

ANNEXURE A Tripartite Merchant Agreement

Merchant Agreement for Processing Card Payments through Bill Payments NZ Ltd's ("ZenPay") Payment Facilitator service for high volume merchants.

This agreement applies to all merchants of the ZenPay payment facilitator service who have been approved to accept Visa and Mastercard transactions and who are reasonably expected to process more than USD \$1,000,000 per Card Scheme per annum.

This tripartite Sub-Merchant Agreement constitutes a legal agreement (referred to below as the "Agreement") between:

- A. **Checkout Limited**, duly registered under the laws of New Zealand under number 7866645, having its registered address at Level 18, 188 Quay Street, PwC Tower, Auckland, 1010, New Zealand;

AND

- B. **Bill Payments NZ Ltd**, duly registered under the laws of New Zealand under company number 6490315, having its registered office address at 159 Hurstmere Road, Takapuna, Auckland 0622 New Zealand (the "Payment Facilitator" or "ZenPay");

AND

- C. the "Merchant" who is a client of **ZenPay** for Payment Facilitator services and who is reasonably expected to process more than USD \$1,000,000 per Card Scheme per annum.

BACKGROUND

- A. The Merchant and the Payment Facilitator have entered into an agreement (the "Payment Facilitator's User Agreement") setting forth, *inter alia*, the terms and conditions under which the Payment Facilitator will provide the Merchant with services that facilitate the Merchant's acceptance of card payments for products and services provided to its customers (the "Payment Facilitator Services").
- B. The Payment Facilitator has entered into an agreement (the "Payment Facilitator Agreement") with Checkout.com setting forth, *inter alia*, the terms and conditions under which Checkout.com provides the Payment Facilitator with services ("Checkout Services") that facilitate the processing of payment transactions by the Payment Facilitator on behalf of the Merchants.
- C. Card Schemes, in certain cases, require that Checkout.com enter into a direct agreement with the Merchant under certain terms ensuring the Merchant's compliance with the Card Schemes Rules. The parties have chosen to incorporate such terms in this Agreement.
- D. This Agreement therefore includes the additional terms applicable to the Payment Facilitator Services provided by the Payment Facilitator to the Merchant under the Payment Facilitator's User Agreement.

1 DEFINITIONS AND JURISDICTIONAL AMENDMENTS

- 1.1 Unless the contrary intention appears and unless otherwise defined in Appendix 2, the following words have these meanings in this Agreement.

Affiliated Company means a legal entity that (a) owns or controls a party, directly or indirectly, or (b) is owned or controlled, directly or indirectly, by a party, or (iii) is directly or indirectly under common ownership or control with a party.

Applicable Law means all laws, rules, regulations, notices, directions, guidelines, directives, circulars, codes, practice notices, policy statements and any other requirements (having statutory force or otherwise) (including the requirements of any regulatory authority) applicable, as the case may be, to Checkout.com, the Payment Facilitator or the Merchant, for the time being in force in any jurisdiction and in each case as amended, replaced or superseded from time to time. These include but are not limited to anti-money laundering, anti-bribery, data privacy and consumer protection laws.

Business Day means a day on which banks are open for general banking business in the relevant Territory except for Saturdays, Sundays and public holidays in the relevant Territory.

Card Schemes means, unless otherwise agreed by the parties, Visa Inc., MasterCard Worldwide, or comparable bodies which provide payment cards and regulate payment card acceptance and for which Checkout.com agrees (in its sole discretion) to provide services to the Payment Facilitator from time to time.

Card Scheme Rules means the rules and regulations which regulate participants in the Card Schemes.

Cardholder means the Person in whose name a Card has been issued.

Chargeback is the reversal of a sales transaction.

Card means a card that has been designated by the issuer as a Visa, MasterCard, or a card issued by any other Card Scheme which You have agreed to accept and the Payment Facilitator has agreed to process under the Payment Facilitator's User Agreement.

Change of Control means, in relation to the Merchant, where a person acquires Control of the Merchant or where a person who Controls the Merchant ceases to do so.

Checkout.com means (as the context requires) in respect of any Checkout Service, the relevant Checkout.com Affiliated Company that shall provide such Checkout Service(s) to the Payment Facilitator under the Payment Facilitator Agreement.

Control means in relation to the Merchant, the ability of another person to ensure that the activities and business of the Merchant are conducted in accordance with the wishes of the other person, whether through ownership of voting shares, contract or otherwise. Without limitation, the direct or indirect beneficial ownership of more than 50% of the voting rights in a body corporate is deemed to constitute Control.

