

# ANZ BLADEPAY

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GENERAL CONDITIONS  
3.3.2017



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For general enquiries, please contact ANZ Merchant

Services on 1800 039 025 (24 hours a day, 7 days a week).

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# 1. THESE GENERAL CONDITIONS

These General Conditions are part of your Merchant Agreement with ANZ. The Merchant Agreement (“Agreement”) consists of:

- (i) Your Letter of Offer;
- (ii) The ANZ BladePay General Conditions;
- (iii) Merchant Prepayment Exposure Declaration (where applicable); and
- (iv) all applicable Terminal Guides; and
- (v) any special conditions set out in the Letter of Offer or otherwise agreed in writing by the Merchant and ANZ to be special conditions as varied from time to time in accordance with these General Conditions
- (vi) any documents relating to the Security (where applicable).

It is advisable that the Merchant reads all documents comprising the terms and conditions under which ANZ BladePay and ANZ FastPay Next Generation are provided by ANZ. Some words and expressions have special meanings in these General Conditions. The meanings are described in Condition 42 and when the Merchant is reading these General Conditions, the Merchant should refer to Conditions 42 and 43.

# 2. PROVISION OF MERCHANT FACILITIES

- (i) ANZ agrees to provide the Merchant with the Merchant Facilities in accordance with the Agreement. ANZ agrees to do this in exchange for the Merchant carrying out the Merchant’s obligations under the Agreement.
- (ii) ANZ will provide the Merchant Facilities unless:
  - (a) the Agreement is terminated (including as a result of a breach by the Merchant of its obligations under the Agreement);
  - (b) the Merchant Facilities are suspended in accordance with the Agreement (including as a result of a breach by the Merchant of its obligations under the Agreement); or
  - (c) there is a change in Law or to the regulations, by-laws or rules of a Nominated Card Scheme that prevents ANZ providing the Merchant Facilities.

- (d) The Merchant may request and ANZ may authorise, at ANZ's sole discretion, the use of Merchant Facilities by Additional Users. ANZ may withdraw the authorisation provided in respect of an Additional User at any time in its absolute discretion.
- (e) The Merchant must ensure that all Additional Users are made aware of and strictly comply with the Agreement except to the extent that obligations in the Agreement, by their nature, apply only to the Merchant.
- (f) The Merchant acknowledges and accepts that if ANZ authorises the use of Merchant Facilities by an Additional User, the Merchant will be liable for all loss or damage (including consequential loss or damage) suffered or incurred by ANZ as a result of the use of the Merchant Facilities by that Additional User.
- (g) Subject to the terms of the Merchant Agreement, the Merchant Facilities may only be used by the Merchant and Additional Users. It may not be used by, or on behalf of, any third party (including any associated company or related body corporate of the Merchant), without the prior written authorisation of ANZ.
- (h) ANZ will issue the Merchant with a Merchant ID and username via email, and send the Merchant a one time passcode via SMS to activate the Electronic Terminal. The Merchant must not disclose these details to anyone and must keep them secure.
- (i) ANZ will provide the Merchant with a username and the Additional User a one time passcode via SMS to the registered mobile number for the Additional User. The Merchant must obtain a separate username for each Additional User. If you are an Additional User, you agree not to share your username, PIN, password or one time passcode with any person other than the Merchant, including any other Additional User.
- (j) When the Merchant or Additional User logs into the Electronic Terminal for the first time, you will be prompted to change your one time passcode to a 4 digit PIN. You agree that you will not:

- (A) disclose this PIN to any other person (including any Additional User in the case of the Merchant); or
- (B) allow any other person to see you entering your username or PIN; or
- (C) record your username or PIN in writing, especially in a manner that is kept with the Electronic Terminal or is liable to theft at the same time as the Electronic Terminal (unless you make a reasonable attempt to protect the security of the username and PIN); or
- (D) act with extreme carelessness in failing to protect your username or PIN.

