

# Customer Terms of Service

Effective Date: 23<sup>rd</sup> April 2024

## Overview

This Customer Terms of Service incorporates:

- Our General Terms;
- Our Kindo Terms of Service; and
- Our eStore Service Terms.

All customers are deemed to have accepted our General Terms upon registering for or using our Services. All internal suppliers of Schools are deemed to have accepted our Kindo Terms of Service. All external suppliers of Schools are deemed to have accepted our eStore Service Terms.

## Definitions

"**Affiliate**" means with respect to any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with such entity.

"**Agreement**" means the General Terms together with the Service Terms relating to the Services provided.

"**Content**" means copyrightable works under applicable Law.

"**Customer Account Information**" means, with respect to any of Your Items sold through the TGCL Site, the order information and shipping information that we provide or make available to you.

"**Delivery Information**" means, with respect to any of Your Items, the estimated or promised shipment and/or delivery date.

"**General Terms of Service**" means the terms and conditions in this document that apply to all Services.

"**Intellectual Property Right**" means any patent, copyright, Trademark, domain name, moral right, trade secret right, or any other intellectual property right arising under any Laws and all ancillary and related rights, including all rights of registration and renewal and causes of action for violation, misappropriation or infringement of any of the foregoing. "**Kindo Launch Date**" means the date on which any of Your Items are first listed for sale on the Kindo Site.

"**Kindo Required Item Information**" means with respect to each of Your Items, the following: (a) a description of Your Item; (b) the assignment of Your Item to a Menu Category; (c) a digitized image of Your Item (where you require the display of the image on the Kindo Site); (d) the price for Your Item; (e) any text, disclaimers, warnings, notices, labels or other content required by applicable law to be displayed in connection with the offer, merchandising, advertising or sale of Your Item; (f) the General Ledger codes or other codes as you may decide to include; (g) item options, choices and the pricing and included quantities of such; (g) fuelled4life icons where these have been provided by the Heart Foundation and you can provide evidence of such; (h) GST or GST exempt status of each item;

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(i) item or delivery information, or similar, where you require this to display with a given menu category; (j) the placement of Your Item within the Menu Category; (k) Delivery Information.

"**Kindo Transaction Information**" means the following information you receive from TGCL associated with any orders of Your Item through your Kindo site: item name; quantity; price; options or choices; member name; location; institution. Notwithstanding the foregoing and for the avoidance of doubt, Kindo Transaction Information does not include: (a) any Customer Account Information; (b) sign-in credentials; (c) user click-stream information; or (d) any credit card or other account or identifying number of, or any other information specifically concerning, any payment instrument or method.

"**Law**" means any law, ordinance, rule, regulation, order, license, permit, judgment, decision or other requirement, now or hereafter in effect, of any governmental authority.

"**Local Currency**" means New Zealand Dollars.

"**Menu Categories**" are groups of Your Items available for sale, under a single menu category listing name. The menu categories are created and determined by the Supplier of those items. Every item must be assigned to a Menu Category.

"**Order Information**" means, with respect to any of Your Items, the order information and shipping information that we provide or make available to you.

"**Person**" means any individual, corporation, partnership, limited liability company, governmental authority, association, joint venture, division or other entity, whether or not having distinct legal existence.

"**Personal Information**" means information about an identifiable individual as defined in the NZ Privacy Act 2020.

"**Program Policies**" means all terms, conditions, policies, guidelines, rules and other information on the TGCL Site or on The TGCL Partner Site.

"**Promotion Site**" means that website containing the link to the TGCL Site.

"**Public Software**" means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open-source software (Linux) or similar licensing or distribution models.

"**Sales Proceeds**" means the gross sales proceeds from any of Your Transactions, including GST and excluding Service Fees. Sales proceeds are recognised on the day the order was placed (where there is no date selector available) or on the day scheduled for delivery. Orders for future deliveries will not have sales proceeds recognised until that date.

"**School**" means a legal entity registered as a school in our countries of operation and with whom we provide services listed in this agreement.

"**Service Fees**" means the fees payable to us in relation to the e-Store Terms of Service, Kindo Terms of Service, or any other service terms, where applicable.

"**Service Terms**" means the service terms specific to each Service and made a part of this agreement upon the date you elect to register for the applicable Service and including any subsequent modifications we are permitted to make to those terms.

"**Services**" means each or any of the following services that TGCL makes available:

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- a) Kindo (as defined in the Kindo Terms of Service)
- b) TGCL e-store (as defined in the e-Store Terms of Service);
- c) and any related services we make available.

"**Supplier**" means any provider that supplies services to Schools as part of the services defined in these terms.

"**Technology**" means any: (a) ideas, procedures, processes, systems, methods of operation, concepts, principles and discoveries protected or protectable under the Laws of any jurisdiction; (b) interfaces, protocols, glossaries, libraries, structured XML formats, specifications, grammars, data formats, or other similar materials; and (c) software, hardware, code, technology or other functional item.

"**TGCL**" means The Growth Collective Limited

"**TGCL e-store Required Item Information**" means with respect to each of Your Items, the following: (a) a description of Your Item; (b) the assignation of Your Item to a Menu Category; (c) a digitized image of Your Item (where you require the display of the image on the TGCL Site); (d) the price for Your Item; (e) any text, disclaimers, warnings, notices, labels or other content required by applicable law to be displayed in connection with the offer, merchandising, advertising or sale of Your Item; (f) the General Ledger codes or other codes as you may decide to include; (g) item options, choices and the pricing and included quantities of such; (g) fuelled4life icons where these have been provided by the Heart Foundation and you can provide evidence of such; (h) GST or GST exempt status of each item; (i) item or delivery information, or similar, where you require this to display with a given menu category; (j) the placement of Your Item within the Menu Category; (k) Delivery Information.

"**TGCL e-store Service**" means the service that TGCL makes available to you to enable you to offer and sell Your Items through the TGCL Site.

"**TGCL e-store Transaction Information**" means the following information you receive from TGCL associated with any orders of Your Item through your TGCL Site: item name; quantity; price; options or choices; Member name; location; institution. Notwithstanding the foregoing and for the avoidance of doubt, TGCL e-store Transaction Information does not include: (a) any Account Holder Account Information; (b) sign-in credentials; (c) user click-stream information; or (d) any credit card or other account or identifying number of, or any other information specifically concerning, any payment instrument or method.

"**TGCL Functionality**" means all techniques, know-how, features and functionality specific to development of a website presence to display items loaded into the TGCL platform, including the following features and functions: browse, item detail display, shopping cart and credit card transaction processing, order/account lookup, and storefront administration & merchandising.

"**TGCL Marks**" means all Trademarks registered to The Growth Collective Limited and its assigns.

