Swipe Merchant Agreement (NZ Users)

Contents

1. Merchant Terms of Service Agreement

1.1 This document sets out the terms and conditions for your use of the Swipe services offered by CyberCom Hospitality Solutions Limited ("CyberCom"). Please read it carefully and retain it for future reference. The latest version of this document is also available online at www.swipehq.com/terms. Together with any applicable Third Party terms of service, this forms the contract ("Merchant Agreement") between you and CyberCom.

1.2 The Merchant Agreement comes into effect from the date that you register for a Swipe account and you agree to be bound by the terms and conditions of the Merchant Agreement from that date. If you are uncertain about the effect of the Merchant Agreement we (CyberCom) suggest that you ask your lawyer to explain it to you **before** you register for the Swipe account.

1.3 We may amend the Merchant Agreement at any time by posting a revised version on our website. Any amendments are binding 24 hours from the time that the revised Merchant Agreement is posted.

2. Definitions

2.1 **Bank**: the existing banking partner of CyberCom which is used for operating Swipe.

2.2 **Card Scheme**: Visa and MasterCard are the owners of the payment scheme into which a bank or any other eligible financial institution can become a member.

2.3 **Commercially Sensitive Information**: Any information which identifies a particular transaction by a Merchant with a particular customer or information about a Merchant's pricing structures or business that is not in the public domain.

2.4 **Direct Debit Authority**: An authority provided by you to your bank or financial institution which authorises CyberCom to take funds from your bank account in order to satisfy your obligations under this agreement.

2.5 **Merchant Category Codes ("MCC")**: Merchant category codes (MCCs) are numbers that classify businesses by what they sell or Swipe they provide. These four-digit codes are assigned by **payment card organizations**—Visa, MasterCard, American Express and Discover—when the business first starts accepting these methods of payment.

2.6 **Merchant Data**: means any personal data relating to business contact details of Merchant or its employees, officers or contractors provided to or obtained by Swipe in the provision of the Swipe Payment Services.

2.7 **New Merchants**: Refers to merchants who have successfully completed the AML and verification processes with our banking partners after 01 of July 2017.

2.8 **Old Merchants**: Refers to merchants who have registered with Swipe who have signed up successfully completed the AML and verification processes prior to 01 of July 2017.

2.9 **Cardholders' Data** (in relation to Merchants'): has the meaning given to it in the Laws of New Zealand.

3. Swipe Definition

3.1 Swipe is a payment processing gateway provided by CyberCom. We create, host, maintain and provide Swipe to you via the internet and provider terminals.

3.2 Swipe works with any New Zealand issued and most non-New Zealand issued, credit, debit, pre-paid and gift cards with a Visa or MasterCard logo. We reserve the right to add or remove cards that can be operated through your Swipe account without prior notice.

4. Swipe's Obligations

4.1   For New Merchants

    4.1.1   By entering into this Merchant Agreement the Merchant is appointing CyberCom as the processing gateway to process payments you receive from your customers on your behalf in accordance with your instructions, subject to the terms and conditions of this agreement.

    4.1.2   Based on the new agreement with our banking partners, you will have a direct relationship with the Bank for your merchant account and as a merchant of our banking partners we provide the Swipe gateway service to you. Under the terms and conditions of the agreement with the Bank you only have to pay a single set up fee and merchant fees for transactions made through Swipe.

    4.1.3   The agreement between you and the Bank is a separate legal agreement concluded on such terms and conditions you and the Bank agree.

    4.1.4   A transaction is settled in full directly into your bank account on the same day as a transaction occurs as long as they have taken place before 6pm, otherwise it will be settled the next day. Settlements for transactions which took place during weekends and public holidays will be settled on the next business day.

    4.1.5   The transaction fees are taken once a month in lump sum usually around the 15th of the next calendar month by the Bank from the Merchant's bank account via a direct debit authority.

4.2   For Old Merchants

    4.2.1   We hold any funds we receive from processing payments on your behalf separately from our operating funds. We will never access those funds for our general operating expenses.

    4.2.2   We will only process cards that receive an authorisation from the applicable Card Scheme or issuer.

    4.2.3   We will collect, analyse and relay information generated in connection with those payments.

    4.2.4   We will maintain the confidentiality of each transaction and will not disclose or deal with commercially sensitive information except to fulfil our obligations under Swipe Agreement or as required by law.

    4.2.5   In order to fulfil our obligations as your agent, we may be required to enter into agreements with Card Schemes, other processors and banks, and we may be required to comply with any applicable laws, bylaws, rules and regulations.

    4.2.6   In order to comply with Card Scheme and any amendments, we may be required to amend the Merchant Agreement.

4.3   We may aggregate information and share this with our partners and advertisers. However, this is not linked to any personal information that can identify any individual Merchant or customer.

