

# MERCHANT TERMS AND CONDITIONS

## INTRODUCTION

- A Consumer Finance Limited (“**CFL**”) provides Cardholders with a revolving credit facility, enabling them to purchase Goods and Merchant Services via a credit card issued by CFL (“**Q Card**”) or by using their Q Card Account.
- B Columbus Financial Services Limited (“**CFSL**”) provides Cardholders with a revolving credit facility known as Long Term Finance, enabling them to purchase Goods and Merchant Services via a credit card issued by CFSL (“**LTF Card**”) or by using their LTF Card Account.
- C CFL and CFSL are together “**the Issuer**”.
- D The Issuer has agreed (at the Merchant’s request) to allow Cardholders to make Purchases from the Merchant using iQ, the Merchant’s EFTPOS Terminal or a web payment facility approved by the Issuer (as applicable) on the terms which follow.

## 1. Definitions and Interpretation

### 1.1 In the Agreement:

**Account** means a Q Card account or LTF Card account maintained by CFL or CFSL respectively, as the context implies.

**Advance** means an advance the Issuer makes to a Cardholder (or on a Cardholder’s behalf), which is debited to an Account.

**Agreement** means the Merchant Application Form, these Terms and Conditions and the Merchant Procedures.

**Applicant** means the person making an Application.

**Application** means a request (using the form approved by the Issuer from time to time) for an Account made in store by a potential Cardholder.

**Card** means a Q Card or a LTF Card, as the context implies.

**Card Not Present Transaction** means a transaction that is facilitated by the Merchant where the Cardholder and Card are not present or available at the Merchant’s premises when the transaction is processed (including an E-commerce transaction).

**Card Number** means the 16-digit number printed (embossed) on the face of a Card.

**Cardholder** means each person to whom a Card is issued or is approved to be issued (and, where required by the context, includes a customer in respect of an Origination Purchase).

**Cardholder Terms and Conditions** means the Q Card cardholder terms and conditions or the LTF Card cardholder terms and conditions, as the context implies.

**Chargeback** is described in clause 6.

**EFTPOS Terminal** means a device used for initiating electronic funds transfer transactions located at the Merchant’s point of sale.

**Fixed Instalment Purchase** if available on a Customer’s Account, means a Purchase having a fixed monthly repayment instalment plan as disclosed on the relevant Sales Voucher. A Q EFTPOS Purchase is not a Fixed Instalment Purchase.

**Flexi Payment Purchase** means a Q EFTPOS Purchase or a Purchase on a LTF Card Account having a specific start-up interest period and/or a payment holiday as shown on the relevant Sales Voucher, as the context implies.

**Goods** mean goods sold by the Merchant to a Cardholder through the use of an Account.

**iQ** means the Issuer’s web based customer finance processing system (and any successor of that system).

**LTF Card** means a credit card issued by CFSL or a Related Company to a customer for use on an Account linked to that credit card.

**Merchant** means the retailer or supplier who is a party to this Agreement.

**Merchant Application Form** means the form (being the form approved by the Issuer from time to time) used by the Merchant to apply to accept the Issuer’s Card(s) as a means of payment.

**Merchant Procedures** mean the support and training materials (including the iQ guide and iQ Help and any ‘Merchant Information’ or ‘Merchant Support’ (as applicable)) provided by the Issuer to the Merchant from time to time and setting out the procedures the Merchant is to follow when dealing with the Issuer or a Cardholder.

**Merchant’s Bank Account** means the bank account nominated by the Merchant through which payments to or from the Issuer are to be processed.

**Merchant Services** mean services sold by the Merchant to a Cardholder through the use of an Account.

**Notice** means a written notice or demand given by one party to the other, including any daily payout advice statement given by the Issuer to the Merchant, as more particularly set out in clause 15.

**Origination Purchase** means a Purchase by a customer of Goods or Merchant Services originated by the Merchant, where the customer has not yet received a Card but whose Application has been successfully approved by the Issuer.

**PIN** means the Personal Identification Number chosen by a Cardholder for use with a Card.

**PPSA** means the Personal Property Securities Act 1999.

**Purchase** means the purchase of Goods or Merchant Services from the Merchant by a Cardholder using an Account and includes a Q EFTPOS Purchase, a Flexi Payment Purchase and a Fixed Instalment Purchase, as the context implies.

**Q Card** means the Q Card issued by CFL to a customer for use on an Account linked to that Q Card.

**Q EFTPOS Purchase** means a Cardholder’s purchase of Goods or Merchant Services (other than a Fixed Instalment Purchase), using a Q Card only, from the Merchant through an EFTPOS Terminal, with details shown on the Q EFTPOS Receipt.