"**TGCL Materials**" means: (a) the TGCL Functionality (including, without limitation, all techniques, know-how, algorithms, materials, specifications and source code related thereto); and (b) all Kindo service-related item information, APIs, and any distinctive trade dress and trade styles (including, without limitation, colour schemes), proprietary fonts, and the design, formatting, organization and structure of screens and other elements included within the Kindo site.

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"**TGCL Partner Site**" means the website at URL [<https://partner.tgcl.co.nz>] and tools made available by TGCL to you, for the purpose of creating your menu categories, Your Items and service listings and other such configuration for your TGCL Site.

"**TGCL Site**" means the website provided at URL [<https://shop.tgcl.co.nz>] and associated websites and services.

"**TGCL Transaction Information**" means, collectively, Order Information, and any other data or information acquired by you or your Affiliates from TGCL or its Affiliates, or otherwise as a result of the Agreement, the transactions contemplated hereby or the parties' performance hereunder.

"**Trademark**" means any trademark, service mark, trade dress (including any proprietary "look and feel"), trade name, other proprietary logo or insignia or any other source or business identifier, protected or protectable under any Laws.

"**Trademark Usage Guidelines**" means the document entitled as such.

"**Your Materials**" means all Technology, Your Trademarks, Content, Your Item information, data, materials, and other items provided or made available by you or your affiliates to TGCL or its Affiliates.

"**Your Item**" means any item that is made available for listing for sale, offered for sale, or sold by you through the TGCL Site.

"**Your Taxes**" means any and all sales, goods and services, use, excise, import, export, value added, consumption and other taxes and duties assessed, incurred or required to be collected or paid for any reason in connection with any advertisement, offer or sale of items by you on or through or in connection with the Services, or otherwise in connection with any action, inaction or omission of you or your Affiliates or respective employees, agents, contractors or representatives.

"**Your Trademarks**" means Trademarks of yours that you provide to us: (a) in non-text form for branding purposes; and (b) separate from (and not embedded or otherwise incorporated in) any item specific information or materials.

"**Your Transaction**" means any sale of Your Item(s) through the TGCL Site.

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# TGCL Business Solutions Terms of Service

## General Terms

Welcome to TGCL suite of services, including Kindo and Kindo e-store.

BY REGISTERING FOR OR USING THE SERVICE(S), YOU (ON BEHALF OF YOURSELF OR THE BUSINESS ENTITY OR INSTITUTION YOU REPRESENT) AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE SERVICE TERMS AND PROGRAM POLICIES FOR EACH SERVICE FOR WHICH YOU REGISTER.

As used in this Agreement, "we," "us," and "TGCL" means The Growth Collective Limited or any of its Affiliates, and "you" means the applicant. Capitalized terms have the meanings listed in the Definitions in the General Terms, the TGCL e-store Service Terms and the Kindo Service Terms. If there is any conflict between these General Terms and the applicable Service Terms, the Service Terms will govern.

### 1. Enrolment.

To begin the enrolment process, you must complete the registration process for one or more of the Services. Use of the Services is limited to parties that can lawfully enter into contracts under New Zealand law. As part of the application, you must provide us with your (or your business') legal name, address, phone number and e-mail address and provide us with valid bank account information for a New Zealand bank account in your name ("Your Bank Account"). You will use only a name you are authorized to use in connection with the Service and will update all of the preceding information as necessary to ensure that it at all times remains accurate and complete. You authorize us (and will provide us documentation evidencing your authorization upon our request) to verify your information (including any updated information), to obtain credit reports about you from time to time, and to debit Your Bank Account for any sums payable by you to us (in reimbursement or otherwise). All payments to you will be remitted to Your Bank Account.

### 2. Sale Proceeds and Fees

The remittance of Sale Proceeds and the payment of our fees are described fully in the applicable Service Terms. If we conclude that your actions and/or performance in connection with the Agreement may result in customer disputes, chargebacks or other claims, then we may, in our sole discretion, delay initiating any remittances and withhold any payments to be made or that are otherwise due to you under this Agreement for the shorter of: (a) a period of ninety (90) days following the initial date of suspension; or (b) completion of any investigation(s) regarding your actions and/or performance in connection with the Agreement.

As a security measure, we may, impose transaction limits on some or all customers and sellers relating to the value of any transaction or disbursement, the cumulative value of all transactions or disbursements during a period of time, or the number of transactions per day or other period of time. We will not be liable to you: (i) if we do not proceed with a transaction or disbursement that

would exceed any limit established by us for a security reason, or (ii) if we permit a customer to withdraw from a transaction because the TGCL Site or the Services are unavailable following the commencement of a transaction.

### 3. Term and Termination.

The term of this Agreement will start on the date of your completed registration for the Service(s) and continue until terminated by us or you as provided below (the "Term"). We may terminate or suspend this Agreement or any Service on 20 working days' written notice to you for any reason at any time. You may terminate this Agreement or any Service or the Promotion Site for any reason at any time by providing 20 working days' written notice. Termination or suspension of this Agreement or a specific Service will not terminate or suspend any other Service unless explicitly provided. Upon termination, all rights and obligations of the parties under this Agreement will terminate, except that Clauses 2, 3, 4, 5, 6, 7, 8, 9, 11, 14, 15, 16 and 18 will survive termination. Any terms that expressly survive according to the applicable Service Terms will also survive termination.

### 4. License.

You grant us a royalty-free, non-exclusive, worldwide, perpetual, irrevocable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all of Your Materials, and to sublicense the foregoing rights to our affiliates and operators of TGCL; provided, however, that we will not alter any of Your Trademarks from the form provided by you (except to re-size trademarks to the extent necessary for presentation, so long as the relative proportions of such trademarks remain the same) and will comply with your removal requests as to specific uses of Your Trademarks (provided you are unable to do so using standard functionality made available to you via the TGCL Site or Services); provided further, however, that nothing in this Agreement will prevent or impair our right to use Your Materials without your consent to the extent that such use is allowable without a license from you or your Affiliates under New Zealand law

Conditioned upon your compliance with the Trademark Usage Guidelines, TGCL grants you a non-exclusive, non-transferable, non-assignable, revocable right and license during the term of this Agreement to use the TGCL Marks solely in connection with your use of the Services for which the TGCL Marks were provided to you. You must use the TGCL Marks solely in the manner in which they were provided to you, meaning you may not change, alter, amend, vary, or modify the TGCL Marks in any way, at any time. You may not use any TGCL Mark except as expressly provided herein, and may not sublicense these rights or otherwise permit any party to use the TGCL Marks. You acknowledge that TGCL and its Affiliates are the sole owners of the TGCL Marks, and you agree to do nothing inconsistent with that ownership. All goodwill arising out of your use of the TGCL Marks will inure to the sole benefit of TGCL and its Affiliates. TGCL may revoke your license to any or all of the TGCL Marks at any time in its sole discretion. Upon the termination this Agreement, or termination or suspension of the Services for which any TGCL Mark was provided to you, you shall immediately cease and discontinue all further use of the TGCL Mark.