4.4   If you are a sole trader we will give you access to any personal information we hold about you and you have the right to correct any personal information we hold about you.

5. Merchant Risks

5.1   CyberCom has implemented a number of technical and organisational measures designed to keep your personal information secure from unauthorised access, disclosure or loss but we cannot guarantee that unauthorised third parties will never be able to defeat our security measures. All information provided to us is at your own risk.

5.2   There is always the risk that the person who presents the card to you may not be authorised to use the card.

5.3   In a card-not-present environment, the risk is always with the Merchant. In a card-present environment, the risk is with the issuer.

5.4 The payer may also contest the transaction through the chargeback process which is set out in Clause 19 and any payment received into your account may be reversed at a later time even though you may have provided the goods or services to the customer.

5.5 There is always the risk that Swipe may be subject to interruptions such as outages or lack of internet service which is beyond our control. We take all reasonable care to provide a reliable service but we cannot and do not guarantee continuity of service. We are not responsible for any losses you may suffer for any reason as a result of a lack of availability of Swipe.

5.6 For Old Merchants: chargebacks are directly communicated via the Swipe system to the Merchant whereby a Merchant will be notified:

5.6.1 via email; and

5.6.2 Alerted in the Merchant Console.

Merchants are solely responsible for:

5.6.3 communicating with the Swipe regarding the above-mentioned chargeback transaction; and

5.6.4 providing the Swipe with any required information regarding a chargeback transaction

5.6.5 Failure to successfully dispute the Chargeback will result in the reversal of the disputed transaction. In the case of a reversal in the transaction, the Merchant is responsible for any costs incurred as a result of this transaction.

For New Merchants: chargebacks are directly communicated via the Bank to the Merchant. Merchants are solely responsible for:

5.6.6 communicating with the Bank regarding the above-mentioned chargeback transaction; and

5.6.7 Providing the Bank with any required information regarding a chargeback transaction.

5.6.8 Failure to successfully dispute the Chargeback will result in the reversal of the disputed transaction. In the case of a reversal in the transaction, the Merchant is responsible for any costs incurred as a result of this transaction.

6. Swipe Account Registration Restrictions

6.1 You can register for a Swipe account if you are using the account for business purposes only and you are:

6.1.1 An Individual (including sole traders) conditional on being at least 18 years or over and a New Zealand tax resident.

6.1.2 A Company: conditional on being incorporated in New Zealand or registered with New Zealand's Companies Office.

6.1.3 A Limited Partnership: conditional on being incorporated in New Zealand or registered with New Zealand's Companies Office.

6.1.4 A Charity and Incorporated Society: conditional on being registered with the Charities Commission and/or the Register of Societies and Trusts.

6.1.5 A Partnership and/or a Trading Trust: conditional on being registered with Inland Revenue.

6.2 You must not use Swipe for any activities that are considered by our banking partner to be high risk under the Merchant Category Codes (MCC).

6.3 Merchant Category Codes are subject to change. We will always comply with the latest list we have available.

6.4 Approval of any registration is at our sole discretion and by our banking partners.

6.5 We reserve the right to require a guarantor for your Swipe account if we have concerns about your creditworthiness.

6.6 As of the date of this Agreement the Merchant represents and warrants that:

    6.6.1 if the Merchant is sole trader:

        6.6.1.1 the Merchant is of sound mind and memory, at the age of majority, not disabled and able of having legal responsibility to the full extent;

        6.6.1.2 performance of this Agreement shall by no means result in breach of legal requirements applicable to the Merchant, and of any other current obligations of the Merchant to any third parties;

        6.6.1.3 performance of this Agreement shall by no means result in breach of orders of any decision of the competent court or administrative authority which is binding and valid in relation to the Merchant;

    6.6.2 if the Merchant is a corporate entity (legal entity):

        6.6.2.1 the Merchant is properly incorporated and legally exists under the New Zealand;

        6.6.2.2 performance of this Agreement shall by no means result in breach of legal requirements applicable to the Merchant, and of any other current obligations of the Merchant to any third parties;

        6.6.2.3 performance of this Agreement shall by no means result in breach of orders of any decision of the competent court or administrative authority which is binding and valid in relation to the Merchant;

        6.6.2.4 if applicable, the Merchant obtained all necessary corporate approvals related to conclusion and performance of this Agreement in a proper manner, as set out in the corporate rules and procedures accepted by the Merchant;

        6.6.2.5 Performing this Agreement any party committing any other acts related to performance of this Agreement on behalf of the Merchant is duly authorized by the latter to commit such acts and has no implied (implicit) limitations.

