

Paystation Merchant Terms and Conditions

15th October 2008

SECTION (A) - LICENSE AGREEMENT

This is a licence agreement between the Client user (you, Client, Merchant) and Paystation Limited (Paystation) to use the Paystation Payment Facility (Facility) as defined in the Paystation Terms and Conditions (Section B - Terms and Conditions). Carefully read this agreement in full before using the Facility. By transacting with the Facility you agree to be bound by the terms of this agreement.

User Responsibilities, Rights and Restrictions

Paystation grants you the right to access and transact with the Facility in order to process transactions that you have a lawful right or authority to undertake. You are responsible for the security and proper use of your user name, passwords and other security features relating to the use of the Facility and you must take all steps to ensure that they are kept confidential and secure and that they are used properly and are not disclosed to other people. You are responsible for any unauthorised use of the Facility and for all losses or charges, including losses or charges that may result from unauthorised or fraudulent use.

You must not use the Facility to:

- Conduct a fraudulent activity or a criminal offence;
- Send, receive, upload, download, use or reuse any material that is offensive, abusive, indecent, defamatory, and obscene or menacing or in breach of copyright, confidence, privacy or any other rights or laws;
- Send unsolicited advertising or promotional material;
- Cause annoyance to anyone with material that may have damaging or contamination effects;
- Allow any other unauthorized person(s) to use the Facility on your behalf;
- Interfere or attempt to interfere with any other person's use of the Facility;
- Interfere or attempt to interfere with the ability of the Facility to process yours or any other person's transactions.

Intellectual Property Rights

Intellectual property rights in any software supplied by Paystation for your use in connection with the Facility are and remain the property of Paystation.

You must not:

- disassemble, reverse engineer or decompile or in any other way interfere with the software;
- copy or modify the software;
- create any new software partly or wholly based on the Facility software;
- transfer, assign or sub-license your right to use the software or attempt to do so.

Termination

This agreement will automatically terminate without notice if you fail to comply with any provisions of the agreement. Upon termination of the Facility service by you or Paystation or any related party you must immediately agree to forgo any further rights to transact with the Facility in any way or to use the software or the security systems including use of your user name, passwords and other security features relating to the use of the Facility and you must take all steps to ensure that they are kept confidential at all times.

SECTION (B) - TERMS & CONDITIONS

1. Constitution of Contract

1.1 Any contract between Paystation Limited and the Client shall be upon terms specified in these Terms and Conditions and referred to as the "Agreement".

2. Supply of Services and Licence

2.1 Paystation shall use all reasonable endeavors to maintain an electronic payment gateway facility ("the Facility") for use by those authorised for the purpose of managing payments for goods and services. Paystation warrants that it is skilled in database and online service management and will undertake to maintain this expertise.

2.2 For the duration of the contract, Paystation may allow end users to transact electronic payments via the Facility subject to clause 3.5 of this agreement.

2.3 Paystation shall use its best endeavours to provide adequate security on the Facility. Paystation warrants that it is skilled in issues of database and online service security and will undertake to maintain this expertise.

3. Client's Obligations

3.1 The Client shall supply to Paystation all necessary data required for the successful establishment and operation of the Facility.

3.2 This data will be substantially clear and free of errors.

3.3 Required data shall be supplied in a timely manner and in the form specified by Paystation.

3.4 The client consents to receive information from Paystation relating to Paystation products and services.

3.5 The Client shall supply to Paystation a Trading Bank Issued Merchant User ID and if applicable a personal password (and any updates thereof) to allow Paystation to establish a new account in the Paystation database and so as to provide the Client with access to the Paystation Facility.

3.6 The Client acknowledges that for the duration of this Agreement, end users may transact using data held in the Facility subject to the rights and obligations of the end users as set out in the Paystation User Licence Agreement (Section A - License Agreement).

4. Duration

4.1 This agreement will continue to operate for the time period as assigned in Section (D) - Connection Plan, subject to the terms of this agreement

5 Intellectual Property Rights

5.1 The Client acknowledges that any and all of the trademarks, trade names, copyrights, patents and other intellectual property rights created, developed, embodied in or in-connection with the Facility shall be and remain the sole property of Paystation.

Warranty as to Intellectual Property Rights and Content Paystation shall use its best endeavours to ensure that any know-how, techniques, media, data, information or programs contributed to or used by Paystation in designing and maintaining the Facility shall be free of any claim for infringement of any intellectual property rights of any third party.

