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ANZ Merchant Business Solutions (a business division of ANZ Bank New Zealand Limited)

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For general enquiries, please contact ANZ Merchant Business Solutions on 0800 473 453 or email [nzmerchantbusiness@anz.com](mailto:nzmerchantbusiness@anz.com).

## 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.

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 in your 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 in your 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 26.

Some words and expressions have special meanings in these Terms and Conditions. Those meanings are described in clause 41 and when you are reading these Terms and Conditions, you should refer to clauses 41 and 42. 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 your 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 your Letter of Offer and Acceptance and will run until it is terminated by either party in accordance with clause 26.
- (iii) 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.

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- (iv) 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 (iii) occur.

### 4. Accepting Nominated Cards and Permitted Uses

- (i) You must accept valid Nominated Cards.
- (ii) A Nominated Card is valid if:
  - (a) it has current validity dates (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) impose a minimum Transaction amount on a Cardholder or refuse to accept an otherwise valid Debit 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.
- (iv) 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.

### 5. Processing Transactions

- (i) You must only use EFTPOS Terminals to process Transactions.
- (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.

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- (iv) Following each Transaction you must immediately give the Cardholder a copy of the Transaction Receipt. The Transaction Receipt must include the following:
  - (a) type of account;
  - (b) type and amount of the Transaction;
  - (c) date of the Transaction;
  - (d) time of the Transaction;
  - (e) Transaction record number; and
  - (f) confirmation that the Transaction has been accepted or approved.
- (v) The information on the Cardholder Transaction Receipt must be identical with information on any other copy of the Transaction Receipt.
- (vi) 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.
- (vii) You must not process a Transaction unless the Cardholder's identity is verified as follows:
  - (a) by the correct entry of the Cardholder's PIN into the EFTPOS Terminal, followed by the verification of the PIN with an 'ACCEPTED' response displayed on the EFTPOS Terminal; or
  - (b) in the case of an Electronic Off-Line Transaction, verification of the Cardholder's signature, whereby you must take all reasonable steps to ensure that the signature on the Transaction Receipt is not forged or unauthorised and that it corresponds with the signature on the card.
- (viii) 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.
- (ix) 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.
- (x) You must ensure that each Transaction is recorded in New Zealand dollars.
- (xi) You must process all Debit Transactions and credit card transactions (including transactions using debit and pre-paid products where the transaction is treated as a credit card transaction) through us, except where we have agreed otherwise.
- (xii) If 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 (xiii) 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.
- (xiii) 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 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;
  - (d) retain a signed copy of the Transaction Receipt for at least eighteen (18) months.

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- (xiv) 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 and an "Accepted" message appears on the EFTPOS Terminal are automatically authorised.
- (ii) You should seek to retain the Nominated Card until authorisation is given.
- (iii) 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 an EFTPOS Terminal 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;
- (iii) at all times act in accordance with the instruction for processing Refunds contained in the Merchant Operating Guide.

## 8. Transaction Information

- (i) You must lodge Transactions with us for settlement in accordance with the Merchant Operating Guide and in the case of a Transaction processed through an EFTPOS Terminal immediately by entering the Transaction.
- (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.
- (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 Settlement Bank Account with the full amount of each Refund Transaction.
- (ii) 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.
- (iii) If, at the end of the settlement period selected by you, 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.
- (iv) 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.
- (v) 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 Settlement Bank Account 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 Settlement Bank Account or any account held by you with us.
- (vi) You agree that if:
- (a) you fail to pay any penalty imposed by the Nominated Card Schemes 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 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).
- (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 Agreement was suspended or the Nominated Settlement Bank Account is frozen in accordance with clause 25 or terminated in accordance with clause 26;
- (iii) 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;
- (iv) you were notified by us not to accept the Nominated Card used in the Transaction;
- (v) the Nominated Card used in the Transaction is not used within the current validity dates shown on the Nominated Card;
- (vi) the particulars on the copy of the Transaction Receipt given to the Cardholder are not identical with the particulars on any other copy;
- (vii) 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;
- (viii) 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;
- (ix) the Transaction value for Debit Transactions exceeds the Electronic Off-Line Payment Limit when processing an Electronic Off-Line Transaction;
- (x) 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 Electronic Off-Line Payment Limit;
- (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 without our consent;
- (xv) 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;
- (xvi) 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;
- (xvii) 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;
- (xviii) 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;
- (xix) you fail to lodge Transactions with us for settlement in accordance with clause 8 (i);
- (xx) the same Transaction is processed by you more than once;
- (xxi) the Transaction was processed in breach of the requirements of any Nominated Card Scheme Regulations notified by us to you under clause 5 (ix) or by any other method determined by us;
- (xxii) the Transaction is not authorised by us or the authorisation request is declined for any reason;
- (xxiii) in the case of an Electronic Off-Line Transaction, you process the Transaction knowing (or in circumstances where you should have known) that the signature on the Transaction Receipt is forged or unauthorised and/or
- (xxiv) in our reasonable opinion, the Cardholder justifiably disputes liability for the Transaction for any reason or has not received the goods or services purchased.