    6.6.3 general warranties applied to all Merchants:

        6.6.3.1 the Merchant has read, understood and fully accepted the terms of this Agreement;

        6.6.3.2 Any and all information presented by the Merchant to the CyberCom, in particular, in the course of registration is true, accurate and complete. In case false, inaccurate or incomplete information is presented the Merchant warrants that all risks including but not limited to this, financial, related to this, shall be borne exclusively by the Merchant in full and without any waivers or disclaimers;

        6.6.3.3 The Merchant did not obtain any warranties concerning lawfulness of transactions with any from the CyberCom or any of the CyberCom's employees, both formally and informally, and did not enter into this Agreement in view of or confidence in prospective obtaining similar warranties in the future.

6.7 Any of the above-mentioned warranties should be valid as of the date of this Agreement and within the term of this Agreement. In case any of these warranties becomes invalid from time to time, then the CyberCom shall reserve the right to terminate this Agreement unilaterally at its own discretion giving notice thereof to the Merchant by any of means specified in this Agreement.

6.8 The CyberCom shall reserve the right at its own discretion and at any time to send the Merchant a demand for proving the validity of any of these warranties. In case of the Merchant's disclaimer of obligation stipulated in this paragraph the CyberCom shall reserve

the right to terminate this Agreement unilaterally at own discretion giving notice thereof to the Client by any of means specified in this Agreement.

7. Swipe Account Restrictions

7.1 All transactions will be settled in New Zealand dollars.

7.2 You must comply with all applicable laws, regulations and rules when using your Swipe account.

7.3 You must not use your Swipe account to process cash advances or to handle, process or transmit funds to any third party.

7.4 You can only process transactions in accordance with the Merchant Category Code, and we cannot authorise you to accept payments connected with the following activities:

    7.4.1 Any illegal activity

    7.4.2 Gambling, lottery, wagering, betting or games of chance

    7.4.3 Financial institutions offering manual or automated cash disbursements, merchandise or services

    7.4.4 Money order sales or wire transfer money orders

    7.4.5 Drug paraphernalia and human health supplements

7.5 We may refuse to process or settle any transaction that we suspect is connected with the above activities or is in violation of the Merchant Agreement, without any liability to you whatsoever.

7.6 We reserve the right to refuse to process any transaction that might cause us to be in breach of any legislation including any anti-money laundering and countering the financing of terrorism

7.7 Legislation both in New Zealand and overseas. You warrant and undertake that you will not require us to perform any obligation under this agreement that might cause us to become involved in any unlawful act.

7.8 You agree to immediately inform us if we have become involved in, or if there is any risk of us becoming involved in, any unlawful act under this agreement.

7.9 You will not receive interest on any funds that might be held in your Swipe account pending payment to you.

7.10 You do not receive any intellectual property rights under Swipe Agreement and you acknowledge that all intellectual property rights and confidential information remain our property.

8. Swipe Account Registration Requirements

8.1 When you initially register with Swipe you will be required to provide information about yourself and your business. Further information will be requested via the Sign up Console. When registering for a merchant account ("Swipe account") you will need to choose a business name that clearly identifies your business. Once the sign up process is completed and submitted to us we can then proceed with your application further.

8.2 You agree to provide us with sufficient information about you in order to:

    8.2.1 Adequately verify your identity.

    8.2.2 Satisfy us (in our sole discretion) as to your creditworthiness.

    8.2.3 Satisfy our banking partners (in their sole discretion) as to your creditworthiness.

    8.2.4 Enable your Swipe account to be operated in accordance with the Merchant Agreement.

    8.2.5 Assign a Merchant Category Code.

8.3 You agree to have this information sent to our banking partners in order to verify you as a customer and create merchant IDs on your behalf. Our banking partners will be in contact to go over any information provided and also will ask for documents as necessary. Our banking partners may require information of business's director's partners or trustees information and documents as required by Anti-Money Laundering Laws. We must have the above-mentioned information in order to progress your registration, and if you have not provided information which satisfies our banking partners, we will not be able to take further steps to complete your application.

8.4 Once you are verified by our banking partners and you agree to pay the non-refundable registration fee only as set out in Pricing Schedule 1.

9. Swipe Software/Hardware

9.1 Upon registration, you receive a Swipe account and the use of the Swipe software.

9.2 This is provided to you by way of a personal, non-exclusive, revocable license. *The licence is non-transferable.* In order to continue to use your Swipe account, you must accept all software updates that we send to you.

9.3 Any devices that we supply you with will remain the property of CyberCom and must be returned to us if you close your Swipe account. The process for returning any devices is set out in Clause 26.

9.4 You are able to use your Swipe account to accept payments on compatible mobile devices. The use of "Jail broken" devices (any device that has been modified contrary to the manufacturer's instructions) is expressly prohibited and may result in the immediate termination of your Swipe account.