**Q EFTPOS Receipt** means the receipt issued from the Merchant’s EFTPOS Terminal detailing a Q EFTPOS Purchase.

**Related Company** has the meaning given to that term in section 2(3) of the Companies Act 1993.

**Sales Voucher** means a document or receipt produced via iQ, evidencing a Purchase (but excluding a Q EFTPOS Purchase).

**Services** means the services provided by the Issuer to the Merchant in accordance with the Agreement.

**Supporting Documentation** means ancillary documentation or additional information submitted to or required by the Issuer in connection with any Application.

**Terms and Conditions** means these merchant terms and conditions.

1.2 Where the context requires it, words denoting the singular shall mean the plural and vice versa.

1.3 Reference to clauses is references to clauses in these Terms and Conditions.

1.4 A party to the Agreement includes its successors and its permitted assignees and transferees.

1.5 A reference to any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order in-council and other instrument from time to time issued or made under, that legislation.

1.6 A reference to an agreement or other document includes that agreement or document as modified, supplemented, novated or substituted from time to time.

1.7 Where a Merchant has been accepted for Q EFTPOS Purchase facility only, the Agreement will be read accordingly.

## 2. Purchases

2.1 A Cardholder may make a Purchase using an Advance in accordance with the relevant Cardholder Terms and Conditions.

2.2 The Merchant will process all Purchases through iQ, an EFTPOS Terminal or a web payment facility approved by the Issuer and, except in the case of a Card Not Present Transaction, will ensure that the Cardholder signs, approves or authorises the applicable Sales Voucher or Q EFTPOS Receipt for each Purchase where required in compliance with the Merchant Procedures and otherwise as the Issuer instructs from time to time. Where a Cardholder’s signature is required on a Sales Voucher or Q EFTPOS Receipt, the Merchant will ensure that the Cardholder’s signature appearing on the Card is consistent with the signature on the Sales Voucher or Q EFTPOS Receipt.

2.3 Subject to clauses 2.9 and 2.10, the Merchant will also process Purchases, approved by the Issuer through iQ, an EFTPOS Terminal or a web payment facility approved by the Issuer which accepts Card Not Present Transactions, as the Issuer directs and will ensure that when the Purchase is processed as a Card Not Present Transaction, the Issuer’s Card identification requirements are followed.

2.4 Where the Purchase is an Origination Purchase the Merchant will provide the Issuer with the required Supporting Documentation having been properly completed no later than 7 working days from the date of Purchase, otherwise the Issuer will Chargeback the purchase amount until such time as the properly completed Supporting Documentation is received.

2.5 Where an Advance is made by way of a Fixed Instalment Purchase or a Flexi Payment Purchase (excluding a Q EFTPOS Purchase) the Merchant will provide the Issuer with a copy of the relevant Sales Voucher signed, approved or authorised by the Cardholder where this is required in compliance with the Merchant Procedures and otherwise as the Issuer instructs no later than 7 working days from the date of Purchase, otherwise the Issuer will Chargeback the purchase amount until such time as the relevant Sales Voucher is received.

2.6 Where the Advance is made for a Q EFTPOS Purchase, the Merchant will hold a copy of the Q EFTPOS Receipt (signed or authorised by the Cardholder) on CFL’s behalf for such period as CFL specifies from time to time (and will provide a copy to CFL on request).

2.7 Where applicable upon the Merchant complying with clauses 2.2 to 2.6 (inclusive), the Issuer will pay the Advance amount applicable to the Purchase (plus or minus any fees or commissions) to the Merchant in accordance with clause 4. This clause applies subject to clauses 3.2, 6 and 7.1.

2.8 The Merchant will not issue GST invoices to the Issuer in respect of commissions owed by the Issuer to the Merchant or fees charged by the Merchant to the Issuer. Instead, the Issuer will generate IRD approved buyer-created tax invoices. CFL’s GST registration number is 48-375-472 and CFSL’s GST registration number is 11-690-6538.

2.9 The Issuer may, at its discretion, permit the Merchant to accept Card Not Present Transactions.

2.10 In respect of all Card Not Present Transactions the Merchant acknowledges and agrees that:

- by electing to process Card Not Present Transactions it accepts the increased risk of processing such transactions where the Cardholder’s identity or authority may at a later time be disputed;
- any authorisation obtained from the Issuer for the Card Not Present Transaction does not guarantee that the legitimate Cardholder is initiating or authorising the transaction or that the Card has not been stolen or fraudulently used;
- it accepts all risks associated with processing a Card Not Present Transaction, including all costs, claims, losses, damages, expenses (including legal costs), liabilities (including penalties) or proceedings incurred by the Merchant or any other person arising as a consequence of any Card Not Present Transaction; and
- any dispute that the Merchant may have with any customer of the Merchant in respect of any Card Not Present Transaction made or initiated via the Merchant’s website will be settled entirely between the Merchant and the Cardholder.

