

Activata Prepay Rental Terms and Conditions

1 Definitions

1.1 In these terms and conditions:

- (a) The terms "Agreement Date", "Retailer", "First Payment Date", "Rental" and "Term" respectively mean at any time the agreement date, retailer, first payment date, Rental and Term included in the Agreement at that time.
- (b) "Commencement Date" means the date on which installation of the equipment is completed, as determined by Activata and included in the Agreement.
- (c) "Default Rate" is 1.5% or such other rate advised by Activata to the Retailer as being the Default rate.
- (d) "Equipment" means the equipment listed in the Agreement together with all intellectual property in respect of the Equipment including without limitation all software, copyright, design rights, patents and trade marks, any accessories, parts or replacements which are at any time supplied with or attached to such equipment.
- (e) "Good Working Order" means being of such condition and operating to such standard as Activata at its sole discretion determines to be satisfactory in light of the age and level of usage of the Equipment.
- (f) "Guarantor" means the guarantor(s) (if any) named in the Agreement.
- (g) "Installation Address" means, in respect of the Equipment or a particular part of the Equipment, the Installation Address specified in the Schedule in relation to the Equipment or that part of the equipment, or such other location at which the Equipment or part of the Equipment may be situated with the consent of Activata in accordance with clause 6.1(j).
- (h) "PPSA" means the Personal Property Securities Act 1999.
- (i) "Agreement" means the Activata Rental Agreement.
- (j) "Term" means a period of twelve (12) months, which follows the Initial Term or Term.
- (k) "Activata" or its successors or assignees and/or (at the option of Pin Distributor Limited) each related company of Activata (as that term is defined in section 2(3) of the Companies Act 1993).
- (l) In this agreement, the expressions "accession", "at risk", "attach" and "security interest" have the meanings given to them under, or in the context of, the PPSA.

2 Term

2.1 The Term of this Agreement is for the Term specified on the Activata Equipment Rental Agreement and will commence on the Commencement Date. On completion of the Term this contract will automatically roll on for further terms of 12 months in accordance with clause 9.1.

3 Installation

3.1 Activata will as soon as is reasonably practicable after the Agreement Date, install the Equipment at the Installation Address. Where necessary, the Retailer will provide at its cost a suitable installation area with appropriate electrical and telephone connections. The Retailer authorises Activata to make any arrangements with network providers as Activata may determine, at the Retailer's cost, to enable the Equipment to be used and to become operational. Activata may appoint an agent to fulfill any of its obligations under this agreement, including under this clause 3.1.

3.2 The Retailer appoints Activata as its attorney to complete any blank spaces in the Agreement and in particular, but without limitation to, entering the Commencement Date and identification data.

4 Property

4.1 The Retailer is lessee of the Equipment. Nothing in this agreement confers on the Retailer any other right or property or interest in or to the Equipment or any replacement of the Equipment, including, without limitation, any right to purchase the Equipment at any time during the currency of, or after the expiration or termination of, this agreement, or any right of ownership or future ownership of the Equipment.

4.2 Ownership in the Equipment or any replacement for the Equipment or replacement component of the Equipment remains with Activata at all times and the Retailer shall not make any claim in respect of such ownership

4.3 The Retailer agrees that;

- (a) this Agreement creates a security interest under the Personal Property Securities Act (PPSA) in the Equipment;
- (b) the Retailer must do all such things and execute all such documents as Activata may require to ensure that Activata has a perfected first ranking security interest(s) in the Equipment;
- (c) Activata may register a financing statement to perfect its interest in the Equipment;
- (d) the Retailer will indemnify Activata for any costs Activata incurs in doing any of the above; and
- (e) the Retailer waives its right to receive a copy of any verification statement(s) under the PPSA and agrees that as between Activata and the Retailer, the Retailer will have no rights under (or by reference to) sections 114(1) (a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the PPSA; and where Activata has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.

4.4 The Retailer will not affix the Equipment to land unless Activata consents in writing. If the Equipment is so affixed to land, and the land is owned by the Retailer the Retailer agrees that the Equipment is personal property and hereby grants to Activata an interest and right of entry in such land to the extent of its right in the Equipment, including without limitation for the purpose of removing the Equipment. The Retailer will where relevant obtain an acknowledgment from all mortgagees of the land, and, if the Retailer is not the owner of the land, from the owner, that the Equipment is regarded for all purposes as personal property and not as a fixture.

