

Merco Merchant Terms & Conditions

Background

- A. Merco Limited (Merco) is the owner of the POLi™ Service.
- B. Waave Technologies Pty Ltd (Waave) has been appointed by Merco as a Reseller to the Territory of New Zealand for the provision of certain Services in relation to the delivery of the POLi™ Service, the POLi™ System and other systems as agreed from time to time.
- C. Waave wishes to make the POLi™ Service available to the Merchant for use by the Merchant within the Territory in accordance with these terms and conditions.

Terms and conditions

1 Application

These terms and conditions govern the Merchant's use of the POLi™ Service and any other related services. The Merchant' initiating Transactions using the POLi™ Service, or accepting payments from the Merchant's Customers using the POLi™ Service, shall constitute and evidence the Merchant's unqualified acceptance of these terms and conditions.

2 Services

Waave will provide the Merchant with access to the POLi™ Service to permit the initiation of Transactions using the Software and Support during the Term.

3 Merchant Obligations

3.1 Operational Obligations. At all times, the Merchant will:

- (a) ensure that the Website and Business Systems and the manner in which the POLi™ Service is accessed from the Website, comply with the Documentation and any instructions from Waave, and are operated in accordance with reasonable security procedures to prevent unauthorised access to any information, data or the POLi™ Service;
- (b) only use the POLi™ Service to initiate and process Transactions, in accordance with the Documentation, these terms and conditions and any instructions from Waave;
- (c) acquire and maintain all equipment, services and software , and its own banking facilities, as are necessary for the Merchant's Customers to access and use the POLi™ Service;
- (d) ensure that it has sufficient properly trained personnel, who are familiar with the Merchant's obligations under these terms and conditions and the Website and Business Systems, to maintain the Website and Business Systems and manage Support inquiries;

- (e) keep confidential and safeguard from unauthorised use:
 - (i) any usernames, passwords and information required to access any facility forming part of, or made available while using the POLi™ Service; and
 - (ii) any other information that Waave, Merco or the POLi System makes available to the Merchant about a Transaction for the purposes of the Merchant providing a refund to the holder of the banking account from which the Transaction was initiated;
- (f) provide Waave and its respective contractors with reasonable assistance and facilities (including a means of accessing the Business Systems in accordance with agreed protocols, and liaison with the necessary Merchant personnel) in order to permit the Implementation Services and Support to be provided in accordance with these terms and conditions);
- (g) provide support to its own customers in relation to the operation and their use of the POLi™ Service (including if required by Waave, the publication on the Website of a "Frequently Asked Questions" page prepared by or on behalf of Waave, or a link to such a page published by Waave);
- (h) provide Waave with such information and assistance as Waave reasonably requires in respect of Transactions (including failed or attempted Transactions); and
- (i) only use any information that Waave provides to the Merchant about a Transaction, for the purpose of initiating and processing a refund in respect of the Transaction.

3.2 Sales Obligations. At all times during its use of the POLi™ Service the Merchant is responsible for managing and fulfilling all orders for goods or services to which any Transaction relates, including any dispute or issue relating to any Transaction, any refund and any taxes. The Merchant must not:

- (a) make any representation in connection with any goods or services or the POLi™ Service that may bind or affect Waave or its contractors;
- (b) make any unauthorised representations concerning the POLi™ Service or Waave's products, policies or services;
- (c) initiate or process any Transaction for or on behalf of any other person (except as permitted in accordance with these terms and conditions);
- (d) initiate or process any Transaction that has been originated from a website or source, other than the Merchant's Systems;
- (e) initiate or process a Transaction on behalf of any other person where the Transaction does not relate to a genuine sale or supply;
- (f) initiate or process a Transaction with the knowledge (or in circumstances where it should reasonably know) that the Transaction is fraudulent or unlawful;
- (g) initiate or process the same Transaction more than once;
- (h) initiate Refund Transaction(s) in favour of a person or a banking account that is:
 - (i) different from the person or banking account from which the original Transaction was originated; or

- (ii) is greater in value than the original POLi Transaction.

Multiple Refund Transactions may be processed in respect of an original Transaction. However, the sum of Refund Transactions processed in relation to the original transaction must not exceed the amount of the original Transaction.