## 3. Origination Purchases

3.1 The Merchant warrants that it is aware of the statements made by the Applicant in the Application and any Supporting Documentation and believes after reasonable enquiry that:

- such statements are correct;
- the Application and any Supporting Documentation have been completed and signed by the Applicant;
- the Applicant completed the Application and Supporting Documentation freely and without being under any misconception encouraged by the Merchant; and
- the Applicant understood the nature of the obligations being entered into.

3.2 The Issuer may make an Advance to allow the Applicant to make an Origination Purchase if the Issuer accepts the Application. Such Advance depends upon the Issuer verifying that none of the information supporting the Application has been misrepresented or provided fraudulently by the Merchant or its employees or agents. Verification will be completed before a Card is issued. Where

- the Issuer believes such information has been misrepresented or provided fraudulently, where the Merchant has not completed such Application verifications as the Issuer requires (where applicable) or where the Merchant has not complied with, where applicable, clauses 2.2 to 2.6 (inclusive) or 3.5 then the Issuer will not be required to pay the Advance amount to the Merchant according to clause 2.7.
- 3.3 In the case where the Issuer does not pay Advance proceeds to the Merchant in terms of clause 3.2 the Merchant indemnifies the Issuer against any claims or losses the Issuer suffers through the Merchant recovering or attempting to recover the Goods.
- 3.4 The Merchant will immediately provide the Applicant with a copy of the Cardholder Terms and Conditions, the applicable Sales Voucher, any information required by law due to the nature and type of transaction and how it is entered into and any other documentation the Issuer requires.
- 3.5 To avoid doubt nothing in the Agreement requires the Issuer to approve an Application or an Origination Purchase (or issue a Card to an Applicant).
- 4. Payments to Merchant**
- 4.1 The Issuer will pay the Merchant the amounts referred to in clause 2.7 by direct credit to the Merchant's Bank Account within 2 working days following the day upon which the Goods or Merchant Services purchased have been collected, installed or delivered and the Cardholder's right to cancel the Advance by the Issuer has expired.
- 4.2 If a payment is mistakenly applied to the Merchant's Bank Account or made pursuant to an Advance which is subsequently cancelled by the Issuer, the Merchant will immediately refund that payment, failing which the Issuer may deduct such payment from the Merchant's Bank Account where a direct debit authority exists or effect an offset referred to in clause 7.
- 4.3 A Purchase may include other services (e.g. insurance) provided by third parties. Where the Advance includes an amount attributable for those services then the Merchant will immediately pay that amount onto the third party service provider. Should the Merchant pass this cost on to the Cardholder or the Issuer (either as part of the Advance or as a separate fee), the Merchant will not charge more than the actual amount paid by the Merchant to the third party for the services. Where provision of those services is reversed the Issuer may debit the Merchant's Bank Account where a direct debit authority exists or effect an offset referred to in clause 7.
- 4.4 Following the Cardholder's default, where any monies remain owing to the Issuer after Goods or Merchant Services the subject of any Sales Voucher or Q EFTPOS Receipt are sold by the Issuer, the Merchant will pay the Issuer the unutilised share of any service or maintenance cost as may have formed part of that transaction.
- 4.5 When the Issuer processes a Chargeback to the Merchant, due to it having not received the properly completed Supporting Documentation from the Merchant, the Chargeback will be reversed when:
- the properly completed Supporting Documentation has been received by the Issuer; or
  - the Cardholder has repaid the Issuer in full.
- 5. Cardholder payments**
- 5.1 The Merchant is not permitted to accept any payments from Cardholders due to the Issuer. If however any payments due to the Issuer by the Cardholder are received by a Merchant, such payments are received and held by the Merchant on trust for the Issuer.
- 5.2 The Merchant will remit such payments without deduction to the Issuer, as the Issuer requires.
- 6. Chargebacks**
- 6.1 An Advance will become a Chargeback if:
- it is processed other than through iQ, the Merchant's EFTPOS Terminal or a web payment facility approved by the Issuer;
  - it is a Card Not Present Transaction which has not been permitted by the issuer;
  - except in the case of a Card Not Present Transaction, it is initiated without the Cardholder having signed, approved or authorised a copy of the applicable Sales Voucher or Q Eftpos Receipt (where required), it involves an obvious forgery of the Cardholder's signature, or the Sales Voucher or Q EFTPOS Receipt is incomplete or illegible;
  - it is initiated through the use of a Card which a reasonable person would consider to be counterfeit;
- after 7 days from the date upon which payment is made to the Merchant in accordance with clause 4.1, the Issuer has not (as required in accordance with clauses 2.4 and 2.5) received properly completed Supporting Documentation or Sales Voucher;
  - it arises where the Merchant has failed to comply with clauses 2.2 to 2.6 (inclusive), 3.1, 3.4, 8.1 or 8.2;
  - it relates to a transaction which has been previously billed or processed by the Merchant either directly or through the use of a charge card or credit card (other than the Card);
  - it is one which the Cardholder disputes, refuses to pay or acknowledge, because the Goods or Merchant Services the subject of the Purchase are:
    - claimed to be defective or inadequate;
    - claimed not to have been ordered, delivered or received;
    - claimed not to be as promised by the Merchant; or
    - (in the case of Goods) returned for any reason;
  - it is one where the Merchant has agreed to take back the Goods or reverse the Purchase for any reason;
  - it is one which has been processed by the Merchant contrary to the Merchant Procedures, or any other instruction, direction or authorisation given by the Issuer;
  - the Merchant fails to provide a copy of the validated Sales Voucher or Q EFTPOS Receipt to the Issuer when requested; or