## 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 charge back of the Transaction to you where permitted in accordance with relevant Nominated Card Scheme Regulations.

## 13. Nominated Settlement Bank Account

- (i) You must maintain a Nominated Settlement Bank Account for the term of the Agreement. This account must be a New Zealand based, New Zealand dollar transactional bank account.
- (ii) You authorise us to debit and credit your Nominated Settlement Bank Account 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 Settlement Bank Account 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 Settlement 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 take an imprint of, or record any information relating to, a Nominated Card or Cardholder.

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- (iii) 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 any relevant 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 your 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

- (i) 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; 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

- (i) 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

- (i) 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 (payment organisations) and other financial institutions (such as Card Issuers); anyone who assists us to identify, prevent or investigate fraud, unlawful activity, misconduct or threats to our systems; insurers and reinsurers; any person who introduces you to us; your referee(s); sureties or assignees or potential sureties or assignees; 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.
- (ii) 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.
- (iii) 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.
- (iv) 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. Fees, Charges and Other Payments

- (i) You must pay to us any charges, fines and/or penalties described in the Agreement (both actual and contingent) and your Letter of Offer and Acceptance (plus GST if any) at the times and in the manner set out in the Agreement and your Letter of Offer and Acceptance (as the case may be), as varied under clause 15 (iv) from time to time.
- (ii) You authorise us to debit, or instruct your Bank to debit, the Nominated Settlement Bank Account 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 Settlement Bank Account;
  - (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 out 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 Settlement Bank Account, 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 15 (ii) which remains unpaid by you because there are insufficient funds in the Nominated Settlement Bank Account to satisfy the payment of that amount in full.
- (iv) We reserve the right to vary the fees and charges in accordance with clause 28.
- (v) All fees, charges and other payments payable pursuant to the Agreement will be charged plus GST (if any).

## 16. EFTPOS Terminals

- (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.

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- (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 security cameras, observation mirrors, reflective surfaces or by any other person, including by closed circuit television and internal monitoring devices.
- (vii) You must notify us immediately if any EFTPOS Terminal (or part of an EFTPOS Terminal) is not operating, is malfunctioning or has (or you suspect it has) been tampered with in any way.
- (viii) You must use reasonable care and diligence to prevent and detect unauthorised use of any EFTPOS Terminal.
- (ix) You must not, without our prior knowledge and written consent (such consent not to be unreasonably withheld):
  - (a) remove or relocate an EFTPOS Terminal; or
  - (b) make any alteration or addition to an EFTPOS Terminal or otherwise tamper with an EFTPOS Terminal.If we provide such written consent, all costs applicable to the removal, relocation or change to the EFTPOS Terminal are payable by you.

### 17. EFTPOS Terminals – 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 17 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 17 (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 26.
- (v) You must comply with all policies and procedures regarding EFTPOS Terminal security as outlined in the Merchant Operating Guide.

### 18. 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.

### 19. 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.

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- (ii) Without prejudice to clause 19 (i), you indemnify us and agree to keep us indemnified against all Liabilities which we suffer or incur 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 and any Cardholder where the Cardholder or us 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 us against any Liabilities to the extent such Liabilities are solely the result of our fraud, wilful default or negligence.
- (iii) Without prejudice to clause 19 (i), if you breach the Agreement including, for the avoidance of doubt, any provision of the Merchant Operating Guide or any material provision of any Nominated Card Scheme 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 us indemnified against all Liabilities suffered or incurred by us as a result of your breach.
- (iv) You authorise us to withdraw from your Nominated Settlement Bank Account or any other account you have with us the amount determined by us to be the amount payable under this indemnity.

## 20. ANZ Liability

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.

## 21. 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.

## 22. 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.

## 23. 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) 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.
- (iv) You must only advertise goods and services which can be purchased with a Nominated Card in New Zealand currency.

## 24. 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 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.

## 25. Suspension of Merchant Facility or Freezing of Nominated Settlement Bank Accounts

- (i) We reserve the right to suspend the Merchant Facilities or freeze (and/or instruct your Bank to freeze) the Nominated Settlement Bank Account and refuse to allow withdrawals of funds from the Nominated Settlement Bank Account, or both suspend the Merchant Facilities and freeze the Nominated Settlement Bank Account, immediately on notice to you if any of the events listed in clause 26.2 occurs. When exercising this right we are not required to notify you of the date on which the suspension or freezing of your Nominated Settlement Bank Account, or both, as the case may be, will end.

