Transactions and is available 24 hours a day, seven days a week by calling 09 377 6060 outside of Support Hours. Windcave will use reasonable efforts to respond to any emergency phone call within 30 minutes of receiving the support request;

Fees means and includes each of the fees detailed in the proposal delivered to you by Windcave;

Goods and/or devices and related equipment purchased by Customer from Windcave;

Insolvency Event means:

- (a) a party is, in the reasonable belief of the other party, or is deemed to be, insolvent or unable or (being an individual) is deemed to have no reasonable prospect of being able (or admits its inability) to pay its debts as they fall due or stops or suspends payment of any of its debts or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) any expropriation, attachment, sequestration, distress, execution, enforcement of security or other legal process is levied, enforced or sued out on or against, or affects, any of a party's assets and is not discharged or stayed within 21 days;
- (c) a party begins negotiations, or enters into, or gives notice of any intention to enter into, any statutory composition or arrangement, with one or more of its creditors in order to reschedule any of its obligations to pay or repay money (whether present of future, actual or contingent) (**Indebtedness**) because of actual or anticipated financial difficulties including giving notice of a meeting of creditors for the purpose of considering a proposal for a company voluntary arrangement or (being an individual) an individual voluntary arrangement;
- (d) a moratorium is declared, or in any event comes into existence, over any of a party's Indebtedness (and remains undischarged after 5 Business Days);
- (e) any petition is presented (and has not been dismissed, discharged or withdrawn after 5 Business Days of being advertised), application made (and, if not made by the party itself, has not been dismissed, discharged or withdrawn after 14 days), resolution proposed, notice of meeting given or other action, proceedings, procedure or step taken whether by a party or any third party for, or which may

(other than for the sole purpose of a scheme for a solvent amalgamation or solvent reconstruction of that party) lead to:

- (i) the suspension of payments, winding up, dissolution, administration, receivership (whether administrative or otherwise) or reorganisation using a voluntary arrangement, scheme of arrangement or otherwise) of a party;
- (ii) the appointment of a liquidator (both provisional and following a winding up), receiver (including a fixed charge receiver), administrative receiver, administrator, nominee, supervisor, compulsory manager or other similar officer in respect of a party or any of its assets; or
- (iii) (where the party is an individual,) bankruptcy, an individual voluntary arrangement or debt relief order;
- (f) any event similar to any of those set out above in this definition occurs in relation to a party (including in any jurisdiction to which it is subject); or
- (g) a party suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;

Intellectual Property means registered and unregistered trade marks (including logos and trade files), domain names, copyright, patents, petty patents, utility models, registered and unregistered designs, circuit layouts, rights in computer software, databases and lists, Confidential Information, software (whether in object code or source code), and all other rights anywhere in the world resulting from intellectual activity;

Payment Manager means Windcave Merchant Portal which Customer is able to access by logging onto the Windcave Website with an assigned username and password;

PCI Standards means the Payment Card Industry standards, requirements and guidelines issued by the Payment Card Industry Data Security Council from time to time including the Payment Card Industry Data Security Standard PIN Entry Device requirements and guidelines, and the Payment Application Data Security Standard;

Permitted Use means the transmission to, and receipt from, an Acquirer of data relating to Windcave Supported Transactions and expressly excludes, without limitation, use for the processing of Transactions of, or for the benefit of, any person other than Customer;

Personal Data and Processing shall bear the respective meanings given to them in the Data Protection Act 2018 or General Data Protection Regulation 2016 (as applicable) (in each case as may be amended, updated, replaced or superseded from time to time) (and **Process** and **Processes** shall be construed accordingly);

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 an Acquirer which receives and accepts Windcave Supported Transactions from Customer; and
- (b) the PCI Standards;

Software means the software and other related Windcave products which:

- (a) form part of the Windcave Solution; and
- (b) is owned or licensed by or developed by, or on behalf of, Windcave and supplied to Customer, including all upgrades, updates, alterations and modifications and other changes to such software by or on behalf of Windcave from time to time, but excluding any third party software and firmware forming part of, or supplied with, the Windcave Solution;

Support Hours means the period from 9.00am to 5.30pm (UK time) on any Business Day and 9:00am to 5:00pm on non-Business Days;

Support Services means and includes:

- (a) Online Help: from time to time Windcave may display Frequently Asked Questions and Answers on the Windcave Website;
- (b) General Support: enquiries may be sent to: support@windcave.com or made by telephone to 0800 PAYMENT (729 6368). Windcave will respond to such enquiries during Support Hours;

Term means the Term defined in clause 2.1;

Tokenized Data means data for which Windcave has substituted a sensitive data element with a non-sensitive equivalent that has no extrinsic or exploitable meaning or value;

Transaction means a message pair consisting of a message relating to a Windcave Supported Transaction transmitted by Customer to an Acquirer through the Windcave Solution and a response to that message from the Acquirer to Customer through the Windcave Solution;

Windcave means Windcave International Limited, a company incorporated in New Zealand (company number 1278310);

Windcave Host means the Windcave host server known as Windcave Host to which Customer may be connected using the Software and which is in turn linked to an Acquirer to enable Windcave Supported Transactions to be processed in real time;

Windcave Logo means the Windcave logo supplied (in electronic format) by Windcave to Customer (as may be updated from time to time by Windcave);