Data Breach means any occurrence which results in the unauthorised use, modification or access by a Person to confidential data relating to Card transactions stored by Your business or any Person engaged by You to provide storage or transmission services in respect of that data.

Data Protection Laws means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule, or other binding instrument relating to the processing of Personal Information.

Data Security Standards means the Payment Card Industry Data Security Standards ("PCI DSS") and the Payment Application Data Security Standard ("PADSS") mandated by the Card Schemes for the protection of Cardholder details and transaction information, and any additional or replacement standards of which You are advised from time to time.

Currencies means those currencies specified as such in Appendix 1, as amended or replaced by Checkout.com from time to time.

Person means an individual, firm, body corporate, unincorporated body or association, partnership, joint venture, trust and any government agency or authority.

Personal Information means (a) any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to his physical, physiological, genetic, mental, economic, cultural or social identity of that natural person; or (b) such other definition as may be set out from time to time in the Data Protection Laws.

PIN means the personal identification number associated to a Card, allocated by a Card issuer or personally selected by the Cardholder.

Territory means the relevant jurisdiction in which the payment services are provided, as indicated in the relevant Appendix and such additional countries or jurisdictions which the parties agree in writing from time to time in which the Payment Facilitator is permitted under Applicable Law and the Card Scheme Rules to provide the Payment Facilitator Services.

Transaction Receipt means a document used to evidence a transaction.

Use Policy means the "Declined Lines of Business Policy" as set out at [https:// www.checkout.com/legal/terms-and-policies](https://www.checkout.com/legal/terms-and-policies), as amended from time to time.

"We", "Us" and "Our" refers to, collectively, Checkout.com and the Payment Facilitator.

"You" and "Your" refers to the Merchant.

1.2 In the event of any inconsistency between this Agreement and the Payment Facilitator's User Agreement, the terms of this Agreement will prevail.

1.3 Where the Payment Facilitator is located in:

(a) New Zealand, the terms in Appendix 2 Part 1 shall apply;

1.4 The provisions in this Agreement should be read in conjunction with the Appendices of this Agreement. In the event of any inconsistency between the provisions of the Appendices and the provisions contained elsewhere in this Agreement, the provisions of the Appendices shall prevail.

2 APPROVAL TO USE PAYMENT SERVICES

2.1 You acknowledge and agree that:

- (a) Checkout.com does not provide any payment services directly to You;
- (b) the provision of the Payment Facilitator Services by the Payment Facilitator to You is conditional on Checkout.com approving Your application to the Payment Facilitator for the Payment Facilitator Services;
- (c) in relation to information provided by You in connection with Your application:
 - (i) We may share that information between Us and provide it or other service providers related to the processing of Your application, monitoring Your ongoing compliance and in performing the Payment Facilitator Services;
 - (ii) We may rely on such information as being complete, accurate and not misleading or deceptive; and
 - (iii) We are not obliged to verify the completeness or accuracy of the information We receive from or in relation to You;
- (d) We may obtain from any Card Scheme or a Person who is involved in any Card Scheme, any credit reporting agency or any other Person, information about Your merchant history or Personal Information about You, an Affiliated Company, Your officers, employees, staff or agents for any purpose relating to the operation of those Card Schemes and We can use any such information to assess an application from us under clause 2.1;
- (e) We can disclose information about Your merchant history, a Data Breach and relevant Personal Information in the following circumstances:
 - (i) to any Card Scheme or to any person who is involved in any Card Scheme, for any purpose related to the operation of those schemes;
 - (ii) to card fraud detection agencies (including information about termination of merchant solutions and reason(s) for termination of Checkout.com merchant solutions);
 - (iii) where Applicable Law requires or permits us to do so; and/or
 - (iv) where We have reasonable grounds to believe that either You are involved in dishonest or criminal activity, are a victim of such activity, may have information relevant to an inquiry into such activity or have experienced a Data Breach, to any state or law enforcement or regulatory agency whether or not We have been requested by that agency to provide such information;
- (f) We can disclose Your information to any Affiliated Companies of ours and to any outsourced service providers engaged by either of Us (for example, debt collection agencies (where necessary) or data analytics providers);
- (g) the decision by Checkout.com whether to approve Your application is at Checkout.com's sole discretion and the reason for any decision which is made may not be given to You;

- (h) an approval by Checkout.com is specific to the provision of the Payment Facilitator Services to You by the Payment Facilitator under the Payment Facilitator's User Agreement and does not in any way constitute a representation by either of Us that You will be able to use the services of another payment service provider or of Checkout.com directly should You cease using the Payment Facilitator Services for any reason;
- (i) any information obtained by Us during Our assessment of an application is and remains confidential to Us and will not be shared with You. We are bound by Card Scheme Rules and all correspondence and discussions between Card Schemes and Us are confidential as between Us and the Card Schemes; and
- (j) We are authorised to obtain from third parties financial and credit information relating to You in connection with Checkout.com's decision to approve Your application and in respect of Our continuing evaluation of Your financial and credit worthiness.