Warning: You must not use your birth date or an alphabetical code which is a recognisable part of your name as a PIN, or select sequential numbers, for example, '1234' or where all numbers are the same, for example, '1111'. If you do, you may be liable for any loss suffered from an unauthorised transaction.

### **3. CONDITIONS PRECEDENT**

ANZ's obligation to make any of the Merchant Facilities available to the Merchant is conditional on ANZ being satisfied that:

- (i) the Merchant has accepted ANZ's offer in accordance with the method of acceptance required by ANZ in the Letter of Offer;
- (ii) ANZ has received an account opening authority if the Merchant Account is held with ANZ or a properly completed periodical direct debit authority if the Merchant Account is held with another financial institution;
- (iii) if the Merchant is a company, ANZ has received all documents requested by ANZ in the Letter of Offer or otherwise at the time of the application for the Merchant Facilities;
- (iv) if the Merchant is a trustee of a trust, ANZ has received a copy of the trust deed, and any variations or amendments to the trust deed, each certified to be a complete, correct and up-to-date copy;

- (v) if the Merchant is a partnership, ANZ has received a copy of the partnership deed and any variations or amendments to the partnership deed, each certified to be a complete, correct and up-to-date copy; and
- (vi) any other conditions set out in the Letter of Offer or as otherwise advised to the Merchant by ANZ have been fulfilled.

## 4. NOMINATED CARDS

- (i) The Merchant must:
  - (a) accept Nominated Cards in accordance with the Agreement; and
  - (b) stop accepting a Nominated Card immediately if:
    - (A) ANZ gives the Merchant a notice to do so; or
    - (B) any of the events described in Condition 2(ii) occur.
- (ii) To remove any doubt the Merchant must not:
  - (a) accept a Nominated Card as payment for goods or services by mail, telephone or Internet Order unless specifically authorised by ANZ; or
  - (b) take Cardholder Data via mail, telephone, facsimile or the Internet, unless specifically authorised by ANZ; or
  - (c) store any Cardholder Data or details.

## 5. HONOURING NOMINATED CARDS AND PERMITTED USES

- (i) The Merchant must accept valid Nominated Cards.
- (ii) A Nominated Card is valid if:
  - (a) the Nominated Card has current validity date (if applicable);
  - (b) the Nominated Card has not been visibly altered or tampered with in any way;
  - (c) the Nominated Card is signed on the back in the designated area for card signatures;



- (d) the account number appearing on the Nominated Card corresponds with the number printed, encoded or otherwise shown on the Nominated Card;
  - (e) the signature on the reverse of the Nominated Card has not been altered or defaced; and
  - (f) the Nominated Card meets each of the criteria for validity set out in the relevant Terminal Guides.
- (iii) The Merchant must not:
- (a) make any representation in connection with any goods or services or any Nominated Card which may bind ANZ;
  - (b) make any representations to any Cardholder concerning ANZ's products or policies;
  - (c) pledge the credit of ANZ in any way;
  - (d) take part in the preparation of any documents purporting to provide for credit to be provided by ANZ to the Cardholder;
  - (e) engage in any conduct which is false, misleading or deceptive concerning goods or services supplied by the Merchant, ANZ's products or policies or in any other dealings with the Cardholder;
  - (f) use a Nominated Card in a Credit Transaction to give a Cardholder cash; or
  - (g) use a Nominated Card issued in the name of the Merchant 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 the Merchant's business. Where the Merchant is a partnership, no Nominated Card issued in the name of a Partner or Authorised User is to be used in any such Transaction. Where the Merchant is a company, no Nominated Card issued in the name of a director, secretary or Authorised User is to be used in any such Transaction. Any Cardholder making enquiries concerning the matters raised in paragraphs (b) to (d) above must be directed to contact ANZ Merchant Services.

