

DYNAMIC PAYMENT PTY. LTD

CUP and/or other Credit/Debit Card Merchant Agreement

THIS AGREEMENT is made between Dynamic Payment Pty.Ltd. whose registered office is Suite 5, Level 8, 300 Queen Street, Auckland New Zealand (the "Company") and the person whose name and address are described in Part I of the Schedule hereto (the "Merchant").

WHEREAS The Company is in the business of providing credit card and debit card settlement services in relation to cards issued by institutions in the PRC using the ChinaUnionPay POS System and the Merchant intends to accept payment by means of the credit card(s) and debit card(s) listed in Part II of the Schedule hereto for merchandise or services sold or rendered to its customers. This Agreement shall apply to every transaction involving payment by the Merchant's customers by means of the Card (as hereinafter defined). This Agreement shall commence from the commencement date described in Part IV of the Schedule hereto and shall continue unless terminated in accordance with this Agreement.

NOW IT IS AGREED as follows: -

1. DEFINITIONS AND CONSTRUCTION

DEFINITIONS:

"Business Day" means a day on which banks in New Zealand and the PRC are generally open for business;
"Card" means a Credit Card or a Debit Card issued by ChinaUnionPay and/or CUP participating with the CUP label;
"Card Acquiring Services" means the services provided by the Company to the merchant under this agreement and related to the Card;
"Cardholder" means a customer of the Merchant who is a holder of a Card;
"Card Issuer" the issuer of a Card;
"Credit Card" and "Debit Card" respectively mean the list of credit cards and the debit cards specified in Part II of the Schedule to this Agreement, and as such list may from time to time be amended in accordance with the provisions hereof;
"CUP" means ChinaUnionPay Co., Ltd., a company incorporated in the PRC and having its registered office address at 6/, ChinaUnionPay Mansion, No. 36, Han Xiao Road, Pudong, Shanghai 200135 PRC,
"CUP Participating Bank" means A bank or financial institution which has entered into an agreement with CUP to take part in the issue of CUP Cards.
"Facilities" means terminals and machines for accessing the System provided to the Merchant by the Company and/or the System Provider, including the Terminals;
"NZD" or "New Zealand dollars" means the lawful currency for the time being of New Zealand;
"RMB" means Renminbi, the lawful currency for the time being of the PRC;
"PRC" means the People's Republic of China;
"Rules" means the rules, regulations and guidelines issued and published by the System Provider regarding the use of the System as the same may from time to time be amended, varied or supplemented;
"System" means the CUP POS System provided by the System Provider;
"System Provider" means CUP;
"Terminal" means a point-of-sales terminal provided by the Company and/or the System Provider for use under the System whereby a Card may be swiped through it to access the System;
"Transaction" means a transaction of sale of goods or services between the Merchant and its customer involving payment by the Customer using a Card processed through the System;

1.2 Construction

Unless a contrary intention appears in this Agreement, a "person" includes an individual, a corporation, a firm, sole proprietorship and a partnership (whether or not having separate legal personality); the singular includes the plural and vice versa and the masculine gender includes feminine and neuter genders and vice versa. Any reference to a clause is to a clause of this Agreement.

2. MERCHANT AND THE PROGRAMMES

- 2.1 The Merchant shall at the Company's direction from time to time display the mark or logotype of CUP and the Company at the Merchant's business outlet(s) or on its promotional materials.
- 2.2 The Merchant irrevocably authorizes the Company to include the Merchant's name in any directory or promotional materials produced or sponsored by the Company or any other person in connection with the Card.
- 2.3 Provided that the terms and conditions of this Agreement are observed in relation to each Transaction:-
 - (i) The Company agrees to pay to the Merchant a sum equal to the amount of each valid Transaction (less the Handling Charges specified in Part II of the Schedule hereto) completed at any business outlet of the Merchant duly recorded on and evidenced by a sales slip printed from the Terminal at the end of the Transaction; and
 - (ii) Correspondingly, the Merchant agrees to accept the use of a Card in substitution for the cash payment of the purchase price by the Cardholder under a Transaction, and such acceptance of use of a Card by the Merchant shall release the relevant Cardholder from any obligation to pay the purchase price for such Transaction to the Merchant.
 - (iii) The Merchant agree to pay the Terminal monthly rental fee and Connection fee specified in Part III of the Schedule hereto to the company upon signing the agreement.

