

# ANZ FASTPAY AGREEMENT

TERMS AND CONDITIONS  
JUNE 2018



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## 1. THESE TERMS AND CONDITIONS

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

Your agreement (“**Merchant Agreement**”) consists of:

- (i) A Letter of Offer and Acceptance (including any special conditions set out in the letter);
- (ii) These ANZ FastPay Terms and Conditions;
- (iii) ANZ FastPay App Terms and Conditions;
- (iv) An ANZ FastPay Merchant Operating Guide;
- (v) A Merchant Prepayment Exposure Declaration (when applicable); and
- (vi) Any special conditions otherwise agreed in writing between us and you.

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

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

You may cancel the Merchant Agreement at no cost before the earlier of (a) the first use of ANZ FastPay and (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 ANZ FastPay and (b) ten (10) Business Days from the commencement date will be governed by clause 27 and fees may apply.

Some words and expressions have special meanings in these ANZ FastPay Terms and Conditions. Those meanings are described in clause 43 and when you are reading these ANZ FastPay Terms and Conditions, you should refer to clauses 43 and 44. Unless the context requires otherwise, any words or expressions defined in these ANZ FastPay Terms and Conditions have the same meaning when used in any document that forms part of the Merchant Agreement.

## 2. PROVISION OF ANZ FASTPAY

- (i) We agree to provide you with ANZ FastPay in accordance with the Merchant Agreement. We agree to do this in exchange for you carrying out your obligations under the Merchant Agreement.
- (ii) You must only use ANZ FastPay to process New Zealand dollar transactions for goods and services supplied in New Zealand.
- (iii) We will provide ANZ FastPay unless:
  - (a) the Merchant Agreement is terminated;
  - (b) ANZ FastPay is suspended in accordance with the Merchant Agreement; or

- (c) there is a change in Law or the requirements of a third party that enables the use or operation of ANZ FastPay or to any Nominated Card Scheme Regulations that prevents us providing ANZ FastPay.
- (iv) You may request and we may authorise the use of ANZ FastPay by Additional Users at our sole discretion.
- (v) You must ensure that all Additional Users are made aware of and strictly comply with the Merchant Agreement.
- (vi) You acknowledge and accept that if we authorise the use of ANZ FastPay for an Additional User, you will be liable for all loss or damage (including consequential loss or damage) suffered or incurred by us as a result of the use of ANZ FastPay by that Additional User.
- (vii) Subject to the terms of the Merchant Agreement, ANZ FastPay may only be used by you and Additional Users 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 Merchant 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(iii) occur.
- (ii) You must not:
  - (a) accept a Nominated Card as payment for goods or services by mail, telephone or Internet order;
  - (b) take Cardholder details via mail, telephone or the Internet; or
  - (c) store any Cardholder data or details.

### **4. ACCEPTING NOMINATED CARDS AND PERMITTED USES**

- (i) You must accept Nominated Cards.
- (ii) A Nominated Card is valid if:
  - (a) it has current validity dates;
  - (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 as set out in the 'Which Cards Should you Accept?' section within the ANZ FastPay 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 Transaction to give a Cardholder cash;
  - (f) use a Nominated Card 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;
  - (g) impose a minimum Transaction amount on a Cardholder or refuse to accept an otherwise valid Nominated 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; and
  - (h) 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.

## **5. PROCESSING TRANSACTIONS**

- (i) You must only use the ANZ FastPay App to process Transactions on your Electronic Device.
- (ii) You may only process Card Present Transactions using ANZ FastPay.
- (iii) You must not process a Transaction on behalf of another person including another business or allow another person to use ANZ FastPay unless that person is an approved Additional User under clause 2(iv).
- (iv) 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 ANZ FastPay Merchant Operating Guide or otherwise notified by us in writing to you.
- (v) You authorise us to email Receipts for all Transactions to Cardholders on your behalf but acknowledge and accept that you may still be obliged to provide a Cardholder with a valid tax invoice as prescribed by relevant Laws.