3.3 Other Obligations and Consents. The Merchant:

- (a) must comply with all applicable laws including, but not limited to, the New Zealand Privacy Act 2020 and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
- (b) acknowledges that Waave may engage service providers to support the provision of the POLi™ Service. The Merchant agrees to comply with any reasonable direction or request given by Waave that relates to its obligations under such arrangements, including providing such relevant information regarding the Merchant's business as reasonably required by Waave and/or its service provider as part of the on-boarding process or during its use of the POLi™ Service;
- (c) confirms that it has read and agreed to The POLi privacy policy, which is available on the www.polipayments.com website; and
- (d) consents to the use of its name or other business details (or part thereof) (in whichever form decided by Waave) to be referenced in the domain of an account identifier for a Transaction.

4 Changes

4.1 Waave may make the following changes to these terms and conditions from time to time without the consent of the Merchant, if Waave (acting reasonably) deems the change to be necessary for legitimate business purposes (a "**Change**"):

- (a) any change necessary to comply with changes in any relevant law;
- (b) any change necessary to deal with significant fraud or security issues;
- (c) any change necessary to reflect changes to Waave's business or technological systems; and
- (d) any administrative change that is necessary to correct mistakes or omissions or which Waave reasonably believes the Merchant will benefit from.

4.2 From time to time, Merco may make new releases of the POLi™ Service or the Documentation ("**Release**"). Releases may, among other things:

- (i) provide a means of using enhanced or added functionality in respect of the POLi™ Service; or
- (ii) remove access to functionality or banking facilities that had previously been available in respect of the POLi™ Service.

4.3 Waave requires the Merchant to undertake any action to accommodate, implement or otherwise give effect to a Release or Change (including making any necessary changes to the Website or the Business Systems), the Merchant must undertake any such necessary action within 30 days of receiving notice from Waave under this clause of a Change or Release (or a longer period if agreed by Waave, acting reasonably). However, if the Change or Release is intended to improve security or comply with any

regulatory requirement, the Merchant must give effect to any Change or Release (as applicable) as soon as reasonably practicable, and no later than 30 days after receiving notice from Waave of the Release.

5 Licence

5.1 Waave grants the Merchant, and the Merchant accepts, a non-transferable, non-exclusive right to access and use the POLi™ Service, in accordance with these terms and conditions, subject to the following restrictions:

- (a) the Merchant may only access and use the POLi™ Service for the direct benefit of the Merchant in accordance with the Documentation and these terms and conditions;
- (b) the Merchant may not access the POLi™ Service from or in relation to any other Website, Business Systems or equipment without Waave's prior written consent;
- (c) except as expressly permitted by these terms and conditions, the Merchant must not directly or indirectly:
 - (i) encumber any of the rights granted under these terms and conditions;
 - (ii) grant any party a sub-licence to access the POLi™ Service for any purpose;
 - (iii) distribute or resell access to the POLi™ Service to any person, including by supplying access to the Service through bureau service processing (except as permitted in clause 13.8);
 - (iv) capture, store, record, monitor, intercept or transmit any information that is input or used by any person initiating a Transaction, that might enable unauthorised access to, or the conduct of unauthorised transactions from, any banking account;
 - (v) export or use the POLi™ Service outside of the Territory (provided that the accessing and use of the POLi™ Service by a Merchant Customer that is located outside the Territory to initiate a Transaction from their account held at a Designated Financial Institution within the Territory is permitted); or
 - (vi) circumvent the operation of the POLi™ Service in any way, nor will the Merchant encourage, assist, or grant the right or ability to, any other party to engage in the same or similar conduct.

6 Support

6.1 Subject to clause 11 of these terms and conditions, Merco and Waave will:

- (a) ensure the conduct of regular checks of the Designated Financial Institutions' websites to ascertain whether they have been changed in a way that affects the operation of the POLi™ Service, and take reasonable steps to alter the POLi™ Service to account for any changes as soon as reasonably possible;
- (b) take reasonable steps to ensure the availability of the POLi™ Service during the hours of operation specified in the Documentation;
- (c) provide the Merchant with a web-based facility, which will be accessible by the Merchant using a username and password issued by or on behalf of Waave, listing Transactions undertaken by end

users from the Website, and status information concerning those Transactions, as described in the Documentation; and

- (d) provide the Merchant with telephone, e-mail or internet-based assistance with respect to the POLi™ Service, through the Help Desk facility referred to in clause 6.2.

