

# hummm pro

## Terms and Conditions

February 2021

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## ABOUT THIS DOCUMENT

These Terms and Conditions set out the terms and conditions that apply to humm pro. There are also App Terms that apply to Your use of the App. Please read these Terms and Conditions and the App Terms carefully.

You can contact Us in the following ways:

Call: 0800 HUMMPRO (0800 4866 776) or +64 9 5807279 from overseas  
Mail: PO Box 90935, Victoria St West, Auckland 1142, New Zealand  
Email: [customer.nz@hummpro.com](mailto:customer.nz@hummpro.com)  
Visit: [www.hummpro.com/nz](http://www.hummpro.com/nz)

## Terms and Conditions – February 2021

The meaning of key words is explained at the end of these Terms and Conditions.

### 1. Establishing the Account

- 1.1 **Acceptance of offer.** By accepting these Terms and Conditions, You accept Our offer to enter into the Contract electronically.
- 1.2 **Electronic signature(s).** If the Contract is signed by You by use of electronic signature(s) (including by signing on an electronic device or by digital signature) then You:
- (a) agree that We may rely on the electronic signature(s) as having the same force and effect as handwritten signature(s); and
  - (b) unconditionally consent to any method used by Us to identify the signatories and to confirm their intention to enter into a binding legal agreement.
- 1.3 **Confirmation.** We do not have to open an Account for You. If We do, We will confirm the opening of the Account by sending You a confirmation (via email, SMS or the App). If We don't open an Account, We will let You know.
- 1.4 **One Account only.** If You already have an open Account relating to the humm pro product, You can't open another one. You can only have one open Account at a time.

### 2. Digital Card, Physical Card and minimum requirements

- 2.1 **Provision of Digital Card.** If We open an Account for You, We will issue the initial authorising Account Holder(s) with a Digital Card. You may nominate an additional Account Holder or additional Cardholder to receive a Digital Card as set out in clauses 15.2 and 15.4. A Digital Card may be

added to an Account Holder's or Cardholder's Digital Wallet via the App.

### 2.2 **Minimum requirements to make Transactions**

You won't be able to make Transactions if You don't:

- (a) accept and comply with these Terms and Conditions;
- (b) ensure that a Cardholder maintains the Digital Card in the Digital Wallet (or has a valid Physical Card);
- (c) add and maintain a valid Funding Source; and
- (d) have an Account.

- 2.3 **Provision of Physical Card.** You may request one or more Physical Cards. The Physical Card(s) can be used separately or in addition to having a Digital Card. If You request one or more Physical Cards, we will charge You the Physical Card Fee at the time of issuing each Physical Card and that fee will be debited to the Account. A Physical Card may be used for Transactions:

- (a) for instore purchases; and
- (b) for online purchases.

- 2.4 **Card instructions.** You authorise Us to act on instructions given using the Digital Card or a Physical Card. You agree that We may assume (without any obligation to make further enquiry) that instructions have been validly given whenever a Digital Card or Physical Card is used with the correct Password, or instructions are received that purport to be from You or a Cardholder. If You are not an individual, We may accept instructions from any director, trustee or partner (as applicable) acting alone.

### 3. Credit Limit

- 3.1 **Credit Limit.** Subject to these Terms and Conditions, You can make Transactions up to the

Available Credit Limit. You can find out what the Available Credit Limit is via the App.

3.2 **Setting the Credit Limit initially.** We will determine the Credit Limit in our absolute discretion (acting reasonably) when we open the Account. The Credit Limit will not be higher than the limit requested by You.

3.3 **Exceeding the Credit Limit.** We may allow the Credit Limit to be temporarily exceeded. The Credit Limit does not change if that happens.

3.4 **Reducing or cancelling the Credit Limit.**

(a) If You ask Us to, We will reduce or cancel the Credit Limit at any time. You can ask Us to reduce it to any amount that is not less than the Total Amount Owing, provided the reduced Credit Limit is not less than the Minimum Credit Limit.

(b) We may (acting reasonably) reduce the Credit Limit to any amount We choose if:

(i) You are in Default;

(ii) We reasonably believe that there may be a material adverse effect for You or Us if We do not (including if We reasonably believe that You may not be able to meet Your obligations under these Terms and Conditions if You drew down further);

(iii) We decide to no longer offer this humm pro product or We put an alternative offer to You; or

(iv) We reasonably believe that it should be reduced due to a change in law or a code binding Us or in interpretation of such a law or code.

(c) If We reduce the Credit Limit and You are in Default, or if We reasonably believe that there may be a material adverse effect for You or Us if We do not reduce the Credit Limit, We do not need to give You prior notice of the reduction, although We will give You notice as soon as practicable after We make that decision. Otherwise, if We reduce the Credit Limit, We will give You thirty (30) days' notice.

3.5 **Increasing the Credit Limit.** We will not make a change to increase the Credit Limit without Your consent.

## 4. Transactions

4.1 **Transactions.** Subject to these Terms and Conditions, the Digital Card and Physical Card can be used to make Transactions up to the Available Credit Limit. Transactions can be made with any

merchants who accept Mastercard. For the avoidance of doubt, Cards cannot be used to request cash advances or money transfers.

4.2 **Active Account Period and Closed Balance.** We will add together all of the Transactions You make during each Active Account Period. The Closed Balance will be the sum of the amounts of all Transactions during the Active Account Period to the extent that You haven't repaid them to Us during that same Active Account Period.

4.3 **Repayment of Closed Balance.** Unless You opt to Pause or Plan part or all of a Closed Balance, You must repay the amount of each Closed Balance that is not subject to a Pause or Plan by 3:00pm (Australian Eastern Standard Time) on the Closed Balance Payment Date for the Closed Balance Period to which it relates.

4.4 **Business or commercial purposes only.** The Transactions and the Account must only be used for business or commercial (and not for personal) purposes and must not be used in relation to Transactions for purchases of goods or services that are prohibited by law in New Zealand and/or in the country in which the goods or services are being purchased.

