

TERMS AND CONDITIONS

COMSUITE PAYABLES FINANCE

[MUFG Bank, Ltd.]

These Terms and Conditions (the “Conditions”) shall apply to the customer (the “Customer”) who applies to use the Software (as defined below) and the Services (as defined below) provided by MUFG Bank, Ltd. (the “Bank”).

1. Definitions

In these Conditions, the following terms have the following respective meanings:

“**Account**” means each of the accounts which the Customer may register by the Application in relation to the Services;

“**Agreement**” means the agreement made and entered into between the Customer and the Bank under these Conditions;

“**Application**” means the COMSUITE Payables Finance Application for Service Setup which the Customer shall submit to the Bank in relation to the Services (including an Application for addition, change and deletion to the registration);

“**Buyer**” means the party defined as the Buyer in the Master Agreement, the term “Obligor” also has the same meaning;

“**Certification Practice Statement**” has the meaning set out in the ‘BTMU-eBusiness Certification Authority Certification Practice Statement’ document available in the information log in page of COMSUITE;

“**Commencement Date**” means the date when the Bank consents to using the Software by the Customer who submits the Application and the Bank is ready to provide the Services;

“**Confidentiality Clause**” has the meaning set out in clause ‘Confidentiality And Disclosure of Information’ of the Buyer Services and Supplier Agreements;

“**Financial Institution Concerned**” means each of the financial institutions [including the Purchaser] (other than the Bank) involved in the implementation of the Services;

“**Malfunction**” means any discrepancy between the functions actually performed and those specified in the Manual

“**Manual**” means the manual and other documents relating to the Software;

“**Master Agreement**” means either the Buyer Services Agreement or Supplier Agreement made and entered into under the Payables Finance scheme of arrangement to which the Customer is a party;

“**Purchase of Receivables**” means transactions of purchasing receivables under the Master Agreement to which the Customer is party as the Supplier or the Buyer;

“**Purchaser**” means the party defined as the Purchaser in the Master Agreement;

“**Services**” means the services stipulated in Clause 3.2;

“**Software**” means the software (including supplementary tools, the Manual and other related documents and information) for the exclusive use of the Services;

“**Supplier**” means the party defined as the Supplier in the Master Agreement, the term “Seller” also has the same definition.

“**System**” means the Bank’s computer system for the exclusive use of the Services;

2. Purposes

2.1 The Customer has applied as the Supplier or the Buyer for the Master Agreement regarding Purchase of Receivables. The purpose of the Services is to allow the Customer to make delivery documents or any other communication to the Purchaser via the internet, and to facilitate the smooth distribution of relevant information. The purpose of the Agreement under these Conditions is to stipulate the special provisions on the Master Agreement in terms of communications which are set forth in Clause 19 or other related provisions of the Master Agreement.

2.2 The Customer shall, subject to the approval of the Bank, register the Services by the Application. The Bank shall, subject to these Conditions, provide the Services to the Customer. The Services shall be provided through the System and the Software.

3. Software License and Services

- 3.1 The Bank hereby grants the Customer a non-exclusive and non-transferable right to use the Software for utilising the Services subject to these Conditions.
- 3.2 The Bank shall provide the Customer with the following Services in accordance with these Conditions;
- (1) services to ensure that the Customer as the Supplier may register information of the Invoice with respect to the Purchase of Receivables through the System;
 - (2) services to ensure that in order to apply for the Purchase of Receivables, the Customer as the Supplier may execute and deliver to the Purchaser the Application to Assign (as defined in the Master Agreement (Supplier Agreement)), the Instrument of Assignment (as defined in the Master Agreement (Supplier Agreement)) or other documents through the System as required from time to time.
 - (3) services to ensure that the Customer as the Buyer may execute and deliver to [the Supplier and] the Purchaser an acknowledgement and confirmation or other documents through the System as required from time to time.
 - (4) in addition to (1) through (3), services to ensure that the Customer as the Supplier or the Buyer may deliver to the Purchaser written documents through the System, and communicate to the Purchaser in the manner the Bank has determined; and
 - [(5) any other services designated by the Bank in its sole discretion regarding the Master Agreement.]
- 3.3 Each communication or instruction (including manifestation of intention) [from the Customer to the Bank / to another party] by using the Services shall become effective at the time when such a communication arrives at [the Bank / the party] and [the Bank / the party] becomes able to access it through the System without any trouble.
- 3.4 [In case where the Customer communicates or instructs (including manifest intention) the Bank by using the Services and the Customer communicates or instructs the same through any other means, the former shall prevail.]

