

GrabOne Merchant Terms and Conditions

The following terms and conditions (**Agreement**) set out the agreement between GrabOne Limited (**GrabOne**) and the Merchant specified on the account application form (**Merchant Account Application**) to which this Agreement is referred to and/or attached (**Merchant**), and is entered into on the date that both parties sign the Account Application.

GrabOne operates a group purchasing service through its various Portals, which provides the Merchant with a channel to promote its goods or services to Members. The Merchant is a supplier of goods or services who is willing to sell those goods or services, sometimes at a discounted price, to Members who have either: (a) purchased through the relevant Portal; or (b) downloaded and redeemed coupons from the relevant Portal; and/or (c) advertise those goods or services through certain digital platforms offered by GrabOne.

It is agreed:

1. Definitions

1.1 In this Agreement:

Administration System means the online system made available by GrabOne to its merchants for the administration of Deals, which can be used, for example, by the Merchant to:

- (a) complete Deal Schedules for those Deals that GrabOne may specify from time to time; and
- (b) submit information in relation to the redemption of Deal Coupons;

Advertisement Content means any text, graphics, videos, sound recordings and any other content provided by the Merchant to GrabOne so that GrabOne can prepare a Draft Advertisement;

Approved Advertisement means a Draft Advertisement that has been approved by the Merchant in accordance with clause 3.2;

Banner Advertising means any advertising of the Merchant's goods, services and/or business that is displayed as an online banner on any Portal;

Commission means the commission payable by the Merchant to GrabOne for facilitating a Live Deal, as specified in the Deal Schedule;

Coupon Deal means a Deal identified as such on the Deal Schedule, and which is advertised on a Portal for the purchase of services which will be provided by the Merchant to the Member upon redemption of the relevant Deal Coupon;

Deal means a deal offered by the Merchant to Members and advertised on the Portal, whereby the Merchant's goods and/or services will be sold if the relevant Deal Criteria are met, as set out in the Deal Schedule;

Deal Coupon means a coupon (whether in hardcopy or electronic format) that allows Members (or their nominees) to be identified as purchasers of the Merchant's goods or services in a Live Deal that is a Coupon Deal, and includes the contact details of the Merchant, a description of the Live Deal, the Expiry Time, a unique code identifying the Member and the Live Deal, and the Specific Fine Print;

Deal Criteria means the criteria applying to a specific Deal, as set out in the Deal Schedule;

Deal Schedule means a document or form (whether in hardcopy or electronic format) substantially in the form set out in Schedule 1, which includes details of the Offer Period;

Deal Terms and Conditions means such terms and conditions applicable to a Live Deal, as set out in the GrabOne Terms and Conditions and the Specific Deal Conditions;

Digital Advertising means advertising subject to NZME Advertising Terms and Conditions conducted by way of:

- (a) Email Advertising;
- (b) Social Media Advertising; or
- (c) Banner Advertising;

Draft Advertisement means a draft advertisement prepared by GrabOne for:

- (a) the sales, promotion or other publicity relating to a Deal; or
- (b) the sales, promotion or other publicity relating to the Merchant's goods, services and/or business that is intended to be advertised through Digital Advertising;

Email Advertising means any email advertising a Merchant's goods, services and/or business that is sent by or on behalf of GrabOne to the Member Database or a select group of the Member Database;

Expiry Time means the expiry date and/or time of the relevant Deal Coupon as specified in the Deal Criteria;

Social Media Advertising means any advertising of a Merchant's goods, services and/or business that is uploaded on any social media platform page that is owned or administered by or on behalf of GrabOne;

GrabOne Terms and Conditions means the general terms and conditions applicable to the relevant Live Deal unless otherwise varied by the Specific Deal Conditions, as set out on the Portal

and as may be amended by GrabOne from time to time by giving notice to the Merchant;

Grace Period means the period of seven Working Days immediately following the Expiry Time for a Coupon Deal;

GST Act means the Goods and Services Tax Act 1985;

Late Entries has the meaning given in clause 2.12;

Line Item Dispatch Report means a dispatch report prepared by the Merchant or their freight or logistics provider that provides track and trace detail for goods that are the subject of a Product Deal, which enables GrabOne to link consignments of those goods back to individual Member accounts for transparency purposes;

Live Deal means a Deal that has been activated by the agreement of the parties and is displayed on the Portal;

Member means any user of the Portal who is: (a) a prospective purchaser of a Deal; or (b) a purchaser of a Live Deal;

Member Confirmation means notification by email or other electronic means that a Member receives as confirmation of the Member's purchase of a Merchant's goods in a Live Deal that is a Product Deal;

Member Database means a database containing information (including contact information) relating to each Member who has agreed to GrabOne's General Terms and Conditions of Use and Privacy Policy (as those are amended from time to time);

Merchant Fees means the payment processing fees and any other fees that are set out in the Deal Schedule that are payable by the Merchant to GrabOne for the Live Deal in addition to the Commission;

Net Amount means, in respect of a Live Deal, the Total Revenue for that Live Deal less:

- (a) the Commission for that Live Deal;
- (b) the Merchant Fees for that Live Deal;

Non-redeemed Deal Coupons has the meaning given in clause 2.12;

NZME means NZME Publishing Limited, NZME Radio Limited and their related companies;

Offer Period means the period during which GrabOne will advertise a Deal on the Portal, as specified in the Deal Schedule;

Pay on Redemption Deal means a Coupon Deal identified as such on the Deal Schedule and where any monies due to the Merchant are only paid upon redemption of the relevant Deal Coupon;

Portal means:

- (a) the website specified in the Deal Schedule;
- (b) any application (for use on an electronic device) that is made available by GrabOne to its Members and relates to the website specified in paragraph (a) of this definition, which provides similar functionality to that website;

Product Deal means a Deal identified as such on the Deal Schedule, and which is advertised on a Portal for the purchase of goods to be delivered by the Merchant to the Member who purchases that Deal;

Redemption Evidence has the meaning given in clause 2.12;

Retention Deal means a Deal identified as such on the Deal Schedule, and which is advertised on a Portal for the purchase of goods or services, and where GrabOne reserves the right to retain Retention Monies according to the payment section of the relevant Deal Schedule;

Retention Monies means any monies retained by GrabOne that are otherwise due to the Merchant in accordance with the payment section of the relevant Deal Schedule;

Specific Deal Conditions means the specific terms and conditions applicable to the relevant Live Deal to be displayed on Deal Coupons, as set out in the Deal Schedule;

Total Revenue means the total gross revenue from sales of a Live Deal;

Track and Trace Report means a track and trace report prepared by the Merchant or their freight or logistics provider that confirms delivery of the goods (that are the subject of a Product Deal) on behalf of the Merchant to the relevant Members;

Voucher Guarantee Period means for Coupon Deals the period of 30 days immediately following the Expiry Time, as specified on the relevant Deal Coupon;

Working Day means a day other than Saturday, Sunday or a public holiday in New Zealand.

2. Deals

2.1 Deal Schedules

- (a) From time to time the Merchant will seek to offer a Deal or Deals to Members and engage GrabOne to promote such Deals on the Merchant's behalf. In such circumstances, the Merchant will submit a draft Deal Schedule in the manner specified by GrabOne. The parties will approve the Deal Schedule once they have agreed on its terms.
- (b) Once a Deal Schedule is approved, the Deal Schedule will be deemed to incorporate the provisions of this Agreement. GrabOne reserves the right, acting reasonably to shorten the Offer Period as set out in the Deal Schedule at any time. GrabOne may only extend the Offer Period with the Merchant's prior consent. The parties acknowledge that there is no commitment by either of them to a minimum number of Deals being offered by the Merchant on any of the Portals. If the Merchant wishes to extend the Offer Period, it will before the end of the Offer Period request the consent of GrabOne to extend the Offer Period and GrabOne may agree to extend the Offer Period. Any such agreed extension will be recorded in writing, which may be by email.

2.2 Advertising Content

As soon as reasonably practicable following the agreement of a Deal Schedule, the Merchant will provide GrabOne with the Advertising Content in accordance with clause 3.2.

2.3 Changes to Deals

The Merchant will not modify, cancel or withdraw a Deal once it has been published on the Portal by GrabOne without GrabOne's written consent.

2.4 Administration System

If at any time GrabOne allows the Merchant to use the Administration System in accordance with any Deal or Digital Advertising, GrabOne grants the Merchant a non-transferable, non-exclusive licence to access and use the Administration System for such period as determined by GrabOne. The Merchant will only access the Administration System using the username and password provided to it by GrabOne (together referred to as the **User Details**). The Merchant will, and will procure that its employees will, keep the User Details required to access the Administration System secure and confidential and not reveal the same to any other person. The Merchant acknowledges that it is entirely responsible for all activities that occur through the use of its User Details.

2.5 Live Deal Obligations

For any Live Deal the Merchant warrants that it will perform its obligations under the Live Deal including promptly and efficiently:

- (a) providing the relevant goods and/or services to the Member in accordance with this Agreement and the Deal Terms and Conditions;
- (b) providing all after sales service and support to the Member in respect of the relevant goods and/or services;
- (c) dealing with any complaint or dispute relating to a Live Deal raised by a Member. Without limiting this clause 2.5(c), GrabOne will as soon as reasonably practicable inform the Merchant in writing of any complaint or dispute made by a Member to GrabOne relating to a Merchant's Deal; and
- (d) complying with its obligations in accordance with the laws of New Zealand including the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 as amended or replaced from time to time.

2.6 Product Deal Obligations

In addition to the obligations set out in clause 2.5, where goods are being provided by the Merchant to a Member pursuant to a Product Deal, the Merchant will:

- (a) be responsible for the packaging, logistics and the distribution of those goods to the relevant Member; and
- (b) provide GrabOne with:
 - (i) proactive and regular updates on expected delivery dates of the goods; and
 - (ii) a Line Item Dispatch Report or Track and Trace Report within five Working Days of dispatch of all of the goods to Members; and
 - (iii) a Track and Trace Report within five Working Days of delivery of all of the goods to Members; and
- (c) immediately notify GrabOne of any potential delays to the Deal's expected delivery date. Where the Merchant does not notify GrabOne of a delay of delivery (as advertised in the Deal) at least 48 hours prior to the delay, then the Merchant will forfeit all rights to the Retention Monies due to the Merchant from GrabOne on the Deal as payment to GrabOne for the additional member support costs and services that the delayed delivery

causes. The Merchant acknowledges that these charges represent a reasonable effort of GrabOne to establish its loss prospectively and shall be due as liquidated damages.

2.7 Coupon Deals

In relation to a Coupon Deal, if a Member:

- (a) presents a Deal Coupon to the Merchant on or before its Expiry Time and the Merchant is, acting reasonably, unable to provide the relevant goods and/or services to the Member at any time (on or before the Expiry Time) that is requested by the Member, the Merchant will, as a gesture of goodwill, provide the relevant goods and/or services to the Member during the Grace Period; or
- (b) presents a Deal Coupon to the Merchant after the Grace Period but within the Voucher Guarantee Period the Merchant will provide goods and/or services to the Member up to the value specified on the Deal Coupon, without any discount on the full value of the goods and/or services to be provided.

2.8 Non-performance of Deal

The Merchant will immediately notify GrabOne if at any time it considers it will not be able to carry out its obligations under a Live Deal and the reason for such non-performance. For the avoidance of doubt, any notice given under this clause will not relieve the Merchant of its obligations under this Agreement.

If GrabOne receives notice under this clause, or otherwise considers that the Merchant may not be able to carry its obligations under a Live Deal (whether or not that Deal has been advertised or becomes a Live Deal), then GrabOne may give notice to the Merchant of its intention to immediately terminate this Agreement if the Merchant cannot reasonably show to GrabOne (within a reasonable time specified by GrabOne) that it is able to carry out such obligations.

2.9 Failure to Honour Terms of Deal

If for any Live Deal the Merchant fails to honour the terms of the Live Deal (including in the case of a Coupon Deal failing to honour a Deal Coupon and in the case of a Product Deal failing to deliver goods or services to a Member following the issue of a Member Confirmation) and GrabOne considers that the Merchant has no reasonable cause to do so, or the Merchant otherwise breaches the warranties provided in this Agreement, then:

- (a) GrabOne may at its sole discretion withhold from the Net Amount any amount otherwise payable to the Merchant in respect of the relevant Live Deal for so long as GrabOne believes (acting reasonably) is necessary so that GrabOne can:
 - (i) refund any amounts to Members that they may be legally entitled to; or
 - (ii) otherwise to protect GrabOne's legitimate business interests.

Any such funds withheld may be refunded to the Member by GrabOne at GrabOne's sole discretion and the Merchant will not make any claim against GrabOne for such refunded amounts; and

- (b) the Merchant will indemnify GrabOne against all costs (including credit agency costs and legal costs on a solicitor client basis), losses, damages and expenses incurred by GrabOne arising out of or in connection with the Merchant's breach; and
- (c) GrabOne reserves the right to;
 - (i) register a default with a credit agency; and
 - (ii) deduct claims and costs related to any Live Deal against any amounts payable to the Merchant.

2.10 Returns

Where a Member returns a product to GrabOne in relation to a Product Deal, and the purchase price is refunded, the Merchant may request that the product is returned to the Merchant and GrabOne will provide all reasonable assistance in accordance with the Merchant's instructions provided:

- (a) the Merchant will be liable for all return freight costs incurred by GrabOne;
- (b) GrabOne accepts no liability for the product;
- (c) where the Merchant does not request the return of the product within 20 Working Days of notice to the Merchant that the product has been returned to GrabOne, GrabOne may dispose of the product.

2.11 Payment Statement for Deal

Subject to clause 2.6, 2.8, 2.9 and 2.10, GrabOne will issue a statement to the Merchant for each Deal setting out, in respect of the relevant payment cycle:

- (a) the Total Revenue;
- (b) the Commission payable to GrabOne;
- (c) the Merchant Fees payable to GrabOne; and

- (d) the Net Amount due to the Merchant;
and GrabOne will pay the Merchant the Net Amount at the times set out in the payment section of the relevant Deal Schedule.

2.12 Payment for Pay on Redemption Deals

Subject to clause 2.6, 2.8, 2.9 and 2.10, for any Live Deals that are Pay on Redemption Deals, the Merchant acknowledges and agrees that:

- (a) GrabOne will only pay to the Merchant the Net Amount for those Pay on Redemption Deals where a Member redeems the Deal Coupons before the Expiry Time;
- (b) In order to receive payment, the Merchant must submit via the Administration System sufficient evidence, to GrabOne's satisfaction, establishing that the Deal Coupons were redeemed (**Redemption Evidence**);
- (c) Where Deal Coupons for a Pay on Redemption Deal are not redeemed by Members on or before the Expiry Time (**Non-redeemed Deal Coupons**) and/or the Merchant does not submit the Redemption Evidence by the end of the relevant Grace Period (**Late Entries**), GrabOne will retain an amount equivalent to the Total Revenue or any other revenue received by GrabOne on behalf of the Merchant in relation to those Non-redeemed Deal Coupons or Late Entries.

2.13 Time of Supply

In respect of any Coupon Deal, GrabOne and the Merchant agree that, in accordance with section 5(11G) of the GST Act, the time of supply for GST purposes will occur on the redemption of the Deal Coupons (i.e. when the Member uses the Deal Coupon to obtain the goods and services from the Merchant) instead of on the issue or sale of the Deal Coupons.

2.14 Responsibility for GST

In respect of any Deal, the Merchant shall ensure that they account for GST on the provision of any underlying goods and services and the associated Total Revenue. GrabOne is not responsible for collecting, reporting or remittance of any GST in relation to sales made on behalf of the Merchant, with the exception of the GST on GrabOne's commission invoice. In relation to Pay on Redemption Deals only, should supply for GST purposes not occur due to non redemption of Deal Coupons then GrabOne will be responsible for collecting, reporting and remitting GST on sales made on behalf of the Merchant for those Non-redeemed Deal Coupons, in accordance with section 5(11E) of the GST Act.

2.15 Discounts Offered

The Merchant warrants that where there is any discount advertised in a Live Deal, it has not offered and will not offer (whether in print, online, in store or otherwise) the goods or services that are the subject of that Deal issued by the Merchant for sale on terms and/or at a price better than the Deal for the period beginning 40 Working Days prior to the Offer Period as set out in the Deal Schedule and ending at least 40 Working Days after the Offer Period including any extension of the Offer Period as agreed in accordance with clause 2.1. Any breach of this clause may (at GrabOne's sole discretion) result in the Merchant forfeiting all or part of the Retention Monies as set out in the Deal Schedule for the additional member support costs and services that the breach causes. The Merchant acknowledges that these charges represent a reasonable effort of GrabOne to establish its loss prospectively and shall be due as liquidated damages.

2.16 International Money Transfers

Any bank fees deducted from payments made to Merchants on international money transfers (by primary, intermediary or custodian banks) are exclusively for the Merchants account. Foreign exchange rates applicable on international money transfers are those rates offered by GrabOne's bank which are prevailing on the date that payments are physically made to Merchants. GrabOne accepts no liability whatsoever for any adverse exchange rate movements.

3. Advertising

3.1 Digital Advertising

From time to time the parties may agree that GrabOne will advertise for the Merchant a Deal or the Merchant's goods or services by way of Digital Advertising. In such circumstances, GrabOne will use the services of NZME and the Merchant agrees to NZME's standard Advertising Terms and Conditions available at <http://advertising.nzme.co.nz/media/361961/nzme-advertising-terms-final.pdf>. NZME reserves the right to change its standard terms at any time.

3.2 Advertising Content

As soon as reasonably practicable following the agreement of a Deal Schedule in accordance with clause 2.1 or any Digital Advertising in accordance with clause 3.1, the Merchant will provide GrabOne with the Advertisement Content for the Deal or Digital Advertisement (as applicable). Following receipt of the Advertisement Content, GrabOne will prepare a Draft Advertisement for the Deal or Digital Advertisement (as applicable), which will include such Advertisement

Content that GrabOne considers appropriate. GrabOne may make any changes to the Advertisement Content that it considers necessary, including:

- (a) in relation to any Deal, to ensure consistency in design with other advertisements on the Portal;
- (b) in relation to any Banner Advertising, to ensure consistency in design with other advertisements on the Portal; and
- (c) in relation to any Social Media Advertising, to ensure consistency in design with other advertisements on any Social Media page that is owned or administered by or on behalf of GrabOne or any Portal.

3.3 Approving Advertisements

GrabOne will submit or otherwise make available to the Merchant the Draft Advertisement for its review and the Merchant will as soon as reasonably practicable:

- (a) request reasonable changes to the Draft Advertisement in which case GrabOne will make those changes to the Draft Advertisement and re-submit the revised Draft Advertisement to the Merchant for its approval in accordance with this clause;
- (b) or notify GrabOne of its approval of the Draft Advertisement (the approved Draft Advertisement referred to as the **“Approved Advertisement”**).

Where GrabOne has not received a response from the Merchant requesting changes or notification of approval within two Working Days from submission by GrabOne, the Merchant will be deemed to have approved the Draft Advertisement and the Draft Advertisement shall be considered an Approved Advertisement for the purposes of this Agreement.

3.4 Failure to Approve Advertisements

GrabOne will not be liable to the Merchant for any delay or failure to provide Digital Advertising or advertise or promote a Deal where such delay or failure arises out of or is in connection with the Merchant's failure to promptly approve a Draft Advertisement.

3.5 Publishing Approved Advertisements

GrabOne will provide Digital Advertising and/or advertise and promote the Deal by using the relevant Approved Advertisement. In doing so, GrabOne:

- (a) will publish Approved Advertisements on the Portal for the Offer Period;
- (b) may at any time withdraw and/or refuse to publish any Approved Advertisement on the Portal without incurring any liability to the Merchant if GrabOne reasonably believes (notwithstanding that the Approved Advertisement has been approved by the Merchant)

that the Approved Advertisement may make GrabOne or the Merchant liable to any complaint, claim or proceedings by any third party.

3.6 NZME Standard Advertising Terms and Conditions

GrabOne will publish all Approved Advertisements in accordance NZME's standard Advertising Terms and Conditions.

3.7 Payment Options

Following approval of the Approved Advertising for Digital Advertising in accordance with clause 3.3, GrabOne will provide the Merchant with an invoice or an approved Direct Debit payment authority based on the relevant rate card.

3.8 Invoices

Each invoice provided by GrabOne will:

- (a) contain sufficient information to enable the Merchant to establish the accuracy of the invoice; and
- (b) be in the form of a valid tax invoice.

3.9 Direct Debit Authority

Each Direct Debit authority will:

- (a) contain sufficient information to enable the Merchant to establish the accuracy of the Direct Debit authority; and
- (b) be in the form of an authorised Direct Debit authority with GrabOne Limited as the authorised initiator.

3.10 Payment

The Merchant must pay each invoice within 5 Working Days of receipt of the invoice or on the due date of the Direct Debit authority by electronic funds transfer to a bank account nominated by GrabOne and such payment must be:

- (a) in New Zealand dollars;
- (b) for the full amount of the invoice and not subject to any deduction for any currency conversion or other bank fee; and
- (c) free of any deduction, withholding, set-off, counter-claim, restrictions or conditions except to the extent the deduction or withholding is required by law.

3.11 Fees due on Termination

All invoices and Direct Debit authorities outstanding will become automatically due on the date that this Agreement is terminated.

3.12 Late Payments

If the Merchant does not pay each invoice or each Direct Debit authority on the due date, GrabOne may:

- (a) remove the Approved Advertising from the relevant Portal; and
- (b) charge interest at the rate of 2% per calendar month on the overdue amount from the due date of payment until actual payment is made.

3.13 Credit Status

GrabOne will have the right to review its payment arrangements with the Merchant in the event that in the reasonable opinion of GrabOne the credit status of the Merchant has changed. GrabOne will notify the Merchant of any such changes.

3.14 Sums inclusive of GST

All sums payable under this Agreement are inclusive of GST unless stated otherwise.

4. GrabOne as Agent

4.1 GrabOne's Responsibilities

The parties acknowledge that, at all times, GrabOne will act as agent for the Merchant in promoting and facilitating any Live Deal and that the Merchant will be solely responsible for carrying out its obligations under a Live Deal.

GrabOne will not be responsible for any of the Merchant's obligations under the Consumer Guarantees Act 1993 or Fair Trading Act 1986, and such obligations are the sole responsibility of the Merchant.

4.2 Non-exclusive

The Merchant acknowledges that GrabOne may act as agent for any other merchant, may promote and facilitate any other merchant's deals or discounts, or offer in its own right any deals or discounts, including any deals or discounts that are the same as or similar to the Deals offered by the Merchant.

5. Use of GrabOne Equipment

5.1 Merchant's Responsibilities

From time to time, GrabOne may offer the Merchant the use of certain equipment (including barcode scanners and/or tablets) (**GrabOne Equipment**), or other methods relating to the redemption of Deal Coupons (**Redemption Methods**), to be used solely for the Merchant's fulfilment of its obligations in respect of a Live Deal. The Merchant acknowledges and agrees that:

- (a) all GrabOne Equipment remains the property of GrabOne and the Merchant will promptly surrender the GrabOne Equipment to GrabOne upon request;
- (b) GrabOne may withhold \$400 from any amounts payable by GrabOne to the Merchant for each piece of GrabOne Equipment provided to the Merchant as a bond, such amount to be payable to the Merchant upon the return of the GrabOne Equipment in a condition that is satisfactory to GrabOne;
- (c) it will provide such information requested by GrabOne so that GrabOne may set-up, install, customise or configure the GrabOne Equipment or Redemption Methods; and
- (d) GrabOne may access data of a payment system provider as engaged by GrabOne from time to time, in relation to the Merchant's business in return for insight into the benefits generated for the Merchant's business from the Live Deal, including but not limited to up sell and repeat business opportunities.

6. Intellectual Property Rights

6.1 Right to Use Merchant's Intellectual Property

The Merchant grants to GrabOne a non-exclusive, royalty-free licence to use, copy, modify and publish the Merchant's trade marks and the Advertisement Contents, for the purpose of GrabOne fulfilling its obligations under this Agreement and to enable GrabOne to promote the GrabOne service. GrabOne will use reasonable endeavours to advise the Merchant of such promotional use.

6.2 Ownership of GrabOne

The Merchant acknowledges that all intellectual property rights in the Approved Advertisements (excluding the Advertisement Content, which remains the property of the Merchant or its licensors), Portal, and in any enhancements or modifications to the Portal,

including the layout and the look and feel of the Portal belong to GrabOne or its licensors and the Merchant will not contest or dispute such ownership rights.

7. Product Liability

7.1 Merchant to Indemnify

The Merchant will defend, indemnify and hold GrabOne, its affiliated and related companies, and any of its respective officers, directors, agents and employees, harmless from and against any claims, lawsuits, investigations, penalties, damages, losses or expenses (including but not limited to reasonable legal fees and costs) arising out of or in connection with goods or services provided by the Merchant to a Member pursuant to a Live Deal, including (without limitation) damage to property, and death or personal injury.

8. Warranties

8.1 Merchant's Warranties

The Merchant warrants that:

- (a) it has the right, power and authority to enter into this Agreement;
- (b) the undiscounted price of the goods or services (including any recommended retail price) that it specifies in a Deal or any Advertisement Content is true and correct, and does not materially differ from the price that it usually charges for the provision of those goods or services in the ordinary course of its business;
- (c) the Deals, Advertisement Content, and Approved Advertisements do not mislead or deceive or are likely to mislead or deceive, or breach any applicable law or industry code (including but not limited to the Fair Trading Act 1986);
- (d) for Coupon Deals, the Deal Coupon, upon being delivered by GrabOne, will be available for redemption during the redemption period as specified in the Deal Schedule;
- (e) for Product Deals, the Merchant will have in stock a number of units of the goods sufficient to fulfil its obligations;
- (f) the terms and conditions of the Deal, including any discounts or goods and services offered, do not and will not violate any law, rule, regulation, or order, including but not limited to, any law or regulation governing the use, sale, and distribution of alcohol and any laws governing vouchers, gift cards, coupons, and gift certificates;

- (g) it owns all interest in and to the Advertisement Contents, it has the right to grant to GrabOne the licence in clause 6.1, and that the granting of such licence or inclusion of the Advertising Contents in any Approved Advertisements does not infringe the intellectual property rights of a third party;
- (h) the Deal, Advertising Content and GrabOne's use and promotion of these will not infringe, dilute, misappropriate, or otherwise violate, anywhere in the world, any patent, copyright, logo, trademark, service mark, trade name, rights in designs, or other intellectual property right or right of privacy or publicity of any third party or any applicable law, and does not and will not result from the misappropriation of any trade secret or the breach of any confidentiality obligations to any person or entity.

9. Indemnity

To the extent permitted under law, the Merchant will defend, indemnify and hold GrabOne, its affiliated and related companies, and any of its respective officers, directors, agents and employees, harmless from and against any claims, lawsuits, investigations, penalties, damages, losses or expenses (including but not limited to reasonable legal fees and costs) arising out of or relating to any breach or alleged breach by Merchant of this Agreement, or the representations and warranties made in this Agreement.

10. Limitation of Liability

10.1 Indirect Liability

GrabOne will not be liable whether in contract, tort (including negligence) or otherwise for any loss of profits, or indirect or consequential loss or damage, suffered or incurred by the Merchant arising out of or in connection with this Agreement.

10.2 Maximum Liability

GrabOne's aggregate liability to the Merchant out of all claims for loss or damage under this Agreement will not exceed in aggregate the Commissions and any other amounts actually paid to GrabOne under this Agreement by the Merchant in the six months prior to the time such liability arises.

10.3 Force Majeure

Neither party will be liable to the other for any delays or non-performance of contractual obligation under this Agreement caused by reason of flood, earthquake, war or civil strife, hurricane, industrial disturbance, fire, lockout, epidemic, failure or delays of scheduled transportation facilities, or other acts of God or any law, order, decree, rule or regulation of any government authority or for any other reason whether of similar or dissimilar nature beyond

the control of the parties (Force Majeure Event), provided that each party has taken all reasonable steps to minimise any loss, damage or delay resulting from a Force Majeure Event.

11. Term and Termination

11.1 Termination for Convenience

Either party may terminate this Agreement at any time by giving 15 Working Days' prior written notice to the other party.

11.2 Termination for Cause

GrabOne may terminate this Agreement immediately if:

- (a) it ceases to operate the Portal for any reason;
- (b) it is acting in accordance with clause 2.8;
- (c) the Merchant commits a material breach of this Agreement;
- (d) the Merchant becomes bankrupt, ceases business, goes into liquidation, becomes insolvent, appoints a receiver, enters into a formal proposal for a compromise with creditors under the Companies Act 1993 or is subject to any form of insolvency or external administration.

11.3 Consequences of Termination

On termination of this Agreement each party will continue to perform its existing obligations in respect of any Live Deals that have not expired as at the date of termination. Termination of this Agreement will be without prejudice to any claim by either party against the other party arising out of any breach or non-performance of any obligations assumed by or imposed on that other party under this Agreement at any time prior to termination.

12. Dispute Resolution

If a dispute arises in connection with this Agreement, neither party may commence any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs, except where the party seeks urgent interlocutory relief:

- (a) A party claiming the dispute (the "**Dispute**") has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the Dispute.
- (b) On receipt of that notice by the other party, both parties must endeavour in good faith to resolve the Dispute first through their respective liaison persons and secondly through informal dispute resolution techniques such as mediation, expert evaluation or

determination or similar techniques agreed by them.

- (c) If the parties do not agree within one week of receipt of a notice (or such period as agreed in writing by them) as to the dispute resolution technique and procedures to be adopted, the timetable for all steps in those procedures and the selection and compensation of the independent person required for such technique, the parties must mediate the Dispute in accordance with the procedures of Resolution Institute. For the avoidance of doubt, conduct of a mediation process in accordance with this clause will be without prejudice to each party's ability to commence court or arbitration proceedings upon completion of such mediation process, if a binding agreement has not been reached as a result of that mediation process.

13. General

13.1

Any notice given pursuant to this Agreement must be in writing (whether by email or otherwise) and sent to the principal place of business of the other party.

13.2

No waiver of any breach of this Agreement will be deemed to be a waiver of any other or any subsequent breach.

13.3

This Agreement constitutes the entire agreement between the parties and supersedes all previous negotiations, commitments and/or writings.

13.4

The Merchant will not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of GrabOne.

13.5

If any provision of this Agreement is invalid or unenforceable, the remaining provisions of this Agreement will not be affected and will continue in full force.

13.6

This Agreement is subject to the laws of New Zealand.

13.7

The Merchant must keep the terms of this Agreement including the Deal Schedules confidential and may not disclose to a third party without prior written consent from GrabOne.

Updated 10 September, 2018.