



Payout and FX Terms

New Zealand

21 April 2022

PAYOUT AND FX TERMS NEW ZEALAND

1. THESE TERMS

- 1.1. The Airwallex Payout and FX Terms (the '**Agreement**') comprises terms and conditions governing the relationship between you ('**Customer**' or '**you**') and Airwallex (New Zealand) Limited (NZBN 9429048910057) ('**Airwallex**', '**us**' or '**we**') that apply to our Services (which we describe in clauses 5, 8 and 9). Please read this Agreement carefully and contact us if anything is unclear. The Customer and Airwallex will individually be referred to as a **Party**, and collectively, as **Parties**.
- 1.2. The Application Form, as amended by you, is incorporated into and forms part of the Agreement. We will provide you with separate terms and conditions for any services that fall outside the scope of this Agreement.
- 1.3. You should also download a copy of the Agreement and keep it for future reference or ask us for a copy at any time. You can always see the most current version of the Agreement (as well as the documents below), on our website www.airwallex.com.
- 1.4. Please read the following additional documents which also apply to your use of the Airwallex Platform and Services and should be read together with this Agreement:
 - (a) Acceptable Use Policy;
 - (b) Privacy Policy;
 - (c) Electronic Communications Consent;
 - (d) Identity Verification Terms;
 - (e) General Terms;
 - (f) API Documentation; and
 - (g) any other terms referenced in this Agreement.

Unless otherwise specified, the above documents do not form part of this Agreement.

- 1.5. If we need to send you information in a form you can keep, we will either send you an email or provide information on our website or via the Airwallex Platform that you can download. Please keep copies of all communications we send to you.

2. WHO AIRWALLEX IS AND HOW TO CONTACT US

- 2.1. **Our company information.** The Services are offered by Airwallex (New Zealand) Limited (NZBN 9429048910057), which has its registered office at Level 5, 79 Queen Street, Auckland 1010.
- 2.2. **How to contact us.** You can contact us by emailing us at: support@airwallex.com or sending us a message through the contact links on our website at www.airwallex.com.
- 2.3. **How we will contact you.** We will contact you using the contact details you provided when you registered or such other contact details that you provide to us – please keep these up to date. By using our Services you agree to receive electronic communications from us. If we have reasonable concerns either about the security of your Wallet or Global Account, or any suspected or actual fraudulent use of your Wallet or Global Account, we will contact you via telephone, email, or both (unless contacting you would be unlawful or compromise our reasonable security measures).

3. CHANGES TO THIS AGREEMENT

- 3.1. We may change this Agreement (including the Service Fees) by giving you thirty (30) days' prior written notice. We will consider that you have accepted the proposed changes if you do not terminate this Agreement by giving us written notice during the notice period.
- 3.2. We may also make some changes immediately, without prior notice, if they:
 - (a) are required by Applicable Law; or
 - (b) relate to the addition of a new service or extra functionality of our Services and do not affect terms relating to the existing Services.
- 3.3. You should stop using our Services if you do not agree to these changes. If you keep using our Services after we have announced such a change, we will treat you as having accepted the change.
- 3.4. **Updates.** We may issue updates for the Airwallex Platform, including the Airwallex APIs, from time to time. We may need to do this to facilitate the continued and proper operation of the Platform, make improvements to the Platform or to comply with Applicable Law. Some updates may require you to take steps to implement them. You agree to implement such updates as soon as reasonably practicable after receipt. In some cases (for example, if there are security risks), you will not be able to use the Airwallex Platform until you have implemented the update. If you have not implemented an update within six (6) months of us releasing it, we may stop providing some of the Services to you or terminate this Agreement, by giving you two (2) months' prior written notice.

4. CUSTOMER DUE DILIGENCE

- 4.1. To meet our obligations under Applicable Law, before we provide our Services to you and from time to time during our provision of Services to you, we may carry out customer due diligence checks on you, your directors, partners, ultimate beneficial owners, and employees (as relevant), Authorised Users and Additional Cardholders together with any parties involved in your transactions. You must provide us with complete, accurate, and up to date information at all times. You will promptly provide any additional information we require at any time, at the latest within two (2) Business Days of a request from us. You acknowledge that we may not provide you with any of our Services until we have received all the information we require. We will not be responsible for any loss arising out of your failure or delay in providing us with the information we require.
- 4.2. You agree that we may make, directly or using a third party, any inquiries we believe are necessary to verify information you provide to us, including checking commercial databases or credit reports. We may keep records of such customer due diligence checks in accordance with Applicable Law.
- 4.3. You agree that our provision of, and your ability to use, the Services is subject to:
 - (a) successful completion of the initial, and any subsequent, credit evaluations (if applicable); and
 - (b) there being no material changes to your credit status during the term of the Agreement.

5. ABOUT THE SERVICES

- 5.1. **Wallet.** The 'Wallet' enables you to electronically hold, send and receive funds in the form of non-cash payments through the Airwallex Platform. The funds in the Wallet can be in multiple currencies but only in the Supported Currencies that we offer, which may change from time to time. The funds in your Wallet may be used to make Payments or FX Conversions in accordance with this Agreement.
- 5.2. **Global Account.** The Global Account is a currency collection service where Airwallex will provide you with local bank account details in Supported Jurisdictions and Supported Currencies which you can provide to payers. A Global Account may be subject to Additional Terms for a Supported Jurisdiction. Subject to any Additional Terms, such bank account shall be opened in the name of Airwallex and any funds received into such account are received by Airwallex as your limited agent and you hereby appoint Airwallex as your agent for such purposes.
- 5.3. You may request Airwallex to open more than one Global Account for a particular Supported Currency. When you request that we open a Global Account you will be provided with a unique account number. You acknowledge and agree that such account number is for administrative purposes only and does not represent a separate bank account opened in your name.
- 5.4. You acknowledge and agree that the Global Account may be provided through financial institutions in certain Supported Jurisdictions. Where money from a payer is received, it may be initially received into an account with such financial institutions. However, Airwallex will on a regular basis sweep such amounts representing your portion of the balance (or equivalent amount in NZD or another currency on a marked to market bases) into a Segregated Account in accordance with Applicable Law.
- 5.5. **How balances are represented.** The funds collected through a Global Account will be represented in your Wallet as part of the balance in each Supported Currency – there will not be a separate balance shown for funds collected through a Global Account.
- 5.6. **Segregated Account.** Subject to clause 5.4, Airwallex will hold funds reflecting the balance of your Wallet on trust in one or more accounts we hold with a bank (each a '**Segregated Account**'). A Segregated Account may include funds of other Airwallex users but will be held separately from Airwallex's own funds. Airwallex is entitled to keep the interest (if any) earned on these accounts.
- 5.7. The balance of your Wallet:
- (a) will not expire, except when your Wallet is closed – see clause 17 for more details;
 - (b) will not earn any interest or rewards; and
 - (c) can be withdrawn at any time, subject to certain conditions – see clause 9 for more details.
- 5.8. We may place interim or permanent restrictions on your use of the Wallet, a Global Account or any other part of the Services depending on certain regulatory requirements, identity verification checks or business requirements, which will be set out in the Acceptable Use Policy or any Additional Terms. These will be communicated to you at the time the restriction is put in place or, if that is not practical due to urgent or unforeseen circumstances, promptly after the restriction is put in place.
- 5.9. **Supported Currencies.** The Services relate to a range of Supported Currencies. The Supported Currencies may differ depending on the Service. More information about the Supported Currencies for each Service are available on www.airwallex.com or the Airwallex Platform.

- 5.10. **Airwallex Card.** If we have agreed to issue you or any Additional Cardholder with a Card, the terms set out in the Issuing Terms shall apply to the use of any Cards linked to your Wallet in addition to the terms of this Agreement. The terms of the Issuing Terms shall be incorporated and form a part of this Agreement as if set out in this Agreement in full.

6. GETTING STARTED

- 6.1. **Creating your Airwallex Profile.** In order to use our Services, you must apply by providing the necessary information as prompted through the Airwallex Platform to register and create your Airwallex Profile. If required by Airwallex, you must provide your bank account details to be linked to your Airwallex Profile. We will review your application and contact you if we agree to provide you with the Services.
- 6.2. We will only create your Airwallex Profile and allow you to use our Services if we are satisfied with the information you have provided, and we have been able to verify this information. We may refuse a request to create your Airwallex Profile and use our Services in our sole discretion, for example if we reasonably believe you may be in breach of our Acceptable Use Policy or due to regulatory restrictions. You must inform us promptly if any details previously provided as part of your Airwallex Profile changes or is incorrect.
- 6.3. You can only have one Airwallex Profile, unless we agree otherwise in writing. If we discover that you have more than one Airwallex Profile, at our discretion, we may either merge or close any duplicate profiles, or terminate your Services, for example, if we reasonably believe you have opened them in order to bypass any restrictions in the Services.
- 6.4. You confirm you are acting on your own account, not on behalf of any other person or legal entity. Where you are a company, sole trader, partnership or other commercial entity, you confirm the Services are being used in connection with business or commercial purposes and not for personal, domestic or household purposes. If you are entering into this Agreement as trustee of a trust, you must disclose that to us. We will deem any use of the Wallet, including any transfers into and out of the Wallet, to have been carried out by you.
- 6.5. **Creating a Global Account.** Once we have created your Airwallex Profile, you can submit a request to open a Global Account by logging on to the Airwallex Platform and providing the necessary information, including any additional information that we may require from time to time. You may also need to agree to Additional Terms. We will advise you of this requirement, if relevant, when you request to open a Global Account.
- 6.6. **Setting up Airwallex APIs.** You may access the Airwallex Platform through Airwallex APIs as well as the Webapp. However, in order to use our Services through the Airwallex APIs, you must first be approved by us. If you are approved by us, you will need to comply with our API Documentation and reasonable directions regarding the integration and use of the Airwallex APIs.