## 5. Representations.

You represent and warrant to us that: (a) if you are a business or institution, you are duly incorporated; (b) you have all requisite right, power and authority to enter into this Agreement and perform your obligations and grant the rights, licenses and authorizations you grant hereunder; (c) you and all of your subcontractors, agents and suppliers will comply with all applicable Laws in your performance of your obligations and exercise of your rights under this Agreement; (d) you will not provide us with any Personal Information we are not entitled to receive - you will comply with all legislation and regulations governing the provision of Personal Information and, in particular, you will not provide Personal Information to us without the relevant individual's authority to do so and you will take all reasonable steps to ensure that Personal Information provided to us is accurate; and (e) you will not use Personal Information provided to you by us other than for the purpose of facilitating Your Transaction and you will protect all Personal Information provided to you by us in accordance with the obligations set out in the Privacy Act 1993, including the requirements that you:

- (i) take all reasonable precautions to guard against loss, misuse, disclosure and unauthorised use of Personal Information; and
- (ii) do not keep Personal Information for longer than is required for the purposes for which the information may lawfully be used.

We may ask you to demonstrate your compliance with the Privacy Act 1993 or any other relevant legislation and you undertake to promptly comply with any such request.

## 6. Indemnification.

You release us and agree to indemnify, defend and hold harmless us (and our officers, directors, employees, and agents) against any claim, loss, damage, settlement, cost, expense or other liability (including, without limitation, attorneys' fees) (each, a "Claim") arising from or related to: (a) your actual or alleged breach of any of your obligations in this Agreement or any related legislation or regulations; (b) any sales channels owned or operated by you, Your Items (including the offer, sale, fulfilment, refund, return or adjustments thereof), Your Materials, any actual or alleged infringement of any Intellectual Property Rights by any of the foregoing, and any personal injury, death or property damage related thereto; or (c) Your Taxes. You will use counsel reasonably satisfactory to us to defend each indemnified claim. If at any time we reasonably determine that any indemnified claim might adversely affect us, we may take control of the defence at our expense. You may not consent to the entry of any judgment or enter into any settlement of a claim without our prior written consent, which may not be unreasonably withheld.

## 7. Disclaimer & General Release.

The TGCL Site and the services, including all content, software, functions, materials and information made available on or provided in connection with the services, are provided "as-is." As a user of the services, you use the TGCL Site and the Services and the TGCL Partner Site at your own risk. To the fullest extent permissible by law, we and our Affiliates waive and disclaim: (1) any representations or

warranties regarding this agreement, the services or the transactions contemplated hereby, including any implied warranties of merchantability, fitness for a particular purpose or non-infringement; (2) implied warranties arising out of course of dealing, course of performance or usage of trade; and (3) any obligation, liability, right, claim or remedy in tort, whether or not arising from our negligence. We do not warrant that the functions contained in the TGCL Site and the Services will meet your requirements or be available, timely, secure, uninterrupted or error free, and we will not be liable for any service interruptions, including, but not limited to system failures or other interruptions that may affect the receipt, processing, acceptance, completion or settlement of any transactions.

Because TGCL is not involved in transactions between customers and sellers or other participant dealings, if a dispute arises between one or more participants, each of you release TGCL (and its agents and employees) from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

## 8. Limitation of Liability.

We will not be liable (whether in contract, warranty, tort (including negligence, item liability or other theory) or otherwise) to you or any other person for cost of cover, recovery or recoupment of any investment made by you or your Affiliates in connection with this agreement, or for any loss of profit, revenue, business, or data or punitive or consequential damages arising out of or relating to this agreement, even if TGCL has been advised of the possibility of such costs or damages. Further, our aggregate liability arising out of or in connection with this agreement or the transactions contemplated will not exceed at any time the total amounts during the prior six month period paid by you to TGCL in connection with the particular service giving rise to the claim.

You will take all reasonable steps to meet your obligations under legislation relating to the protection of information. You will indemnify us for liability for any loss or damage resulting from a breach by you (or your agents, associates or Affiliates) of your obligations under the Privacy Act 1993 or any other legislation governing the treatment of Personal Information, including the Education Act 2006.

## 9. Insurance.

You will keep and maintain an insurance policy covering public liability of no less than NZD \$200,000.00 and upon request by TGCL, supply a copy of the insurance policy and any evidence of its currency to TGCL.

## 10. Tax Matters.

As between the parties, you will be responsible for the collection and payment of any and all of Your Taxes, except to the extent TGCL expressly agrees to collect taxes or other transaction-based charges in connection with a collection service made available by TGCL and used by you. You agree to and will comply with the Tax Policies and the representations contained therein.



## 11. Confidentiality.

During the course of your use of the Services, you may receive information relating to us or to the Services including, but not limited to TGCL Transaction Information, that is not known to the general public ("Confidential Information"). You agree that: (a) all Confidential Information will remain TGCL's exclusive property; (b) you will use Confidential Information only as is reasonably necessary for your participation in the Services; (c) you will not otherwise disclose Confidential Information to any individual, company, or other third party, and (d) you will take all reasonable measures to protect the Confidential Information against any use or disclosure that is not expressly permitted in this Agreement.

You may not issue any press release or make any public statement related to the Services, or use our name, trademarks or logo, in any way (including in promotional material) without our advance written permission, or misrepresent or embellish the relationship between us in any way.

## 12. Force Majeure.

We will not be liable for any delay or failure to perform any of our obligations under this Agreement by reasons, events or other matters beyond our reasonable control.

## 13. Relationship of Parties.

You and we are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. You will have no authority to make or accept any offers or representations on our behalf. You will not make any statement, whether on your site or otherwise, that would contradict anything in this section. This Agreement will not create an exclusive relationship between you and us. Nothing expressed or mentioned in or implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy, or claim under or in respect to this Agreement. This Agreement and all of the representations, warranties, covenants, conditions, and provisions hereof are intended to be and are for the sole and exclusive benefit of TGCL, you, and relying customers or sellers. As between you and us, you will be solely responsible for all obligations associated with the use of any third party service or feature that you permit us to use on your behalf, including compliance with any applicable terms of use.

## 14. Use of TGCL Transaction Information.

You will not, and will cause your Affiliates not to, directly or indirectly: (a) disclose or convey any TGCL Transaction Information (except you may disclose this information as necessary for you to perform your obligations under this Agreement and provided that you ensure that every recipient

uses the information only for that purpose and complies with the restrictions applicable to you related to that information); (b) use any TGCL Transaction Information for any marketing or promotional purposes whatsoever, or otherwise in any way inconsistent with our or your privacy policies or applicable Law; (c) contact a Person that has ordered Your Item that has not yet been delivered with the intent to collect any amounts in connection therewith or to influence such Person to make an alternative purchase; (d) disparage us, our Affiliates, or any of their or our respective products or services. The terms of this Clause 14 do not prevent you from using other information that you acquire without reference to TGCL Transaction Information for any purpose, even if such information is identical to TGCL Transaction Information.