  - it is one where the Merchant has processed a Card Not Present Transaction that is later found to be fraudulent or is claimed by the Cardholder to be an Unauthorised Transaction (as defined in the Cardholder Terms and Conditions).
- 6.2 If an Advance becomes a Chargeback the Merchant will repay on demand to the Issuer, the Advance amount plus or minus any applicable charges to or payments made by the Cardholder. The Merchant authorises the Issuer to debit the Merchant's Bank Account where a direct debit authority exists with any Chargeback or otherwise effect an offset according to clause 7.
- 6.3 A Chargeback is not waived because the Issuer may have authorised a particular Purchase.
- 7. Offset**
- 7.1 Where the Merchant has incurred any actual or contingent liability to the Issuer, including a Chargeback, the Issuer may offset such liability against any sum that would otherwise be due by the Issuer to the Merchant.
- 7.2 The Merchant cannot assign any credit balances with the Issuer or any Related Company.
- 8. Merchant's Undertakings**
- 8.1 The Merchant undertakes and agrees that:
- all Purchases will be processed via iQ, the Merchant's EFTPOS Terminal or a web payment facility approved by the Issuer and in accordance with the Merchant Procedures or as the Issuer instructs from time to time;
  - it will not act (or fail to act) in any way which might give rise to any claim that the Issuer is in default under the Cardholder Terms and Conditions or under the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, the Privacy Act 1993, the Consumer Guarantees Act 1993 or any other legislation or regulation binding on the Issuer;
  - any amount stated in any applicable Sales Voucher or Q EFTPOS Receipt as being the Advance amount is the price or less, at which (at the time the Cardholder made the Purchase) the Cardholder could have purchased the Goods or Merchant Services for cash had the Cardholder been a cash buyer;
  - all Purchases will be processed according to the Merchant Procedures and otherwise as the Issuer instructs;
  - the Merchant will honour all warranties and guarantees (whether under the Consumer Guarantees Act 1993 or otherwise) relating to each Purchase;
  - when the Issuer pays or credits the Merchant with the Advance proceeds, the Cardholder has not cancelled the Purchase;
  - it will only initiate Card Not Present Transactions for the purpose of a relevant Cardholder purchasing the Goods or Merchant Services;
  - it will not process an Advance until after it has supplied the Goods or Merchant Services;
  - it will obtain, when applicable, the following information in relation to all Card Not Present Transactions at the time of accepting the Cardholder's order:
    - the Card Number;
    - the Cardholder's name as it appears on the Card;
    - the Card expiry date;
    - the Card CVV2 number;
  - it will not store, use, sell, purchase, disclose or exchange any Cardholder information obtained by use of the Services for purposes other than the Services;
  - it will not initiate any transaction through use of the Services which is an Advance for the Merchant;
  - when the Issuer provides the Merchant with suggestions on how to reduce the risk of fraudulent transactions, the Issuer makes no representation on the effectiveness of those suggestions, nor in any way guarantees a reduction in or protection from fraudulent transactions;
  - it will follow best practice procedures to reduce likelihood of exposure to fraud, including but not limited to those set out in the Merchant Procedures;
  - it will provide the Issuer or its agent with reasonable access to inspect and/or examine the Merchant's accounts, records and procedures as they relate to the Agreement or to a transaction initiated by the Merchant using the Services; and
  - it will not charge any fee to a Cardholder in connection with a Purchase except as permitted by the Issuer.
- 8.2 The Merchant will not process a Sales Voucher until any free trial period (if applicable) expires, or in the case of a forward sale with a delayed delivery, until the Goods have been delivered or installed, or in the case of Merchant Services, they have been provided, as the case may be.
- 8.3 The Merchant will retain such information as the Issuer specifies in the Merchant Procedures or as the Issuer requests from time to time relating to Purchases facilitated by the Merchant (and will provide that information to the Issuer on request).
- 8.4 When the Cardholder makes a Purchase but agrees with the Merchant to pay in part only on the date of Purchase with the balance payable at a later date (usually when the Merchant has some but not all items in stock), a split delivery exists. Where a split delivery occurs, the amount the Cardholder agrees to pay at the date of Purchase only will be debited to the relevant Account. The Merchant must notify the Cardholder and the Issuer when each remaining item is available for delivery or collection and when the outstanding amount will become payable to the Merchant on the date of such notification.
- 9. Merchant Fees**
- 9.1 A merchant service fee will apply to each Advance made to the Cardholder for a Purchase and may be either:
- a charge payable by the Merchant to the Issuer; or
  - a commission payable by the Issuer to the Merchant, depending on the terms of the Purchase to which the Advance relates. The Issuer will advise the Merchant as to the applicable merchant service fee from time to time and it will debit or credit this fee from the Merchant (this may be by offset) as the case may be. The Issuer may vary the merchant service fee and in this respect clause 25.1 applies.
- 9.2 Subject to such limitations as the Issuer imposes from time to time the Merchant may:
- decide which Purchase type a Cardholder may access; and
  - agree the finance terms with the Issuer applying to each Purchase (e.g. interest rate/s, payment terms etc.) provided that the interest rate applying to a particular Purchase does not exceed the Standard Interest Rate (as defined in the Cardholder Terms and Conditions).
- 9.3 The Merchant acknowledges and agrees that the Issuer may charge a cancellation fee, the amount of which will be notified to the Merchant from time to time, for every Advance that is required to be cancelled and/or re-written, other than as a result of a Cardholder exercising his or her statutory or contractual rights to cancel an Advance.