2.2 You represent and warrant that:

- (a) any information You provide to Us in connection with an application for the Payment Facilitator Services is complete, accurate and not misleading or deceptive;
- (b) You have all necessary rights, permissions, consents and authority to disclose that information to Us under this Agreement and, without prejudice to the generality of this clause, if You disclose Personal Information to Us in connection with the application under clause 2.1, You have obtained the relevant individual's prior consent to the disclosure and otherwise complied with Your obligations under Data Protection Laws; and
- (c) You are able to satisfy Your obligations and responsibilities under this Agreement.

2.3 No party is or will be bound by this Agreement unless and until Checkout.com has confirmed its approval for the Payment Facilitator to provide the Payment Facilitator Services to You.

3 YOUR OBLIGATIONS

3.1 You:

- (a) must immediately notify the Payment Facilitator of any change to Your financial position which may affect Your ability to perform Your obligations under this Agreement;
- (b) must promptly notify the Payment Facilitator of any change in Your place of business;
- (c) must have a permanent location where your employees or agents accountable for the sale or distribution of the goods or services work. This location must be both: (a) the actual location where you conduct business activities and (b) the location where those accountable for the sale / distribution decide what or how products are sold or distributed are located;
- (d) must not change Your business name or ownership (including any Change of Control) of Your business without giving the Payment Facilitator prior notice and not substantially change the type of goods and services You sell without our prior written consent;
- (e) must only submit a sales transaction where You are the supplier of the goods and/or services;
- (f) must not submit transactions on behalf of a third party. For the avoidance of doubt, this includes submitting transactions for goods and/or services sold on another Person's website;
- (g) must allow Our employees, contractors or agents or those of any Card Scheme reasonable access to Your premises during normal business hours to check Your compliance with this Agreement, the Data Security Standards or for the purposes of the relevant Card Scheme Rules;
- (h) must provide Us with all information and assistance reasonably required to perform Our obligations and to deal with any queries in relation to the Payment Facilitator Services;
- (i) must comply with all applicable Card Scheme Rules and Applicable Laws and contractual requirements in accepting card payments and performing Your obligations under this Agreement;
- (j) must observe and implement the fraud prevention procedures set out in the manuals, guides or directions provided to You, unless otherwise mutually agreed to by the parties; and
- (k) must not use the Payment Facilitator Services for the payment of the products and services which are listed in Checkout.com's Use Policy. This list may be updated at Checkout.com's discretion, where needed to ensure compliance with Applicable Law, compliance with the Card Scheme Rules, prevent high levels of Chargebacks, reputational risks and/or reduce exposure to potentially fraudulent or illegal transactions.

Data Security Standards

3.2 This clause applies to You if You collect payment data directly from a Cardholder or store any Cardholder data. In addition to the other provisions of this Agreement, You acknowledge and agree:

- (a) You must protect stored Cardholder data, regardless of the method used to store such data. Data storage also includes physical storage and security of Cardholder data. Some examples of other data storage which must be secured include an access or excel database and hard copy files. Storage should be kept to the minimum required for business, legal and/or regulatory purposes;
- (b) You must not store the PIN or sensitive authentication data after authorization (even if encrypted);
- (c) if the Payment Facilitator or Checkout.com notifies You that You must comply with the Data Security Standards, You must, at Your cost, successfully complete the protocols for PCI DSS and PA DSS within the time frame stipulated by Us or the Card Schemes. You acknowledge and agree that if You fail to do so:
 - (i) the Payment Facilitator or Checkout.com may terminate the Payment Facilitator Services and/or this Agreement; and
 - (ii) You are liable for any fine imposed upon Checkout.com by the Card Schemes as a result of Your failure to comply; and
 - (iii) You are liable for any fines which the Card Schemes levy in the event that You suffer a Card data compromise incident, and have not complied with the PCI DSS and PA DSS accreditation program; and

- (d) We are obliged to report all Data Breach events to Card Schemes, law enforcement agencies and/or regulators where required by Applicable Law. You grant irrevocable and enduring consent for Checkout.com to release details of any such Data Breach to the aforementioned bodies; and
- (e) if You have suffered a Data Breach:
 - (i) You must notify Checkout.com without undue delay after having become aware of such breach;
 - (ii) You must give Checkout.com and its agents full access to Your systems and databases to facilitate a forensic analysis to ascertain:
 - (A) what Card data has been compromised;
 - (B) what weaknesses in the system permitted the Data Breach; and
 - (C) whether Card data was created, deleted, altered, copied or manipulated in any manner;
 - (iii) all costs of the forensic analysis must be paid by You; and
 - (iv) in order to continue processing Card transactions, You must undergo a full PCI DSS accreditation. All costs of this accreditation exercise must be paid by You.