## 15. Suggestions and Other Information.

If you or any of your Affiliates elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to us in connection with or related to the TGCL Site or Services (including any related Technology), we will be free to use, disclose, reproduce, modify, license, transfer and otherwise distribute, and exploit any of the foregoing information or materials in any manner. In order to cooperate with governmental requests, to protect our systems and customers, or to ensure the integrity and operation of our business and systems, we may access and disclose any information we consider necessary or appropriate, including but not limited to user contact details, IP addresses and traffic information, usage history and posted content.

## 16. Modification.

We may amend any of the terms and conditions contained in this Agreement at any time and at our sole discretion. Any changes will be effective upon the posting of such changes on The TGCL Partner Site, and you are responsible for reviewing these locations and informing yourself of all applicable changes or notices. All notice of changes to the Agreement will be posted for at least 30 days. YOUR CONTINUED USE OF A SERVICE AFTER TGCL'S POSTING OF ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS. IF YOU DO NOT AGREE TO ANY CHANGES TO THIS AGREEMENT, YOU MUST TERMINATE THIS AGREEMENT AS PROVIDED ABOVE.

## 17. Password Security.

Any password we provide to you may be used only during the Term to access The TGCL website (including the TGCL Partner Site or other tools we provide) to use the Service, electronically accept Your Transactions, and review your completed transactions. You are solely responsible for maintaining the security of your password. You may not disclose your password to any third party (other than third parties authorized by you to use your account in accordance with this Agreement) and are solely responsible for any use of or action taken under your password. If your password is compromised, you must immediately change your password.

## 18. Miscellaneous.

Failure by the parties to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations it has under this contract.

This Agreement shall be governed by and interpreted in accordance with the laws of New Zealand. The Courts of New Zealand have jurisdiction to hear any dispute in connection with this Agreement.

This Agreement together with the Service Terms contains the entire Agreement and undertaking between the parties and supersedes all prior discussions, representations, understandings and Agreements whether oral or in writing.

If any provision of this Agreement shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Subject to that restriction, this Agreement will be binding on, inure to, and be enforceable against the parties and their respective successors and assigns. We may perform any of our obligations or exercise any of our rights under this Agreement through one or more of our Affiliates.

TGCL retains the right to immediately halt any transaction, prevent or restrict access to the Services or take any other action to restrict access to or availability of any inaccurate listing, any inappropriately categorized items, any unlawful items, or any items otherwise prohibited by the applicable Program Policies.

Because TGCL is not the agent of either you or the customer for any purpose, TGCL will not act as either party's agent in connection with resolving any disputes between participants related to or arising out of any transaction.

We will send all notices and other communications regarding this Agreement to you at the e-mail addresses you designated for notifications and updates in your program application or within The TGCL Partner Site, or by any other means then specified by TGCL. You may change your e-mail addresses by notifying TGCL. You will update your e-mail addresses (as well as your legal name, address and phone number) as often as necessary to ensure that they are accurate. You must send all notices and other communications relating to TGCL to [helpdesk@thegrowthcollective.co.nz](mailto:helpdesk@thegrowthcollective.co.nz).

## Kindo Terms of Service

Kindo provides access to and use of an e-commerce website, mobile applications & partner website through which you can set up, offer and sell Your Items (a "**Kindo Site**") to Account Holders and, where you are a school, you can determine which menu categories are offered to Account Holders subscribed to your organisation from external suppliers.

These Kindo Service Terms are part of the TGCL Services Business Solutions Agreement ("**Business Solutions Agreement**"), and, unless specifically provided otherwise, concern and apply only to your participation in the Kindo service. **BY REGISTERING FOR OR USING THE KINDO SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE BUSINESS SOLUTIONS AGREEMENT AND THESE KINDO SERVICE TERMS.** Unless defined in these Kindo Service Terms (including the Kindo Definitions), all capitalized terms have the meanings given them in the Business Solutions Agreement.

### 1. Listing and Promotion.

Each sale of Your Items through your Kindo Site is a sale by you. You will determine what is available for sale on your Kindo Site, subject to paragraph 2 of this clause.

The school has the right to determine which menu categories, if any, it will assign into which Services and as such will determine: (a) the arrangement and structure of the Services and Menu Categories presented to Account Holders; (b) whether a menu category (and Your Items) is made available for Account Holders to purchase at the school.

The school may opt out of managing the Services, where they are not also a Supplier, thereby granting rights for Service management to the Supplier to determine. In this case, the Supplier or TGCL will manage the Services. The Supplier must have proof available of the school agreement to opt out. The school may revoke such arrangement at any time, including determining that the Service will no longer be made available to their Members in its entirety and/or initiating alternative suppliers at its own arrangement.

### 2. Information.

You will provide, via the TGCL Partner Site or otherwise as requested, accurate and complete Kindo Required Item Information and all other information requested by us to process payments for you and to otherwise operate your Kindo Site. You will update such information as necessary to ensure it at all times remains accurate and complete. If you provide us with any images of Your Item, you will, unless we otherwise agree, first remove any logos, text or other marking included on the image except for any logos, text or other marking that actually appears on the item. We will make available certain information and reports relating to Your Transactions as we determine and have no obligation to make available any other information.

Where you are not a school, you will arrange with the school for permission to use their logo and school name as part of your Kindo Site and provide this to TGCL along with a reasonable quality

image of such. You will provide TGCL with contact details for the school such that TGCL can work with them to set up the link to your Kindo Site and provide technical assistance to the school for setting up the Service and any other communications as we find necessary.

### 3. Your Item Transactions.

**3.1 General; Sale and Fulfilment.** You will be solely responsible for, and bear all risk and liability for, sourcing, storing, selling, fulfilling, and delivering all of Your Items. As such, you are responsible for any non-conformity or defects in, damage to, or theft of or claims regarding the delivery or non-delivery of Your Items. You will handle such responsibilities, and agree to complete transactions for the items that you have listed in accordance with these Kindo Service Terms. You will not send Account Holders emails confirming orders of Your Items. All sales of Your Items on or through the Kindo Site will be final and may not be cancelled or revoked by you except pursuant to the applicable terms and conditions that appear on the Kindo Site.

