



Rules of The **Trading Programme**

RULES OF THE TRADING PROGRAMME

PART I – PRELIMINARY

1. THE TRADING PROGRAM AND THE PARTIES INVOLVED

1.1. Trading Program

The “Trading Program” is a system to facilitate reciprocal trade amongst its Members.

1.2. Bartercard New Zealand LP

Bartercard New Zealand LP (“Manager”) operates the Trading Program (“the Licence”) and acts as a third-party record keeper of trade transactions amongst Members, and direct Members to each other for the purpose of facilitating trade transactions.

1.3. Bartercard Exchange Limited

Bartercard Exchange Limited (“Bartercard”) issues memberships in the Trading Program and is a party to the Deed of Management.

1.4. Member

A “Member” is a person or entity that is entitled to participate in the Trading Program and whose membership has been approved under the Rules of the Trading Program and unless otherwise stated includes an Extraordinary Member.

1.5. Extraordinary Member

An “Extraordinary Member” of the Trading Program is the classification given to the Manager and its subsidiary companies, Barter Futures NZ Limited, Barter Futures Pty Ltd, Bartercard Exchange Limited and Bartercard International Limited (other than in their capacity as Members) when participating in the Bartercard Trading Program by buying and/or selling products and/or services with other Members.

2. THESE RULES

2.1 Interpretation

In these Rules, unless the context otherwise requires:

- (a) references to any legislation or legislative provisions include any statutory modification or re-enactment of, or any legislative provision substituted for, and any statutory instrument issued under that legislation or legislative provision;
- (b) words denoting the singular number include the plural number and vice versa;

- (c) words denoting individuals or persons include businesses, partnerships corporations, authorities, governments and governmental agencies and vice versa;
- (d) words denoting any gender include all genders;
- (e) headings are for convenience only and do not affect interpretation;
- (f) references to recitals, clauses, schedules and annexures are recitals, clauses, schedules and annexures to these Rules;
- (g) references to any agreement or document or instrument are to that agreement or document or instrument (and, where applicable, any provisions of that agreement or document or instrument) as amended, novated, supplemented or replaced from time to time;
- (h) references to any party under these Rules, or any other document or arrangement, include that party’s executors, administrators, substitutes, successors and permitted assigns;
- (i) references to payment of an amount in trade dollars means causing the crediting of that Trade dollar amount to the Trade Account of the person to whom payment is expressed to be made;
- (j) where the context requires reference to Bartercard will be deemed to include reference to the Manager and vice versa.

2.2 Definitions

In these Rules, unless the context so requires:

- (a) “Agreement” means the agreement between Bartercard and the Member by which Bartercard grants to the Member the right to participate in the Trading Program.
- (b) “Authorisation” means confirmation given by Bartercard to a Selling Member that a Buying Member has sufficient credit in its Trade Account to complete the Trade and that the relevant amount will be frozen in the Buying Member’s account until the Trade is complete. Any such Authorisation will be recorded in books of Bartercard with a number which will be called “the Authorisation Number” and the amount of the Trade will be recorded in the Buying Member’s account as a debit.

- (c) "Card" includes a Members Card, An Additional Card or a Gift Card unless otherwise specifically stated.
- (d) "Confidential Information and Intellectual Property" means trade marks, logos, commercial names and designations, technical information, methods, processes, trade secrets, formulae, compositions, systems, techniques, computer programs, research projects, business information, customer lists, pricing data, sources of supply, financial data, marketing, training, production or merchandising systems and plans and other information relating to the Trading Program confidential to Bartercard.
- (e) "Continual Supply Agreement" means an exclusive agreement that has been entered into between two Members with the prior written consent of Bartercard for the regular calendar monthly supply of goods and/or services where the consideration for any such supply is made by way of a combination of cash and trade dollars.
- (f) "Deed of Management" means the Deed entered into between the Manager and Bartercard under which the Manager has agreed to manage the Trading Program.
- (g) "Delinquent Member" means a Member in respect of which, by reason of its lack of trade activity or for any other reason, Bartercard considers that the likelihood that the Member will bring its Trade Account to a nil or credit balance within a reasonable time or at all, justifies the debit balance being written off, whether or not the debit balance has actually been written off.
- (h) "Fees" means Membership Fees, Transaction/Service Fees, Marketing support fee, Administrative/Services Fees, Directory Fees and Display Advertising Fees unless otherwise specifically stated and includes both cash Fees and Fees payable in trade dollars.
- (i) "Limited Supply Member" means a Member which, with the prior approval of Bartercard, has either suspended or restricted its participation in the Trading Program and will be designated as such in the Bartercard Directory/Maps.
- (j) "Membership Register" means the record kept by Bartercard of Members currently participating in the Trading Program.
- (k) "Month" means a calendar month.
- (l) "Normal Selling Price" means the price at which a Selling Member, sells or supplies its goods and/or services to non-members on the same day.
- (m) "Rules and Regulations of the Trading Program" means the rules and regulations adopted by Bartercard from time to time to regulate the operation of the Trading Program and includes any subsidiary rules issued from time to time relating to any of the procedures of the Trading Program and includes any amendments or alterations made to such rules or subsidiary rules.

2.3 Purpose

The purpose of these Rules is to regulate the Trading Program by setting out the terms upon which Members may trade. These Rules govern the operation of the Trading Program.

2.4 Legally Binding

Bartercard and each Member agree to be bound by these Rules

which, by force of the Membership Agreement signed by each Member, forms a contract between Bartercard and all of the Members jointly, between Bartercard and each of the Members severally, and between each Member and each other Member ("the Agreement"). If there is a conflict between the terms of the Agreement and these Rules, the provisions of these Rules will prevail.

2.5 Survival of Obligations

These Rules are binding on the Members and obligations imposed upon Members under these Rules will survive suspension or termination of the right of a Member to participate in the Trading Program.

2.6 Binding on Personal Representatives and others

The Rules are binding upon the Members, their executors, administrators, successors, permitted assigns and substitutes.

3. NATURE OF Trade dollars

3.1 Nature

A "Trade dollar" is an accounting unit (equivalent to one New Zealand Dollar) used to record the value of goods and services traded. Trade dollars are not legal tender, securities, debentures, or commodities. Bartercard has the right and power to regulate and control the number of trade dollars within the Trading Program.

3.2 Credit Balance an Asset of Member

The trade dollars recorded in the trading account of a Member ("Trade Account") which has a credit balance represent an asset of that Member. Such a Member is entitled to obtain goods or services from another Member to a value equivalent to that credit balance.

3.3 Not a Liability of Bartercard

The trade dollars recorded in a Trade Account of a Member which has a credit balance do not constitute a liability or a debt payable by Bartercard or the Manager to any Member.

3.4 Debit Balance a Liability of Member

A Member whose Trade Account has a debit balance is liable to either:

- (a) supply goods or services to an equivalent value to another Member; or
- (b) if the Member has not discharged the Member's liability by supplying goods or services to another Member, to pay to Bartercard an amount in cash in New Zealand Dollars equivalent to the amount in trade dollars of the debit balance.

3.5 No Obligation to Redeem or Convert

Under no circumstances will Bartercard or the Manager be under any obligation to any Member to redeem or convert to cash or pay any amount for or in respect of trade dollars nor do Bartercard or the Manager warrant the negotiability of trade dollars.

3.6 Restriction on Use

(a) Trade dollars may only be used in the manner and for the purpose set forth in these Rules.

(b) For the avoidance of doubt, trade dollars must not be exchanged between Members for any cash consideration.

PART II – TRADING IN THE PROGRAM

4. ENTITLEMENT TO PARTICIPATE

4.1 Member

Only a Member current in the payment of any Fees and charges owing to Bartercard, trading within its Credit Line limit and otherwise conducting itself in accordance with these Rules, is entitled to participate in the Trading Program.

4.2 Limited Supply Member

A "Limited Supply" Member is a Member which, with the prior approval of Bartercard, has either suspended or restricted its participation in the Trading Program and will be designated as such in the Bartercard Directory/Maps.

4.3 Additional Cardholders

Bartercard may at a Member's request issue additional Cards to any person nominated by the Member ("Additional Cardholder") to be used subject to these Rules. The Member agrees to be liable for the use of the Additional Cardholder's Card including any breaches of the Rules until the Additional Cardholder's right to use the Card is withdrawn in accordance with Rule 4.4. If the Additional Cardholder breaches any of these Rules, Bartercard may without notice suspend and/or withdraw the Additional Cardholder's right to participate in the Trading Program.

4.4 Additional Cardholders Right Withdrawn

The Member will give to Bartercard written notification of the Member's intention to withdraw an Additional Cardholder's right to use the Member's Trade Account and will return the Additional Cardholder's Card to Bartercard forthwith. Bartercard will withdraw the right of use effective from receipt by Bartercard of both written notification and the Additional Cardholder's Card. A Member remains liable for all use of an Additional Cardholders Card until the additional Card is returned to Bartercard.