4.5 **Liability for Transactions.** You are liable for all Transactions made and we will debit the Account with the amount of each Transaction plus any fees and other amounts payable under the Contract. You owe Us the amounts debited to the Account and must repay amounts owed as set out in the Contract. Each Transaction is a drawdown of credit under the Account in respect of the relevant total amount payable as specified by the merchant, and We will disburse that amount directly to the merchant on Your behalf. We are not a supplier of any goods or services purchased using a Transaction, and it is up to You to check the total amount payable and ensure that the goods or services are suitable in all respects, prior to making payment.

4.6 **Suspected fraud or security reasons.** We may place a stop on the Account, not process a Transaction, or delay a Transaction where We reasonably suspect fraudulent use or for security reasons.

4.7 **Approval for Transactions.** Some Transactions may require Our approval before they can be completed or require an Account Holder or Cardholder to first enter a secure code. If We do not approve or if We reasonably delay a Transaction, We will not be liable to You or any other person for any loss or damage that You or that other person may suffer as a result.

4.8 **Pre-authorisation.** You may authorise an amount to be charged to or obtained from a Funding

Source and/or the Account before a purchase is made. If You do that, We can reduce the Available Credit Limit by that amount.

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## 5. **Pause**

### 5.1 **How to Pause.**

You can opt to Pause part or all of a Closed Balance (except for any Plan Amount) at any time before 3:00pm (Australian Eastern Standard Time) on the Closed Balance Payment Date for that Closed Balance by selecting 'Pause' in relation to the selected Closed Balance in the App. The date You opt to Pause will become the Pause Date for that Paused Amount.

5.2 **Pause Fee.** If You opt to Pause, We will charge You the Pause Fee on the Pause Date.

5.3 **Confirmation and Paused Payment Date.** If You opt to Pause, We will provide You with confirmation of the Paused Payment Date for the Paused Amount in the App.

5.4 **Application of Pause.** When You Pause:

- (a) the selected Paused Amount is payable on the Paused Payment Date; and
- (b) the Credit Limit and the Available Credit Limit will not change.

5.5 **Maximum of Two Pauses for a Closed Balance.** You can Pause part or all of a Closed Balance a maximum of two (2) times.

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## 6. **Plan**

### 6.1 **How to Plan.**

You can opt to Plan part or all of a Paused Amount or Closed Balance at any time before 3:00pm (Australian Eastern Standard Time) on the Payment Date for that Closed Balance or Paused Amount by selecting 'Plan' in relation to the selected Paused Amount or Closed Balance.

6.2 **Plan Fee.** If You opt to Plan, we will charge You the Plan Fee on each of the Plan Payment Dates until the Plan Amount is paid in full.

6.3 **Confirmation and Plan Payment Dates.** If You opt to Plan, We will provide You with confirmation of the Plan Payment Dates for the Plan Amount in the App.

6.4 **Application of Plan.** When You Plan:

- (a) the selected Plan Amount is divided into equal monthly instalments and each instalment is payable on the Plan Payment Dates for that Plan; and
- (b) the Credit Limit and the Available Credit Limit will not change.

6.5 **Adding additional Amounts to an existing Plan.** You can at any time add a further Paused Amount or Closed Balance to the Plan. When this occurs:

- (a) the selected Paused Amount or Closed Balance is combined with the Plan Amount to create a new Plan;
- (b) that replaces the repayment obligations for the pre-existing Plan with a single obligation to repay the new Plan Amount over the Plan Payment Dates; and
- (c) the Plan Fee is recalculated based on the new Plan Amount.

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## 7. **When You can't make Transactions**

7.1 **When You can't make Transactions.** You can't make a Transaction if:

- (a) the Account has been closed or use of the Account has been suspended or cancelled;
- (b) You are in Default;
- (c) You do not provide any documents We reasonably require from time to time, including (but not limited to) identification documents, bank statements and financial statements;
- (d) You do not maintain a New Zealand Business Number;
- (e) You do not maintain a valid and verifiable New Zealand mobile phone number;
- (f) You do not have a valid Funding Source;
- (g) We reasonably suspect that You or another person, director, officer, employee or agent may have acted fraudulently in connection with the Account; or
- (h) subject to clause 3.3, it will cause You to exceed the Credit Limit.

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## 8. **Fees and charges**

8.1 **Fees and charges.** The following fees and charges are payable by You to Us:

- (a) the Account Fee, which is only charged if there is a Transaction in an Active Account Period;
- (b) the Pause Fee, which is payable on the Pause Date;
- (c) the Plan Fee, which is payable in monthly instalments on each of the Plan Payment Dates;

- (d) a Physical Card Fee (if You request, and We issue to a Cardholder, a Physical Card in accordance with clause 2.3); and
- (e) a Digital Card Fee.

You must pay the fees and charges to Us from a Funding Source when they become payable. The fees and charges and when they are payable is set out in the Fee Schedule.

## 8.2 Late Fees and enforcement expenses.

- (a) You must pay Us:
  - (i) the Late Fee if You do not pay any amount which is due and payable by 3:00pm (Australian Eastern Standard Time) on the Payment Date; and
  - (ii) enforcement expenses, being any reasonable costs (including charges and expenses and costs in connection with legal and other advisers) We reasonably incur in exercising Our rights to recover amounts due and unpaid under the Contract.
- (b) We can debit the Late Fee and enforcement expenses to the Funding Source.
- (c) Any Late Fee is due and payable two (2) months from the Payment Date for the unpaid Amount.
- (d) We may change the Late Fee at any time without Your consent (see clause 10 (*Changes and adjustments*)).

**8.3 Cap on Late Fees.** Regardless of the number of payments due from You to Us on or in respect of a Payment Date, only one (1) Late Fee will be payable by You if You do not pay the full amount due to Us by the Payment Date. For example, where a Closed Balance Payment Date and a Paused Payment Date are due on the same day and You do not pay either or both the corresponding Closed Balance or Paused Amount, You will be liable to Us for only one (1) Late Fee.

## 8.4 Authorisation to use the Funding Source for other fees and charges.

- (a) You authorise Us to debit or otherwise obtain any Late Fee and enforcement expenses from the Funding Source any time after they become payable.
- (b) If You must pay Us any Late Fee and enforcement expenses and We are unable to debit or otherwise obtain the amount from the Funding Source, We may add the amount to the Total Amount Owed.