3. ACCEPTANCE OF CARD

- 3.1 Subject to clause 3.2, the Merchant shall promptly accept without discrimination any Card presented by its customers for payment of the Merchant's merchandise or services.
- 3.2 The Merchant shall only accept a Card for payment after it has confirmed all of the following (if applicable):-
 - The Card has not been defaced, tampered with or altered in any manner or is not reasonably suspected of being a counterfeit;
 - The Card has not expired (if there is an expiry date printed on the card face);
 - In respect of a Credit Card, it bears the corresponding hologram and the same has not been damaged or blurred;
 - In respect of a Credit Card, the first four digits of the card number embossed on the card face are the same as the four-digit number printed immediately above or below
 - in respect of a Card, it bears the specimen signature of its cardholder at the back and the same has not or is not reasonably suspected of having been tampered with or altered in any manner
 - In respect of a Card, if a color photo Card is presented, the identity of the Cardholder (including name, gender and appearance etc.) shall match with the photo appearing on the Card
 - The Terminal shows that the Card is valid, has not expired or been cancelled;
 - The Terminal displays a card number which is the same as the card number embossed on the card face (in case of discrepancies in respect of a Card, the Merchant shall report to the Company immediately);
 - in respect of a Card, the signature of the customer on the sale slip is the same as the specimen signature at the back of the Credit Card
 - In respect of a Card, its card number and/or its account number is not listed on any current warning, card recovery, hot card, stop or similar list or notice supplied to the Merchant by the Company from time to time
 - In respect of a Debit Card, the Card presented shall be one that has been agreed by the parties to be applicable for use in the System as set out in this Agreement, or has been expressly authorized for such use by the Company under this Agreement;
 - Authorization shall only be obtained by the Cardholder inputting a password through the Terminal, and may not be obtained by manual authorization or the use of an imprinting machine;

- Such other instructions from time to time published by the Company have been fulfilled or otherwise complied with

The Merchant shall not accept the following Cards for use in the System:

- Cards not approved by the Company.
 - A Credit Card with an anti-counterfeit label that has been damaged or is unclear.
 - A Card designated by the Company or the Card Issuer as hot card, lost card or stop card.
 - A Card without specimen signature of the Cardholder on the back of the Card, or Credit Cards with specimen of signatures that are unclear or that have been altered.
- 3.4 The Merchant shall not collect more than the reasonable cost of card acceptance in accordance with any NZ government authority's regulations from Cardholders effecting payment using Credit Cards or Debit Cards through the System.

4. AUTHORIZATION

Under the following circumstances, the Merchant shall obtain prior authorization from the Company from time to time and record legibly on the sales slip(s) the authorization code before accepting a Card:-

- Where the Transaction amount is in excess of the applicable floor limit as set out in Part II of the Schedule; If the amount prescribed for a single Transaction exceeds the Merchant's floor limit as set out in Part II of the Schedule unless otherwise notified by the Company to the Merchant in writing, prior authorization must be obtained by the Merchant from the Company from time to time
- Where the Merchant has reasonable cause to believe that the Card may be a counterfeit, forged, lost or stolen, in which case the Merchant will notify shop security;
- Where the Merchant communicates to the Company that there are suspicious circumstances surrounding the presentation of the Card or the proposed transaction;

and the Merchant shall not be held liable for any claims made by the Company or the cardholder where the authorization of the Company has been obtained in accordance with this Clause.