5 Invoicing and Payment

5.1 Activata will invoice the Retailer for the Equipment and Rental purchased by the Retailer on a weekly basis. The Retailer herein agrees to pay Activata by Direct Debit on the first Wednesday following purchase (hereinafter called the Due Date). The payment made each Wednesday will include all purchases by the Retailer within the preceding seven day period, being 00:00 Monday ending 24:00 Sunday.

5.2 Default Penalty Interest may be charged at the Default Rate per month or part month for any amount owing after the Due Date.

5.3 Activata reserves the right to request an alternative payment method and terms thereof in the event that the Retailer account with Activata falls into arrears.

5.4 Activata reserve the right to impose credit limits on the Retailer account at the sole discretion of Activata without notice.

5.5 Activata will apply a \$150 fee for each dishonoured payment (hereinafter called Default). In this case, the Retailer's account will be suspended until payment has been received in full.

5.6 For the second and any subsequent Default within a 6 month period, the provisions of clause 5.5 will apply, except that the minimum fee will be \$300 per Default.

5.7 Any expenses, disbursements and legal costs incurred by Activata in the enforcement of any rights contained in this contract shall be paid by the Retailer, including any reasonable solicitor's fees or debt collection agency fees.

5.8 Invoices will be generated weekly and emailed or electronically transmitted to the Retailer.

5.9 In the event an invoice is required by means other than those specified in 5.8 a fee of up to \$5.00 will apply for each invoice supplied.

6 Condition of Equipment

6.1 The Retailer acknowledges that prior to installation of any equipment, the Retailer examined the Equipment and that the Retailer is satisfied that the Equipment is in Good Working Order and condition and is suitable for the purpose for which the Retailer intends to use such Equipment.

6.2 If the Retailer enters, or holds itself out as entering, into this guaranteeing for the purpose of a business and the exception set out in section 43(2) of the Consumer Guarantees Act 1993 is applicable to the Retailer:

- (a) Activata gives no warranty or representation in relation to the condition or suitability of the Equipment or warranty or collateral warranty to title prior to or at any time during the continuance of this agreement; and
- (b) Activata's maximum liability for any breach or breaches by Activata of this Agreement will not exceed the weekly installment of Rental multiplied by the number of weeks remaining in the Term specified on the Schedule.

6.3 If the exception set out in section 43(2) of the Consumer Guarantees Act 1993 is not applicable to the Retailer, and the provisions of that Act are otherwise applicable to this Agreement, paragraphs (a) to (b) of clause 6.2 will apply, but subject to that Act, to the intent that the maximum extent of the warranties and representations given by Activata in that instance are the guarantees implied under that Act.

7 Obligations of the Retailer

7.1 During the term of this Agreement, the Retailer will:

- (a) take proper care of the Equipment and will not permit the Equipment to be damaged, lost or destroyed;
- (b) not alter or make any addition to the Equipment without the previous consent in writing of Activata and will not alter any identifying number or mark on the Equipment;
- (c) At its own expense insure the Equipment separately, with Activata named as coinsured, for its full value (not being less than the amount, if any, specified by Activata for this purpose) with an insurer reasonably acceptable to Activata. If the Retailer does not effect or keep up such insurance Activata may effect and keep up such insurance and alimonies spent by Activata in that regard will be payable by the Retailer to Activata upon demand. Activata: will be entitled to receive alimonies payable by the insurer under such insurance. If, however, the Retailer receives any such moneys it will pay the same to Activata forthwith. The Retailer hereby irrevocably authorises Activata to appropriate all such moneys at Activata's sole discretion in making good any damage to the Equipment or (if Activata has exercised any right to eliminate this Agreement) treat the agreement at an end and retain or recover such moneys;
- (d) prevent the existence of any circumstances which would permit the insurer of the Equipment to decline a claim arising under the relevant policy of insurance and will notify Activata in writing for the following any loss or damage to or destruction of the Equipment whatsoever caused;
- (e) not pledge Activata's credit or involve Activata in any liability, and will not assign, mortgage, charge, encumber or permit any security interest to attach to this agreement and will not sell, offer for sale, assign, mortgage, pledge, underlet, lend permit any security interest to attach to (other than Activata's) or otherwise deal with or part with possession of or control of the Equipment without Activata's prior written consent;
- (f) comply with all requirements of law in relation to the Equipment or its possession or use or the occupation or use of the Installation Address;
- (g) ensure that the Equipment is used and operated only by persons properly trained to use it, and that it is used and operated only for the purpose intended by the manufacturer of the Equipment and in accordance with the manufacturer's instructions;
- (h) the Retailer will promptly notify Activata in writing on the occurrence of any event which requires or may require repair or replacement or servicing of the Equipment and will not do or permit to be done any act in respect of the Equipment, after the occurrence of such an event without the prior written approval of Activata,
- (i) the Retailer will allow Activata or its agents or servants to enter the Installation Address at all reasonable times to inspect the Equipment and to carry out repairs, maintenance, servicing or removal of the Equipment. If damage, loss or destruction does occur as a result of any willful or negligent act or omission of the Retailer or its agent of employs, the Retailer will indemnify Activata in respect thereof;
- (j) not remove the Equipment from the installation Address without Activata's prior written consent;
- (k) not permit any lien to be created upon the Equipment or any part therefore for any reason whatsoever;
- (l) not allow the Equipment to become an accession to any property;
- (m) not change its name without first notifying Activata of the new name at least twenty-one days before the change takes effect;
- (n) not relocate its principal place of business outside New Zealand or (if the Retailer is a company) change its place of incorporation;
- (o) pay for the replacement or restorative maintenance of any/all