**3.2 Order and Payment Processing.** We will process all payments, refunds and adjustments for Your Transactions. TGCL's, or one of its Affiliates' or brands, name will appear on the Account Holder's credit card statement. We will determine the time at which we process payments, refunds and adjustments for Your Transactions in our sole discretion. However, you are always the seller of record. We are acting on your behalf only to process payments, refunds and adjustments for Your Transactions. We may withhold for investigation, or refuse to process, any of Your Transactions. We may also restrict destinations to which you may ship Your Items sold on or through the Kindo Site. We do not need to accept any particular form of order or payment for Your Item, or honour or accept any discounts, coupons, gift certificates, or other offers or incentives made available by you. We may in our sole discretion withhold for investigation and/or to refuse to process any transaction involving Your Items or any other items or services on or through the Kindo Site. We may use the services of one or more third party, processors or financial institutions in connection with the Kindo service (each, a "Processor").

**3.3 Fraud and Order Stops/Cancellations.** We will bear the risk of credit card fraud (i.e. fraudulent purchases arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your Transactions, except with respect to Your Transactions that you do not fulfil in accordance with the Order Information made available to you by us (including shipping Your Item only to the recipient and at the shipping address specified in the Order Information made available by TGCL), and you will bear all other risk of fraud or loss. You will promptly inform us of any changes to the item mix of Your Items or any pattern of fraudulent or other improper activities with respect to any of Your Item(s) that has resulted or may result in a higher incidence of fraud or other impropriety associated with transactions involving it (or them) than other similar items. You will stop and/or cancel orders of Your Items if we so direct (and if the Account Holder has already been charged for such orders, you will execute refunds therefor) and will provide to us telephone and email contact information for a designated contact available during business hours whom we can contact regarding fraud, order stops and cancellations and similar concerns, who will cooperate with us and who has access and ability promptly to cancel or stop orders from being shipped.

**3.4 Refunds and Returns.** You will accept and process returns of, and (using the functionality we make available to you) provide refunds and adjustments for, Your Items in accordance with these Kindo Service Terms and your policies posted on the Kindo Site at the time of the applicable sale, and you will calculate and refund any associated taxes required to be refunded. You will route all refund (and adjustment) payments through TGCL or its designated Affiliate. TGCL or its designated Affiliate will credit the applicable Account Holder account, and you will reimburse TGCL for all amounts so credited. The functionality we make available to you for processing returns and adjustments may be modified or discontinued by us at any time without notice and is subject to the terms of this Business Solutions Agreement. We have no obligation to accept any returns of any of Your Items.

**3.5 Delivery Errors and Nonconformities; Item Recalls.** You are responsible for any non-delivery, misdelivery, theft or other mistake or act in connection with the fulfilment and delivery of Your Items, except to the extent caused by (a) credit card fraud for which we are responsible under Clause 3.3; or (b) our failure to make available to you Order Information as it was received by us. You are also responsible for any non-conformity or defect in, or any public or private recall of, any of Your Items. You will notify us promptly as soon as you have knowledge of any public or private recalls of Your Items.

## 4. Customer Service.

**4.1 General.** You will refer Account Holder issues to us according to the responsibilities below, in a timely, professional and courteous manner and at the applicable "Contact Us" form, email address and/or phone number provided for such purpose by us. You will not phone or forward Account Holder emails to us, or disclose our customer service contact information unless in response to a customer service issue for which we are responsible under these Kindo Service Terms.

**4.2 Our Customer Service Responsibilities.** As between you and us, we will be solely responsible for all customer service issues relating to payment, credit card processing, debiting or crediting, or functional issues with the use of the website.

**4.3 Your Customer Service Responsibilities.** Unless provided otherwise elsewhere in these Kindo Service Terms, you will be solely responsible for all customer service issues relating to Your Items (including pricing, rebates, item information, availability, technical support, functionality and warranty), order fulfilment and shipping and handling, order cancellation by you or any Account Holder, returns, refunds and adjustments, and feedback concerning experiences with your personnel, policies or processes. In performing customer service, you will always present yourself as a separate entity from us.

## 5. Data and Communications.

We and you will hold Customer Account Information and Kindo Transaction Information. Neither you nor we will need to pay any royalties or account to the other in connection with your or our use of any Customer Account Information or Kindo Transaction Information.

You and your Affiliates will: (a) at all times comply with all Laws, including any Law related to the use of this type of information, in particular the Privacy Act 2020; and (b) comply with any applicable policies posted on the Kindo Site regarding use of this transaction and Account Holder data.

We will take all reasonable steps to protect Personal Information in line with our obligations under the Privacy Act. However, we will not be liable for the protection or privacy of electronic mail or other information transferred through the Internet or any other network that you or your Account Holders may utilize, including without limitation in connection with the provision of the Kindo Service; or the back up of any of your files or data.

## 6. Pricing and Remittance.

6.1 **Your Item Pricing and Terms of Sale Generally.** You are free to determine the price for each of Your Items listed for sale on your Kindo Site. Your Item pricing will include GST and any fees.

6.2 **Shipping & Handling Charges.** There is currently no facility for shipping and handling charges on the Kindo Site, therefore your Item pricing should include any such amount as you determine necessary to cover these costs.

### 6.3 Remittance and our Fees

#### *6.3.1 Fees.*

6.3.1.1 You will pay us applicable Kindo service fees. With respect to each of Your Transactions the Kindo service fees are calculated as *Sales Proceeds x Kindo Service Fee* percentage as specified on the Kindo Fee Schedule at the time of Your Transaction, plus GST.

"Sales Proceeds" has the meaning set out in the General Terms of the Business Solutions Agreement.

6.3.1.2 You will pay us applicable Supplier Monthly Fees as agreed at the time of activation or advised at a later date. This fee will be invoiced on the first day of each month for service access for that month and is due for payment within 7 days. It will continue to be invoiced so long as the account remains activated. Deactivation will remove all listings from the following day and no further monthly fees will be invoiced until reactivated. Activation will restart listings and generate a part month invoice for those days remaining in a month, followed by monthly bills on the first day of each month.

6.3.1.3 A one-off Setup fee may apply as agreed at the time of activation.

6.3.1.4 A Technical Assistance fee may be calculated at the published hourly rate for time spent assisting you, such as setting up menus, additional training and other such assistance.

#### *6.3.2 Remittance of Sales Proceeds.*

We will remit to Your Bank Account on a weekly (7-day) basis any Kindo Sales Proceeds collected by us but not previously remitted to you as of midnight Thursday or, in the case of same day food services, 10.30am Friday, less the Kindo service fees due for such sums. You will accept our remittances under the previous sentence as payment in full for the sale and shipping and handling of Your Items.

Daily remittances may be made available at the sole discretion of TGCL. Daily remittances will include Kindo Sales Proceeds collected by us but not previously remitted to you as of midnight

just passed, less the Kindo service fees due for such sums. The exception to this is in the weekend, where a remittance on Monday will include Thursday midnight to Sunday midnight.