Your duties to Cardholders

3.3 Subject to the other provisions of this Agreement, You:

- (a) must accept any valid and acceptable Card in a transaction;
- (b) must only send the Payment Facilitator a sales transaction when You have committed to provide the goods and services to the customer;
- (c) must not accept a Card in a credit card transaction for the purpose of giving a Cardholder cash;
- (d) must perform all obligations (including supplying all goods and/or services) to the Cardholder in connection with the sale;
- (e) must not sell, purchase, provide or exchange any information or document relating to a Cardholder's account number, or Card number, or a transaction, to any Person other than:
 - (i) the Payment Facilitator;
 - (ii) Checkout.com;
 - (iii) the Card issuer; or
 - (iv) as required by Applicable Law;
- (f) must destroy any document that is no longer required to be retained under Applicable Law or Card Scheme Rules, in a manner which makes the information unreadable;
- (g) must take reasonable steps to ensure that the information and documents mentioned in (e) are protected from misuse and loss and from unauthorised access, modification or disclosure;
- (h) must not make any representation in connection with any goods or services which may bind the Payment Facilitator, Checkout.com or any Card Scheme;
- (i) must not indicate or imply that We or any Card Scheme endorse any goods or services or refer to a nominated Card in stating eligibility for goods, services or any membership;
- (j) must not accept a Card or a transaction which is of a type You have been previously advised is not acceptable;
- (k) must prominently and unequivocally inform the Cardholder of Your identity at all points of Cardholder interaction (including on any relevant Website, promotional material and invoice) so that the Cardholder can readily distinguish You from the Payment Facilitator, any supplier of goods or services to You, or any other third party;
- (l) must provide notice to any Cardholder with whom You enter into a transaction that You are responsible for that transaction, including for any goods or services provided, any payment transaction, related service enquiries, dispute resolution, and performance of the terms and conditions of the transaction;
- (m) must not unfairly distinguish between issuers of a Card when accepting a transaction;
- (n) must not refuse to complete a transaction solely because a Cardholder refuses to provide additional identification information in circumstances where You do not legitimately require that information and We do not require You to obtain it;
- (o) must, if You collect or store Cardholder information, comply with any Data Security Standards notified to You;
- (p) must not transfer or attempt to transfer financial liability under this Agreement by asking or requiring a Cardholder to waive his or her dispute rights;
- (q) must disclose to the Cardholder before a transaction is completed any fee that You will charge for completion of the transaction and do it in such a way that allows a Cardholder to cancel the transaction if they choose to do so, without the Cardholder incurring any costs; and
- (r) must provide sufficient training to Your employees, contractors, agents and representatives to ensure You meet Your obligations under this Agreement.

Recurring transactions

3.4 You may only process a transaction as a recurring transaction if:

- (a) You have obtained Cardholder permission (either electronically or in hardcopy) to periodically charge for a recurring service;

- (b) You retain this permission for the duration of the recurring services and make it available to Us on request; and
- (c) You provide a simple and accessible online cancellation procedure, if the Cardholder request for the goods or services was initially accepted online.

Indemnity

- 3.5 You agree to indemnify and hold harmless Checkout.com and the Payment Facilitator from and against any fines imposed on either of them by a Card Scheme because of Your conduct in relation to your activities, including any fines imposed as a result of an unacceptable rate of chargebacks.