## 10. Indemnities

The Merchant indemnifies the Issuer against any payments, expenses, damages, claims and losses the Issuer incurs arising out of or in connection with:

- (a) a breach by the Merchant of the Agreement;
- (b) the Merchant being found to have acted as the Issuer's agent without the Issuer's authority;
- (c) any dispute between the Merchant and the Cardholder;
- (d) any representation, statement or undertaking made by the Merchant or its representatives to a Cardholder;
- (e) any Court or Disputes Tribunal decision as may adversely affect the Issuer and which relates to any act or omission on the Merchant's part;
- (f) the Merchant failing to account to the Issuer for monies it receives on the Issuer's behalf;
- (g) any act of fraud committed or contributed to by the Merchant; or
- (h) the Merchant's acceptance of Card Not Present Transactions.

Without limiting the foregoing the Merchant indemnifies the Issuer against any losses the Issuer incurs (including but not being limited to interest losses) in the case where the Merchant fails to notify the Issuer of delays in delivery of Goods or provision of Merchant Services (as the case may be) purchased by a Cardholder.

## 11. Limited Agency

The Merchant is not the Issuer's agent (and may not purport to have any right or power to bind the Issuer) for any purpose except where the Merchant originates a Cardholder and/or an Account via iQ, including performing customer due diligence in accordance with clause 23 and the Merchant Procedures.

## 12. Default interest and expenses

- 12.1 The Merchant will pay the Issuer all costs and expenses the Issuer incurs as a result of exercising its powers under the Agreement including actual legal costs on a solicitor-client basis.
- 12.2 If the Merchant fails to pay any amount due under the Agreement, then the Issuer may demand and the Merchant will pay the Issuer interest, calculated on a daily basis on the amount not paid from the due date until the date of payment at the Prescribed Rate of interest as defined and prescribed in accordance with section 87 of the Judicature Act 1908.

## 13. Termination

- 13.1 The Agreement will continue until terminated by either party by not less than one month's Notice given to the other.
- 13.2 The Issuer may terminate the Agreement (or any part of it) without giving any prior Notice to the Merchant should:
  - (a) the Merchant:
    - (i) become insolvent or is unable to pay its debts as they fall due;
    - (ii) have a receiver appointed over the whole or any part of its assets;
    - (iii) be wound up;
    - (iv) make any composition or arrangement with its creditors; or
    - (v) cease or intend to cease trading;
  - (b) the Merchant fail to pay any money to the Issuer when due;
  - (c) the Merchant breach or fail to comply with the Agreement;
  - (d) the Merchant, its employees or agents participate in or the Issuer has reasonable grounds to suspect that the Merchant or any of those parties has participated in any fraud against the Issuer, a Cardholder or any other payment facilitator;
  - (e) the ownership or effective control of the Merchant's business change;
  - (f) the Merchant be in default under any lease or licence relating to any premises of the Merchant;
  - (g) the Issuer determine that the Merchant is using the Services for purposes other than those implied in the Merchant Application Form;
  - (h) the Issuer reasonably determines that, if the Issuer continues to provide the Services, the Issuer's reputation may be damaged or the Issuer may suffer loss;
  - (i) the Merchant, in the Issuer's reasonable opinion, have an excessive Chargeback or fraud to transaction ratio or be involved in unacceptably high numbers of refunds to Cardholders.