5. MULTIPLE SALES SLIPS

- The Merchant shall not use two or more sales slips in a single Transaction and shall include all items of merchandise or services sold or rendered in a single Transaction in one total amount on a single sales slip except in a situation involving partial payment or delayed delivery described in this clause.
- In respect of a Card, the Merchant shall not effect a Transaction when only a part of the amount due is included in a single sales slip except:
 - When the balance of the amount is paid by the customer at the time of sale in cash or by cheque; or
 - When the customer shall have executed two or more separate slips in a delayed delivery sales where a deposit is required to be paid by the customer and the balance of the sales price is required to be paid on delivery of merchandise or performance of services. Authorization is required if the total amount of the two sales slips exceeds the applicable floor limit as set out in Part II of the Schedule and such sales slips shall be assigned separate authorization codes. The Merchant shall record legibly on the sales slips the word "deposit" or "balance" as the case may be.
- For the purposes of clauses 4.1 and 5.1, the Merchant shall be deemed to have used two or more sales slips in a single Transaction if two or more sales slips are presented indicating that the transactions are entered into between the same customers on the same day.

6. COMPLETING THE SALES SLIP

- The Merchant shall complete a separate sales slip for each single Transaction. The Merchant shall only engage the processing and settlement service offered by the Company or other agreed solution in respect of all payment transactions effected with the Card transaction.
- All sales slips to be used by the Merchant shall be in a form approved by the Company and shall consist of the Merchant copy, Company copy or Bank copy (as appropriate) and Cardholder copy. The Cardholder copy shall be given to the customer immediately after the Transaction has been completed and signed by the customer. Each Merchant copy shall be retained by the Merchant for a period of not less than twelve months from the date of the Transaction and shall be submitted to the Company within ten business days upon request. The Company copy or Bank Copy (as appropriate) shall be sent to the Company upon request.
- The following provisions shall apply where a Card is presented by a customer for payment: -
- The Merchant shall compare the signature on the sales slip(s) with the signature on the Card to ascertain that they appear the same; and
- The Merchant shall enter an adequate description and the price of all merchandise or services sold or rendered in NZD and the date of each Transaction on the sales slip.

7. RESPONSIBILITIES AND OBLIGATIONS

- 7.1 In providing the Card Acquiring Services, the Company shall use its reasonable endeavours to:
 - To pay to the Merchant a sum equal to the amount of each valid Transaction (less the Handling Charges specified in Part II of the Schedule hereto)
 - Coordinate and communicate with the System Provider to procure the normal operation of the System.
 - Provide the means for information exchange between the Company and/or the System Provider in relation to the Transactions effected through the System and record all such information transmitted.
 - Advise the Merchants and/or CUP on issues regarding the Transactions, funds settlement and complaints arising among Merchants, CUP and/or other banks participating in the System.
- 7.2 The Merchant, in using the System, shall have the following responsibilities and obligations:
 - Observe the Rules and do such acts and things as may be reasonably required by the Company from time to time in relation to the Card Acquiring Services hereunder and the usage of the System.
 - Provide such facilities and security protection as are necessary to ensure the normal operation of the System.
 - Not to unreasonably refuse the use of a Card by a Cardholder, and not to engage in unequal treatment between Cardholders and other customers in the sales of merchandise and/or provision of services and any other benefits offered.
 - Handle complaints from customers and act on advices given by the Company in relation thereto.
 - Display in an appropriate and prominent place of its business locations and on all promotional materials the marks and logos of the Company and the System Provider, in order to inform the public that the Merchant accepts the use of the System for settling card payments.
 - Assist the Company and CUP in managing the network of the Cards.
 - Accept Transactions and use the Facilities with due care and diligence.
 - Keep the Facilities in a safe and proper manner and indemnify and keep the Company fully indemnified for any damage or loss caused to the Facilities, except for any fair wear and tear.
 - The Merchant shall not make any cash refund to the customer. The Merchant shall promptly deliver to the Company a credit note in the form supplied by the Company from time to time and present the same together

with other sales slips evidencing such refund or adjustment.

- Cash advances by the Merchant to a Cardholder are not allowed in all circumstances.
- The Merchant shall not impose more than the reasonable cost of card acceptance in accordance with any NZ government authority's regulations on a transaction for which a customer intends to use the Card.
- The Merchant shall use the Facilities provided by the Company for the Transaction. The Merchant shall maintain suitable environment and proper use of the Facilities.