## 6. PROCESSING TRANSACTIONS

- (i) The Merchant must only use ANZ FastPay Next Generation on the Electronic Terminal to process transactions.
- (ii) The Merchant must ensure any goods purchased via mail, telephone or Internet order are despatched to the Cardholder immediately after processing that sales Transaction through an Electronic Terminal to ANZ.
- (iii) The Merchant must not process a Transaction on behalf of another person including another merchant or allow another person, other than an Additional User, to use the Merchant Facilities.
- (iv) The Merchant 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, the Merchant must comply with specific requirements set out in the Terminal Guides or reasonable directions otherwise notified by ANZ to the Merchant in writing.
- (v) When processing a Transaction (other than mail, telephone and Internet Orders) the Merchant must allow the Cardholder to elect whether they wish to be sent a Receipt (via email and SMS).
- (vi) Unless otherwise authorised by ANZ in writing, the information on the Receipt must be identical with information on any other copy of the Receipt and must include all information required by the relevant Terminal Guide.
- (vii) The Merchant must not split the value of any proposed Credit Transaction into two or more separate Credit Transactions which would, when added together, be in excess of the Authorised Floor Limit.
- (viii) If ANZ determines that the conduct of a Merchant in processing Transactions in accordance with the Agreement may cause loss to the Merchant or ANZ (through fraudulent activities or otherwise), ANZ may where the Merchant is authorised by ANZ to accept a Nominated Card as payment for goods or services ordered by mail, telephone or Internet in accordance with Condition 4(ii), withdraw that authorisation and require the Merchant to only process Transactions where the Nominated Card is presented by the Cardholder.

- (xi) The Merchant must prominently and clearly inform the Cardholder of the identity of the Merchant so that the Cardholder can readily distinguish the Merchant from any supplier of goods or services to the Merchant or other third party. The Merchant must also notify the Cardholder that the Merchant is 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.
- (xii) If the Merchant is specifically authorised by ANZ to accept a Nominated Card as payment for goods or services ordered by mail, telephone or Internet in accordance with Condition 4(ii) or the Merchant is authorised by a Cardholder to process Recurring Transactions, the Merchant must ensure that the Transaction is correctly identified as a mail, telephone, Internet Order or Recurring Transaction.
- (xiii) If a Merchant is authorised to process Recurring Transactions, the Merchant must maintain appropriate business practices to ensure that the Cardholder's Nominated Card information remains current, accurate and complete (including where applicable, the Nominated Card's expiry date).
- (xiv) If the Merchant is authorised to process Recurring Transactions, the Merchant must also ensure that Recurring Transactions are processed with the Cardholder's consent.
- (xv) The Merchant is required to provide Cardholders with a means of informing the Merchant of changes to card account details and/or the Cardholder's wish to cancel payment arrangements. The Merchant is required to action any Cardholder request to change and/or cancel payment arrangements within 5 Business Days of receipt of the Cardholder's request.
- (xvi) The Merchant must not, without the prior written consent of ANZ, process Transactions for any goods or services unless delivery to the Cardholder will be completed within twelve months of the date of the Transaction.

- (xvii) The Merchant must comply with all applicable Laws, any obligations in this Agreement and any reasonable direction of ANZ in carrying out its obligations in processing Transactions under the Agreement. For the avoidance of doubt, a breach of any Law including any code of conduct specifically regulating or prohibiting the retention by merchants of Cardholders' personal identification numbers, passwords or other codes or information that can be used to access a Cardholder's account will constitute a breach of this undertaking.
- (xviii) The Merchant must ensure that it processes all Transactions in accordance with the requirements of any Nominated Card Scheme rules that ANZ notifies to the Merchant.
- (xix) The Merchant must ensure that each Transaction is recorded in Australian dollars except where ANZ has given prior written approval to the Merchant to record Transactions in other currencies.
- (xx) ANZ may prevent you processing Transaction and/or using the Electronic Terminal if ANZ detects that you have overridden the software lockdown on your Electronic Terminal.