5. TRADE TRANSACTIONS

5.1 Trade

A "Trade" is a transaction conducted in the manner set out in these Rules between Members involving the sale and purchase of goods (which expression includes real and personal property and any right or title to or interest in any thing) or services. The party selling the goods or services is the "Selling Member", and the party purchasing is the "Buying Member". Unless otherwise specifically stated a "Trade" in these Rules will mean an "Ordinary Trade" pursuant to Rule 6.1.

5.2 Trade Accounts

Bartercard will establish for each Member a Trade Account for recording Trades entered into by them and other transactions in trade dollars which relate to them.

5.3 No Agency

In conducting any Trade, Members do so as principals and not as agents of or through the Manager or Bartercard. Bartercard is not a party to any Trade, and Trades will be entered into voluntarily by the Buying Member and Selling Member. Neither the Manager nor Bartercard is not the guarantor of any Trade or Trade dollar or otherwise liable therefore.

5.4 Foreign trade dollars

Notwithstanding anything to the contrary in these Rules, a member may apply to Bartercard NZ to bring a maximum of NZ \$10,000 (assessed in total across all accounts associated to the account held by the member) into the New Zealand Bartercard Trade Exchange

during any 12 month period. Approval of such applications will be determined by Bartercard NZ in its sole discretion and any attempt to transfer funds in excess of any approved level will be declined. This clause applies to funds transacting by means of:

- (a) Acting as a Selling Member; or
- (b) Transferring funds from any associated Bartercard Trade Account(s) held in a foreign jurisdiction(s); or
- (c) Utilising an associated Bartercard Trade Account(s) held in a foreign jurisdiction(s) to act as a Buying Member with any New Zealand Bartercard accounts.

6. TRADE PROCEDURE

6.1 Ordinary Trades

The procedure for conducting payment for an Ordinary Trade is:

- (a) Produce Card: After the Trade has been completed the Buying Member will produce its Card to the Selling Member.
 - (b) Complete Voucher: Either the Buying Member or the Selling Member will complete the following particulars of the Trade upon a form prescribed from time to time by Bartercard as the form to be completed for the purposes of a Trade ("Transaction Voucher"):
 - (i) the name of the Buying Member and its account number;
 - (ii) the name of the Selling Member and its account number;
 - (iii) a brief description of the goods or services;
 - (iv) the date upon which the Trade is entered into;
 - (v) the Trade dollar amount of the Trade; and
 - (vi) the Selling Member will confirm that the Card has not expired.
 - (c) Sign Voucher: The Buying Member will sign the Transaction Voucher and the Selling Member will check that the signature on the Transaction Voucher conforms with the signature on the Card.
 - (d) Endorse Authorisation: The Selling Member will obtain and endorse the Transaction Voucher with the Authorisation Number issued by Bartercard pursuant to Rule 7.
 - (e) Return of Voucher: The Selling Member will send the original completed Transaction Voucher to Bartercard within seven (7) days, give the duplicate to the Buying Member, and retain the triplicate copy.
- #### 6.2 Trade by Product Voucher
- (a) Product Vouchers: Product Vouchers are prepaid Vouchers obtained through Bartercard which enable the bearer to receive goods and services from a named merchant to the value of the Product Vouchers without an Authorisation Number.
 - (b) Product Vouchers obtained from Selling Member: From time to time, Bartercard may obtain from a Selling Member Product Vouchers in which case it will:

- (i) credit the Trade Account of that Member with the relevant Trade Dollar amount;
 - (ii) debit Bartercard's Trade Account with that Trade dollar amount.
- (c) Issue of Product Vouchers:** At the request of any Member, Bartercard may issue to that Member a Product Voucher entitling the bearer to receive goods and services to the value of the Product Voucher in which case it will:
- (i) debit the Trade Account of that Member with the relevant Trade Dollar amount;
 - (ii) credit Bartercard's Trade Account with that Trade dollar amount.
- (d) Selling Member's Obligation:** A Selling Member must trade with the bearer of a Product Voucher by supplying goods and services to the value of the Product Voucher. There is no need for the Selling Member to forward the redeemed Product Voucher to Bartercard after the Trade has been completed.
- (e) Payment of balance in cash:** The bearer of a Product Voucher may, if the Trade dollar amount of the Product Voucher is insufficient to meet the purchase price of the goods or services to be sold or provided by the Selling Member, pay the balance of the purchase price to the Selling Member in cash rather than in trade dollars.
- (f) No change payable:** Where the Trade dollar amount of the Product Voucher exceeds the purchase price of the goods or services to be sold or provided, the Selling Member is not obliged to pay any change or give any credit in favour of the bearer of the Product Voucher.
- (g) Product Vouchers not Issued:** At any stage, should Product Vouchers remain unissued, Bartercard may return the Product Vouchers, whether expired or not, to the named merchant and will:
- (i) debit the Trade Account of the Member to whom the Product Voucher(s) are being returned with the Trade dollar amount of the Product Voucher(s), refunding any Transaction/Service Fees originally incurred;
 - (ii) credit Bartercard's Trade Account with that Trade dollar amount.
- (h) Supplementary or Amended Rules:** Bartercard may, from time to time, issue supplementary or amended rules for the use of Product Vouchers, which will be endorsed thereon, and Members using Product Vouchers will be bound thereby.
- (i)** In respect of goods or services provided pursuant to the production of a Product Voucher, Bartercard or the Manager makes no express or implied warranty as to the merchantability or fitness for purpose of any such goods or services and for the purposes of such Trade the Member receiving the Product Voucher will be deemed to be the Selling Member.
- 6.3 Trade by Gift Card**
- (a)** Gift Cards are Cards preloaded with a Trade dollar amount which entitles the authorised bearer to participate in the Trading Program.
- (b)** At the request of any Member, Bartercard may issue to a non-Member a Gift Card in which case it will:
- (i) debit the Trade Account of that Member with the relevant Trade dollar amount;
 - (ii) credit the Gift Card being issued with that Trade dollar amount.
- (c)** The issue and value of Gift Cards will be at the sole discretion of Bartercard.
- (d)** When a Gift Card is presented to a Selling Member for the purchase of goods or services, the Selling Member must follow the trade procedure as set out in Rule 6.1.
- (e)** In respect of goods or services provided pursuant to the production of a Gift Card, Bartercard or the Manager makes no express or implied warranty as to the merchantability or fitness for purpose of any such goods and services and for the purposes of such Trade the Member to whom the Gift Card is produced will be deemed to be the Selling Member.
- (f)** Bartercard may, from time to time, issue supplementary or amended rules (which will be supplied with the Gift card) for the use of Gift Cards, and Members using or accepting Gift Cards will be bound by the amended rules.
- 6.4 Trade By Use of EFTPOS Terminal**
- The procedure for conducting Trades through the use of an EFTPOS Terminal is as follows:
- (a)** Produce Card: Prior to receiving the goods or services the Buying Member will produce its Member Card to the Selling Member.
- (b)** Complete EFTPOS transaction: The Selling Member will swipe or enter the Buying Member's Card details through the Selling Member's EFTPOS terminal.
- (c)** Sign Voucher: The Buying Member will sign the EFTPOS Transaction Voucher and the Selling Member will check that the signature on the EFTPOS Transaction Voucher conforms with the signature on the Card.
- (d)** The Selling Member will give the Buying Member a copy of the EFTPOS Transaction Voucher immediately after completing the Trade.
- (e)** The Selling Member will retain the original EFTPOS Transaction Voucher for at least twelve (12) months after the Trade.
- (f)** The Selling Member will provide Bartercard with a copy of the EFTPOS Transaction Voucher within forty-eight (48) hours after demand. Failure to do so may result in the Trade being reversed.
- (g)** If an EFTPOS terminal is not operational, then the trade procedure will be followed as set out in Rule 6.1.
- 6.5 Trade By Use of Electronic Commerce**
- The procedure for conducting e-commerce Trades through the Internet is contained in the Rules governing e-commerce applications located at Bartercard's Internet trading website which rules form part of these Rules.
- 6.6 Trade by way of mail, facsimile, telephone or internet order**

The procedure for conducting Trades by way of mail, facsimile, telephone or internet order is:

- (a) Information Provided: Where the Selling Member has been granted phone/mail order status prior to receiving the goods or services, the Buying Member will provide the Member Card or Additional Cardholders Card details (including name, number and expiry date) by way of mail, facsimile, telephone or internet order to the Selling Member.
- (b) Trade Procedure Followed: The appropriate procedure set out in Rule 61 (except Rule 61(c)) will be then followed.
- (c) EFTPOS Procedure Followed: With EFTPOS Trades the appropriate procedure set out in Rule 64 will be followed.

6.7 Acknowledgment of Liability

The signing by the Buying Member of the Transaction Voucher or the provision of the Buying Member's Card details by or on behalf of the Buying Member constitutes:

- (a) acknowledgment by the Buying Member that the Trade to which the Transaction Voucher relates has been conducted in accordance with these Rules;
- (b) agreement on the part of the Buying Member that the Buying Member's Trade Account is to be debited in accordance with Rule 5.3(b) with the amount referred to in the Transaction Voucher; and
- (c) if the effect of debiting the Trade Account of the Buying Member with the Trade dollar amount of the Trade, after offsetting that amount against any credit balance in that Trade Account, is to produce a debit balance in that Trade Account, an acknowledgment and evidence of the Buying Member's liability as provided in Rule 3.4.

