

ANZ MERCHANT AGREEMENT

TERMS AND CONDITIONS
DECEMBER 2018



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1. THESE TERMS AND CONDITIONS

These Terms and Conditions are part of your agreement with us governing the provision of Merchant Facilities to you. Please read them carefully and retain them for future reference.

Your agreement ("Agreement") consists of:

- (i) A Letter of Offer and Acceptance;
- (ii) These Terms and Conditions;
- (iii) A Merchant Operating Guide;
- (iv) Any Additional Services Schedules set out in the Letter of Offer and Acceptance and the applicable Additional Service Schedule which contain the specific terms and conditions and operating instructions for the Additional Service(s);
- (v) A Secure Internet Site Declaration (where applicable) and Merchant Prepayment Exposure Declaration (when applicable); and
- (vi) any documents relating to the Security (where applicable).

It is advisable that you read all documents comprising the Agreement under which we provide the Merchant Facilities.

You agree to be bound by the Agreement from the commencement date shown on the Letter of Offer and Acceptance.

You may cancel the Agreement at no cost before the earlier of (a) the first use of your Merchant Facilities or (b) the date ten (10) Business Days from the commencement date shown on the Letter of Offer and Acceptance. Termination after the earlier of (a) the first use of your Merchant Facilities and (b) ten (10) Business Days from the commencement date will be governed by clause 29 and fees may apply.

Some words and expressions have special meanings in these Terms and Conditions. Those meanings are described in clause 46 and when you are reading these Terms and Conditions, you should refer to clauses 46 and 47. Unless the context requires otherwise, any words or expressions defined in these Terms and Conditions have the same meaning when used in any document that forms part of the Agreement.

2. PROVISION OF MERCHANT FACILITIES

- (i) We agree to provide you with the Merchant Facilities outlined in the Letter of Offer and Acceptance and more fully detailed in the Agreement. We agree to do this in exchange for you carrying out your obligations under the Agreement.
- (ii) The Agreement will come into effect from the commencement date shown in the Letter of Offer and Acceptance and will run for an Initial Term unless it is terminated earlier by either party in accordance with clause 29.

- (iii) At the end of the Initial Term, the Agreement will automatically continue for a further period of the same duration as the Initial Term (a “Subsequent Term”) unless you elect to terminate under clause 29.1 (i)(b) or unless the Agreement is terminated by us in accordance with its terms. At the end of each Subsequent Term, the Agreement will automatically continue for a further period of the same duration as the first Subsequent Term unless you or we elect to terminate the Agreement in accordance with its terms.
- (iv) We will provide the Merchant Facilities unless:
 - (a) the Agreement is terminated;
 - (b) the Merchant Facilities are suspended in accordance with the Agreement; or
 - (c) there is a change in Law or to any Nominated Card Scheme Regulations that prevents us providing the Merchant Facilities.
- (v) The Merchant Facilities may only be used by you and may not be used by, or on behalf of, any third party (including any associated company or related body corporate of yours), without our prior written authorisation.

3. NOMINATED CARDS

- (i) You must:
 - (a) accept all Nominated Cards in accordance with the Agreement; and
 - (b) stop accepting a Nominated Card immediately if:
 - (A) we provide you with a notice to do so; or
 - (B) any of the events described in clause 2 (iv) occur.
- (ii) You must not, unless we specifically authorise in writing:
 - (a) accept a Nominated Card as payment for goods or services by mail, telephone or Internet order; or
 - (b) take Cardholder details via mail, telephone, facsimile or the Internet.

4. ACCEPTING NOMINATED CARDS AND PERMITTED USES

- (i) You must accept valid Nominated Cards.
- (ii) A Nominated Card is valid if:
 - (a) it has a current validity date (if applicable);
 - (b) it has not been visibly altered or tampered with in any way;
 - (c) it is signed on the back in the designated area for card signatures;
 - (d) the signature on the reverse has not been altered or defaced; and
 - (e) it meets the criteria for validity set out in the Merchant Operating Guide.

- (iii) You must not:
- (a) make any representation in connection with any goods or services or any Nominated Card which may bind us;
 - (b) make any representations to any Cardholder concerning our products or policies;
 - (c) pledge our credit in any way or take part in the preparation of any documents purporting to provide for credit to be provided by us to the Cardholder;
 - (d) engage in any conduct which is false, misleading or deceptive concerning goods or services you supply, our products or policies or in any other dealings with the Cardholder;
 - (e) use a Nominated Card in a Credit Transaction to give a Cardholder cash. You may use a Nominated Card in a Debit Transaction conducted through an EFTPOS terminal to give a Cardholder cash unless we have advised you that a particular Nominated Card or Nominated Card Scheme cannot be used to give cash;
 - (f) use a Nominated Card issued in your name in any Transaction to pay for goods or services or to provide cash where the Transaction is not a bona fide sale or where the Transaction is for the purpose of funding the working capital of your business. Where you are in a partnership, no Nominated Card issued in the name of a partner is to be used in any such Transaction. Where you are a company, no Nominated Card issued in the name of a director or secretary is to be used in any such Transaction.
 - (g) impose a minimum Transaction amount on a Cardholder or refuse to accept an otherwise valid Credit Card on the basis that the amount of the Transaction is below a certain amount. You will not indicate that there is a requirement of a minimum Transaction amount either at the point of sale, in any published material or by way of any other medium.
 - (h) in relation to Card Present Transactions, refuse to complete a Transaction if a Cardholder refuses to provide additional identification information such as an address and/or telephone number unless such information is required by law to complete the transaction and/or the information is required by the Card Issuer or us.
- (iv) You can:
- (a) in relation to Card Not Present Transactions, refuse to complete a Transaction if a Cardholder refuses to provide additional identification information such as an address and/or telephone number if you have any concerns in relation to the validity of the Transaction or if required by the Card Issuer or us.

- (v) With respect to Mastercard cards you may choose to accept Mastercard Debit and Prepaid Cards only, Mastercard Credit Cards only, or both Mastercard Debit and Prepaid Cards and Mastercard Credit Cards. Where you choose to accept any of these cards, you must honour all such valid cards properly presented for payment by a Cardholder except where a Cardholder does not have purchasing privileges with you.

5. PROCESSING TRANSACTIONS

- (i) You must only process transactions using an EFTPOS Terminal, Online Payment Gateway or the IVR Authorisation and Settlement Service when authorised by us.
- (ii) You must not process a Transaction on behalf of another person including another business or allow another person to use the Merchant Facilities except under a bona fide agency arrangement.
- (iii) You must use reasonable care in processing a Transaction to detect forged or unauthorised signatures or the unauthorised use or forgery of a Nominated Card. In particular, you must comply with specific requirements set out in the Merchant Operating Guide or otherwise notified by us in writing to you.
- (iv) If you are authorised to process transactions via mail, telephone or Internet order you must ensure all goods are despatched to the Cardholder immediately after processing that sales Transaction either through an EFTPOS Terminal, Online Payment Gateway or the IVR Authorisation and Settlement Service to us.
- (v) Following each Transaction (other than mail, telephone and Internet orders or those processed via the IVR Authorisation and Settlement Service) you must immediately give the Cardholder a copy of the Transaction Receipt. When the Transaction is an Internet Transaction, the Cardholder must be able to print a Transaction Receipt from the Internet and when the Transaction is a telephone Transaction, you must provide the Cardholder with a receipt number for the Transaction and maintain a record of that receipt number. The Transaction Receipt must include the following:
 - (a) business name;
 - (b) business location;
 - (c) type of account;
 - (d) type and amount of the Transaction;
 - (e) date of the Transaction;
 - (f) time of the Transaction;
 - (g) Transaction record number; and
 - (h) confirmation that the Transaction has been approved or declined.

- (vi) The information on the Cardholder Transaction Receipt must be identical with information on any other copy of the Transaction Receipt.
- (vii) You must not split the value of any proposed Credit Transaction into two or more separate Credit Transactions.
- (viii) Where you are authorised to accept a Nominated Card as payment for goods or services ordered by mail, telephone or Internet order in accordance with clause 3 (ii), if we determine that your conduct in processing Transactions in accordance with the Agreement may cause loss to you or us (through fraudulent activities or otherwise), we may withdraw that authorisation and require you to only process Transactions where the Nominated Card is presented by the Cardholder in person.
- (ix) You must prominently and clearly inform the Cardholder of your identity so that the Cardholder can readily distinguish you from any supplier of goods or services to you. You must also notify the Cardholder that you are responsible for:
 - (a) the sales Transaction including any goods or services that are the subject of the sales Transaction;
 - (b) all customer service relating to the sales Transaction;
 - (c) dispute resolution in connection with the sales Transaction; and
 - (d) performance of the terms and conditions of the sales Transaction.
- (x) You must process Transactions and verify the Cardholder's identity in accordance with the procedures set out in the Merchant Operating Guide.
- (xi) If you are specifically authorised by us to accept a Nominated Card as payment for goods or services ordered by mail, telephone or Internet in accordance with clause 3 (ii) or you are authorised by a Cardholder to process Recurring Transactions, you must ensure that the Transaction is correctly identified as a mail, telephone, Internet order or Recurring Transaction.
- (xii) If we and a Cardholder have authorised you to process Recurring Transactions, you must maintain appropriate business practices to ensure that the Cardholder's Nominated Card information remains current, accurate and complete (including the Nominated Card's expiry date where applicable) and comply with the terms and conditions for Recurring Transactions outlined in the Recurring Transactions schedule which forms part of the Additional Services Schedules.
- (xiii) For Recurring Transactions, you are required to provide Cardholders with a means of informing you of changes to card account details and/or the Cardholder's wish to cancel payment arrangements. You are required to action any Cardholder request to change and/or cancel payment arrangements with five (5) Business Days of receipt of the Cardholder's request.

- (xiv) You must not, without our prior written consent, process Transactions for any goods or services unless delivery to the Cardholder will be completed within six (6) months of the date of the Transaction.
- (xv) You must comply with all applicable Laws, any obligations in the Agreement and any direction from us in carrying out your obligations in processing Transactions under the Agreement.
- (xvi) You must ensure you process all Transactions in accordance with the requirements of any Nominated Card Scheme Regulations that we notify to you. You agree to demonstrate your compliance with the Nominated Card Scheme Regulations if we request you do so.
- (xvii) You must ensure that each Transaction is recorded in New Zealand dollars except where we have given prior written approval to record Transactions in other currencies.
- (xviii) You must process all Transactions through us, except where we have agreed otherwise. If you process any Transactions through a provider other than us, we may at our sole discretion charge you two (2) times the Average Monthly Merchant Service Fee for any breach during the Initial Term or any Subsequent Term.
- (xix) You acknowledge and agree that where we have agreed to provide you with the ability to accept Card Not Present Transactions that:
 - (a) processing Card Not Present Transactions may result in losses to your business if you process a Transaction that is later found to be fraudulent or is disputed by the Cardholder and then charged back to you;
 - (b) in providing you with suggestions on how to reduce the risk of fraudulent transactions, we make no representation on the effectiveness of those suggestions nor in any way guarantee a reduction in or protection from fraudulent transactions;
 - (c) any authorisation obtained for the Card Not Present Transaction does not guarantee that the legitimate Cardholder is initiating the transaction or that the card has not been stolen or fraudulently used;
 - (d) you will follow best-practice procedures to reduce the likelihood of exposure to fraud including, but not limited to, the procedures detailed in the Merchant Operating Guide and any security guide we provide; and
 - (e) we accept no liability for, and you agree to indemnify and keep us indemnified against, any losses, claims, costs, damages, expenses (including legal costs), liabilities (including penalties) or proceedings incurred or arising out of or as a consequence of any Card Not Present Transaction.