7. AUTHORISED USER

- 7.1. You may appoint an ‘**Authorised User**’ (for example, any of your directors, officers, employees or professional advisors) to access information about the Services and act on your behalf to enter into and confirm FX Conversions and Payments under this Agreement. You must set up each Authorised User with a User Profile and promptly provide us with the following details of any of your proposed Authorised Users: Customer name, name of Authorised User, Customer address and billing address, phone and email address of Authorised User, and any other contact or identification information of the Authorised User that we may reasonably require. You must inform us promptly if any details previously provided about an Authorised User changes or is incorrect. You will ensure that your Authorised Users comply with this agreement and in respect of your obligations and liabilities

under this Agreement and for such purposes any references to 'you' shall (where the context requires) be read as including your Authorised Users.

7.2. You may setup you Authorised Users to have different levels of authority by following the relevant prompts on the Airwallex Platform.

7.3. You agree that:

- (a) your Authorised Users have the authority to provide instructions to us for the provision of Services on your behalf;
- (b) we may rely on instructions given by the Authorised User, and you will be bound by the actions of your Authorised Users, until you provide us with written notice withdrawing or otherwise varying the authority of an Authorised User;
- (c) we may refuse access to your Authorised User(s) if we are concerned about unauthorised or fraudulent access; and
- (d) you will promptly report to us any infringements or unauthorised access to the Airwallex Platform, including through the Webapp or Airwallex APIs.

8. RECEIVING PAYMENTS & LOADING MONEY INTO THE WALLET

8.1. **Funding your Wallet.** You can load funds to your Wallet by logging in to the Airwallex Platform and following the steps as prompted. You may load funds to the Wallet by way of a bank transfer to Airwallex. We may permit additional methods of receiving or loading money into the Wallet from time to time.

8.2. **Global Account collection.** If we have opened a Global Account for you, you may also receive funds to your Wallet through payer making a payment through the Global Account service in accordance with clause 5 above.

8.3. **We will credit your Wallet when we receive your funds.** When transferring money to your Wallet or to a Global Account, you should ensure that you or any transferee enters the correct bank details and any unique transaction reference number details specified by Airwallex. If you do not provide accurate details, then we may not be able to credit your Wallet and we will not be responsible for any loss you incur as a result. We are not responsible for any funds transferred, and will not record them as available in the Wallet, until we have actually received the funds from you or via a collection through the Global Account. The transfer of funds from you or other payers to your Wallet or a Global Account is a service provided by third parties, and is not part of our Services. We have no control over the time it may take for the transfer of such funds to clear and settle. If you think a mistake has been made, in transferring money to your Wallet or a Global Account, you should promptly contact the third party responsible for the transfer in the first instance. We will use reasonable efforts to cooperate with any such third party in investigating any such mistaken transfer.

8.4. **Reversals.** We may need to reverse a transaction and either deduct funds we have credited to your Wallet, or return funds we have debited from your Wallet, including in the following circumstances:

- (a) the sender, or any relevant payment services provider, reverses a transaction or is likely to reverse a transaction;
- (b) the sender made a transfer to you by mistake or your account has been credited in error;
- (c) you have provided us with incorrect instructions for the transaction;
- (d) we suspect that a transaction is fraudulent, or is in breach of this Agreement, the Acceptable Use Policy or Applicable Law; or
- (e) we exercise our rights under clause 16.

- 8.5. If you do not have enough funds in your Wallet for us to make a deduction, you must reimburse us as soon as possible, as set out in clause 9.20.
- 8.6. Where the original transaction was made through the Card, reversals will be effected in accordance with the Issuing Terms. For other transactions, where we make a reversal, we may choose whether to make the reversal in the currency of the original transaction or in a separate currency, for example, where the original transaction is not in a Supported Currency which can be held in your Wallet, we will generally choose to convert the amount of the reversal into your Base Currency. Where we are required to perform any currency conversions in connection with the reversal of a transaction, we will do this at the prevailing FX Exchange Rate applicable at the time of the reversal or at the original FX Exchange Rate applicable to the transaction, in our discretion.
- 8.7. You must promptly notify Airwallex in writing if you become aware that your Wallet has been credited in error.

9. MAKING PAYMENTS AND FX CONVERSIONS

- 9.1. **Your instructions.** You may instruct us to make a FX Conversion or Payment by providing the necessary details as prompted in the Airwallex Platform.
- 9.2. You should check each instruction carefully to ensure that the details of the instruction are correct including the bank account details of any payee. If you do not provide accurate details, then we may not be able carry out your instructions correctly. In such cases, we will not be liable for any loss you incur, although we will use reasonable efforts to investigate and credit or return incorrect and inaccurately referenced payments into or from your Wallet. You should inform us promptly if you think a mistake has been made in your instructions. However, we may not be able to stop, amend or reverse a transaction undertaken in accordance with your instructions once a Confirmation has been issued.
- 9.3. **Confirmation.** Unless otherwise approved by Airwallex, you must have sufficient funds in your Wallet in the relevant source currency to cover the full amount of any FX Conversion or Payment (including Service Fees) that you wish to make. We may decline your instructions if you do not have enough funds, if you exceed any applicable limits, or in accordance with clause 17. When we are satisfied with your instructions we will issue you with a Confirmation and the amount specified in the Confirmation becomes due and payable to us on the date specified in the Confirmation.
- 9.4. Where there are insufficient funds for one or more FX Conversions and/or Payments at Settlement Cut-Off, Airwallex reserves the right to make the FX Conversion or Payment at its discretion (for example, on a time basis, converting the earliest booked FX Conversion or Payment up to the value of the funds available to Airwallex at the applicable Settlement Date or Payment Date). The remaining booked FX Conversions will be treated as failed transactions, and Airwallex reserves the right to charge relevant break costs and administration fees in accordance with this Agreement.
- 9.5. We may impose daily or periodic limits on the amount of Payments or FX Conversions you may enter into.
- 9.6. **FX Exchange Rate.** You may access the indicative FX Exchange Rate for a FX Conversion through the Airwallex Platform. The indicative FX Exchange Rate will be quoted to you when you instruct us through the Airwallex Platform and the final FX Exchange Rate will be confirmed when we issue a Confirmation. We will ensure, as far as reasonably practicable, that the confirmed FX Exchange Rate reflects the rate quoted to you. The rate may be different as the rate may have changed between the time of your instruction and the time we issue the Confirmation. You agree that changes to exchange rates come into effect immediately without notice.

- 9.7. We may agree to allow you to enter into FX Conversions at an agreed FX Exchange Rate for an agreed period of time ('**Lock FX**'). Where you have requested and we have agreed to provide you with Lock FX, the agreed FX Exchange Rate will apply to all FX Conversions entered into during the period of the Lock FX.
- 9.8. **Settlement requirements.** The issue of a Confirmation means that the FX Conversion or Payment has been created and cannot be cancelled by you. We will deduct the relevant proceeds due and payable in connection with the FX Conversion or Payment from your Wallet on the Settlement Date. You must ensure that there are sufficient funds available in your Wallet by the relevant Settlement Cut-Off time.
- 9.9. If a Settlement Date or Payment Date is not a Business Day or the day is not a day banks are open for business (other than a Saturday, Sunday or public holiday) in the countries of the currencies that are being transacted ('**Local Business Day**'), then the Settlement Date or Payment Date (as applicable) may be adjusted by us to the next day that is both a Business Day and a Local Business Day.
- 9.10. If any other date specified in this clause 9 is not a Business Day, or if we receive your instructions after 5pm on a Business Day, then the date may be adjusted by us to the next day that is a Business Day.
- 9.11. **Execution time.** If you are making a Payment and/or FX Conversion, we will generally remit the Payment and/or effect the FX Conversion on the Payment Date or Settlement Date (as applicable) provided that we have received corresponding payment or funds from you in accordance with clause 9.8.
- 9.12. For a Payment, the methods of crediting the funds may be provided by third parties (for example the bank where the payee has their bank account) and are not part of our Services. We do not have any control over the amount of time it may take for a payee's bank or payment provider to credit funds to the payee, but would generally expect this to take less than five (5) Business Days, unless a longer period is required by Applicable Law.
- 9.13. **Holding Amount.** Airwallex may from time to time require you to pay to it an amount (the '**Holding Amount**') by way of deposit against the potential liabilities you may incur in connection with transactions you enter into with us. Airwallex may at any time in its absolute discretion, by not less than two (2) days' prior notice, require you to make additional payments to Airwallex with such payments forming part of the Holding Amount.
- 9.14. The Holding Amount may be applied to meet any amount you owe to Airwallex in connection with this Agreement (including losses and expenses incurred by Airwallex in connection with the termination and unwinding of a FX Conversion in accordance with clause 9.18).
- 9.15. The Holding Amount may be deducted from the balance of your Wallet or a hold may be placed over a portion of the balance of your Wallet corresponding to the Holding Amount (in which case you will not be able to enter into FX Conversions or Payments using this amount). You acknowledge and agree that you will not be entitled to interest on the Holding Amount and we may retain any interest in connection with the Holding Amount. Airwallex shall return to you any remaining balance of the Holding Amount (less any amounts deducted in accordance with clause 9.14) if you terminate your relationship with us and you do not owe any outstanding obligations to us or at such other time as we may agree in our absolute discretion.
- 9.16. **Failed FX Conversions and Payments.** We may in our sole discretion decide to cancel an FX Conversion or Payment, or delay the Settlement Date of a FX Conversion, or Payment by rolling it over to the next Settlement Date or Payment Date (as applicable), due to reasons outside of our control such as:
- (a) failure of conversion in the sell currency by the Customer to Airwallex on any FX Conversion;