8. PAYMENT AND DISCOUNT

- 8.1 Subject to the other provisions of this Agreement, the Company shall pay the Merchant the Transaction amount of each sales slip (less the Handling Charges specified in Part II of the Schedule hereto) for each Transaction accepted by the Company in accordance with clause 8.2
- 8.2 Payment by the Company to the Merchant may be made by direct credit to Merchants' designated bank account, through ANZ Bank, or other agreed solution in writing. All of the related banking charges incurred by the Company in effecting the payment will be borne by the Merchant, which is specified in Part III of the Schedule hereto.
- 8.3 Payment by the Company shall be without prejudice to any claim or right which the Company may have against the Merchant and shall not constitute any admission or waiver by the Company as to the performance by the Merchant of its obligations under this Agreement or the amount payable to the Merchant, nor shall it in any manner prejudice the Company's rights interest and benefits pursuant to this Agreement or otherwise.
- 8.4 At any time and from time to time the Company shall be entitled to set off against and deduct from the Merchants designated bank Account and/or any account which the Merchant held with the Company or any payment due to the Merchant with:
- Any overpayment made by the Company to the Merchant owing to whatever reason;
 - Any other sum due from or payable by the Merchant to the Company pursuant to this Agreement or otherwise;
 - Any amount which the Company was not obliged to pay;
 - Any cancellation of the Card transaction that is initiated by any Cardholder and/or any Card issuer of the Card concerned; and
 - Any amount to be reimbursed to the Company by the Merchant for whatever reason.
- 8.5 In addition and without prejudice to any other right and remedy available to the Company, the Company shall have the absolute right at any time without notice to refuse payment of any sales slip presented to the Company by the Merchant or, if payment has been made, to be reimbursed by the Merchant Immediately with the amount paid on such sales slip if the Company notifies the Merchant of the occurrence of any of the following:
- Dishonesty or fraud by the Merchant or its officers or employees is suspected, on reasonable grounds, in relation to such sales slip;
 - Any aspect of the relevant Transaction was made or conducted in breach or contravention of any of the provisions in this Agreement;
 - The Cardholder denies liability (in whole or in part) for the Transaction and after investigation of the transaction by the Company, including the production of a properly signed customer receipt within 10 days by the Merchant and any other detail setting out the circumstances surrounding the transaction, the cardholder's claim is accepted by the Company as valid; or
 - It is illegal for the Company to allow payment for the Transaction provided that the Company has notified the Merchant as soon as practicable that any such transaction as the Transaction is illegal for the Company to process.
- 8.6 The Rate of Handling Charges specified in Part II may be varied with immediate effect from time to time by the Company upon giving 7 days written notice to the Merchant pursuant to clause 18.4 herein.
- 8.7 All payments by the Company in respect of a Transaction shall be made in NZD and the settlement will be arranged by a major New Zealand Bank.

9. RECOVERY OF CARD

The Merchant shall comply with advice or instructions given by the Company to obtain the return of or re-possess the Card from time to time as the Company may reasonably require for the prevention and detection of offence, dishonesty, fraud or other malpractice in respect of any Transaction, but in doing so the Merchant shall ensure that it will not give rise to any claim or action against the Company.

10. REMOVAL AND CESSATION OF BUSINESS

The Merchant shall inform the Company in writing of any change of its registered address/office and/or business outlet and its cessation/suspension of business not less than thirty days prior to the relevant effective date.

11. DISCLOSURE

The Merchant hereby acknowledges and agrees that to the extent permitted by law, the Company shall have a right to obtain from and exchange information about the Merchant with any person, including without limitation, CUP, banks and other financial institutions, credit reference agencies, any agent, contractor, debt collection agency or third party service provider of the CUP participating bank (including without limitation Card Alliance Company Limited) for the purposes of assessing applications received from the Merchant.

12. EXCLUSION OF LIABILITY

- The Merchant acknowledges that its entry into this Agreement is not based or otherwise in reliance on any representation, statement or warranty in whatever form made by or on behalf of the Company (which, if made, shall all be hereby deemed as withdrawn and revoked) other than those set out in this Agreement.
- The Company shall not be under any liability whatsoever to the Merchant, its customers and any other person for the inaccuracy, invalidity or improper exercise of any authorization communicated by the Company in connection with this Agreement unless caused by any fraud, breach, negligence or willful default on the part of the Company or its officers/agents.
- The Company shall not be under any liability whatsoever to the Merchant for any loss, damage, liabilities, demands, claims, costs and expenses which the Merchant may suffer or incur by reason of, or which may arise directly or indirectly from, anything relating to irregular Transaction or the failure of the Facilities or the System except caused by any fraud, breach, negligence and willful default on the part of the Company or its authorized officers/agents.