- (vi) Following each Transaction you must allow the Cardholder to elect to be emailed a copy of the Transaction Receipt. 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.
- (vii) The information on the Cardholder Transaction Receipt must be identical with information on any other copy of the Transaction Receipt.
- (viii) You must not split the value of any proposed Transaction into two or more separate Transactions.
- (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 Cardholder's identity in accordance with the procedures set out in the ANZ FastPay Merchant Operating Guide.
- (xi) 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.
- (xii) You must comply with all applicable Laws, any obligations in the Merchant Agreement and any direction from us in carrying out your obligations in processing Transactions under the Merchant Agreement.
- (xiii) 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.

- (xiv) You must ensure that each Transaction is recorded in New Zealand dollars.
- (xv) 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 four times the Average Monthly Merchant Service Fee for any breach during the Term.

## 6. AUTHORISATION

- (i) Transactions authorised via the ANZ FastPay App where a PIN is used or a Contactless Transaction is made and an **"Approved"** message appears on the ANZ FastPay App and ANZ FastPay Card Reader are automatically authorised. Credit Card Transactions which are completed via the ANZ FastPay App with an **"Accept with Signature"** message are also automatically authorised. 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 the signature provided at the time of the Transaction.
- (ii) You must seek prior authorisation from the **"Authorisation Centre"** for any Transaction where:
  - (a) 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;
  - (b) the Cardholder presents a Nominated Card at a time which is not within current validity dates shown on the Nominated Card;
  - (c) the signature panel on the Nominated Card is blank or the signature has been altered or defaced;
  - (d) the ANZ FastPay App instructs you to contact the Authorisation Centre; or
  - (e) 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 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.
- (iv) Authorisation of a Transaction is not a representation or warranty by us to you that a Transaction is not an Invalid Transaction.



## 7. REFUNDS

You must:

- (i) establish a fair policy for giving Refunds and for exchanges or return of goods for sales Transactions;
- (ii) only give a Refund by means of a Transaction Receipt processed to the same Nominated Card on which the original Transaction was made, a credit note issued by you or an exchange of goods, and not in cash or by cheque. You must disclose your Refund policy to the Cardholder prior to the Transaction; and
- (iii) at all times act in accordance with the instruction for processing Refunds contained in the ANZ FastPay Merchant Operating Guide.

## 8. TRANSACTION INFORMATION

- (i) Transactions will be settled in accordance with the days and timeframes outlined in the ANZ FastPay Merchant Operating Guide and any other directions from us.
- (ii) You must retain information about a Transaction for a period of eighteen (18) months from the date of the Transaction or such other period required by Law or notified by us. The ANZ FastPay Merchant Operating Guide sets out the information about a Transaction which you must retain.
- (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) When required under clause 8(iii) above, you must ensure that Cardholder data is destroyed and not seek to recover or reconstruct Cardholder data.
- (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 Transactions processed by you in accordance with the Merchant Agreement and, subject to the other provisions of the Merchant 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 Merchant 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 Transactions processed by us and settled to your Nominated Settlement Bank Account during the previous month.
- (iii) Where settlement is effected, we will use all reasonable endeavours to ensure that you receive value on the next Business Day.
- (iv) 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;
  - (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.
- (v) 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.
- (vi) You agree that if:
  - (a) you fail to pay any penalty imposed by the Nominated Card Schemes in accordance with the Merchant Agreement;
  - (b) we suspect you of any fraudulent or suspicious activity;
  - (c) we assess you as a high credit or fraud risk;
  - (d) you have breached the Merchant 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 subclauses (a) to (e) above 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 Transactions will be charged back by Cardholders.

