

Terms and Conditions (including Disclosure Statement)

1. Introduction

- 1.1 This Contract governs your right to use the Services, other rights you have and payment terms including how Debitsuccess will debit your nominated bank account or credit card for any instalments or payments due by you under this Contract.
- 1.2 These terms and conditions also contain initial disclosure information that Debitsuccess is required to provide to you under the CCCFA.
- 1.3 All queries regarding payment terms should be directed to Debitsuccess and all queries regarding the provision of the Services should be directed to the Facility.
- 1.4 In the event of any inconsistency between the terms of this Contract and any terms, conditions and contractual agreements made between the Facility and you the terms of this Contract shall prevail unless otherwise agreed.

2. Notices

- 2.1 All notices to Debitsuccess may be sent as follows:

By delivery to: 5 The Warehouse Way, Northcote, Auckland 0627;

By post to: P.O. Box 34-770 Birkenhead, North Shore City 0746;

By E-mail to: customerservices@debitsuccess.co.nz;

By Fax to: 09 481 1401

- 2.2 You may also contact Debitsuccess via the following methods:

Telephone: 09 481 0400

Via our website: www.debitsuccess.com

- 2.3 Notices to the Facility should be sent to the Facility at the contact details set out on the front of this Contract.

3. Definitions

- 3.1 In this Contract, the following words mean:

“Administration Fee” means the one-off fee of the amount set out in the Payment Plan Section;

“CCCFA” means the “CCCFA” means Credit Contracts and Consumer Finance Act 2003;

“Commencement Date” means First Payment Date (unless otherwise agreed);

“Contract” means this contract (which includes, without limitation, the membership details section, customer details section, Payment Plan Section, direct debit section, declaration section, these terms and conditions and conditions of instruction to accept direct debits);

“Customer” or “you” means the person entering into this Contract;

“Debitsuccess” means Debitsuccess Limited, a company incorporated in New Zealand;

“Early Termination Fee” means the lesser of:

- (a) 25% of the remaining instalments due from the date of termination to the expiry of the Minimum Term; or
- (b) \$150.00;

“Facility” means the entity providing the Services to you, and/or the entity’s franchisees (as applicable);

“First Payment Date” means the first payment date set out at in the Payment Plan Section;

“Fitpass” means the Debitsuccess fitpass, a program which allows the use of other participating facilities in other areas of New Zealand on the terms set out on the Debitsuccess website;

“Minimum Term” means the agreed minimum term for this Contract as set out in the Payment Plan Section;

“New Facility” has the meaning set out in clause 5.2;

“Payment Plan Section” means the terms set out in the box headed “Payment Plan”;

“Personal Information” means any information that can or may be used to identify you including your name, address, e-mail address and payment information;

“Services” means the right to use the services provided by the Facility to you and includes any reasonable changes made to such services following the Commencement Date to the extent that such changes do not materially disadvantage you;

“working days” means any day other than a Saturday, Sunday or public holiday including anniversary day in Auckland New Zealand.

4. Term

- 4.1 This Contract will start on the Commencement Date and notwithstanding any Minimum Term, will continue until terminated in accordance with clause 5 or otherwise in accordance with this Contract.

5. Termination and Early termination Fee

- 5.1 If you wish to terminate this Contract then you may do so in accordance with this clause:

- 5.1.1 You acknowledge that you have agreed to a Minimum Term for this Contract. If you wish to terminate this Contract prior to expiry of the Minimum Term, you must give written notice of termination to Debitsuccess or the Facility and pay the Early Termination Fee. This Contract shall then terminate on receipt by Debitsuccess of payment of the Early Termination Fee;

- 5.1.2 If you wish to terminate this Contract on expiry of the Minimum Term, you must give written notice of termination to Debitsuccess or the Facility on or prior to the date of expiry of the Minimum Term. The Contract shall then terminate on the date of expiry of the Minimum Term;

- 5.1.3 If you wish to terminate this Contract after expiry of the Minimum Term, you must give 10 days written notice of termination to Debitsuccess or the Facility. Any payments due within the notice period has to be paid in full on or before expiry of termination notice.

- 5.2 Either Debitsuccess or the Facility may terminate this Contract immediately by giving notice in writing to you if you are in breach of this Contract (including failure to make payment) and the breach has not been remedied 10 working days after notice has been given to you requiring the breach to be remedied.

- 5.3 You may terminate this Contract immediately by giving notice in writing to the Debitsuccess or the Facility if either Debitsuccess or the Facility are in material breach of this Contract and the breach has not been remedied 10 working days after notice has been given to Debitsuccess or the Facility requiring the breach to be remedied.