## 8.5 Transactions in a foreign currency.

- (a) If You make a Transaction in a foreign currency, the amount of that Transaction will be converted into New Zealand currency by Mastercard International. Mastercard International will determine the exchange rate by selecting a wholesale market rate or applying any government rebate, in either case using the rate as at the date the day before Mastercard International processes the transaction.
- (b) Any fees or foreign exchange commissions charged in (a) above will be passed on to You.

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## 9. Repayments, authorisations and refunds

**9.1 Repayments for Transactions.** Once You make a Transaction, You owe Us the amount of that Transaction and must (subject to clause 9.2 (*Repayment of Paused and Plan Amounts*)), repay it to Us by 3:00pm (Australian Eastern Standard Time) on the Closed Balance Payment Date for the Closed Balance to which the Transaction relates by:

- (a) a direct debit from the Funding Source; or
- (b) making one (1) or more payments from the Funding Source via the App.

**9.2 Repayment of Paused and Plan Amounts.** If You opt to Pause or Plan, You must pay the Paused Amount or Plan Amount to Us by 3:00pm (Australian Eastern Standard Time) on the Paused Payment Date or Plan Payment Dates (respectively) by:

- (a) a direct debit from the Funding Source on the Paused Payment Date or Plan Payment Dates; or
- (b) making one (1) or more payments from a Funding Source via the App.

**9.3 Process if an Amount and/or Late Fee can't be or is not obtained from the Funding Source.** Notwithstanding any other provision of these Terms and Conditions:

- (a) If, when We attempt to debit or otherwise obtain an Amount and/or Late Fee on a Payment Date from the Funding Source and we are unable to do so because it is not valid, there are insufficient funds available or for any other reason, You still owe Us that amount. We may attempt to debit any such amount again until the debit is successful. However, if an amount cannot be debited on any attempt, You must manually pay it to Us from a Funding Source, if possible; and
- (b) if for any reason We have not attempted to debit or obtain an Amount and/or Late Fee



due from a valid Funding Source, We will attempt to process the debit or otherwise obtain payment as soon reasonably practicable. You will not be liable to pay Us any additional Late Fee.

**9.4 Authorisation to use the Funding Source to obtain any amount.**

- (a) You must keep a valid Funding Source in place while the Account remains open.
- (b) You cannot use a payment method or other source as a Funding Source if You no longer hold that payment method or source.

**9.5 Early repayments.** You can make an early repayment of an Amount before 3:00pm (Australian Eastern Standard Time) on the Payment Date.

**9.6 Priority of repayments.** Unless We agree otherwise, payments made to the Account will be applied to the part of the closing balance shown in Your last account statement (if any) that remains owing. Otherwise, We will apply any payment or any remaining payment to pay off amounts that are owing under the Contract. We will apply any payment received in the following order until the Total Amount Owing has been reduced to nil:

- (a) enforcement expenses;
- (b) fees and charges payable under these Terms and Conditions;
- (c) Amounts which have not been repaid based on the earliest corresponding Payment Date. Where Amounts are due on the same Payment Date, We will use Our discretion as to which Amount the payment will be applied;
- (d) Active Account Period Transactions which do not yet form part of a Closed Balance and which have not been repaid; and
- (e) any other part of the Total Amount Owing.

**9.7 No refund.** All repayments, fees and charges, once paid, are not refundable unless We have received payment in error or You are entitled to a refund under any applicable law.

**9.8 Refunds.** Any refunds in relation to a Transaction will be applied to the Account in the following order:

- (a) towards repaying the Closed Balance, Paused Amount, Plan Amount or Active Account Period Transactions to which the Transaction the subject of the refund relates;
- (b) other Amounts which have not been repaid based on the earliest corresponding Payment Date. Where Amounts are due on the same Payment Date, We will use Our discretion as to which Amount the refund will be applied;

- (c) other Active Account Period Transactions which do not yet form part of a Closed Balance and any other amount owing under the Contract and which have not been repaid; and

- (d) if there are no outstanding Closed Balance or Active Account Period Transactions which have not been repaid or any other amount owing under the Contract, any part of a refund that has not been applied to the Account will be refunded to the Funding Source.

Returns and refunds in respect of goods or services purchased using a Transaction are a matter to be resolved between You and the relevant merchant.

**9.9 Unconditional repayments.** Your obligations under the Contract to make repayments to Us and pay any related fees and charges are absolute and unconditional no matter what happens, even if the goods or services purchased via a Transaction are damaged, destroyed, defective, lost, stolen, not delivered, or if You cannot use the goods or services for any other reason (unless You have a statutory right to withhold payment which cannot, by law, be limited or excluded). If You sell the goods or property to which the goods purchased via a Transaction have been installed or attached to, You are still required to continue to make repayments to Us and to pay any related fees and charges until the Total Amount Owing is paid in full, even in the event You are no longer in possession of those goods.

**9.10 Credit balance.** The Account cannot have a credit balance.

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**10. Changes and adjustments**

**10.1 Changes.**

- (a) We can change, without Your further consent, the amount, frequency or time for payment, or method of calculation of, a fee or charge or repayments or introduce new fees or charges.
- (b) We may, without Your further consent, reduce the Credit Limit in accordance with clause 3.4, change any minimum or maximum Credit Limit, or introduce other transaction limits from time to time under these Terms and Conditions.
- (c) We may make any change without Your further consent to any provision of these Terms and Conditions:
  - (i) to comply with any law or regulation;

- (ii) to reflect any decision of a court, ombudsman or regulator;
- (iii) to correct an error or simplify these Terms and Conditions; or
- (iv) for any other reason, including as a result of changed industry practice, circumstances or environment or changed features.

(d) Unless the Contract says otherwise, We will give You twenty (20) days' written notice of any change. However, unless the law requires Us to, We do not have to give You prior notice if a change is required for the security of a system or individual accounts including the prevention of criminal activity or fraud.

(e) You can close the Account if You are not satisfied with any change, although You will first need to pay Us the Total Amount Owing.

**10.2 We may adjust the Account balance.** We may adjust the balance in the Account to take account of any processing error or because of the dishonouring of a repayment. We may also adjust the balance of the Account so as to accurately reflect the legal obligations between You and Us.