You must immediately cease using the Electronic Terminal and must immediately report to ANZ if:

- (a) you become aware or suspect that your one time passcode, PIN, username, ANZ FastPay Next Generation or the Electronic Terminal is compromised, disclosed, used without your authority, or is lost or stolen;
- (b) ANZ FastPay Next Generation or the Electronic Terminal appears to be faulty, damaged, misused, lost or stolen; or You can report this to ANZ by calling 1800 039 025. ANZ may suspend your access and issue the Merchant or Authorised User (as applicable) with a new username, one time passcode and/or Electronic Terminal.

## 7. AUTHORISATION

- (i) For non-Recurring Transactions - the Merchant must seek prior authorisation from the Authorisation Centre for any Transaction where:
  - (a) the Merchant is aware that, or considers 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 account number appearing on the Nominated Card does not correspond with the number printed, encoded or otherwise shown on the Nominated Card;
  - (c) the Cardholder presents a Nominated Card at a time which is not currently valid as shown on the Nominated Card (where applicable);
  - (d) the signature panel on the Nominated Card is blank or the signature has been altered or defaced;
  - (e) the Electronic Terminal instructs the Merchant to contact the Authorisation Centre; or
  - (f) the Transaction is of a certain type or class which has been notified to the Merchant by ANZ as a type or class of Transaction requiring authorisation.
- (ii) For Recurring Transactions – the Merchant must obtain authorisation for all Recurring Transactions and ensure it has the Cardholder’s consent to process Recurring Transactions. Where applicable, the Merchant must ensure the Nominated Card has a current validity date and that the CVV2 is provided when processing the first Recurring Transaction against that Nominated Card. After processing the initial Recurring Transaction, the Merchant must destroy the CVV2 in one of the manners set out in Condition 9(iv).
- (iii) In the event that the Merchant seeks authorisation, the Merchant must ensure that the authorisation code appears on each Transaction Voucher applicable to a Transaction.
- (iv) The Merchant should seek to retain the Nominated Card until authorisation is given. If the Merchant is requested by the Authorisation Centre to retain the Nominated Card, the Merchant should use reasonably peaceful means to retain the Nominated Card and deal with the Nominated Card in accordance with the instructions of the Authorisation Centre.

- (v) In the case of a Transaction involving a mail, telephone or Internet order, authorisation is not a representation or warranty to the Merchant that the purchase is made by the Cardholder.
- (vi) Authorisation of a Transaction is not a representation or warranty by ANZ to the Merchant that a Transaction is not an Invalid Transaction.
- (vii) ANZ may at any time change the Merchant's Authorised Floor Limit immediately upon notice: where ANZ has approved a change requested by the Merchant; where in ANZ's reasonable opinion, the change is required to protect ANZ, the Merchant and/or Cardholders from actual or suspected fraudulent activity; to enable the processing of transactions during technical difficulties; or where required by a change in Law or to the regulations, by-laws or rules of a Nominated Card Scheme. Where the Merchant's Authorised Floor Limit is changed for any other reason, ANZ will provide the Merchant with reasonable notice of the change.

## 8. REFUNDS

The Merchant 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 refund transaction processed via the Electronic Terminal to the same Nominated Card on which the original Transaction was made, a credit note issued by the Merchant or an exchange of goods, and not in cash or by cheque. The Merchant must disclose the Merchant's Refund policy to the Nominated Cardholder prior to the Transaction;
- (iii) where the Merchant is authorised to process Transactions via the Internet in accordance with Condition 4(ii), display the Merchant's Refund policy on its website; and
- (iv) at all times act in accordance with the Terminal Guides in processing Refunds.