4 WEBSITE REQUIREMENTS

- 4.1 Unless You are otherwise notified in writing, You must, before You accept any electronic commerce transaction over the Internet, establish and maintain at Your own expense a Website that complies with the requirements of clause 4.2 and is approved by Us in writing.
- 4.2 The Website must clearly display the following information:
- (a) Your business name (and Business Number as applicable);
 - (b) the address of Your approved place of business;
 - (c) Your business contact details, including telephone numbers and email addresses;
 - (d) a complete description of the goods and services available for purchase on Your Website with the price advertised in the relevant currency or, if We have agreed that You can process transactions in another currency, that currency;
 - (e) details of Your return and refund policy, including how a transaction can be cancelled by a Cardholder;
 - (f) details of Your delivery times for goods and services. Delivery times are to be appropriate for the type of business carried on by You. If the delivery is to be delayed, the Cardholder must be notified of the delay and an option provided to them to obtain a refund;
 - (g) details of any export restrictions (if applicable);
 - (h) details of Your privacy policy and how You intend to deal with, or share, Personal Information obtained from and about the Cardholder;
 - (i) a description of the measures You have to maintain the security of:
 - (i) the Cardholders' account data; and
 - (ii) any other information which, by notice, We require You to display from time to time; and
 - (j) any other information required for the purpose of complying with the Card Scheme Rules.
- 4.3 You must provide Us reasonable access to view, monitor and audit the pages of Your Website.
- 4.4 Your Website payments page must be protected by "Secure Sockets Layer" (SSL) or any other form of security method approved in writing by Us.
- 4.5 You must ensure that the name of Your Website either corresponds with or otherwise connects to the name appearing on Cardholder's statement to enable customers to identify You without confusion.

5 CARD ACCEPTANCE REQUIREMENTS

- 5.1 You must:
- (a) use reasonable care to detect forged or unauthorised signatures or the unauthorised use or forgery of a Card;
 - (b) notify the Payment Facilitator if You become aware of or suspect fraud on the part of a Cardholder;
 - (c) not deliberately reduce the value of any one transaction by:
 - (i) splitting a transaction into two or more transactions; or
 - (ii) allowing a Cardholder to purchase items separately;
 - (d) establish a fair policy for dealing with refunds and disputes about transactions and include information about that policy on Transaction Receipts as required by the Payment Facilitator;
 - (e) only submit a transaction as a refund to a Cardholder if it is a genuine refund of a previous sale transaction. The refund must be processed to the same Card that was used in the original sales transaction and be for the original sale amount or, if the Cardholder has agreed to a partial refund, the amount of that partial refund;
 - (f) give refunds for transactions by means of credit in accordance with clause 5.1(e) and not in cash or cheque;
 - (g) not process a refund transaction as a way of transferring funds between Your accounts;
 - (h) if a transaction for a sale does not cover the full amount of the sale:
 - (i) in the situation in which the Card is used to make a deposit or pay an instalment You may accept the Card in payment of all or part of the outstanding balance; and
 - (ii) in any other circumstance You must obtain the balance due at the time the sale is completed in cash;
 - (i) not state or set a minimum or maximum amount for a Card transaction without our prior written consent;
 - (j) not ask a Cardholder to reveal their PIN or any other secret identifier;

- (k) contact the Payment Facilitator for instructions if the identification of a Cardholder or the validity of the Card is uncertain;
- (l) not knowingly submit for processing any transaction that is illegal or that You should have known is illegal; and
- (m) not infer from the fact that a Cardholder has been issued with a nominated Card, or that a transaction has been processed or an authorisation has been given, that either of Us has guaranteed: (i) the Cardholder's creditworthiness; (ii) the correct identity of the Cardholder; (iii) that the transaction is valid and acceptable and subsequently will not be charged back or reversed; or (iv) that You have complied with Your obligations under this Agreement and, in each case, You waive any right to claim that We do.

6 NOT IN USE

7 INVALID OR UNACCEPTABLE TRANSACTIONS

7.1 A transaction is not valid if:

- (a) the transaction is illegal as per Applicable Laws;
- (b) if applicable, the signature on the voucher, Transaction Receipt or authority is forged or unauthorised;
- (c) the transaction is before or after any validity period indicated on the relevant Card;
- (d) You have been told not to accept the Card;
- (e) the transaction is not authorised by the Cardholder;
- (f) the particulars on the copy of the voucher or Transaction Receipt given to the Cardholder are not identical with the particulars on any other copy;
- (g) the price charged for the goods or services is inflated to include an undisclosed surcharge for card payments or the price charged for the goods and services is different for a transaction processed through this facility when compared with other available forms of payments;
- (h) another person has provided or is to provide the goods or services the subject of the transaction to a Cardholder;
- (i) You did not actually supply the goods or services to a genuine Cardholder as required by the terms of the transaction, or have indicated Your intention not to do so;
- (j) the transaction did not relate to the actual sale of goods or services to a genuine Cardholder;
- (k) the transaction is offered, recorded or billed in a currency We have not authorised You to accept;
- (l) this Agreement was terminated before the date of the transaction;
- (m) You have not complied with Your obligations in clause 3.3;
- (n) if applicable, the details are keyed into equipment and You did not legibly record on a Transaction Receipt the information required; or
- (o) it is a credit transaction in which:
 - (i) the amount of the transaction or transactions on the same occasion is more than any applicable limit notified to You;
 - (ii) You collected or refinanced an existing debt including, without limitation, the collection of a dishonoured cheque or payment for previous card charges; or
 - (iii) You provide a Cardholder with cash;
- (p) it occurs during a period in which Your rights under this Agreement were suspended;
- (q) You cannot give a Transaction Receipt as required by clause 7, as set out in the Payment Facilitator's User Agreement;
- (r) for any other reason, the Cardholder is entitled under the Card Scheme Rules to a Chargeback of the transaction; or
- (s) it is a remote transaction and You did not record the required details for the transaction.