- 5.4 Termination of this Contract will also terminate the instruction to accept direct debits.
- 5.5 Where you have suffered a permanent injury or illness that prevents exercise for a period of more than 12 months and you provide evidence of that injury or illness to Debitsuccess, Debitsuccess may, at its discretion, waive the Early Termination Fee.

6. Further customer agreements

6.1 You agree that:

6.1.1 Change in Facility details – Neither a reasonable relocation of the premises where the Services are ordinarily provided (to the extent that such relocation is within a 4km radius), nor changes in the ownership of the Facility, or the name of the Facility, affects your obligations under this Contract except to the extent that such change disadvantages you;

6.1.2 You shall:

- (a) comply with any reasonable rules and conditions of the Facility relating to the Services; and
- (b) make any payments required under this Contract when due.

6.1.3 Electronic communications – You agree that Debitsuccess and/or the Facility may communicate with you electronically (including via email) in relation to this Contract, understanding that at times these communications will contain confidential and or commercially sensitive information. Debitsuccess and/or the Facility will take all reasonable steps to mitigate any risk of unauthorised access or disclosure of confidential information, but cannot guarantee that such communications will not be intercepted or read by an unintended recipient.

6.2 Where the Facility is a member of the Fitpass program you can use other facilities which participate in the Fitpass program subject to the following:

- (a) Fitpasses are issued at the sole discretion of Debitsuccess and/or the Facility and can be withdrawn at any time; Fitpasses are not for use in the same town or city where you ordinarily receive Services;
- (b) Fitpasses can only be used at facilities that participate in the Fitpass program from time to time;
- (c) Debitsuccess is not responsible should any facility refuse to accept a Fitpass or attempt to charge you for the use of a Fitpass.
- (d) You acknowledge that if Fitpass is not available for your use, either because Debitsuccess ceases to operate the program, or a facility ceases to be part of the Fitpass program or for any other reason, this will not be a material disadvantage to you in the provision of the Services as it was an additional service provided to you outside of the Services.

6.3 Membership Transfers – You may request that your membership is transferred to another participating Debitsuccess facility (“New Facility”), to the extent that you have relocated to another town or city within New Zealand, and Debitsuccess may, at its absolute discretion, agree to such a request. Where Debitsuccess agrees to a request for a membership transfer, you further agree that:

6.3.1 this Contract shall apply except that the payments due hereunder may be adjusted in line with the standard payments charged by the New Facility; and

6.3.2 a fee for Debitsuccess’ administrative costs may be charged for each transfer, details of which can be obtained by contacting Debitsuccess.

6.4 You must inform Debitsuccess of any changes in name, address, contact details or payment details. You agree that Debitsuccess is entitled to take payment from the account set out in the direct debit section of this

Contract until you provide Debitsuccess with any new account details that should apply, even after the payment card has expired.

7. Payments

- 7.1 At the date of this Contract the total of the instalments due during the Minimum Term and the Administration Fee is the total amount payable by you under this Contract. This is stated under the Total Value of Contract set out in the Payment Plan Section.
- 7.2 You shall pay the instalments in the amounts and at the frequency set out in the Payment Plan Section for the term of this Contract.
- 7.3 You may alter the frequency of payments from weekly to monthly (and vice versa) and/or day to debit by requesting a change with Debitsuccess. However, any changes shall not affect the total amount you would otherwise be required to pay. Debitsuccess will provide you a summary of the changes that are made prior to the changes taking effect.
- 7.4 Should there be any payments in arrears, you authorise Debitsuccess to debit the outstanding balance in order to bring the account up to date. Where the day to debit does not fall on a working day, the payment will be processed on the next working day.
- 7.5 You may pay up all amounts due during the Minimum Term at any time.
- 7.6 Where this Contract continues beyond the Minimum Term, you agree that Debitsuccess and/or the Facility may give notice to increase the instalment amount payable, and such increase will not take effect for at least 30 day's following the date of notification. For the avoidance of doubt, if you are not satisfied with the increase in the instalments you can choose to terminate under clause 5.1.3.

8. Fees

- 8.1 The Administration Fee is payable by you on signing this Contract for administrative costs associated with your membership. You acknowledge that some of the Administration Fee may be paid by Debitsuccess to the Facility.
- 8.2 A late payment fee of an amount stated on the front of the contract is payable by you to Debitsuccess for each reversal of a payment initiated by Debitsuccess in accordance with this Contract.
- 8.3 If you default in making any payment when it is due you shall also pay the fees stated in clause 9 (Debt Collection Action).
- 8.4 You authorise Debitsuccess to take any fees owing under this clause by direct debit and to add any fees owing under this Contract to any instalments paid by you (as a separate payment or otherwise).