Windcave Solution means the solution provided by Windcave for the transmission of data relating to Windcave Supported Transactions between a Customer and an Acquirer, incorporating the Software and including access (via the internet) to the Windcave Host and the Support Services;

Windcave Supported Transactions means transactions from Customers:

- (a) accepting payment for goods and services by means of credit card, debit card, prepaid card, gift card or any other means of payment which Windcave agrees to support through the Windcave Solution from time to time;
- (b) accepting loyalty cards, rewards cards, points cards, discount cards or club cards; or

- (c) providing services in relation to the sale and use of any of the cards referred to in paragraphs (a) and (b) above including the issue of such cards and the crediting or debiting of value to such cards; and

Windcave Website means the website maintained by Windcave and accessible by Customer for viewing Transactions, data entry, refunding, report generating and other features related to Transactions;

1.2 Interpretation: In this Agreement, unless the context indicates otherwise:

- (a) expressions defined in clause 1.1 have the defined meaning throughout this Agreement;
- (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) 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;
- (f) references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (g) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (h) all monetary amounts are stated exclusive of VAT and in Euros.
- (i) in the event of any inconsistency between the terms of any of the following, they will have precedence in the descending order of priority set out below:
- (i) General Terms and Conditions;
 - (ii) the Application Form.

2. Term

2.1 Term: This Agreement commences on the Commencement Date and will continue until the date either party terminates this Agreement subject to clause 12.

3. Payment

3.1 Fees: Customer will not be given access to the Windcave Solution until Customer has expressly accepted the Fee proposal from Windcave for use of the Windcave Solution and/or the Goods ("Proposal"). Windcave may change the Fees due pursuant to this Agreement at its sole discretion, at any time, by providing Customer 30 days' written notice.

3.2 Invoicing: Customer expressly acknowledges that by accepting the Proposal Windcave is authorized to charge Customer in arrears on a monthly basis and that these invoices will be continuous until this Agreement terminates pursuant to Clause 12. Customer will pay Windcave the Fees without setoff or deduction on the 20th day of the month following the date of the invoice for those Fees.

3.3 Taxes: Customer is responsible for all VAT and any other taxes, duties and levies (other than Windcave's income tax) assessed in connection with its use of the Windcave Solution and the provision of services under this Agreement.

3.4 Default Interest for Late Payment: Subject to clause 3.5, Customer must pay Windcave interest at the Default Interest Rate on any overdue amounts under this Agreement, calculated daily from the due date until the actual date of payment. Customer will pay Windcave all costs (including collection costs and legal costs on a solicitor-client basis) that Windcave incurs in attempting to recover or recovering any such overdue amounts.

3.5 Disputed Invoices: Where Customer has reasonable grounds to dispute any portion of any amount invoiced by Windcave to Customer under this Agreement (**disputed portion**):

- (a) Customer will notify Windcave of such dispute and the grounds for such dispute within five (5) Business Days of receiving the invoice;
- (b) any undisputed portion of the invoice will remain payable on the due date for payment;
- (c) provided that Customer has complied with clause 3.5(a), Customer will not be required to pay:
 - (i) the disputed portion until the parties' dispute has been resolved by agreement between the parties or in accordance with clause 21.2; or
 - (ii) any interest under clause 3.4 on the disputed portion unless the dispute is resolved with the effect that Customer is required to pay all (or part) of the disputed portion, in which case Customer will pay the interest on the disputed portion (or that part of that disputed portion) in accordance with clause 3.4. Interest will be payable from the date that payment would have been due under clause 3.1 but for the dispute until the date that disputed portion is paid to Windcave in full.

4. Joint Responsibilities

Each party represents and agrees:

4.1 Power and Authority: that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement; and

4.2 Requirements: to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice.

5. Customer Responsibilities

Customer:

5.1 Suitability: has made, and will continue to make, its own assessment of the suitability, adequacy, compatibility and appropriateness of the Windcave Solution for its purposes;

5.2 Comply with Instructions: will comply with Windcave's restrictions, instructions and Documentation in relation to the use of the Windcave Solution, including those set out in this Agreement;

5.3 Use by Others: will ensure that only authorised persons use the Windcave Solution and that the Windcave Solution is used only for the Permitted Use and as expressly authorised under this Agreement;

5.4 Responsibility for Use: will accept all responsibility for the reliance on and use of the Windcave Solution by Customer and its employees, contractors and agents;

5.5 Obtain Equipment etc.: will obtain and maintain all equipment, software and services needed to enable it to receive and use the Windcave Solution;

5.6 Accurate Customer Information: warrants that all information provided by Customer to Windcave in the Application Form is accurate and correct, and that Customer will notify Windcave in writing if such information changes or ceases to be accurate in any way;

5.7 Provide Sufficient Information: will ensure that sufficient information is given to Windcave to enable Windcave to comply with its obligations under this Agreement and that such information is timely, complete and accurate;

5.8 Personal Information: acknowledges that any personal information concerning Customer or its personnel which is provided to Windcave by or on behalf of Customer may be:

- (a) used by Windcave for the purpose of providing the Windcave Solution, the Support Services and any other services to Customer; and
- (b) disclosed by Windcave to its Related Companies and other services providers to enable Windcave to provide the Windcave Solution, the Support Services and any other services to Customer;

5.9 Notify of Third Party Infringement: will immediately notify Windcave upon becoming aware of any third party infringing Windcave's Intellectual Property rights in any manner;

5.10 Responsible for Connecting to Windcave Host: is responsible for all charges and costs associated with connecting to the Windcave Host to operate the Windcave Solution. Windcave will provide Customer with reasonable technical information and Software necessary to enable Customer to connect to the Windcave Host; and

5.11 Comply with Law Generally: will comply with all relevant laws, including all statutory, regulatory and common laws, in its use of the Windcave Solution and carrying out its obligations under this Agreement.