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## **11. Closing the Account and not providing You with further credit**

**11.1 Your right to close the Account.** You may at any time request to close the Account by:

- (a) giving Us notice via one of the following available channels:
  - (i) Our website;
  - (ii) the App; or
  - (iii) by contacting us on 0800 4866 776; and

(b) paying the Total Amount Owing.

If You do so, we will close the Account.

**11.2 When We may not provide You with further credit, cancel a Card or close the Account.** We may decide without prior notice (whether or not You are in Default) not to provide You with further credit and/or to cancel a Card and/or to close the Account:

- (a) if no Transactions are made for six (6) months after the Total Amount Owing has been repaid;
- (b) if We reasonably consider that:
  - (i) there has been fraudulent use; or
  - (ii) a security issue has arisen;

- (c) if We reasonably believe You are or may be in financial difficulty;
- (d) if You ask Us to reduce the Credit Limit below the Minimum Credit Limit; or
- (e) if we reasonably consider it necessary to protect Our business interests.

If We do so, We will give You written notice as soon as practicable after We make that decision (except where You are in Default).

Otherwise, We may decide not to provide You with further credit, cancel a Card or close the Account by giving You thirty (30) days' prior notice.

**11.3 What You must do if We decide not to provide You with further credit or close the Account.** If We decide not to provide You with any further credit or we close the Account:

- (a) You must not undertake any Transactions;
- (b) no further credit will be provided under the Contract but Your obligations under the Contract will continue until You pay Us the Total Amount Owing; and
- (c) You must pay the amounts due on each Payment Date until the Total Amount Owing has been reduced to nil.

**11.4 Use after cancellation or expiry.** You will continue to be liable for any amounts You owe Us even if the Account has been closed, a Card is cancelled, or we decide not to provide you with further credit. You cannot use a Card once it has been cancelled or it has expired or while it is suspended, or once the Account is closed.

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## **12. Suspending the Card(s) and the Account**

**12.1 Your right to suspend.** You may suspend the Digital Card at any time within the App. You may cancel a Physical Card by contacting Us at 0800 4866 776.

**12.2 Our right to suspend.** We may suspend the Card(s) and the Account if:

- (a) You are in Default;
- (b) We reasonably believe that there may be a material adverse impact on You or Us if We do not suspend the Account;
- (c) We reasonably suspect that You or someone else has acted fraudulently in connection with these Terms and Conditions or the Account;
- (d) there is any dispute regarding a transaction under the Account and We reasonably believe We should suspend to prevent a material adverse impact to You or Us; or



- (e) We otherwise reasonably believe it is necessary to protect Your or Our interests.

A Card cannot be used to make Transactions while it is suspended.

- 12.3 **No notice for Us to suspend.** We do not need to give You prior notice of a suspension but will promptly inform You afterwards.

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## 13. Default

- 13.1 **Action on Default.** If You are in Default, We may give You a notice stating that You are in Default. If You don't rectify the Default within any period given in the notice, then, at the end of that period and without further notice to You, the Total Amount Owing becomes immediately due for payment (to the extent it is not already due for payment). We may then commence legal proceedings against You for that amount and We may close the Account.

- 13.2 **Notice.** We need not give You notice if We:

- (a) are unable to locate You after making reasonable attempts to do so;
- (b) are authorised by a court to begin enforcement proceedings; or
- (c) reasonably believe You fraudulently induced Us to enter into the Contract.

In that event, the Total Amount Owing will become immediately due and payable.

- 13.3 **Enforcement expenses.** Enforcement expenses may become payable under the Contract in the event of a breach of the Contract and are payable in accordance with clause 8 (*Fees and Charges*). They are immediately due for payment once debited to the Account or on demand (whichever is earlier).

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## 14. Dispute Resolution

- 14.1 **Disputes and complaints.** If You want to dispute a Transaction or make a complaint about the Account or anything else in relation to the Contract, You should tell Us at [customer.nz@hummprom.com](mailto:customer.nz@hummprom.com) as soon as possible. You should also provide Us with sufficient information or documents for Us to be able to investigate the matter.

- 14.2 **Initial investigation.** We will investigate the matter, and if We are unable to settle it immediately to Your and Our satisfaction, We will advise You in writing of the procedures for further investigation and resolution and may request further relevant details from You.

- 14.3 **First twenty-one (21) days.** Within twenty-one (21) days of receipt from You of the details of the disputed transaction or Your complaint, We will:

- (a) complete Our investigation and advise You in writing of the outcome of Our investigation; or
- (b) advise You in writing that We require further time to complete Our investigation.

- 14.4 **Updates.** We will also provide You with monthly updates on the progress of the investigation and its likely resolution date, except where We are waiting for a response from You and You have been advised that We require such a response.

- 14.5 **Adjustments and notification.** If We find that an error was made, We will make any appropriate adjustments to the Account and notify You in writing of the amount of any adjustment.

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## 15. Rights and Obligations of Account Holders and Cardholders

- 15.1 **What an Account Holder can do.** An Account Holder can perform any actions You are authorised to make under these Terms and Conditions, including (but not limited to):

- (a) Making a Transaction;
- (b) Making a Payment;
- (c) Pause or Plan;
- (d) Making a request to increase or decrease the Credit Limit; and
- (e) Close or suspend the Account and/or cancel the Cards.

- 15.2 **Nominating an additional Account Holder.** You may nominate an additional Account Holder by contacting us on 0800 4866 776 or through the App (if available). Where You nominate an Account Holder, We in our absolute discretion may accept the nomination.

- 15.3 **What a Cardholder can do.** A Cardholder can only make Transactions (using the Card issued to the Cardholder by Us) and cannot perform any other actions that You or an Account Holder can.

- 15.4 **Nominating a Cardholder.** You may nominate a Cardholder by contacting us on 0800 4866 776 or through the App (if available). Where You nominate a Cardholder, We in our absolute discretion may accept the nomination.

- 15.5 **Your acknowledgements.** Subject to applicable law, You acknowledge and agree that You authorise and take full responsibility for any action made by any Account Holder and Cardholder and cannot dispute such action other than that caused

by mistake, fraud, negligence or wilful misconduct of Us, Our employees or Our agents.