6.8 Non Compliance with Procedure

Where the Buying Member or the Selling Member do not comply with any part of the trade procedure set out in these Rules, Bartercard will have the right to refuse to process the Trade or, if it has been processed, to reverse, cancel, or alter the entries in the Trade Accounts of the Members involved pursuant to Rule 18.

7. AUTHORISATION PROCEDURE

7.1 Authorisation to be Sought

Where the Trade dollar value of a proposed Trade exceeds such amount as Bartercard may specify from time to time as endorsed on the Member's Card ("Minimum Authorised Amount"), the Selling Member will seek Authorisation for the Trade.

7.2 Authorisation Granted

If Authorisation is granted to a proposed Trade then Bartercard will issue an Authorisation Number.

7.3 Refusal of Authorisation

Bartercard will be entitled to refuse Authorisation for any reason including, without limitation:

- (a) that the Buying Member does not have sufficient trade dollars in its Trade Account or available credit in its Credit Line; or
- (b) that either party is in breach of the Rules; or

- (c) that the Selling Member failed to obtain Authorisation before the Trade.

7.4 Expiry of Authorisation

An Authorisation is valid only for a period of seven (7) days after the date upon which it was granted, after which it expires whereupon Bartercard may treat the Trade as if no Authorisation had been granted.

8. PROCESSING OF TRADES

8.1 Posting of Authorised Trade

Where Authorisation has been granted and the Authorisation Number so issued has been endorsed on the Transaction Voucher, Bartercard will post the Trade to the Trade Accounts of the Selling Member and the Buying Member.

8.2 Obligation to Process

Bartercard is not obliged to process a Transaction Voucher where it reasonably suspects of any party to the Trade, or reasonably suspects of any party in any other circumstances, a breach of the Rules, fraud, or misleading or deceptive conduct.

8.3 Lost or Stolen Card

A Member is liable for:

- (a) All Trades conducted on a lost or stolen Card prior to Bartercard receiving written notification of the loss or theft.
- (b) All Trades conducted on an Additional Cardholder's Card prior to Bartercard receiving written notification of withdrawal under Rule 4.4 PROVIDED THAT if Bartercard is satisfied that the Member has made all reasonable efforts to obtain the Additional Cardholder's Card but has been unable to do so, then Bartercard may in its sole discretion treat the Additional Card as being lost or stolen.

8.4 Where No Authorisation Number

If an Authorisation Number is not endorsed on a Transaction Voucher, Bartercard may post the Trade to the Member's Trade Account but will have no obligation to do so.

8.5 Late Receipt of Voucher

Bartercard may decline to process any Transaction Voucher which is received later than seven (7) days after the date of the Trade, even if Authorisation was granted.

8.6 Audit and Verification

All Trades are subject to final audit and verification by Bartercard and, in the case of errors or inaccuracies, a Member's Trade Account may be debited or credited so as to correct any error without giving notice to the relevant Member.

8.7 Copy of Transaction Voucher

A Member who requests a copy of a Transaction Voucher will be provided with a copy subject to payment of an administrative fee which may be prescribed from time to time.

8.8 Re-presentation of Cheques

Members will be charged an administrative fee which may be prescribed from time to time for cheques that are required to be re-presented or are referred to the drawer or for returning more than one copy of a Voucher.

9. TRADE CONDUCT

9.1 Identification

(a) A Buying Member will not be required to disclose to a Selling Member the Buying Member's intention to pay with trade dollars until after the terms of the Trade have been agreed upon.

(b) When establishing the terms of trade, a Buying Member will not seek or pressure a Selling Member for their best possible price.

(c) Once the terms of the Trade have been agreed upon, the Buying Member must clearly disclose to the Selling Member its intention to pay with trade dollars. Any such disclosure must be made at the time of making the booking, placing the order or accepting a quote and before the Trade becomes binding.

9.2 Ethical Pricing

(a) A Selling Member will charge the Normal Selling Price for all goods and services sold through Bartercard. The "Normal Selling Price" means the price at which a Selling Member, sells or supplies its goods and/or services to non-members on the same day.

(b) A Buying Member may seek a discount from a Selling Member's Normal Selling Price after it has disclosed its intention to pay with trade dollars.

9.3 100% Trade and exceptions

(a) All Trades will be conducted on a one hundred percent (100%) Trade dollar basis except in the following circumstances:

(i) the Selling Member has, before entering into the Trade, obtained the prior consent of Bartercard to trade in cash, or partly in cash and partly in trade dollars;

(ii) when dealing with property and specific large value items which meet the 'listing criteria' set out in the Bartercard Property Website;

(iii) where there exists a Continual Supply Agreement (see Rule 2.2(d)) between the Members;

(iv) where Bartercard has in its sole discretion negotiated an agreement with a Member, which will result in goods and/or services being made available to other Members for a combination of cash and trade dollars. For the purposes of this Sub rule any such agreement will be referred to as a National Continual Supply Agreement.

(b) Consent for any Trade entered into pursuant to Rule 9.3(a) may be given conditionally, withheld and/or later withdrawn at the sole discretion of Bartercard.

(c) Any Member breaching the requirement for 100% trade dollar transactions will pay the standard Transaction/Service Fee on the non-Bartercard Trade dollar component of the Trade, together with an additional cash Transaction /Service Fee equal to 15% of the said value within seven (7) days of demand by Bartercard.

9.4 Refusal to Trade

(a) Members are accountable for their listings in the Bartercard Directory/ Maps and are bound by their listing for the life of the Directory as set out in Rule 13.4.

(b) No Selling Member which is not a Limited Supply Member will decline

to enter into a Trade with a Buying Member in circumstances where the Selling Member would have entered into the Trade if the Buying Member was willing to pay cash, unless an Authorisation Number has been sought and refused, or if the Buying Member is an existing cash economy customer of the Selling Member.

9.5 Tips and Taxes

All tips, gratuities and any tax or duty applicable on any Trade will be paid in trade dollars by the Buying Member at the point of purchase.

9.6 Direct Trade

A "Direct Trade" is a Trade entered into by two or more Members outside of the Trading Program for the purpose of avoiding the payment of Transaction/Service Fees.

(a) No Member will enter into a Direct Trade with another Member.

(b) No Member will execute a Transaction Voucher leaving the Selling Member's name blank, receive a third party Transaction Voucher, or negotiate a Gift Card or Product Voucher to a third party.

(c) Each Member involved in a Direct Trade will pay a Transaction/Service Fee equal to the Transaction/Service Fee of the value of the Direct Trade, together with an additional cash Transaction/Service Fee equal to 15% of the said value, with all Fees due and payable within seven (7) days of completion of the Direct Trade.

(d) Bartercard may request from any of the Members it believes to have engaged in the Direct Trade a copy of any relevant documentation relating to the Trade which must be supplied within 48 hours of request being made.

(e) Notwithstanding the other provisions of Rule 9.6, Bartercard may suspend or terminate the right of a Member to participate in the Trading Program if the Member has entered into a Direct Trade.

9.7 Poor Service

Where in Bartercard's opinion a Member fails to respond to another Member's enquiry or fails to respond to another Member in the same manner as the Member would have if the other Member was a cash customer, the Member will be deemed to have engaged in "Poor Service" for which the Member's right to participate in the Trading Program may be suspended or terminated.

9.8 Fair Dealings

Bartercard may investigate or enquire into complaints in relation to or breaches of these Trade Conduct Rules by a Member and may take such actions as it deems appropriate in order to promote or ensure fair dealings between Members.

10. EXTRAORDINARY MEMBER TRADES

10.1 Warranty as to Title

Where an Extraordinary Member participates in the Trading Program as a Selling Member, the Extraordinary Member warrants to the Buying Member that it has title to the goods free from any charge, lien, or encumbrance.

10.2 "As is where is"

Such goods are sold by the Extraordinary Member on an "as is where is" basis and the Buying Member acknowledges that the goods are manufactured or produced by a third party.

10.3 Assignment of Warranty

Upon the completion of any Trade in which the Extraordinary Member participates as a Selling Member, the Extraordinary Member will assign to the Buying Member the benefit of any warranty attaching to the goods to the extent that the benefit of any such warranty is lawfully capable of assignment.

10.4 No Warranty as to Fitness for Purpose

The Extraordinary Member makes no warranty whether express or implied, by operation of law or otherwise as to the merchantability, fitness for purpose or otherwise of those goods and a Buying Member will look solely to the manufacturer, distributor or retailer of such goods to obtain the benefit of any warranty.