## 9. TRANSACTION INFORMATION

- (i) The Merchant must lodge Transactions with ANZ for settlement in accordance with the Terminal Guides and any other reasonable directions from ANZ or a Nominated Provider and in the case of a Transaction processed through an Electronic Terminal immediately by entering the Transaction.
- (ii) The Merchant must retain information about a Transaction processed electronically for a period of 30 months from the date of the Transaction or such other period required by Law or reasonably notified by ANZ. The Terminal Guides set out the information about a Transaction which the Merchant must retain.
- (iii) The Merchant must destroy any information about the Transaction on the later of:
  - (a) the expiry of the 30 month period; or
  - (b) the date on which the Merchant has no further business or legal reason for retaining the information.
- (iv) The Merchant 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) The Merchant must provide information about a Transaction which is requested by ANZ within 5 Business Days of receipt of the request.
- (vi) The Merchant must provide any information or reporting reasonably required by ANZ.

## 10. SETTLEMENT OF TRANSACTIONS

- (i) ANZ agrees:
  - (a) to accept all sales processed by the Merchant in accordance with the Agreement and, subject to Condition 13.2, to credit the Merchant Account with the full amount of such Transactions on the basis that the debt due by the Cardholder to the Merchant in respect of the Transaction is extinguished; and
  - (b) to accept all Refund Transactions processed by the Merchant in accordance with the Agreement and to debit the Merchant Account with the full amount of each Refund Transaction.
- (ii) ANZ will issue a monthly record of Transactions statement to the Merchant including a summary of the number of Debit Transactions and the number and total amount of all Credit Transactions processed by ANZ to the Merchant Account during the previous month.
- (iii) Where ANZ is aware or has reason to believe that a Transaction or Invalid Transaction is fraudulent or a counterfeit Nominated Card has been used for that Transaction, ANZ reserves the right for a period of 30 days to:
  - (a) withhold payment to the Merchant Account in respect of the relevant Transaction; and
  - (b) unless it otherwise agrees in writing, prevent the debit of that part of the balance of the Merchant Account or any account held by the Merchant with ANZ, as is equal to the amount ANZ estimates may become owing to it by the Merchant in respect of that Transaction. During that 30 day period, ANZ will investigate the Transaction to determine whether ANZ will either:
    - (c) refuse to accept the Transaction and return the Transaction to the Merchant; or
    - (d) if the Transaction has been accepted, charge that Transaction back to the Merchant; and
    - (e) will set-off the resulting amount owing to it by the Merchant in respect of that Transaction against funds standing to the credit of the Merchant Account or any account held by the Merchant with ANZ.



- (iv) Where:
  - (a) ANZ is aware or has reason to believe that a Transaction or Invalid Transaction is fraudulent;
  - (b) ANZ assesses the Merchant as a high credit or fraud risk;
  - (c) the Merchant has breached the Agreement; or
  - (d) ANZ otherwise determines on reasonable grounds that deferred settlement is justified in order to prevent loss to the Merchant or ANZ, ANZ may defer settlements of any Transaction which occurs during a period of up to three months following the occurrence of the circumstance set out in (a) to (d) above (the “deferred period”). Such settlement may be deferred for up to 2 Business Days. Immediately prior to the end of any deferred period, ANZ will review the relevant circumstance set out in (a) to (d) above, to determine whether deferred settlements should continue and what period that deferral should be. ANZ will advise the Merchant in writing of its decision on completing the review.

## 11. 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 Merchant Account frozen in accordance with Condition 28 (and before such suspension or freezing ceased) or terminated in accordance with Condition 29;
- (iii) the Merchant processes the Transaction knowing (or in circumstances where the Merchant should have known) that the Transaction is unauthorised;
- (iv) the Merchant processes the Transaction knowing (or in circumstances where the Merchant would reasonably be expected to know) that the Nominated Card is used without the authority of the Cardholder or in the case of a mail, telephone or Internet order authorised by ANZ in accordance with Condition 4(ii), the Transaction is not authorised by the Cardholder;