4. The Software

- 4.1 The Customer may use the Software solely in such location, with the equipment and in the

environment as the Bank may approve. The Customer shall prepare and maintain such location, equipment and environment.

- 4.2 The Customer shall comply with the instructions given in the Manual in the use of the Software.
- 4.3 The Customer acknowledges that the System is designed for customers in general and that it may not serve a specific need of any particular customer.
- 4.4 The Customer shall immediately notify the Bank of any Malfunction in the Software. The Bank shall make commercially reasonable efforts to rectify such Malfunction; provided that the Bank shall have no obligation to rectify the following Malfunctions:
- (1) Malfunctions caused by the use of the Software other than in the manner provided herein or designated by the Bank;
 - (2) Malfunctions caused by the use of the Software other than by the person designated by the Customer under Clause 20; and
 - (3) Malfunctions not immediately reported to the Bank by the Customer after becoming aware of it.

The Bank shall in no case be liable for any damages caused due to any Malfunctions in the Software, except in the case of gross negligence or willful misconduct of the Bank.

- 4.5 If the COMSUIITE Payables Finance supplemental tool (the “Supplemental Tool”) is designated by the Bank as a supplemental tool regarding the Services registered by the Application, the Bank shall be deemed to have granted the Customer a non-exclusive and non-transferable right to use the Supplemental Tool subject to these Conditions. The Supplemental Tool shall form a part of the Software.
- 4.6 The Bank may from time to time make changes to the Software and Services, unless such changes relate to the essential part thereof. The Bank shall notify the Customer of such changes to the extent that such changes will affect the Customer utilising the Services; provided that the Bank is not required to do so if such changes are announced on the web site.

5. Prohibition

The Customer shall not:

- (1) grant the right to use, assign, sell, buy, or lease the Software to any third party, or create security interest over the Software for the benefit of any third party;
- (2) copy, change, translate, adapt, analyse, reverse-engineer, disassemble, decompile or develop its application software or do any similar acts with respect to the Software;
- (3) use the Software other than in the manner provided herein or designated by the Bank; or
- (4) use the Software other than for the purposes of the Agreement.

6. Fees and Costs

- 6.1 The Customer shall pay fees for the Services in accordance with the fee schedule which the Bank may set forth from time to time. Fees for the Services shall be effective from the Commencement Date.
- 6.2 The Customer shall pay all costs (including remittance charges) for services provided by the Bank and Financial Institution Concerned in relation to the Services.
- 6.3 The Bank is hereby authorised to debit [the account to be designated by the Customer] with the amount of the fees and costs referred to in Clauses 6.1 and 6.2, without presenting any check or any withdrawal slip with its bank book. In the event that the Bank is unable to debit the amount from such account, the Bank may, upon notice to the Customer, demand the payment of such fees and costs, together with default interest to be determined by the Bank.
- 6.4 If any deduction or withholding is made by any tax authorities of a country other than New Zealand from the fees and costs payable hereunder, the Customer shall pay such additional amounts as may be necessary to ensure that the Bank receives an amount equal to the amount which it would have received if such deduction or withholding had not been made.
- 6.5 The Bank shall notify the Customer of the amounts of fees and costs (and the break down thereof) to be debited from the account of the Customer, in advance or immediately afterwards, in accordance with Clause 6 and other provisions of these Conditions.

7. Term

The term of the Agreement shall be one (1) year commencing on the Commencement Date. The Agreement shall be renewed automatically for a period of one (1) year, unless a written notice is given by the Bank or the Customer to the other party to confirm the termination of the Agreement not later than ten (10) days prior to the expiration date of the Agreement. The same shall apply thereafter.

8. Termination

8.1 The Customer or the Bank may terminate the Agreement by giving not less than ten (10) days prior written notice to the other party.

8.2 The Agreement shall terminate without notice or other act of the Bank or the Customer, if the Master Agreement is terminated for any reason.

8.3 On or after the termination of the Agreement, the Bank shall have no obligation to effect the instructions given by the Customer; provided that the acts which the Bank has done without the knowledge of the termination of the Agreement shall be deemed to be valid and effective.