6.2 Waave will make available a Help Desk facility during the hours of operation specified in the Documentation. The functions of the Help Desk facility are as set out in the Documentation, but include:

- (a) telephone, e-mail or internet-based assistance in relation to functions and features of the POLi™ Service, and the Documentation;
- (b) guidance in the operation of the POLi™ Service, and in the installation of any Release as it is made available; and
- (c) a means for the Merchant to report and be provided with answers to inquiries by the Merchant about problems or issues affecting the POLi™ Service (including changes to Designated Financial Institutions' websites).

6.3 When reporting a problem or issue to Waave, the Merchant must comply with the procedures and provide the information described in the Documentation. If the problem or issue is attributable to any systems operated by or on behalf of Waave, or is attributable to a change in a Designated Financial Institution's website, Waave will use its best endeavours to rectify that problem or manage its effects, in accordance with the Response Levels.

6.4 Waave is not required to provide support in relation to problems arising out of:

- (a) the Merchant's failure to implement a current Release;
- (b) the Merchant not accessing the POLi™ Service in accordance with the Documentation;
- (c) changes to the Website or the Merchant's Business Systems or environment on which the POLi™ Service is operating;
- (d) a failure by the Merchant to provide qualified and trained staff for the operation the Website or the Business Systems and their interaction with the POLi™ Service;
- (e) accident, negligence, misuse or abuse;
- (f) operator, Merchant, Designated Financial Institution, the Merchant's Customers or end user error; or
- (g) the Merchant breaching these terms and conditions.

The Merchant will pay any dishonour fee or other expense incurred by Waave as a result of any breach of these terms and conditions by the Merchant.

7 Confidentiality

7.1 Waave and the Merchant acknowledge the confidentiality and the proprietary nature of the other's Confidential Information and that no right, entitlement or interest in that Confidential Information is extended to or conveyed to it, other than for the purposes contemplated by these terms and conditions. Each undertakes to and agrees with the other that it will:

- (a) keep all of the other's Confidential Information confidential;
- (b) only use the other's Confidential Information for the purposes contemplated by these terms and conditions; and
- (c) not use, or attempt to use, any of the other's Confidential Information for its own purposes or the purposes of any third party, or do or omit to do any act or thing involving the use of that Confidential Information that may injure or cause loss to the other, without the other's prior written consent.

7.2 Clause 7.1 will not apply to Confidential Information, to the extent that:

- (a) the recipient is legally compelled to disclose that Confidential Information or the Confidential Information is required by a regulatory body;
- (b) the disclosure is only to those of its employees or contractors or agents who have a need to know (and only to the extent that each has a need to know); and have been directed to keep confidential that Confidential Information;
- (c) in the case of Confidential Information relating to a Transaction the Confidential Information of or relating to the Merchant is required to be disclosed to assist in the investigation or dispute concerning that Transaction; or
- (d) the Confidential Information is publicly available (except due to breach of confidentiality).

7.3 Waave and the Merchant acknowledge that a breach by it of this clause 0 may cause the other irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, the discloser may seek and obtain injunctive relief against such a breach or threatened breach. In addition each of Waave and the Merchant will indemnify the other and keep the other indemnified from and against any loss arising as the consequence of a breach by the indemnifying party, its servants or agents, of this clause 0.

7.4 The obligations under this clause 0 shall survive the Merchant ceasing using the POLi™ Service.

8 Intellectual Property Rights

8.1 The Merchant acknowledges that the POLi™ Service and Documentation are the subject of copyright and other intellectual property rights and that Merco owns all of the existing and new Intellectual Property arising from the provision of the POLi™ Service and the Documentation. The Merchant must not at any time whether during use of the POLi™ Service or otherwise, do or permit any act or omission that infringes on those Intellectual Property rights. The Merchant will fully indemnify Waave fully against any loss, liability, cost or expense suffered or incurred by Waave (including liability to any other party) as a result of the Merchant's breach of the provisions of this clause 8.

8.2 On becoming aware of any claim or allegation by a third party against the Merchant alleging that an authorised use by the Merchant of the POLi™ Service infringes the intellectual property rights of that third party, the Merchant must:

- (a) promptly notify Waave in writing, giving full particulars of any infringement, suspected infringement or alleged infringement;
- (b) give Waave the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to or after the institution of legal proceedings;
- (c) provide Waave with reasonable assistance (at the reasonable expense of Waave) in conducting the defence of such a claim;
- (d) permit Waave to modify the POLi™ Service or replace components or parts of components, to render the POLi™ Service non-infringing; and
- (e) authorise Waave to obtain for the Merchant's benefit the authority to continue the use of the POLi™ Service.