(vii) 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 Merchant Agreement was suspended or the Nominated Settlement Bank Account and/or Nominated Charges Bank Account is frozen in accordance with clause 26 or terminated in accordance with clause 27;
- (iii) you process the Transaction knowing (or in circumstances where you should have known) that the signature on the 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;
- (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 a valid Nominated Card referred to in clause 4(ii);
- (vii) the particulars on the copy of the Transaction Receipt given to the Cardholder are not identical with the particulars on any other copy;
- (viii) the Transaction is recorded in a currency other than New Zealand dollars;
- (ix) 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 incurred or charged by you;

- (x) the Transaction requires authorisation by us and you do not obtain such authorisation;
- (xi) you have arranged without our consent for a person other than you to supply goods or services;
- (xii) you process the Transaction knowing (or in circumstances where you should have known) that the Transaction is fraudulent;
- (xiii) 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;
- (xiv) the goods or services to which the Transaction relates were supplied from outside New Zealand;
- (xv) the Nominated Card was not presented to you;
- (xvi) you have not otherwise complied with the Merchant 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;
- (xvii) the Transaction is processed by you on behalf of another person, or you have allowed another person to use ANZ FastPay in connection with the Transaction unless that person is an approved Additional User under clause 2(iv);
- (xviii) 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;
- (xix) 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;
- (xx) the same Transaction is processed by you more than once;
- (xxi) in our reasonable opinion, the Cardholder justifiably disputes liability for the Transaction for any reason or has not received the goods or services purchased;
- (xxii) the Cardholder disputes the Transaction and/or makes a claim for set off or counter claim in respect of the Transaction against us;
- (xxiii) the Transaction was processed in breach of the requirements of any Nominated Card Scheme Regulations notified by us to you under clause 5(xiii) or by any other method determined by us; and/or
- (xxiv) 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, we, have the right, but not the obligation to dishonour the 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 Merchant 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 Merchant 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 charge back of the Transaction to you where permitted in accordance with relevant Nominated Card Scheme Regulations.
- (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.
- (v) The ANZ FastPay Merchant Operating Guide provides a list of the most common Chargeback reasons and what you can do to minimise your risk of receiving Chargebacks.

## 13. NOMINATED BANK ACCOUNTS

- (i) You must maintain a Nominated Settlement Bank Account and Nominated Charges Bank Account for the term of the Merchant Agreement. 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 Merchant 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 Merchant Agreement. Any such minimum credit balance will be notified by us to you from time to time.

## 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 request or retain a Cardholder's PIN, password or other code or information that can be used to access a Cardholder's account.
- (iii) You must not take an imprint of, record, or seek to recover or reconstruct, any information relating to a Nominated Card or Cardholder data.
- (iv) You must not record, store, replicate or otherwise use any information relating to a Nominated Card or Cardholder data for any purpose other than to comply with your obligations under the Merchant Agreement.

### 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 ("PCI DSS")) 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 Merchant Agreement or otherwise notified to you from time to time, including any obligations regarding compliance with the PCI DSS. 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 non-compliance 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 ANZ FastPay ("**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 Merchant 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.
- (v) 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**

- (vi) If you do not provide some or all of the information requested, we may be unable to provide you with ANZ FastPay.

### **Providing your information to others**

- (vii) We may provide your information to: another member of 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.



- (viii) 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.
- (ix) 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.
- (x) Where you do not want ANZ Group or our alliance partners or third parties who 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 Merchant 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 Merchant 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 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 Merchant 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 Merchant Agreement, ANZ FastPay and any Transaction contemplated by the Merchant 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 Merchant 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 Merchant 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 Merchant 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 29.
- (v) All fees, charges and other payments payable pursuant to the Merchant Agreement will be charged plus GST (if any).

## **17. ANZ FASTPAY CARD READER**

- (i) You must use the ANZ FastPay Card Reader in accordance with the Merchant Agreement and any other terms notified to you from time to time.
- (ii) You must, at your cost, comply with all security requirements reasonably requested by us before, and as long as, the ANZ FastPay Card Reader is used for processing Transactions under the Merchant Agreement.
- (iii) You must use reasonable care and diligence to prevent damage to the ANZ FastPay Card Reader, including following any instructions we give you from time to time for the proper care of the ANZ FastPay Card Reader.
- (iv) You must notify us immediately if any ANZ FastPay Card Reader (or part of an ANZ FastPay Card Reader) is not operating, is malfunctioning or has (or you suspect it has) been tampered with in any way.
- (v) You must use reasonable care and diligence to prevent and detect unauthorised use of any ANZ FastPay Card Reader.
- (vi) You must not modify, alter or copy the ANZ FastPay Card Reader.
- (vii) You must not sell, sublet, or hire out the ANZ FastPay Card Reader.