9.5 Some devices may not be compatible with Swipe. It is your responsibility to test your device for compatibility. We will do our best to resolve any issues you may experience but we are not liable for any losses you may suffer as a result of your device failing to work with Swipe.

10. Ownership

10.1 CyberCom owns any product or hardware supplied to you for the use of Swipe. Termination or cancellation of Swipe will require you to follow the Returns Policy in Clause 26.

10.2 In the event, your business is either sold, liquidated or stops trading you are required to inform CyberCom and return all devices that were supplied to you by us. The ownership of these devices is vested with CyberCom. All other account access and usage shall be terminated upon sale, liquidation, winding up or cessation of your business for whatever reason. Please note the license for the use of Swipe is with the original registered business with Swipe. In the event your business has been acquired, bought, amalgamated, etc. and has continued using Swipe services and products, then it is presumed that the acquiring company has also acquired the liabilities of the original registered business, including responsibility for all chargebacks.

10.3 Swipe is licensed and not sold. We reserve all rights at law which are not expressly granted to you in this Agreement. Swipe is protected by copyright, trade secret and other intellectual property laws. CyberCom owns the title, copyright and other worldwide Intellectual Property Rights (as defined below) in Swipe and all copies of Swipe. This Agreement does not grant you any rights to CyberCom's trademarks or service marks.

10.4 CyberCom owns all products supplied by allowing the use of Swipes. Including but not limited to 'SwipeHQ', 'Swipe Online', 'Swipe Payment Gateway', 'Swipe Checkout' and any other physical or software based product provided.

10.5 The use of any device provided to you by CyberCom is non-transferrable and it cannot be transferred to any other business/entity/person unless prior approved by CyberCom.

10.6 For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights

as may now exist or hereafter come into existence. This, therefore, includes all applications and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

10.7 You may choose to or we may invite you to submit comments or ideas about Swipe, including without limitation about how to improve Swipe or our products ("Ideas"). By submitting an Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place CyberCom under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, CyberCom does not waive any rights to use similar or related ideas previously known to us, or developed by its employees, or obtained from sources other than you.

11. Indemnity

11.1 You will indemnify, defend and hold us and our processors harmless (and our respective employees, directors, agents, affiliates and representatives) from and against any and all claims, costs, losses, damages, judgments, Tax assessments, penalties, interest, and expenses (including without limitation reasonable legal fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to: (a) any actual or alleged breach of your representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of our Policies or the Card schemes' rules; (b) your wrongful or improper use of Swipe; (c) any transaction submitted by you through Swipe (including without limitation the accuracy of any Product Information that you provide or any claim or dispute arising out of products or services offered or sold by you); (d) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (e) your violation of any law, rule or regulation of the New Zealand or any other country; (f) any other party's access and/or use of Swipe with your unique username, password or other appropriate security code.

12. Availability of Services

12.1 You acknowledge that Swipe tries to have 100% uptime; however, it does not guarantee 100% availability of Swipe provided to Merchants and that there will be times where there are temporary disruptions to Swipe provided to your Customers. You agree that Swipe is not liable to you in any way for any loss suffered by you in connection with any service outage or disruption in Swipe provided to you.

13. Representation and Warranties.

13.1 You represent and warrant to us that:

13.1.1 you are at least eighteen (18) years of age;

13.1.2 you are eligible to register and use Swipe and have the right, power, and ability to enter into and perform under this Agreement;

13.1.3 the name identified by you when you registered is your name or business name under which you sell goods and services;

13.1.4 any sales transaction submitted by you will represent a bona fide sale by you;

13.1.5 any sales transactions submitted by you will accurately describe the goods and/or services sold and delivered to a purchaser;

13.1.6 you will fulfil all of your obligations to each customer for which you submit a transaction and will resolve any consumer dispute or complaint directly with the purchaser;

13.1.7 You and all transactions initiated by you will comply with all federal, state, and local laws, rules, and regulations applicable to your business, including any applicable tax laws and regulations.

13.1.8 except in the ordinary course of business, no sales transaction submitted by you through Swipe will represent a sale to any principal, partner, proprietor, or owner of your entity;

13.1.9 you will not use Swipe, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of Swipe;

13.1.10 Your use of Swipe will be in compliance with this Agreement.

14. Swipe Costs

14.1 Our Fees are set out in Pricing Schedule 1.

14.2 Our fees consist of:

14.2.1 A non–refundable setup and provisioning fee.

14.2.2 Break fees for subscription options.

14.2.3 Chargeback fees.

14.2.4 Transaction fees.

14.2.5 Refund fees.

14.2.6 Any Minimum transacting fees.

14.3 All fees are payable by the Direct Debit Authority or credit card that you have provided to us when you set up your Swipe account and are deducted at source at the time of settlement.