If an independent tribunal of fact or law determines that an infringement of third party's intellectual property rights has occurred, Waave will:

- (f) take reasonable steps to obtain for the Merchant the right to continue using the POLi™ Service;
- (g) modify the POLi™ Service in order to avoid continuing infringement; or
- (h) if the solutions in either of the preceding paragraphs cannot be achieved using reasonable commercial efforts, Waave may terminate provision of the POLi™ Service (or the relevant part of it) by written notice to that effect.

8.3 Waave will not have any liability under clause 8.2 with respect to any claim based upon:

- (a) the use of the POLi™ Service, with other products or software not supplied by Waave;
- (b) any addition to or modification to the POLi™ Service not created or supplied by or on behalf of Waave;
- (c) use of a superseded release or version of the POLi™ Service;
- (d) any use of the POLi™ Service other than in accordance with these terms and conditions or the Documentation; or
- (e) the Website or the Merchant's systems, including the Business Systems.

8.4 Clauses 8.2 and 8.3 set out Waave's entire obligations, and the Merchant's sole remedies in respect of any claim that an authorised use by the Merchant of the POLi™ Service provided by or on behalf of Waave infringes the intellectual property rights of any party.

8.5 This clause 8 shall survive the Merchant ceasing using the POLi™ Service.

9 Warranty & Liability

9.1 Subject to clause 9.2, Waave warrants that:

- (a) The POLi™ Service when installed and operated in accordance with the Documentation, will comply in all material respects with the Documentation; and
- (b) it will:
 - (i) provide any Implementation Services and the Support in a professional manner using suitably qualified personnel; and
 - (ii) take reasonable steps to endeavour to provide Support in accordance with the Response Levels.

9.2 The Merchant acknowledges that:

- (a) the operation of the POLi™ Service or access to the websites operated by any Designated Financial Institutions will not be uninterrupted and error-free;
- (b) the performance of the POLi™ Service (including response times) will depend on factors outside the parties' control including:
 - (i) the design and performance of the Website and the Business Systems;
 - (ii) other Merchant systems;
 - (iii) the websites, mobile applications, systems, processes, rules, codes, procedures and policies (including in relation to security or risk related checks, clearing and settlement processes and timeframes) of the Merchant's Bank and the Merchant's Customer's Designated Financial Institutions;
 - (iv) the state of the relevant telecommunications networks and their interconnections and network congestion; and
 - (v) the occurrence of a Force Majeure Event impacting the business of Waave or that of its service providers or contractors which in turn impacts on the provision of the POLi™ Service;
- (c) Designated Financial Institutions are not obliged to notify Merco or Waave of any changes to the layout or functionality of their websites or any outages, faults or errors in the performance of their websites or mobile applications;
- (d) an internet banking receipt, whether issued by a Designated Financial Institution or the Merchant's Bank, and/or a completed Transaction status reported by the POLi™ Service, is not to be taken as conclusive proof that the Transaction has been processed by the Designated Financial Institution or the Merchant's Bank, or that funds will be, or have been, deposited to the Merchant Bank Account;
- (e) although Merco and Waave will implement reasonable security procedures and measures, including those described in the Documentation, it cannot warrant that unauthorised access to information and data cannot occur;