The Merchant must immediately notify the Issuer on becoming aware of the occurrence of any of the events in this clause 13.2.

- 13.3 Without limiting any of its rights the Issuer will be entitled to take, at the Merchant's cost, all steps it considers necessary to remedy any breach of the Agreement.
- 13.4 Unless otherwise expressly specified, the termination of the Agreement will not affect any obligation, undertaking or indemnity incurred or given by the Merchant prior to such termination. To avoid doubt, the Issuer may deem an Advance to be a Chargeback despite the Agreement terminating, with the Merchant's obligations under clause 6.2 and clause 10 continuing notwithstanding.
- 13.5 The Merchant must return all the Issuer's promotional material and forms, and must cease to advertise, market or refer to Q Card or LTF Card or display the Q Card logo or the LTF Card logo, upon the Agreement terminating.

## 14. Confidentiality

The Merchant acknowledges that all information it or its officers or employees receive in the course of dealing with the Issuer, the Cardholders and the Cards is confidential. The Merchant will hold that information in the strictest confidence. The Merchant will not disclose any such information to any other party or use the information for its own benefit without the Issuer's prior written consent.

## 15. Notices

A Notice is deemed to be sufficiently served or given if any one of the following methods is used:

- (a) it is delivered to a recipient personally;
- (b) it is left at the recipient's usual or last known residence, business or at an address specified for that purpose;
- (c) it is posted in a letter addressed to the recipient by name, to that residence, business or address specified;
- (d) it is faxed or emailed to the recipient at a facsimile number or an email address specified by the recipient for that purpose.

A Notice sent by mail will be treated as having been received 4 working days after posting. A Notice sent by email or facsimile will be treated as having been served immediately upon completion of sending (provided the sending email account confirms delivery to the recipient or the sending facsimile machine produces a printout of time, date and uninterrupted transmission success record).

## 16. Promotional material and marketing

- 16.1 The Issuer will supply the Merchant with promotional material. The Merchant must submit all advertising and marketing that refers to or displays the Q Card logo or the LTF Card logo to the Issuer and any relevant third party for approval, within the time periods notified by the Issuer from time to time, and may only advertise or promote the Card in a manner approved by the Issuer.
- 16.2 The Merchant undertakes and agrees only to publish advertising and marketing materials that refer to or display the Q Card logo or the LTF Card logo which comply with all applicable legislation, regulation or codes of practice.
- 16.3 The Merchant consents to the use of its name and/or logo in any Merchants list the Issuer publishes from time to time.

## 17. Force Majeure

- 17.1 The Issuer's ability to provide the Services is subject to the equipment and services required to be provided by the Merchant or a third party for the proper operation of Card facilities being available (such as electronic funds transfer services, telecommunications and electricity which are supplied by third parties). Should services of this kind be interrupted or be discontinued then the Issuer will have no liability to the Merchant.
- 17.2 The Issuer will not be liable to the Merchant should the Issuer be unable to carry out its obligations through any reason beyond its reasonable control including strikes, riots, acts of war or terrorism, fire, other natural disaster or through government action.

## 18. The Issuer's liability limits

Subject to mandatory law:

- (a) all warranties and representations implied by statute, law, custom or otherwise on the Issuer's part are excluded as between the Issuer and the Merchant;
- (b) in no case will the Issuer be liable to the Merchant for any consequential or indirect loss the Merchant suffers through the Issuer

failing to carry out its obligations under the Agreement or otherwise in connection with the Agreement; and

- (c) if the Issuer is found to be liable to the Merchant in connection with anything (or a related series of things) arising from the Agreement then the Issuer's total liability (apart from payments due under clause 4) is limited to \$5,000.

## 19. Privacy

- 19.1 Merchant information includes information the Merchant provides to the Issuer and information the Issuer obtains about the Merchant from the way in which the Merchant uses the Services and from third parties, as described in clause 19.3 below. Merchant information may also include information about individuals within the Merchant's organisation and its corporate structure, including its owners, partners, directors and officers.
- 19.2 Merchant information provided to the Issuer, will be held by the Issuer at its business premises and will be used for the following purposes:
  - (a) verifying the identity of the Merchant, and individuals involved in its corporate structure;
  - (b) assessing the Merchant's creditworthiness from time-to-time;
  - (c) administering and enforcing the Merchant's relationship with the Issuer;
  - (d) updating and enforcing defaults;
  - (e) maintaining credit records with the Issuer and external agencies (including credit reference agencies);
  - (f) preventing and detecting fraud; and
  - (g) planning, conducting market research, and carrying out transactional and statistical analysis.
- 19.3 The Merchant authorises the Issuer to:
  - (a) obtain information about it and individuals within its corporate structure from other sources as the Issuer reasonably requires (including from credit reference agencies at application stage and from time-to-time during our relationship); and
  - (b) retain and use information about the Merchant and its relationship with the Issuer (including but not limited to repayment history, payment deferred, creditworthiness and credit history) and provide this information to Related Companies and external agencies for the purposes listed in clause 19.2 above (such information may be used in updating and maintaining credit reporting agency/ies files and databases, which are accessible to their customers).
- 19.4 The Issuer will hold Merchant information safely and securely. However, in order to provide its Services, the Merchant agrees that the Issuer may release Merchant information:
  - (a) to its Related Companies for the purposes set out in clause 19.2 above;
  - (b) to its agents and other third parties who help the Issuer provide its Services, meet its obligations and for the purposes set out in clause 19.2 above;
  - (c) credit reference agencies (this information may include without limitation repayment history, details relating to the Merchant account and payment defaults) who will hold Merchant information on their system to provide their Services to third parties;
  - (d) to the Police, or any other Government or financial regulatory body who assists in the prevention, detection and investigation of crime;
  - (e) to any potential assignee; or
  - (f) when the Issuer is required to do so by law.
- 19.5 Any communications between the Issuer and the Merchant may be recorded for security, and record keeping and training purposes. Where the information can be readily retrieved the Merchant will have access to it and will have the right to have personal information corrected.