5.12 Requisite Review of Payline Portal and Bank Settlement Files: Windcave has established a web-based payment management client that permits Customer to process credit card Transactions manually, process refunds, set up recurring payments, generate reports, and review for Transaction errors ("Payline Portal"). Customer is required to review Customer's Payline Portal on a daily basis with due care to ensure no Transaction errors have occurred. If an error is discovered by Customer, Customer must notify Windcave in writing within three (3) Business Days of the date such error occurs; provided, that Windcave will have no liability or obligations of any kind with respect to errors that are not reported to Windcave within such three (3) Business Day period. In addition, Customer shall be required to, on a daily basis, review with due care bank settlement files to ensure deposits occur without error. If an error is discovered by Customer, Customer must notify Windcave in writing within three (3) Business Days of the date such error occurs; provided, that Windcave will have no liability or obligations of any kind with respect to errors that are not reported to Windcave within such three (3) Business Day period. Windcave's liability under this Section 5.12 (Requisite Review of Payline Portal and Bank Settlement Files) of the Agreement is further governed by, and fully subject to, the terms of Section 10 (Liability) of this Agreement.

5.13 Improperly Deposited Funds: If Windcave deposits funds in Customer's bank account(s) that do not rightfully belong to Customer ("Improperly Deposited Funds"), Customer shall return the Improperly Deposited Funds to Windcave without offset within five (5) calendar days of a written request to do so by Windcave. If Customer fails to comply with the terms of this Section, Windcave may immediately suspend services to Customer until Customer returns the Improperly Deposited Funds. Customer will be liable to Windcave for the Improperly Deposited Funds, and all costs (including legal costs on a solicitor-client basis) incurred by Windcave in recovering the Improperly Deposited Funds.

5.14 Return of Old Goods: For Goods that Customer ceases using for the Permitted Use ("Unused Goods"), Customer will return such Unused Goods to Windcave within 30 calendar days. Unused Goods include, but are not limited to, Goods Customer has ceased using due to the Goods becoming obsolete, Goods that no longer operate, and Goods that are replaced per the warranty set forth in clause 7.3 of this Agreement. Customer will pay all shipping fees and costs associated with returning the Unused Goods to Windcave. Alternatively, instead of returning Unused Goods to Windcave, Customer may provide Windcave a secure destruction certificate evidencing that the Unused Goods were destroyed in compliance with the Security Standards within the same 30 calendar day period.

6. Windcave's General Responsibilities

6.1 Good Faith: Windcave will comply with all relevant laws and co-operate with Customer (and Customer's service providers) in connection with the Windcave Solution.

6.2 No Requirement to Decrypt Tokenized Data: Unless expressly required to do so by law, Windcave will be under no obligation to decrypt and transmit Tokenized Data to Customer or any third party.

7. Windcave Warranties

- 7.1 Security Standards:** Windcave confirms that Windcave will throughout the term of this Agreement comply with the requirements of the Security Standards.
- 7.2 Limitations on Warranties:** To the fullest extent permitted by law, except as expressly set out in this Agreement, Windcave excludes all warranties, conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise, including any condition or warranty of merchantability or fitness for a particular purpose. Windcave does not warrant that:
- the Windcave Solution, the Goods, the Software or the Documentation will meet Customer's requirements; or
 - the Windcave Solution, the Goods, the Software and the Documentation will be uninterrupted or error free, or that all errors will be corrected; or
 - that the Goods will be free of defects in design, materials or workmanship or will comply with any applicable equipment manufacturer's or software developer's specifications.
- 7.3 Supply Warranty:** Windcave warrants that the Goods will be free from defects in workmanship (labour and parts included, but transport excluded) during a warranty period commencing on the Commencement Date and concluding twelve (12) calendar months later. As to repaired or exchanged Goods, during the original warranty period here above mentioned, the warranty period on the exchanged or repaired Goods shall expire three (3) months after the date of repair or exchange of such Goods or upon the expiration of the warranty period applicable to the original Goods set forth in this Section. With respect to Windcave's supply warranty:
- Any defective Goods, under warranty, shall be replaced or repaired, free of charge, at Windcave's discretion (to the exclusion of compensation for any other damage), and the work shall be carried out at Windcave or its partner's or subcontractor's premises. Customer will pay the costs of transport of the Goods (including insurance) to Windcave.
 - Windcave has the choice to repair the Goods with spare parts or new parts. The defective elements, repaired, will become the property of Windcave.
 - The time when the Goods are repaired or unavailable during the warranty period will not give rise to an extension of the warranty period as set forth in this Section, subject to legal mandatory provisions.
 - Customer must return warranted Goods that are replaced subject to this warranty back to Windcave within 30 calendar days of replacement Goods being shipped to Customer. Customer shall pay the shipping fees to return the old, warranted Goods back to Windcave.
- 7.4 Exclusions to Supply Warranty:** Windcave will have no liability under the Supply Warranty described in Section 7.3 in respect of:
- Defects, breakdowns, or malfunctions due to failure to properly follow the installation process and instructions for use or an external cause to the Goods (including, but not limited to, shock, lightning fire, vandalism, malicious action, contacts with various liquids or vermin or water damage of any nature, and inappropriate electric voltage); or modifications to the Goods made without the written approval of Windcave; or a lack of every day maintenance (as described in the Documentation); or a lack of supervision or care; or improper storage or poor environmental conditions, particularly those related to temperature and hygrometry effects of variations of electric voltage from the electric network; or from the earth or repair work; or maintenance of the Goods by persons not authorized by Windcave;
 - Damage due to insufficient or bad packaging of the Goods when returned to Windcave;
 - Wear and tear from normal use of the Goods and accessories;
 - Communication problems related to an unsuitable environment, including problems accessing the Internet, transmission faults, local network faults, and modification of the parameters of the relevant cellular network after sale of the Goods;
 - Supply of new versions of Software. If, for example, Windcave produces new Software that is not necessary to fulfil its obligations under this Agreement, Windcave is not required to make such Software available to Customer;
 - Malfunction due to the use of products or accessories that are non-compatible with the Goods;
 - Goods returned to Windcave without Windcave's prior consent or that Windcave has not had an opportunity to troubleshoot;
 - Defects, breakdowns, or malfunctions due to **obstructing material** being placed on or into the Goods. Examples of obstructing material includes, but is not limited to, paper, plastic, and metal objects apart from credit and debit cards.