- (b) failure of Payment in the Payment currency by the Customer to Airwallex on any Payment; or
- (c) due to any closure or disruption to the normal operation of banks in the countries of the currencies that are being transacted.

9.17. **Termination of FX Conversion.** We may terminate a FX Conversion at any time:

- (a) if you fail to pay to us any part of the Holding Amount required from you or you communicate an intention not to pay such amount;
- (b) if you communicate an intention not to be bound by the terms of an FX Conversion or to default under the terms of an FX Conversion;
- (c) if you suffer an Insolvency Event or if in our reasonable opinion there is an adverse change in your financial position;
- (d) if you have not made a required payment by the Settlement Cut-Off time;
- (e) if you breach this Agreement (including because you have defaulted on your obligations in connection with any other FX Conversion or Payment) or any Additional Terms; or
- (f) if required by Applicable Law.

9.18. If your FX Conversion is terminated, you must indemnify Airwallex for all losses and expenses incurred by Airwallex in connection with the termination and unwinding of the FX Conversion. Airwallex may require you to compensate it for such losses or expenses by charging you a break cost which reflects Airwallex's genuine and reasonable estimate of its likely losses in connection with the termination and unwinding of a FX Conversion. More information about how break costs are calculated is available from Airwallex on request. In the event that a gain is made by Airwallex in connection with the termination of a FX Conversion, such gain will not be paid to you under any circumstances.

9.19. **Right of rejection.** We reserve the right to withhold, block, suspend, reject or delay any transaction (including remitting funds to you under a FX Conversion) in order to comply with Applicable Law. We may not accept your instructions for a Payment or FX Conversion if:

- (a) no valid exchange rates are available from our correspondent banking partners, liquidity providers, or other financial institutions;
- (b) any relevant anti-money laundering or counter financing of terrorism conversion limits are exceeded; or
- (c) you have not complied with your obligations under this Agreement or any Additional Terms.

9.20. **Obligation to repay.** You cannot have a negative balance in your Wallet. If any transactions or charges (including any chargeback, reversal of a transaction, or deduction of fees) take your Wallet below zero, you must immediately repay the amount owing to us, without requiring notice from us to do so. If you do not, we may suspend use of your Wallet or refuse to provide the Services to you. We may also take reasonable steps to recover any amount owing to us (such as taking legal action or using debt collection services) and charge you for the cost of these services.

9.21. **We can deduct funds from your Wallet if you owe us money, including the Service Fees.** You authorise us to deduct the Service Fees and any other amounts that you owe us from time to time from the funds in your Wallet. If you do not have enough funds in your Wallet to cover these amounts, we will not accept or process your instructions and may refuse to provide the Services to you. We may also, at your cost, take reasonable steps to recover the amount owing (such as taking legal action or using debt collection services).

- 9.22. **Direct debit authorisation.** You may authorise us through the Airwallex Platform to deduct a specified number of funds from your Wallet and to make a Payment, on a one-time or regular basis, to a nominated third party (each such deduction, a **Scheduled Deduction**).
- 9.23. At least three (3) Business Days before we make a Scheduled Deduction at the time that is authorised by you through the Airwallex Platform, you may request via the Airwallex Platform that we stop that Scheduled Deduction.
- 9.24. You may also authorise a third party to provide us with a written direct debit request on your behalf to direct us to make a Scheduled Deduction (a **Third Party Request**). You acknowledge and agree that:
- (a) we may rely on any Third Party Request that may be provided to us by a third party as an instruction by you to carry out a Scheduled Deduction; and
 - (b) you will be bound by the relevant provisions of this Agreement in respect of any Payment that we make pursuant to a Third Party Request.
- 9.25. You also acknowledge and agree that:
- (a) you are responsible for ensuring that you have sufficient funds in your Wallet available to make any Scheduled Deduction on the date(s) specified by you either through the Airwallex Platform or as specified in a Third Party Request; and
 - (b) you are liable for any fees or charges imposed by any third party (for example, interest charges or overdue payment fees) in respect of a Scheduled Deduction, except to the extent that such fees or charges arise as a result of an error or system failure by us. If any fees or charges are imposed on you as a result of our error or system failure, please provide us with a copy of the relevant records, and we will reimburse you for the relevant fees or charges.

10. SAFETY AND SECURITY

- 10.1. **Keep your Wallet safe.** In order to use the Airwallex Platform through the Webapp, you (or your Authorised User) must log in using the unique password and any multiple-factor authentication: for example, we may require your Authorised User to authenticate that they are the Authorised User when logging in to the Airwallex Platform, or for certain transactions made using the Airwallex Platform.
- 10.2. Where you access the Platform through the Airwallex API, you acknowledge and agree that it is your responsibility to ensure the security and integrity of your technical systems and for ensuring that only authorised persons are able to access the Platform (including by imposing log-in and user authentication requirements).
- 10.3. You must and you must ensure that your Authorised Users will:
- (a) store all log-in information and passwords necessary to gain access to the Airwallex Platform (whether through the Webapp or Airwallex API) safely and securely at all times;
 - (b) not disclose such log-in information and passwords to any other person or allow any other person to use their Airwallex Profile or User Profile (as applicable) to access the Airwallex Platform;
 - (c) not use any identifiable numbers or words which can easily be guessed by someone else as a password;
 - (d) contact us immediately in the circumstances specified in clause 10.4.
- 10.4. **Contact us if you suspect your Wallet may be compromised.** You must contact us immediately by email to support@airwallex.com and change your password if you suspect:

- (a) your Wallet, Global Account, or access to the Airwallex Platform (or that of an Authorised User) or other security credentials of you or an Authorised User are stolen, lost, used without your authorisation or otherwise compromised;
 - (b) someone else finds out your or an Authorised User's log-in information and password for the Airwallex Platform; or
 - (c) the security of the method you use to access the Airwallex Platform has otherwise been compromised.
- 10.5. Any undue delay in notifying us may affect the security of your Wallet, Global Account, or access to the Airwallex Platform and result in you being responsible for financial losses. Until you notify us that the security of your access to the Platform has been compromised, Airwallex shall be entitled to assume that any person that accesses the Platform through:
 - (a) the Webapp using your or any Authorised User's login-in details and password; or
 - (b) the Airwallex API,is acting on your behalf and is authorised to provide use with instructions in accordance with this Agreement.
- 10.6. **Check the transactions in your Wallet regularly.** All of your activity is displayed in the Airwallex Platform. You must contact us immediately by email to support@airwallex.com to report any suspected or actual unauthorised transaction or other security concerns regarding the Airwallex Platform. If you do not notify us of any unauthorised, or incorrectly initiated or executed transactions immediately and at the latest within 90 days of the debit date of the transaction, you may lose the right to have the matter corrected or money refunded.
- 10.7. **Unauthorised transactions.** We may be able to refund money you have lost if the transaction is due to our mistake, fraud, or errors with your transaction. We will however not be liable for unauthorised transactions that are caused outside of the direct control of Airwallex. In particular, but without limitation, we are not liable (and you will be solely liable for all losses):
 - (a) if you do not promptly notify us of security issues;
 - (b) you have breached this Agreement or applicable Additional Terms;
 - (c) if we find that you or your Authorised Users, or anyone else acting on your behalf, has acted fraudulently or recklessly (and we will not refund you in any circumstances);
 - (d) if you or any Authorised User has with intent or negligence compromised the security of your Airwallex Profile or User Profile (as applicable) or the Airwallex Platform or failed to comply with your obligations to use them in accordance with this agreement, and to keep all log-in information and passwords confidential and secure;
 - (e) if you gave us incorrect instructions for the Payment (we may however provide you with reasonable assistance to assist you to recover the funds, where possible, in accordance with clause 9.2 but do not guarantee that this would be successful); and
 - (f) in any other circumstance outside of our direct control to the extent permitted by Applicable Law.
- 10.8. Where we refund you for an unauthorised transaction but subsequently find that you did not comply with your obligations under this clause 10, you must reimburse us for the value of the unauthorised transaction.
- 10.9. You acknowledge that:
 - (a) Airwallex will not be responsible for or otherwise guarantee the performance of any transaction you enter into via the Airwallex Platform;

- (b) you must provide or obtain any equipment or telecommunications lines and connections that may be necessary for you to use or connect with the Airwallex Platform;
- (c) certain software and equipment you use may not be capable of supporting certain features of the Airwallex Platform;
- (d) it is your responsibility to configure and update your information technology, software and equipment in order to access the Services or the Airwallex Platform;
- (e) you will be liable for all costs, charges, claims, damages, fees, disbursements, losses, expenses, fines, and liability incurred by Airwallex arising out of:
 - (i) (where applicable) your incorrect instructions, overpayment, payment error, or other invalid payment you cause;
 - (ii) any error, default, negligence, misconduct, or fraud by you, your employees, directors, officers, or representatives, or anyone acting on your behalf; and
 - (iii) any costs, charges, claims, damages, fees, disbursements, losses, expenses, fines and liability incurred by Airwallex in respect of a failure by you to comply with this Agreement.