10.5 Reservation of Title

Where the Extraordinary Member participates in the Trading Program as a Selling Member, the following provisions apply:

- (a) Title to goods traded between the Extraordinary Member and the Buying Member will remain with and vest in the Extraordinary Member at all times until:
 - (i) the full purchase price has been discharged by a debit entry in the Trade Account of the Buying Member; and
 - (ii) if such a debit entry results in the Trade Account of the Buying Member having a debit balance, that debit balance has been discharged either by payment from the Buying Member to the Extraordinary Member, or by credits subsequently made to the Buying Member's Trade Account as a result of Trades.
- (b) While title to goods traded between the Extraordinary Member and the Buying Member remains with and is vested in the Extraordinary Member, the Extraordinary Member may re-take possession of such goods (or any part of them) unless, within thirty (30) days after the completion of the Trade (for which purpose the date on which the Trade is entered in the Buying Member's Trade Account will be conclusive evidence of the date of the Trade), title to the goods has transferred to and become vested in the Buying Member in accordance with the provisions of Rule 10.5(a).
- (c) For the purposes of Rule 10.5(b), the Extraordinary Member is hereby irrevocably authorised by the Buying Member to do all or any of the following things in re-taking or attempting to re-take possession of the goods (or any part of them), and may exercise any of the following powers through any of the Extraordinary Member's directors, officers, servants, agents, or sub-contractors:
 - (i) to enter upon any land, buildings or property owned, leased or occupied by the Buying Member;
 - (ii) to use force in order to obtain entry to any such land, buildings or property;
 - (iii) to sever, remove and disconnect the goods (or any part of them) from any land, building or other property to which the same have been attached or affixed, without liability for any damage or injury thereby caused to such land, buildings or other property;
 - (iv) to appoint a Receiver to take possession of the goods or any part of them; and
 - (v) if the goods (or any part of them) have been intermingled with goods

of the same or a similar character or description, to appropriate out of the goods so intermingled such quantity or amount as in the opinion of the Extraordinary Member fairly represents the quantity or amount and the value of the goods sold to the Buying Member;

PROVIDED THAT the Buying Member will indemnify the Extraordinary Member against any loss or damage suffered by the Extraordinary Member resulting from any action taken by the Extraordinary Member pursuant to Rule 10.5(c).

- (d) While title to any goods sold by the Extraordinary Member to the Buying Member remains vested in the Extraordinary Member:
 - (i) the Buying Member must not sell, lease, encumber, or otherwise deal with or part with possession of the goods or any part of them until title has transferred to and become vested in the Buying Member; and
 - (ii) if the Buying Member breaches the provisions of Rule 10.5(d)(i), all proceeds of any such sale, leasing, encumbering, dealing, or parting with possession of the goods will be immediately due and payable to the Extraordinary Member.

10.6 Legislation

The provisions of Rule 10 are subject to any trade or commerce legislation which is inconsistent with these provisions, to the extent that the same cannot lawfully be contracted out of and to that extent only, the provisions of these Rules will be of no force or effect.

10.7 Charge

Despite anything else contained in these Rules, the Buying Member agrees to grant a charge in favour of the Extraordinary Member over any goods supplied pursuant to Rule 10.

PART III - ADMINISTRATION OF THE PROGRAM

11. BARTERCARD'S ROLE

11.1 Provision of Services Bartercard will:

- (a) Monitor and Recover Debit Balances:
 - (i) monitor all Trade Accounts which have a debit balance and ensure that the Members holding those accounts maintain them in accordance with these Rules;
 - (ii) pursue recovery of debit balances where the Rules provide that they are recoverable and where Bartercard is satisfied that the debit balance is commercially viable to pursue.
- (b) Regulate and control the number of trade dollars within the Trading Program.
- (c) Issue to Members within 30 days of them becoming Members, Transaction Vouchers that may be prescribed from time to time for use in connection with any Trade.
- (d) In its discretion issue Gift Cards to any non-members and Product Vouchers to any Members which can be used to participate in a Trade in accordance with Rules 6.2 and 6.3.

- (e) Issue Member's Card:
 - (i) issue from time to time to Members a Member's Card ("Member's Card") which will, upon its production to another Member be valid in respect of purchases up to the amount specified on the reverse side of the Card;
 - (ii) the Member's Card will remain at all times the property of Bartercard and may not in any way be defaced or altered;
 - (iii) the Member's Card will promptly be cut in half and returned to Bartercard by the Member:
 - a. upon cancellation of the right to use the Card;
 - b. where the Member requests cancellation;
 - c. upon its expiry (although the Card need not be returned);
 - d. where a Card has been previously reported lost or stolen, upon its subsequently being found;
 and in these circumstances an agent of Bartercard may call on the Member to obtain possession of the Member's Card and the Member will return the Card to that agent upon sight and proof of authority to collect the Card.
 - (f) Provide Monthly Statements electronically or in paper form to Members reflecting activity in their Trade Accounts and amounts that are due and owing to Bartercard ("Monthly Statement"). Monthly Statements issued by Bartercard are deemed to be accurate unless a Member notifies Bartercard in writing of any discrepancy within fourteen (14) days of the Monthly Statement date. If the discrepancy is accepted a further Monthly Statement will be issued to correct the discrepancy. Copies of Monthly Statements will be provided upon payment of a fee which will be prescribed from time to time.
 - (g) Provide interim statements to Members particularising activity in their Trade Accounts subject to payment of a fee which may be prescribed from time to time.
 - (h) At its discretion invite applications for Membership of the Trading Program and if it considers the applicant to be a person or entity who carries on business of a kind likely to be suitable for trading in the Trading Program may upon payment of the Membership Fee and the approval of the Manager enter the applicant in the Membership Register.
 - (i) At its discretion amend the Rules pursuant to Rule 31.
 - (j) Establish and maintain all books and records (including books of account) necessary and proper for the conduct of the Trading Program.
 - (k) Establish a Trade Account for each Member.
 - (l) At its discretion post or refuse to post trade dollars to a Member's Trade Account.
 - (m) At its discretion grant, establish, maintain, review, vary or cancel a Credit Line in accordance with Rule 20.
 - (n) At its discretion set and from time to time review the amount of the Fees payable by each Member under the Rules, and the proportion of those Fees which is payable in cash.
 - (o) Operate and maintain a procedure for providing Authorisation
 - (p) Numbers to Members.
 - (q) At its discretion terminate any Membership pursuant to Rule 19.2.
 - (r) At its discretion institute, maintain, defend or otherwise participate in or compromise any proceedings in any court or tribunal in its name or in the name of the Manager, in respect of any moneys payable by or to Bartercard or any other claim or demand by or against it or the Manager.
 - (s) Exchange trade dollars for cash received by it from a Member as payment of a Trade dollar debt.
 - (t) Use its best endeavours to ensure that the levels of the Debt Reserve Fund are adequate to protect the interests of the Members.
 - (u) Maintain a current list of all Members in its Membership Register.
 - (v) Provide to Members access to non-confidential authorised details of current information on Members and goods or services available under the Trading Program.
 - (w) Issue from time to time publications and make available advertising space in such publications to Members for goods or services on offer through the Trading Program.
 - (x) Do all things necessary or incidental to the proper and efficient management and administration of Bartercard and the Trading Program and the operation and enforcement of the Rules of the Trading Program.
- 11.2 No Liability**
Neither Bartercard nor the Manager will be liable to any Member for failure to provide, or the manner of providing, the above services.
- 12. MANAGER'S ROLE**
- 12.1 Manager to Act on Behalf of Bartercard**
Pursuant to the Deed of Management the Manager has the full and unfettered management and control of the affairs of Bartercard relating to the conduct and operation of the Trading Program. Where these Rules provide that any act, matter or thing is to be done or caused to be done or may be done by Bartercard the Manager may do or cause to be done that act, matter or thing which will be sufficient compliance with these Rules.
- 13. DIRECTORY, ADVERTISING, AND PROMOTIONS**
- 13.1 Authorisation**
(a) Members authorise Bartercard to notify and advertise to other Members the availability in the Trading Program of that Member's goods or services for the purposes of:
- (i) the provision of the goods or services;
 - (ii) the enhancement of customer service;
 - (iii) the answering of Members' queries;
 - (iv) Member research; and
 - (v) the facilitation of Trades.

- (b) Members authorise Bartercard and its agents, contractors, authorised employees and any related party:
 - (i) to send to it commercial electronic messages for the purpose set out in Rule 13.1; and
 - (ii) not to include in the commercial electronic message a functional unsubscribe facility.
- (c) For the purposes of these Rules, an “electronic message” is a message sent using an Internet carriage service or any other listed carriage service to an electronic address in connection with:
 - (i) an email account; or
 - (ii) an instant messaging account; or
 - (iii) a telephone account.

Note: Email addresses and telephone numbers are examples of electronic addresses.

- (d) For the purposes of Rule 13, it is immaterial whether the electronic address exists or whether or not the message reaches its intended destination.
- (e) If a message is sent by way of a voice call made using a standard telephone service, the message is not an electronic message for the purposes of these Rules.

13.2 Directory – Publication and Distribution

Bartercard will from time to time publish and distribute a directory, including a directory in electronic form on the Internet, that contains the names and such other information concerning Members that Bartercard from time to time determines. In these Rules a reference to “Directory” will mean both Published and Electronic Directories unless otherwise specified.