equipment where Activata deems the Retailer caused damage or otherwise returned in a condition that would prevent Activata redeploying the equipment. This would include and is not limited to intentional damage or misuse resulting in broken components (cables, plugs and hinges), shock, water ingress, insect infestation, power surges, environmental exposure and excessively soiled equipment. Such payment to be made within seven days of receipt of an invoice from Activata for replacement or restorative maintenance for such equipment;

(p) provide Activata with adequate counter space, and window space in close proximity to the egress of the Retailer's site, for the purposes of displaying product and point of sale material, as Activata may deem as reasonable and adequate.

7.2 If the Retailer breaches any provision contained or implied in this Agreement Activata may without prejudice to any of its rights or remedies under this Agreement do all things and pay all money necessary to make good such default or to exercise its rights under this Agreement or otherwise. The costs of anything so done and any moneys so paid (including costs on a solicitor and client basis that Activata incurs) will be payable by the Retailer to Activata upon demand by Activata.

8 Termination

8.1 If the Retailer fails to pay any money due under this Agreement for more than seven days after the due date whether or not a demand has been made, or defaults in the observance or performance of any other covenants or conditions contained or implied in this agreement, or if any of the Equipment is at risk, or if a judgment of any court against the Retailer or the Guarantor remains unsatisfied for one day, or if a lien is lawfully claimed over or a security interest claimed in the Equipment by any person or if the Retailer or the Guarantor dies or commits or suffers an act of bankruptcy, or if (being a company) a liquidator is appointed in respect of the Retailer or the Guarantor, or the Retailer or the Guarantor is presumed to be unable to pay its debts under any law, or it a receiver is appointed in respect of, or any execution is levied upon, any goods or assets of the Retailer or the Guarantor, or if any insurance policy in respect of the Equipment is cancelled, or if Activata discovers that any of the information supplied by the Retailer or the Guarantor to Activata is false, inaccurate or misleading in a material way or that the Retailer or the Guarantor withheld material information from Activata, or if the Retailer or the Guarantor does, causes, or permits or suffer any act or thing, whereby Activata's rights in the Equipment or under this agreement may be prejudiced or put in jeopardy, then Activata may without prior notice and notwithstanding any payment of any money due under this agreement enter upon any lands or premises where the Equipment may be and retake possession of the Equipment. The Retailer agrees to indemnify Activata for any loss or liability incurred by Activata as a result of any exercise by Activata of its powers pursuant to this clause (whether or not Activata has retaken possession of the Equipment) but without releasing the Retailer or the Guarantor from any liability in respect of the breach of any provision in this Agreement. In the event of termination of this agreement by Activata in accordance with this clause 8.1, the Retailer agrees to pay Rental for the outstanding period to the Expiry of Term together with any other payments due and payable under this Agreement. Without prejudice to clause 8.2, in the event that at any time the Equipment is damaged or lost, the Retailer will be liable to pay to Activata all additional losses suffered by Activata, as certified by Activata, provided that credit will be given to the Retailer in respect of any such liabilities for any insurance proceeds received by Activata under any insurance policy in respect of such loss or damage.