11. SERVICE FEES

- 11.1. You will pay us the Service Fees for the Services, which are set out in the fees table available on www.airwallex.com (which forms part of this Agreement) or as otherwise agreed in writing with us. Unless we agree otherwise in writing, we may revise the Service Fees in accordance with clause 3.
- 11.2. **Tax.** All amounts payable to us under the Agreement:
 - (a) are exclusive of all taxes and similar fees now in force or enacted in the future, all of which you will be responsible for and will pay in full;
 - (b) will be paid in full without any set-off, counterclaim, deduction or withholding unless prohibited by Applicable Law. If the Customer is obliged by Applicable Law to deduct withholding tax from any payment:
 - (i) it will promptly notify Airwallex of the requirement;
 - (ii) the Parties will make all necessary filings in order to ensure the provisions of any applicable tax treaty applies to the payment;
 - (iii) the Customer will pay to Airwallex such additional amount as will result in the receipt by Airwallex of the full amount which would otherwise have been receivable had no withholding or deduction been payable;
 - (iv) the Customer will pay to the relevant authorities the full amount required to be deducted or withheld when due; and
 - (v) the Customer will promptly forward to Airwallex an official receipt (or a certified copy), or other documentation reasonably acceptable to Airwallex, evidencing payment to such authorities.
- 11.3. **Security.** We may, at any time, require that you procure, within thirty (30) days (or such longer period as we may determine is reasonable) after receiving our written request, a guarantee, indemnity or other security (including the replacement of any existing security) in such form and over such assets as we may reasonably require to secure to our reasonable satisfaction the performance of your obligations (including contingent or potential obligations) from time to time under this agreement.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. **Licence.** We grant you a personal, revocable, non-transferable, non-sublicensable and non-exclusive licence to access and use the Airwallex Platform via any supported web browser for the management of our Services provided you comply with this Agreement.
- 12.2. **Ownership.** We own all Intellectual Property Rights in and to the Airwallex Platform and its proprietary technology, including its software (in source and object forms), algorithms, user interface designs, architecture, and documentation (both printed and electronic), and network designs, and including any modifications, improvements, and derivative work thereof. This Agreement does not transfer from Airwallex to the Customer any ownership rights in the Airwallex Platform, and its proprietary technology.
- 12.3. **Restriction on use.** You do not have any right to our Services, including the Airwallex Platform, other than the right to use them in accordance with the licence granted in clause 12.1. Except as allowed by law or by Airwallex, you cannot use, distribute, reproduce, modify, copy, adapt, translate, create derivative works from, transfer, loan, rent, sublicense, sell, frame or otherwise re-publish or redistribute, publicly perform or publicly display any part of our Airwallex Platform, Services, or included software. You will not allow any unauthorised person to access or use the Airwallex Platform, or trade on the Airwallex Platform for speculative purposes. You also cannot reverse engineer, decompile, disassemble or attempt to extract the source code of the Airwallex Platform or software.
- 12.4. **Customer Data.** You grant Airwallex a royalty-free, non-exclusive, irrevocable, transferable and sub-licensable to any Group Company, third party supplier and outsourcer, licence to use your customer data including any proprietary business information, as well as details of your transactions transmitted via the Airwallex Platform ('**Customer Data**'), for the purposes of operating the Airwallex Platform, providing the Services, and fulfilling Airwallex's rights and discharging its obligations under this Agreement. You are solely responsible for the quality, accuracy, and completeness of any Customer Data transmitted via the Airwallex Platform.
- 12.5. **Other people's rights.** You cannot use our Services, including the Airwallex Platform, in any way that infringes or violates our or anyone else's copyright, trade mark or other intellectual property rights or otherwise breaks any Applicable Law. The Airwallex Platform may display content that we do not own and we are not responsible for. You may not use content from any of our Services, including the Airwallex Platform, unless you get permission beforehand from us or the owner of the content, or you are permitted by law.
- 12.6. **Airwallex compensation.** If a third party alleges that authorised use of the Airwallex Platform as permitted by this Agreement infringes any Intellectual Property Rights then Airwallex will:
- (a) at its own expense defend you or, at Airwallex's option, settle any claim or action brought against you ('Claim') and will be responsible for any reasonable losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against you as a result of or in connection with any such Claim, and clauses 16.3 to 16.4 will apply accordingly; and
 - (b) if the quiet enjoyment of the Airwallex Platform is prevented as soon as reasonably practicable secure the right for you to continue using the Airwallex Platform or replace or modify the Airwallex Platform to make it non-infringing (without degrading its performance or quality)
- 12.7. Clause 12.6 will not apply where the Claim is attributable to:
- (a) any Customer Data;
 - (b) any modification of the Airwallex Platform, other than by or on behalf of Airwallex;
 - (c) your possession or use of the Airwallex Platform (or any part of it):
 - (i) other than in accordance with this Agreement; or

- (ii) in combination with any other products, services, or materials if the Airwallex Platform would not be infringing without such combination;
 - (d) use of a non-current release of the Airwallex Platform; or
 - (e) compliance with your specifications or instructions
- 12.8. **Promotion.** If you operate a business, you agree that we may include and use your company name, logos, trade name, trademarks and general business information in our promotional and marketing materials for our Services and on our website. You may at any time and upon reasonable notice request in writing that we stop using your company name, logos, trade name, trademarks and general business information for these purposes.
- 12.9. **Feedback.** If you provide us with any comments, questions, ideas, suggestions or other feedback relating to the Airwallex Platform or our Services (**'Feedback'**), you agree that we may freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on Intellectual Property Rights or otherwise. Feedback will not be considered as your Confidential Information.

13. CONFIDENTIALITY, PRIVACY AND USE OF DATA

- 13.1. **Confidential Information.** You acknowledge that you may have access to Confidential Information belonging to us and that you must keep such information confidential in accordance with the terms of these terms.
- 13.2. **Confidentiality Undertakings.** You agree that you:
- (a) will not disclose any of our Confidential Information to any third party except as required:
 - (i) by law or any authority of competent jurisdiction; (ii) to your attorneys, accountants and other advisors as reasonably necessary; or (iii) for the purposes of defending itself in relation to actual or threatened proceedings, provided that in respect of (i) and (iii) above, you will give us reasonable notice in advance of such required disclosure, together with such details as we may request (where notice to us is permissible under Applicable Law); and
 - (b) will take reasonable precautions to protect the confidentiality of such information, at least as stringent as those taken to protect its own Confidential Information.
- 13.3. **Disclosures to employees and agents.** In addition, you may only reveal our Confidential Information only to your agents, representatives and employees who have a 'need to know' such information in connection with these terms, and are informed of the confidential nature of such Confidential Information and agree to act in accordance with the terms and conditions of this clause 13. You will remain liable for any disclosure of Confidential Information by your agents, representatives and employees as if you had made such disclosure.
- 13.4. **Privacy and Personal Data.** The protection of Personal Data is very important to us. In addition to these terms, our Privacy Policy explains how and for what purposes we collect, use, retain, disclose, and safeguard the Personal Data you provide to us. You agree to review the terms of our Privacy Policy, which we update from time to time.
- 13.5. **Purposes.** You agree to share Personal Data with Airwallex and authorise Airwallex to collect, use, store or otherwise process such Personal Data for the following **'Agreed Purposes'**, to enable us to:
- assist in providing information to you about a product or service;
 - consider your request for a product or service;
 - enable us to provide a product or service;
 - manage Airwallex's relationship with the Customer;

- manage accounts and perform other administrative and operational tasks (including risk management, systems development and testing, credit scoring, staff training, collecting debts and market or customer satisfaction research);
- design new products and services or improve existing products and services provided by us;
- general and specific communication between us and you;
- consider any concerns or complaints you raise against us, to manage any legal action involving Airwallex, or both;
- carry out any enforcement activities including to collect any money due from you;
- identify you or establish your tax status under any local or foreign legislation, regulation or treaty or pursuant to an agreement with any tax authority;
- identify, prevent or investigate any fraud, unlawful activity or misconduct (or suspected fraud, unlawful activity or misconduct);
- comply with all Applicable Law, including conducting anti-money laundering, financial crime and other screening checks;
- verify any information and records relating you;
- comply with these terms and the Privacy Policy;
- enable an actual or proposed assignee(s) of all or any part of our business and/or assets to evaluate the transaction intended to be the subject of the assignment and to enable the actual assignee(s) to use the Personal Data provided by you in the operation of the business; and
- for any other purpose set out in our Privacy Policy.