8. Intellectual Property

All Intellectual Property rights in the Windcave Solution, the Goods, the Software, the Documentation and any work or thing developed or created by or on behalf of Windcave under or in connection with this Agreement (such work or thing being **Developed Works**), are exclusively owned by Windcave (or Windcave's licensors or suppliers). Customer acknowledges that there is no transfer of title, Intellectual Property rights or ownership of:

- 8.1** the Windcave Solution, the Goods, the Software, the Documentation or any part thereof; or
- 8.2** any Developed Works;
- to Customer under this Agreement and Customer will not dispute Windcave's (or Windcave's licensors or suppliers) ownership of the property referred to in this clause 8.

9. Indemnity

9.1 Customer indemnifies Windcave at all times against any liability, loss, damage or cost (including legal costs on a solicitor-client basis) suffered or incurred by

Windcave and all actions, proceedings, claims or demands made against Windcave as a result of any negligent act or omission or any breach of this Agreement by Customer, its personnel or agents.

10. Liability

To the fullest extent permitted by applicable law:

- 10.1 Remedy:** Subject to clauses 10.2 and 10.3, Customer's sole and exclusive remedy for breach of any warranty or of any of Windcave's obligations under this Agreement is (at Windcave's option) the supply or re-supply of the Windcave Solution, the Goods, the Software, or the Documentation or the refund or waiver of Fees for the relevant part of the Windcave Solution, the Goods, the Software, or the Documentation which is the subject matter of, or directly related to, the breach.
- 10.2 Limitation:** In no event will Windcave's total liability to Customer under this Agreement for any one or more defaults as described in clause 10.1 exceed the amount paid by Customer to Windcave under this Agreement in the 3 months following execution of this Agreement.
- 10.3 Exclusion:** In no event will Windcave be liable to Customer whether in contract, tort (including negligence) or otherwise in respect of any:
- 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 Customer arising out of, or in connection with, this Agreement;
 - loss, damage, cost or expense suffered or incurred by Customer, to the extent this results from any act or omission by Customer; or
 - any event described in clause 14.

11. Consumer Guarantees Act

11.1 It is expressly acknowledged and agreed by Customer that the Windcave Solution, the Goods, the Software and the Documentation are supplied to Customer for business purposes and that the provisions of the Consumer Guarantees Act 1993 do not apply.

12. Termination

12.1 Termination by Customer: Customer may terminate this Agreement at any time by completing both of the following:

- Providing thirty (30) calendar days' prior written notification to Windcave of termination; and
- ceasing all use of the Windcave Solution and the Software.

Termination does not relieve Customer of its obligation to pay outstanding Fees or to meet any of the other obligations of this Agreement which by their nature survive termination of this Agreement.

12.2 Termination for Convenience and Suspension by Windcave: Windcave may terminate this Agreement for convenience by providing Customer thirty (30) calendar days' prior written notice. Windcave may also temporarily suspend the availability of the Windcave Solution and/or the Software to Customer if Customer does not timely pay all Fees due and owing pursuant to this Agreement.

12.3 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 (**Second Party**) if the Second Party:

- is in material breach of any of its obligations under this Agreement, and has failed to remedy the breach within 10 Business Days of receiving written notice from the First Party to remedy the breach; or
- goes into liquidation or has a receiver appointed; or
- is unable to pay its debts as they fall due (as that term is defined in section 287 of the Companies Act 1993).

12.4 Breach of Licence Terms: Without limiting clause 12.3(a), any use of the Windcave Solution, the Goods, the Software, or the Documentation by Customer for any purpose other than the Permitted Use, or any breach by Customer of the provisions of clause 16 will be deemed to be a material breach of this Agreement which for the purposes of clause 12.3(a) Customer has failed to remedy.