### *6.3.3 Refunds.*

If you refund money to an Account Holder in connection with Your Transaction, and the refund is routed through us, we will remit any amounts to be refunded by us under this subsection with the next remittance made by us to you pursuant to Clause 6.3.2 above. If the remittance is not enough to cover the refund, you will make a payment to us to cover the shortfall. The Kindo service fee paid by you to us attributable to the amount of the Account Holder refund will not be refunded.

## 7. Provision and Use of the Kindo Service.

**7.1 Control of the Kindo Service.** We reserve the right to determine and control all aspects (including all functionality) of the Kindo service and the TGCL Materials as well as the right to re-design, modify and remove any or all aspects of them.

**7.2 License to the Kindo Service and TGCL Materials.** Subject to this Agreement (including, but not limited to, Clause 7.3 (License Restrictions)), we grant you a limited, revocable, non-sublicenseable, non-assignable, non-exclusive and royalty-free license to: (a) access and use the Kindo service and the TGCL Materials in the manner permitted by this Agreement; (b) install, copy, and use any TGCL Materials we may provide, solely in conjunction with your access to and use and operation of your Kindo Site; and (c) enable the access to and use of your Kindo Site by Account Holders, via the school website.

**7.3 License Restrictions.** You may not and may not authorize any other party to do the following to or with the Kindo Service, the Kindo Site or the TGCL Materials: (a) reverse engineer, decompile, or disassemble them; (b) modify or create derivative works based upon them in whole or in part; (c) distribute copies of them; (d) remove any proprietary notices or labels on them; (e) use any Public Software in any manner that requires, pursuant to the license applicable to such Public Software, that the Kindo service or any TGCL Materials be disclosed, licensed, distributed or otherwise made available to anyone; or (f) resell, lease, rent, transfer, sublicense, or otherwise transfer rights to them. In addition to any other rights or remedies that we may have, any use in violation of this section will immediately terminate your right to use the Kindo Service, the Kindo Site and the TGCL Materials.

**7.4 Ownership; Reservation of Rights.** You acknowledge and agree that we (or our licensors, as applicable) own all right, title and interest in and to the Kindo Service, the TGCL Materials, and TGCL Trademarks, and, except as explicitly included in this Agreement, you do not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in or to the Kindo Service, the TGCL Materials, any TGCL Trademarks, or any other intellectual property or technology that we provide or use in connection with the Kindo Service. All licenses not expressly granted in these Kindo service Terms are reserved and no other licenses, immunity or rights, express or implied are granted by us, by implication, estoppels or otherwise.

**7.5 URLs.** We will provide you with an URL for the School to use to provide connection through the school website to your Kindo site. The School must use one of the methods in the documentation



provided to you for this purpose, including the exact code provided in that documentation, unless it has been expressly agreed between TGCL and the School that alternative code may be used. It is your responsibility, as a Supplier to the School to ensure that the link to the URL is functional and working correctly.

The Partner site URL is <https://partner.tgcl.co.nz>.

The myKindo site URL (login page) is <https://shop.tgcl.co.nz> or [mykindo.co.nz](https://mykindo.co.nz)

**7.6 Messaging.** We will have the right to determine the use of any TGCL Trademarks and any messaging or notice on the Kindo site, for example, we will control how our role in processing orders and payments is explained to the Account Holder. The Kindo site will also display privacy and Account Holder account use and creation messaging, which will include any terms we may require. At a minimum, you will ensure that your privacy policy discloses that you use third party service providers to provide your Kindo Site and that your third party service providers will have access to Account Holder information. Should we allow or require you to include any TGCL Trademarks or messaging, you will do so strictly in accordance with instructions we provide to you.

## 8. Termination.

Your termination rights are set out in Clause 3 of the General Terms of the Business Solutions Agreement. Upon any termination of the term of the Business Solutions Agreement or these Kindo Service Terms, all rights and obligations of the parties under these Kindo Service Terms will terminate, except that: the rights and obligations of the parties under Clauses 2, 3, 4, 5, 6 and 8 with respect to Your Transactions occurring prior to termination will survive such termination.

Account Holder balances that are unused at the time of termination, remain the property of the Account Holder. Where you were the sole supplier to the Account Holder using the Kindo Site, and there is no replacement supplier, Account Holders will be contacted upon termination to determine how said balances are to be refunded by TGCL. Neither the Supplier nor the School has any rights or ownership of the monies retained on the Account Holders' account once all orders, fulfilment and refunds have been settled.

## 9. Miscellaneous.

**Your Representations; Compliance with Laws.** In addition to your representation and warranties in Section 5 of the Business Solutions Agreement, you hereby represent and warrant to us that: (a) all of Your Items and their packaging comply and will comply with all applicable marking and labelling requirements required by law; (b) none of Your Items are or will be produced or manufactured, in whole or in part, by child labour or forced labour; (c) you and all of your subcontractors, agents and suppliers involved in producing or delivering Your Items will strictly adhere to all applicable New Zealand and all other countries laws where Your Items are produced or delivered, regarding the operation of their facilities and their business and labour practices, including without limitation working conditions, wages, hours and minimum ages of workers; (d) you will not, unless we

otherwise agree, redirect any Account Holders or prospective Account Holders from the Kindo Site into any other sales channel, and will not use the Kindo service for any purpose other than the offering or sale of Your Items as contemplated hereunder; (e) Your Materials, Your Items and your offer and subsequent sale of any of the same complies with all applicable Laws (including all marking and labelling requirements) and do not contain any defamatory, obscene or sexually explicit materials; (f) in connection with the Kindo service or your Kindo site, you will not separately ask for or require any Account Holders or prospective Account Holders to provide any credit card, debit card, bank account, or other information related to a payment method.

## e-Store Terms of Service

TGCL e-store provides access to and use of an e-commerce website, mobile applications & partner website through which you can set up, offer and sell Your Items to Account Holders.

These TGCL e-store Service Terms are part of the TGCL Business Solutions Agreement ("Business Solutions Agreement"), and, unless specifically provided otherwise, concern and apply only to your participation in the TGCL e-store service. BY REGISTERING FOR OR USING THE TGCL E-STORE SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE BUSINESS SOLUTIONS AGREEMENT AND THESE TGCL E-STORE SERVICE TERMS. Unless defined in these TGCL e-store Service Terms (including the TGCL e-store Definitions), all capitalized terms have the meanings given them in the Business Solutions Agreement and the TGCL e-store Service Terms.

### 1. Listing and Promotion.

Each sale of Your Items through your TGCL Site is a sale by you. You will determine what is available for sale on your TGCL Site.

### 2. Information.

You will provide, via the TGCL Partner Site or otherwise as requested, accurate and complete TGCL e-store Required Item Information and all other information requested by us to process payments for you and to otherwise operate your TGCL Site. You will update such information as necessary to ensure it at all times remains accurate and complete. If you provide us with any images of Your Item, you will, unless we otherwise agree, first remove any logos, text or other marking included on the image except for any logos, text or other marking that actually appears on the item. We will make available certain information and reports relating to Your Transactions as we determine and have no obligation to make available any other information.