## 16. General

16.1 **Representations and warranties.** You represent and warrant at the date of Your acceptance of the offer in clause 1.1 (*Acceptance of offer*) and each time You make a Transaction that:

- (a) You (if You are an individual) or each of Your directors, trustees or partners (as applicable) are a permanent resident or citizen of New Zealand and are at least 18 years of age;
- (b) You are capable of entering in a legally binding contract;
- (c) You and/or Your directors, trustees or partners (as applicable) have a valid and verifiable email address and New Zealand mobile telephone number;
- (d) You have a New Zealand Business Number;
- (e) You have been trading for at least 24 months;
  - (f) if You are a company, You are duly incorporated under the laws of New Zealand;
- (g) You have the power and authority to enter the Contract, and have undertaken and complied with all necessary corporate or other steps to ensure the Contract is enforceable and binding on You;
- (h) if You are the trustee(s) of a Trust:
  - (i) all of the powers and discretions conferred by the deed establishing the Trust are capable of being validly exercised by You as trustee(s) and have not been varied or revoked, and the Trust is a valid and subsisting trust;
  - (ii) each of the trustees of the Trust is an individual (and not a company or other entity);
  - (iii) You agree that We may have full recourse to the assets of the Trust and Your right of indemnity from the assets of the Trust. In addition, You are liable to Us as a separate, independent, principal and personal obligation in respect of the Contract, whether or not We may recover any sum from the assets of the Trust;
  - (iv) You must not, without our prior written consent, change the trustees of the

Trust or the terms of the governing document(s) of the Trust, or distribute, re-settle or vest any capital or assets of the Trust, or terminate or dissolve the Trust;

- (v) the Contract is being entered into as part of the due and proper administration of the Trust and for the benefit of the beneficiaries of the Trust; and
- (vi) no restriction on Your right of indemnity out of, or lien over, the Trust's assets exists, or will be created or permitted to exist, and that right of indemnity will have priority over the right of the beneficiaries to the Trust's assets;
- (i) if You are a partner of a partnership:
  - (i) each partner signing represents and warrants that they have the power and authority to do so for the partnership and perform their obligations;
  - (ii) each partner of the partnership is liable to Us as a separate, independent principal and personal obligation, whether or not We may recover any sum from the partnership assets; and
  - (iii) You must not, without our prior written consent, change the partners of the partnership or the terms of the governing document(s) of the partnership, or distribute, re-settle or vest any capital or assets of the partnership;
  - (iv) You must provide immediate written notice to Us if the partnership is dissolved, and if this occurs (to the extent permitted by law) then each partner must act in relation to the administration of the partnership assets in the manner directed by Us, a retiring partner is not discharged from any liability to Us as a result of an agreement between the then existing partners, and the obligations of a retiring partner to Us are not affected by anything which might otherwise affect them at law or in equity.
- (ii) You will maintain a valid mailing delivery address in New Zealand;
- (iii) You have access to a valid Funding Source;

- (l) You have not ceased to trade; and
- (m) You and/or Your directors are not Insolvent.

**16.2 Costs and indemnities.** To the extent permitted by law, You agree to indemnify Us for:

- (a) all taxes payable in connection with the Contract; and
- (b) any cost, loss, liability or expense (including legal costs and expenses on a full solicitor client basis) that We incur:
  - (i) in enforcing the Contract;
  - (ii) because You have repudiated or terminated the Contract;
  - (iii) as a result of any Default; and/or
  - (iv) rectifying any failure by You to comply with your obligations under the Contract.

**16.3 Taxes.** If the law requires any deduction or withholding for or on account of any tax to be made from or in relation to any payment by You, You will gross up the amount by paying to Us such additional amount which will result in the receipt by us on the due date of the full amount we would have been entitled to receive and retain absent any requirement to make any such deduction or withholding.

**16.4 Commissions.** You agree that We may pay commissions or fees to any broker, agent, dealer or other person who introduces You to Us, or Us to You.

**16.5 Rights.**

- (a) We may exercise a right or remedy under these Terms and Conditions (in addition to other rights and remedies provided by law independently of it or by any other contract) or give or refuse Our consent in any way We consider appropriate, including by imposing reasonable conditions, but at all times acting reasonably.
- (b) If We do not exercise a right or remedy fully or at a given time, We can still exercise it later.

**16.6 Liability for loss.** Subject to applicable law, We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy other than caused by mistake, fraud, negligence or wilful misconduct of Us, Our employees or Our agents.

**16.7 Assignment.**

- (a) You agree that (subject to applicable law) We may assign, transfer or otherwise deal

with Our rights and/or obligations under or in connection with the Contract (in whole or in part) to any other person without Your further consent or notice. Any person to whom Our rights or obligations are transferred will have the same rights or obligations (as the case may be) that We do under the Contract.

- (b) You agree that We may disclose any information or documents We consider desirable to help Us exercise this right, including personal creditworthiness information to persons involved in providing funds by way of securitisation.
- (c) You must not assign, transfer or otherwise deal with any of Your rights and/or obligations under or in connection with the Contract without our prior written consent, which will not be unreasonably withheld.

**16.8 Communications.**

- (a) Notices, certificates, consents, approvals and other communications provided by You in connection with the Contract must be in writing (writing includes communication via the App).
- (b) You agree to receive any statements, notices and any documents that We are required to give You in relation to the Account and these Terms and Conditions by electronic communication through the App including by making it available for a reasonable period on Our information system for retrieval by electronic communications by You. By agreeing to receive documents by electronic communications, You may no longer be given paper documents. You should regularly check for communications from Us in the App as this will be Our main method of communication with You (although We may on occasion also contact You by Your email address or mobile phone number). Even though We operate online, We still might write to You if We cannot use the App to communicate with You, or if We think You are not receiving Our electronic communications. You can withdraw Your consent to electronic communications using the App, but if You do that We may close the Account.
- (c) We can also give You notice by sending a document to Your last email and/or postal address notified to Us. You must promptly tell Us if your email address or postal address change.