## **18. ANZ FASTPAY CARD READER – SECURITY**

- (i) You must take all steps that are, in the circumstances, reasonable to ensure that your ANZ FastPay Card Reader 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, your ANZ FastPay Card Reader 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 your ANZ FastPay Card Reader has been stolen, lost or may otherwise have been altered, tampered with or compromised.
- (iii) Any breach of this clause 18 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, your ANZ FastPay Card Reader, including, any loss arising from any unauthorised or fraudulent use of your ANZ FastPay Card Reader that occurs before you give notice to us in accordance with clause 18(ii).
- (iv) If you:
  - (a) cease trading; or
  - (b) no longer require ANZ FastPay,you must immediately terminate the Merchant Agreement in accordance with clause 27.
- (v) You must comply with all policies and procedures regarding ANZ FastPay Card Reader security as outlined in the Merchant Operating Guide.

## **19. ANZ FASTPAY MERCHANT OPERATING GUIDE**

- (i) We will provide you with a copy of the ANZ FastPay Merchant Operating Guide at our cost. The ANZ FastPay Merchant Operating Guide includes procedures and other information you require for the day-to-day operation of ANZ FastPay, including requirements set down under Nominated Card Scheme Regulations.
- (ii) We may update the ANZ FastPay Merchant Operating Guide from time to time by posting a notice on [www.anz.co.nz](http://www.anz.co.nz) on the Business banking rates, fees and agreements page or ANZ FastPay website under Terms and Conditions. Such changes to the ANZ FastPay Merchant Operating Guide shall be effective on the third day after the posting of the notice to that website.

## **20. CREDIT CARD SURCHARGE FEE**

- (i) Under the Nominated Card Scheme Regulations in New Zealand, you are permitted to charge Visa and Mastercard 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 and Mastercard 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, us or a financial institution; and
  - (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). In the absence of a physical point of sale, such notices or signs must be communicated clearly 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 20, 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.

## 21. 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 Merchant 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 21(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 Additional User, employee, contractor or agent of yours;
  - (b) your failure, or the failure of an Additional User, employee, contractor or agent of yours, to observe any of your obligations under the Merchant 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 Electronic Device by you or your Additional Users, employees, contractors or agents;
  - (f) any representation, warranty or statement made by you or your Additional Users, 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 (or an Additional User, employee, contractor or agent) 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 21 (i), if you breach the Merchant Agreement including, for the avoidance of doubt, any provision of the ANZ FastPay 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 Merchant 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.
  - (v) In addition to any other rights or remedies set out in this clause 18, you will indemnify us against all Liabilities suffered or incurred by us as a consequence of any claim, damage, action, loss or liability of an Additional User arising out of any act or omission of yours or use by the Additional User of ANZ FastPay.

## 22. 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 Merchant Agreement including, but not limited to, Merchant Liabilities:
  - (a) suffered because, due to a reduced level of service caused by any third party (including without limitation your mobile network operator), the Electronic Device malfunctions or does not operate;

- (b) arising from any security breach, if you have acted fraudulently (either alone or together with any other person), if you have installed applications on your Electronic Device other than those available from any recognised application store, or if you have caused or contributed to that loss, for example, by failing to comply with any term of the Merchant Agreement;
- (c) arising from any loss or damage to any Electronic Device (including any information or application stored on the Electronic Device) owned or operated by you, including as a result of the use of the ANZ FastPay Card Reader;
- (d) suffered as a result of any other person accessing and using ANZ FastPay on an Electronic Device;
- (e) resulting from your access or use, or attempted access or use, of ANZ FastPay (including the use of the ANZ FastPay Card Reader and downloading any associated applications for ANZ FastPay); and
- (f) 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, ANZ FastPay is 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 Merchant Agreement, we are found to be liable to you under or in connection with the Merchant Agreement then, without limiting your obligation to indemnify us as set out in clause 18, 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.