8.2 Subject to clause 4.2, upon expiry or termination of this Agreement the Retailer will forthwith deliver up the Equipment in Good Working Order to Activata or its nominee and if the Retailer wilfully fails to do so the Retailer will pay to Activata as stipulated damages for wrongful retention of possession an amount equal to twice the Rental divided by 30 for each day or part of a day during which such default shall continue but this provision shall be without prejudice to the other rights and remedies of the Equipment will not excuse the Retailer from the Retailer's obligation to deliver up the Equipment and accordingly the Retailer will be liable for damage to, loss, destruction or theft of the Equipment, any resulting depreciation or loss of revenue and all costs of salvage.

9 Expiry of Term

9.1 Unless the Retailer serves on Activata not less than thirty days prior to the expiry of the Term of this contract a written notice that the Retailer does not wish to extend this Agreement; and delivers the Equipment to Activata the day after the expiry of the Term of this contract, then this Agreement will be extended for a further Term under the terms and conditions within this Agreement.

9.2 Upon the expiry of the Term of this agreement the Retailer must:

(a) At its own cost return the Equipment to Activata, with any accessories and parts:

(b) Pay any amounts due to Activata under this agreement.

10 General

10.1 The original rights, powers, exemptions and remedies of Activata will remain in full force notwithstanding any neglect or forbearance made in their enforcement. Activata will not be deemed to have waived any provision of this agreement unless any such waiver is in writing signed by Activata or an authorised officer of Activata. Any such waiver, unless the contrary is expressly stated, will apply to and operate only in a particular dealing of matter.

10.2 Notice; If Activata sends a notice to the Retailer under or in connection with this Agreement, the notice; must be in writing or published on the Activata website www.activata.co.nz. If in writing delivered, or sent by post or email or facsimile to the Retailer's address as stated in the Agreement, or to such other address in New Zealand as the recipient may have notified in writing from time to time for this purpose. Any Notice sent to Activata by the Retailer must be sent in writing by post to The Manager, Activata Prepay, PO Box 2533, Shortland St, Auckland, New Zealand, 1140, such Notice will be deemed received once sighted by The Manager at Activata.

10.3 Activata will be entitled to assign its rights under this Agreement, including all amounts due from the Retailer hereunder and in the Equipment, without consent of the Retailer and Guarantor, provided only that such assignment will be subject to the Retailer's rights in accordance with this Agreement.

10.4 This Agreement represents the entire agreement between Activata and the Retailer as to its subject matter.

10.5 The Retailer authorises Activata to contact any credit agency, referee or any other source (each a "source") to obtain, check, dispose of or exchange information in connection with this agreement and to provide all such information to any person whatsoever (including, without limitation, any potential assignee of Activata). The Retailer acknowledges by signing this Agreement the Retailer is authorising each source to provide Activata or Activata's nominee with any

information about the Retailer. If the Retailer is a natural person the Privacy Act 1993 entitles the Retailer to have access to that information and to request correction of that information if necessary. The Retailer further authorises Activata to use the Retailer's name for the purpose of promotional material which Activata may prepare and send to the Retailer from time to time.

10.6 If the Retailer is a department within the definition of the "Crown" in the Public Finance Act 1989, the Retailer warrants that this Agreement is being entered into under and in terms of that Act, and any approvals and consents to this Agreement which are required by the Retailer have been obtained.

10.7 Activata is not bound by this Agreement until a copy of this Agreement signed by an authorised signatory of Activata is delivered to the Retailer even if the Equipment has been installed at the installation Address and whether or not the Retailer has signed an Equipment On trial form. Whether or not Activata enters into this Agreement is totally at its discretion.

10.8 The Retailer shall not have, exercise, or purport to exercise any right of set-off, combination or application, however arising, whether contractual or law, against Activata in respect of any amount owing by it to Activata whether in respect of Rental or otherwise.

10.9 Activata reserves the right to swap, switch, and/or replace the equipment as it sees fit from time to time, whilst ensuring there is no disruption to the services provided to the Retailer.

10.10 Activata reserves the right to oncharge any and all costs incurred to allow Activata-supplied terminal equipment to function within the latest Eftpos and terminal security standards and requirements as they may change from time to time within the Term.