13.3 Expiry of Published Directory

All new Published Directories will take effect immediately upon receipt by the Member which will be deemed to be three (3) working days after dispatch by Bartercard to the Member. All old Published Directories will cease to have effect as soon as the new Published Directories take effect.

13.4 Expiry of Electronic Directory

All new Electronic Directory listings will take effect immediately upon their placing on Bartercard’s website and all old Electronic Directory listings will expire at the same time except that any amendments or alterations to existing listings will not take effect until the new Published Directory takes effect.

13.5 Member’s Listing

A Member’s listing in the Directory may be classified by Bartercard from time to time.

13.6 Member’s Obligations

- (a) Members will fulfill their listing obligations until the expiry of the old Published Directory. Requests to go on to Limited Supply will not take effect until the commencement date of any new Published Directory pursuant to Rule 13.2.
- (b) Listings will be rerun in each new Published Directory unless

Members request amendments prior to the notified Directory deadline.

- (c) Members will not refuse to accept trade dollars whilst they have a current unqualified Directory listing.

13.7 No Warranty as to Accuracy of Directory

Neither Bartercard nor the Manager give any warranty as to and will not be responsible for the accuracy of the information in relation to any Member contained in the Directory, or any promotional or other material provided by Bartercard or servant or agent of them or any of them to Members, and will not be liable for any error or omission therein and will be indemnified by any Member in respect of any loss or damage suffered by Bartercard or the Manager as a result of any Member placing inaccurate information in the Directory.

14. TRANSACTION, SERVICE, ADMINISTRATION AND DIRECTORY FEES

14.1 Transaction/Service Fees

Each Member will pay a fee in respect of each Trade in which it participates (the “Transaction/Service Fee”) which will be equal in amount to such percentage of the value of the Trade (inclusive of any tax) as Bartercard from time to time determines, payable, at the election of Bartercard, either in cash or in trade dollars. The Trade dollar amount of any Transaction/Service Fee may, at the election of Bartercard, be debited to the Trade Account of either or both of the Members participating in the Trade.

14.2 Marketing Support Fees

Each Member will pay a monthly fee for the marketing and promotion and/or service of its Trade Account (“the Marketing Support Fee”) which at the discretion of Bartercard will be payable in any proportion of cash and/or trade dollars.

14.3 Directory Fees and Display Advertising Fees

Members may be charged a Directory Fee and/or a Display Advertising Fee in order to secure a listing in the Published and/ or the Electronic Directory under Rule 13 which at the discretion of Bartercard will be payable in any proportion of cash or trade dollars.

14.4 Payment

Each Member will pay the full amount of all Fees, charges and other moneys owing by it within seven (7) days of the date of the Monthly Statement or within such other period as may be notified in that Statement or in any other way unless the Member has agreed with Bartercard in writing that payment is to be sent and received together with the Transaction Voucher to which the Fee relates, in which case the Member (“Fees with Voucher Member”) must forward such Fee together with that Transaction Voucher.

- 14.5 Notwithstanding anything in these Rules to the contrary, except for contributions towards the Debt Reserve Fund and any moneys paid to Bartercard by a Member with a debit balance in its Trade Account upon termination of that Member’s right to participate in the Trading Program (being moneys sufficient only to offset the debit balance), all Fees, charges and other moneys or financial obligations owed by any Member pursuant to these Rules will be paid to or satisfied with Bartercard or its nominee.

15. OVERDUE FEES OR OTHER MONEYS

15.1 Late Payment Interest

If a Member fails to pay any Fees, charges or other moneys within the period referred to in Rule 14.4 or, in the case of a Fees with Voucher Member, from the date of the Transaction Voucher to which the Fee

relates, then the Member must pay a monthly amount in cash on all outstanding Fees, charges and other moneys as notified under Rule 14.4 at the rate of ten percent (10%) per month (or such other rate as may be prescribed from time to time) from the date of the Monthly Statement or in respect of Fees with Voucher Member from the date of the Transaction Voucher until the Member has paid all Fees, charges or other moneys owing in full.

15.2 Arrears

If a Member is in breach of Rule 14.4 then Bartercard may in addition to any other remedies under these Rules cancel any Trade dollar Credit Line granted to the Member and/or freeze its Trade dollar balance and prevent that Member from participating as a Buying Member in any Trade until satisfactory arrangements are made for payment of any Fees, charges or other moneys in arrears.

15.3 Election to take trade dollars

(a) Where any Fees payable by a Member in cash (including interest charges payable under Rule 15.1) remain outstanding for longer than sixty (60) days after they fall due, Bartercard may, in its sole discretion and upon giving notice in writing to the Member, elect to convert the Member's cash indebtedness into a Trade dollar obligation in such sum as Bartercard in its sole discretion will determine, and thereupon debit the Member's Trade Account with that Trade dollar amount and credit Bartercard's Trade Account with that amount.

(b) A Member whose liability in cash for outstanding Fees has been converted to trade dollars in accordance with Rule 15.3(a) may, at any time within thirty (30) days after receiving a notice under Rule 15.3(a), satisfy its newly converted obligation in trade dollars by paying the amount of the cash Fees that was payable immediately before the conversion, whereupon Bartercard will reverse the Trade dollar debit referred to in Rule 15.3(a).

16. BREACH OF RULES, SUSPENSION AND DAMAGES

16.1 Investigate

Bartercard may in its sole discretion investigate breaches of these Rules by Members.

16.2 Fair Dealings

Bartercard may suspend and/or restrict a Member's right to participate in the Trading Program, and take such other action as it is empowered to pursuant to these Rules including the imposition of damages, in order to promote or ensure fair dealings between Members and may from time to time issue Fair Trading Guidelines with which Members must comply.

16.3 Suspension and Show Cause

If Bartercard suspects that a Member has breached these Rules, it may give notice of the breach in writing to the Member and request the Member to show cause in writing within seven (7) days as to why its Membership should not be suspended and/or why it should not pay damages.

16.4 Suspension

If, at any time after the expiry of seven (7) days from the date upon which a notice under Rule 16.3 was sent to a Member, Bartercard considers in its absolute discretion that the right of any Member to participate in the Trading Program should be suspended and/or why it should not pay damages, Bartercard, after considering submissions made by any Member pursuant to Rule 16.3, may suspend the Member's right to participate in the Trading Program immediately and/or call upon the Member to pay damages and will notify the

Member accordingly. Any suspension will have immediate effect and will be for such period as Bartercard determines. Any damages will be for such amount as Bartercard in its sole discretion will determine but not exceeding \$10,000.00 and will at Bartercard's sole discretion be payable within fourteen (14) days of demand in any proportion of cash and/or trade dollars.

16.5 Effects of Suspension

If Bartercard suspends a Member's right to participate in the Trading Program pursuant to Rule 16.4, all activity in the Member's Trade Account must cease.

16.6 Without Notice

Despite any other provisions in Rule 16, Bartercard will have the right in its sole discretion to suspend a Member or impose damages without notice.

16.7 Termination

Any decision by Bartercard to suspend a Member under Rule 16 will not affect Bartercard's right to also terminate the Member's Membership under Rule 19.

16.8 Decision Final

A decision by Bartercard to suspend or terminate a Member's Membership or to impose damages pursuant to Rule 16 or Rule 19.4 will be final.

16.9 Additional Powers

Bartercard's powers under Rule 16 will be in addition to any of its other powers referred to in these Rules.

17. TRADE OUT AND CESSATION OF PARTICIPATION

17.1 Pre-Payment

If:

- (a) Bartercard reasonably believes that a Member is spending the credit balance in the Member's Trade Account or reducing the debit balance in the Member's Trade Account in anticipation of ceasing future participation in the Trading Program; or
- (b) a Member has given notice to Bartercard or has, by its actions, in the opinion of Bartercard indicated that it intends to cease participation in the Trading Program; or
- (c) a Member's right to participate in the Trading Program has been terminated but Bartercard allows the Member to finalise its Trade Account by entering into Trades as a Selling Member only -

Bartercard will be entitled to require immediate pre-payment in cash of the Transaction/Service Fees which will become payable on the debit or credit balance of the Member's Trade Account.

17.2 No Trading Unless Fees Pre-Paid

Where Bartercard requires a Member to pre-pay Fees under Rule 17.1 that Member will not be permitted to enter any Trade until those Fees are paid.

18. REVERSAL OF TRANSACTIONS

18.1 Reverse Certain Transactions

Bartercard may reverse, alter or cancel an entry in any Member's Trade Account in relation to a Trade if:

- (a) both the Buying Member and the Selling Member so request;

- (b) the Transaction Voucher in respect of the Trade was not or does not appear to have been signed by an authorised signatory or was not signed at all;
- (c) the Trade was by way of Mail, Facsimile, Telephone or Internet Order and was, in Bartercard's opinion, unauthorised or not valid;
- (d) there was, in Bartercard's opinion, some breach of these Rules or a fraudulent act in connection with the conduct of the Trade;
- (e) the Card used in the Trade was expired or invalid.

18.2 Member May Show Cause

Before taking any steps under Rule 18.1 Bartercard may give the relevant Members notice requiring them to show cause within seven (7) days as to why the entries in their Trade Accounts reflecting that Trade should not be reversed, altered, or cancelled.