12.5 Consequences: Expiry or 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 3, 5.9, 7, 8, 9, 10, this 12.5, 13, 16, 17, 18, 19, 21.2 and 21.7, together with those clauses which are incidental to, and required in order to give effect to, those clauses).

13. Confidentiality

13.1 Confidential Information: Each party will maintain as confidential at all times, and will not at any time, directly or indirectly:

- disclose or permit to be disclosed to any person;
 - use for itself or to the detriment of the other party;
- any Confidential Information of the other party except as, and then only to the extent:
- required by law;
 - that the information is already or becomes public knowledge, otherwise than as a result of a breach, by the receiving party, of any provision of this Agreement;
 - that the information is disclosed to the receiving party, without restriction, by a third party and without any breach of confidentiality by the third party;
 - that the information is developed independently by the receiving party without reliance on any of the Confidential Information of the other party;
 - authorised in writing by the other party; or
 - reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information of the

other party only to those of its officers, employees or professional advisers on a "need to know" basis, as is reasonably required for the implementation of this Agreement).

13.2 Windcave's Intellectual Property: Without limiting the effect of clause 13.1, Customer will treat information about Windcave's Intellectual Property as the Confidential Information of Windcave.

14. Force Majeure

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

14.1 Notice: 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;

14.2 Continued Performance: each party will continue to use its best endeavours to perform its obligations as required under this Agreement;

14.3 No Deemed Acceptance of Extra Costs: 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 or otherwise resulting from such act, omission or failure; and

14.4 Charges: this clause 14 will not apply in respect of Customer's obligation to pay any charges or Fees payable under this Agreement.

15. Licence

15.1 Grant of Licence: Windcave grants to Customer a non-exclusive, non-transferable licence to use the Windcave Solution, the Goods, the Software and the Documentation for the Term of this Agreement solely for the Permitted Use. Any other use or dealings with the Windcave Solution, the Goods, the Software or the Documentation without the prior written consent of Windcave will be a material breach of this Agreement. Except to the extent specifically authorised under this Agreement, Customer must not sub-license, transfer, assign, rent or sell any of the Windcave Solution, the Goods, the Software or the Documentation or the right to use the Windcave Solution, the Goods, the Software or the Documentation.

15.2 Windcave Warranty: Windcave warrants that Windcave has the right and authority to grant to Customer the licence set out at clause 15.1, in accordance with the terms of this Agreement.

16. Terms of Use

16.1 Adequacy: Customer must satisfy itself as to the adequacy, appropriateness and compatibility of the Windcave Solution and/or the Goods for its requirements. Without limiting clause 7.1, Customer acknowledges that it has not relied on any statements or representations on the part of Windcave as to performance or functionality, verbal or otherwise, except as expressly recorded in this Agreement.

16.2 Windcave Logo: If Customer uses a capture method for credit or debit card processing using a system which is not hosted by Windcave, Customer agrees to display the Windcave Logo in a readily visible position on the user interface of Customer's system where the credit or debit card data is captured. The Windcave Logo must not be altered or used for any other purpose without the prior written consent of Windcave.

16.3 Compliance: If Customer is not compliant with one or more of the Security Standards, Customer must not capture or store any credit or debit card number or expiry date locally on Customer's or a non-compliant third party's system.

16.4 No Right to Copy, Alter or Modify: Subject to clause 16.8, Customer must not, and must not permit any other person to, copy, reproduce, translate, adapt, vary, repair or modify all or any part of the Windcave Solution, the Goods, the Software or the Documentation by any means or in any form without Windcave's prior written consent.

16.5 Permitted Use: Customer may not:

- (a) use the Windcave Solution, the Goods, the Software or the Documentation for any purpose other than the Permitted Use; or
- (b) use the Software independently of the other components of the Windcave Solution unless Windcave has given prior written consent to do so.

If this Agreement is terminated, Customer's right to use the Windcave Solution, the Software and the Documentation will automatically terminate and Customer must immediately remove all copies of the Software from its system(s) and return the Windcave Solution, the Goods, the Software and the Documentation to Windcave.

16.6 Reverse Engineering: Customer must not, and must not permit any other person to, reverse assemble or decompile the whole or any part of the Software.

16.7 No Third Party Use: Except as expressly provided for in this Agreement, the Customer must not provide, or otherwise make available, the Windcave Solution, the Goods, the Software or the Documentation or any component thereof in any form to any person (**Third Party**) without the prior written consent of Windcave. If Windcave grants such consent, Customer must ensure that the Third Party complies with the provisions of clauses 15.1, 16, 8 and 13 (so far as those provisions relate to Customer) as if the Third Party were a party to this Agreement. Customer will be liable to Windcave for all acts or omissions of any Third Party in contravention of the provisions of clauses 15.1, 16, 8 and 13.

16.8 Backup Copies: Customer may make a reasonable number of copies of the Software for backup and disaster recovery purposes only.

16.9 Installation: Customer will be responsible for, and all bear all costs associated with, the installation, operation, maintenance and support of the Windcave Solution and/or the Goods.

16.10 Labels: Customer will not remove or deface any labels affixed by Windcave to the Goods. Customer will not affix any label to the Goods.

16.11 Windcave Testing Prior to Launch: Prior to any permitted use of Windcave products and/or Software by Customer or any third party, Windcave shall, at its sole discretion, be entitled to test all Windcave products and Software that Customer purchases, rents, or intends to use for at least seven (7) Business Days ("Pre-launch Testing"). Such Pre-launch Testing shall also entitle Windcave to at least three (3) Business Days to test transaction processing and settlement.