### **23. 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 ANZ FastPay. 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.

## **24. APPOINTMENT OF AGENT, SUBCONTRACTOR OR OTHER PARTY**

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 Merchant Agreement.

## **25. REPRESENTATIONS AND WARRANTIES**

- (i) When you supply Transaction details to us you represent and warrant to us that:
  - (a) all Transaction details are true and correct;
  - (b) you have complied with the requirements of the Merchant 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 Merchant 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 Merchant Agreement and that the Merchant 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 Merchant Agreement.

## **26. SUSPENSION OF MERCHANT FACILITY OR FREEZING OF NOMINATED BANK ACCOUNTS**

- (i) We reserve the right to suspend ANZ FastPay or freeze the Nominated Bank Accounts and refuse to allow withdrawals of funds from the Nominated Bank Accounts, or both suspend ANZ FastPay and freeze the Nominated Bank Accounts, immediately on notice to you if any of the events listed in clause 27.2 occurs. When exercising this right we are not required to notify you of the date on which the suspension or freezing of the Nominated Bank Accounts, or both, as the case may be, will end.

- (ii) When we suspend ANZ FastPay 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 ANZ FastPay under clause 27.
- (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.

## **27. TERMINATION**

### **27.1 How can the Merchant Agreement be terminated?**

- (i) You may only terminate the Merchant Agreement:
  - (a) in accordance with clause 1; or
  - (b) by giving us at least twenty-one (21) days prior written notice of termination.
- (ii) We may terminate the Merchant Agreement:
  - (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 27.2 occurs;
  - (c) immediately if we reasonably determine that the continued provision of ANZ FastPay may damage our reputation or may result in us or you suffering loss; or
  - (d) immediately if we are unable to continue to provide ANZ FastPay for any reason.
- (iii) If the Merchant Agreement is terminated, for whatever reason, you agree to return to us the ANZ FastPay Card Reader.



## 27.2 What is a Termination Event?

- (i) We may terminate the Merchant 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;
  - (b) you are in breach of any provision of the Merchant 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;
  - (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;
  - (d) you become Insolvent;
  - (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;
  - (f) you act fraudulently or illegally in relation to the Merchant Agreement or you process any Transaction that you knew or ought to have known was fraudulent;
  - (g) you have been identified in the Visa or Mastercard International Fraud databases or any banking databases as having previously acted fraudulently;
  - (h) we Chargeback a Transaction and the Chargeback is dishonoured or otherwise refused for any reason;
  - (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;
  - (j) you default under any lease or licence relating to the Premises (if applicable);
  - (k) we determine that you are using ANZ FastPay 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;
  - (l) 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;

- (m) 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
- (n) 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.

### **27.3 What Are The Consequences Of Termination?**

- (i) If we terminate the Merchant Agreement for any of the reasons set out in clause 27.2 or you terminate the Merchant Agreement in breach of clause 27.1(i) we may charge you four times the Average Monthly Merchant Service Fee.
- (ii) Upon termination of the Merchant Agreement for any reason, you will no longer be able to process Transactions.
- (iii) If the Merchant Agreement is terminated for fraudulent or improper use of ANZ FastPay, or for non-compliance with Nominated Card Scheme Regulations or the Merchant Agreement, we may list your details in the Visa and Mastercard International Fraud databases or any banking databases.
- (iv) Termination of the Merchant 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 Merchant Agreement to indemnify us or to pay us any amounts (including costs), is a continuing and independent obligation and survives even if the Merchant Agreement is terminated. All Transactions made prior to termination are subject to the terms of the Merchant Agreement.
- (v) You authorise us to:
  - (a) disclose to any person the fact that all or part of the Merchant Agreement has been terminated;
  - (b) disclose information concerning the termination and reasons for termination of all or part of the Merchant 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.

- (vi) The obligations contained in clauses 11, 12, 13, 14, 16, 21, 22, 26, 27, 28 and 40 survive termination of the Merchant Agreement, together with any other obligations intended to survive termination of the Merchant Agreement.