- (v) the Merchant was notified by ANZ not to accept the Nominated Card used in the Transaction;
- (vi) for non-Recurring transactions, the Nominated Card used in the Transaction is not used at a time which is currently valid as shown on the Nominated Card (unless otherwise advised by ANZ);
- (vii) for Recurring Transactions – the expiry date (where applicable) and CVV2 of the Nominated Card is not provided with the initial Recurring Transaction;
- (x) the Transaction is recorded in a currency other than Australian dollars, except where ANZ has given prior written approval to the Merchant to record Transactions in other currencies;
- (xi) the price charged for the goods or services to which the Transaction relates is more than the Merchant's normal price which is charged to the general public, except where the additional amount represents the amount of any credit card surcharge properly incurred or charged by the Merchant;
- (xii) for:
  - (a) non-Recurring Transactions – the Transaction requires authorisation by ANZ and the Merchant does not obtain such authorisation; and
  - (b) Recurring Transactions – the Transaction is unauthorised and/or does not contain a Recurring Transactions flag;
- (xiii) the Transaction value exceeds the Authorised Floor Limit, and the Merchant did not obtain authorisation for a Transaction above the Authorised Floor Limit;
- (xv) in ANZ's reasonable opinion the Transaction relates to one or more purchases made in the same Merchant establishment which have been split into 2 or more Transactions in an attempt to avoid the Authorised Floor Limit;
- (xvi) the Merchant has arranged without ANZ's consent for a person other than the Merchant to supply goods, services or cash;
- (xvii) the Merchant processes the Transaction knowing (or in circumstances where the Merchant should have known) that the Transaction is fraudulent;

- (xviii) the Cardholder has not received the goods or service as required by the terms of the Transaction and, in the case where the Merchant is not the provider of the goods or services and acts as agent for the provider of the goods or services, the goods or services have not been provided by the principal) and the Merchant has failed to provide ANZ with proof that the Cardholder has received goods or services; and the Cardholder is not satisfied the goods and services have been provided as required by the terms of the Transaction, within 5 Business Days of ANZ's request to do so;
- (xix) the goods or services to which the Transaction relates were supplied from outside Australia without ANZ's consent;
- (xx) in the case of a Transaction being a mail, telephone or Internet order authorised by ANZ in accordance with Condition 4(ii), the Merchant did not record Reasonable Identification Details of the Cardholder and (where applicable) the expiry date of the Nominated Card;
- (xxi) except in the case of a mail, telephone or Internet order authorised by ANZ in accordance with Condition 4(ii), the Nominated Card was not presented to the Merchant;
- (xxii) in the case of a Transaction where the details are keyed into an Electronic Terminal the Merchant did not record on the Receipt Reasonable Identification Details of the Cardholder;
- (xxiii) the Merchant has not otherwise complied with the Agreement in connection with the Transaction and ANZ is of the reasonable opinion that such non-compliance may result in either ANZ or the Merchant suffering a loss;
- (xxiv) the Transaction is processed by the Merchant on behalf of another person, or has 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;
- (xxv) the Merchant has accepted a Nominated Card as payment for goods and services by mail, telephone or Internet order without specific authorisation in writing by ANZ under Condition 4(ii);
- (xxvi) the Merchant bills the amount of the Transaction direct to the Cardholder or receives payment through the use of another card or by any other means;

- (xxvii) the card number or truncated card number appearing on the Receipt does not correspond with the card number printed, encoded or otherwise shown on the Nominated Card used for the Transaction;
- (xxviii) the Merchant fails to lodge Transactions with ANZ for settlement in accordance with Condition 9(i);
- (xxix) the same Transaction is processed by the Merchant more than once;
- (xxx) the Merchant key-enters incorrect Transaction details into the Electronic Terminal or key-enters the Transaction otherwise than in accordance with the Terminal Guides;
- (xxxi) the Merchant manually processes a Transaction using a damaged Nominated Card which is not a valid Nominated Card referred to in Condition 5(ii) without obtaining prior approval from ANZ;
- (xxxii) in ANZ's reasonable opinion, the Cardholder justifiably disputes liability for the Transaction for any reason;
- (xxxiii) the Cardholder makes a claim for set off or counter claim in respect of the Transaction against ANZ;
- (xxxiv) the Transaction was processed in breach of the requirements of any Nominated Card Scheme rules notified by ANZ to the Merchant under Condition 6(xviii) or of any other reasonable method determined by ANZ;  
or
- (xxxv) the Transaction is not authorised by ANZ or the authorisation request is declined for any reason.