17. Rental/Loan of Goods

17.1 Where Customer agrees to rent/loan Goods from Windcave, the following terms and conditions apply:

- (a) **Ownership:** Legal and beneficial ownership of, and title to, the Windcave Solution, the Goods, the Software and the Documentation remains at all times with Windcave;
- (b) **Risk:** Customer will bear the risk of, and be responsible for, all loss (including theft) of or damage to, the Goods from the time that they are first delivered to Customer until the time that they are delivered back to Windcave;
- (c) **Maintain Goods:** Customer must take reasonable steps to avoid exposure of the Goods to excessive heat, dust and moisture, liquids and electrical and physical shock;
- (d) **Licence Terms:** Customer must comply with all manufacturer's licence terms applicable to the Goods (as supplied with the Goods or otherwise notified by Windcave to Customer from time to time);
- (e) **Theft, Seizure, Loss, Damage, Repairs:** If for any reason the Goods are stolen, seized, lost, damaged or require repairs, Customer must immediately advise Windcave of the theft, seizure, loss, damage or repairs required. Customer must pay all costs and comply with Windcave's directions in connection with recovering the Goods, repairing any damage or the replacing of any parts (fair wear and tear excepted). Customer must continue to pay the Fees while the Goods are being repaired or, in the event of theft, seizure or loss, while the Goods are missing. Windcave will not be liable for any loss or damage in relation to the unavailability of the Goods;
- (f) **No Dealing or Modifying or Security Interests:** Customer must not sell, lend, lease, transfer, modify or otherwise deal with the Goods without first obtaining Windcave's written consent. Customer must not create, or allow to be created, a security interest over the Goods;
- (g) **Inspection:** Customer must allow Windcave to inspect the Goods at any time during normal business hours, provided that Windcave first gives Customer not less than two (2) Business Days' notice;
- (h) **Return of Goods:** When this Agreement ends (either by completion of the Term or by way of termination), Customer will, at Customer's expense, return the Goods, in good working order and undamaged condition (fair wear and tear excepted) to Windcave's place of business. If the Customer fails to return the Goods within 14 Business Days of the end of the Agreement, Customer will pay Windcave the fair value of the Goods as at the completion of the Term;
- (i) **Repossession:** If Customer does not return the Goods in accordance with clause 17.1(h), Windcave may enter any premises where Windcave reasonably believes that the Goods may be located and Customer will provide all reasonable authority and assistance to enable recovery of those Goods by Windcave. Customer will be liable to Windcave for all costs (including legal costs on a solicitor-client basis) incurred by Windcave in recovering the Goods; and
- (j) **Further supply:** The rental/loan of Goods by Windcave to Customer does not guarantee Customer that Windcave will supply Goods beyond the Initial Term.

18. Purchase of Goods

18.1 Where Customer agrees to purchase Goods from Windcave, the following terms and conditions apply:

- (a) **Title:** Title in any of the Goods (excluding any Software and firmware forming part of, or supplied with, the Goods) will pass to Customer upon Customer making payment in full for those Goods;
- (b) **No Dealing or Modifying or Security Interests:** Customer must not sell, lend, lease, transfer, modify or otherwise deal with the Goods without first obtaining Windcave's written consent. Customer must not create, or allow to be created, a security interest over the Goods;
- (c) **Risk:** Risk in any of the Goods will pass to Customer upon delivery of those Goods to Customer;
- (d) **Licence to Software/Firmware:** Customer will be licensed to use any third party software and/or firmware forming part of, or supplied with, the Goods on the relevant manufacturer's or software developer's licence terms (as supplied with the Goods or otherwise notified by Windcave to Customer). Customer must comply with all such licence terms;
- (e) **Warranty:** Windcave will repair or replace, at Windcave's option, faulty Goods for a period of 1 year commencing from the date the Goods are delivered to Customer, fair wear and tear excepted and provided damage is not caused by the Customer i.e. liquid damage is not covered by this warranty;
- (f) **Hold for Benefit of Customer:** Where it is unable to pass to Customer any manufacturer's warranties in respect of any of the Goods supplied to Customer under this Agreement, Windcave will hold any such warranties for the benefit of Customer; and

(g) **Recovery of Unpaid Retail Equipment:** If Customer fails to pay Windcave in full for any Goods which have been delivered, Windcave may enter any premises where Windcave reasonably believes that the Goods may be located and Customer will provide all reasonable authority and assistance to enable recovery of those Goods by Windcave. Customer will be liable to Windcave for all costs (including legal costs on a solicitor-client basis) incurred by Windcave in recovering the Goods.