- (f) where Waave provides information to the Merchant about a Transaction, Merco and Waave has not checked or verified the accuracy or completeness of that information and it is the Merchant's responsibility to do so; and
 - (g) the Merchant has relied on its own independent assessment and judgment in determining whether the POLi™ Service meets the Merchant's technical and business requirements.
- 9.3** Except for warranties expressly set out in these terms and conditions, to the extent permitted by the law Waave expressly excludes all conditions and warranties whether express or implied, statutory or otherwise.
- 9.4** The Merchant acknowledges and agrees that it is acquiring the right to access and use the POLi™ Service and associated services (including the licences granted under these terms and conditions) for business purposes, and that accordingly the provision of the New Zealand Consumer Guarantees Act 1993 will not apply to these terms and conditions or to the supply of such access or use.
- 9.5** Except for undertakings to indemnify or fraud, in no event will Waave be liable to any party for any indirect, punitive, special, incidental or consequential loss in connection with or arising out of these terms and conditions or the Merchant's access to or use of the POLi™ Service (including for loss of profits, use, data, or other economic advantage), regardless of how it arises, whether for breach of these terms and conditions or on any other basis, and even if it has been previously advised of the possibility of such damage.
- 9.6** Waave's liability arising out of or in connection with these terms and conditions or the Merchant's access to or use of the POLi™ Service (whether in contract, equity, negligence, tort or for breach of statute or otherwise) will be reduced by the extent, if any, to which the Merchant or any other party contributed to the loss.
- 9.7** The Merchant represents and warrants to Waave that:
- (a) to the best of its knowledge and belief, the processing by Waave of any payment instructions given by the Merchant or the Merchant's Customers will not breach any laws; and
 - (b) It will comply with all its obligations under these terms and conditions and perform all its obligations under these terms and conditions in compliance with all applicable laws.
- 9.8** To the extent permitted by law, the cumulative liability of Waave for any breach of any conditions or warranties in these terms and conditions, or any breach of any statutory guarantees, and the Merchant's sole and exclusive remedy in relation to such breaches shall be limited to:
- (a) in the case of goods supplied by or on behalf of Waave, at Waave's option:
 - (i) replacing or repairing the goods, or supplying equivalent goods; or
 - (ii) paying the cost of replacing or repairing the goods or of acquiring equivalent goods; and/or
 - (b) in the case of services, at Waave's option:
 - (i) supplying the services or licences granted under this document again; or
 - (ii) paying the cost of having the services supplied or licences granted again.

9.9 In no event will Waave or the Merchant's total aggregate liability in respect of all claims arising under or pursuant to these terms and conditions (regardless of whether those claims arise out of a single event or a number of different events) exceed \$50,000.00.

9.10 To the extent permitted by law, the Merchant indemnifies Waave and its employees, agents and contractors (each an **"Indemnified Party"**) against any loss, damage or liability which any of them suffers or incurs as a result of:

- (a) negligence, error or fraud by the Merchant or any employee, contractor or agent of the Merchant, or any end user; **OR**
- (b) the Merchant's relationship with any end user or customer of the Merchant;

provided that the Merchant's obligation to indemnify an Indemnified Party shall be reduced to the extent that the loss, damage or liability suffered is caused by, or materially contributed to by, any unlawful act of the Indemnified Party.

9.11 To the extent permitted by law, Waave indemnifies the Merchant and its employees, agents and contractors (each an **"Indemnified Party"**) against any loss, damage or liability which any of them suffers or incurs as a result of negligence, error or fraud by Waave or any employee, contractor or agent of Waave, provided that Waave's obligation to indemnify an Indemnified Party shall be reduced to the extent that the loss, damage or liability suffered is caused by, or materially contributed to by, any unlawful act of the Indemnified Party.

9.12 This clause 9 shall survive the Merchant ceasing to use the POLi™ Service.

10 Termination

10.1 The Merchant's access to the POLi™ Service may be terminated by written notice in the following circumstances:

- (a) immediately by Waave on the occurrence of a Regulatory Event;
- (b) immediately by Waave if the Merchant is operating a prohibited business as reasonably determined by Waave; and
- (c) immediately by Waave if Waave, acting reasonably, considers that the continued operation of these terms and conditions would expose Waave to reputational or brand damage.

10.2 On termination of the Merchant's access to the POLi™ Service for any reason:

- (a) The Merchant's right to use the Documentation and to access the POLi™ Service automatically ceases; and
- (b) the Merchant must promptly remove the POLi™ Service from the Business System, and update the Website or Business Systems so as not to refer to Waave or the POLi™ Service.

11 Suspension and Blocking and unblocking the POLi™ Service upon a Merchant's Customer's request

11.1 Waave may suspend the POLi™ Service or the Merchant's access to it at any time, by written notice to the Merchant, if Waave reasonably believes that:

- (a) any third party (including a Designated Financial Institution) is taking, or has taken, steps to interfere with the proper operation of any part of the POLi™ Service or a Transaction, including any suspected, alleged or actual security or fraud or compliance related issues relating to the POLi™ Service;
- (b) any action taken or required to be taken in accordance with these terms and conditions contravenes or may contravene any law or code of conduct;
- (c) a Regulatory Event has occurred or is likely to occur. When exercising this right Waave will endeavour to keep the Merchant informed of any date upon which the suspension is expected to end, and will advise the Merchant when the suspension has ended; or
- (d) the Merchant has breached a material term of these terms and conditions; or Waave considers, acting reasonably, that the operation of these terms and conditions or the POLi™ Service is exposing Waave to reputational or brand damage.