## 20. iQ

- 20.1 The Issuer may provide the Merchant with access to iQ and with information in relation to credit assessment facilities provided by the Issuer to the Merchant (data) for use in association with iQ.
- 20.2 Copyright in iQ (and any predecessor system), any related manuals and all programmes enhancing iQ, remains with the Issuer alone.
- 20.3 Where applicable the Issuer grants the Merchant a non-exclusive, non-assignable licence to use iQ for the sole purpose of accessing and processing data.

- 20.4 The Merchant will not:
- copy or allow the copying of iQ or any part of it; or
  - disclose or allow the disclosure of any data to any other party; or
  - allow any other party access to iQ.
- 20.5 The Merchant will keep all aspects of iQ confidential.
- 20.6 In return for the Issuer providing iQ, the Merchant will comply with the iQ terms and conditions and will pay such charges relating to iQ as the Issuer may from time to time determine.
- 20.7 The Issuer will not be liable to the Merchant for the correctness or otherwise of particular information supplied to the Merchant via iQ.
- 21. Security Interest**
- 21.1 The Merchant acknowledges and agrees that certain sums paid to or held by the Merchant, in respect of Purchases made using a Q Card or LTF Card or Account may be subject to a Chargeback and are therefore a debt payable to the Issuer. To better secure the repayment of such sums to the Issuer, the Merchant agrees, when requested by the Issuer, to provide the Issuer with a security interest over all of its present and after acquired property to the extent of such sums. Accordingly the Issuer may register a Security Interest (as defined in the PPSA) over such property on the Personal Property Securities Register ("PPSR").
- 21.2 The Merchant agrees to:
- do all things reasonably necessary to assist the Issuer with its registration of a financing statement on the PPSR and in maintaining perfection of its security interest, this includes but is not limited to the Merchant paying all applicable registration fees;
  - give the Issuer 10 working days prior Notice of any change in its name.
- 21.3 The Merchant waives its rights to receive a copy of any verification statement under the PPSA and agrees that as between the Merchant and the Issuer:
- the Merchant will have no rights under (or by reference to) section 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA; and
  - where CFL has rights in addition to those in Part 9 of the PPSA, those rights continue to apply.
- 22. Insurance**
- 22.1 Where the Merchant has been approved to sell insurance on behalf of CFL or a Related Company, CFL or the Related Company will pay commission at the rate notified to the Merchant from time to time. The Merchant acknowledges that CFL may vary the rate on Notice, in accordance with the law.
- 22.2 Where the Merchant sells insurance it undertakes and agrees that it will not provide Cardholders with any financial adviser service or broking service (each as defined in the Financial Advisers Act 2008) in relation to such products. No act or omission at any time may be taken to constitute the express or implied direction, consent or agreement of CFL or any Related Company to the Merchant (or any employee, agent or representative of the Merchant) providing any such service.
- 23. Due Diligence**
- 23.1 Subject to any future direction the Issuer may give to the Merchant from time to time, the Merchant, in its capacity as the Issuer's agent pursuant to section 34 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, has agreed to undertake customer due diligence ("CDD") in relation to all Applicants in the manner required by that Act and the Merchant Procedures. For new Applicants the following information must be collected and verified by the Merchant against the customer identification and proof of address supplied by the customer,
- title, first name, surname and date of birth;
  - residential mailing address and email address;
  - daytime and mobile telephone numbers; and
  - New Zealand residency/citizenship status.
- 23.2 The Terrorism Suppression Act 2002, the Financial Transactions Reporting Act 1996 and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("AML") place responsibilities on all financial institutions to identify their customers. New applicants are therefore obliged to provide, in addition to the information at clause 23.1 above, the Merchant with the following details, either in an original or a certified copy format:
- primary identification in the form of a valid New Zealand or overseas Passport, New Zealand driver licence, New Zealand firearms licence, New Zealand issued 18+ card or New Zealand Police Photograph identification; and
  - secondary identification in the form of
    - a credit card issued by an approved registered card issuer, an EFTPOS card or a debit card each with name and signature;
    - a current Farmers Finance Card with name and signature; or
    - a current Q Card with name and signature; and