## 28. SET-OFF

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 Merchant 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.

## 29. VARIATION

- (i) We may vary all or any of the provisions of the Merchant Agreement including by introducing a new fee or charge under the Merchant 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 in respect of ANZ FastPay, additional or increased incidence of liabilities or losses may arise as a result, including from erroneous or fraudulent Transactions.

## 30. NOTICE

- (i) You acknowledge that we may deliver notices to you in any of the ways listed in clause 30(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;
  - (d) when the party sending the notice is us, if delivered via [www.anz.co.nz](http://www.anz.co.nz) on the Business banking rates, fees and agreements page or ANZ FastPay website under Terms and Conditions, on the third day after the posting of the notice to that website; or
  - (e) if sent by SMS, at the time the SMS is sent.

- (iii) The address, phone 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, phone number or email address advised by you and stored by us. You must inform us immediately of any change of your address, phone number or email address.
- (iv) Any notices under the Merchant Agreement from you to us must be delivered to:  
ANZ Merchant Business Solutions  
PO Box 2211  
Wellington 6140

### **31. RELATIONSHIP OF THE PARTIES**

Nothing in the Merchant 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.

### **32. OTHER ARRANGEMENTS**

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

### **33. ASSIGNMENT**

The Merchant 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 Merchant Agreement unless we consent in writing. We may transfer any of our rights or obligations under the Merchant 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 Merchant Agreement and/or exercise our rights under the Merchant Agreement.

### **34. SEVERABILITY**

If any provision or part of the Merchant 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.

### **35. WAIVER**

The rights we have under the Merchant 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 Merchant 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.

## 36. 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 Merchant Agreement. It is advisable that you inform us promptly when you are in financial difficulty;
  - (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 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 direct debit authorities; and/or
  - (f) if any Additional User should no longer have or require access to ANZ FastPay.
- (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.

## 37. MERCHANT PREPAYMENT EXPOSURE DECLARATION AND SUSPENSE ACCOUNT

- (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 completed Merchant Prepayment Exposure Declaration and you will provide us with such completed Merchant Prepayment Exposure Declaration (as applicable).
- (ii) Without limiting clauses 13 (Nominated Bank Accounts), 28 (Set-off) or 37(i) above, if we believe there is a likelihood of any of the events in clause 27.2 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 settlement proceeds held in the suspense account until we are satisfied that:
  - (a) the risk of any of the events in clause 27.2 occurring, or ceasing to occur, no longer exists; and/or
  - (b) no Transactions will be charged back by Cardholders.

### **38. OTHER**

- (i) The Merchant Agreement is governed by the Laws of New Zealand.
- (ii) You agree that the covenants contained in the Merchant Agreement which refer to the Card Issuing Organisations are given for the benefit of and are enforceable in terms of the Contracts (Privity) Act 1982 by, the Card Issuing Organisations. The Merchant 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 the Merchant 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 the Merchant 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 Additional Users, employees, agents, contractors and representatives comply with all of the terms and conditions in the Merchant 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.

### **39. DISPUTE RESOLUTION PROCEDURES**

- (i) Where you have a complaint in relation to the provision of ANZ FastPay, 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 Merchant 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; and
  - (c) we shall both continue to perform our respective obligations under the Merchant 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.

#### **40. CARDHOLDER DISPUTES**

- (i) You acknowledge that any dispute between you and a Cardholder arising directly or indirectly out of the Merchant 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.

#### **41. 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; and
- (b) use any Confidential Information of the other party for its own purposes.

#### **42. 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 Merchant Agreement,without incurring any liability, if we suspect, for any reason, that:
  - (d) an action we are required or requested to take under the Merchant Agreement;
  - (e) our involvement in any Transaction that is any way connected with the Merchant Agreement; or
  - (f) our performance of any service for any person in connection with the Merchant 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 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 Merchant 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 Merchant 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 Merchant 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.