9. Debt Collection Action

- 9.1 Where you default in making any payment when it is due under this Contract you:
- 9.1.1 authorise Debitsuccess to notify any debt collection or credit reporting agency of the default;
 - 9.1.2 where Debitsuccess refers the debt to a debt collection agency, you authorise Debitsuccess to add \$50 to the outstanding debt being its fee for dealing with the default; and
 - 9.1.3 agree to pay any and all costs incurred as a result of debt collection including the commission, fees and costs charged by any debt collection agency (approximately 25% of the outstanding debt).

10. Privacy

- 10.1 Personal Information will be collected from you when you enter into this Contract and when you receive the Services.

- 10.2 Debitsuccess and the Facility are entitled to store your Personal Information (whether received from you, the Facility or otherwise) on their systems and use it for the following purposes:
- 10.2.1 administering and enforcing this Contract;
 - 10.2.2 providing the Services;
 - 10.2.3 offering alternative products and services;
 - 10.2.4 communicating with you;
 - 10.2.5 marketing and promotion; and
 - 10.2.6 data aggregation and analysis.
- 10.3 Debitsuccess and the Facility may share your Personal Information with:
- 10.3.1 Each other;
 - 10.3.2 Other facilities; and
 - 10.3.3 Other third parties including service providers and software providers;

in connection with any purposes mentioned in clause 10.1.

10.4 You have rights of access to, and correction of, your Personal Information under the Privacy Act 1993.

10.5 Debitsuccess acknowledges that:

- 10.5.1 it is responsible for the security of your personal information that it possesses or otherwise stores, processes, or transmits on your behalf; and
- 10.5.2 it will maintain all applicable Payment Card Industry Data Security Standard requirements to the extent that it handles, has access to, or otherwise stores, processes or transmits your cardholder data or sensitive authentication data.

11. **Liability**

11.1 You agree that under no circumstances will Debitsuccess be liable to you or in any way responsible for the provision of the Services by the Facility or for the use by you of the Facility's premises.

11.2 The parties agree that neither you, the Facility, Debitsuccess (or any of their related companies, directors or employees) will be liable for any injury, loss or damage that is not reasonably foreseeable, that arises out of or in relation to this Contract.

11.3 Nothing in this clause is intended to have the effect of contracting out of the Consumer Guarantees Act 1993, except to the extent permitted by law.

12. **Contractual Privity**

12.1 You acknowledge that Debitsuccess has been contracted by the Facility to collect the instalments due under this Contract and, for the purposes of part 2, subpart 1 of the Contract and Commercial Law Act 2017 you acknowledge that all rights of the Facility pursuant to this Contract are able to be enforced by Debitsuccess as if it were the Facility, without any involvement on the part of the Facility or your further consent.

13. **Severability**

13.1 If any provision of this Contract is prohibited, invalid or unenforceable, that provision will be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of

this Contract or affecting the validity or enforceability of that provision, unless it materially alters the nature or material terms of this Contract.

14. **Disclosure**

- 14.1 Debitsuccess is required to provide you with initial disclosure of the key terms of this Contract. You acknowledge that this is provided by this Contract being sent to your e-mail address.
- 14.2 Debitsuccess may be required to provide you with regular statements providing information about your account. Where Debitsuccess are required to provide statements, these will be provided every six months.
- 14.3 You consent to the information referred to in clause 14.2 being disclosed by way of our website. To the extent that the website does not have this functionality when you enter into this Contract Debitsuccess will notify you of the website address when it is available.

15. **Dispute Resolution**

- 15.1 If you have any dispute or complaint regarding the terms of this Contract you should, in the first instance, contact Debitsuccess by email to customerservices@debitsuccess.co.nz, and Debitsuccess will attempt to respond within 7 days of you making contact.
- 15.2 You may wish to make a complaint to the independent dispute resolution scheme that Debitsuccess is a member of. It is free to make a complaint to this scheme.

Name of dispute resolution scheme: Financial Services Complaints Limited

Contact details of dispute resolution scheme:

Phone: 0800 347 257
Website: www.fscl.org.nz
Business address: Financial Services Complaints Limited
Level 4, 101 Lambton Quay
Wellington 6145

- 15.3 This scheme can help you to resolve any disagreements you have with the Facility and/or Debitsuccess. However, you should first attempt to resolve your dispute with Debitsuccess.

16. **Registration on Financial Service Provider Register**

- 16.1 Debitsuccess is registered on the Financial Service Providers Register under the name Debitsuccess Limited with registration number FSP440766.