13.6. **Data Subjects.** The categories of Data Subjects who we may collect Personal Data about may include the following where they are a natural person: the Customer, the directors and ultimate beneficial owner(s) of the Customer, your customers, employees and contractors, payers and payees. You may share with Airwallex some or all of the following types of Personal Data regarding Data Subjects:

- full name;
- email address;
- phone number and other contact information;
- date of birth;
- nationality;
- public information about the data subject;
- other relevant verification or due diligence documentation as required under these terms; and
- any other data that is necessary or relevant to carry out the Agreed Purposes.

13.7. **Compliance.** Neither Party will knowingly perform its obligations under these terms in a way that causes the other Party to breach applicable Data Protection Legislation. Neither Party will be responsible for any consequences resulting from the other Party's failure to comply with applicable Data Protection Legislation in relation to Personal Data that it shares.

13.8. **Undertakings.** To the extent either you or Airwallex processes Personal Data, each party will:

- (a) process the Personal Data fairly and lawfully and ensure it has legitimate grounds under Data Protection Legislation for such processing;

- (b) obtain and maintain all appropriate registrations required under Data Protection Legislation to allow it to use the Personal Data in accordance with these terms;
- (c) ensure appropriate technical and organisational security measures are in place to protect Personal Data under its control;
- (d) ensure that all personnel who have access to and/or process the Personal Data are obliged to keep it confidential;
- (e) transfer Personal Data between jurisdictions only where it has taken appropriate measures to make such a transfer lawful under Data Protection Legislation;
- (f) notify the other Party promptly if it receives any request, complaint or other communication from a Data Subject or a Regulatory Body that is addressed to or intended for the other Party; and
- (g) notify the other party promptly if it becomes aware of a Personal Data breach that is directly relevant to the other Party.

13.9. **Data Security.** You will ensure that any Personal Data that is transferred to Airwallex is transferred by a method and means that is secure and compliant with Data Protection Legislation in addition to any other reasonable information security requirements specified by us.

13.10. **Cooperation.** Each Party will be responsible for responding to requests from supervisory authorities or individuals exercising their rights under applicable Data Protection Legislation. Each Party will provide the other with reasonable cooperation and assistance to comply with all obligations imposed on them by the Data Protection Legislation and any relevant Applicable Law, including: (i) dealing with and responding to any communications from Data Subjects; (ii) dealing with, mitigating and responding to any breach of personal data; and (iii) with respect to security, impact assessments and consultations with supervisory authorities or Regulatory Bodies.

13.11. **Data Disposal.** On termination of these terms, or once processing of any Personal Data is no longer necessary to carry out the Agreed Purposes, each Party will securely dispose of any such Personal Data in its possession as required by Applicable Law.

13.12. **Data Security.** We will take all steps required under Data Protection Legislation to ensure appropriate information security safeguards are put in place regarding such disclosure.

13.13. **Personal data you provide about someone else.** If you give us Personal Data about someone else, including (but not limited to) your Authorised Users, your director and ultimate beneficial owner(s), your customers, employees and contractors, payers and payees, you undertake that we may rely on you to obtain such other persons' consent for disclosing their Personal Data to us which we will use in accordance with the terms of these terms. You are required to show them information about these provisions so that they may understand the manner in which their Personal Data may be collected, used and disclosed by Airwallex in connection with your dealings with us and our use of their Personal Data including our use of Personal Data for direct marketing purposes and their consent to our use of their Personal Data provided by you on their behalf.

14. DISCLOSURE OF INFORMATION AND USE OF PERSONAL DATA FOR DIRECT MARKETING

14.1. **We may disclose your information to others.** Airwallex may disclose your Customer Data, Payment Data and Personal Data, including any Confidential Information, to:

- any branch, subsidiary, holding company, associated company, affiliate or related entity of Airwallex;

- any agent, contractor or service provider that we engage or propose to engage to carry out or assist us with our functions and activities who is under a duty of confidentiality to keep such information confidential;
- participants in the payments system including card schemes, financial institutions and payments organisations such as Society for Worldwide Interbank Financial Telecommunication;
- any person to whom Airwallex may enter into any assignment, fundraising, share purchase or other commercial agreement who is under a duty of confidentiality to keep such information confidential;
- any person to whom information is permitted or required (or expected) to be disclosed by any applicable law or regulation or pursuant to any order of court;
- any referee or representative or yours (including any professional advisor, broker, introducer, attorney or executor);
- any third party provider of collateral, security or credit support (if any);
- credit reference agencies, and, in the event of default, to debt collection agencies;
- any of your agents you have authorised or who is authorised under law such as an administrator or trustee in bankruptcy or your legal representative; and
- any actual or proposed assignee of all or any part of our business and/or assets and/or interests of Airwallex.

14.2. **Use of Personal Data in Direct Marketing**

We may use the Personal Data provided by you in direct marketing and we require consent (or an indication of no objection) from the Data Subject for that purpose. In this connection, please note that:

- the name, contact details, products and other service information, transaction pattern and behavior, financial background and demographic data of the Data Subjects held by us from time to time may be used by us in direct marketing:
- the following classes of services, products and subjects may be marketed:
 - financial, insurance, credit card, banking and related services and products;
 - reward, loyalty, co-branding or privileges programmes and related services and products;
 - services and products offered by our co-branding partners (the names of such co-branding partners will be provided during the application for the relevant services and products, as the case may be); and
 - donations and contributions for charitable and/or non-profit making purposes;
- the above services, products and subjects may be provided by us or (in the case of donations and contributions) solicited by us and/or any of the following:
 - any branch, subsidiary, holding company, associated company, affiliate or related entity of Airwallex;
 - third party financial institutions, insurers, credit card companies, securities and investment services providers;
 - third party reward, loyalty, co-branding or privileges programme providers;
 - co-branding partners of Airwallex or any branch, subsidiary, holding company, associated company, affiliate or related entity of Airwallex (the names of such co-branding partners will be provided during the application of the relevant services and products, as the case may be); and

- charitable or non-profit making organisations.

If you (or any persons for whom you provide the Personal Data to us) do not wish us to use or provide to other persons his or her Personal Data for use in direct marketing as described above, you and such persons for whom you provide the Personal Data to us (as the case may be) may exercise the right to opt-out by notifying us.

15. LIMITATION OF LIABILITY

- 15.1. Nothing in the Agreement excludes or limits either Party's liability where it would be unlawful to do so. If warranties or conditions are implied under the Consumer Guarantees Act 1993 or any similar law in respect of goods or services supplied under this Agreement or in connection with the Services, then our liability for a breach of any such warranty or condition is limited to:
- (a) in the case of goods, the replacement cost of the goods, the repair of the goods or the costs of having the goods repaired as determined in our discretion; or
 - (b) in the case of services, supplying the services again or the payment of the costs of supplying the services again,
- each as determined in our discretion.
- 15.2. Subject to this clause 15, Direct Losses will be recoverable under this Agreement. However, save as otherwise stated in this Agreement, neither Party will be liable for any Indirect or Consequential Losses.
- 15.3. Without limiting any other provision of this Agreement, we will not be liable to you for:
- (a) any loss outside of our direct control that arises from the negligence, fraud or wilful misconduct or the insolvency of any third party correspondent bank, liquidity provider, or other financial institution who is part of the payment network used to provide the Services;
 - (b) the non-execution, or defective execution, of a payment if any information you provide in your instructions is incorrect;
 - (c) acting in good faith on any instructions provided to us by you or any Authorised User or which reasonable appear as if they have been provided to us by you or an Authorised User; or
 - (d) errors, mistakes, or non-performance arising from the payee/beneficiary bank if the payee/beneficiary bank fails to process the payment correctly.
- In the case of (b) or (c), we will make reasonable efforts to recover the funds involved in the payment. You will be responsible for all costs incurred by us as part of any such recovery attempt, even if we are unable to successfully recover the funds.
- 15.4. Save as set out in clause 15.5, Airwallex's total aggregate liability to you for all Actions arising under this Agreement will not exceed the total amount of Service Fees paid by you to Airwallex during the one (1) year period prior to the date the liability first arose.
- 15.5. Airwallex's maximum liability for a FX Conversion, whether arising in contract, tort or otherwise, will in no circumstances exceed an amount equal to the currency sold by Airwallex under that FX Conversion.
- 15.6. Damages alone may not be an adequate remedy for breach and accordingly either Party will be entitled to seek the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach.
- 15.7. Each Party agrees to use reasonable endeavours to mitigate any loss in respect of which it is indemnified under the Agreement.