- (xx) If you are permitted to process Transactions as part of the Agreement, and electronic processing is not available for any reason, including but not limited to a technical malfunction at the Switch or failure of the telecommunications links and your EFTPOS Terminal has Electronic Off-line Transaction functionality you must process these Transactions in accordance with the Merchant Operating Guide and these Terms and Conditions (including clause 5 (xxi) below). Where we are the Card Issuer, we will not dishonour any payment made to you pursuant to an Electronic Off-line Transaction that is an authorised Transaction and is for an amount that does not exceed the respective Electronic Off-line Payment Limit or your Authorised Floor Limit. Electronic Off-Line Transaction functionality is not available for UnionPay.
- (xxi) When completing an Electronic Off-line Transaction you must:
 - (a) ensure that if the Transaction is stored within a point of sale device attached to the EFTPOS Terminal, such point of sale device is secure against unauthorised access;
 - (b) not process any Debit or Credit Card Transactions that exceed the Electronic Off-line Payment Limit;
 - (c) not use two or more Electronic Off-line Transactions to effect one Transaction if the amount of the Transaction exceeds the Electronic Off-line Payment Limit or Authorised Floor Limit;
 - (d) retain a signed copy of the Transaction Receipt for at least eighteen (18) months.
- (xxii) In all circumstances when an Electronic Off-line Transaction is conducted, it must not be used to:
 - (a) provide a Cardholder with cash;
 - (b) process a Transaction where the card's magnetic strip, stripe or chip is unable to be read by the EFTPOS Terminal;
 - (c) process a Transaction which has been previously declined;
 - (d) process a Transaction which could not be completed as a result of Cardholder PIN errors; or
 - (e) process a Transaction away from your normal site of business.

6. AUTHORISATION

- (i) Electronic Transactions authorised via an EFTPOS Terminal where a PIN is used or a Contactless Transaction is made and an “Accepted” message appears on the EFTPOS Terminal are automatically authorised. Visa and Mastercard Credit Card Transactions which are completed via an EFTPOS Terminal with an “Accept with Signature” message are also automatically authorised. UnionPay transactions which are completed via an EFTPOS Terminal will prompt a “Signature Verified?” message and the transaction will be authorised when the Merchant has confirmed verification by pressing “Enter”. You must complete all the necessary security checks to validate the Nominated Card and Cardholder including but not limited to checking that the signature on the Nominated Card matches that on the Transaction Receipt.
- (ii) You must seek prior authorisation from the Authorisation Centre for any Transaction where:
 - (a) in the case of a Credit Transaction:
 - (A) the value is in excess of the Authorised Floor Limit; or
 - (B) the Transaction is manually key-entered into an EFTPOS Terminal;
 - (b) you are aware that, or consider it is possible that, a signature is a forgery or is unauthorised or there is an unauthorised use or forgery of the Nominated Card;
 - (c) the Cardholder presents a Nominated Card at a time which is not currently valid as shown on the Nominated Card (where applicable);
 - (d) the signature panel on the Nominated Card is blank or the signature has been altered or defaced;
 - (e) the EFTPOS Terminal instructs you to contact the Authorisation Centre; or
 - (f) the Transaction is of a certain type or class which has been notified to you by us as a type or class of Transaction requiring authorisation.
- (iii) You must obtain an authorisation for all Recurring Transactions and ensure you have the Cardholder’s consent to process Recurring Transactions. Where applicable, you must ensure the Nominated Card has a current validity date and that the CSC is provided when processing the first Recurring Transaction against that Nominated Card. After processing the initial Recurring Transaction, you must destroy the CSC in one of the manners set out in clause 8 (iv).
- (iv) When you are using the IVR Authorisation and Settlement Service and you complete a Transaction Voucher, you must ensure that the authorisation number is clearly written on the Voucher.

- (v) You should seek to retain the Nominated Card until authorisation is given. If you are requested by the Authorisation Centre to retain the Nominated Card, you must use your reasonable endeavours to do so if this can be done safely and deal with the Nominated Card in accordance with the instructions of the Authorisation Centre and the Merchant Operating Guide.
- (vi) In the case of a Transaction involving a mail, telephone or Internet order, authorisation is not a representation or warranty to you that the purchase is made by the legitimate Cardholder.
- (vii) Authorisation of a Transaction is not a representation or warranty by us to you that a Transaction is not an Invalid Transaction.
- (viii) We may at any time change your Authorised Floor Limit by giving notice to you.

7. REFUNDS

You must:

- (i) establish a fair policy for giving Refunds;
- (ii) only process a Refund via the EFTPOS Terminal or Online Gateway on which the original Transaction was made and to the Nominated Card that was used in the original purchase Transaction. Alternatively you can issue a Credit note or an exchange of goods. It cannot be refunded in cash, by internet banking or by cheque. You must disclose your Refund policy to the Cardholder prior to the Transaction;
- (iii) where you are authorised to process Transactions via the Internet in accordance with clause 3 (ii), you must display your Refund policy on your website; and
- (iv) at all times act in accordance with the instruction for processing Refunds contained in the Merchant Operating Guide.

8. TRANSACTION INFORMATION

- (i) In the case of a Transaction processed through an EFTPOS Terminal you must process the Transactions with us immediately for settlement in accordance with the Merchant Operating Guide.
- (ii) You must retain information about a Transaction whether processed via the IVR Authorisation and Settlement Service or electronically for a period of eighteen (18) months from the date of the Transaction or such other period required by Law or notified by us.
- (iii) You must destroy any information about the Transaction on the later of:
 - (a) the expiry of the eighteen (18) month period; or
 - (b) the date on which you have no further business or legal reason for retaining the information.

- (iv) You must ensure that Cardholder data is destroyed in the following manner:
 - (a) shred, incinerate or pulp hardcopy materials so that Cardholder data cannot be reconstructed; and
 - (b) render Cardholder data on electronic media unrecoverable so that Cardholder data cannot be reconstructed.
- (v) You must provide any information about a Transaction which is requested by us within five (5) Business Days of receipt of the request.
- (vi) You must provide any information or reporting reasonably required by us regarding any Transactions.

9. SETTLEMENT OF TRANSACTIONS

- (i) We agree:
 - (a) to accept all sales Transactions processed by you in accordance with the Agreement and, subject to the other provisions of the Agreement, to credit your Nominated Settlement Bank Account with the full amount of such Transactions on the basis that the debt due by the Cardholder to you in respect of the Transaction is extinguished; and
 - (b) to accept all Refund Transactions processed by you in accordance with the Agreement and to debit your Nominated Bank Accounts with the full amount of each Refund Transaction.
- (ii) We will issue a monthly Transactions statement to you including a summary of the number and total amount of all Credit Transactions processed by us and settled to your Nominated Settlement Bank Account during the previous month.
- (iii) You may initiate settlement in respect of all or any of your EFTPOS Terminals for the sum of the value of On-line Transactions since your previous settlement as set out in the Merchant Operating Guide.
- (iv) If, at the end of the settlement period, you have not initiated settlement, we will take all reasonable steps to force settlement and credit or debit (as the case may be) your Nominated Settlement Bank Account with the aggregate of the On-line Transactions for that Business Day. We shall not be liable for any loss or costs incurred by you not effecting settlement.
- (v) Where settlement is effected on a day other than a Business Day, we will use all reasonable endeavours to ensure that you receive value on the next Business Day.

- (vi) Where we are aware or have reason to believe that:
- (a) a Transaction or Invalid Transaction is fraudulent or a counterfeit Nominated Card has been used; or
 - (b) we receive notice of any claim or dispute in relation to any Transaction; or
 - (c) we receive unclear or conflicting instructions relating to any Transaction; we reserve the right for a period of thirty (30) days to:
 - (d) withhold payment to your Nominated Settlement Bank Account and immediately re-route the Transaction to a suspense account; and/or
 - (e) prevent the debit of that part of the balance of your Nominated Bank Accounts or any account held by you with us, as is equal to the amount we estimate may become owing to us by you in respect of that Transaction.

During that 30-day period, we will investigate the Transaction to determine whether we will either:

- (f) refuse to process the Transaction and return the Transaction to you; or
 - (g) if the Transaction has been processed, charge that Transaction back to you; and
 - (h) set-off amounts owing to us by you in respect of that Transaction against funds standing to the credit of any Nominated Bank Accounts or any account held by you with us.
- (vii) If a Transaction is a Delayed Supply Transaction, you agree that we may, at our sole discretion, immediately re-route the Transaction to a suspense account. We will make the proceeds in the suspense account available to you if you can supply evidence to our satisfaction that you have supplied the goods and services to which the Delayed Supply transaction relates (if part of the goods or services have been supplied then you will only be entitled to the portion of the proceeds due in respect of the part supplied) or we agree otherwise.
- (viii) You agree that if:
- (a) you fail to pay any penalty imposed by the Nominated Card Schemes (whether imposed on us or you directly) in accordance with the Agreement; or
 - (b) we suspect you of any fraudulent or suspicious activity; or
 - (c) we assess you as a high credit or fraud risk; or
 - (d) you have breached the Agreement; or
 - (e) we otherwise determine on reasonable grounds that it is justified in order to prevent loss to you or us;

we may, at our sole discretion, immediately re-route Transactions to a suspense account. In such cases we will make the proceeds in the suspense account available to you when:

- (f) we are satisfied that none of the matters or circumstances listed in sub-clauses (a) to (e) apply or exist, or such matters or circumstances have been remedied to our satisfaction (in each case, as applicable); and/or
 - (g) we are satisfied that no Transaction will be charged back by Cardholders.
- (ix) For the avoidance of doubt, you acknowledge that you have no ownership of any funds transferred to a suspense account until those funds are transferred to your Nominated Settlement Bank Account, and that no interest is payable on the funds while they are held by us.