Where Waave exercises its rights under this clause, Waave will use its reasonable endeavours to provide reasonable prior notice to the Merchant, other than where it reasonably considers the immediate suspension of the POLi™ Service or the Merchant's access to it is required without notice having regard to the material or immediate impact it may otherwise have on Waave's business, the POLi™ Service and/or its end users.

11.2 If Waave suspends the POLi™ Service or the Merchant's access to it:

- (a) Waave is not obliged to process any Transactions using the POLi™ Service;
- (b) if possible, Waave and the Merchant will work together in good faith to resolve the issue or issues which resulted in the suspension; and
- (c) Waave will reinstate the POLi™ Service or the Merchant's access to it, once the issue which resulted in the suspension is resolved.

11.3 The Merchant agrees and acknowledges that Waave may block or unblock (for the relevant period(s) determined by Waave) a Merchant Customer's use of or access to the POLi™ Service for that Merchant Customer in accordance with Waave's Terms and Conditions or otherwise in the following circumstances:

- (a) At the request of a Merchant Customer, with their consent;
- (b) Without the consent of a Merchant Customer, if Waave considers in its sole and absolute discretion that in respect of any Transaction by, from or to a Merchant Customer, any such Transaction(s):
 - (i) which were previously processed, have been deemed fraudulent;
 - (ii) which have been received but not yet processed, may be fraudulent;
 - (iii) may be associated with any other illegal activity; or

- (iv) may in any other way be rejected by that Merchant Customer's bank or Designated Financial Institution.

The Merchant agrees to work collaboratively and in good faith with Waave to facilitate any such request from a Merchant Customer to block and unblock their use of or access to the POLi™ Service and any instructions from Waave (acting reasonably) relating to this process.

12 Marketing & Promotion; Publicity

- 12.1 If Waave provides the Merchant with any logos, trademarks, signs or other promotional or instructional material relating to the Service ("**Materials**"), the Merchant will display them on the Website in accordance with the Documentation. The Merchant shall remain solely responsible for all content appearing on the Website and for the maintenance and updating of all information on the Website. The Merchant consents to Waave referring to the Merchant as a user of the POLi™ Service and grants Waave a licence to use the Merchant's name and any logos for that limited publicity purpose only.

13 General provisions

- 13.1 Assignment: Neither Waave nor the Merchant may transfer any right or liability under these terms and conditions without the other's prior written consent, except where these terms and conditions provide otherwise.
- 13.2 Subcontracting: Waave may subcontract the provision of any services under these terms and conditions to another party including, Implementation Services and Support Services and the operation of the Help Desk.
- 13.3 Waiver: Failure, delay or neglect by either Waave or the Merchant to enforce a right or entitlement under these terms and conditions is not to be construed as a waiver of that right or entitlement, or a consent to, waiver of, or excuse for any other different, continuing, or subsequent breach.
- 13.4 Amendment: Subject to the changes that Waave may make in respect of these terms and conditions as set out in clause 4, the parties may amend these terms and conditions by way of:
- (a) Waave making available the proposed changes to these terms and conditions to the Merchant via the merchant console, portal, website or email, and having provided the relevant notice to the Merchant of the same in accordance with these terms and conditions where applicable, and either:
 - (i) the Merchant clicking a link or button to confirm its acceptance of the proposed new terms on such merchant console, portal, website or email; or
 - (ii) the Merchant agrees in writing to the change (including by email or other electronic means); or
 - (iii) where the Merchant is unable or chooses not to do so, the Merchant's continued use of the POLi™ Service, initiating Transactions using the POLi™ Service, or accepting payments from the Merchant's Customers using the POLi™ Service after being notified of such revised or new terms by Waave. In the case described in paragraph (iii) of this clause, any such action by the Merchant shall constitute and evidence the Merchant's unqualified acceptance of the revised or new terms and conditions; or
 - (b) A document signed (including by way of electronic signature) by Waave and the Merchant, if applicable.
- 13.5 Audit and Information Gathering Rights: Waave may, by itself or an authorised representative, audit the Merchant's records and/or request the Merchant promptly provides information relating to any or all of the Merchant's business activities, the Website and the Transactions, as considered reasonably necessary by Waave to confirm the Merchant's compliance with these terms and conditions, or to assist Waave to meet its obligations or in connection with other arrangements Waave has to facilitate the provision of the POLi™ Service, by giving the Merchant at least 7 days' prior written notice to that effect. Any such audit will be