18.3 Where Cause Not Shown

If the relevant Members do not show cause to Bartercard's satisfaction, Bartercard in its absolute discretion will be entitled to reverse, alter, or cancel the entry or entries in the Trade Account of the Buying Member and/or the Selling Member in respect of which there has been non-compliance with these Rules, in which event it will be the responsibility of the Selling Member to seek payment from the Buying Member for any goods and/or services provided.

18.4 Trade Frozen Until Good Cause Shown

At any time until Bartercard has made a determination under Rule 18.3 it may freeze the entry in question in the Trade Accounts of the Buying Member or the Selling Member or both, until such determination is made.

18.5 Consequence of Reversal of Trade

If such reversal, alteration, or cancellation of any entry in the Selling Member's Trade Account results in a failure of the consideration in whole or in part for the Trade then the Selling Member will have no rights against Bartercard or the Manager and the Buying Member and the Selling Member will indemnify Bartercard or the Manager against any loss or damage they may suffer in respect of any exercise or purported exercise of any powers under Rule 18.

18.6 No Obligation to Reverse

Notwithstanding Rules 18.1 to 18.4 (inclusive), Bartercard will have no obligation, in any case, to:

- (a) reverse, alter, or cancel any entry;
- (b) call upon any Member to show cause why any entry should not be reversed, altered or cancelled;
- (c) freeze or unfreeze any entry; or
- (d) make any determination under Rule 18.

19. TERMINATION

19.1 Termination By Member

A Member will be entitled to withdraw from participation in the Trading Program by giving written notice of its intention to do so provided that that Member's goods and services are not advertised in the current Published or Electronic Directory in which case the notice of termination will only take effect at the expiry date of the current Published Directory or thirty (30) days after the receipt by Bartercard

of any such notice whichever is the later. It will be a breach of these Rules for any Member to so withdraw without giving the requisite notice.

19.2 Termination By Bartercard

Despite anything else in these Rules, Bartercard may in its absolute discretion terminate a Member's right to participate in the Trading Program without notice on the happening of any one or more of the following events:

- (a) the Member breaching any of these Rules or the terms of the Agreement;
- (b) the Member receiving on two (2) or more occasions in any twelve (12) month period a notice under Rule 16.3;
- (c) the Member committing an act of bankruptcy or being a company becoming insolvent and/or having a receiver, liquidator, administrator, or manager appointed, or making any arrangement or composition with its creditors;
- (d) the Member being in arrears with payment of Transaction/Service Fees or any other Fees, charges or other moneys for the period set out in Rule 14.4;
- (e) the Member engaging in Unfair Trading, Poor Service, Voucher Splitting, Direct Trading or Unethical Pricing as defined in Rule 9;
- (f) in its sole opinion Bartercard considers that it is not in the interests of the Trading Program that the Member should continue to participate in it.

19.3 Member's Breach Causes Loss

Members acknowledge and agree that a breach of these Rules by a Member will cause loss and damage to Bartercard in a number of ways which may include, but are not limited to:

- (a) administrative costs in dealing with the breach;
- (b) financial loss due to loss of Fees, charges and other moneys payable whether in cash or in trade dollars;
- (c) expenditure of funds in obtaining legal advice, and in instituting and prosecuting recovery action;
- (d) loss of the goodwill of Members towards the Trading Program and Bartercard ;
- (e) loss of trading volume; and
- (f) loss of Members.

19.4 Damage for Breach Payable on Termination

In addition to any moneys payable from the consequences set out in Rule 19.5, if a Member's right to participate in the Trading Program is terminated pursuant to Rule 19.2, that Member may be required to pay as a genuine pre-estimate of damages and not as a penalty the sum of \$10,000.00 or such lesser sum and in such proportion of cash and trade dollars as Bartercard in its sole discretion will determine, within fourteen (14) days of the date of termination.

19.5 Consequences of Termination

Upon the termination of a Member's right to participate in the Trading Program:

- (a) except when Rule 19.5(d)(ii) applies when the date for return will be at the end of the trade out period set out in that Rule, the Member must

immediately return to Bartercard all Cards and unused or outstanding Transaction Vouchers, and all other documents and property of Bartercard;

- (b) all Fees, charges and other moneys payable in trade dollars will be immediately debited against the Member's Trade Account;
- (c) if, after debiting the amounts referred to in Rule 19.5(b), the balance in the Member's Trade Account is a credit balance:
 - (i) that Member must immediately pay the amount of cash and Trade dollar Transaction/Service Fees that would have become payable by it in the ordinary course of the Trading Program if that Member had entered into a Trade as a Buying Member in an amount sufficient to spend the amount of trade dollars standing to its credit;
 - (ii) if the Member fails to pay any outstanding cash, Fees, charges or other moneys, Bartercard may debit the Member's Trade Account with an amount of trade dollars in such sum as Bartercard in its sole discretion will determine;
 - (iii) if after receipt of all cash Fees (or if the Fees are not paid in cash, the debiting of the Member's Trade Account) the Member's Trade Account is still in credit, Bartercard will issue to the Member a replacement Member's Card expiring one hundred and twenty (120) days from the date of issue, or some other period of time determined at Bartercard's sole discretion, for the specific purpose of spending out the Member's remaining Trade Account credit balance;
- (d) If after debiting the amounts referred to in Rule 19.5(b) the Member's Trade Account has a debit balance:
 - (i) the Member must immediately pay the amount of cash and Trade dollar Transaction/Service Fees that would have become payable by it in the ordinary course of the Trading Program if that Member had entered into a Trade as a Selling Member in an amount sufficient to bring its Trade Account to a nil balance;
 - (ii) the Member will have thirty (30) days within which to trade as a Selling Member and to reduce, so far as it can, the debit balance;
 - (iii) at the expiration of the thirty (30) day period, the Member must immediately pay to Bartercard the cash equivalent of the remaining debit balance;
- (e) No Fees or charges paid pursuant to these Rules will under any circumstances be refunded.

19.6 Certificate as Evidence

A certificate signed by a director or other person authorised by Bartercard is prima facie evidence and, in the absence of evidence to the contrary, is conclusive evidence:

- (a) that an amount stated in that certificate is due and payable by the Member in accordance with Rule 19.5;
- (b) of the amount of any interest payable by the Member in accordance with these Rules;
- (c) that any other sum stated in the certificate is due and payable by the Member in accordance with these Rules;

- (d) of any other fact, matter or circumstance whatsoever relevant to the dealings between the Member and Bartercard, or between the Member and Bartercard, or between the Member and another Member, in relation to these Rules.

19.7 Enforcement Expenses

Despite anything else contained in these Rules, if a Member is in default or in breach under these Rules, any enforcement expenses reasonably incurred or expended by Bartercard and/or the Manager in exercising any right under these Rules, or arising from any such default or breach, are immediately payable by the Member with effect from the date on which the enforcement expenses are incurred or expended and until paid will bear interest at the rate of 15% per annum from the date they are incurred or expended until the date of payment.

19.8 Moneys due for Payment

Termination for whatever reason will not affect the right of Bartercard under these Rules to enforce any provision relating to the payment of any Fees, charges and any other moneys due.

PART IV - CREDIT LINES AND DEBT RESERVE FUND

20. Trade dollar CREDIT LINES

20.1 Credit Line

(a) Bartercard may grant or withdraw from any Member a line of credit in trade dollars ("Credit Line") in an amount and on terms consistent with that Member's creditworthiness and ability to repay and may take the following matters into consideration:

- (i) the financial position of the Member;
- (ii) any credit references supplied by the Member;
- (iii) the Member's trading history;
- (iv) the nature of the Member's business;
- (v) the period of time during which the Member has operated its business.

(b) Bartercard may require security and/or a guarantee to support a Credit Line and also may require the Member to contribute a further non-refundable amount to the Debt Reserve Fund as an initial lump sum payment or as a monthly payment or both.

(c) The grant of a Credit Line will be subject to the approval of the General Partner of the Manager, which may withhold or grant its approval conditionally or unconditionally.

20.2 Trade Balance Beyond Credit Line

Where Bartercard has not granted a Credit Line to a Member and that Member's Trade Account is in debit by any amount or where Bartercard has granted a Credit Line to a Member and that Credit Line is exceeded by any amount, there will immediately be payable by that Member:

- (a) the cash equivalent of the Trade dollar deficit; and
- (b) interest at the rate of 2% per month on any such deficit payable in cash from the date the deficit arose until the deficit is repaid.

21. DEBT RESERVE FUND

21.1 Purpose

A fund of trade dollars ("Debt Reserve Fund") will be maintained and applied in accordance with these Rules for the purpose of injecting trade dollars into the Trading Program under Rule 21.4.

21.2 Levy of Contribution

Bartercard may levy Members for monthly contributions to the Debt Reserve Fund of not less than T\$5.00 trade dollars and not more than T\$20.00 trade dollars;

21.3 Adjustment to Monthly Contribution

(a) Bartercard may from time to time consider the adequacy of the Debt Reserve Fund;

(b) If Bartercard is of the opinion that the level of the Debt Reserve Fund is inadequate, then Bartercard in its sole discretion may determine the amount of the inadequacy and may increase the monthly levy specified in Rule 21.2 so as to bring the Debt Reserve Fund to an adequate level.

(c) If Bartercard is of the opinion that the level of the Debt Reserve Fund is adequate then Bartercard may decrease the monthly levy specified in Rule 21.2 to maintain the Debt Reserve Fund at an adequate level.

21.4 Application of Debt Reserve Fund

(a) If at any time it appears to Bartercard that a Member is a Delinquent Member, Bartercard may apply trade dollars from the Debt Reserve Fund to the debit balance in that Member's Trade Account so as to reduce in part or in full the debit balance in that account.

(b) Bartercard will then record the application of the trade dollars from the Debt Reserve Fund against the debit balance of the Delinquent Member in the books of Bartercard.

(c) The Debt Reserve Fund is not available to an individual Member who after entering into a Trade remains unpaid or is in dispute with another Member.

21.5 Delinquent Member not relieved

The reduction of a Delinquent Member's Trade Account under Rule 21 will not relieve the Delinquent Member of its obligations under the Rules of the Trading Program, and in particular, the Delinquent Member's obligations will continue as if any such reduction had not taken place.

22. DISPUTES BETWEEN MEMBERS

22.1 If a dispute arises between members, a member shall not commence any court proceedings relating to the dispute unless the member has first complied with this rule except where a party seeks urgent interlocutory relief.

22.2 A member claiming a dispute has arisen (the "Dispute") shall give written notice to the member with whom they have a dispute specifying the nature of the Dispute.

22.3 On receipt of that notice the members must in good faith endeavour to resolve the Dispute expeditiously.

22.4 If the members do not resolve the Dispute within 10 working days and the Dispute falls within the jurisdiction of the Disputes Tribunal, the

members shall within a further period of 20 working days, refer the Disputes Tribunal for determination.

22.5 If the members do not resolve the Dispute within 10 working days and the Dispute falls outside the jurisdiction of the Disputes Tribunal, the members shall mediate the Dispute in accordance with the procedures of LEADR New Zealand and the chair of the New Zealand Chapter of LEADR (or the chair's nominee) will select a mediator and determine the mediator's remuneration provided that, for the avoidance of doubt, it is recorded that conduct of the mediation process in accordance with this rule shall be without prejudice to each party's ability to commence court proceedings upon completion of such a mediation process, if a binding agreement has not been reached as a result of that mediation process.

22.6 For the avoidance of doubt, it is acknowledged that neither Bartercard nor the manager is obliged to resolve, arbitrate or mediate any disputes between members.

23. CONFIDENTIAL INFORMATION AND RESTRAINT AGAINST COMPETITION

23.1 Confidential Information and Intellectual Property Rights

A Member must not, whilst remaining a Member or at any time after ceasing to be a Member, make use of the Confidential Information or Intellectual Property Rights either:

(a) for the financial advantage or benefit of the Member or any other person; or

(b) to the detriment or disadvantage of Bartercard or the Manager -

and Members acknowledge that all Confidential Information and Intellectual Property Rights belong to Bartercard and Members rights to use any such Information and/or Rights is at the sole discretion of Bartercard and in any event will only subsist so long as they are Members. Any Member using Confidential Information and/or Intellectual Property Rights in breach of this provision will pay as a genuine pre-estimate of damages and not as a penalty the cash sum of \$250,000.00 or such lesser amount as Bartercard in its sole discretion will decide.

23.2 Restraint

A Member may be or become a member of another trade exchange in New Zealand but otherwise must not, without the prior written consent of Bartercard in respect of any business competitive with Bartercard business:

(a) remain a Member whilst participating either directly or indirectly in any such other business as an employee or in any management function or as a director, shareholder, partner or proprietor in any way;

(b) for a period of one year after ceasing to be a Member whether directly or indirectly or as director, shareholder, partner, or proprietor in any way:

(i) carry on or engage in or be interested in or participate in any such other business at any place within a 25km radius from a then current Member's business;

(ii) solicit business from any person who was a Member immediately prior to the said one year period.

24. TAXES

- 24.1** Selling Members will charge any appropriate taxes applicable to a Trade and collect, record and pay these as required by law.
- 24.2** Under no circumstances will the Manager and/or Bartercard be responsible for or liable to pay any taxes on behalf of any Member.
- 24.3** A Trade may be treated as taxable event for tax purposes and the obligation to declare, report, and account for all taxes resulting from Trades rests with the Members participating in the Trade. Each Member hereby indemnifies the Manager and/or Bartercard in respect of any loss or damage suffered by the Manager and/or Bartercard in respect of any failure by the Member to comply with tax laws in respect of any Trade in which that Member participates.
- 24.4** Reporting of Trades. Members acknowledge and agree that the Manager and/or Bartercard may be required from time to time to make disclosure to the regulator of taxation and to other government authorities in relation to Trades. The Manager and/or Bartercard in their absolute discretion are authorised to provide any information to and to co-operate in any way with such authorities whether or not the Manager and/or Bartercard is obliged by law to furnish such information or to provide such co-operation. Neither the Manager nor Bartercard are liable to any Member in respect of information furnished to such authorities, in any circumstances whatsoever.

25. LEGAL LIABILITY OF THE MANAGER AND BARTERCARD

25.1 No Liability to Procure New Members

While the Manager and Bartercard will use their best endeavours to procure new Members to the Trading Program, the Manager and Bartercard will, under no circumstances, be liable for failure to procure new Members or retain existing Members.

25.2 No Warranty as to Availability of Particular Goods or Services

The Manager and Bartercard does not warrant the availability of any particular goods or services under the Trading Program and will not be responsible or in any way liable if a Member cannot obtain particular goods or services from other Members or if other Members do not buy goods or services from a Member.

25.3 Compliance With Laws

All Members will observe and comply with applicable laws and regulations when engaging in Trades. Bartercard will not be responsible or in any way liable for or in respect of any failure of the part of any Member or Members to comply with such laws.

25.4 Disclaimer of Liability.

Neither the Manager nor Bartercard make any representation or warranty either express or implied and to the fullest extent permitted by law disclaim all liability arising out of or in connection with any Trade, including, without limitation, any liability for the fitness, quality, delivery date, merchantability, prices, or any term of the Trade. In no event will The Manager and/or Bartercard be liable to the Member for any indirect, incidental, special or consequential loss or damage, loss of use, revenues, profits, goodwill, bargain or loss of opportunities, anticipated savings, loss of or corruption of data from any cause, whether arising from breach of contract, negligence or any other tort, in equity or otherwise and whether or not the Manager and/or Bartercard was aware of the possibility of such loss or damage.

25.5 Unauthorised Use of Vouchers

Neither the Manager nor Bartercard will be responsible for:

(a) the use of Members' Cards, Additional Cards, Transaction Vouchers, Gift Cards, Product Vouchers or other authorised forms, by unauthorised persons; or

(b) Trades that are not conducted in accordance with the Rules.

25.6 Member's Indemnity for Failure to Perform

Each Member agrees to indemnify and keep indemnified the Manager and Bartercard and each of its directors, officers, employees, agents, independent contractors and subcontractors against any loss or damage suffered by them or any of them in respect of any failure by that Member to perform its obligations under these Rules.

25.7 Member's Indemnity for Claim, Debt or Liability

Each Member agrees to indemnify and keep indemnified the Manager and Bartercard and each of its directors, officers, employees, agents, independent contractors and sub-contractors against any claim, debt, or liability whatsoever arising out of or in connection with any Trade between Members or purported Members.

25.8 Not Bound by Representations of Others

The directors, officers, employees, agents, independent contractors and sub-contractors of the Manager and Bartercard have no right to make any representation or commitment on behalf of the Manager or Bartercard unless in the ordinary course of business.

26. WAIVER

26.1 No Waiver

Any failure or delay by the Manager or Bartercard in exercising any right will not operate as a waiver of that right, and any single or partial exercise of a right will not preclude any other further exercise of any right.

26.2 Cumulative Remedies

The rights and remedies of Bartercard and or the Manager are under these Rules cumulative and are not exclusive of any remedies provided by law.

27. INSOLVENCY OF MEMBER

27.1 Grant of Charge

Each Member grants to Bartercard and/or the Manager a lien over all trade dollars credited to that Members Account for the amount of all unpaid Fees, charges and other moneys owed from time to time.

27.2 Where Insolvent Administration

If a Member commits an act of bankruptcy, has a receiver, liquidator, provisional liquidator, administrator, or manager appointed to it or makes any arrangement or composition with its creditors or becomes insolvent or bankrupt, then all Fees, charges and other moneys owing will immediately become due and payable in full. Bartercard and/or the Manager has the option in lieu of continuing as a creditor, of treating the Trade dollar balance in the Trade Account as equal in value to the amount of any such Fees, charges and other moneys owing, and terminating the Trade Account.