10. INVALID TRANSACTIONS

A Transaction is invalid if:

- (i) the Transaction is illegal, including, without limitation, because it is in breach of any Law governing, for example, the sale of prescription medicines, controlled substances or other regulated products;
- (ii) the date of the Transaction is a date after the Agreement was suspended or the Nominated Settlement Bank Account and/or Nominated Charges Bank Account is frozen in accordance with clause 28 or terminated in accordance with clause 29;
- (iii) you process the Transaction knowing (or in circumstances where you should have known) that the signature on the Transaction Voucher or Transaction Receipt is forged or unauthorised;
- (iv) you process the Transaction knowing (or in circumstances where you would reasonably be expected to know) that the Nominated Card is used without the authority of the Cardholder or in the case of a mail, telephone or Internet order authorised by us in accordance with clause 3 (ii), the Transaction is not authorised by the Cardholder;
- (v) you were notified by us not to accept the Nominated Card used in the Transaction;
- (vi) the Nominated Card used in the Transaction is not used within the current validity dates shown on the Nominated Card (where applicable);
- (vii) for Recurring Transactions – the expiry date (where applicable) and CSC of the Nominated Card is not provided with the initial Recurring Transaction;
- (viii) the Transaction Voucher is not completed in accordance with the Agreement or is illegible;
- (ix) the Transaction is recorded in a currency other than New Zealand dollars, except where we have given prior written approval to you to record Transactions in other currencies;

- (x) the price charged for the goods or services to which the Transaction relates is more than your normal price which is charged to the general public, except where the additional amount represents the amount of any Surcharge Fee properly charged by you;
- (xi) the Transaction requires authorisation by us and you do not obtain such authorisation, or for Recurring Transactions, the Transaction is unauthorised and/or does not contain a Recurring Transactions flag;
- (xii) the Transaction value for a Credit Transaction exceeds your Authorised Floor Limit and you did not obtain authorisation for a Transaction above that respective limit;
- (xiii) the Transaction requires authorisation by us and the Transaction Voucher does not contain the authorisation code;
- (xiv) in our reasonable opinion the Transaction relates to one or more purchases made in the same Merchant establishment which have been split into 2 or more Transactions in an attempt to avoid the Authorised Floor Limit, or Electronic Off-line Payment Limit;
- (xv) you have arranged without our consent for a person other than you to supply goods or services;
- (xvi) you process the Transaction knowing (or in circumstances where you should have known) that the Transaction is fraudulent;
- (xvii) the Cardholder has not received the goods or service as required by the terms of the Transaction (and, in the case where you are not the provider of the goods or services and act as agent for the provider of the goods or services, the goods or services have not been provided by the principal) and you have failed to provide us with proof of receipt of, and satisfaction with, the goods or services by the Cardholder within five (5) Business Days of our request to do so;
- (xviii) the goods or services to which the Transaction relates were supplied from outside New Zealand without our consent;
- (xix) in the case of a Transaction being a mail, telephone or Internet order authorised by us in accordance with clause 3 (ii), you did not record the Cardholder's identification details and the expiry date (where applicable) of the Nominated Card as required by the Merchant Operating Guide.
- (xx) except in the case of a mail, telephone or Internet order authorised by us in accordance with clause 3 (ii), the Nominated Card was not presented to you;
- (xxi) you have not otherwise complied with the Agreement in connection with the Transaction and we are of the reasonable opinion that such non-compliance may result in either us or you suffering a loss;

- (xxii) the Transaction is processed by you on behalf of another person, or you have allowed another person to use the Merchant Facilities in connection with the Transaction, except under a bona fide agency arrangement authorised in accordance with the Agreement;
- (xxiii) you have accepted a Nominated Card as payment for goods and services by mail, telephone or Internet order without specific authorisation in writing by us under clause 3 (ii);
- (xxiv) you bill the amount of the Transaction direct to the Cardholder or receive payment through the use of another card or by any other means;
- (xxv) the card number or truncated card number appearing on the Transaction Receipt does not correspond with the card number printed, encoded or otherwise shown on the Nominated Card used for the Transaction;
- (xxvi) you fail to lodge Transactions with us for settlement in accordance with clause 8 (i);
- (xxvii) the same Transaction is processed by you more than once;
- (xxviii) you key-enter incorrect Transaction details into the EFTPOS Terminal or key enter the Transaction otherwise than in accordance with the Merchant Operating Guide;
- (xxix) you manually process a Transaction using a damaged Nominated Card which is not a valid Nominated Card referred to in clause 4 (ii);
- (xxx) in our reasonable opinion, the Cardholder justifiably disputes liability for the Transaction for any reason or has not received the goods or services purchased;
- (xxxi) the Cardholder disputes the Transaction and/or makes a claim for set-off or counter claim in respect of the Transaction against us;
- (xxxii) the Transaction was processed in breach of the requirements of any Nominated Card Scheme Regulations notified by us to you under clause 5 (xvi) or by any other method determined by us; and/or
- (xxxiii) the Transaction is not authorised by us or the authorisation request is declined for any reason.

11. RIGHT TO DISHONOUR

In the event that you process an Invalid Transaction, you acknowledge that the Card Issuer and, in the case of a Refund, your Bank, has the right, but not the obligation, to dishonour the Transaction. For the avoidance of doubt, where the amount of an Electronic Off-line Transaction exceeds the Electronic Off-line Payment Limit and the Cardholder's Nominated Account has insufficient funds, the Card Issuer shall have the right, but not the obligation, to dishonour the whole amount of the Electronic Off-line Transaction.

12. CHARGEBACK

- (i) If a Transaction is an Invalid Transaction, we may, at our sole discretion (and without a request or demand from a Cardholder):
 - (a) refuse to accept the Transaction; or
 - (b) if the Transaction has been processed, at any time within twelve (12) months of the date of the Transaction, charge that Transaction back to you by debiting the Nominated Bank Accounts or otherwise exercising our rights under the Agreement.
- (ii) If we receive a payment from a Cardholder relating to an Invalid Transaction that has been charged back to you, we will pay an amount equal to that payment to you less any amount which we are entitled to withhold or set-off under the Agreement.
- (iii) Despite any contract, arrangement or understanding to the contrary, in respect of all Transactions processed by you, the Cardholder will be entitled to initiate a Chargeback of the Transaction to you where permitted in accordance with relevant Nominated Card Scheme Regulations.

The Merchant Operating Guide provides a list of the most common Chargeback reasons and what you can do to minimise your risk of receiving Chargebacks.
- (iv) You must not impose, as a condition of accepting a Mastercard or Maestro-branded Nominated Card, a requirement that the Cardholder waive any right to dispute a Transaction or pay you a fee in the event that the Cardholder chooses to exercise any right to dispute a Transaction.

13. NOMINATED BANK ACCOUNTS

- (i) You must maintain a Nominated Settlement Bank Account and Nominated Charges Bank Account for the term of the Agreement. These accounts must be New Zealand based, New Zealand dollar transactional bank accounts. These accounts can be the same account if permitted by us.
- (ii) You authorise us to debit and credit your Nominated Bank Accounts for the purposes of the Agreement.
- (iii) We reserve the right acting reasonably to require you to maintain a minimum credit balance in any Nominated Bank Accounts during the term of the Agreement. Any such minimum credit balance will be notified by us to you from time to time.
- (iv) Where any Nominated Bank Account is held with a financial institution other than us, you must provide us with a properly completed direct debit authority.

14. INFORMATION COLLECTION, STORAGE AND DISCLOSURE

14.1 General

- (i) You must not sell, purchase, provide or exchange any information or document relating to a Cardholder, a Cardholder's account number or a Transaction to any person other than us, the Card Issuer or as required by Law. You may disclose such information or document to your employees, contractors or agents as necessary in the course of conducting your business.
- (ii) You must not capture or record any information relating to, a Nominated Card or Cardholder, unless the capture of information is required to process a Transaction being made at that time or for the purposes of processing Recurring Transactions against that Nominated Card which have been authorised by the Cardholder. For the avoidance of doubt, you must immediately destroy the CSC of a Nominated Card in one of the manners set out in clause 8 (iv) after processing a Transaction.
- (iii) If permitted to record any information under clause 14.1 (ii) in respect of the Nominated Card, you may only record the card account number, expiration date and name of the Cardholder.
- (iv) You must ensure that any full card-read data in respect of Nominated Cards accessed by you in connection with a Transaction (or otherwise in connection with the Agreement) is stored only by you on an electronic file in a secure environment with restricted access in compliance with the Compliance Requirements, for the sole purpose of providing documentation for exception processing. You must not record, store, replicate or otherwise use full card-read data for any other purpose.

14.2 Nominated Card Scheme Obligations

- (i) You must provide us with a Compliance Action Plan (if required by any Nominated Card Scheme for the purposes of complying with the Payment Card Industry Data Security Standards ("PCIDSS")) within ninety (90) days of receiving a request from us to do so. You must also comply with all Nominated Card Scheme Regulations as specified in the Agreement or otherwise notified to you from time to time, including any obligations regarding compliance with the PCIDSS. We will notify you of any such obligations and, to the extent practicable, will provide you with a reasonable period of time to comply with such obligations.
- (ii) We will notify you of any noncompliance alert received from a Nominated Card Scheme as a result of any breach of the Nominated Card Scheme Regulations ("ANZ Notice"). The ANZ Notice must:
 - (a) specify any actions or remediation works to be undertaken by you in order to rectify the breach set out in the alert from the Nominated Card Scheme;

- (b) notify you of the deadline for rectifying the breach set out in the alert; and
 - (c) (provided the alert was received in written format) enclose either a copy of the alert or an extract of the alert (determined at our sole discretion) received from the Nominated Card Scheme.
- (iii) You must comply with the terms of any ANZ Notice by the deadline specified by us.
- (iv) If you:
 - (a) fail to comply with the terms of the ANZ Notice; or
 - (b) are otherwise in breach of Nominated Card Scheme Regulations;

we may receive a breach notification (which may include a fine and/or penalty) from a Nominated Card Scheme ("Breach Notice"). You acknowledge that we may receive a Breach Notice without having received a non-compliance alert from the Nominated Card Scheme. If we receive a Breach Notice, we will:

 - (A) promptly notify you of the Breach Notice and (provided the notice was received in written format) provide a copy of the notice or an extract of the notice (determined at our sole discretion) to you;
 - (B) notify you of the deadline for paying the fine and/or penalty (such deadline not to exceed thirty (30) days from the date of our notice); and
 - (C) provide you with the opportunity to discuss the nature of the Breach Notice and any actions or remediation works which may be necessary to assist you avoid another Breach Notice in respect of the same matter in the future, providing however that any discussions between the parties does not waive or otherwise remove your obligation to pay the fine and/or penalty imposed by the Nominated Card Scheme.
- (v) You must pay the fine and/or penalty detailed in the Breach Notice to us within the timeframe specified by us and in a manner agreed between the parties.
- (vi) For the avoidance of doubt, you agree that you are liable for all fines and/or penalties imposed by the Nominated Card Schemes (whether imposed on us or you directly) as a result of your breach of the Nominated Card Scheme Regulations.
- (vii) In this clause 14.2, "you" means the person named as merchant in the Letter of Offer and Acceptance ("Person") or, where appropriate, a service provider appointed by the Person to carry out any function which is in any way connected with the Merchant Facilities ("Service Provider"). It is the Person's obligation to notify a Service Provider of its obligations under this clause.