8.4 Upon termination of the Agreement, the Customer shall, without delay and on its responsibility, destroy the Software and the documents and other materials delivered by the Bank to the Customer in relation thereto or take any other steps necessary to comply with the provisions in the Master Agreement related to the Confidentiality Clause; provided that the Customer shall promptly return to the Bank the Software and the documents and materials referred to above, if so requested by the Bank.

9. Access to the System

9.1 Access to the System shall be made by using (i) the combination of customer ID, user IDs, passwords and digital certificates, or (ii) the combination of customer ID, user IDs, passwords and one time password ((i) and (ii) together referred to as the “**Access Code**”). In case where the Bank is unable to confirm the identity of the Access Code, the Bank may reject access to the System.

9.2 In case where the Bank confirms the identity of the Access Code, the Bank may regard such access to the System as being made by a duly authorised person and may effect the instructions given thereby. As long as the identity of the Access Code is confirmed, the Bank shall in no case be liable, even if instructions and access to the System are not authorized.

- 9.3 The Customer acknowledges that the digital certificates are issued by BTMU-eBusiness Certification Authorities (the "Certification Authorities") operated by the Bank and agrees to comply with the provisions in the Certification Practice Statement of BTMU-eBusiness Certification Authorities displayed on the web site. The provisions in this Clause 9.3 shall not prevent the Bank from contracting with other certification authorities.
- 9.4 The Customer shall on its responsibility keep under control the Access Code and the IC cards for digital certification on loan from the Certification Authorities and the tokens for one time passwords on loan from the Bank (the "OTP Tokens").
- 9.5 Upon termination of the Agreement, the Customer shall comply with the provisions in the Certification Practice Statement of BTMU-eBusiness Certification Authorities and shall, at the request of the Bank and on its responsibility, destroy the IC cards for digital certification and the OTP Tokens or take any other steps necessary to comply with the provisions in the Master Agreement related to the Confidentiality Clause; provided that the Customer shall promptly return to the Bank such IC cards for digital certification and OTP Tokens, if so requested by the Bank. The Bank shall not be held liable to any damages which the Customer may suffer as a result of failure or delay in taking such steps.
- 9.6 If any IC card for digital certification or OTP Token is stolen, lost or improperly used or fails to function properly or if the Access Code is divulged or otherwise disclosed to a third party, the Customer shall comply with the provisions in the Certification Practice Statement of BTMU-eBusiness Certification Authorities and shall immediately notify the Bank thereof.

10. Communication Networks

- 10.1 The Customer acknowledges that the Services are provided through the communication networks (including the internet) and confirms that the Customer understands the risks involved in such communication networks and is satisfied with the security measures taken by the Bank against such risks.
- 10.2 The Customer shall on its own responsibility make the necessary arrangements for the communication networks necessary to connect with the System and shall indemnify the Bank against any fees, costs or damages which the Bank may incur as a result of any act of, or any event attributable to, the Customer relating to the Customer's use of the communication networks. The Customer shall comply with the conditions of the use and the instructions given by the network service providers in relation to the use of the communication networks and shall forthwith pay fees

and other charges and pay for other claims upon demand by the network service providers.

11. Maintenance and Suspension

- 11.1 The Bank shall provide such maintenance services as the Bank may deem necessary for the System.
- 11.2 The Bank may suspend the System temporarily, if required for the maintenance services for the System.
- 11.3 If there occurs unlawful interference by a third party with the System or any other event which causes failure of the System (except for an event attributed to the gross negligence or willful misconduct of the Bank), the Bank may suspend the System temporarily without a prior consent of the Customer.

12. Intellectual Property Rights

- 12.1 All copyrights, patents, utility models, designs, trademarks and other intellectual property rights (“Intellectual Property Rights”) relating to the Software shall remain as the property of the Bank and shall not be assigned or transferred to the Customer by virtue of the Agreement.
- 12.2 To the best of the Bank’s knowledge, the Bank confirms as of the Commencement Date that the Software does not infringe any third parties’ Intellectual Property Rights.

13. Infringement

The Customer shall forthwith notify the Bank of any action, injunction, claim for damages or other claim which is or may be made by a third party asserting that the Software infringes such third party’s Intellectual Property Rights. The Bank shall exert its best efforts to resolve such dispute. The Customer shall comply with the instructions of the Bank and cooperate with the Bank in such dispute with a third party.