13. INDEMNITY

The Merchant shall indemnify the Company on demand in respect of all claims, costs (including legal costs on a full indemnity basis), expenses, damages, demands, losses and liabilities made against, suffered or incurred by the Company arising directly or indirectly from or in connection with any of the following:

14. CONFIDENTIALITY & DISPUTE RESOLUTION

- The Merchant shall not (unless under legal compulsion to do so) disclose any information or document in relation to or obtained from any Cardholder by reason of the Merchants in any way to any person without the written consent of the Company or related Cardholder.
- If any question, difference or dispute whatsoever arises between the parties hereto, then the parties will attempt to resolve such dispute through commercial negotiation in good faith. If they are then unable to resolve such dispute, then any such party may by notice in writing to the other party specify the nature of such question, difference or dispute and call for the matter to be referred to mediation.
- The parties may agree upon the appointment of a single mediator. If the parties fail to agree on the appointment within seven days, either party may apply to Financial Dispute Resolution to nominate a mediator.
- The mediator may fix reasonable charges for the mediation which must be paid equally by the parties.
- If the parties are unable to resolve a dispute through mediation, then the dispute must be referred by the parties to arbitration for resolution. The arbitration will be conducted by an arbitrator appointed by agreement between the parties or, failing such agreement, by the President of the Arbitrators' and Mediators' Institute of New Zealand. The rules of arbitration and the costs to be paid by each party will be determined at the discretion of

the arbitrator.

- Nothing in clauses 14.2 to 14.5 inclusive herein will be read to prevent the right of either parties to seek injunctive relief against the other for enforcement of its rights under this Agreement."

15. TERMINATION

- The Parties shall be entitled to terminate this agreement upon written notice of no less than 30 days subject always to this clause. Such termination shall not discharge, prejudice or otherwise affect the Merchant's accrued obligations and liabilities under this Agreement in respect of the Transactions completed before the effective date of such termination.
- Upon termination of this Agreement, the Merchant shall immediately at the Merchant's expense return to the Company all equipment, documents, slips, items and things supplied to the Merchant including, without limitation, the whole of the Facilities.
- Any Sales Slip presented to the Company from and including the effective date of such termination will not be paid by the Company.
- This is a TWO YEAR agreement from the commencement date stated below, and in the event that the Merchant elects to terminate prior to the conclusion of the 2 year fixed period, then the Merchant shall be responsible for payment of the Terminal monthly rental fee for the balance of months remaining under the Agreement. However, where the Merchant terminates because of a change of terms by the Company under clause 18.4 herein, then the Merchant will only be responsible for 50% of the remaining terminal rental fee.
- Where a party enters into any form of insolvent administration, or its assets become the subject of execution repossession attachment or foreclosure, or ceases to trade substantially, or undergoes a change in ownership or control, or is unable to comply with its obligations under this Agreement, or has served the requisite notice of termination under this Agreement, then this Agreement shall terminate automatically.

16. ASSIGNMENT

The Merchant is not entitled to assign or transfer any of its rights and obligations under this Agreement but the Company is entitled at any time to assign or transfer any or all of its rights and obligations under this Agreement in favor of any subsidiary, related or associated company of the Company or any company within the group of the Company's holding company and to subcontract or appoint any agent or third party service provider (including Card Alliance Company Limited) to perform or carry out any of the Company's services or obligations under this Agreement.

17. WAIVER

Any failure, forbearance or delay by the Company in exercising any right or remedy shall not be deemed to be a waiver of such right or remedy, and any single or partial exercise of any right or remedy shall not preclude further exercise thereof. No course of dealing between the Merchant and the Company nor any waiver in any one or more instances shall be deemed a waiver in any other instance. The Company's rights and remedies shall continue in full force and effect until they are specifically amended or waived in writing by the Company.