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- (ii) When we suspend the Merchant Facilities or freeze the Nominated Settlement Bank Account, 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 Settlement Bank Accounts, or both, as the case may be, terminate the Merchant Facilities under clause 26.
- (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.

## 26. Termination

### 26.1 How can the Agreement be terminated?

- (i) You may only terminate the Agreement:
  - (a) in accordance with clause 1; or
  - (b) by giving us at least twenty-one (21) days prior written notice of termination.
- (ii) For the purposes of this clause, if you give notice to terminate the Agreement pursuant to clause 26.1 (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:
  - (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 26.2 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 return to us all information, including without limitation, stationery and promotional material, which you have in your possession other than that concerning your settlement records.

### 26.2 What is a termination event?

We may terminate the Agreement immediately if:

- (i) 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
- (ii) 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
- (iii) 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

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- (iv) you become Insolvent; or
- (v) 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
- (vi) 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
- (vii) you are involved in an unacceptably high number of Refund requests; or
- (viii) you fail to process all your Debit Transactions and credit card transactions (including transactions using debit and pre-paid products where the transaction is treated as a credit card transaction) through us; or
- (ix) you default under any lease or licence relating to the Premises (if applicable); or
- (x) we determine that you are using the Merchant Facilities for purposes that may be brand-damaging for 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
- (xi) 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
- (xii) 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.
- (xiii) 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.

### 26.3 What are the consequences of termination?

- (i) Upon termination of the Agreement for any reason, you will no longer be able to process Transactions.
- (ii) 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 any Nominated Card Scheme fraud database or any banking databases.
- (iii) 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.
- (iv) 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;
  - (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.
- (v) The obligations contained in clauses 12, 13, 14, 15, 16, 17, 19, 20, 25, 26, 27 and 40 survive termination of the Agreement, together with any other obligations intended to survive termination of the Agreement.
- (vi) 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.

## 27. 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 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.

## 28. 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 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 any fee, including any rate used to determine any fee, without notice to you to the extent the fee was calculated on the basis of incorrect information provided by you or if any relevant 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 the Merchant Facilities, additional or increased incidence of liabilities or losses may arise as a result, including from erroneous or fraudulent Transactions.

## 29. Notice

- (i) You acknowledge that we may deliver notices to you in any of the ways listed in clause 29 (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 pre-paid post, on the third day after the posting;
  - (c) if sent by facsimile transmission, on the date the transmitting machine records transmission of the complete document;
  - (d) when the party sending the notice is us, if sent by email, at the time when the email enters your information system; or
  - (e) when the party sending the notice is us, if delivered via [www.anz.co.nz](http://www.anz.co.nz) under the Business tab and listed in a prominent position in the Merchant 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 your 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

## 30. 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.

## 31. 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.

## 32. 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.

## 33. 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.

## 34. 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.

## 35. 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; 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.
- (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.

## 36. Other

- (i) The Agreement is governed by the laws of New Zealand.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) 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 14.2, if you are a company, you shall also procure that your directors and shareholders, comply with that clause.

## 37. 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.

## 38. 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.

## 39. Confidentiality

Both parties agree not to:

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

## 40. 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.

## 41. Meaning of Words and Expressions

In the Agreement:

“Agreement” means the agreement constituted by your acceptance of our offer on the terms and conditions set out in your 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.

“Appointee” has the meaning given to that term in clause 22.

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

“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 issuer that issued the Nominated Card.

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

“Compliance Requirements” means all applicable Laws and the requirements of all applicable Nominated Card Schemes and regulatory bodies 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.

“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 and pre-paid products where the transaction is treated as a domestic Electronic Transaction, but does not include an International Debit Card.

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

“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 Voucher” means the functionality available on some EFTPOS Terminals that allows you to continue accepting Transactions using an EFTPOS Terminal including but not limited to when there is a technical malfunction at the Switch or failure of the telecommunications links.

“Electronic Off-Line Transaction” 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.

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"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 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.

"Insolvent" means:

- (i) you:
  - (a) become insolvent or are unable to pay your Indebtedness as Debts fall due;
  - (b) 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
  - (c) 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;
- (ii) 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;
- (iii) 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;
- (iv) 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
- (v) 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 Debit Card" means a Debit Card issued outside of New Zealand.

"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 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 your 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.

"Nominated Card" or "Card" means each card which is a Debit 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.

## ANZ Merchant Agreement **Debit Terms and Conditions**

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

"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.

"Payments NZ" means Payments NZ Limited, or any successor body.

"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.

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

"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.

"Switch" means the network that securely transmits Cardholder details to and from us or the Card Issuers from EFTPOS Terminals 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.

"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 (iv) and the 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.

## 42. 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; and
  - (b) these Terms and Conditions.

In the event there is an inconsistency between your Letter of Offer and Acceptance, these Terms and Conditions 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.