7.2 A transaction for a sale or refund is not acceptable if:

- (a) the Cardholder disputes liability for the transaction for any reason or makes a claim for set-off or a counterclaim; or
- (b) it is of a class which Checkout.com or the Payment Facilitator decide, in their discretion, is not acceptable.

7.3 You acknowledge and agree that Checkout.com and/or the Payment Facilitator may:

- (a) refuse to accept a transaction if it is invalid or unacceptable, or may charge it back to You if it has already been processed, even if We have given You an authorisation;
- (b) reverse a sales transaction as a Chargeback, and debit Your account for the amount of the Chargeback, for any of the reasons in clauses 7.1 or 7.2 and any other reason We notify to You from time to time; and
- (c) without limiting the above, delay, block, freeze or refuse to accept any transaction where Checkout.com and/or the Payment Facilitator has reasonable grounds to believe that the transaction breaches Applicable Law or sanctions or the laws or sanctions of any other country.

8 SETTLEMENT OF TRANSACTIONS

8.1 The Payment Facilitator will provide settlement to You under the conditions and within the deadlines set out in the Payment Facilitator's User Agreement.

9 USE OF CARD SCHEME LOGOS AND TRADEMARKS

9.1 You acknowledge and agree that:

- (a) the Card Scheme logos, names and holograms (the "Marks") are owned solely and exclusively by the relevant Card Scheme;

- (b) You will not contest the ownership of the Marks for any reason;
- (c) the Card Schemes may at any time, immediately and without notice, prohibit You from using any of the Marks for any reason; and
- (d) You may only use advertising and promotional material for the Cards or which show a Mark in the manner Checkout.com approves, unless You have received authorization from the Card Schemes through other means.

10 REPRESENTATIONS AND WARRANTIES BY YOU

10.1 You represent and warrant that:

- (a) by entering into this Agreement, You are not currently and will not be in breach of any Applicable Law or any obligation owed to any Person;
- (b) where applicable, You are duly authorised to enter into this Agreement and the obligations under this Agreement are valid, binding and enforceable in accordance with its terms;
- (c) if You are an incorporated body, You validly exist under the laws of Your place of incorporation and have the power and authority to carry on Your business as that business is now being conducted and using any name under which that business is being conducted;
- (d) if You, an Affiliated Company or any officer, employee or agent of You or an Affiliated Company has at any time been listed on a database of terminated merchants maintained by any Card Scheme or have otherwise had merchant services terminated by another acquiring bank, You have disclosed that fact to Us;
- (e) You are legally able to enter into this Agreement;
- (f) You will not use the Payment Facilitator Services, directly or indirectly, for any fraudulent or illegal undertaking; and
- (g) You will only use the Payment Facilitator Services in a manner consistent with this Agreement and the Card Schemes Rules.

10.2 The representations and warranties set out in this clause will be deemed to be repeated each day after the date You entered into this Agreement.

11 NO WARRANTIES BY US

Neither Checkout.com nor the Payment Facilitator make any representations, guarantees or warranties in respect of any of the services to be provided under this Agreement. To the maximum extent permitted by Applicable Law, any and all implied representations, warranties and guarantees are excluded.

12 EXCLUSION OF LIABILITY

12.1 To the maximum extent permitted by Applicable Law, We are not liable to You or to any Person for any act or omission (including negligence) of Ours that results in any direct or indirect loss (including loss of profits), damage, injury or inconvenience You suffer because of any service failure, including any unavailability of the service, any delays or any errors. Under no circumstances will We be liable to You for any lost sales, revenue or profit or loss of customers due to any service failure which results in You being unable to promptly accept payments from Your customers.