18. GENERAL

- If signed by a firm, the expression "the Merchant" shall include the persons from time to time carrying on the business of such a firm and, if there are two or more such persons, the expression "the Merchant" shall include each and all of them and their liabilities under this Agreement shall be joint and several.
- If any provision of this Agreement is or proves to be or becomes illegal, invalid or unenforceable, in whole or in part, such provision or part shall to that extent be deemed severed and deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected thereby.
- Any notice or communication by either party to the other shall be in writing and shall be deemed to have been duly given if either delivered personally or by post addressed to the other party at its last known address or by facsimile transmission at the number communicated by one party to the other with confirmed facsimile report. The notice shall be deemed to have been duly served in case of delivery, on the date of delivery, in case of sending by post, on the third day following the date on which the notice is posted and in case of sending by facsimile, on transmission of the facsimile.
- The Company shall be entitled to vary or amend any of these provisions and/or to introduce new provisions to this Agreement from time to time at its sole discretion. Any such variation, amendment or introduction will become effective and binding on the Merchant upon 7 days notification to the Merchant. If the Merchant is unwilling to accept any such variation, amendment or introduction, then the Merchant shall notify the Company in writing within seven days from the date of receipt of the notification by the Company and propose some alternative which is acceptable to it. If the Company does not within a further 7 days accept the proposed alternative and the parties are unable to agree on some compromise, then the Merchant will be entitled to terminate this Agreement in accordance with clause 15. .
- For all intent and purposes, including any legal proceedings, a certificate issued by an authorized signatory of the Company as to the sums and liabilities for the time being due by (or incurred to the Company) by the Merchant shall, in the absence of manifest error or fraud or negligence of the Company, be conclusive evidence thereof against the Merchant.
- The Company may at the time of and at any time after signing of this Agreement assign one or more merchant number(s) to the Merchant for administrative purposes. The Merchant agrees that the Company may at any time (whether or not at the request of the Merchant) cancel, consolidate and/or re-designate the then existing merchant number(s) and to assign new merchant number(s) to the Merchant in whatever manner or combination as it sees fit.
- This Agreement shall be construed and enforced in accordance with the laws of the New Zealand.
- Where the Merchant consists of two persons or more, all the provisions contained herein are and shall be deemed to have been agreed to by such persons jointly and severally.
- Without prejudice to any accrued rights or remedies of the parties hereto prior to the date of this Agreement, for all intent and purposes, the provisions of this Agreement shall supersede all previous agreements, arrangements and understandings whatsoever between the Company and the Merchant (if any) with regard to the transactions hereby contemplated upon signing of this Agreement. For the avoidance of doubt, all obligations of the parties hereto which remain outstanding as at the date hereof (if any) shall be performed and discharged in accordance with the provisions hereof.

I HAVE READ THE AGREEMENT AND ACCEPT THE TERMS AND CONDITIONS LIST ABOVE.

MERCHANT SIGNATURE: _____

DATE: _____

**THE SERVICE SCHEDULE REFERRED TO****Part I**

Name of the Merchant: Address:

Part II

Name of the Account Opening Bank:		Account Number:	
Account name:		Number of Terminal:	
Name of Card: UnionPay		Rate of the Handling Charges: Per Transaction	
Floor Limit:		Nature of the Corporation:	
Principal	Title:	Tel:	Fax:
Contact Person for Account Enquiry:		Tel:	Fax:
		email:	

Part III

Merchant Code:	Terminal monthly rental fee:
Description of Terminal:	One-off Connection Fee:
Payment Period: Within 3 working days after transaction date	

Part IV

Commencement Date:	
Signed by the Company Dynamic Payment Network Pty. Ltd - New Zealand.	For and on behalf of Signed by the Merchant (with Company Chop)
Name of Signatory:	Name of Signatory:
Date:	Date:
Witnessed by: Smartpay Ltd.	Witnessed by: Smartpay Ltd.
Name of Signatory:	Name of Signatory:
Date:	Date:
Witness:	Witness: