

Important:

In accordance with Genoapay's notice to all Merchants on 24 February 2023 and the notice on the Website on 3 March 2023, the terms and conditions for Genoapay are changing. This version of the terms and conditions will apply from 12 April 2023.

For the current terms and conditions go to www.genoapay.com/merchant-terms-and-conditions/

MERCHANT TERMS & CONDITIONS

Version: *12 April 2023*

Part C GENOAPAY MERCHANT TERMS AND CONDITIONS

This document sets out the terms on which Latitude Innovation Holdings Limited, trading as Genoapay (NZBN 9429047155084) (**Genoapay**) offers an online service to selected merchants (**Merchants**), who offered their customers (**Customers**) the ability to pay for goods or services purchased from the Merchant by way of weekly instalments, through an interest free loan provided to the Customer up to 11 April 2023 by Genoapay. The Service ceased to be available for Customers to make new Transactions after 11 April 2023.

When you registered as a Merchant, you acknowledged and agreed to be bound by the Agreement.

Introduction

1. Genoapay ceased accepting new Customer registrations to use the Service after February 28 February 2023 and the Service ceased to be available for registered Customers to make new Transactions after 11 April 2023.
2. In summary, the Service operated as follows up until 11 April 2023:
 1. a Customer registered with Genoapay to use the Service up until 28 February 2023;
 2. the Customer identified a Merchant that was offering the option to pay for goods and services using a Genoapay loan; and
 3. if the Merchant confirmed that the Customer could use the Service to pay for goods and services from that Merchant, then the Customer would apply for a loan to pay the Merchant;
 4. if the Customer's loan application was approved by Genoapay, then the Customer and the Merchant each received a confirmation from Genoapay, following which the transaction between the Customer and the Merchant would be completed.
3. The above steps were carried out online on the Genoapay Website (except for the transaction between the Customer and the Merchant). The terms on which Genoapay provided the Service to Customers are set out on the Website.
4. If there is any inconsistency between these terms and any other terms set out on the Website, these terms will prevail (except as expressly contemplated by these terms). This Agreement constitutes the entire agreement between you and Genoapay in relation to the provision of the Service by Genoapay. For the avoidance of doubt, neither party will act as or represent themselves to be the agent of the other party. Neither party has the authority to make any agreement, representation or warranty or to agree to any condition on behalf of the other. You will refer the Customer to Genoapay to satisfy the Customer's enquiries (if any) in respect of his or her obligations relating to the Service.

Registration as a Merchant

5. In order to access and use the Service, you must register as a Merchant by completing the Merchant Application. The Merchant Application will collect personal information from you, which will be used by and disclosed by Genoapay, on the terms set out in the Credit Reporting and Privacy Policy specified on the Website, which you agree will be binding on you. You also agree to Genoapay using the information collected (including personal information) to complete a Commercial Credit Check in order to assess your eligibility for a facility. Genoapay reserves the right not to register any person as a Merchant if that person has not completed the registration process to Genoapay's satisfaction.
6. After 11 April 2023, you must not promote the Service to Customers. From this time Genoapay withdraws any previous exclusive license to use Genoapay's name, brand and marketing materials to promote the use of the Service to potential customers of Genoapay.
7. You will support the Service in your Stores in accordance with this Agreement but you must not promote the service in your Stores after 11 April 2023.
8. Genoapay may terminate or suspend your registration as a Merchant at any time by notice to you (including to address any security issues, concerns regarding your financial condition or any adverse finding following a Genoapay review. Genoapay may terminate the Agreement or suspend your registration at any time by notice to you (1) if Genoapay reasonably believes that you are not complying with the Agreement or any other contractual agreement which you have with Genoapay or its Related Entities, (2) if you have engaged in conduct which is unlawful or which in Genoapay's opinion is unsatisfactory because (a) it is adverse to the interests, business or reputation of Genoapay or (b) is in substantial non compliance with requests made of you by

Genoapay in connection with your obligations under the Agreement; (3) if you cease to carry on business or you (or any of your directors) become bankrupt or otherwise insolvent or appear likely to do so; (5) if the law allows or requires us to do so; or (6) in accordance with the Merchant Pricing Offer. You may terminate the Agreement on written notice: (1) if Genoapay has committed a material breach of its obligations under this Agreement and has failed to remedy that breach within 30 days of being notified in writing that you require Genoapay to remedy such breach or (2) in accordance with the Merchant Pricing Offer.

9. This Agreement will continue until 14 June 2023 when it will automatically terminate. If your registration is terminated or suspended earlier, these terms will continue to apply in respect of any Transaction which you have completed with a Customer. On termination or suspension, you must comply with the relevant requirements set out in the [Merchant Operating Guide](#). Clauses 18-21 (inclusive), 24 to 29 (inclusive), 32 to 35 (inclusive), 39, 40, 42, 43 and 44 survive the termination of this Agreement.
10. New Customer registrations ceased to be accepted by Genoapay after 28 February 2023 and the Service ceased to be available for registered Customers to make new Transactions after 11 April 2023.
11. You must not make or have any mentions of Genoapay or the Service to a Customer or on your own website or other online portal.

12. Applicable to Transactions processed up to 11 April 2023: If you were notified that the Transaction has been completed, then Genoapay, will pay to you an amount equal to the Transaction Value less the Fees (plus GST) and any Third Party Costs which will be deducted at the time that Genoapay settles the Transaction with you. The Fees % will be set out in the Merchant Pricing Offer and calculated as a % of the total Transaction Value.
13. You agree to accept the amount payable by Genoapay under clause 12 in respect of a Transaction, and the timing of that payment, as full and final payment by a Customer of that Customer's payment obligations (or part-payment obligations, if relevant) in respect of the Transaction.
14. You acknowledge and agree that on behalf of yourself and your relevant persons, that you and your relevant persons:
 1. may only promote the Service for so long as you are registered as a Merchant and must not promote the Services at all after 11 April 2023;
 2. have the right to refuse a Customer's request to use the Service to pay for any Transaction;
 3. Genoapay may appoint other persons as Merchants from time to time, including persons with businesses that compete with your business;
 4. access to and use of the Website is subject to the terms and conditions set out therein;
 5. will fully cooperate with Genoapay to promptly resolve all disputes with Customers;
 6. will comply with the requirements of the *Consumer Guarantees Act 1993* (NZ) and the *Fair Trading Act 1986* (NZ) and any applicable sale of goods legislation; and will only use suitably qualified and trained personnel in the provision of products and services which are the subject of a Transaction;
 7. you will comply with the [Merchant Operating Guide](#) (which includes details of the mandatory minimum standards for merchant and retail with respect to all Transactions and undertake to follow the procedures in the [Merchant Operating Guide](#) whenever taking any action in connection with the Service;

8. will comply with all standards, obligations and legislation relevant to the provision of the products and or services which are the subject of a Transaction and hold (and shall provide satisfactory evidence on request for) all necessary registrations, licences and approvals under relevant legislation to provide the relevant products and services to Customers;
9. will hold current professional indemnity, public liability and or product liability insurance to the greater of the minimum required as requested by Genoapay at the time of executing this Agreement or by any professional association or registration body to which You belong (as applicable); and
10. will maintain a fair and equitable policy for the exchange and return of goods and promptly resolve of complaints raised by Customers in respect of the services or products provided by you (or as a result of a Transaction facilitated by you) to Customers.

Fees and Charges

15. Genoapay will charge the Fees to you for the use of its Service to pay for goods and/or services which are sold by you to a Customer. The Fee % will be set out in your Merchant Pricing Offer and calculated as a % of the total Transaction Value. Genoapay may, subject to the terms of the Merchant Pricing Offer and this Agreement, adjust any fees and charges payable by you by written notice (including by email) to you at any time.
16. You acknowledge and agree that:
 1. you cannot charge a Customer any additional fees or other amounts (including, for example, higher prices for goods/services) for having used the Service to pay for a Transaction; and
 2. you have no right to seek any payment from the Customer in relation to a Transaction (except where the loan is provided in part-payment) regardless of whether Genoapay makes payment to you in respect of that Transaction under clause 12 or not.
 3. Genoapay has the right to decline to pay or withhold from you the amount of any Transaction or of any indebtedness in respect of the Services if:
 - (i) the Customer does not exist or denies knowledge of the Transaction;
 - (ii) the Customer asserts in good faith (together with accompanying evidence) any defence, claim, set off or counterclaim in relation to the Transaction (for example the goods and services were not delivered or supplied, or were delivered and supplied but are damaged or faulty;
 - (iii) there is a case of fraud;
 - (iv) you or your relevant persons did not comply with the Agreement or any other reasonable instruction provided by Genoapay in respect of the Service and Genoapay suffered a loss as a result;

(v) the Transaction was submitted in a way that is structured to avoid your obligations (for example the payment of the Fees) under the Agreement;

(vi) the Transaction is illegal;

(vii) the financial condition of you or your relevant persons so warrants or Customer complaints against you or your relevant persons are of a number or type unacceptable to LatitudePay acting reasonably;

(viii) the Transaction is processed after 11 April 2023; or

(ix) Genoapay is determining whether the circumstances in paragraph (i) to (vii) inclusive is occurring or has occurred.

17. You acknowledge and agree that clauses 13 and 16 are for the benefit each Customer and Genoapay may, on your behalf, compensate a Customer for any loss suffered by that Customer as a result of any failure by you to comply with those clauses, and you must fully indemnify Genoapay for all such payments made and any associated costs and expenses. In addition, clauses 13 and 16 are enforceable by each Customer for the purposes of subpart 1 of part 2 of *Contract and Commercial Law Act 2017* (NZ).

Returns and Refunds

18. Genoapay will process a refund to a Customer in accordance with this Returns and Refunds section provided Genoapay is notified that you have approved the refund through the process set out in this Agreement.

19. For refunds processed up until 14 June 2023:

1. You should access the "refund request" section available online in the Genoapay dashboard or send a refund request via the API and comply with any instructions in the [Merchant Operating Guide](#). You must not issue a refund by cash or another payment mechanism to the Customer where the Transaction was financed through the Service.
2. If you process the refund via the Genoapay dashboard, you will need to search the relevant Customer and select the "process refund" button on the individual Customer screen. By selecting the "process refund" button or processing the refund request via the API, you are irrevocably instructing Genoapay to refund the Customer.
3. Once you have selected the "process refund" button or process the request via the API, Genoapay will cancel the relevant Loan (or part thereof) and if all of the Transaction Value is to be refunded, the Loan Contract will also be cancelled. Genoapay will calculate how much to refund back into the Customer's bank account or credit card (this will depend on how many instalments they have paid and the remaining balance owed by the Customer). Genoapay will email the Customer with details of the refund.

4. Once you have selected the “process refund” button” or processed the request via the API, you must repay to Genoapay the Transaction Value in the event that the Transaction is cancelled or in the event of a partial refund, the Partial Refund Value.. You will see a specific section on refunds which will be itemised.
20. For refunds needed after 14 June 2023:
1. You will need to arrange directly with the Customer to issue any refund by cash or another payment mechanism.
 2. You must not require or force a Customer to accept a refund as store credit where the Transaction was finance through the Service.
21. For all refunds:
1. All amounts which you are required to repay must be repaid by you to Genoapay within 5 days of processing the refund pursuant to the Agreement.
 2. No Fees will be refunded by Genoapay to a Merchant in the event of a refund or a return.

Warranties

22. You warrant to Genoapay that:
1. all information provided by you or your relevant persons to LatitudePay is true, accurate, and complete when given;
 2. you will promptly provide LatitudePay with updated information (including contact information) if any such information has changed from the time you registered as a Merchant;
 3. you and your relevant persons will comply with the [Merchant Operating Guide](#) with respect to all Transactions and undertake to follow the procedures in the [Merchant Operating Guide](#) whenever taking any action in connection with the Service;
 4. you and your relevant persons have not done and will not do anything to prevent any amounts owing on a Transaction from being valid and enforceable against the relevant Customer;
 5. you will to the best of your ability review, complete and process any information related to Transactions accurately and completely in accordance with the [Merchant Operating Guide](#), and with all applicable laws and regulations;
 6. all goods and/or services supplied by you or your relevant persons must comply with all applicable laws and scheme regulations and must not be illegal within the jurisdiction in which they are sold;
 7. all goods and/or services the subject of a Transaction correspond with the description set out in the relevant sales voucher, were of merchantable quality, and were fit for any particular purpose which the Customer made known to you or your relevant persons;
 8. where goods the subject of a Transaction were sold by reference to a sample, the goods corresponded with the sample in quality, the Customer has been given a reasonable opportunity of comparing the goods with the sample, and the goods are free from any defect rendering them unmerchantable that would not be apparent on reasonable examination of the sample; and
 9. you will comply with all standards, guidelines, obligations and legislation relevant to the provision of goods and/or services supplied by you or your relevant persons as well as to the utilisation of the Services and any Transactions utilizing the Services.

Right to Profit

23. You acknowledge and agree that Genoapay and its Related Entities may be paid a commission or other financial benefit by the person providing funding for the Loan in connection with any Loan or Transaction, if applicable.

Liabilities and Indemnity

24. You acknowledge and agree, in respect of Genoapay, and its Related Entities and their respective employees, directors, officers, agents and contractors (together, Genoapay relevant persons), that none of the Genoapay relevant persons will be liable in respect of:
 1. any failure to provide the Service or otherwise to comply with this Agreement, if the failure or non-compliance is caused by events beyond its reasonable control; or
 2. any failure of any Customer to be offered a Loan at any time.

Nothing in this clause 24 or these terms limits any rights you may have under the *Fair Trade Act 1986* (NZ) or any other applicable legislation. This clause 24 is for the benefit of each Genoapay relevant person and Genoapay may, on your behalf, compensate a Genoapay relevant person for any loss suffered by them as a result of any failure by you to comply with this clause 24 and you must fully indemnify Genoapay for all such payments made and any associated costs and expenses. In addition, clause 24 is enforceable by, each relevant person for the purposes of subpart 1 of part 2 of *Contract and Commercial Law Act 2017* (NZ).

25. You acknowledge that the Genoapay Platform may not be available at all times and that Genoapay will not be liable to you for any loss of profit or opportunity (however described) arising from any inability to access the Website at any time.
26. Genoapay will not be responsible or liable to you for any indirect, or Consequential Loss or damage suffered or incurred by you.
27. Genoapay's liability for all claims for loss or damage of any kind, in contract, tort (including negligence) under any statute or otherwise arising in connection with
 1. a Transaction is limited to an amount equal to the Fees payable in respect of that Transaction; and
 2. all other liability in connection with the Agreement is limited to an amount equal to the total of all Fees paid by you to Genoapay in the 12 month period preceding the claim.
28. Genoapay may set off any amount owing by you against any amount payable to you under this Agreement.
29. You agree to be responsible for a breach of the Agreement by you and your relevant persons (as if they were a party thereto) and to indemnify Genoapay and its Related Entities against all losses, costs or claims resulting from or arising out of:
 1. the supply by you or your relevant persons of goods and services, the purchase of which was financed through the Services (including any product liability or warranty claim relating to those goods and or services);
 2. any false or misleading representations by you or your relevant persons in connection with the promotion of the Services;
 3. fraud or wilful misconduct of you or your relevant persons;
 4. any breach by you of any warranty, undertaking or other provision of this Agreement;
 5. Your negligent act or omission and any negligent act or omission of you or your relevant persons in the performance of their duties or obligations under this Agreement;

6. your fraud or error or any fraud or error of your relevant persons in the performance of their duties or obligations under this Agreement;
7. any use of the Genoapay system by someone using a password, username or other personalized method of access provided to you by Genoapay;
8. any unauthorized access or use of information caused by your failure to comply with your obligations under the Agreement and
9. any contravention of any privacy, fair trading, door to door sales or other legislation (to the extent such laws impose obligations on you in performing your obligations under this Agreement) which is committed or caused by you or your relevant persons,

except to the extent that such loss, cost or claim results from or arises out of the fraud or wilful misconduct of Genoapay or its employees, contractors or agents.

Communications

30. Genoapay may provide you with communications in relation to these terms, including notices, by mail or in an electronic form, including by email and text messages.
31. You must provide notices to Genoapay by email to the email address below. If you have any questions about the Service or these terms, please contact Genoapay as follows:

Email: info@genoapay.com

Ownership and Security of Customer Information

32. You acknowledge and agree that Genoapay is the sole owner of all Customer Information, Loan Contracts and all related data, information, all systems, software, documents and forms of any type and in any media relating to the Service and any copyright or other intellectual property rights arising in any of them.
33. You agree that you must:
 1. not directly or indirectly disclose any Customer Information to any person (including third party suppliers) without first obtaining Genoapay's written consent, except where required by law;
 2. not make records of any Customer Information, or allow records to be made, including in relation to your use of the Genoapay Platform except to the extent necessary to fulfil your obligations under this Agreement;
 3. destroy any records of Customer Information after the records are no longer required to be kept in order to comply with this Agreement or law;
 4. not use any Customer Information, except to the extent necessary to fulfil your obligations under this Agreement;
 5. use your best endeavours to ensure that any Customer information is kept under your effective control and is secure from theft, loss, damage and unauthorised access, use and disclosure;
 6. notify the Genoapay in writing immediately (i) of any disclosure of Customer Information to a third party, whether or not in accordance with this Agreement; or (2) if you become aware of any actual, suspected, likely or threatened theft, loss, damage or unauthorised access, use or disclosure of any Customer Information;

7. comply with all relevant laws, including the Privacy Act, with respect to Customer Information (if any) Genoapay discloses to you.

Access to the Genoapay Platform

34. Access to the Genoapay online and payment platform (**Genoapay Platform**) to access the Service is subject to the terms and conditions set out in this clause:
 1. The Genoapay Platform and copyright therein is and will remain the property of Genoapay. The access granted to the Genoapay Platform will only constitute a non-exclusive licence to access (but not to copy, modify, or otherwise interfere with) the Genoapay Platform.
 2. The Genoapay Platform will comprise such information and processes and be available for such days and hours as Genoapay decides.
 3. Genoapay may alter or modify the Genoapay Platform without notice to you and in Genoapay's sole and unfettered discretion.
 4. You will pay all expenses incidental to your use of the Genoapay Platform and your compliance with the terms of this clause 34 including in respect of any equipment or software required to operate the Service.
 5. You must ensure that access to the Genoapay Platform is restricted to authorised persons, including by undertaking reasonable security measures to keep usernames and passwords secure and by ensuring that any equipment is installed with appropriate security measures and software.
 6. Genoapay excludes all conditions, warranties and representations relating to the supply of goods or services to the extent permitted by law. To the extent that Genoapay's liability cannot be excluded, its liability will be limited to replacement or repair of the goods, supply of replacement goods or services or payment of the cost of doing so, at Genoapay's option.
 7. The API key provided for the use of Service on your website must only be used by you for the websites accredited by Genoapay for use with the Service under this Agreement.
 8. You acknowledge and agree that to the extent reasonably practicable, integration and API's connecting to the Genoapay Platform will permit and provide to Genoapay all product details data relating to the Transaction including details of the goods and or services and the price payable by the Customer.
 9. You warrant and agree that you:
 1. will not input information into the Genoapay Platform or through using the Genoapay Platform, or provide any information to Genoapay which you know or ought to know is false;
 2. will not authorise any agent to use the Genoapay Platform unless the agent is approved by Genoapay;
 3. will not use the Genoapay Platform except for the purposes of accessing it in accordance with the terms of this agreement;
 4. will take all steps, which a reasonably prudent owner of a computer system would take to protect its equipment and software from computer viruses and will not hold Genoapay responsible for any damage caused by any computer virus;
 5. will not make any claim against Genoapay if for any reason during the term of this Agreement access to the Genoapay Platform fails or is denied as a result of events or circumstances, which are beyond Genoapay's control;
 6. will comply with all reasonable directions of Genoapay in respect of the Genoapay Platform and its use.

Confidentiality

35. Neither party may disclose any information (whether identified as confidential or whether by its nature is deemed confidential information) provided by the other party in relation to this Agreement (including the applicable amount or rate of any fees) or the Services to any other party except i) as contemplated by the Agreement to enable Genoapay to provide the Services, (ii) to those Related Entities who need to know and are bound by equivalent obligations of confidentiality, (iii) where required pursuant to a legally enforceable order, direction or other regulation, (iv) where the information is available to the public generally (except as a breach of this clause) or (v) with the other party's consent. Provided that Genoapay may disclose information in relation to this Agreement (including the terms of this Agreement and the applicable amount or rate of the Fees and associated Transaction data to any of your or Genoapay's Related Entities.

Amendments to Agreement

36. Subject to clause 15, Genoapay may modify these terms, and the way in which Genoapay provides the Service, at any time by notice on the merchant terms & conditions page (<https://www.genoapay.com/merchant-terms-and-conditions/>). You should check the merchant terms and conditions section of the Website regularly. Any such variations will take effect immediately if the variation is necessary to prevent fraud or ensure compliance with any applicable laws. All other variations shall take effect from such date specified in the notice which shall be not less than 30 days from the date of the notice.

Assignment and Change of Ownership

37. You may not transfer or assign any of your rights or obligations under these terms without Genoapay's prior consent. Genoapay may transfer or assign all and any of its rights under these terms to any person, without requiring your consent.
38. You will notify Genoapay as soon as reasonably practicable of (a) any sale or transfer of your business, (b) if you are a partnership, the retirement or admission of any partner; and (c) if you are a company, any change of 25% or more in the beneficial ownership of any of your issued capital or the control of your company

Governing Law and Miscellaneous

39. This Agreement is governed by New Zealand law. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising under or in connection with this Agreement.
40. If
1. any provision of this Agreement is held to be invalid or unenforceable, all other provisions will remain valid and be enforceable and construed as if such invalid provision were never a part of the Agreement.
 2. a party is affected by a Force Majeure Event, that party must promptly give the other written notice of the Force Majeure Event, including an estimate of its likely duration, the obligations affected by it and the steps taken to rectify it. Genoapay's obligations under this Agreement are suspended to the extent to which they are affected by the Force Majeure Event as long as the Force Majeure Event continues.

41. If you are a trustee of a trust, you confirm that you have power under the trust deed and it will not constitute a breach of trust to enter into this Agreement and perform all obligations under it and that you are liable for the performance on your obligations under this Agreement both in your own capacity and in your capacity as trustee of that trust.

Goods and Services Tax

42.

Any reference in this clause to a term defined or used in the *Goods and Services Tax Act 1985* (NZ) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

- Unless expressly included, the consideration for any supply made under or in connection with this Agreement does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.
- Any amount referred to in this Agreement which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- To the extent that GST is payable in respect of any supply made by a party (for the purposes of this clause 42, the Supplier) under or in connection with this Agreement, the consideration to be provided under this Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- The recipient must pay the additional amount payable under clause 42(c) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 42(c) or at such other time as the parties agree.

Definitions

43.