- (d) Communications from Us may be signed by any of Our authorised employees, if required.
  - (e) Communications for You or Us may also be given by any means permitted by law.
  - (f) We may use, and You consent to Us using, Your email address as part of Our secure log in or authorisation process, or to advise You of changes to the Account (including those which may alter Our delivery of, or Your ability to use, the Account). You must keep Your email address current. You can use the App to update Your email address (if available) or contact Us on live chat in the App or on 0800 4866 776.
  - (g) Because We use, and You consent to Us using, electronic communication, We will use Your mobile phone number to send You SMS codes and other information You need to know. So We can communicate with You, You must keep Your mobile phone number provided to Us up to date. You may update Your mobile phone number using the App (if available) or by contacting Us on live chat in the App or on 0800 4866 776. If You do not provide Us with Your current mobile phone number, You will not be able to transact on the Account and You may not be notified of important information relevant to the use of the Account.
- 16.9 **Set-off.** Subject to any statutory right of set-off which We cannot exclude by agreement, You must pay all amounts due under the Contract in full without setting off amounts You believe We owe You and without counter-claiming amounts from Us.
- 16.10 **Governing law and jurisdiction.** The Contract is governed by the laws of New Zealand. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New Zealand.
- 16.11 **Change of contact details or other information.** You must tell Us:
- (a) within five (5) Business Days if You change Your business or postal address, email address or mobile phone number. You can do this via the App. We will not be responsible for any errors or losses associated with a change in Your particulars if We do not receive notice or adequate notice of the change.
  - (b) if You think there is any information that We should be aware of about Your ability to comply with the Contract.
- 16.12 You also agree to provide all information to Us that We require (at any time) to manage Our anti-money-laundering obligations or comply with any other applicable laws (including information relating to Cardholders as required).
- 16.13 **Transactions and merchant records.** You agree that:
- (a) merchant / retailer records and documents of any transaction with You are evidence of the transaction and of the amount shown; and
  - (b) We may rely on those records and documents to make decisions about the Account and how We deal with You.
- 16.14 **Your authority to operate the credit card or debit card account.** You agree that You are the authorised signatory of the Funding Source to be used for the repayments or are otherwise authorised to use the Funding Source for the repayments.
- 16.15 **Enquiries.** If You would like any further information about the Contract, please contact Us using the details on at the front of these Terms and Conditions.
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17. **How You can access and use the App**
- The App is how We communicate with You and how You access the Account.*
- 17.1 **Charges for connecting to the App.** You are responsible for any charges by Your telecommunications provider for connecting to the App on Your mobile phone or tablet device, including call costs and data costs associated with browsing the internet.
- 17.2 **Rights and obligations relating to use of the App.** The App Terms set out Your rights and obligations relating to, among other things:
- (a) accessing and operating the Account (including use of the Password);
  - (b) Your security responsibilities; and
  - (c) Your liability for unauthorised use of the Card(s) and the Account.
- 17.3 **Adjustments.** We may adjust debits and credits to the Account to accurately reflect Your legal obligations and Ours and We will show You any adjustments in the App. If an adjustment is required, We may make consequential adjustments.
- 17.4 **Steps to resolve errors or disputed Transactions.** If You believe a Transaction is wrong or unauthorised or the information We make available to You contains any instances of



unauthorised use or errors, You must notify Us and provide Us with information in accordance with clause 14 (*Dispute Resolution*) as soon as You can and We will investigate the matter in accordance with clause 14 (*Dispute Resolution*).

- 17.5 You will not be responsible for any loss you suffer because the humm pro service accepted an instruction but failed to complete the Transaction.
- 17.6 If the humm pro service malfunctions and You should reasonably have been aware that the humm pro was unavailable or malfunctioning, We will only be responsible for correcting errors in Your Account and refunding to You any charges or fees imposed on You as a result.

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## **18. Your liability for unauthorised use**

- 18.1 This section only applies to Transactions that are initiated using electronic equipment and are not intended to be authenticated by comparing a manual signature with a specimen signature. This clause 18 (*Your liability for unauthorised use*) does not apply to any Transaction that is performed by You or a person who performed a Transaction with Your knowledge and consent, or authorisation.
- 18.2 You are not liable for losses caused by unauthorised Transactions:
- (a) where it is clear that You have not contributed to the loss;
  - (b) that are caused by the fraudulent or negligent conduct of employees or agents of Us or any organisation involved in the provision of the system under which Transactions are processed or any merchant;
  - (c) that are caused by the same Transaction being incorrectly debited more than once to the same Account;
  - (d) that are caused by a Device, email address or Password that is forged, faulty, expired or cancelled;
  - (e) occurring after We are notified that a Device or Password has been misused, lost or stolen, or that security of a Password has been breached; or
  - (f) a Transaction requiring the use of a Device or Password that occurred before You received the Device or Password.
- 18.3 You are liable for all Transactions on Your Account where a Password is used with Your authorisation. You are also liable for any loss arising from any unauthorised Transaction if the loss occurs before notification to Us that a Device, email address, or Password has or may have been misused or lost or

stolen, or Your Password has or may have become known to someone else and on the balance of probability, You have contributed to the losses through:

- (a) fraud or failure to look after and keep the Password secure or extreme carelessness in failing to protect the security of a Password; or
  - (b) unreasonably delaying reporting to Us the misuse, loss or theft of a Device, email address or Password becoming known to someone else, but only if the loss occurs between the time You did become or reasonably should have become aware of these matters and the time of reporting to Us.
- 18.4 However, You are not liable for that portion of losses:
- (a) that exceeds any applicable daily or periodic Transaction limits set on the Account;
  - (b) which exceeds the credit limit on the Account; or
  - (c) incurred on any account which You had not agreed with Us could be accessed using the Device, email address or Password.
- 18.5 Where more than one Password is required to perform a Transaction and one or some, but not all Passwords became known to someone else, You are liable under clause 18.3(a) for unauthorised Transactions if, on the balance of probability, the fact that some but not all Passwords became known to someone else was more than 50% responsible for the losses, when assessed together with all the contributing causes.
- 18.6 Where a Password was required to perform the unauthorised Transaction and clauses 18.2 or 18.3 do not apply, Your liability for any loss of funds arising from an unauthorised Transaction using a Device, email address or Password, if the loss occurs before notification to Us that a Device has been misused, lost or stolen or the email address or Password has become known to someone else, is limited to the lesser of:
- (a) \$150;
  - (b) the actual loss at the time the misuse, loss or theft of the Device, email address, or Password becoming known to someone else is reported to Us, excluding the portion of losses that exceeds any applicable daily or periodic Transaction limits set on the Account; or
  - (c) the credit limit of Your Account.