### 3. Your Item Transactions.

**3.1 General; Sale and Fulfilment.** You will be solely responsible for, and bear all risk and liability for, sourcing, storing, selling, fulfilling, and delivering all of Your Items. As such, you are responsible for any non-conformity or defects in, damage to, or theft of or claims regarding the delivery or non-delivery of Your Items. You will handle such responsibilities, and agree to complete transactions for the items that you have listed in accordance with these TGCL e-store Service Terms. You will not send Account Holders emails confirming orders of Your Items. All sales of Your Items on or through the TGCL Site will be final and may not be cancelled or revoked by you except pursuant to the applicable terms and conditions that appear on the TGCL Site. It is your responsibility to arrange access and meet any relevant security requirements to enable you to deliver Your Items to Account Holders.

**3.2 Order and Payment Processing.** We will process all payments, refunds and adjustments for Your Transactions. TGCL's, or one of its Affiliates', name will appear on the Account Holder's credit card statement (which may also display, at our option, your name). We will determine the time at which we process payments, refunds and adjustments for Your Transactions in our sole discretion. However, you are always the seller of record. We are acting on your behalf only to process payments, refunds and adjustments for Your Transactions. We may withhold for investigation, or refuse to

process, any of Your Transactions. We may also restrict destinations to which you may ship Your Items sold on or through the TGCL Site. We do not need to accept any particular form of order or payment for Your Item, or honour or accept any discounts, coupons, gift certificates, or other offers or incentives made available by you. We may in our sole discretion withhold for investigation and/or to refuse to process any transaction involving Your Items or any other items or services on or through the TGCL Site. We may use the services of one or more third party, processors or financial institutions in connection with the TGCL e-store Service (each, a "Processor").

**3.3 Fraud and Order Stops/Cancellations.** We will bear the risk of credit card fraud (i.e. fraudulent purchases arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your Transactions, except with respect to Your Transactions that you do not fulfil in accordance with the Order Information made available to you by us (including shipping Your Item only to the recipient and at the shipping address specified in the Order Information made available by TGCL), and you will bear all other risk of fraud or loss. You will promptly inform us of any changes to the item mix of Your Items or any pattern of fraudulent or other improper activities with respect to any of Your Item(s) that has resulted or may result in a higher incidence of fraud or other impropriety associated with transactions involving it (or them) than other similar items. You will stop and/or cancel orders of Your Items if we so direct (and if the Account Holder has already been charged for such orders, you will execute refunds therefor) and will provide to us telephone and email contact information for a designated contact available during business hours whom we can contact regarding fraud, order stops and cancellations and similar concerns, who will cooperate with us and who has access and ability promptly to cancel or stop orders from being shipped.

**3.4 Refunds and Returns.** You will accept and process returns of, and (using the functionality we make available to you) provide refunds and adjustments for, Your Items in accordance with these TGCL e-store Service Terms and your policies posted on the TGCL Site at the time of the applicable sale, and you will calculate and refund any associated taxes required to be refunded. You will route all refund (and adjustment) payments through TGCL or its designated Affiliate. TGCL or its designated Affiliate will credit the applicable Account Holders account, and you will reimburse TGCL for all amounts so credited. The functionality we make available to you for processing returns and adjustments may be modified or discontinued by us at any time without notice and is subject to the terms of this Business Solutions Agreement. We have no obligation to accept any returns of any of Your Items.

**3.5 Delivery Errors and Nonconformities; Item Recalls.** You are responsible for any non-delivery, misdelivery, theft or other mistake or act in connection with the fulfilment and delivery of Your Items, except to the extent caused by (a) credit card fraud for which we are responsible under Clause 3.3; or (b) our failure to make available to you Order Information as it was received by us. You are also responsible for any non-conformity or defect in, or any public or private recall of, any of Your Items. You will notify us promptly as soon as you have knowledge of any public or private recalls of Your Items.

## 4. Customer Service.

**4.1 General.** You will refer Account Holder issues to us according to the responsibilities below, in a timely, professional and courteous manner and at the applicable "Contact Us" form, email address and/or phone number provided for such purpose by us. You will not phone or forward Account Holders' emails to us, or disclose our customer service contact information unless in response to a customer service issue for which we are responsible under these TGCL e-store Service Terms.

**4.2 Our Customer Service Responsibilities.** As between you and us, we will be solely responsible for all customer service issues relating to payment, credit card processing, debiting or crediting, or functional issues with the use of the website.

**4.3 Your Customer Service Responsibilities.** Unless provided otherwise elsewhere in these TGCL e-store Service Terms, you will be solely responsible for all customer service issues relating to Your Items (including pricing, rebates, item information, availability, technical support, functionality and warranty), order fulfilment and shipping and handling, order cancellation by you or any Account Holder, returns, refunds and adjustments, and feedback concerning experiences with your personnel, policies or processes. In performing customer service, you will always present yourself as a separate entity from us.

## 5. Data and Communications.

We and you will co-own all the Customer Account Information and TGCL e-store Transaction Information. Neither you nor we will need to pay any royalties or account to the other in connection with your or our use of any Customer Account Information or TGCL e-store Transaction Information. You and your Affiliates will: (a) at all times comply with all Laws, including any Law related to the use of this type of information; and (b) comply with any applicable policies posted on the TGCL Partner Site regarding use of this transaction and Account Holder data. We are not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network you or your Account Holders may utilize, including without limitation in connection with the provision of the TGCL e-store Service; or the back up of any of your files or data.

## 6. Pricing and Remittance.

**6.1 Your Item Pricing and Terms of Sale Generally.** You are free to determine the price for each of Your Items listed for sale on your TGCL Site. Your item pricing will include GST and any fees.

**6.2 Shipping & Handling Charges.** There is currently no facility for shipping and handling charges on the TGCL Site, therefore your item pricing should include any such amount as you determine necessary to cover these costs.

**6.3 Payment of Sale Proceeds and our Fees**

### 6.3.1 Fees.

6.3.1.1 You will pay us applicable Kindo service fees. With respect to each of Your Transactions the Kindo service fees are calculated as *Sales Proceeds x Kindo Service Fee* percentage as specified on the Kindo fee schedule at the time of Your Transaction, plus GST.

"Sales Proceeds" has the meaning set out in the General Terms of the Business Solutions Agreement.

6.3.1.2 You will pay us applicable Supplier Monthly Fees as agreed at the time of activation or advised at a later date. This fee will be invoiced on the first day of each month for service access for that month and is due for payment within 7 days. It will continue to be invoiced so long as the account remains activated. Deactivation will remove all listings from the following day and no further monthly fees will be invoiced until reactivated. Activation will restart listings and generate a part month invoice for those days remaining in a month, followed by monthly bills on the first day of each month.