14. Exclusion of Liabilities

- 14.1 The Bank shall not be liable to the Customer for the following damages:
 - (1) damages caused by natural disaster, incident, disturbance, war, restriction by applicable laws and regulations, measures imposed by a government, courts or other public organizations or

other unavoidable occurrences (including those events relating to the equipment and facilities for the Services situated in countries other than New Zealand);

- (2) damages caused by error, failure, delay in transmission of data, messages or information, or breakdown, error, malfunction, mutilation, suspension (including such suspension as set forth in Clause 11), inaccuracy or omission of, or resulting from, terminals, public communication networks, the internet or other communication networks or computers (including hardware and software other than the Software);
- (3) damages caused by the compliance of any Financial Institution Concerned with laws and regulations or customs and practices of the country in which it is located or its internal rules, or damages caused for reasons attributable to any Financial Institution Concerned;
- (4) damages caused by the Bank's compliance with applicable laws, regulations, customs and practices or its internal rules;
- (5) damages caused by instructions to the Bank which are not duly authorized by the Customer;
- (6) damages caused by the Bank's non-fulfillment of instructions in cases where the Bank does not have any obligations to effect such instructions given by the Customer, including cases where the Bank may delay effecting such instructions in accordance with the provisions of these Conditions;
- (7) damages caused by divulgence of information or failure, error, delay, inaccuracy, omission or alteration in transmission of information or other similar incidents due to unlawful interference or wiretapping by a third party with terminals, communication networks and computers;
- (8) damages caused by divulgence of the security information (including the Access Code) or theft, unauthorized use, loss or malfunction of, or illegal use by a third party of, the IC cards for digital certification or the OTP Tokens, or any other similar incidents;
- (9) damages caused by the use of the Services other than in the manner provided for herein or designated by the Bank; or
- (10) damages caused by force majeure or for reasons other than willful misconduct or gross negligence of the Bank.

14.2 If an event occurs for which the Bank is responsible in relation to the implementation of the Services, the Customer shall notify the Bank thereof immediately after becoming aware of it. The Bank shall not be liable with respect to such event if the Customer fails to notify the Bank immediately upon the occurrence of such event or the Bank has not received such notice from the Customer within thirty (30) days after the occurrence of such event.

15. Indemnity

The Customer shall indemnify the Bank against the following damages, costs and expenses which the Bank may sustain:

- (1) damages, costs and expenses attributable to any act (including the use of the Software) of the Customer and damages, costs and expenses caused for reasons attributable to the Customer;
- (2) damages, costs and expenses incurred by infringement of a third party's intellectual property rights due to any changes made by the Customer to the Software.

16. Compliance with Laws and Regulations

16.1 The Customer shall, on its own responsibility, comply with all applicable laws and regulations including but not limited to sanctions and Anti Money Laundering (AML) requirements and shall take all necessary actions to procure necessary registrations and approvals or otherwise.

16.2 The Agreement shall immediately cease to be effective, if the Agreement is in violation of the laws and regulations.

17. Exclusion of Anti Social Forces

17.1 The Customer represents, warrants and covenants to ensure that it, its Parents, Subsidiaries, Related Companies and those employees and shareholders with 50% of the voting rights (collectively, including the Customers, the “Related Parties”) do not or shall not in the future fall under the following categories (collectively, the “Anti Social Forces”):

- (1) an organized crime group;
- (2) a member of an organized crime group;
- (3) a quasi-member of an organized crime group;
- (4) a related company or association of an organized crime group;
- (5) a corporate racketeer; or
- (6) other equivalent groups of the above.

17.2 The Customer represents, warrants and covenants to ensure that the Related Parties themselves or through the use of third parties have never conducted or will not conduct in the future any of the following actions:

- (1) a demand with violence;
- (2) an unreasonable demand beyond the legal responsibility;
- (3) use of intimidating words or actions in relation to transactions;
- (4) an action to defame the reputation or interfere with the business of the Bank or any of its affiliates by spreading rumors, using fraudulent means or resorting to force; or
- (5) other equivalent actions of the above.