19. PPSR

- 19.1 Property in the Goods shall not pass from Windcave to Customer until Customer has paid all monies outstanding from Customer to Windcave on any account in full.
- 19.2 Customer grants to Windcave a security interest, as defined in the Personal Property Securities Act 1999 ("PPSA"), in the Goods and their proceeds, and in all Customer's present and after acquired property, and Customer acknowledges that the granting of the security interest gives rise to remedies of repossession of the Goods in accordance with the PPSA or otherwise where Windcave seeks to enforce their security interest.
- 19.3 Customer agrees to store the Goods separately and mark them so as to render them identifiable as being made from or with Goods which are the property of Windcave. Further, Customer agrees to advise Windcave of the whereabouts of the Goods and allow Windcave to inspect the Goods.
- 19.4 Customer will, at Windcave's request, promptly execute any documents, provide all necessary information and do anything else required by Windcave to ensure that their security interest in the Goods is perfected in accordance with the PPSA with such priority as Windcave requires.
- 19.5 Customer waives its rights under the PPSA to receive a copy of any verification statement otherwise required by the PPSA. If applicable, so far as permitted by section 107 of the PPSA Customer will have no rights under sections 114(1) (a), 120 and 133 of the PPSA, including the right to receive any notices. Customer agrees that Windcave may exercise its rights under sections 109 and 120 concurrently, and that repossession and retention of Goods under sections 120 – 123 will immediately extinguish any rights and/or interests Customer may have in the Goods. Windcave may allocate any monies they receive to debts, charges and expenses in any priority.
- 19.6 Customer agrees that Windcave may charge Customer for the costs of registration of a financing statement and all other costs associated with the perfection and enforcement of the security interest (including full client/solicitor costs).

20. Windcave Support Services

- 20.1 **Support:** Windcave will provide the Support Services to Customer.
- 20.2 **Emergency Support Services and Other Services:** Windcave may make available the Emergency Support Services. If Customer requires Emergency Support Services and/or services additional to the Support Services Windcave may, if it agrees to provide those services to Customer, charge Customer for those services on a time and materials basis and on such other terms and conditions as may be agreed between the parties.
- 20.3 **Alterations to Software:** Windcave may, at its sole discretion, alter, upgrade, update or change the Windcave Solution at any time during the Term of this Agreement. Customer acknowledges and agrees that, if Customer fails to promptly install all updates to any software forming part of the Windcave Solution supplied by Windcave in connection with this Agreement, Customer may be unable to process Transactions and that:
- Windcave will not be liable to Customer under this Agreement in respect of such inability; and
 - Windcave will be released from any obligation to supply the Support Services during any period which Customer has failed to install any such update.
- 20.4 **Windcave Website:** Customer acknowledges and agrees that Windcave may, at its sole discretion, determine what information, data, features and functionality is made available to Customer via the Windcave Website. Customer agrees to comply with any terms that Windcave may specify in relation to Customer's use of the Windcave Website. In the event of any inconsistency between the terms and conditions of this Agreement and those on the Windcave Website, the terms and conditions of this Agreement will apply to the extent of that inconsistency. Windcave will supply user names and passwords to enable authorised users of Customer to access the Windcave Website. Customer must keep such user names and passwords secure and made known only to authorised users and will be responsible for all use of the Windcave Website through use of Customer's user names and passwords. If Customer breaches any term of this Agreement or the terms of use of the Windcave Website, Windcave may disable Customer's user names and passwords.

21. General

- 21.1 **Entire Agreement:** This Agreement records the entire arrangement between the parties relating to all matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.
- 21.2 **Disputes:** If the parties fail to negotiate a resolution to a dispute within a reasonable time (not exceeding 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. If the parties fail to agree on a mediator within 5 Business Days after the submission to mediation, one will be appointed by the President for the time being of the New Zealand Law Society or its successor. In the event of any submission to mediation:
- 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.

All discussions in mediation will be confidential and without prejudice.

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.

- 21.3 **Waiver:** No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.
- 21.4 **Severance:** Any provisions in this Agreement which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other provision which shall remain in full force and effect.
- 21.5 **Assignment:** Windcave may assign all or any of its rights and obligations under this Agreement to any person without Customer's consent. Customer may not transfer or assign any of its liabilities or rights under this Agreement to any other person without Windcave's prior written consent (such consent not to be unreasonably withheld, provided Windcave is satisfied as to the suitability of the assignee and Customer meets Windcave's reasonable costs in relation to the assignment).
- 21.6 **Amendment:** Except as expressly provided for in this Agreement, no amendment to this Agreement will be valid unless recorded in writing and signed by a duly authorised senior representative of each party.
- 21.7 **Governing Law and Jurisdiction:** This Agreement is governed by the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 21.8 **Remedies:** The rights, powers and remedies provided in this Agreement are not exclusive of any rights, powers or remedies provided by law.
- 21.9 **Subcontracting:** Windcave may appoint subcontractors to perform any of its obligations under this Agreement.
- 21.10 **Counterparts and Copies:** This Agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document. Any facsimile copy of this agreement or copy of this agreement sent via email in PDF format (including any facsimile copy or copy sent via email in PDF format, of any document evidencing either party's signature of this agreement) may be relied upon by the other party as if it were an original copy. This Agreement may be entered into on the basis of an exchange of such facsimile or PDF copies.
- 21.11 **Notices:** Any notice or other communication to be given under this Agreement must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:
- By personal delivery – when received by the party.
 - By post by registered or ordinary mail – on the second working day following the date of posting to the addressee's registered office.
 - By email – when acknowledged by the party by return email or otherwise in writing.
- The addresses for the Customer shall be as set out on the Application Form or such other address as Customer may specify in writing to Windcave.
- 21.12 **Conflicts:** In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order provided by Customer to Windcave, this Agreement will govern and control.
- 21.13 **Privacy:** For further information about how we collect, use, share or otherwise process Customer information, please see our Privacy Policy at windcave.com/privacy-policy.
22. **General Data Protection Regulation (GDPR) Compliance Provisions**
- 22.1 The Customer, to the extent it is a data controller, warrants and represents that:
- it will comply at all times with the Data Protection Law and not do or cause anything to be done or omit to do anything that would, or is likely to, place Windcave in breach of the Data Protection Law; and
 - it has provided all information necessary to, and obtained any requisite consent from, any individual who is the subject of the Customer Personal Data for the purpose described under this Agreement in accordance with its obligations under the Data Protection Law.
- 22.2 Taking into account the state of technical development and the nature of Processing, Windcave shall implement appropriate technical and organisational measures to protect the Customer Personal Data against accidental or unlawful destruction, loss, alteration and unauthorised disclosure or access.
- 22.3 As at the date of this Agreement, the Customer gives a general written authorisation to Windcave to engage any agent, sub-contractor or other third party ("**Sub-processor**") subject to Windcave informing the Customer of any intended changes concerning the addition or replacement of any Sub-processors and allowing the Customer to object to such changes. If the Customer does object to any Sub-processor, then Windcave will not use that Sub-processor. If any Sub-processor is identified as an authorised Sub-processor and used by Windcave for such Sub-processing services, the Customer consents to their appointment as a Sub-processor under this Agreement subject to Windcave putting in place an agreement with such Sub-processor in accordance with the requirements under this clause.