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## 19. Privacy

**Privacy Policy.** We have a New Zealand Privacy and Credit Reporting Policy that deals with how We manage and handle Your information. You can find it at [www.flexigroup.com.au/privacy-policy](http://www.flexigroup.com.au/privacy-policy).

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## 20. Payments

**20.1 Debiting the Funding Source.** If an amount is due on a day that is not Business Day, the amount will be debited on the next Business Day. If you are uncertain when a debit payment will be processed to the Funding Source, you should contact us.

### 20.2 Your obligations.

- (a) It is Your responsibility to ensure that there are sufficient clear funds available in the Funding Source to allow a debit payment to be made in accordance with the Direct Debit Request.
- (b) If there are insufficient funds in the Funding Source to meet a debit payment:
  - (i) You may be charged a fee and/or interest by Your financial institution;
  - (ii) You may also incur fees or charges imposed or incurred by Us; and
  - (iii) You must arrange for the debit payment to be made by another method or arrange for sufficient funds to be in the account stated in the App and nominated as the Funding Source by an agreed time so that We can process the debit payment.
- (c) You should check the App and Your hummpo account records carefully to verify that amounts debited to the Funding Source are correct, and to identify and report to Us as soon as possible any actual or suspected instances of unauthorised use of Your Account or errors.
- (d) It is recommended that You check and retain all Transaction slips, receipts and payment or transfer reference numbers issued to You after conducting a payment or transfer using hummpo, to assist in checking Transactions against Your statements and in case You have any queries in relation to the Transaction.

**20.3 Errors or queries.** If You believe that there has been an error in debiting the Funding Source, You should notify Us directly on live chat in the App or on 0800 4866 776 and confirm that in writing with Us as soon as possible so that We can resolve

Your query more quickly. Alternatively, You can take it up directly with Your financial institution.

### 20.4 Funding Sources. You should check:

- (a) with Your financial institution whether direct debiting is available from the Funding Source, as direct debiting is not available on all accounts offered by financial institutions;
- (b) Your account details which You have provided to Us are correct by checking them against a recent account statement; and
- (c) with Your financial institution or provider(s) of the Funding Source before providing the Direct Debit Request or if You have any queries about how to complete the Direct Debit Request.

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## 21. Definitions and Interpretation

**21.1 Definitions.** In these Terms and Conditions, unless the context otherwise requires:

**Account** means the account We establish in Your name for recording all transactions (including the Transactions) under the Contract.

**Account Fee** means the \$15 fee charged at the end of each Active Account Period and payable one month after the end of the Active Account Period.

**Account Holder** means the person(s) authorised by You to control and manage the Account (and includes each of Your directors, trustees or partners (as applicable)).

**Active Account Amounts** means amounts relating to Transactions during the Active Account Period.

**Active Account Period** means the monthly period within which Transactions are made on the Account, starting on and from the day on which the Account is opened (or, if the Account is opened on a day which is the 29th, 30th or 31st of a month, Your monthly period will run from the 26th, 27th or 28th of the month respectively). For clarity, Your first Active Account Period may be less than a month.

**Amounts** means Active Account Amounts, Closed Balances, Paused Amounts and Plan Amounts.

**App** means the online interface / application provided to You (or an Account Holder or Cardholder) by Us to use the Digital Card(s) and Account which is available in the Apple App Store or the Google Play Store.

**App Terms** means the document titled 'App Terms of Use' available at [www.hummpo.com/nz](http://www.hummpo.com/nz).

**Available Credit Limit** means (subject always to these Terms and Conditions) the Credit Limit less the sum of (without double-counting):

- (a) Transactions which are not included in Active Account Amounts;
- (b) Active Account Amounts;
- (c) Closed Balance Amounts;
- (d) Paused Amounts;
- (e) Plan Amounts; and
- (f) an amount You authorise as described in clause 4.8 (*Pre-authorisation*),

which have not been repaid or paid.

**Business Day** means a day other than a Saturday or Sunday or a public holiday in New Zealand and on which applicable payment networks in New Zealand are operating.

**Cardholder** means the person(s) authorised by You (and accepted by Us) to hold a Card for the purposes of making Transactions.

**Card(s)** means Digital Card(s) and/or Physical Card(s).

**Closed Balance** means the amount which is the sum, as at the end of an Active Account Period, of the amounts of all Transactions during that Active Account Period which have not been repaid or paid during that Active Account Period.

**Closed Balance Payment Date** means the date corresponding with the expiry of the Closed Balance Period.

**Closed Balance Period** means a period of one month from the end of the previous Active Account Period.

**Contract** means the credit contract between You and Us comprising these terms and conditions.

**Controller** means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator, or any other person (however described) holding or appointed to an analogous office, or acting or purporting to act in an analogous capacity, whether pursuant to any statute, the order or authority of any court or other government agency, an encumbrance, or otherwise.

**Credit Limit** means the amount specified in the App as Your 'credit limit' or 'hummprom limit', as varied from time to time, but which is not to exceed \$30,000.

**Default** means:

- (a) You have not paid an amount due under the Contract and it remains unpaid at least one (1) day after the due date for payment;
- (b) You fail to comply in a material respect with any other undertaking, obligation or agreement under the Contract;
- (c) You have given Us materially incorrect or misleading information in connection with the Contract;
- (d) any obligation under the Contract is not legal, valid, binding and/or enforceable in a material respect;
- (e) We reasonably believe that it is more likely than not that You have acted fraudulently in connection with the Contract;
- (f) You cease or threaten to cease to carry on all or substantially all of Your business or operations;
- (g) You are Insolvent; or
- (h) an event or circumstance has arisen that, in Our reasonable opinion, has had or could have a material adverse effect on Your commercial or financial position, your ability to perform your obligations under the Contract, or Our ability to exercise Our rights under the Contract.