conducted on the Merchant's premises during business hours. Waave and its authorised representatives will treat as confidential any Confidential Information that is contained in the records or other information provided by the Merchant during such audit, and only use such information for the purposes of ensuring the Merchant's compliance with these terms and conditions. Each of Waave and the Merchant will bear its own costs relating to such audit and inspection under this clause unless audit reveals that the Merchant has failed to comply with these terms and conditions, in which case the Merchant will be liable to pay for all costs and expenses relating to that audit and inspection

- 13.6 Capacity: The Merchant agrees and acknowledges that Waave acts on its own behalf and does not act on behalf of the Merchant or the Merchant's Customers in facilitating the Transactions, nor does Waave provide the means of payment or a custodial or depository service to the Merchant or the Merchant's Customers.
- 13.7 Governing Law: These terms and conditions and the licence granted under it, shall be governed and construed in accordance with the laws of New Zealand, regardless of the principles of conflict of laws thereof.
- 13.8 Party acting for Related Companies: If agreed in writing by Waave from time to time, the Merchant may access the POLi™ Service, and may permit those agreed Related Companies to do so, in accordance with these terms and conditions. In that event, the Merchant and those Related Companies will be jointly and severally liable under these terms and conditions. Nothing releases the Merchant from any liability in its personal capacity. Both Waave and the Merchant warrant that they each have the full power and authority of any nominated Related Companies.
- 13.9 Notices:
- (a) Any notice to or by Waave or the Merchant under these terms and conditions must be in writing and must be addressed to the postal or email address specified by the addressee for that purpose, as amended from time to time.
 - (b) Notices may be served by delivery in person, by post, or by email to the address or number of the recipient most recently notified by the recipient to the sender. In addition, the Merchant agrees that Waave may communicate to it by making it available on its website, console or portal and a notice is duly given if it is being made available in such ways (in which case Waave will notify the Merchant by way of email or other electronic messaging that the information is available for perusal, retrieval and / or download).
 - (c) A notice is taken to be received as follows:
 - (i) A notice hand delivered before 5.00pm on a Business Day is taken to have been given on that day. Otherwise, a hand delivered notice is taken to have been given on the following Business Day.
 - (ii) A notice sent by post is taken to have been given on the third Business Day after posting (from and to a place within New Zealand) or otherwise within ten Business Days of posting (from and to a place outside of New Zealand) unless it was actually received before that date.
 - (iii) A notice sent by email before 5.00pm (recipient's time) on a Business Day is taken to have been given on that day. Otherwise a notice sent by email is taken to have been given on the following Business Day. However, this clause does not apply where the person sending the transmission has evidence that the transmission was unsuccessful.
 - (iv) A notice that was made by Waave on its website, merchant console or portal will be taken to be received at the time the Merchant is taken to receive the email or other electronic messaging

that Waave has sent to the Merchant to advise the Merchant that the notice is available for perusal, retrieval and / or download.

- (d) The Merchant agrees to promptly notify Waave of any updates to its contact or notice details from time to time during the Term.

13.10 Severability. Any provision of these terms and conditions which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of these terms and conditions or the validity of that provision in any other jurisdiction.

14 Definitions

In these terms and conditions:

Business Day means a day other than a Saturday, Sunday, or public holiday in Auckland, New Zealand, beginning at 9.00am and ending at 5.00pm;

Business Systems means the hardware and software environment with which the POLi™ Service is to be primarily implemented as notified by the Merchant to Waave acknowledging that the hardware and software environment cannot be completely notified initially but in doing so the Business Systems notified reflect the means by which the Merchant's Customers shall gain access to or use the POLi™ Service or the Waave Service. The Merchant shall advise Waave prior to any change to the Business Systems as previously notified;

Commencement Date means the date specified in the Schedule or such other date as the parties may agree date in writing (which may be via email);

Confidential Information of an entity (the **Owning Party**) means all information of or relating to the Owning Party, or any Related Company (including the POLi™ Service in source and object code form and the Documentation), relating to the business, operations or affairs and goods and services of the Owning Party or any Related Company;