14.4 If we determine (based on reasonable grounds) that your Swipe account represents an additional risk to us we may allow you to continue to use your account only if you agree to pay increased fees. We will give you reasonable notice of the proposed increase in fees and give you the opportunity to terminate your account instead.

14.5 If you default on your obligations to us under this agreement you will be liable to pay all of our costs and disbursements associated with that default including our legal and collection expenses.

15. Swipe Transaction Settlements

15.1 Each time a transaction is completed we will update your Swipe account activity on our website and provide you with a transaction confirmation which serves as your receipt.

15.2 For Old Merchants:

15.2.1 Once a transaction is deemed to be completed we will deposit the transaction amount (less our fees as set out in Schedule 1) into your designated bank account.

15.2.2 A transaction is completed when we have received the funds from your customer into our bank account. You will normally receive payments to your bank account within three (3) working days.

15.3 For New Merchants:

15.3.1 Once a transaction is deemed to be completed we will deposit the transaction amounts into your designated bank account overnight as long as the transaction occurs before the cut-off time of 6pm.

15.3.2 Transaction fees for one calendar month will be taken in the following month around the 15th day of the month.

15.4 Summaries of your Swipe account will remain on our website for up to one year. You must ensure that you extract and keep all records, including transactional records that you require in order to comply with any of your obligations.

16. Merchant's Swipe Account Obligations

16.1 Direct Debit Authorisation

By signing up for the Swipe account you authorise us to hold, receive and disburse funds on your behalf. We can also generate a paper draft of electronic funds transfer to process each payment transaction that you authorise.

This authorisation will remain in place and in full effect until 61 days after the termination of your Swipe account and you expressly acknowledge that you may not withdraw your direct debit authority until that date.

16.2 Receipts

You must provide your customer with a digital and/or written receipt of the transaction.

16.3 Taxes and GST

You are solely responsible for ensuring that all taxes are charged and paid to Inland Revenue Department.

16.4 Customer Service

You are solely responsible for all customer service issues relating to goods and services provided by you. We do not guarantee that any payment made for goods and services you have supplied will not be subject to a later chargeback or reversal.

16.5 Personal Information

You authorise us to make any enquiries either directly, or through third parties, to verify your identity or to obtain a credit report.

You authorise us to share any of your information provided when applying for a Swipe account with your bank or other financial institution. We may do this for regulatory or compliance purposes; to manage and maintain Swipe; to update customer records, and to manage our risk management process.

You authorise us to obtain from and to collect, hold, and provide to any third party any information we consider is necessary for the provision of Swipe to you or the operation of your Swipe account, even the following termination. This may include any member of the Card Scheme or credit provider and may include the reasons for any termination of your Swipe account.

You agree to keep all information you receive about any users of Swipe confidential and to only use the information in connection with your use of Swipe. You expressly acknowledge that you will not use any information about users for marketing purposes unless you have received the express consent of the user.

You agree to advise us promptly of any changes to your personal information including but not limited to physical addresses, email addresses, bank account details and name changes. You agree to fully indemnify us for any losses we may suffer as a result of your failure to notify us of any changes.

You agree that we may use the aggregated information we obtain for marketing purposes.

16.6 Cardholders' Data Protection

Swipe is responsible for the security of cardholders' personal data which Swipe possesses or otherwise stores, processes, or transmits on behalf of Merchants.

Swipe complies with applicable PCI DSS requirements in relation to possession, storage and transmission of cardholders' data on behalf of the Merchants.

16.7 Merchant's Data

Swipe is the controller in respect of Merchant Data and may use it for the following purposes:

   a. as reasonably necessary to provide the Services to Merchant and its customers;
   b. to conduct anti-money laundering, know your customer and fraud checks on the Merchant; and
   c. Any other purpose that it notifies (or Merchant agrees to notify on its behalf) to the employees and contractors of Merchant in accordance with New Zealand data protection laws.

Swipe shall comply with the requirements of New Zealand Data Protection Laws in respect of the use of Merchant Data under this Agreement (including without limitation, by implementing and maintaining at all times all appropriate security measures in relation to the processing of Merchant Data and by maintaining a record of all processing activities carried out in respect of Merchant Data) and shall not knowingly do anything or permit anything to be done with respect to the Merchant Data which might lead to a breach by the Merchant of the New Zealand data protection laws.

16.8 Obligations to Third Parties

You may be required to enter into commercial entity agreements with our payments processor. If you do not complete such an agreement when requested we reserve the right to suspend or terminate your Swipe account.