- 22.4** To the extent that Windcave Processes any Customer Personal Data, Windcave shall:
- (a) only Process the Customer Personal Data in accordance with its provision of the Windcave Solution, the Goods, the Documentation, and the Software in accordance with this Agreement and on the documented instructions of the Customer from time to time;
 - (b) subject to Clause 22.5, not transfer, or otherwise directly or indirectly disclose, any the Customer Personal Data to countries outside the European Economic Area (EEA) without the prior written consent of the Customer except where Windcave is required to transfer the Customer Personal Data by the laws of the member states of the EU or EU law (and shall inform the Customer of that legal requirement before the transfer, unless those laws prevent it doing so);
 - (c) ensure that access to the Customer Personal Data is limited to Windcave's personnel and authorised Sub-Processors who need access to it to satisfy its obligations under this Agreement and who are subject to an enforceable obligation of confidence with regards to the Customer Personal Data;
 - (d) taking into account the nature of the Processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, in relation to any request from any data subject for: access, rectification or erasure of the Customer Personal Data, or any objection to Processing;
 - (e) notify the Customer in writing without undue delay if any the Customer Personal Data has been disclosed in breach of this Clause 22;
 - (f) notify the Customer promptly if it becomes aware of a breach of security of the Customer Personal Data, such notices shall include full and complete details relating to such breach;
 - (g) provide such assistance (at the Customer's cost) as the Customer may reasonably require in relation to:
 - (i) the need to undertake a data protection impact assessment in accordance with the Data Protection Law; and
 - (ii) any approval of the Information Commissioner or other data protection supervisory authority to any Processing of the Customer Personal Data; and
 - (iii) on termination of this Agreement, at the Customer's cost and its option, either return all of the Customer Personal Data (and copies of it) or securely dispose of the Customer Personal Data except to the extent that any applicable legal requirement mandates Windcave to store the Customer Personal Data.
- 22.5** Windcave shall be permitted to transfer the Customer Personal Data to countries outside of the EEA to the extent that any one or more of the following applies:
- (a) Windcave has in place with the non-EEA receiving entity the EU model contractual clauses as set out in Decision 2010/87/EU or any alternative version of those clauses issued by the European Commission or a supervisory authority from time to time;
 - (b) the transfer is to a non-EEA country that is deemed to have an adequate level of protection from time to time by the European Commission or such other supervisory authority;
 - (c) to the extent that the transfer is to a Windcave group company located outside of the EEA, Windcave's group of companies has in place Binding Corporate Rules for the transfer of Personal Data to a non-EEA group company, the Windcave has in place with the non-EEA group company the EU model contractual clauses as set out in Decision 2010/87/EU (or any alternative version of those clauses issued by the European Commission or a supervisory authority from time to time) or an intra-group transfer agreement that provides for the necessary protection of the Customer Personal Data in accordance with Data Protection Law;
 - (d) there is an approved code of conduct in place by an association or other body representing Windcave or the Customer that applies to the non-EEA territory or territories to which the Customer Personal Data is to be transferred;
 - (e) there is an approved certification mechanism in place in respect of the non-EEA territory; or
 - (f) to the extent that the transfer is to an entity located in the United States, such entity participates in the EU-US Privacy Shield or such other mechanism that may replace or supersede it from time to time.
- 22.6** At the Customer's cost, Windcave shall allow for a reasonable audit (no more than once per annum) by the Customer and any auditors appointed by it in order for Windcave to demonstrate its compliance with this Clause 22. For the purposes of such audit, upon reasonable notice, Windcave shall make available to the Customer and any appointed auditors all information that the Customer deems necessary (acting reasonably) to demonstrate Windcave's compliance with this Clause 22.
- 22.7** In Windcave's reasonable opinion, to the extent that it believes that any instruction received by it is likely to infringe the Data Protection Law or any other applicable law, Windcave shall promptly inform the Customer and shall be entitled to withhold provision of the Windcave Solution, the Documentation, the Goods, and the Software until the Customer amends its instruction so as not to be infringing.