Designated Financial Institutions means the financial institutions whose systems are accessible from time to time by a Merchant's Customer to initiate a payment Transaction to the Merchant from the Website using the POLi™ System. The Designated Financial Institutions and the URLs of their websites are available here <https://polipayments.statuspage.io/>. Waave may change the list of Designated Financial Institutions from time to time and any such changes will be updated in Merchant console and/or here <https://polipayments.statuspage.io/>;

Documentation means the documents titled "Merchant Implementation Guide", "Console User Guide for Merchants", "Merchant Style Guide" and "Customer Service Level Agreement" as issued and amended from time to time by Waave;

Force Majeure Event means any act or omission outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps and includes:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;

- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority;
- (f) strikes, blockades, lockout or other industrial disputes; or
- (g) pandemic as declared by the relevant New Zealand health authority and/or WHO, including restrictions imposed as a result of pandemic;

Help Desk means the facility to be provided by Waave, whose functions are described in clause 6.2;

Implementation Services means the provisioning of the POLi™ Service for the Merchant as outlined in the “Merchant Implementation Guide” as issued and amended from time to time by Waave;

Intellectual Property means copyright, all rights in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, confidential information, software (whether in object code or source code), and all other rights anywhere in the world resulting from intellectual activity in relation to Waave, the POLi™ Service and the Documentation;

Insolvency Event means in respect of an entity:

- (a) the entity commits an act of insolvency or is unable or is deemed to be unable to pay its debts as and when they fall due;
- (b) the entity enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of its creditors, or proposes a reorganisation, moratorium or other administration involving it;
- (c) the entity enters into a debt arrangement or composition with its creditors pursuant to the New Zealand Companies Act 1993, or the equivalent legislation in the place the party is incorporated);
- (d) the entity goes into liquidation; or
- (e) a receiver or manager is appointed over the assets of the Merchant;

Merchant means such party to a Merchant Services Agreement with Mint New Zealand Pty Ltd to which these terms and conditions apply.

Merchant Bank Account means the Merchant’s account held in a bank in the Territory, as notified by the Merchant to Waave, and approved by Waave (or as varied in writing from time to time), into which funds from Transactions are to be deposited. Merchant Bank Accounts must be associated with the Merchant and comply with the guidelines as specified by Waave in the Documentation;

Merchant’s Bank means the bank at which the Merchant Bank Account is held;

Merchant Customer means a customer of the Merchant who initiates a Transaction;

Merchant’s Systems means the Merchant’s Business Systems and Website, as described in the Schedule,

POLi™ Service and **POLi™ System** mean the transaction processing platform operated by Waave in New Zealand, delivering a variety of payment applications and functions in support of the transmission of funds. The current features of the POLi™ Service for the purposes of these terms and conditions are specified in the Documentation.

Refund Transaction means a Transaction that is intended to refund (in whole or in part) moneys that have previously been transferred to the Merchant's Bank Account as the result of a previous Sales Transaction;

Region means any country within the Territory;

Regulatory Event means a determination by any regulatory authority or judicial body, or a change or ruling under any law or regulations or policy in the Territory which would prevent or impair Waave's ability to provide or operate any part of the POLi™ Service in the Territory;

Related Company means a "related body corporate" as defined in section 2(3) of the New Zealand Companies Act 1993;

Response Levels are the times for responding to reports of errors reported by the Merchant in accordance with these terms and conditions, as specified in the Documentation;

Sales Transaction means an electronic message facilitated by the POLi™ System, between the Merchant, a Merchant Customer, a Designated Financial Institution, and related intermediary entities (if applicable) to facilitate support the transmission of monetary value from an account held with that Designated Financial Institution, in return for the Merchant agreeing to provide goods and or services as ordered by a Merchant Customer, or in payment by a Merchant Customer for goods or services that have already been provided by the Merchant;

Support means the services described in clause 6;

Terms and Conditions mean the terms and conditions which apply to a Merchant Customer's use of the POLi™ Service, and which are displayed to a Merchant Customer during a Sales Transaction and available to view here <https://www.polipayments.com/terms-and-conditions/>, as amended by Waave from time to time;

Territory means New Zealand, the territory in which the Merchant has the right to use the POLi™ Service;

Transaction includes:

- (a) a Sales Transaction (being orders for goods, the supply of goods or the supply of services, or both);
- (b) a Refund Transaction

that is initiated using the POLi™ Service;

Website means the website operated by or on behalf of the Merchant, whose URL is notified to Waave (and such further or replacement websites as agreed in writing from time to time).