6.3.1.3 A one-off Setup fee may apply as agreed at the time of activation.

6.3.1.4 A Technical Assistance fee may be calculated at the published hourly rate for time spent assisting you, such as setting up menus, additional training and other such assistance.

### 6.3.2 Remittance of Sales Proceeds.

We will remit to Your Bank Account on a weekly (7-day) basis any TGCL e-store Sales Proceeds collected by us but not previously remitted to you as of midnight Thursday or, in the case of same day food services, midday Friday, less the TGCL e-store Service Fees due for such sums. You will accept our remittances as payment in full for the sale and shipping and handling of Your Items.

Daily remittances may be made available at the sole discretion of TGCL. Daily remittances will include e-store Sales Proceeds collected by us but not previously remitted to you as of midnight just passed, less the e-store Service fees due for such sums. The exception to this is in the weekend, where a remittance on Monday will include Thursday midnight to Sunday midnight.

### 6.3.3 Refunds.

If you refund money to an Account Holder in connection with Your Transaction, and the refund is routed through us, we will remit any amounts to be refunded by us under this subsection with the next remittance made by us to you pursuant to Clause 6.3.2 above. If the remittance is not enough to cover the refund, you will make a payment to us to cover the shortfall. The TGCL e-store Service Fee paid by you to us attributable to the amount of the Account Holder refund will not be refunded.

## 7. Provision and Use of the TGCL e-store Service.

**7.1 Control of the TGCL e-store Service.** We reserve the right to determine and control all aspects (including all functionality) of the TGCL e-store Service and the TGCL Materials as well as the right to re-design, modify and remove any or all aspects of them.

**7.2 License to the TGCL e-store Service and TGCL Materials.** Subject to this Agreement (including, but not limited to, Clause 7.3 (License Restrictions)), we grant you a limited, revocable, non-sublicenseable, non-assignable, non-exclusive and royalty-free license to: (a) access and use the

TGCL e-store Service and the TGCL Materials in the manner permitted by this Agreement; (b) install, copy, and use any TGCL Materials we may provide, solely in conjunction with your access to and use and operation of your TGCL Partner Site & TGCL Site; and (c) enable the access to and use of your TGCL Site by Account Holders via your website.

**7.3 License Restrictions.** You may not authorize any other party to do the following to or with the TGCL e-store Service, the TGCL Partner Site, the TGCL Site or the TGCL Materials: (a) reverse engineer, decompile, or disassemble them; (b) modify or create derivative works based upon them in whole or in part; (c) distribute copies of them; (d) remove any proprietary notices or labels on them; (e) use any Public Software in any manner that requires, pursuant to the license applicable to such Public Software, that the TGCL e-store Service or any TGCL Materials be disclosed, licensed, distributed or otherwise made available to anyone; or (f) resell, lease, rent, transfer, sublicense, or otherwise transfer rights to them. In addition to any other rights or remedies that we may have, any use in violation of this section will immediately terminate your right to use the TGCL e-store Service, the TGCL Partner Site, the TGCL Site and the TGCL Materials.

**7.4 Ownership; Reservation of Rights.** You acknowledge and agree that we (or our licensors, as applicable) own all right, title and interest in and to the TGCL e-store Service, the TGCL Materials, and TGCL Trademarks, and, except as explicitly included in this Agreement, you do not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in or to the TGCL e-store Service, the TGCL Materials, any TGCL Trademarks, or any other intellectual property or technology that we provide or use in connection with the TGCL e-store Service. All licenses not expressly granted in these TGCL e-store Service Terms are reserved and no other licenses, immunity or rights, express or implied are granted by us, by implication, estoppels or otherwise.

**7.5 URLs.** We will provide you with an URL to use to provide connection through your website to your TGCL Site. You must use one of the methods in the documentation provided to you for this purpose, including the exact code provided in that documentation, unless it has been expressly agreed between us that alternative code may be used. It is your responsibility, to ensure that the link to the URL is functional and working correctly.

The TGCL Partner Site URL is <https://partner.tgcl.co.nz>.

**7.6 Messaging.** We will have the right to determine the use of any TGCL Trademarks and any messaging or notice on the TGCL Site, for example, we will control how our role in processing orders and payments is explained to the Account Holder. The TGCL Site will also display privacy and Account Holder account use and creation messaging, which will include any terms we may require. At a minimum, you will ensure that your privacy policy discloses that you use third party service providers to provide your TGCL Site and that your third party service providers will have access to Account Holder information. Should we allow or require you to include any TGCL Trademarks or messaging, you will do so strictly in accordance with instructions we provide to you.

## 8. Termination.

Your termination rights are set out in Clause 3 of the General Terms of the Business Solutions Agreement. Upon any termination of the term of the Business Solutions Agreement or these TGCL e-store Service Terms, all rights and obligations of the parties under these TGCL e-store Service Terms will terminate, except that: the rights and obligations of the parties under Clauses 2, 3, 4, 5, 6 and 8 with respect to Your Transactions occurring prior to termination will survive such termination. Account Holder balances that are unused at the time of termination, remain the property of the Account Holder. Where you were the sole supplier to the Account Holders using the TGCL Site, and the Account Holder is not subscribed to any other TGCL hosted sites, Account Holders will be

contacted upon termination to determine how said balances are to be refunded by TGCL. You do not have any rights or ownership of the monies retained on the Account Holders account once all orders, fulfilment and refunds have been settled.

## 9. Miscellaneous.

**Your Representations; Compliance with Laws.** In addition to your representation and warranties in Clause 5 of the Business Solutions Agreement, you hereby represent and warrant to us that: (a) all of Your Items and their packaging comply and will comply with all applicable marking and labelling requirements required by law; (b) none of Your Items are or will be produced or manufactured, in whole or in part, by child labour or forced labour; (c) you and all of your subcontractors, agents and suppliers involved in producing or delivering Your Items will strictly adhere to all applicable New Zealand and all other countries laws where Your Items are produced or delivered, regarding the operation of their facilities and their business and labour practices, including without limitation working conditions, wages, hours and minimum ages of workers; (d) you will not, unless we otherwise agree, redirect any Account Holders or prospective Account Holders from the TGCL Site into any other sales channel, and will not use the TGCL e-store Service for any purpose other than the offering or sale of Your Items as contemplated hereunder; (e) Your Materials, Your Items and your offer and subsequent sale of any of the same complies with all applicable Laws (including all marking and labelling requirements) and do not contain any defamatory, obscene or sexually explicit materials; (f) in connection with the TGCL e-store Service or your TGCL Site, you will not separately ask for or require any Account Holders or prospective Account Holders to provide any credit card, debit card, bank account, or other information related to a payment method.