14.3 Privacy and Confidentiality

- (i) This clause 14.3 sets out when and how we may collect and share your information.
- (ii) If you are a company or other similar legal entity, you agree to obtain the consent of your directors and shareholders for us to use and disclose their personal information as provided in this clause 14.3.
- (iii) Information you provide to us will be kept strictly confidential and will be securely held by us and other companies within the ANZ Group. If you are an individual, you have the right to access your personal information (within the meaning of the Privacy Act 1993) and request correction of any errors in that information. A fee may be payable for this.

Collection of information

- (iv) We may collect and use your information to provide information about a product or service; to consider your request for a product or service; to meet our obligations under the Agreement; to administer, manage and monitor any contracts and banking facilities you have with us or other companies in the ANZ Group or manage our relationship with you; to provide you with a product or service; to tell you about other products or services; to assist in arrangements with other organisations (such as loyalty partners) in relation to the promotion and provision of a product or service; to perform administrative and operational tasks (including, for ANZ Group: risk management, debt collection, systems development and testing, credit scoring, staff training, and market or customer satisfaction research); to identify, prevent or investigate any actual or suspected fraud, unlawful activity, misconduct or threats to our systems (this includes monitoring traffic and information to and from our website and other IT systems for those purposes); and as required by relevant Laws, and external payment systems.

We may obtain information and make enquiries about you as we consider warranted from any source, including credit reference agencies and other companies within the ANZ Group. We may contact the source of any information that you provide to us in order to check the accuracy of the information and you authorise any person we approach to provide the above information to us.

Absence of relevant information

- (v) If you do not provide some or all of the information requested, we may be unable to provide you with Merchant Facilities.

Providing your information to others

- (vi) We may provide your information to: another member of the ANZ Group; any outsourced service provider to ANZ Group (for example mailing houses or debt collection agencies); an alliance partner or other third party with whom we have a relationship for the purpose of promoting or using that alliance partner's or third party's products or services (and any of the alliance partner's or third party's outsourced service providers); credit reporting agencies; government agencies; other parties ANZ Group is authorised or required by Law to disclose information to; participants in the payments system (including Nominated Card Schemes, payment organisations and merchants (including providing details of excessive Chargebacks or Invalid Transactions)) and other financial institutions (such as Card Issuers); insurers and reinsurers; any person who introduces you to us; your referee(s); sureties or assignees or potential sureties or assignees; anyone who assists us to identify, prevent or investigate fraud, unlawful activity, misconduct or threats to our systems; and your representative (for example your lawyer, administrator, attorney or executor). You agree we may not be able to tell you that a request has been received for information and that information has been provided.
- (vii) You agree that we may disclose information about you to credit reference agencies or debt collection agencies, including details of any defaults in payments or repayments of your financial facilities. Those agencies may retain that information and provide it to their customers who use their credit reporting services.
- (viii) You agree that the ANZ Group may disclose any information concerning you to any law enforcement, regulatory agency or court where required by any law or regulation in New Zealand or elsewhere. If the ANZ Group receives a request from certain agencies to release your information, we may not be able to tell you that the request has been received and/or that information has been provided. The ANZ Group may also disclose information to the police, certain government agencies or other financial institutions where we reasonably believe that the disclosure will assist in the investigation, detection and/or prevention of fraud or other criminal offences.
- (ix) Where you do not want ANZ Group or our alliance partners or third parties with whom we have a relationship with to tell you about their products or services, you may withdraw your consent.

15. AUDIT

If there is a dispute involving a Transaction or we suspect that fraud is involved, you authorise us, or our agent, to enter your Premises during normal business hours to examine and take copies of your book of accounts and records.

16. FEES, CHARGES, OTHER PAYMENTS

- (i) You must pay to us the fees, charges, fines and/or penalties described in the Agreement (both actual and contingent) and the Letter of Offer and Acceptance (plus GST if any) by direct debit from your Nominated Charges Bank Account at the times and in the manner set out in the Agreement and the Letter of Offer and Acceptance (as the case may be), as varied under clause 16 (iv) from time to time.
- (ii) You authorise us to debit, or instruct your Bank to debit, the Nominated Bank Accounts or debit from any settlement amounts payable by us to you without notice for:
 - (a) all fees, charges and costs owing to us by you under the Agreement;
 - (b) the value of any over credits paid by us to you due to errors and omissions;
 - (c) all credits paid by us in respect of Transactions which are Invalid Transactions;
 - (d) the full amount of any Refund Transaction less any amounts in respect of such Transaction already debited to the Nominated Bank Accounts;
 - (e) all Taxes incurred or payable by us in connection with the Agreement, the Merchant Facilities or any Transaction contemplated by the Agreement;
 - (f) all fines, penalties and other charges incurred by us as a result of any act or omission by you including a breach of the Agreement by you;
 - (g) any fees, charges or penalties imposed on us by any Nominated Card Scheme due to the nature of your business;
 - (h) all fines and/or penalties levied by a Nominated Card Scheme as a result of your breach of any Nominated Card Scheme Regulations specified in the Agreement or otherwise notified to you from time to time;
 - (i) interest (plus GST if any) on any amount that is not paid when it is due. The applicable interest rate will be set at our bank overdraft rate as at the first day of the month that the amount was due to be paid; and
 - (j) all other amounts owing to us by you under the Agreement.

If we debit the Nominated Bank Accounts, we will give you written notice that we have done this.
- (iii) You must pay on demand by us any amount referred to in clause 16 (ii) which remains unpaid by you because there are insufficient funds in the Nominated Bank Accounts to satisfy the payment of that amount in full.
- (iv) We reserve the right to vary the fees and charges in accordance with clause 31.
- (v) All fees, charges and other payments payable pursuant to the Agreement will be charged plus GST (if any).

17. MERCHANT WEBSITES

If you are specifically authorised by us in accordance with clause 3 (ii) to accept a Nominated Card as payment for goods or services ordered via the Internet:

- (i) in addition to any information set out in the Merchant Operating Guide and the Mail, Telephone and Internet Order Transactions provisions of the Additional Services Schedules or as otherwise notified by us from time to time, your website must contain all of the following information:
 - (a) a complete description of the goods or services offered;
 - (b) a returned merchandise and refund policy;
 - (c) a customer service contact, including electronic address and/or telephone number and the physical address of your Premises;
 - (d) any export or legal restrictions (if known);
 - (e) a delivery policy (including the delivery cost, if any);
 - (f) a privacy policy (including your policy on dealing with Cardholder information);
 - (g) security capabilities and your policy for transmission of Cardholder's details;
 - (h) the "Visa" logo, in full colour, to indicate Visa card acceptance;
 - (i) the "Mastercard" logo, in full colour, to indicate Mastercard acceptance; and
 - (j) the "UnionPay" logo, in full colour, to indicate UnionPay acceptance.
- (ii) except with our prior written consent, the transaction currency on your website must be in New Zealand dollars only;
- (iii) your country of domicile must be New Zealand;
- (iv) you must complete a Secure Internet Site Declaration to our satisfaction;
- (v) you must, at your cost, arrange for your website to be prepared and maintained in accordance with our reasonable requirements, including those requirements applicable to Internet security standards or as set out by a Nominated Card Scheme or otherwise notified by us in writing from time to time; and
- (vi) you must, at your cost, immediately rectify any security or processing faults or issues with your website as identified by either:
 - (a) you; or
 - (b) us and notified to you.

18. EFTPOS TERMINALS

This clause 18 applies if you have requested and we have agreed you may process Transactions electronically, or where we have nominated an EFTPOS Terminal for you to use in accordance with clause 5 (viii).

- (i) You must:
 - (a) only use an EFTPOS Terminal of a type that has been approved by Payments NZ and the Switch the EFTPOS Terminal is connecting to; and
 - (b) use the EFTPOS Terminal for the purposes of the Agreement; and
 - (c) use the EFTPOS Terminal in accordance with the Agreement and the supplier's agreement with you.
- (ii) You must, at your cost, comply with all security requirements reasonably requested by us before, and as long as, the EFTPOS Terminal is used for processing Transactions under the Agreement.
- (iii) You must take proper care of and maintain regular servicing of the EFTPOS Terminal.
- (iv) Unless otherwise agreed you must arrange at your cost for an approved telecommunication supplier to install and maintain all necessary telecommunications infrastructure and associated services (including, for example, a telephone line or wireless communications device and any Internet services) to enable the use of the EFTPOS Terminal. We are not responsible for maintaining any telecommunications requirements in connection with the Agreement.
- (v) You must arrange at your cost for the preparation of the location of the EFTPOS Terminal in accordance with our requirements, including those requirements applicable to site security standards and suitable power supply.
- (vi) The EFTPOS Terminal site must enable the Cardholder to use the EFTPOS Terminal keypad without the Cardholder's use of the keypad being observed by either security cameras, observation mirrors, reflective surfaces or by any other person, including by closed circuit television and internal monitoring devices.
- (vii) You must use reasonable care and diligence to prevent and detect unauthorised use of any EFTPOS Terminal.

19. EFTPOS TERMINAL SECURITY

- (i) You must take all steps that are, in the circumstances, reasonable to ensure that each EFTPOS Terminal is protected against loss, theft, unauthorised access or use, modification or other misuse. You agree that such steps include, ensuring that, at the start and at the close of business each day, each EFTPOS Terminal is secure and has not been lost or stolen or tampered with in any way.
- (ii) You must immediately notify us by telephone as soon as you become aware (or should reasonably have become aware) that an EFTPOS Terminal has been stolen, lost or may otherwise have been altered, tampered with or compromised.
- (iii) Any breach of this clause 19 by you may result in you being liable for any loss or costs suffered or incurred by us as a result of theft or loss of, or other breach of security in connection with, an EFTPOS Terminal, including, any loss arising from any unauthorised or fraudulent use of an EFTPOS Terminal that occurs before you give notice to us in accordance with clause 19 (ii).
- (iv) If you:
 - (a) cease trading; or
 - (b) no longer require the Merchant Facilities,you must immediately terminate the Agreement in accordance with clause 29.
- (v) You must comply with all policies and procedures regarding EFTPOS Terminal security as outlined in the Merchant Operating Guide.

20. MERCHANT OPERATING GUIDE

We will provide you with a copy of the Merchant Operating Guide at our cost. The Merchant Operating Guide includes procedures and other information you require for the day-to-day operation of the Merchant Facilities, including requirements set down under Nominated Card Scheme Regulations.