28. DISSOLUTION OF TRADING PROGRAM

28.1 Events Triggering Dissolution.

The Trading Program will be dissolved in accordance with Rule 28 if:

(a) an order is made or resolution passed that Bartercard be wound up (other than for the purpose of reconstruction or amalgamation);

- (b) Bartercard ceases trading;
- (c) Bartercard ceases to hold the Licence;
- (d) the Manager retires and a Replacement Manager is not found pursuant to the Deed of Management.

28.2 Procedure on Dissolution

Upon the occurrence of an event referred to in Rule 28.1 ("Dissolution Event") the following procedure will apply:

- (a) Bartercard will inform each Member that a Dissolution Event has occurred and draw their attention to the requirements of these Rules.
- (b) Each Member and Bartercard will be entitled to continue to trade for a period of ninety (90) days (the "Balancing Period") for the purpose of bringing its Trade Account, as near as possible, to a zero balance, but no Member will be obliged to trade during this period.
- (c) Each Member having a Trade Account with a credit balance at the expiry of the Balancing Period will immediately pay:
 - (i) an amount in cash, being the cash equivalent of the Trade dollar Transaction/Service Fees that would have become payable in the ordinary course of the Trading Program if that Member had entered into a Trade as a Buying Member in an amount sufficient to spend the amount of trade dollars standing to its credit at the expiry of the Balancing Period; plus
 - (ii) the cash Transaction/Service Fees that would have become payable in that event;
- (d) Each Member having a Trade Account with a debit balance at the expiry of the Balancing Period must immediately pay:
 - (i) an amount in cash, being the cash equivalent of the Trade dollar Transaction/Service Fees that would have become payable in the ordinary course of the Trading Program if that Member had entered into a Trade as a Selling Member in an amount sufficient to bring the amount of trade dollars standing to its Trade Account at the expiry of the Balancing Period to a nil balance; plus
 - (ii) the cash Transaction/Service Fees that would have become payable in that event; plus
 - (iii) the cash equivalent of the debit balance of the Member's Trade Account.
- (e) Set off against Extraordinary Member Balance
 - (i) During and at the expiry of the Balancing Period, any Trade dollar Fees payable under these Rules or otherwise, will be either set off pro rata against any deficit balance in the Extraordinary Member's Trade Account or added to any credit balance of the Extraordinary Member's Trade Account.
 - (ii) Following the set off in Rule 28.2(e)(i), if the Extraordinary Member's Trade Account still reflects a deficit balance, Bartercard may convert any Member's cash indebtedness arising during the Balancing Period in respect of Transaction/Service Fees which are able to be charged to any Member during the Balancing Period, into such Trade dollar Fees as Bartercard in its absolute discretion may determine and debit the Member's Trade Account with
 - (i) that Trade dollar amount and credit the Extraordinary Member's Trade Account with that Trade dollar amount. However, such cash Fees will only be converted into Trade dollar Fees to the extent that it is necessary to ensure that the Extraordinary Member's Trade Account is, at the expiry of Balancing Period, no longer in deficit and any cash Fees that are not required to be converted under Rule 28 may still be recovered by Bartercard in cash in accordance with Rule 28. If a Member's Trade Account is debited trade dollars as a result of the conversion of cash Fees payable into Trade dollar Fees in accordance with Rule 28, the Member is immediately released from any further liability with respect to those Trade dollar Fees charged to its Trade Account.
 - (ii) If the Extraordinary Member's Trade Account is and remains in deficit and there are insufficient cash or Trade dollar Fees generated at the expiry of the Balancing Period to set off the entire amount of any deficit balance in the Extraordinary Member's Trade Account, the Extraordinary Member's liability with respect to the deficit in its Trade Account is extinguished in consideration of Bartercard's agreement to direct the cash Fees payable in accordance with Rules 28.2(c) and (d) of these Rules into the Dissolution Fund.
 - (iii) If the Extraordinary Member's Trade Account is in credit at the expiry of the steps required to be taken under Rules 28.2(a) (e) (inclusive), then the Extraordinary Member's credit balance will remain a credit balance of the Extraordinary Member and the Extraordinary Member will be eligible for any distribution made under Rule 28.2(k).
- (f) Bartercard will strike accounts off the Trading Program.
- (g) Bartercard or any person appointed to do so by Bartercard will notify each Member of the amount of its debit balance and demand payment of the amount required to be paid under Rules 28.2(c) and 28.2(d).
- (h) If Bartercard receives any moneys under Rules 28.2 (c) or 28.2(d), it will hold those moneys in a separate bank account ("the Dissolution Fund") on trust subject to Rule 28, for the Members whose Trade Accounts are in credit.
- (i) After the giving of notice under Rule 28.2 (g), Bartercard will use its best endeavours to recover all amounts owing under Rules 28.2 (c) and 28.2(d) and it will be no defence for any Member from whom payment is sought to contend that, by reason of any conduct of the Manager and/or Bartercard, or any other person, it was difficult or impossible to bring the Member's Trade Account to a zero balance during the Balancing Period or at any previous time. If such cash Fees remain due and owing for 60 days, Bartercard may elect to rely upon Rule 15.3 in respect of those cash Fees.
- (j) Bartercard and or the Manager in their sole discretion will have no obligation to take or continue any legal action in respect of any amount owing by any Member where:
 - (i) they perceive a legal or practical difficulty in pursuing recovery;
 - (ii) it appears that the amount that would or may be recovered will or might be exceeded by the cost of recovery;
 - (iii) they consider that there is some other sufficient reason.

(k) Bartercard will distribute the Dissolution Fund, after deduction of its proper costs and outlays, to the Members whose Trade Accounts were in credit and who are not in breach of any of the Rules after the expiry of the steps required to be taken under Rules 28.2(a) (e) (inclusive) and to the Extraordinary Member if its Trade Account is in credit at that time on a pro rata basis in accordance with the amounts by which those accounts were in credit.

(l) Any power or discretion exercisable by Bartercard under Rule 28 may be exercised by any receiver or receiver and manager appointed to Bartercard.

29. SEVERANCE

29.1 If any part or provision of these Rules should be judged or found to be void or unenforceable, it will not affect the validity and enforceability of all other parts and provisions of these Rules and will be severable from every other part and provision of these Rules, to the intent that these Rules will continue in force and effect to the fullest extent possible after severance of the part or provision which is void or unenforceable.

30. JURISDICTION

30.1 These Rules are to be construed and applied in accordance with the laws of New Zealand.

30.2 In the event of any dispute or any action for enforcement of rights or obligations arising out of or in connection with these Rules, the Members will submit to the jurisdiction of the courts of competent jurisdiction in New Zealand.

31. AMENDMENT OF RULES

31.1 These Rules may be amended as follows:

- (a) Bartercard will notify the Members of any amendment of the Rules as soon as is reasonably practicable after the amendment has been promulgated;
- (b) a Member may give notice of its intention to withdraw permanently from the Trading Program within seven (7) days after receiving such notification;
- (c) a Member who has not given written notice to Bartercard of its intention to withdraw permanently from the Trading Program within seven (7) days after receipt of such notification or who participates in any Trade in accordance with the Trading Program will be deemed to have waived any objection to the amendment of the Rules so notified to that Member, and thereupon the amendment will have effect and the Rules as amended will constitute a contract:

- (i) between Bartercard and all of the Members jointly;
- (ii) between Bartercard and each Member severally; and
- (iii) between each Member and each other Member.

32. INTEREST

Unless interest rates and/or payments on any moneys due are specifically set out in any of these Rules, any moneys due under these Rules and not paid by due date will bear interest at the rate of 15% per annum payable in such proportion of cash and/or trade dollars as Bartercard will determine.

33. NOTICES

Notices given under these Rules and the Agreement will be in writing and may be given by:

- (a) delivery; or
- (b) prepaid post; or
- (c) facsimile transmission; or
- (d) email transmission -

to the address set out in the Agreement of the party to whom the notice is given or by publication by Bartercard in the Members Section on the Bartercard website. Every notice will be deemed to have been received and given 48 hours after the posting, or if hand delivered, on the date of the delivery, or if sent by facsimile transmission or email transmission in the normal course of transmission or if published on Bartercard's Website 48 hours after publication.

34. Registered Financial Services Provider

Bartercard is a registered Financial Service Provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

If a Bartercard Member has a complaint this should be addressed in the first instance with the Member's Account Specialist. If you are not satisfied with how Bartercard has managed your complaint then you may send a complaint to the independent complaints resolution service. This service is provided free of charge and is available to all Retail Clients. Retail Clients are defined as small businesses, particularly entities with less than \$1m assets or annual turnover or any one individual or business with less than 19 full time employees. Please note: Retail clients must lodge a complaint with Financial Services Complaints Ltd within two months of the issue occurring. If the complaint is made after two months of the issue occurring the complaint will not be investigated.

The contact details for FSCL are:

Financial Services Complaints Ltd

Website: www.fscl.org.nz
Email: info@fscl.org.nz
Telephone: (Call Free for consumers) 0800 347257
Or (04) 472FSCL (472 3725)
Fax: (04) 472 3727
Postal Address: PO Box 5967
Lambton Quay
Wellington 6145



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