Agreement means these terms and conditions together with any policies and documents incorporated by reference including the Website Terms and Conditions, Privacy Policy and your Merchant Pricing Offer;

Business Day means a day other than a Saturday, Sunday, or statutory public holiday in New Zealand;

Consequential Loss means a loss which (a) does not arise naturally or in the usual course of things from a breach of this Agreement; or (b) which constitutes, or arises from or in connection with, a loss of revenue, profit, goodwill or business opportunity or damage or loss of business reputation, even if that loss arises naturally or in the usual course of things from a breach of this Agreement;

Credit Reporting and Privacy Policy means the then current privacy policy of Genoapay specified on the Website;

Customer means a natural person who has registered as a customer with Genoapay;

Customer Information means information (including health information) about a Customer, and associated Transactions and Loans accessed or processed through the Genoapay Platform;

Fees means the amount payable by a Merchant to Genoapay in respect of each Transaction where the Customer pays for some or all of that Transaction using the Service as set out in the Merchant Pricing Offer (plus the applicable GST) which for the avoidance of doubt excludes any Third Party Costs.

Force Majeure Event means an act, event, omission or other circumstance beyond a party's reasonable control which adversely affects or delays a party's observe or perform an obligation under the Agreement. including but not limited to, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving a party's employees), Internet service provider failure or delay, third party services, or acts undertaken by third parties, including without limitation, denial of service attack;

Genoapay Platform has the meaning given to it in clause 34 and includes the Website;

Loan means the loan advanced to a Customer using the Service to enable that Customer to pay for a Transaction;

Loan Contract means, in relation to a Loan, the contract under which that Loan is made as between the Customer and Genoapay;

Merchant means a supplier of goods and/or services who has registered with Genoapay;

Merchant Pricing Offer means the merchant pricing offer attached as Part B to this Agreement as varied from time to time in accordance with this Agreement;

Merchant Operating Guide means the instructions and procedures to be followed by you in connection with the Service including in relation to the use of any online system, copies of which are made available on the Website, as amended from time to time by Genoapay;

Partial Refund Value means in the case of a partial refund, the amount (including GST, if any) attributable to that part of the Transaction Value which has been cancelled and for which a refund has been processed pursuant to the Agreement;

Related Entity has the meaning given to “related company” in section 2(3) of the *Companies Act 1993* (NZ);

Service means the provision of a service through which a Customer can apply to pay Merchants for goods or services, facilitated by Genoapay including via the Genoapay Platform, and or POS system;

Stores means any stores, online or physical locations for the buying or selling of your goods and/services;

Third Party Costs means those fees and charges (net of any GST recovered by Genoapay) that may be applied to a Transaction by a Merchant’s ecommerce or payments processing service or solution;

Transaction means the transaction (including details of the goods, services and associated charges) entered into (or proposed to be entered into) between a Customer and a Merchant, where that Customer seeks to acquire good(s) and/or services from that Merchant and wishes to pay for some or all of the amount payable to the Merchant using a Loan;

Transaction Value means the amount (including GST, if any) payable by the Customer to the Merchant in respect of a Transaction (and, where the Customer is part-paying the value of that Transaction using a Loan means the amount of that part-payment). For the

avoidance of doubt, the Transaction Value includes the aggregate amount payable by the Customer for all purchases and charges that form a Transaction;

your relevant persons means (a) your related bodies corporate, franchisees, commercial partners, subcontractors, promoters, and service providers and (b) officers, directors, employees or agents of you and any entity in paragraph (a), your officers, directors, employees or agents; and

Website means the website at www.Genoapay.com or such other website as Genoapay may from time to time operate to provide the Service.

Interpretation

44. In this Agreement:

1. headings are inserted for ease of reference only, and do not affect the interpretation of this Agreement;
2. references to the singular include the plural and vice versa;
3. references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
4. reference to any party includes its permitted assignee or transferee;
5. reference to the "liability" of a person include references to its liability under any cause of action, whether in contract, tort, or equity or under any enactment;
6. references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form; and
7. a reference to any legislation is a reference to that legislation as amended or replaced from time to time, and includes any regulations or legislative instrument made under it.
8. where you are made up of two or more persons and/or entities, then all references to you are references to each of those persons and/or entities, jointly and severally.