21. CREDIT CARD SURCHARGE FEE

- (i) Under the Nominated Card Scheme Regulations in New Zealand, you are permitted to charge Visa, Mastercard and UnionPay Credit Card Cardholders a Surcharge Fee when these cards are used in a Transaction.
- (ii) When applying a Surcharge Fee you must:
 - (a) ensure the Surcharge Fee is clearly disclosed to the Cardholder prior to the completion of the transaction and give the Cardholder the opportunity to cancel once the Surcharge Fee has been disclosed;
 - (b) ensure the Surcharge Fee is processed as part of the total amount of the transaction and not collected separately;
 - (c) ensure the Surcharge Fee bears a reasonable relationship to your cost of accepting Visa, Mastercard and UnionPay Credit Cards for payment;

- (d) ensure the Surcharge Fee is not described as, or inform the Cardholder that it is, a charge imposed by Visa, Mastercard, UnionPay, us or a financial institution;
 - (e) prominently display notices or signs (to a minimum of 10pt Arial font) disclosing that a Surcharge Fee is charged. Such notices or signs must be in conspicuous location(s) at the physical point of sale. In the absence of a physical point of sale, such notices or signs must be displayed prominently during an Internet order Transaction or communicated clearly in a telephone order, in each case prior to the transaction being processed.
- (iii) If a surcharge is levied on a Cardholder in circumstances other than those set out in this clause 21, you will be liable for the cost of compensating any Card Issuer which successfully effects a Chargeback against us for the amount of any surcharge levied to a Cardholder by you.

22. INDEMNITY

- (i) You indemnify us and agree to keep us indemnified against all claims, damages, actions, proceedings, expenses (including legal costs) losses and liabilities (including all fines, penalties and other charges) whether in contract, under statute, in tort (including negligence) ("Liabilities") suffered or incurred at any time by us arising out of or as a consequence of the Agreement, except that you are not obliged to indemnify us against any Liabilities to the extent such Liabilities are solely the result of our fraud, wilful default or negligence.
- (ii) Without prejudice to clause 22 (i), you indemnify us and the Card Issuing Organisations (the "Indemnified Parties") and agree to keep the Indemnified Parties indemnified against all Liabilities which an Indemnified Party suffers or incurs arising directly or indirectly from:
 - (a) your negligence or fraud or the negligence or fraud of an employee, contractor or agent of yours;
 - (b) your failure, or the failure of an employee, contractor or agent of yours, to observe any of your obligations under the Agreement;
 - (c) any dispute arising between you and the Cardholder in respect of the supply, use, quality or fitness for purpose of goods or services or the provision of cash;
 - (d) any dispute between us or the Card Issuing Organisations, as the case may be, and any Cardholder where the Cardholder or us or the Card Issuing Organisations, as the case may be, dispute liability for any reason;
 - (e) any use of an EFTPOS Terminal by you or your employees, contractors or agents;
 - (f) any representation, warranty or statement made by you or your employees, contractors or agents to the Cardholder; or

- (g) any misrepresentation, breach of contract and/or failure of consideration relating to any contract for the supply of goods or services by you to a Cardholder, except that you are not obliged to indemnify an Indemnified Party against any Liabilities to the extent such Liabilities are solely the result of the fraud, wilful default or negligence of that Indemnified Party.
- (iii) Without prejudice to clause 22 (i), if you breach the Agreement including, for the avoidance of doubt, any provision of any Additional Services Schedule or the Merchant Operating Guide or any material provision of any Nominated Card Schemes Regulations applying generally across all merchants and notified by us in writing then, in addition to any remedy we may have elsewhere in the Agreement, you agree to indemnify and keep indemnified the Indemnified Parties against all Liabilities suffered or incurred by an Indemnified Party under any such Nominated Card Scheme Regulations as a result of your breach.
- (iv) You authorise us to withdraw from your Nominated Bank Accounts or any other account you have with us the amount determined by us to be the amount payable under this indemnity.

23. ANZ LIABILITY

- (i) To the extent permitted by Law, we will not be responsible for any Liabilities (whether direct, indirect, consequential or otherwise) ("Merchant Liabilities") suffered or incurred by you under or in connection with the Agreement including, but not limited to, Merchant Liabilities suffered or incurred because an EFTPOS Terminal, the Card Payment System, or any telephone line or other communications device or service is malfunctioning or not operating and Merchant Liabilities resulting from our failure to credit the Nominated Settlement Bank Account due to technical or administrative difficulties relating to the banking system or Card Payment System used for the transfer of funds to the Nominated Settlement Bank Account.

To remove any doubt and without limiting the generality of this provision, our services and Merchant Facilities are dependent on messaging, communications, processing and other systems which are subject to interruption or breakdown for a variety of reasons. We will take all commercially reasonable steps to reduce the duration should such interruption or breakdown occur but will not otherwise have any liability for any failure, delay or other matter resulting from it.

- (ii) If, despite the other provisions of the Agreement, we are found to be liable to you under or in connection with the Agreement then, without limiting your obligation to indemnify us as set out in clause 22, our total liability to you in connection with each event or series of events giving rise to liability is limited to an amount equal to two (2) months' Merchant Service Fees at the rate prevailing at the time the liability arose.

24. THIRD PARTY BUREAU SERVICES

We are not responsible for the acts or omissions of any third party which provides services, including processing services, to you in connection with or as part of the Merchant Facilities. For the avoidance of doubt, we are not liable for any losses, claims, damages, costs, terms or expenses suffered by you (including consequential loss) arising from or in connection with any act or failure to act by such third party in connection with a Transaction.

25. APPOINTMENT OF AGENT, SUBCONTRACTOR OR OTHER PARTY

- (i) You must not appoint any agent or subcontractor or a person in any other capacity (an "Appointee") to carry out the performance of any of your obligations under the Agreement without our specific written agreement.
- (ii) If we agree to the appointment of an Appointee you will be responsible for any act or omission of that Appointee as if you had performed such act or omission.

26. PROMOTIONAL MATERIAL

- (i) We may supply you with Nominated Card signs, decals and other promotional material we have authorised.
- (ii) You must prominently display in your Premises each Nominated Card decal and other promotional material supplied by us or our authorised representative.
- (iii) Where you are authorised in writing by us to accept Internet orders, you must display logos, signs or other promotional material supplied by us or our authorised representative on your website wherever payment options are presented to the Cardholder.
- (iv) You must not use any promotional material in relation to us or any Nominated Card Scheme except as authorised by us. You must not use the name, logo, any trademarks, brand names, business names or copyright belonging to us or any Nominated Card Scheme without our prior written approval.
- (v) You must only advertise goods and services which can be purchased with a Nominated Card in New Zealand currency or any other currency authorised in writing by us.

27. REPRESENTATIONS AND WARRANTIES

- (i) When you supply Transaction details to us, whether the Transaction is processed electronically or via the IVR Authorisation and Settlement Service, you represent and warrant to us that:
 - (a) all Transaction details are true and correct;
 - (b) you have complied with the requirements of the Agreement applicable to processing of Transactions;
 - (c) you are not aware of any fact which would cause the Transaction to be an Invalid Transaction;
 - (d) you have complied with all applicable Laws in carrying out your obligations in connection with the Transaction under the Agreement; and
 - (e) the information you have provided us in the Application remains true and correct and not misleading in any material respect.
- (ii) You represent and warrant to us that you have power to enter into and perform your obligations under the Agreement and that the Agreement is valid, binding and enforceable against you.
- (iii) You represent and warrant to us that the information you have provided us in the Application is true and correct and not misleading in any material respect.
- (iv) You acknowledge that the issue of a Nominated Card to a Cardholder is not a representation or warranty by us or the Card Issuer as to the Cardholder's credit worthiness or identity.
- (v) Unless you have disclosed to us that you are acting in a trustee capacity or on behalf of another party, you warrant that you are acting on your own behalf in entering into the Agreement.

28. SUSPENSION OF MERCHANT FACILITY OR FREEZING OF NOMINATED BANK ACCOUNTS

- (i) We reserve the right to suspend the Merchant Facilities or freeze (and/or instruct your Bank to freeze) the Nominated Bank Accounts and refuse to allow withdrawals of funds from the Nominated Bank Accounts, or both suspend the Merchant Facilities and freeze the Nominated Bank Accounts, immediately on notice to you if any of the events listed in clause 29.2 occurs. When exercising this right we are not required to notify you of the date on which the suspension or freezing of your Nominated Bank Account, or both, as the case may be, will end.
- (ii) When we suspend the Merchant Facilities or freeze the Nominated Bank Accounts, or both, as the case may be:
 - (a) you must not accept any Nominated Cards as payment for goods or services; and
 - (b) we are not obliged to accept any Transactions processed by you after notification of suspension.
- (iii) We may during the period of suspension or freezing of the Nominated Bank Accounts, or both, as the case may be, terminate the Merchant Facilities under clause 29.
- (iv) We may also suspend the availability of various types of Nominated Cards for such period or periods as we may consider appropriate if:
 - (a) we reasonably consider that the principles of prudent banking require such action; or
 - (b) a financial institution has suspended the use of those types of its Nominated Cards.

We will use all reasonable endeavours to give you notice of suspension of Nominated Card types, after we have received notification. For the purposes of this clause, notice to you can include publishing a general notice in major daily metropolitan newspapers in Auckland, Wellington, Christchurch and Dunedin.

For the avoidance of doubt, we are not required to notify you of the suspension of individual Nominated Cards.

29. TERMINATION

29.1 How can the Agreement be terminated?

- (i) You may only terminate the Agreement or cancel any Additional Service:
 - (a) in accordance with clause 1; or
 - (b) at the end of the Initial Term or each Subsequent Term by giving us at least twenty-one (21) days prior written notice of termination before the end of that Initial Term or Subsequent Term; or
 - (c) if you cease to carry on the whole of your business, or sell the business as a going concern to an unrelated buyer, in which case you must provide us with at least six (6) months prior written notice of termination under this sub-clause.
- (ii) If you terminate the Agreement, or cancel any Additional Service, before the end of the Initial Term or any Subsequent Term or cease to carry on the whole of your business, or sell the business as a going concern to an unrelated buyer without the required six (6) months notice, you authorise us, or where the Nominated Charges Bank Account is not with us you authorise us to authorise your Bank, to debit your Nominated Bank Accounts and credit us with fees as set out in clause 29.3. For the purposes of this clause, if you give notice to terminate the Agreement or cancel any Additional Service pursuant to clause 29.1 (i), but you continue to accept any services pursuant to this Agreement after the expiry of such notice such notice shall be invalid and of no effect from the date of expiry of such notice and the Agreement shall continue in accordance with its terms and conditions as if such notice was not served.
- (iii) We may terminate the Agreement, or cancel any Additional Service:
 - (a) at any time by giving you at least twenty-one (21) days' written notice;
 - (b) immediately if any of the events listed in clause 29.2 occurs;
 - (c) immediately if we reasonably determine that the continued provision of the Merchant Facilities may damage our reputation or may result in us or you suffering loss;
 - (d) immediately if we are unable to continue to provide the Merchant Facilities for any reason.
- (iv) If the Agreement is terminated, for whatever reason, you agree to:
 - (a) securely destroy all information, including without limitation, stationery and promotional material, including the decal insignia, decals, provided by us which you have in your possession other than that concerning your settlement records; and
 - (b) cancel any automatic payments in our favour.