  - a bank statement, IRD statement or utility invoice showing their residential address (bank statements or invoices cannot be more than 3 months old at the date of Application).
- 23.3 A Cardholder who has previously had an Account with the Issuer or has an existing Account will be considered to be a new Applicant for the purposes of AML, and CDD must be conducted.
- 23.4 It will be the Merchant's responsibility as the Issuer's agent to ensure the Application is complete and all the relevant information necessary to complete CDD has been provided and verified and the customer identification has been scanned and provided to the Issuer with the Application.
- 23.5 It will be the Merchant's responsibility to ensure that the Applicant's signature and likeness is verified against the primary photographic identification provided, as required above in clause 23.2 (a).
- 23.6 For further information on the due diligence process, you can contact the Issuer's AML officer, by email to [aml officer@flexicards.co.nz](mailto:aml officer@flexicards.co.nz), by telephone on 0800 22 22 55 or by post to the AML Officer, Columbus Financial Services Limited, 111 Carlton Gore Road, Newmarket, Auckland 1023. Private Bag 94013, Auckland 2241, New Zealand
- 24. Anti-Money Laundering**
- 24.1 Subject to any future direction the Issuer may give to the Merchant, the Merchant agrees that the Issuer may delay, defer, stop or refuse to process any Purchase without incurring any liability if the Issuer knows or suspects that:
- the transaction or relationship with the relevant Cardholder will breach any laws or regulations in New Zealand or any other country; or
  - the Purchase involves any person (natural, corporate or governmental) that is itself sanctioned, or is connected, directly or indirectly, to any person (natural, corporate or governmental) that is sanctioned, under economic and trade sanctions imposed by any country.
- 24.2 The Merchant agrees to provide all information to the Issuer, which the Issuer reasonably requires in order to manage its money-laundering, terrorism financing or economic and trade sanctions risk or to comply with any laws or regulations in New Zealand or any other country. The Merchant agrees that Issuer may be required to delay, defer, stop or refuse to process any Purchase, or terminate its business relationship with the Merchant, if the latter fails to provide this information to the Issuer.
- 24.3 For each Purchase conducted in accordance with the Agreement, the Merchant represents and warrants to the Issuer that, to best of its knowledge, information and belief at the time the Purchase takes place, the processing of that Purchase by the Issuer in accordance with the Merchant's instructions will not breach any laws or regulations in New Zealand or any other country relevant to the transaction or relationship with the relevant Cardholder.
- 24.4 The Merchant will notify the Issuer immediately when it becomes aware of any suspicious activity or transactions (as defined in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009) relating to an Account.
- 25. General**
- 25.1 The Issuer may vary the Agreement from time to time by giving notice of the variation to the Merchant by way of a Notice, public notice, press release, notice on the Issuer's website(s) (including the iQ portal, where applicable) or otherwise as authorised by law.
- 25.2 The Agreement sets out the terms governing the relationships between the Merchant and the Issuer. Upon the earlier to occur of the Issuer's acceptance of the Merchant Application Form or the Merchant's acceptance of a Purchase made by a customer, the Agreement will be binding on the parties.
- 25.3 The Agreement does not establish a trust, agency (except to the extent expressly specified in the Agreement), partnership or joint venture between the parties.
- 25.4 The Issuer may assign any of its rights, interests and obligations under the Agreement, without the Merchant's consent. The Merchant can only assign or transfer its rights, interests or obligations under the Agreement with the Issuer's prior written consent.
- 25.5 Should there be inconsistency between these Terms and Conditions and the Merchant Procedures, these Terms and Conditions will prevail.
- 25.6 No failure or forbearance of a party to exercise, or delay in exercising (in whole or in part) any right, power or remedy under, or in connection with, the Agreement will operate as a waiver of that right, power or remedy. Any waiver of a right, power or remedy of a party must be given by that party in writing. No waiver of any breach or failure to enforce any provision of the Agreement at any time by any party will affect, limit or waive the right of such party to subsequently require the other to observe the Agreement.
- 25.7 Subject to mandatory law, the Agreement constitutes the entire agreement between the parties relating to its subject matter.
- 25.8 Where CFL, CFSL or a Related Company issues an additional LTF Card and Merchant chooses to accept it for Purchases, the terms of this Agreement will apply.
- 26. Governing law**
- The Agreement is governed by the laws of New Zealand.