**Device** means an item that We give You, an Account Holder or a Cardholder to perform a Transaction, for example, a Digital Card. It does not include an email address or Password.

**Digital Card** means the digital card made available to a Cardholder via the App and that can be used to complete Transactions.

**Digital Card Fee** means the fee of \$2 per Digital Card for each additional Digital Card requested by You.

**Digital Wallet** means an electronic device or online service approved by Us that allows Transactions to be made with the Digital Card.

**Direct Debit Request** means the direct debit request set out in the App.

**Fee Schedule** means the schedule of fees and charges set out in the App.

**Funding Source** means any payment method or source We accept from time to time (which may, at Our absolute discretion, include a valid Visa or Mastercard debit card or credit card issued in New Zealand, Apple Pay, Google Pay and/or an account with a bank or other financial institution in New Zealand), in each case in Your name, the details of which You have added to the App and selected as

Your default Funding Source or Your additional Funding Source and in respect of which You authorise Us to debit or through which you otherwise authorise Us to obtain amounts due in accordance with these Terms and Conditions.

**Identity Verification** means the third-party identity verification service to confirm Your identity (and the identity of each Account Holder, each Cardholder and any beneficial owners) using a document verification service.

**Insolvent** means the happening of any of the following events:

- (a) You are unable to pay your debts as they fall due, or are unable to certify that You are able to pay Your debts as they fall due;
- (b) You commit an act of bankruptcy;
- (c) an application is made to a court for an order, or an order is made, appointing a liquidator or provisional liquidator in respect of You (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
- (d) proceedings are initiated with a view to obtaining an order for the winding up or similar process of You, an order is made or any effective resolution is passed for the winding up of You, or You are deregistered or dissolved;
- (e) except to reconstruct or amalgamate while solvent on terms approved by Us, you enter into, or resolve to enter into, a scheme of arrangement, deed of company arrangement, or composition with, or assignment for the benefit of, all or any class of Your creditors, or You propose a reorganisation, moratorium or other administration involving any class of Your creditors;
- (f) a Controller is appointed to or over or takes possession of any of Your assets or undertaking;
- (g) You are, or are deemed or presumed by law or a court to be, insolvent;
- (h) You take any step to obtain protection, or are granted protection, from Your creditors under any applicable legislation, or an administrator is appointed to You; or
- (i) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of You under the law of any applicable jurisdiction.

**Late Fee** is \$20.

**Minimum Credit Limit** means \$1,000 or such other amount We set from time to time.

**Password** means password, PIN, passcode and/or SMS code.

**Pause** means the extension of the due date for the repayment of the Closed Balance or a Paused Amount by one month.

**Pause Date** means the date you elect to Pause the payment of the Closed Balance or a Paused Amount.

**Pause Fee** means an amount equal to 3.5% of the Paused Amount.

**Paused Amount** means a Closed Balance the subject of a Pause.

**Paused Payment Date** means one month after the Closed Balance Payment Date, or the following month if the Closed Balance is Paused twice.

**Payment Date** means, in the context applicable:

- (a) a Closed Balance Payment Date;
- (b) a Paused Payment Date;
- (c) a Plan Payment Date.

**Physical Card** means the physical card we issue to a Cardholder upon Your request and that can be used to complete Transactions.

**Physical Card Fee** is \$10 per card, including per replacement card.

**PIN** means 'personal identification number'.

**Plan** means the extension of the due date for repayment of the Closed Balance or Paused Amount (whichever applies in the circumstances) by:

- (a) six (6) months (where a six (6) month plan is selected);
- (b) nine (9) months (where a nine (9) month plan is selected); or
- (c) twelve (12) months (where a twelve (12) month plan is selected).

**Plan Amount** means a Closed Balance and/or Paused Amount the subject of a Plan.

**Plan Date** means one month from the Closed Balance Payment Date or the Pause Payment Date in respect of the Closed Balance or Paused Amount You have selected to Plan.

**Plan Fee** means:

- (a) where a six (6) month plan is selected, an amount equal to 9% of the Plan Amount, divided into equal monthly instalments;

- (b) where a nine (9) month plan is selected, an amount equal to 13.5% of the Plan Amount, divided into equal monthly instalments; and;
- (c) where a twelve (12) month plan is selected, an amount equal to 18% of the Plan Amount, divided into equal monthly instalments,

payable on a monthly basis.

**Plan Payment Dates** means:

- (a) for a six (6) month plan, each of the six (6) monthly intervals;
- (b) for a nine (9) month plan, each of the nine (9) monthly intervals; or
- (c) for a twelve (12) month plan, each of the twelve (12) monthly intervals,

starting on, and from the applicable Plan Date.

**Privacy Policy** means the privacy policy referred to in clause 18.

**SMS** means 'short message service'.

**Terms and Conditions** means this document, including any schedule or annexure to it.

**Total Amount Owning** means:

- (a) at any time, the difference between all amounts credited and all amounts debited to the Account at that time; and
- (b) all other amounts which You must pay under the Contract but which have not been debited to the Account.

**Transaction** means a drawdown of credit under the Account in order to pay for goods or services from a third party merchant.

**Trust** means each trust of which You are the trustee and acting in that capacity in entering into the Contract, whether or not known to us.

**We / Our / Us** means humm pro Limited (Financial Service Providers Register number FSP758051), the credit provider under the Contract, and its successors and assigns.

**You / Your** means the borrower named in the App (and in the case of a trust or partnership, includes all trustees or partners (as applicable)).

21.2 **Interpretation.** In these Terms and Conditions, unless the context otherwise requires:

- (a) a reference to a document includes any variation or replacement of it;
- (b) a reference to a law includes any common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them);
- (c) a reference to any thing includes the whole and each part of it;
- (d) the word 'include' in any form is not a word of limitation; and
- (e) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

You should contact Us if You are experiencing financial difficulty in meeting your payment obligations.

## **Collections Support**

**Call:** 0800 4866 776

**Visit:** [www.hummprom.com/nz](http://www.hummprom.com/nz)

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