## 12. CHARGEBACK

- (i) If a Transaction is an Invalid Transaction, ANZ may, at its 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 two years of the date of the Transaction, charge that Transaction back to the Merchant by debiting the Merchant Account or Retention Account or otherwise exercising its rights under the Agreement.

- (ii) If ANZ receives a payment from a Cardholder relating to an Invalid Transaction that has been charged back to the Merchant, ANZ will pay an amount equal to that payment to the Merchant less any amount which ANZ is 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 the Merchant, the Cardholder will be entitled to initiate a charge back of the Transaction to the Merchant where permitted in accordance with the rules of the relevant Nominated Card Schemes.

## **13. MERCHANT ACCOUNTS**

### **13.1 MERCHANT ACCOUNT**

- (i) The Merchant must maintain a Merchant Account for the term of the Agreement.
- (ii) The Merchant authorises ANZ to debit and credit the Merchant Account for the purposes of the Agreement.
- (iii) ANZ reserves the right acting reasonably to require the Merchant to maintain a minimum credit balance in the Merchant Account during the term of the Agreement. Any such minimum credit balance will be notified by ANZ to the Merchant from time to time.
- (iv) Where the Merchant Account is held with a financial institution other than ANZ, the Merchant must provide ANZ with a properly completed periodical direct debit authority.

### **13.2 RETENTION ACCOUNT**

- (i) ANZ may at any time give the Merchant a Retention Notice where, in the reasonable opinion of ANZ, the Merchant's business gives rise to a significant risk of financial loss to ANZ, the Merchant and/or Cardholders. The Retention Notice must specify:
  - (a) the Retention Amount; and
  - (b) the proportion of the Merchant's settlement proceeds processed through the Merchant Facilities to be retained in the Retention Account ("Retained Proceeds").

- (ii) If a Retention Notice is given to the Merchant and a Retention Account has not previously been established in relation to the Merchant, ANZ will establish a Retention Account in relation to the Merchant. No interest is payable on the balance in the Retention Account.
- (iii) The Merchant authorises ANZ to:
  - (a) deduct the Retained Proceeds from the Merchant's settlement proceeds processed through the Merchant Facilities and retain the Retained Proceeds in the Retention Account. The balance of the Merchant's settlement proceeds after the Retained Proceeds have been deducted will only be released to the Merchant Account in accordance with this Agreement; and
  - (b) debit the Retention Account in accordance with Condition 12(i)(b) or otherwise as permitted by this Agreement.
- (iv) Once the balance of the Retention Account reaches the Retention Amount, ANZ will continue to deduct further Retained Proceeds from the Merchant's settlement proceeds processed through the Merchant Facilities and retain these Retained Proceeds in the Retention Account, but will release a corresponding amount to the Merchant Account so that the balance of the Retention Account (after any deductions made in accordance with this Agreement) remains at the Retention Amount.
- (v) Each of ANZ and the Merchant agree that:
  - (a) Retention Amounts standing to the credit of the Retention Account shall only mature, and the Merchant may only request the withdrawal or repayment of the Retention Amounts, with the consent of ANZ. ANZ shall only give that consent upon ANZ being satisfied that, in ANZ's reasonable opinion, the Merchant has no further liability to ANZ, whether present or future, actual or contingent, under or in respect of this Agreement, including without limitation on account of chargebacks under Condition 12 (Chargebacks). This Condition overrides any other provision, document or agreement to the contrary;