Except where it is alleged that Paystation or its agents have been negligent, Paystation shall have no liability for any infringement of intellectual property rights arising from the use of any know-how, techniques, media, data, information or program not provided by Paystation; or the modification of the Facility by any party other than Paystation; or an allegation of infringement of intellectual property rights arising from information, data, or content supplied to Paystation by the Client or any representative or agent of the Client.

Paystation agrees to not make available over any service any information, software or other content which knowingly violates or infringes upon the rights of any others or which would be abusive, profane or offensive to an average person.

6.0 Paystation's Liability

6.1 Though Paystation will undertake best endeavours to ensure an uninterrupted and error-free service, Paystation does not warrant that the Facility or any service related to it will be uninterrupted or error free; nor does Paystation make any warranty as to the results to be obtained from use of the data or any service related to it.

6.2 Paystation shall not be liable to the Client for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Agreement, the Facility, its use, application, support, or otherwise, except to the extent to which it is unlawful to exclude such liability and except where it is alleged that Paystation or its agents have been negligent.

6.3 In the event that any exclusion or provision contained in this Agreement shall be held to be invalid for any reason and Paystation becomes liable for loss or damage that it would otherwise have been lawful to limit, such liability shall be limited to the amount of Paystation's transaction charge applied to any affected transaction(s).

6.4 The Client releases and discharges Paystation from any and all claims and demands arising out of or in connection with the design or maintenance of the Facility including without limitation any and all claims for libel and invasion of privacy.

6.5 Where the Client is a business (as "business" is defined by the Consumer Guarantees Act 1993), it is agreed that it is purchasing all services from Paystation for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply.

6.6 Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of these Terms and Conditions will be read subject to the application of that Act, and in the case of any conflict the provisions of that Act will apply.

7. Force Majeure

7.1 Neither party shall be under any liability to the other in respect of anything which may constitute breach of the Agreement arising by reason of force majeure, namely, circumstances beyond the control of the party.

8. Termination

8.1. Either party may terminate the Agreement immediately if any of the following events shall occur, namely:

(i) If the defaulting party is in breach of any term, condition or provision of the Agreement or required by law.

(ii) If the defaulting party, being a body corporate shall present petition or have a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bonafide reconstruction or amalgamation) or shall call a meeting of its creditors, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be deemed by the Insolvency Act to be unable to pay its debts.

(iii) If the Client, being a firm or partnership shall be dissolved or in any case shall commit any act of bankruptcy or have a receiving order made against him/it or shall make or negotiate for any composition or arrangement with or assignment for the benefit of his/its creditors.

(iv) If the Clients merchant account with the bank or card scheme (the Acquirer) is closed for any reason.

8.2. On termination by Paystation, howsoever arising, the Client shall pay to Paystation all costs and expenses and all arrears of charges or other payments arising from any Client-specific deliverables including support and the use of the system by the Client's authorised users under this Agreement.

8.3. If the Client requests a resumption of service following the termination of the account by either party a Service Resumption Fee will apply (at a rate designated in Section D).

9. Assignment

9.1 The benefit of this agreement shall not be dealt with in any way by the Client or Paystation (whether by assignment, sublicensing or otherwise) without the Client or Paystation's written consent.

10. Waiver

10.1 Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole of any part of this Agreement nor prejudice the party's rights to take subsequent action.

11. Severability

11.1 In the event that any of these terms, conditions or provisions shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

12. Paystation's Rights

12.1 Any express statement of a right of Paystation under this agreement is without prejudice to any other right of Paystation expressly stated in this agreement or arising at law.

13. Entire Agreement

13.1 The Agreement constitutes the entire agreement between the parties for the subject matter referred to herein. Any prior arrangements, agreements, representations or undertakings are superseded. No modification or alteration of any clause of this Agreement will be valid except in writing signed by each party.

14. Disputes

14.1 Any dispute arising as to any matter provided for in this document or its implementation is to be referred in the first instance to the chief executives of the respective parties who must endeavour to resolve such dispute in the spirit of achieving broad equity in respect of the agreement and its purposes.

(i) Failing agreement between them, but only as a last resort if such agreement is not possible, the matter in dispute is to be referred to an independent referee appointed by the President of the Auckland District Law Society, who must promptly resolve such dispute and whose decision on the matter is final and binding on the parties.