16. INDEMNITY

- 16.1. Customer's indemnity. You agree to indemnify us against all losses, damages, costs (including reasonable legal fees) and expenses incurred or suffered by us in connection with or as a result of:
- (a) your breach of this Agreement, failure to comply with Applicable Law, or your use or misuse of our Services;
 - (b) (where applicable) your incorrect instructions, overpayment, payment error, or other invalid payment you cause;
 - (c) any error, default, negligence, misconduct, or fraud by you, your employees, directors, officers, or representatives, or anyone acting on your behalf;
 - (d) a third party alleging that our use of the Customer Data as permitted by this Agreement infringes any Intellectual Property Rights;
 - (e) any of your Payments, or FX Conversions, including us acting on any of your instructions which we reasonably believe to have been made by you or your Authorised User; or
 - (f) the closure or cancellation of all or any part of a Payment or FX Conversion before its Settlement Date or Payment Date, including if we have to do so due to you failing to provide funds for the FX Conversion or Payment.
- 16.2. This clause 16.2 and clauses 16.3 and 16.4 apply in respect of the obligations in this clause 16 and clause 12.6. If a Party becomes aware of any claim or proceeding which might lead to a claim under this clause 16 or clause 12.6 (each, a **'Third Party Claim'**), the Party will promptly notify the other Party in writing and, subject to the other Party complying at all times with clause 16.3, the first Party will:
- (a) allow the other Party to control the defence of such Third Party Claim; and
 - (b) at the request and expense of the other Party, provide reasonable assistance for the other Party to defend any such Third Party Claim.
- 16.3. If the other Party assumes the defence of a Third Party Claim, the other Party will:
- (a) promptly notify the first Party that it has assumed such defence;
 - (b) at all times have regard for the interests and reputation of the first Party and comply with all applicable court rules in the defence of such Third Party Claim;
 - (c) consult and keep the first Party informed, in relation to any negotiations, settlement or litigation; and
 - (d) not, without the prior written consent of the first Party, enter into any settlement or compromise of the Third Party Claim that involves a remedy other than the payment of money.
- 16.4. If the other Party does not assume the defence of a Third Party Claim in accordance with clause 16.3 within 14 (fourteen) days of being notified in writing of that Third Party Claim, the first Party, or a Person designated by the first Party, may defend the Third Party Claim in such manner as it may deem appropriate, and the other Party will indemnify the first Party in relation to all costs, claims and liabilities incurred by the first Party in relation to such Third Party Claim.

17. TERMINATION AND SUSPENSION

- 17.1. **Stopping Services or closing your Wallet.** At any time you can stop using any part of the Services, or close your Wallet and stop using all Services and terminate this Agreement, by giving us thirty (30) days' prior written notice where there are no outstanding transactions between you and Airwallex.
- 17.2. **Airwallex's rights to suspend or terminate.** We may terminate this Agreement at any time by giving you 30 days' prior written notice that we are closing your Wallet and ending the provision of the Services. In addition, we may without notice immediately suspend or terminate all or any part of this Agreement or any of the Services, or block any transactions, if:
- (a) we suspect criminal activity on your Wallet, that your Wallet is being used fraudulently, or we reasonably believe you have fraudulently requested a refund for an unauthorised transaction;
 - (b) we reasonably believe you are in breach of Applicable Law;
 - (c) we are legally required to do so, including by any relevant Regulatory Body;
 - (d) you have broken this Agreement or gone over any applicable limits or restrictions in the Acceptable Use Policy;
 - (e) you have given us false or inaccurate information, or we have been unable to verify any information you have provided;
 - (f) you notify us, or we suspect or identify, any suspected or actual unauthorised transactions;
 - (g) you have been abusive to anyone at Airwallex;
 - (h) we have reasonable concerns about the security, or unauthorised use, of the Airwallex Platform, your Wallet or the Global Account;
 - (i) your Wallet has a negative balance and you haven't promptly repaid the amount owing to us;
 - (j) one of our banking partners, or other service provider necessary to provide the Services, requires us to terminate the Agreement; or
 - (k) you do not use your Wallet for twelve (12) months or more.
- 17.3. We may also block any transaction if your instructions are unclear, incomplete or contain an error.
- 17.4. **We will give you notice of suspension where possible.** We will give you notice of any suspension and the reasons for such suspension as soon as we can, either before the suspension is put in place, or immediately after, unless it would compromise our reasonable security measures or otherwise be unlawful. We will lift the suspension as soon as practicable after the reasons for the suspension have ceased to exist.
- 17.5. **Immediate termination.** Without affecting any other right or remedy available to it, either Party may terminate this Agreement immediately on written notice to the other Party and without liability to the other Party:
- (a) if the other Party:
 - (i) commits a material breach of the Agreement, and, in the case of a breach capable of remedy, fails to remedy such breach within thirty (30) days after receiving formal written notice to do so; or
 - (ii) commits a series of breaches of the Agreement which when taken together have the impact or effect of, or otherwise amount to a material breach;

- (iii) becomes subject to an Insolvency Event;
 - (b) if the Party reasonably determines that it has become unlawful to perform its obligations under the Agreement; or
 - (c) in the event of a Force Majeure Event that has the effect of preventing the other Party from performing any of its obligations under the Agreement for a period exceeding one (1) month.
- 17.6. On termination you will need to repay any money you owe us. In the circumstances set out in clauses 17.2 or 17.5 we may charge you for any costs, expenses and losses we incur (including costs due to FX difference or any action we may take to cover or reduce the exposure).
- 17.7. **Withdraw your funds.** After you have repaid any money you owe us, if you still have funds in your Wallet at the time this Agreement or the Services are terminated, you should withdraw those funds either before the Wallet is closed, or within a reasonable period of time following its closure. After a reasonable amount of time has passed since we closed your Wallet, we will attempt to transfer any remaining funds to the bank account you last notified to us. If we are unable to do so, we will deal with any remaining balance as may be required by Applicable Law.
- 17.8. **Effect of termination.** On termination of this Agreement:
- (a) you will not be able to use the Airwallex Platform. All rights granted to you under this Agreement will cease;
 - (b) you must immediately return or delete copies of any documentation, notes and other materials comprising or regarding the Airwallex Platform;
 - (c) all of your payment obligations under this Agreement for Services provided through to the effective date of termination will immediately become due and payable;
 - (d) each Party will return or delete all Confidential Information of the other Party in its possession within thirty (30) days of the termination of this Agreement, and will not make or retain any copies of such Confidential Information except as necessary to comply with Applicable Law; and
 - (e) any provision that expressly or by implication has effect after termination will continue in full force and effect.

18. SERVICE PROVIDERS

- 18.1. You acknowledge and agree that:
- (a) we may work with third parties (including any other Group Company of Airwallex) to provide the Services;
 - (b) if you receive information from us regarding, or provided by, such third parties, you will not rely on such information and will not make any claims against us or the third party in relation to such information. You agree that you bear all risk and responsibility if you choose to rely on such information in contravention of this clause.
- 18.2. If we use a third party to provide the Services, you acknowledge that the Services are provided by Airwallex to you and not by the third party, unless any Additional Terms for the use of a Service or feature of a Service specifically provide otherwise in writing.
- 18.3. If we use a third party to provide the Services, we will ensure that the third party complies with Data Protection Legislation relating to the processing of personal data pursuant to clause 14 of this Agreement.

- 18.4. **Airwallex warranties.** We represent and warrant that:
- (a) we have the right, power and authority to enter into this Agreement and to perform all of our obligations under it; and
 - (b) we have used, and will continue to use, reasonable commercial efforts to provide the Services.
- 18.5. **Disclaimer.** Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including any implied warranties of satisfactory quality or fitness for a particular purpose or non-infringement) are excluded to the fullest extent permitted by law. We do not make any commitments about the content or data within the Airwallex Platform, the specific functions of the Airwallex Platform or its accuracy, reliability, availability or ability to meet your needs. We cannot guarantee that the Airwallex Platform will operate uninterrupted or error-free, that it will always be available, that the information it contains is current or up-to-date, that it will be free from bugs or viruses, or never be faulty. Occasionally we may have to interrupt your use of the Airwallex Platform. In such a case we will restore access as quickly as practicable.
- 18.6. **Customer warranties.** You represent and warrant to us that you:
- (a) will comply with this Agreement and all Applicable Law regarding your use of the Services, the Airwallex Platform and Customer Data;
 - (b) have the right, power and authority to enter into this Agreement and to perform all of your obligations under it;
 - (c) have the valid right to grant to us the rights as defined in this Agreement without violating any Applicable Law or the proprietary rights of any third party;
 - (d) will provide us with accurate, up-to-date and complete Customer Data at all times, pursuant to clause 4 of this Agreement;
 - (e) will pay all sums to us free and clear of any claims, encumbrances or any other interest of any third person;
 - (f) will use the Services and the Airwallex Platform only for lawful purposes; and
 - (g) if you are an individual, you are 18 years of age or older.
- 18.7. **Customer conduct.** You are solely responsible for any use of the Wallet, Global Account, and other features of the Airwallex Platform, including the content of any data or transmissions you execute through the Platform yourself, or by any Authorised User you permit to access the Platform. You will use all reasonable endeavours to ensure that no unauthorised person will or could access the Wallet, Global Account or other features of the Airwallex Platform. You will not interfere with, disrupt, or cause any damage to other users of the Airwallex Platform or Services.
- 18.8. **You must not misuse the Airwallex Platform.** You cannot:
- (a) access the Airwallex Platform using a method other than the Airwallex APIs or Webapp, for example you cannot use automated means (including harvesting bots, robots, spiders, or scrapers) without our permission;
 - (b) do anything that may disrupt, disable, overburden, or damage the Airwallex Platform, such as a denial of service attack; and
 - (c) cause viruses or other malicious code to interfere with the use of the Airwallex Platform.