12.2 Subject to clause 12.1:

- (a) each of Us will be liable only for Our own acts or omissions and not for acts or omissions of third parties. This expressly excludes Our liability for acts or omissions of the Card Schemes and Card issuers, or for events or activities originating outside Our system (such as infrastructure failure, internet disturbances or malfunctioning in third party systems), except where such events were caused by Our deliberate default or negligence;
- (b) in no event will Checkout.com's total liability arising out of or in connection with this Agreement in each twelve (12) month period, whether in contract or in tort or other legal theory, exceed the total amount of the fees paid by You during that twelve (12) month period; and
- (c) if and insofar as the Payment Facilitator is liable to You, such liability is arranged in accordance with the terms of the Payment Facilitator's User Agreement.

13 EFFECTIVE DATE, SUSPENSION AND TERMINATION

13.1 This Agreement shall have the same effective date as the Payment Facilitator's User Agreement and shall continue unless and until terminated in accordance with this clause 13. This Agreement will also terminate automatically upon termination of the Payment Facilitator's User Agreement, except for those terms which are intended to survive termination.

13.2 This Agreement may be terminated at any time by the Payment Facilitator or Checkout.com upon notice to You. Checkout.com or the Payment Facilitator may suspend or terminate this Agreement or suspend and then terminate this Agreement at any time if:

- (a) You are in breach of Your obligations under or arising out of this Agreement;
- (b) if in the Payment Facilitator's or Checkout.com's reasonable opinion, the processing of Your transactions exposes the Payment Facilitator or Checkout.com to risk;
- (c) You are or have engaged in conduct which exposes the Payment Facilitator or Checkout.com to potential fines or penalties imposed under Applicable Law and/or Card Scheme Rules;
- (d) Your business or equipment is or has been targeted by a person engaged in fraudulent or dishonest activity whether with or without Your knowledge;
- (e) You or any service provider (other than the Payment Facilitator or Checkout.com) that You use in connection with Your activities have suffered a Data Breach;
- (f) a direction is made by a Card Scheme or under Applicable Law that the Payment Facilitator Services be suspended or terminated;
- (g) You have experienced an adverse change in financial circumstances;
- (h) Checkout.com or the Payment Facilitator has concerns about Your solvency or if You become insolvent or are subject to any form of insolvency administration or a resolution is passed or an order is made for winding up;

- (i) You have a significant adverse credit event recorded against You; or
- (j) as otherwise permitted by this Agreement.

13.3 This Agreement will terminate automatically and immediately if:

- (a) Checkout.com's registration as a member service provider or independent sales organisation with any Card Scheme is cancelled;
- (b) the agreement between the Payment Facilitator and Checkout.com is terminated for any reason; or
- (c) the Payment Facilitator's User Agreement or any other agreement that You have with Payment Facilitator Services is terminated for any reason.

13.4 You acknowledge that the Payment Facilitator will inform Checkout.com of the termination of this Agreement for any reason and You authorise Checkout.com to disclose to any Card Scheme advice of termination of this Agreement and the reasons for the termination. You acknowledge that the information concerning termination of this Agreement then becomes available to any member of the Card Schemes. This information, available to any member of the Card Schemes, may be used in assessing subsequent applications for merchant facilities.

13.5 This clause 13 shall survive the termination of this Agreement.

14 ASSIGNMENT

You may not assign or charge Your rights under this Agreement without the prior written consent of Checkout.com and the Payment Facilitator.

15 GOVERNING LAW

This Agreement, and any matter (whether or not contractual) arising from or in relation to this Agreement, is governed by the laws of England and Wales. Each party submits to the exclusive jurisdiction of the courts of England and Wales and any courts of appeal from them.

16 AMENDMENT

We may vary this Agreement on thirty (30) days' written notice to You. Where any variation made by Us had, or would have an adverse impact on You, You may terminate this Agreement and cease using the Payment Facilitator Services prior to the amendment taking effect.

17 NOTICES

17.1 You acknowledge that Checkout.com or the Payment Facilitator may deliver notices to You in any of the ways listed in clause 17.2.

17.2 A notice must be in writing and is taken to be received:

- (a) if delivered personally, at the time of delivery;
- (b) if sent by pre-paid post, on the third day after the posting;
- (c) if sent by facsimile transmission, on the date the transmitting machine records transmission of the complete document;
- (d) when the party sending the notice is Checkout.com or the Payment Facilitator, if sent by email, at the time when the email enters Your information system.

17.3 The address, facsimile number or email address to be used for notices is the last address, facsimile number or email address advised by a party. You must inform the Payment Facilitator immediately of any change of Your address, facsimile number or email address.