29.2 What is a termination event?

- (i) We may terminate the Agreement immediately if:
 - (a) any amount payable by you to us is overdue, or in our opinion you are unlikely to be able to meet your payment or other obligations to us; or
 - (b) you are in breach of any provision of the Agreement and where such breach is capable of remedy, such breach is not remedied within twenty-one (21) days following written notice from us requesting the same to be remedied; or
 - (c) you are in breach of any material provision of any Nominated Card Schemes Regulations applying generally across all merchants and notified by us in writing whether or not such breach is capable of remedy; or
 - (d) you become Insolvent; or
 - (e) you cease to carry on the whole or any substantial part of your business, you transfer or agree to transfer the ownership or effective control of your business, or the nature of your business is materially altered; or
 - (f) you act fraudulently or illegally in relation to the Agreement or you process any Transaction that you knew or ought to have known was fraudulent; or
 - (g) you have been identified in the Visa or Mastercard International Fraud databases or any banking databases as having previously acted fraudulently; or
 - (h) we Chargeback a transaction and the Chargeback is dishonoured or otherwise refused for any reason; or
 - (i) you have, in our reasonable opinion, an excessive Domestic Chargeback to Transaction Ratio, International Chargeback to Transaction Ratio, Domestic Fraud to Transaction Ratio or International Fraud to Transaction Ratio, or you are involved in an unacceptably high number of Refund requests; or
 - (j) you fail to process all your Transactions through us; or
 - (k) you default under any lease or licence relating to the Premises (if applicable); or
 - (l) we determine that you are using the Merchant Facilities for purposes outside of those declared on the Application (including but not limited to illegal or fraudulent transactions, high-risk transactions or activities that may be brand-damaging for any Card Issuing Organisation or us) and/or information you provide us is or becomes incorrect, false or misleading whether, in each case, the information was provided fraudulently or in error; or
 - (m) your details and other information disclosed in the Application materially changes, including, but not limited to, a change to the nature and type of business conducted by you; or

- (n) the Cardholder has not received any goods or services purchased (including, where you act as an agent for the provider of the goods or services, if the principal has not supplied the goods or services) and you have not provided us with proof of the receipt of, and satisfaction with, the goods or services by the Cardholder within five (5) Business Days of our request to do so; or
- (o) you fail to provide us with copies or do not allow us or an agent appointed by us to inspect or examine your accounting books or financial statements or any other records relating to any Transactions within five (5) Business Days of our request to do so.

29.3 What are the consequences of termination?

- (i) If we terminate the Agreement for any of the reasons set out in clause 29.2 or you terminate the Agreement in breach of clause 29.1 (i) we may charge you:
 - (a) four (4) times the Average Monthly Merchant Service Fee if you terminate during year one (1) of the Initial Term; or
 - (b) three (3) times the Average Monthly Merchant Service Fee if you terminate during year two (2) of the Initial Term; or
 - (c) two (2) times the Average Monthly Merchant Service Fee if you terminate during year three (3) of the Initial Term or during any Subsequent Term;and the balance of any fixed fees or charges described in the Letter of Offer and Acceptance that would have been payable up to the end of the current Term.
- (ii) If you terminate the Agreement due to sale or ceasing to carry on business, without giving the required six (6) months notice, we may charge you:
 - (a) two (2) times the Average Monthly Merchant Service Fee; and
 - (b) the balance of any fixed fees or charges described in the Letter of Offer and Acceptance that would have been payable up to the end of the current Term (to a maximum of six (6) months charges).
- (iii) Upon termination of the Agreement for any reason, you will no longer be able to process Transactions.
- (iv) If the Agreement is terminated for fraudulent or improper use of the Merchant Facilities, or for non-compliance with Nominated Card Scheme Regulations or the Agreement, we may list your details in the Visa and Mastercard International Fraud databases or any banking databases.

- (v) Termination of the Agreement or any part of it does not affect any rights or obligations of you or us that arose prior to termination. In particular, any obligation you have under the Agreement to indemnify us or to pay us any amounts (including costs), is a continuing and independent obligation and survives even if the Agreement is terminated. All Transactions made prior to termination are subject to the terms of the Agreement.
- (vi) You authorise us to:
 - (a) disclose to any person the fact that all or part of the Agreement has been terminated;
 - (b) disclose information concerning the termination and reasons for termination of all or part of the Agreement to any credit provider, credit reference agency or Nominated Card Scheme; and
 - (c) give a banker's opinion to other financial institutions with whom you may make application for other Merchant Facilities.

You acknowledge that the disclosure of this information may affect your ability to successfully apply for Merchant Facilities in the future.

- (vii) The obligations contained in clauses 12, 13, 14, 16, 18, 19, 22, 23, 28, 29, 30 and 45 survive termination of the Agreement, together with any other obligations intended to survive termination of the Agreement.
- (viii) If we receive a Transaction Voucher after termination of the Agreement, we reserve the right, at our option, to return the Transaction Voucher to you or to retain the Transaction Voucher. If we decide to retain the Transaction Voucher, you are not entitled to any payment for the Transaction in respect of the Transaction Voucher until such time as we have received payment and no chargeback claim can be made by the issuer of the Nominated Card in connection with the Transaction Voucher.

30. SET-OFF

- (i) We may at any time without notice to you set-off any Liability owed by us to you on any account against any Liability owed by you to us under or in connection with the Agreement.

For the purposes of this clause, "Liability" means any debt or monetary liability or any other claim which is capable of being reduced to or expressed as a monetary liability, irrespective of whether the debt or monetary liability is future or present, actual or contingent.

31. VARIATION

- (i) We may vary all or any of the provisions of the Agreement including by introducing a new fee or charge under the Agreement, or by increasing an existing fee or charge, or the rate or margin used to determine an existing fee or charge, at any time by giving you at least fourteen (14) days' notice in writing.
- (ii) We may change the Merchant Service Fee, including any rate or margin used to determine the Merchant Service Fee, without notice to you to the extent the Merchant Service Fee was calculated on the basis of incorrect information provided by you or if the current Nominated Card Scheme interchange rates or fees are changed.
- (iii) You acknowledge that where we agree to an increase in your Refund limit, Authorised Floor Limit or tipping limit in respect of the Merchant Facilities, additional or increased incidence of liabilities or losses may arise as a result, including from erroneous or fraudulent Transactions.

32. NOTICE

- (i) You acknowledge that we may deliver notices to you in any of the ways listed in clause 32 (ii) and consent to notices being delivered in any of these ways. A notice sent to your Representative or any other person nominated by you will be deemed to be a notice sent to you.
- (ii) A notice must be in writing, in English and is taken to be received:
 - (a) if delivered personally, at the time of delivery;
 - (b) if sent by prepaid post, on the third day after the posting;
 - (c) when the party sending the notice is us, if sent by email, at the time when the email enters your information system; or
 - (d) when the party sending the notice is us, if delivered via www.anz.co.nz on the home page or Merchant services section of that website, on the third day after the posting of the notice to that website.
- (iii) The address, facsimile number or email address to be used for notices to you is the address set out in the Letter of Offer and Acceptance or the last address, facsimile number or email address advised by you and stored by us. You must inform us immediately of any change of your address, facsimile number or email address.
- (iv) Any notices under the Agreement from you to us must be delivered to:
ANZ Merchant Business Solutions
PO Box 2211
Wellington 6140

33. RELATIONSHIP OF THE PARTIES

Nothing in the Agreement creates a relationship of joint venture, partnership or principal and agent between us and you. You must not act as if, or represent or attempt to represent to any person that, any such relationship exists.

34. OTHER ARRANGEMENTS

Nothing in the Agreement affects any existing arrangements we may have, nor does it restrict us from entering into any future arrangements with third parties to provide the Merchant Facilities in a similar capacity.

35. ASSIGNMENT

The Agreement is binding on the parties, their executors, administrators, successors and permitted assigns. You must not assign or transfer any of your rights or obligations under the Agreement unless we consent in writing. We may transfer any of our rights or obligations under the Agreement on giving fourteen (14) days' prior notice to you. To remove any doubt we may at any time arrange for a third party to provide any of the services we are obliged to provide to you under the Agreement and/or exercise our rights under the Agreement.

36. SEVERABILITY

If any provision or part of the Agreement is held to be invalid, illegal, uncertain or unenforceable, the validity, legality, certainty and enforceability of the remaining provisions will not be in any way affected or impaired.

37. WAIVER

The rights we have under the Agreement cannot be waived except by us giving you written notice waiving the particular rights. In particular, we do not waive any right that we have in connection with the Agreement merely because we do not exercise it or do not exercise it as soon as we can. If we exercise a right once or partially, it does not mean we cannot exercise that right again or other rights.

38. MERCHANT'S CONTINUOUS OBLIGATIONS

- (i) You must immediately notify us in writing:
 - (a) if circumstances arise which may have a material adverse effect on your business, assets or financial condition or your ability to perform your obligations under the Agreement. It is advisable that you inform us promptly when you are in financial difficulty; or
 - (b) if you sell, lease or transfer your business or any of the Premises;
 - (c) if you change the address where you carry on business or otherwise change the contact details (e.g. telephone number, facsimile number or email address) or start carrying on business at any other place;
 - (d) if you change the nature, scope or type of your business including the goods or services sold;
 - (e) to inform us of any changes to your banking arrangements to allow us to update your Settlement Bank Account and/or direct debit authorities; and/or
 - (f) if you intend to begin offering mail (including fax and email), telephone or Internet orders.
- (ii) You must provide copies of your latest financial statements and any other financial information (including bank statements) reasonably requested by us within thirty (30) days of our request.
- (iii) When requested by us, you must promptly complete and submit all forms and documents supplied or requested by us within thirty (30) days of our request.

39. SECURITY

- (i) At any time (including where you carry out Delayed Supply Transactions, but not limiting any Transaction type), we may request that you provide us with:
 - (a) a completed Merchant Prepayment Exposure Declaration; and/or
 - (b) Security of a type, and to secure an amount, specified by us, and you will provide us with such completed declaration and/or Security (as applicable).
- (ii) If we specify a time by which the Security must be provided, you must provide the Security to us by that time.

- (iii) Without limiting clauses 13 (Nominated Bank Accounts), 30 (Set-off) or 39 (i) above, if we believe there is a likelihood of any of the events in clause 29.2 occurring, or such events do occur, we may by notice in writing to you, in our absolute discretion, retain portions of your settlement proceeds in a separate suspense account. You acknowledge you have no ownership of these funds until they are transferred to your Nominated Bank Accounts and that no interest is payable on the funds while they are held in the suspense account.
We may retain the Security until we are satisfied that:
 - (a) the risk of any of the events in clause 29.2 occurring, or ceasing to occur, no longer exists; and/or
 - (b) no Transactions will be charged back by Cardholders.