10.11 Activata reserves the right to change these Terms and Conditions at any time and for any reason provided that they give seven days Notice to the Retailer.

11 Limitation of Liability

11.1 Subject to the Consumer Guarantees Act 1993 (where clause 5.3 applies), Activata will not be liable for any loss of business or profit or for any other consequential loss however arising as a result of any failure by Activata to perform to its obligations under this agreement.

11.2 Where any part of the Equipment supplied under this Agreement is telephone technology or where the nature of the Equipment is such that its sufficient and proper operation and its maintenance in Good Working Order is dependent in part or in whole on services provided by any third party including without limitation, Activata will not be liable for any loss, cost or damage suffered or incurred by the Retailer or any other party as a result of any act or omission by that third party in connection with the provision of such services.

12 Statement of Rights

12.1 The Credit Contracts Act 1981 gives the Retailer the right for a short time after the terms of this contract have been disclosed for the Retailer to:

(a) cancel the contract (but the Retailer cannot do this if the Retailer has taken possession of the goods, or if the Retailer bought them at an auction); or
(b) cancel the credit and pay the cash price for the goods.

12.2 How to Cancel

If the Retailer wants to cancel this contract, or cancel the credit and pay only the cash price for the goods, the Retailer must give written notice to the person who sold or leased the Retailer the goods that the Retailer wants to cancel. If the Retailer intends to keep the goods and just repay the credit the Retailer must pay the cash price to the person who sold or leased the Retailer the goods within fifteen working days after the day the Retailer gives notice. Saturdays, Sundays and national public holidays are not counted as working days.

12.3 Time Limits for Cancellation

If the disclosure documents are handed to the Retailer directly the Retailer must give notice that the Retailer intends to cancel within three working days after the Retailer receives the documents. If the documents are mailed to the Retailer, the Retailer must give the notice within seven working days after they were posted.

12.4 What You May Have To Pay If You Cancel

If the Retailer cancels the contract the person who sold or leased the Retailer the goods can charge the Retailer -

(a) The amount of any legal fees or other expenses that he has had to pay (such as surveys, credit reports, etc.);
(b) Charges for any incidental services he has provided (such as inspections, alterations, etc).

(c) If the Retailer only cancels the credit and decides to pay the cash price for the goods, the Retailer can be charged, in addition to (a) and (b) above

(d) Interest for the period from the day the Retailer received the goods until the day the Retailer paid the cash price.

IF THERE IS A DISPUTE REGARDING THE RETAILER'S RIGHTS UNDER THE CREDIT CONTRACTS ACT 1981, OR IF THE RETAILER THINKS THAT THE SELLER/LESSOR IS BEING UNREASONABLE IN ANY WAY, THE RETAILER SHOULD SEE A SOLICITOR IMMEDIATELY.

12.5 The Retailer has the right to apply to the court for relief under section 12 of the Credit (Repossession) Act 1997 if goods are supplied under a credit contract to which that Act applies and either -

(a) The creditor serves a prepossession notice on The Retailer; or

(b) The creditor takes possession of the goods without serving a prepossession notice on The Retailer, or otherwise takes possession, in contravention of the Credit (Repossession) Act 1997.

13 Service Level Agreement

13.1 For conditions of Activata's Service Level Agreement please visit website: www.activata.co.nz

14 Security

14.1 Depending on which of Activata's products or services the Retailer may wish to use, Activata may provide Security Information to the Retailer, and Activata may also require the Retailer to provide Security Information to Activata which will enable the Retailer to access and use the relevant product or service. The Retailer must treat all Security Information as strictly confidential, and not disclose it to anyone. Activata is entitled to rely on the provision of the Retailer's Security Information without further enquiry, as evidence of the Retailer's identity and authority to use the relevant product or service. As a result, the Retailer will be liable for the costs and charges in relation to all such use. Any Security Information which is generated by Activata and supplied to the Retailer remains the property of Activata at all times

14.2 The Retailer agrees to notify Activata immediately of any actual or suspected unauthorised use of the Security Information relating to the Retailer. Such notice will not release the Retailer from any liability the Retailer may have to Activata in relation to the relevant product or service, but Activata will use all reasonable endeavours to mitigate the effects of that unauthorised use from the Retailer's perspective.