17.3 The Customer shall immediately provide the Bank with documents or information of the Related Parties (including, without limitation, the registered, principal, office or residential address, formal name and birth date) requested by the Bank anytime for the purpose of identity verification and screening of Anti Social Forces by the Bank.

17.4 In case the Bank determines that it is not appropriate to maintain business transactions with the Customer after becoming aware that the representations and warranties in Clause 17.1 and 17.2 are not or were not true or that the Customer breached the covenants in Clause 17.1 and 17.2, the Agreement shall be immediately terminated.

18. Severability

If any provisions of these Conditions become unenforceable due to interpretation, application or administration of the laws or regulations, the other provisions shall, to the extent possible, continue to be in full force and effect.

19. Laws and Regulations

The terms “laws and regulations” and “taxes and public charges” used in these Conditions shall mean laws and regulations and taxes and public charges of all countries concerned.

20. Implementation of the Services

20.1 The Customer hereby requests the Bank to provide the Services in accordance with the instructions to be given by the Customer through the System and the Bank agrees to provide the Services in accordance therewith.

20.2 In order to utilize the Services with respect to the Accounts of the Customer maintained with Financial Institution Concerned (other than the Bank), the Customer acknowledges that the relevant authorisation must be given to such Financial Institution Concerned and the Bank by the Customer, with respect to the disclosure of information, debiting of the Accounts for fund transfer and other matters necessary for the implementation of the Services.

20.3 The Customer shall not nullify, cancel or amend its instructions given for the Services due to misunderstanding or otherwise.

20.4 In the case of any discrepancy between the instructions for the Services alleged to be given by the Customer and the electromagnetic records thereof kept by the Bank, the latter shall prevail.

20.5 The Customer shall from time to time review the transactions made through the Services and shall immediately notify the Bank of any irregularities therein.

21. Administrators and Users

- 21.1 Pursuant to the procedure set forth by the Bank, the Customer shall register with the Bank administrators (each an “Administrator”) who use the Access Code (including IC cards for digital certification and OTP Tokens) and supervise users (each a “User”) on behalf of the Customer.
- 21.2 Pursuant to the procedure set forth by the Bank, the Customer shall register with the Bank Users who use the Access Code (including IC cards for digital certification and OTP Tokens) on behalf of the Customer. The Bank may, if necessary, disclose to the Users any information relating to the Services which the Bank has disclosed to the Administrators.
- 21.3 Neither Administrators nor Users shall use the Access Code (including IC cards for digital certification and OTP Tokens) jointly with others, or lend or transfer the same to others.
- 21.4 The Customer shall be responsible for the appointment of, and supervision over, the Administrators and the Users and shall take appropriate measures to prevent unauthorized access to the System by a person other than the Administrators and the Users.
- 21.5 Pursuant to the procedure set forth by the Bank, the Customer shall immediately notify the Bank of any change to the Administrators, the Users and the registration relating thereto. The Bank may deem the registration relating thereto as unchanged until the Bank completes the procedure for such change. The Bank shall not be liable to the Customer for any damages caused by such changes, save in the case of gross negligence or willful misconduct of the Bank. The Users registered before the change of an Administrator shall not be affected by the change of such Administrator.
- 21.6 In addition to the signatures and authorities registered with the Bank, the Customer acknowledges and approves the powers and authorities given to the Administrators and Users under the Agreement.

22. Amendments or Changes to these Conditions

The Bank may from time to time make amendments or changes to these Conditions. The Bank shall notify the Customer of such amendments or changes to the extent that such amendments or changes will affect the Customer utilizing the Services; provided that the Bank is not required to do so if such amendments or changes are announced on its web site. The Bank shall in no case be liable for any damages caused due to any amendments or changes to these Conditions, except in the case of gross negligence or willful misconduct of the Bank.

23. Governing Law and Jurisdiction

- 23.1 These Conditions and the Agreement shall be governed by, and construed in accordance with the laws of New Zealand.
- 23.2 The Courts of New Zealand shall be the court of agreed exclusive first jurisdiction over any dispute arising out of or in connection with these Conditions or the Agreement.
- 23.3 The parties acknowledge and consent that the Agreement supersedes the Master Agreement and that the governing law and jurisdiction of matters arising out of or in connection with the Agreement (including matters in connection with the Master Agreement) shall be determined in accordance with Clauses 23.1 and 23.2.

End.