(ii) In resolving such dispute, the referee is not acting as an arbitrator and, accordingly, the provisions of the Arbitration Act 1996 do not apply. While any such dispute remains unresolved the parties agree to continue the performance of the agreement to the extent that such performance is possible given the nature of the dispute.

Any information or material or settlement proposals disclosed or made during the preceding dispute resolution proceedings are made on a without prejudice basis and the parties agree to use their best endeavours to ensure that all such information, material and proposals and the existence of any dispute between them is kept strictly confidential.

15. Law

15.1 The parties hereby agree that this Agreement shall be construed in accordance with New Zealand Law and subject to the exclusive jurisdiction of the New Zealand Courts.

16. User Management

16.1 Paystation will retain control operator management available through the acquirer's merchant administration system, and may or may not provide these details to the merchant.

SECTION (C) - PAYMENT OF CONNECTION AND TRANSACTION FEES

17. Payment

17.1 Where the Client has elected to operate the Paystation Plan as so stated in Section (D), the client agrees to pay Paystation a single Connection Payment of NZ\$200.00 +GST no later than close of business on the seventh business day following Paystation's invoice date.

17.2 Transaction Fees are incurred and are payable for all Paystation connection Plans, and so calculated on the total number of token establishments, authorisation, capture, purchase and refund transactions logged during each calendar month. The Client agrees to pay these transactions fees to Paystation no later than close of business on the seventh business day following Paystation's invoice date.

17.3 Should the Client terminate this Agreement for whatever reason, the Client shall remain liable to pay Paystation all transaction fees and remaining term contract monies due, not excluding any time spent and materials used to date, in addition to any and all costs and expenses incurred by Paystation as a result of the Client's default, termination or rescheduling of the supply of services to the Client.

17.5 Subject to the terms & conditions contained herein, the client agrees to the following terms of fee payment to Paystation.

Calculation of transaction fees

Paystation Transaction Fees are calculated as a set fee per transaction that the client passes through the Facility, and are calculated against all successful Token Establishments, Purchase, Authorisation, Capture and Refund transaction types regardless of the success of the payment. Transactions run against the Clients test account on the Paymark Virtual, ANZ eGate or pago server are not charged.

A Paystation Invoice will be raised detailing the fees calculated from each merchant's transaction log. Notification of the invoice generation will be emailed to the address supplied by the Client. The Invoice can be retrieved by the Client from within the Clients login area within the Paystation administration website at <https://admin.paystation.co.nz>.

SECTION (D) - CONNECTION PLAN

The Connection Plan provided to the Client is;

The Paystation Connection Plan

- No Term Contract period is required with 1 months notice of termination.
- **Establishment Fee** of NZ\$200.00 +GST payable on acceptance of this agreement.
- **Account Fee** of NZ\$10.00 +GST per month payable from acceptance of this agreement.
- **Transaction Fee** of NZ\$0.10 +GST per transaction against the account.
- **Transaction Rebate** to the value of up to 150 transactions against the account.
- **Gateway Fee** of NZ\$5.00 +GST per month per gateway loaded against the account payable from the gateway going live, which includes one currency.
- **Currency Fee** of NZ\$5.00 +GST per additional currency loaded against a gateway payable from the currency going live.
- **Service Resumption Fee** of NZ\$50.00 +GST to activate a disabled account.
- **Payment Dishonour Fee** of NZ\$15.00 +GST for dishonoured Direct Debit payments.
- **Copy of Account Fee** of NZ\$5.00 +GST for each hard copy statement or invoice requested and supplied in the post.
- **Credit Letter Fee** of NZ\$5.00 +GST for each letter written for an overdue account.

Example 1:

Merchant A has an account with one gateway and one currency, and processes under 150 transactions per month.

They will pay a one-off Establishment Fee, and each month pay an Account Fee and a Gateway Fee. There will be no Transaction Fees payable as their total number of transactions will be less than the Transaction Rebate threshold.

Merchant A will pay NZ\$15.00 +GST per month.

Example 2:

Merchant B has an account with two gateways, one with a single currency and one with three currencies, and processes exactly 250 transactions each month.

This Merchant will pay a one-off Establishment Fee, and each month pay an Account Fee (1 @ 10.00), two Gateway Fees (2 @ 5.00 = 10.00) and two Currency Fees (2 @ 5.00 = 10.00). There will be Transaction Fees payable for 100 transactions (100 @ 0.10 = 10.00) as their total number of transactions will exceed the Transaction Rebate threshold.

Merchant B will pay NZ\$40.00 +GST per month.