19. ANTI-BRIBERY

- 19.1. Each Party will (and will ensure that any person it uses for the performance of its obligations under or in connection with this Agreement, including, employees, agents, consultants and subcontractors will):
- (a) comply with all Applicable Law relating to sanctions, bribery and corruption including the Crimes Act 1961, Secret Commissions Act 1910, UK Bribery Act 2010, US Foreign Corrupt Practices Act, *Crimes Act 1914* (Cth) and *Criminal Code Act 1995* (Cth) ('**ABC Legislation**');
 - (b) not do or omit to do anything likely to cause the other Party to be in breach of any such ABC Legislation;
 - (c) not give or receive any bribes, including in relation to any public official;
 - (d) maintain throughout the term a programme designed to ensure compliance with ABC Legislation, including an education and training programme and measures reasonably calculated to prevent and detect violations of ABC Legislation;
 - (e) if requested, and at the other Party's reasonable cost, provide the other Party with sufficient reasonable assistance to enable the other Party to perform any actions required by any government or agency in any jurisdiction for the purpose of compliance with ABC Legislation or in connection with any investigation relating to ABC Legislation; and
 - (f) promptly notify the other Party of any allegation of fgovtions violation, fraud, bribery or corrupt or unlawful practices made against it in court, arbitration or administrative proceedings, or any investigation commenced in respect of the same.
- 19.2. Each Party will indemnify the other Party against all liabilities, losses, and expenses which they have suffered as a result of a breach of this clause 20 by the Party.

20. MARKET DISRUPTION, ERRORS & FORCE MAJEURE

- 20.1. **Force majeure.** Neither Party will be responsible for any failure to fulfil any obligation for so long as, and to the extent to which the fulfilment of such obligation is impeded by a Force Majeure Event. The Party subject to the Force Majeure Event will:
- (a) promptly notify the other Party of any circumstances which may result in failure to perform its obligations; and
 - (b) use reasonable efforts to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 20.2. **Market Disruption.** If in our reasonable opinion a Market Disruption occurs after we have provided you with an FX Exchange Rate, in relation to all or certain currency pairs affected by the Market Disruption, until we reasonably determine the period of Market Disruption has ended we may revise any FX Exchange Rate, or any rate or margin component of any FX Exchange Rate, with immediate effect.

21. REPRESENTATIONS AND WARRANTIES

- 21.1. **Error.** If an FX Conversion is executed at an FX Exchange Rate that clearly and materially deviates from the market price, you must not rely on such obvious error. In such cases, we may declare that the FX Conversion is not binding: you will need to return to us any amounts made under the FX Conversion and we will reprocess such FX Conversion at the correct rate.
- 21.2. This clause 21 does not limit or otherwise affect your obligation to pay any fees or other charges or amounts due under this Agreement.

22. GENERAL

22.1. **Entire Agreement.** This Agreement represents the entire Agreement between the Parties and supersedes and extinguishes all previous Agreements, representations, promises, and statements between us, whether written or oral, relating to its subject matter. Each Party acknowledges that in entering into this Agreement it does not rely on, and will have no remedy in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

22.2. **Complaints.** Please let us know if we have made a mistake or you feel that we have not met your expectations in the delivery of our Services. We have internal procedures for handling complaints fairly and promptly in accordance with our regulatory requirements. A copy of our complaints procedure is available upon request.

If you are not satisfied with the decision in our final response, you may refer your complaint to the Financial Dispute Resolution Service. Airwallex is a member of the Financial Dispute Resolution Service (membership number: FM6263). The Rules for Financial Dispute Resolution Service are published on the Financial Dispute Resolution Service's website: www.fdrs.org.nz. In particular, the Customer should note the exclusions and limitations imposed by the Financial Dispute Resolution Service from time to time, including that a complaint is not covered by the Financial Dispute Resolution Service scheme unless:

- (a) the Customer has first made the complaint (or substantially the same complaint) to Airwallex; and
- (b) one of the following things has occurred:
 - (i) Airwallex has given the Customer written notice of its decision (a “**decision notice**”); or
 - (ii) Airwallex has given the Customer written notice that it has reached the view that the parties are unlikely to resolve the complaint under Airwallex's complaints procedures (a “**deadlock notice**”); or
 - (iii) at least two (2) months has passed after the Customer first made that complaint to Airwallex; and
- (c) the Customer then refers the complaint to the Financial Dispute Resolution Service within the following applicable time limit:
 - (i) within three (3) months after receiving a valid decision notice or deadlock notice; and
 - (ii) within two (2) years after first making that complaint to Airwallex in any other case.

22.3. **Notices.** All notices, demands and other communications provided for or permitted under this Agreement will be made in writing to the Parties at their registered addresses and will be sent by:

- (a) registered or certified first-class mail, return receipt requested;
- (b) email (delivery receipt requested); and/or
- (c) courier or overnight service or personal delivery, and will be deemed received upon delivery, or, in the case of email, upon receipt of a delivery receipt.

22.4. **Relationship.** Nothing in this Agreement will be construed as creating a partnership or joint venture between the Parties, constitute any Party the agent of the other Party, or authorise any Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

- 22.5. **Assignment.** You will not assign this Agreement, in whole or in part, without our prior written consent. Any attempt to do so will be void and constitute a material breach of this Agreement. We may assign this Agreement, in whole or in part, or subcontract our obligations under it, without your consent.
- 22.6. **Waiver.** No failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law, or a single or partial exercise of such right or remedy, will constitute a waiver of that or any other right or remedy, nor will it preclude or restrict the further exercise of that or any other right or remedy.
- 22.7. **Severability.** If any provision of this Agreement is determined to be invalid, unenforceable or illegal by any court of competent jurisdiction, it will be deemed to have been deleted without affecting the remaining provisions. If such provision would be valid, enforceable and legal if some part of it were modified or deleted, the provision will apply with the minimum modification necessary to make it legal, valid and enforceable.
- 22.8. **Non-Solicitation.** Neither Party will (except with the prior written consent of the other Party) during the term of the Agreement and for a period of one (1) year after termination solicit the services of any staff of the other Party who have been engaged in the performance or management of the other Party's obligations under the Agreement other than by means of a public recruitment campaign not specifically targeted at any staff of the other Party.
- 22.9. **Set-Off.** We may at any time set off any payment liability you have to us against any payment liability that we have to you, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, we may convert either liability at a market rate of exchange for the purpose of set-off. Our right to set off includes, but is not limited to, setting off the amount of any payment you have requested against any amount collected through a Global Account.
- 22.10. **Order of payments.** We may determine the order of transactions we process with respect to your account, subject to any requirements at law. For example, if you have given us one or more payment instructions without a sufficient balance in the Wallet, we may use any funds we subsequently receive for the purposes of one or more of those payment instructions at our discretion, unless we accept instructions from you otherwise.
- 22.11. **Other languages.** This Agreement is made in the English language. It may be translated to other languages for convenience only and in such cases the English language version will apply.
- 22.12. **Governing law.** This Agreement will be governed by and constructed in accordance with the laws of New Zealand. Each Party irrevocably submits to the exclusive jurisdiction of the New Zealand courts over any dispute, controversy or claim (including non-contractual claims) arising under or in connection with the Agreement.

23. DEFINITIONS & INTERPRETATION

- 23.1. In this Agreement, the following definitions apply:

Actions means any action, claim, demand or proceeding, in respect of any loss, damage, costs, fines, expenses and other liabilities of whatever nature (whether foreseeable or contingent and whether relating to a third-party claim), including in relation to any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or other head of claim and however suffered, incurred or sustained.

Additional Cardholder has the meaning given in the Issuing Terms.

Additional Terms means any additional terms of use applicable to the use of our Services found on our website www.airwallex.com including, but not limited to, any specific terms applicable to the use of a Service in a particular region.

Agreed Purposes has the meaning given in clause 13.5.

Airwallex API means the technical interface setting out the protocols and specifications required to effect an integration of the Customer's technical systems with the Airwallex Platform for Authorised Users to use the Services.

Airwallex Data means details of transactions using Airwallex infrastructure, information used in fraud detection and analysis, aggregated or anonymised information generated in connection with the Services, and any other information created by or originating from Airwallex or the Services.