18 SET-OFF

18.1 For the purpose of this clause, "**Liability**" means any debt or monetary liability, irrespective of whether the debt or monetary liability is future or present, actual or contingent.

18.2 The Payment Facilitator may at any time without notice to You set off any Liability owed by the Payment Facilitator to You, on any account, against any Liability, owed by You to the Payment Facilitator under or in connection with this Agreement.

18.3 Checkout.com may at any time without notice to You set off any Liability owed by Checkout.com to You, on any account, against any Liability, owed by You to Checkout.com under or in connection with this Agreement.

18.4 If the Liability to be set off is expressed in different currencies, Checkout.com or, as applicable, the Payment Facilitator may convert such Liability at a market rate of exchange for the purpose of set-off.

18.5 In the event such set-off does not fully reimburse Checkout.com or, as applicable, the Payment Facilitator for the amount owed, You shall immediately pay Checkout.com or, as applicable, the Payment Facilitator such amount remaining outstanding.

18.6 Any exercise of Checkout.com's or the Payment Facilitator's rights under this clause 18 is without prejudice and in addition to any rights or remedies available to Checkout.com and the Payment Facilitator under this Agreement or otherwise.

19 WAIVER

The failure by a party to assert its rights under this Agreement shall not be deemed to constitute a waiver by this party of any right to enforce each and every provision of this Agreement in accordance with their terms. Any waiver must be made in writing.

20 CONSENT AND DISCRETION

Any discretion conferred on Checkout.com and the Payment Facilitator under this Agreement will be exercised reasonably in accordance with Checkout.com's or, as applicable, the Payment Facilitator's legitimate business interest.

21 COUNTERPARTS

This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Appendix 1, CURRENCIES

NZ \$

Appendix 2, Part 1 – NEW ZEALAND

1 Checkout.com Parties

- 1.1 For services provided to a Payment Facilitator in New Zealand, Checkout Limited (**Checkout NZ**), a company incorporated under the laws of New Zealand under company number 7866645 with the New Zealand Companies Office, having its registered office address at C/- Buddle Findlay, Level 18, HSBC Tower, 188 Quay Street, Auckland 1010, New Zealand, is the supplier of these Services and is a Party to the Agreement for the provision of such Services. References to Checkout.com in this Agreement shall be read as referring to Checkout NZ.
- 1.2 In the context of Checkout NZ being a Party to this Agreement, the Parties agree that this Agreement is supplemented and/or amended (as applicable) by the terms as set out in this Appendix. In the event of any conflict or inconsistency between the provisions of this Appendix 2 and the provisions contained elsewhere in this Agreement, the provisions of this Appendix 2 shall prevail.

2 Definitions

- 2.1 The definitions in Clause 1.1 of this Agreement shall be expanded, supplemented, amended and/or varied, as appropriate, as follows:

Business Day means any day on which banks are open for general banking business in New Zealand except for Saturdays, Sundays or a public holiday (as defined in the Holidays Act 2003) in New Zealand.

Card Schemes means, unless otherwise agreed by the parties, Visa Asia Pacific, Visa Inc., MasterCard Worldwide, Carte Bancaire, JCB, American Express, Union Pay International, Diners Club International/Discover Network or comparable bodies which provide payment cards and regulate payment card acceptance and for which Checkout.com agrees (in its sole discretion) to provide services to the Payment Facilitator from time to time.

Data Protection Law means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule, or other binding instrument relating to Personal Information held by a Party, including the Privacy Act 2020 and any codes of practice issued by the Privacy Commissioner under the Privacy Act 2020, (as amended and replaced from time to time).

Territory means New Zealand and such additional countries or jurisdictions which the Parties agree in writing from time to time in which the Payment Facilitator is permitted under Applicable Law and the Payment Scheme Rules to provide the Payment Facilitator Services.

3 Clause 3

- 3.1 The words "You must protect stored Cardholder data" in clause 3.2(a) shall be replaced with "You must ensure that Cardholder data (including Personal Information) is protected, by such security safeguards as are reasonable in the circumstances to take, against loss, unauthorised access, use, modification or disclosure or other misuse".

4 Clause 4

- 4.1 Clause 4.2(d) of the Agreement is deleted in its entirety and substituted with the following:

"a complete description of the goods and services available for purchase on Your Website with the price advertised in New Zealand Dollars or, if We have agreed that You can process transactions in another currency, that currency;"

EXECUTED AS AN AGREEMENT

The completion of a Payment Facilitator's User Agreement between the Merchant and ZenPay and the conduct of the first transaction with ZenPay will be considered the Merchant's consent and intent to execute this agreement.