16.9 User Content

You may upload photos, other materials or information to Swipe ("user content"). You expressly acknowledge that you hold the copyright for the user content (whether or not it was created by you) or that you have permission from the copyright holder.

In uploading user content you grant us a worldwide non-exclusive license to use the user content as we see fit, including adapting or modifying it.

Any user content uploaded by you will comply with all laws and we have the absolute discretion to remove any material that we consider is in any way objectionable without notice to you. We are not responsible for any loss or damage to you as a result of any user content you upload.

17. Processing Errors

17.1 We will do our best to ensure that processing errors do not occur and we will promptly correct any processing errors we discover.

17.2 You must notify us within thirty (30) days of the error appearing on your transaction history. If you do not notify us that is deemed to be a waiver of your rights to any amounts owed to you.

17.3 If the processing error means that we have paid you less than you were entitled to we will credit your Swipe account with the difference, If the processing error results in you receiving more than you were entitled to receive then we will deduct the overpayment from your bank account using the direct debit authority.

17.4 We are not liable for any interest, costs, additional charges, damages or any other liabilities that you may incur for any reason as a result of any processing error.

18. Refunds (Merchant to Customer)

18.1 Card Scheme rules require you to have a fair return, cancellation and refund policy that must be disclosed to customers at the time of the transaction.

18.2 You must not give cash refunds unless required by law and you may not accept cash or any other item of value for preparing a refund.

18.3 The amount of the refund must not exceed the amount of the original purchase.

18.4 The amount of the refund must include any taxes required to be refunded.

18.5 Where a return is made and the sale price is not the same you must issue a refund for the total amount of the goods returned and complete a new sale of any new goods.

18.6 You may still be subject to a chargeback if a customer is dissatisfied with your returns policy.

18.7 You can request a credit card refund on behalf of your customer through your Swipe account up to thirty (30) days from the day you accepted the payment for all online payments.

18.8 We will use your direct debit authorisation to process the refund from your bank account. If there are insufficient funds in your bank account we will off-set the balance required to fund the refund from your Swipe account.

18.9 We will credit the full amount of the refund to your customer's credit card when we have received the funds from you. While the full purchase price is always returned to your customer, we do not refund the transaction fees to you.

18.10 We charge a refund processing fee of $5 per refund; we also reserve the right to suspend or terminate your Swipe account or to charge you a bond as set out in clause (20) if you have more than three (3) refunds in any thirty (30) day period.

18.11 We will not accept any returns of any of your goods or services on your behalf.

19. Chargebacks and Invalidated Payments

19.1 A chargeback is a transaction that is disputed by your customer or later reversed for any reason, including unauthorised, fraudulent or illegal transactions.

19.2 We do not determine the outcome of any chargeback; that is determined by the credit card issuer.

19.3 You agree to provide us with any information necessary for us to assist the credit card issuer or any investigating body investigate a chargeback within five (5) working days of any request we make to you and you authorise us to share all necessary information with third parties.

19.4 We charge $25.00 for each chargeback and reserve the right to charge an additional fee upon notice to you if we are required to undertake further investigation or mediation on your behalf.

19.5 The credit card processor or other third party may also charge a fee for any chargeback and you agree to indemnify us and to pay all fees including actual legal costs associated with any chargebacks.

19.6 We will deduct the amount of the chargeback including all fees from your bank account using the Direct Debit authority and hold these funds in a reserve until the chargeback has been resolved. If there are insufficient funds in your bank account we will off-set the chargeback amount from your Swipe account to hold in reserve.

19.7 If the chargeback is resolved in your favour we will release the amount held in reserve for that chargeback to you less any applicable fees.

19.8 If the chargeback is not resolved in your favour, or you choose not to contest the chargeback, or you do not co-operate with any investigation we will retain the funds held in reserve, and if those funds are insufficient we will deduct the remainder of the chargeback from your bank account using your Direct Debit authority. If there are insufficient funds in your bank account our rights to take any further action to recover these amounts including but not limited to issuing legal proceedings and/or suspending your Swipe account.

19.9 We may also withhold payment to you if we reasonably believe that any transaction is likely to be subject to a chargeback until the chargeback is assessed or the period of time allowed by law to contest the chargeback has expired, or we believe that there is no longer a risk of a chargeback being claimed.

19.10 You remain liable to us for the full amount of any payment, including all fees, if the payment is later invalidated or you lose a chargeback or any claim.

20. Excessive Chargebacks, Invalidated Payments, Returns and Refunds

20.1 If you have more than one (1) chargeback or invalidated payments, or three (3) refunds or returns in any thirty (30) day period we may do any of the following:

    20.1.1 Require you to pay an increased transaction fee.

    20.1.2 Require you to provide sufficient funds to be held in a reserve account to cover anticipated chargebacks, invalidated payment, returns and refunds.