### 43. MEANINGS OF WORDS AND EXPRESSIONS

In the Merchant Agreement:

**“Additional Users”** means those users nominated by you to use ANZ FastPay on your behalf.

**“ANZ”** means ANZ Bank New Zealand Limited.

**“ANZ FastPay”** means the merchant facilities provided by ANZ through the ANZ FastPay App.

**“ANZ FastPay App”** means the software application that enables the operation of ANZ FastPay and is located on the Internet for download onto an Electronic Device.

**“ANZ FastPay App Terms and Conditions”** means those terms and conditions that prescribe the use of the ANZ FastPay App.

**“ANZ FastPay Card Reader”** means the Card Reader provided by us that, when connected to your Electronic Device, allows you to process Card Transactions.

**“ANZ FastPay Merchant Operating Guide”** means any operating information provided to you by ANZ from time to time, including the ANZ FastPay Merchant Operating Guide and any operations manuals, guidelines or user guides.

**“ANZ FastPay Terms and Conditions”** means these ANZ FastPay Terms and Conditions.

**“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 ANZ FastPay and, for the avoidance of doubt, includes all supporting documentation provided to us in connection with your application and the Merchant Prepayment Exposure Declaration (if applicable).

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

**“Authorisation Centre”** or **“Credit Card Authorisation Centre”** means the authorisation centre approved by us for the purposes of the Merchant Agreement and the details of which are notified to you 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 the Merchant Agreement, the calculation will be based on anticipated volumes as defined on the Application where fixed Merchant Service Fees have been applied.

**“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 and Mastercard Debit Cards.

**“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.

**“Chargeback to Transaction Ratio”** means the number of Chargebacks against you in comparison to the number of Credit Card or International Card Transactions initiated by you.

**“Confidential Information”** means all information about your business and us, the Card Payment System, and includes without limitation the Merchant 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 Merchant 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 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 and Mastercard cards where the card is accessing a credit account;
- (b) Dual cards where the Cardholder nominates a credit account;
- (c) Visa and Mastercard debit products where the Transaction is treated as a credit card Transaction (including but not limited to where the **“Credit”** account is selected on the ANZ FastPay Card Reader); and
- (d) Prepaid cards.

**“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 and Mastercard 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 provided.

**“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 Device”** means a smartphone or tablet that is enabled for cellular or wireless Internet connection and is capable of supporting the ANZ FastPay App.

**“Electronic Transaction”** means, in relation to ANZ FastPay, a Transaction (including, but not limited to, a sales Transaction) where a Nominated Card is used with an Electronic Device with an ANZ FastPay Card Reader to 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.

**“Fraud to Transaction Ratio”** means the number of fraudulent Transactions processed by you in comparison to the number of Credit Card (or International Card) Transactions initiated 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.

**“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.

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

**“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.

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

**“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 ANZ FastPay to you setting out terms specific to you and enclosing the contract documents pertaining to the Merchant Agreement.

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

**“Merchant 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.

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

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

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

**“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.

**“Prepaid Card”** means Visa, Mastercard prepaid products where the Transaction is treated as a Credit Card Transaction including where the **“Credit”** account is selected on the ANZ FastPay Card Reader.

**“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).

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

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

**“Surcharge Fee”** means a fee you may apply to some or all Visa and Mastercard Credit Card Transactions in accordance with clause 20, calculated as a percentage of the Credit Card Transactions or a flat dollar amount.

**“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 the period beginning on the commencement date shown in the Letter of Offer and Acceptance and ending on the day the Merchant Agreement is terminated in accordance with its terms.

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

**“Transaction Receipt”** means the receipt which contains the details set out in clause 5(vii) and the ANZ FastPay Merchant Operating Guide.

**“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.

#### **44. INTERPRETATION**

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

In the event there is an inconsistency between your Letter of Offer and Acceptance, these ANZ FastPay Terms and Conditions, the ANZ FastPay App Terms and Conditions and the ANZ FastPay Merchant Operating Guide, the ANZ FastPay 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 Merchant Agreement or any document forming part of the Merchant Agreement, or any Law is a reference to the Merchant 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 ANZ FastPay Terms and Conditions.