40. OTHER

- (i) The Agreement is governed by the laws of New Zealand.
- (ii) You agree that the covenants contained in the Agreement which refer to the Card Issuing Organisations are given for the benefit of and are enforceable in terms of the Contract and Commercial Act 2017 by, the Card Issuing Organisations. The Agreement may be varied by us and you without the approval of the Card Issuing Organisations.
- (iii) You acknowledge that for the purposes of the Consumer Guarantees Act 1993, you are a business (or hold yourself out as acquiring goods and services for the purpose of a business) and no rights or remedies under the Consumer Guarantees Act 1993 shall apply in respect of goods or services supplied by us under this Agreement.
- (iv) All warranties, descriptions, representations or conditions, whether implied by statute or by law, trade, custom or otherwise, are excluded to the extent permitted by law.
- (v) The rights, powers and remedies provided in this Agreement are in addition to, and not exclusive of, any rights, powers or remedies provided by law.
- (vi) You shall procure that all of your employees, agents, contractors and representatives comply with all of the terms and conditions in the Agreement, and for the purposes of clause 14.3, if you are a company, you shall also procure that your directors and shareholders, comply with that clause.

41. DISPUTE RESOLUTION PROCEDURES

- (i) Where you have a complaint in relation to the provision of the Merchant Facilities, you should speak with us in the first instance. If the complaint cannot be resolved promptly, one of our supervisors will take responsibility for resolution of the complaint. We aim to resolve any complaint within ten (10) Business Days. If this is not possible, we will keep you informed on the progress of the matter and how long we expect it will take to resolve the complaint.
- (ii) In the event a dispute arises in relation to the Agreement, we both agree to use our best endeavours to resolve the dispute through good faith negotiations.
- (iii) We both agree that:
 - (a) in the first instance one party shall give notice of, and attempt to resolve, any dispute with the other party;
 - (b) where you have raised a dispute and we are unable to reach a mutually satisfactory conclusion, we will inform you of your right to raise the dispute with the Banking Ombudsman;
 - (c) we shall both continue to perform our respective obligations under the Agreement as far as possible as if no dispute had arisen and pending the final settlement of any dispute.
- (iv) Nothing in this clause prevents us from taking immediate steps to seek injunctive relief before a New Zealand court.

42. CARDHOLDER DISPUTES

- (i) You acknowledge that any dispute between you and a Cardholder arising directly or indirectly out of the Agreement or the Card Payment System is entirely between you and the Cardholder and you shall not involve us in any such dispute although we may become involved if we consider it is in our best interests to do so.
- (ii) If you are unable to resolve the dispute with a Cardholder, you should refer the Cardholder to their Card Issuer.
- (iii) You must not impose, as a condition of Card acceptance, a requirement that the Cardholder waive his or her right to dispute a Transaction. This prohibition includes imposing any requirement for a Cardholder to pay the Merchant a fee in the event that the Cardholder exercises the right to dispute a Transaction.

43 . ADDITIONAL SERVICES

- (i) We may offer Additional Services to you in connection with any of the Merchant Facilities offered under the Agreement. If you choose to use any Additional Services offered, we will notify you of the Merchant Service Fee(s) and/or other fees and charges at or as soon as practicable after, the time the Additional Service is provided.
- (ii) We may add new Additional Services from time to time, and will set out the terms and conditions of these services in a new schedule in the Additional Services Schedules. If we offer that new service to you and provide you with a copy of the new schedule, and you choose to accept that service, then you agree to comply with the provisions of that new schedule.

44. CONFIDENTIALITY

Both parties agree not to:

- (a) disclose to any person any Confidential Information relating to the other party unless required to do so by law;
- (b) use any Confidential Information of the other party for its own purposes.

45. ANTI-MONEY LAUNDERING AND SANCTIONS

- (i) You agree that we may, in our sole and absolute discretion:
 - (a) delay, block or refuse to process any Transaction;
 - (b) delay, block or refuse to settle any Transaction; or
 - (c) refuse to perform any one or more of our obligations under the Agreement; without incurring any liability, if we suspect, for any reason, that:
 - (d) an action we are required or requested to take under the Agreement;
 - (e) our involvement in any Transaction that is any way connected with the Agreement; or
 - (f) our performance of any service for any person in connection with the Agreement; might in any way cause us:
 - (g) to breach any Law, regulation or other legal prohibition of any place or jurisdiction (including a foreign place or jurisdiction);
 - (h) to deal in any way with any person (natural, corporate or governmental) that is sanctioned, or is connected in any way to any person that is sanctioned, under economic and trade sanctions imposed by the United Nations, the European Union or any country;

- (i) to breach any sanction of any kind imposed by any country (including any sanction that supports a decision or resolution of the United Nations Security Council);
- (j) to deal in any way with any person (natural, corporate or governmental) that has been listed or named by any government, or independent authority (such as the United Nations or the European Union), as a person who is in any way suspected of being involved (or potentially involved) in terrorism or in any activities connected with terrorism; or
- (k) to be involved (whether directly or indirectly) in any Transaction which involves the proceeds of unlawful conduct or which involves proceeds which might be applied for the purposes of unlawful conduct in New Zealand, Australia or any other country.

For the purposes of this clause, the circumstances listed in paragraphs (g) to (k) above are collectively described as “unlawful acts”.

- (ii) You must provide all information to us which we reasonably require in order:
 - (a) to manage anti-money laundering, counter-terrorism financing and economic and trade sanctions risk;
 - (b) to comply with any Laws, regulations, or other prohibitions that may be applicable to us with respect to any Transaction, requested action or obligation applicable to us; and/or
 - (c) to avoid involvement in any unlawful act.
- (iii) You warrant and undertake to us that you will not request us to take any action, or to perform any obligation, in connection with the Agreement that might cause us to be involved in any unlawful act on our part. Should you become aware that we might become involved in an unlawful act in connection with the Agreement, you must immediately tell us of the fact or circumstance that might cause us to be at risk or have involvement in an unlawful act. Should you become aware that we have become involved in an unlawful act, as a result of our performance of any action or obligation in connection with the Agreement, you must immediately tell us of the facts or circumstances that have caused this to occur.
- (iv) You agree that we may disclose any information concerning you or any Transaction to any Law enforcement agency or court or any relevant authority where required to do so under any Law or regulation (including a Law or regulation of a foreign place or jurisdiction) or where we have a reasonable belief that the Transaction may contravene that Law or regulation, and we will not incur any liability to you as a result of that action.

46. MEANINGS OF WORDS AND EXPRESSIONS

In the Agreement:

“Additional Services” means any of the following services or any new service offered by us under the Agreement:

- (a) Car Rental Transactions
- (b) Accommodation Transactions
- (c) Mail, Telephone and Internet Order Transactions
- (d) Recurring Transactions
- (e) ANZ eGate™
- (f) Customer Preferred Currency
- (g) Customer Preferred Currency Online
- (h) Multi-Currency Service.

“Additional Services Schedules” means the schedule(s) listed in the Letter of Offer and Acceptance and provided by us to you which contain the specific terms and conditions and operating instructions relating to the Additional Services, as amended from time to time by us.

“Agreement” means the agreement constituted by your acceptance of our offer on the terms and conditions set out in the Letter of Offer and Acceptance and comprising the documents referred to in clause 1, as varied from time to time.

“ANZ” means ANZ Bank New Zealand Limited.

“ANZ Group” means ANZ, any of its subsidiaries, its related companies (as defined by the Companies Act 1993) and Australia and New Zealand Banking Group Limited ABN 11 005 357 522 in Australia.

“Application” means the application form (or other mode of application permitted by us from time to time) completed, and submitted to us, by you for the Merchant Facilities and, for the avoidance of doubt, includes all supporting documentation provided to us in connection with your application and the Secure Internet Site Declaration and Merchant Prepayment Exposure Declaration (if applicable).

“Appointee” has the meaning given to that term in clause 25.

“Authorisation” on a Credit Card payment means at the time we authorise a Transaction.

“Authorisation Centre” or **“Credit Card Authorisation Centre”** means the automated phone service you can call to obtain an authorisation for a Credit Card Transaction.

“Authorised Floor Limit” means the value of a sale or payment which you are authorised to make to a Cardholder in any one Transaction without having to get the Transaction authorised by us.

“Average Monthly Merchant Service Fee” means the average of the Merchant Service Fees charged to your account each month over the twelve (12) month period immediately preceding the date of such calculation, provided that if you have not been a merchant for twelve (12) months, then the Average Monthly Merchant Service Fee shall be calculated over the shorter period, as may be determined by us or if a Merchant Service Fee is yet to be paid under this agreement, the calculation will be based on anticipated volumes as defined on the Application where fixed Merchant Service Fees have been applied.

“Bank” means your bank as notified in writing by you to us from time to time.

“Biometric Identification (ID)” means verifying identity using a person’s unique physical and other traits, such as Voice ID, facial recognition or fingerprint log-on using a fingerprint identity sensor.

“Business Day” means any day in New Zealand excluding a day of a weekend, a public holiday and any day on which trading banks are not open for retail business.

“Cardholder” means a person issued with a Nominated Card or authorised to use a Nominated Card.

“Cardholder’s Nominated Account” means any account which at the Cardholder’s request, has been approved by a Card Issuer as an account through which a Transaction may be made.

“Card Issuer” means the Card Issuing Organisation that issued the Nominated Card.

“Card Issuing Organisation” means the organisations authorised to issue Credit Cards or Visa, Mastercard or UnionPay Debit Cards.

“Card Not Present Transaction” means a Transaction where the Cardholder and Card are not present at the Merchant’s premises, including mail, telephone and Internet order Transactions.

“Card Payment System” means the arrangements between us, other banks and Card Issuing Organisations for, amongst other things, the payment of debt and the extension of credit using cards.

“Card Present Transaction” means a face to face Transaction where the Cardholder and Nominated Card are present.

“Chargeback” means a Transaction that we charge back to you in accordance with clause 12.

“Compliance Requirements” means all applicable Laws and the requirements of all applicable Nominated Card Schemes and regulatory bodies and includes the Payment Card Industry Data Security Standard and any other requirements advised to you by us.

“Confidential Information” means all information about your business and us, the Card Payment System, and includes without limitation the Agreement, and any material supplied by us to you relating to the Card Payment System but does not include any information that:

- (a) at the time of disclosure is published or otherwise generally available to the public; or
- (b) became part of the public domain after its disclosure, otherwise than through a disclosure by you or us in breach of the Agreement.

“Consumer Device Cardholder Verification Method (CDCVM)” means where a Cardholder verifies the Contactless Transaction on their Mobile Device by using a passcode, pattern or Biometric ID.

“Contactless Card” means any card which can be used for Contactless Transactions.

“Contactless Reader” means a device approved by us that reads Contactless Cards using radio waves rather than reading the card magnetic strip, stripe or chip.

“Contactless Transaction” means transmitting card data using radio waves instead of a device physically reading the card magnetic strip, stripe or chip.

“Credit Card” means all:

- (a) Visa, Mastercard and UnionPay cards where the card is accessing a credit account;
- (b) Dual cards where the Cardholder nominates a credit account;
- (c) Visa, Mastercard and UnionPay debit products where the transaction is treated as a credit card transaction (including but not limited to Internet, IVR Authorisation and Settlement and telephone transactions or where the “CR” function is selected on an EFTPOS Terminal); and
- (d) Prepaid cards.

“Credit Transaction” means a Transaction where payment is made by us or another Card Issuer of a Nominated Card (being a Credit Card) on behalf of the Cardholder under a credit card contract between us and the Cardholder or the Cardholder and the other Card Issuer (as the case may be) in discharge of the Cardholder’s debt for goods or services supplied by you to the Cardholder.

“CSC” means Card Security Code, being the 3-digit number positioned on the back of a Nominated Card.

“Debit Card” means any card issued by a financial institution used by a Cardholder to access a cheque or savings account and includes the Visa, Mastercard and UnionPay debit products where the transaction is treated as a domestic Electronic Transaction.

“Debit Transaction” means a Transaction where payment is made by the Cardholder selecting a cheque or savings account that is authorised for access by the Cardholder’s Nominated Card.

“Delayed Supply Transaction” means a Transaction whereby payment is made by the Cardholder before the goods or services are supplied.

“Domestic Chargeback to Transaction Ratio” means the number of Chargebacks against you in comparison to the number of Transactions initiated by you for New Zealand-issued Credit Cards.

“Domestic Fraud to Transaction Ratio” means the number of fraudulent Transactions processed by you in comparison to the number of Transactions initiated by you for New Zealand-issued Credit Cards.

“Electronic Off-line Payment Limit” means the maximum amount set by us that you are allowed to process a Transaction for and/or the maximum number of Transactions you can process using an EFTPOS Terminal with Electronic Off-line Transaction functionality.

“Electronic Off-line Transaction” or **“Electronic Off-line Voucher”** means a Transaction made using the automated procedures within the EFTPOS Terminal to capture and store the Transaction for subsequent dispatch to us and authorised manually at your discretion, subject to the terms and conditions of the Agreement.

“EFTPOS Terminal” means any electronic device or equipment (including where applicable a portable electronic device or equipment (such as cables and peripherals) but not including an automatic telling machine), for processing Transactions using Nominated Cards and for initiating the credit or debit of funds to facilitate the settlement of those Transactions.

“Electronic Transaction” means a transaction (including, but not limited to, a sales transaction) where a Nominated Card is used on an EFTPOS Terminal to withdraw, deposit or transfer funds electronically to or from a Cardholder’s Nominated Account through a Cardholder instructing or authorising a Card Issuer by use of a card and its associated PIN or by signature verification by you for a Credit Card and includes Refunds effected by you.

“GST” means goods and services tax chargeable under the Goods and Services Tax Act 1985, together with any interest or penalties in relation thereof.

“Indebtedness” or “Debt” includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money.

“Initial Term” means the period beginning on the commencement date shown in the Letter of Offer and Acceptance and ending on the last day of the Initial Term set out in the Letter of Offer and Acceptance.

“Insolvent” means:

- (a) you:
- (i) become insolvent or are unable to pay your Indebtedness as Debts fall due;
- (ii) stop or suspend, or threaten to stop or suspend, payment of any of your Debts, or begin negotiations or take any proceedings to reschedule any of your Debts; or
- (iii) make or propose to make, an assignment, arrangement or composition with, or for the benefit of, your creditors in respect of or affecting any of your Indebtedness;
- (b) a receiver, receiver and manager (including statutory), administrator or similar official is appointed in respect of you or your business or any of your assets;
- (c) a distress, attachment, execution or other legal process is levied or enforced on or against any of your assets and is not discharged or stayed within fourteen (14) days;
- (d) an order is made, resolution passed or other step taken by any person for your dissolution, except for the purpose of and followed by a reconstruction or re-organisation (not involving or arising out of insolvency) on terms approved by us before that step is taken; or
- (e) you cease or threaten to cease to carry on the whole or any substantial part of your business, or transfer, threaten to transfer or agree to transfer (whether by one or a series of transactions) the whole or any substantial part of your assets other than for reasonable consideration.

“International Card” means a Card issued outside of New Zealand.

“International Chargeback to Transaction Ratio” means the number of Chargebacks against you in comparison to the number of Transactions initiated by you in relation to International Cards.

“International Fraud to Transaction Ratio” means the number of fraudulent Transactions processed by you in comparison to the number of Transactions initiated by you in relation to International Cards.

“Internet” means the public on-line computer network of that name or any successor of it.

“Invalid Transaction” means a Transaction that is invalid under clause 10.

“IVR Authorisation and Settlement Service” means the automated phone service you can call to obtain an authorisation and settlement for a Credit Card Transaction.

“IVR Authorisation and Settlement Services Sales Voucher” means a voucher for recording the details of mail, telephone and Internet order Transactions processed through the IVR Authorisation and Settlement Service as set out in the Merchant Operating Guide.

“Law” includes any law, statute, regulation, ordinance, proclamation, by-law or statutory instrument or order, including codes of conduct issued by regulatory bodies or any Nominated Card Scheme Regulations.

“Letter of Offer and Acceptance” means the letter in which we made the offer of Merchant Facilities to you setting out terms specific to you and enclosing the contract documents pertaining to the Agreement.

“Merchant” means the person named as Merchant in the Letter of Offer and Acceptance.

“Merchant Facilities” means the services and facilities we make available to you under the Agreement.

“Merchant Operating Guide” means the Merchant Operating Guide which is provided by us to you, as varied from time to time by us.

“Merchant Prepayment Exposure Declaration” means the form of that name provided by you to us (whether included in the Letter of Offer and Acceptance or otherwise), as updated or revised by you and us from time to time.

“Merchant Service Fee” means the Merchant Service Fee set out in your Letter of Offer and Acceptance as amended by us from time to time.

“Mobile Device” means a phone or other mobile telecommunications device that lets the Cardholder make Contactless Transactions using a Mobile Wallet.

“Mobile Wallet” means a virtual wallet that enables the Cardholder to make Contactless Transactions using a wallet card stored on a Mobile Device.

“Nominated Card” or **“Card”** means each card which is a Debit Card or Credit Card or both, a charge card or International Card, and which in each case has been authorised by us for the purposes of the Agreement and notified to you in writing.

“Nominated Card Scheme” means any scheme established to manage and establish standards and procedures for the issuance and acceptance of Nominated Cards and the settlement of Transactions and includes any other payment industry body notified to you by us from time to time.

“Nominated Card Scheme Regulations” means any standards, procedures, rules, regulations, programmes or requirements of, or issued by, a Nominated Card Scheme.

“Nominated Bank Accounts” means the Nominated Charges Bank Account and/or the Nominated Settlement Bank Account as the context permits.

“Nominated Charges Bank Account” means the bank account(s) to which charges payable by you under the Agreement may be debited.

“Nominated Settlement Bank Account” means the bank account you ask us to pay your settlements into.

“On-line Transaction” means a Transaction where electronic authorisation has been obtained.

“Online Payment Gateway” means a gateway on the Internet that you can use to accept Credit Card Transactions safely and securely.

“Payments NZ” means Payments NZ Limited, or any successor body.

“PCI DSS” has the meaning given to it in clause 14.2 (i).

“PIN” means the Personal Identification Number selected by a Cardholder, which when used in conjunction with a Nominated Card, enables the Cardholder to make Electronic Transactions.

“PPSA” means Personal Property Securities Act 1999.

“Premises” means the various locations or location where you conduct business and are authorised by us to accept Nominated Cards.

“Prepaid Card” means Visa, Mastercard and UnionPay prepaid products where the Transaction is treated as a credit card Transaction (including but not limited to Internet, IVR Authorisation and Settlement Service and telephone Transactions or where the “CR” function is selected).

“Recurring Transaction” means Transactions that occur where you have an ongoing signed authority from the Cardholder to process Transactions against a Cardholder’s credit card, scheme debit or charge card account (as applicable).

“Representative” means each party’s representative with authority to represent it as notified to the other party from time to time.

“Refund” means, in respect of a sales Transaction, the reversal in accordance with the Merchant Operating Guide of that sales Transaction.

“Secure Internet Site Declaration” means the form of that name provided by you to us (whether included in the Letter of Offer and Acceptance or otherwise), as updated or revised by you and us from time to time relating to the security of your website to accept a Nominated Card as payment for goods or services ordered via the Internet .

“Security” means any guarantee or guarantee and indemnity or bill of sale, mortgage, charge, letter of credit, deposit, security interest (as defined in the PPSA), any authority to appropriate and set-off deposits or any other security that we may request from you to provide to us under clause 39.

“Surcharge Fee” means a fee you may apply to some or all Visa, Mastercard and UnionPay Credit Card Transactions in accordance with clause 21, calculated as a percentage of the Credit Card Transactions or a flat dollar amount.

“Subsequent Term” means each term following the completion of the Initial Term or any subsequent term where the Agreement is renewed in accordance with clause 2 (iii).

“Switch” means the network that securely transmits Cardholder details to and from us or the Card Issuing Organisation from EFTPOS Terminals or Online Payment Gateways for the purposes of authorising Transactions.

“Taxes” includes a present and future tax, levy, impost, duty, rate, charge, fee, deduction and withholding of any nature regardless of where and by whom imposed, levied, collected, withheld and assessed and includes interest, penalties, fines, costs, charges and expenses and other amounts relating to and arising in connection with taxes.

“Term” means any Initial Term or Subsequent Term.

“Terms and Conditions” means these ANZ Merchant Agreement Terms and Conditions.

“Transaction” includes a sales transaction (being the supply of goods or services or both), Refund transaction or cash transaction in which a Nominated Card or a card number of a Nominated Card is used and which is processed by you manually or electronically.

“Transaction Receipt” means the receipt printed by the EFTPOS Terminal which contains the details set out in clause 5 (v) and the Merchant Operating Guide.

“Transaction Voucher” means an IVR Authorisation and Settlement Services Sales Voucher is used to process a Transaction via the IVR Authorisation and Settlement Service.

“We, us, and our” means ANZ.

“You, your and yours” means the Merchant, and where that Merchant comprises more than one person, means each of them jointly and severally.

47. INTERPRETATION

- (i) If you consist of more than one person, the liability of those persons under the Agreement is joint and several.
- (ii) If there is an inconsistency between the following documents each forming part of the Agreement, the following order prevails:
 - (a) your Letter of Offer and Acceptance;
 - (b) Additional Services Schedules; and
 - (c) these Terms and Conditions.

In the event there is an inconsistency between your Letter of Offer and Acceptance, these Terms and Conditions or the Additional Service Schedules and the Merchant Operating Guide, the Merchant Operating Guide shall prevail.

- (iii) A reference to an individual or person includes a reference to a company and any other entity the Law recognises.
- (iv) The singular includes the plural and vice versa.
- (v) A reference to the Agreement or any document forming part of the Agreement, or any Law is a reference to the Agreement, document or Law as amended, novated, supplemented, replaced or re-enacted.
- (vi) A reference to "mail" includes information sent or received by facsimile or email.
- (vii) The meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.
- (viii) A reference to a 'clause' is to a clause in these Terms and Conditions.