    20.1.3 Require you to pay a bond which is calculated to be three (3) times the total amount refunded by us to your account in any one month.

    20.1.4 Delay payouts from your Swipe account to your bank account.

    20.1.5 Suspend your Swipe account.

    20.1.6 Terminate your Swipe account.

20.2 If we propose to take any steps under this clause we will give you 48 hours' notice of our intended action.

21. Our Set-Off Rights

21.1 To the extent permitted by law, we may set off against the Balances for any obligation you owe us under this Agreement, including without limitation any Chargebacks. All Fees are charged at the time we process a transaction and are deducted first from the transferred or collected funds and thereafter from the Balance in your Swipe account. If you owe us an amount that exceeds your Balance, we may charge or debit a payment instrument registered in your Swipe account. Your failure to fully pay amounts that you owe us on demand will be a breach of this Agreement. You will be liable for our costs associated with the collection in addition to the amount owed, including without limitation attorneys' fees and expenses, collection agency fees, and any applicable interest.

22. Reserve

22.1 If we believe that your account is at risk of, or is being operated in breach of any of the terms of the Merchant Agreement or if we believe that you are an unacceptable credit risk we may agree to allow you to operate your Swipe account **only** if you provide a reserve. This may be held in your Swipe account but not accessed by you. The amount of any reserve will be determined by us and notified to you and will be an amount to cover anticipated chargebacks, refunds or other invalidated payments, our costs and any other amounts we require to be covered in advance by you.

22.2 You agree that we can fund the reserve by withholding any amounts of money from any transactions that would otherwise be payable to you or by withdrawing money from your designated bank account using the Direct Debit authority.

23. Merchant Account Termination

23.1 There are no term contracts for your Swipe account and you can close your Swipe account at any time subject to clause (**Error! Reference source not found.**).

24. Swipe Account Breach/Suspension

24.1 If you are in breach of the Merchant Agreement or any other agreement we may have entered into with you, or if you are in breach of any of our policies.

24.2 If you refuse any request or do not co-operate with any request we may make for further information as to your identity, verification of the nature of your business including allowing access to inspect your business premises or information regarding your creditworthiness.

24.3 If there has been no activity in your Swipe account for 60 days. We will endeavour to contact you prior to terminating your account by sending you an email to the email address you have provided to us and by calling or sending a txt message to you on the telephone number you have provided to us.

24.4 If we reasonably believe that there is an increased risk with your account that means that you pose an unacceptable credit or fraud risk; or that there is a risk that you have provided misleading and false information or are engaged in the fraudulent or illegal conduct. We also reserve the right to suspend your Swipe account while we conduct further investigations.

24.5 If there is a material change in your circumstances such as a change in your business or your personal circumstances including a change to your Merchant Category Code, insolvency, death, removal from the Companies Office Register or other register, or if we are notified of a dispute (in the case of a corporate entity or joint Swipe account holders).

25. Swipe Account Termination

25.1 We will immediately suspend your Swipe account and no further transactions will be processed.

25.2 <u>There is no refund of the setup cost. As set out in clause (14), it is a non-refundable setup fee.</u>

25.3 All pending transactions will be settled into your Swipe account. This is subject to all fees, chargebacks (pending or potentially pending), legal costs and bank charges are completely cleared and settled from your account.

25.4 If you are an Old Merchant your Direct Debit authority will remain in place for 61 days to allow us to complete all settlements including refunds, returns and chargebacks. You will not be able to claim any refunds, returns after this time.

25.5 We will use your Direct Debit authority to deduct all amounts that are owed under your Swipe account including any applicable fees or charges as set out in Schedule 1.

25.6 If there is a pending investigation we reserve the right to retain moneys in your Swipe account until the matter has been resolved.

25.7 We are not liable for any damages or losses incurred in connection with your Swipe account on termination or suspension of your Swipe account.

25.8 You must return all devices to us in accordance with our returns policy as set out in clause (26) within seven (7) days of termination. Failure to do so will result in us deducting the cost of a replacement device using your direct debit authority.

25.9 CyberCom reserves the right to terminate this agreement at any time by giving 30 days written the notice.

26. Returns Policy

26.1 We will replace any device that is *faulty* at no charge to you. You must report the fault to us including the reasons for the fault as soon as practicable. <u>We will replace the device at our</u>

discretion. If the device has been damaged by you, you will be required to pay all applicable charges and fees for a replacement device.

27. Assignment

27.1 You may not assign the Merchant Agreement or your Swipe account but we may assign the Merchant Agreement without restriction.