Airwallex Platform or **Platform** means the proprietary technology and associated products (including but not limited to those found on the Webapp and through an Airwallex API) devised by Airwallex to provide customers with Services including access to the Wallet and Global Account.

Airwallex Profile means the electronic information profile that records your customer details and that is used to log into and use the Airwallex Platform.

API Documentation means the documentation and guidelines applicable to the Airwallex APIs found on our website www.airwallex.com.

Applicable Law means all laws, legislation, regulations, binding codes of practice, or rules or requirements of any relevant Regulatory Body applicable to the activities undertaken or procured by the Parties under this Agreement, as interpreted by taking into account any code of practice or guidance issued by any Regulatory Body with which reputable financial institutions in New Zealand are required or accustomed to comply.

Authorised User has the meaning given in clause 7.1.

Base Currency means New Zealand dollars.

Business Day means any day (other than a Saturday, Sunday or public holiday in Auckland, New Zealand) when banks are open for business in Auckland, New Zealand.

Card means the 'Visa Commercial Card' or similarly named payment instrument issued by Airwallex to you or any of your Additional Cardholders which can be used as a means of making Payment using the balance of your Wallet on the terms set out in this Agreement and the Issuing Terms. The Card may be issued as a physical card or virtual card.

Confidential Information means and includes all confidential information, whether verbal or written: (i) concerning the business and affairs of a Party, that a Party obtains or receives from the other Party; or (ii) which arises out of the performance of any obligations under this Agreement. Confidential Information does not include information which is: (a) known by the receiving party without restriction in relation to disclosure prior to receipt from the disclosing party; (b) received from a third party who lawfully acquired it and who was under no obligation restricting its disclosure; (c) approved in writing for release from this Agreement by the disclosing party; (d) available in the public domain other than by breach of this Agreement; or (e) independently developed without access to any Confidential Information disclosed by the disclosing party.

Confirmation means Airwallex's response and confirmation to your instructions to us for a FX Conversion, a Payment, or both.

Customer Margin means the amount specified as such in the Airwallex Platform that applies to you, or any other percentage or amount that we may notify you in writing from time to time.

Data means all Customer Data, Personal Data, Payment Data and Airwallex Data.

Data Protection Legislation means applicable privacy and data protection laws including the Privacy Act 2020.

Data Subject means any natural person who can be identified, directly or indirectly, via an identifier such as a name, an identification number, location data, or via factors specific to the person's physical, physiological, genetic, mental, economic, cultural or social identity.

Direct Losses means, in respect of any breach, those losses that the breaching Party knew, or a reasonable person in the breaching Party's position ought reasonably to have known, either: (i) at the time of entering into the Agreement; or (ii) at the time of the breach, were reasonably probable to result from the breach, provided, however, the following will not be Direct Losses, loss of: goodwill; business; profit; operation time; reputation; opportunity; or corruption of data or information; or loss of anticipated savings, even if the breaching Party was aware or ought reasonably to have been aware of the possibility that such loss or damage could occur.

Force Majeure Event means an event beyond a Party's reasonable control including: Black Swan events; strikes, lock-outs, labour troubles (but excluding strikes or other forms of industrial action by the employees, agents or subcontractors of that Party); interruption or failure of a utility service including the internet, electric power, gas or water; riots, war, pandemic, or terrorist attack; nuclear, chemical or biological contamination; extreme abnormal weather conditions; the imposition of a sanction, embargo or breaking off of diplomatic relations; or any change in Applicable Law.

FX Base Rate means the currency exchange base rate we have specified for a FX Conversion and Settlement Date having regard to the Customer Margin, costs provided by our foreign exchange rate service providers, the interbank exchange rates and relevant market conditions.

FX Conversion means an agreement between the Parties in which one currency is sold or bought against another currency at an agreed FX Exchange Rate.

FX Exchange Rate means the FX Base Rate plus any other margin that may be applicable to you, including the Customer Margin.

Global Account means the collection account created by Airwallex for your use to receive funds in the Supported Currency in a Supported Jurisdiction.

Group Company means any entity in respect of which a Party or a Party's ultimate holding company: (i) owns (directly or indirectly) more than fifty (50) percent of the voting rights or issued share capital; or (ii) can ensure that the activities and business of that entity are conducted in accordance with its wishes.

Holding Amount has the meaning given in clause 9.13.

Indirect or Consequential Losses means those losses that are not Direct Losses.

Insolvency Event means: (i) any procedure commenced with a view to the winding-up or re-organisation of such Party; (ii) any step taken or any procedure is commenced with a view to the appointment of an administrator, receiver, administrative receiver or trustee in bankruptcy in relation to such Party or all or substantially all of its assets; (iii) the holder of any security over all or substantially all of the assets of such Party takes any step to enforce that security; (iv) all or substantially all of the assets of such Party is subject to attachment, sequestration, execution or any similar process; (v) such Party is unable to pay its debts as they fall due; (vi) such Party enters into, or any step is taken, whether by the board of directors of such Party or otherwise, towards entering into a composition or arrangement with its creditors or any class of them, including a company voluntary arrangement or a deed of arrangement; or (vii) such Party enters into, or any step is taken, whether by the board of directors of such Party or otherwise, towards any analogous procedure under the laws of any jurisdiction to the procedures set out in (i) to (vi) above, and in each case other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party.

Intellectual Property Rights means: (i) rights in, and in relation to, any patents, registered designs, design rights, trademarks, trade and business names (including goodwill associated with any trade marks or trade and business names), copyright and related rights, moral rights, databases, domain names, semi-conductor and other topography rights and utility models, and including registrations and applications for, and renewals or extensions of, such rights, and similar or equivalent rights or forms of protection in any part of the world; (ii) rights in the nature of unfair competition rights and to sue for passing off and for past infringement; and (iii) trade secrets, confidentiality and other proprietary rights, including rights to know how and other technical information.

Issuing Terms means the terms and conditions for Airwallex's Service relating to issuance of Cards.

Local Business Day has the meaning given in clause 9.9.

Lock FX has the meaning given in clause 9.7.

Market Disruption means any action, event or circumstance which, as determined by Airwallex in its sole and absolute discretion: (i) has the direct or indirect effect of hindering, limiting or restricting the ability of Airwallex or its Group Companies to obtain a firm quote of an offer price, convert any currency into any other currency, or to transfer any sum to any other country or within the same country; (ii) results in any purchase currency not being available in the interbank foreign exchange market in accordance with normal commercial practice; or (iii) constitutes unusual price volatility in the foreign exchange markets.

Payment means a payment to be made by the Customer to a payee through the Airwallex Platform.

Payment Date means the date nominated by you in your instructions to us, for the Payment to be transferred from Airwallex to the payee. The Payment Date for any transfer must be a Business Day in both countries (i.e. the countries where the Parties are located to transact business).

Payment Services means the services provided by Airwallex to you under this Agreement relating to the payment of funds in a Supported Currency to a payee via the Wallet.

Personal Data means information that identifies a specific living person (not a company, legal entity, or machine) that is collected, transmitted to or accessible through the Services and as otherwise defined in the Data Protection Legislation.

Regulatory Body means any person or regulatory body concerned with the creation, enforcement or supervision of, or compliance with Applicable Law, including the New Zealand Companies Office and any regulatory body which replaces it.

Segregated Account has the meaning given in clause 5.6.

Services means the services offered by Airwallex to the Customer under this Agreement.

Service Fees means all fees applicable to the use of the Services.

Settlement Date means the date on which the settlement of a FX Conversion or Payment will occur as relevantly specified in the Confirmation or otherwise notified to you through the Airwallex Platform.

Settlement Cut-Off means, in respect of a FX Conversion or Payment, the time and date where sufficient cleared funds must be in your Wallet in order to fund the relevant transaction which will generally be the time and date on which the relevant Confirmation is issued by Airwallex, unless a different time is specified in the Confirmation or otherwise notified to you through the Airwallex Platform.

Supported Currency means, in respect of each feature of a Service, each currency approved by Airwallex from time to time that can be collected, exchanged and/or paid out (as applicable) using that feature through the Airwallex Platform.

Supported Jurisdiction means in respect of the Global Account each jurisdiction approved by Airwallex from time to time where a Global Account is maintained for the purposes of collecting payments.

User Profile means, with respect to each Authorised User, the electronic profile that records the Authorised User's details and that is used by them to log into and use the Airwallex Platform on your behalf.

Wallet has the meaning given in clause 5.1.

Webapp means the user interface that the Customer and its Authorised Users may use to access the Airwallex Platform and the Services.

23.2. Unless the context otherwise requires:

- (a) use of the singular includes the plural and vice versa;
- (b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (c) any phrase introduced by the terms 'including', 'include', 'in particular', 'for example' or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms.

23.3. References to the Parties will include any successors, permitted assignees or transferees where permitted by this Agreement. The word 'person' will be deemed to include a body corporate, partnership or unincorporated association. References to any Party indemnifying any person against any costs, claims or liabilities include indemnifying against any and all liabilities, losses and expenses, as well as (to the fullest extent, but only if permitted by Applicable Law) any civil or criminal fines imposed by any relevant Regulatory Body and any reasonably incurred legal fees, costs and expenses.