17. **Statement of Right to Cancel**

- 17.1 You have a right under section 27 of the CCCFA to cancel this Contract by giving written notice of the cancellation to the Facility or Debitsuccess within:
 - 17.1.1 5 working days of the date that this Contract is given to you (where this Contract is given to you); or
 - 17.1.2 7 working days of the date that this Contract is e-mailed to you (where this Contract is e-mailed to you); or
 - 17.1.3 9 working days of the date that this Contract is posted to you (where this Contract is posted to you).
- 17.2 To cancel you must give written notice of your intention to cancel the Contract by:
 - 17.2.1 giving notice to Debitsuccess or the Facility; or
 - 17.2.2 posting the notice to Debitsuccess or the Facility; or

- 17.2.3 emailing the notice to Debitsuccess or the Facility; or
- 17.2.4 sending the notice to either Debitsuccess' or the Facility's fax number (if any)
- 17.3 If you cancel this Contract under this clause you may be charged an amount equal to any reasonable expenses Debitsuccess or the Facility had to pay in connection with the Contract and its cancellation.
- 18. **Unforeseen Hardship**
- 18.1 If you suffer illness, injury, loss of employment, the end of a relationship or other reasonable cause, that results in you being unable to reasonably keep up with your payments you may apply to change the terms of this Contract by requesting:
 - 18.1.1 An extension of the term of this Contract, which will reduce the amount of each payment due under this Contract;
 - 18.1.2 A postponement of the dates on which payments are due under this Contract for an agreed period; or
 - 18.1.3 Both an extension and postponement of payments.
- 18.2 To apply for a hardship variation you should:
 - 18.2.1 Make an application in writing; and
 - 18.2.2 Explain your reason(s) for the application.
- 19. **Interpretation**
- 19.1 Any reference in this Contract to legislation is to legislation in force and includes any subordinate legislation, by-law, regulation, order, statutory instrument or determination made under it, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation.

CONDITIONS OF THIS INSTRUCTION TO ACCEPT DIRECT DEBITS

1. The Initiator:-

- 1.1 Has agreed to give written advance notice of the net amount of each Direct Debit and the due date of the debiting at least two calendar days before the date that the Direct Debit will be initiated. This notice will include the following message:-

"Unless advice to the contrary is received from you by the billing start date*, the amount stated on the front of this form will be directly debited from your bank account on (initiating date)."

* this date will be at least two (2) days prior to the initiating date to allow for amendment of Direct Debits.

- 1.2 May, upon the relationship which gave rise to this Instruction being terminated, give notice to the Bank that no further Direct Debits are to be initiated under the Instruction. Upon receipt of such notice, the Bank may terminate this Instruction as to future payments by notice in writing to the Customer.
- 1.3 The Customer may:-
 - 1.3.1 At any time, terminate this Instruction as to future payments by giving notice of termination to the Bank and to Debitsuccess.
 - 1.3.2 Stop payment of any Direct Debit to be initiated under this Instruction by Debitsuccess by giving written notice to the Bank prior to the Direct Debit being paid by the Bank.

1.3.3 Request the Bank to reverse any Direct Debits initiated by the Debitsuccess under the Instructions by debiting the amount of the Direct Debits back to Debitsuccess through Debitsuccess' bank, to the extent that Debitsuccess cannot produce a copy of the Instructions and/or confirmation that reasonably demonstrates the Customer's authorisation to the Bank to accept Direct Debits from Debitsuccess against the Customer's account, PROVIDED the request is made not more than nine months from the date when the first Direct Debit was debited to the Customer's account by Debitsuccess under the Instructions.

2. The Customer acknowledges that:-

- 2.1 This Instruction will remain in full force and effect in respect of all Direct Debits passed to the Customer's account in good faith notwithstanding the Customer's death, bankruptcy or other revocation of this Instruction until actual notice of such an event is received by the Bank.
- 2.2 In any event, this Instruction is subject to any arrangement now or hereafter existing between the Customer and the Bank in relation to the Customer's account.
- 2.3 Any dispute as to the correctness or validity of an amount debited to the Customer's account shall not be the concern of the Bank (except in so far as the Direct Debit has not been paid in accordance with this Instruction), and should be referred to Debitsuccess. Any other dispute lies between the Customer and Debitsuccess.
- 2.4 The Bank accepts no responsibility or liability for the accuracy of information on bank statements relating to any Direct Debits.
- 2.5 The Bank is not responsible for, or under any liability in respect of:-
- 2.5.1 any variations between notices given by Debitsuccess and the amounts of Direct Debits;
 - 2.5.2 Debitsuccess' failure to give written advance notice correctly, or for the non-receipt or late receipt of notice by the Customer for any reason whatsoever. In any such situation, the dispute lies between the Customer and Debitsuccess.

3. The Bank may:-

- 3.1 At its absolute discretion, conclusively determine the order of priority payment by it of any monies pursuant to this or any other instruction, cheque or draft properly executed by the Customer or given to or drawn on the Bank.
- 3.2 At any time, terminate this Instruction as to future payments by notice in writing to the Customer.
- 3.3 Charge its current fees for this service in force from time-to-time.