28. Disputes

28.1 This Merchant Agreement is governed by New Zealand law.

28.2 If a dispute of any kind arises we want to understand and address your concerns as soon as possible so we ask you to contact our Customer Service Centre as soon as possible.

28.3 If we cannot resolve any dispute with you we may agree to resolve the dispute using an informal dispute resolution process but this is at our sole discretion.

28.4 Unless required by law you must commence any proceeding against us in respect of any dispute within (120) hundred and twenty calendar days of the dispute arising.

29. Consumer guarantees act

29.1 You acknowledge and agree that you are using the merchant services for business purposes and accordingly the Consumer Guarantees Act 1993 will not apply.

30. General Terms

30.1 You agree that we can update the Merchant Agreement and provide other notices and information to you about your Swipe Account by posting to our website, or by emailing it to you at the email address you have notified to us. You agree that any notices are considered to have been received by you within 24 hours of the time it was posted to the website or emailed to you unless we receive notice that the email was not delivered.

30.2 You agree that all information you receive about any users or an entity associated with the Swipe Service is confidential and you will not disclose it or use for any purposes other than in connection with the Swipe Service. You may not use any information for marketing purposes without the express consent of the user or entity.

30.3 The execution, effectiveness, performance, modification, interpretation and termination of this Agreement shall be governed by the laws of New Zealand.

30.4 This Agreement records the entire understanding and agreement between the parties relating to the matters dealt with in this Agreement.

30.5 This Agreement supersedes all previous understandings or agreements (whether written, oral, or both) between the parties relating to these matters.

30.6 The rights provided in this Agreement are cumulative and not exclusive of any rights provided by law.

30.7 Partial Invalidity/Severance: If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this Agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this Agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

31. Schedule 1 - Pricing

(All prices are GST exclusive where GST is applicable)

Sign-up Fees covering set up and provisioning

Swipe Online - Card Not Present transactions only $99.00

Transaction Fees for the New Merchants (Per Transaction)

Standard local credit cards	**2.85%**
International credit cards	**2.85%**
Registered Charitable Organisations **(if eligible. New Zealand issued credit cards only. May also vary depending on charitable status and type)**	**1.29%**
Overseas transactions	**1.29%**

Transaction Fees for the Old Merchants (Per Transaction)

Standard local credit cards	**2.75%**
International credit cards	**3.25%**
Registered Charitable Organisations **(if eligible. New Zealand issued credit cards only)**	**0.95%**
Overseas transactions	**3.25%**

Chargebacks (For excessive chargebacks)	**$25.00**
Refunds	**$0.00**
Defaulting account bond:	**3 x the amount of the chargebacks, invalidated payments, returns or refunds in each 30 day period**

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32. Schedule 2 - Paperless Direct Debit - Terms and Conditions

CONDITIONS OF THIS INSTRUCTION TO ACCEPT A DIRECT DEBIT PAYMENT (Old Merchants)

As part of the Swipe Merchant Services being offered to you, you agree to authorize direct debit payments to be deducted from your nominated business account for the following purposes:

1. Collection of setup fees

2. Settlement of any pending chargebacks

3. Processing of any refunds

4. Outstanding fees and charges

Purchase of additional CyberCom products

Before each direct debit charge is due, we will advise you by email of the charge amount that will be deducted from your account.

You may, upon termination of your Swipe account, give notice to your Bank that no further Direct Debits are to be initiated under the Instruction. Upon receipt of such notice, your Bank may terminate the Instruction as to future payments by notice in writing to us.

Your rights:

You may terminate this instruction by giving (61) sixty-one days' notice in writing to your Bank and to us. However, termination of this instruction will result in the termination of your Swipe account and any outstanding charges, fees, chargebacks or refunds processed on your behalf will become immediately due and owing and the instruction must remain in effect until all payments are made in full.

We reserve the right to refer any outstanding amounts to a debt collection agency or to take legal action against you and any costs incurred by CyberCom during the collection or legal process will be payable by you.

By agreeing to our terms and conditions you acknowledge that:

a) This instruction will remain in full force and affect in respect of all Direct Debits passed to my/our account in good faith notwithstanding my/our death, bankruptcy or other revocation of this instruction until actual notice of such an event is received by the Bank.

b) In any event, this instruction is subject to any arrangement now or hereafter existing between me/us and the Bank in relation to my/our account.

c) Any dispute as to the correctness or validity of an amount debited to my/our account shall not be the concern of the Bank except in so far as the Direct Debit has not been paid in accordance with this instruction. Any other dispute lies between me/us and CyberCom.

d) Where the Bank has used reasonable care and skill in acting in accordance with this instruction, the Bank accepts no responsibility or liability in respect of:

- The accuracy of information.

- Any variations between notices given by CyberCom and the amounts of Direct Debits.