- (b) on request from the Merchant from time to time, ANZ may in its absolute discretion release additional amounts from the Retention Account to the Merchant Account; and
  - (c) none of the provisions of this agreement take effect to the extent that it creates (or would, but for this subclause, create) a mortgage, charge, pledge, lien or hypothecation over the Retention Account, the Retained Proceeds or any Retention Amount.
- (vi) If this Agreement is terminated, this Condition will survive termination. Any amounts in the Retention Account will only be released to the Merchant after a period of 12 months from the date of termination (or any other time notified to the Merchant by ANZ) or in accordance with a schedule notified in writing by ANZ to the Merchant (if sooner).

## **14. INFORMATION COLLECTION, STORAGE AND DISCLOSURE**

### **14.1 GENERAL**

- (i) The Merchant 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 ANZ, the Nominated Card issuer or as required by Law. The Merchant may disclose such information or document to the Merchant's employees, contractors or agents in the course of conducting the Merchant's business.
- (ii) The Merchant must not take an imprint of, or record any information relating to, a Nominated Card or Cardholder, unless the imprint or information is required to process a Transaction being made at that time or for the purposes of processing Recurring Transactions against that Nominated Card which have been authorised by the Cardholder. For the avoidance of doubt, the Merchant must immediately destroy the CW2 of a Nominated Card in one of the manners set out in Condition 9(iv) after processing a non- Recurring Transaction or after processing the initial Recurring Transaction.

- (iii) If permitted to record any information under Condition 14.1(ii) in respect of the Nominated Card, the Merchant may only record the card account number, expiration date and name of the Cardholder.
- (iv) Except with ANZ's prior written consent, the Merchant must not request or retain a Cardholder's personal identification number, password or other code or information that can be used to access a Cardholder's account. Consent will only be given by ANZ in exceptional circumstances and conditions may apply. This Condition 14.1(iv) is a material obligation of the Merchant under the Agreement.
- (v) The Merchant must ensure that any full card-read data in respect of Nominated Cards accessed by the Merchant in connection with a Transaction (or otherwise in connection with the Agreement) is stored only by the Merchant 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. The Merchant must not record, store, replicate or otherwise use full card-read data for any other purpose. For the avoidance of doubt, the Merchant must not store Cardholder Data or card-read data on the Electronic Terminal or any Third Party App downloaded to the Electronic Terminal.

## **14.2 NOMINATED CARD SCHEME OBLIGATIONS**

- (i) The Merchant must provide ANZ with its Compliance Action Plan (if required by any Nominated Card Scheme for the purposes of complying with the Payment Card Industry Data Security Standards (PCIDSS)) within 90 days of receiving a request from ANZ to do so. The Merchant must also comply with the rules of any Nominated Card Scheme as specified in this Agreement or otherwise notified to the Merchant from time to time, including any obligations regarding compliance with the PCIDSS. ANZ will notify the Merchant of any such obligations and, to the extent practicable, will provide the Merchant with a reasonable period of time to comply with such obligations.



- (ii) ANZ will notify the Merchant of any noncompliance alert received from a Nominated Card Scheme as a result of the Merchant's breach of the Nominated Card Scheme rules (ANZ Notice). The ANZ Notice must:
  - (a) specify any actions or remediation works to be undertaken by the Merchant in order to rectify the breach set out in the alert from the Nominated Card Scheme;
  - (b) notify the Merchant 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 in ANZ's discretion) received from the Nominated Card Scheme.
- (iii) The Merchant must comply with the terms of any ANZ Notice by the deadline specified by ANZ.
- (iv) If:
  - (a) The Merchant fails to comply with the terms of the ANZ Notice; or
  - (b) The Merchant is otherwise in breach of the Nominated Card Scheme rules; ANZ may receive a breach notification (which may include a fine and/or penalty) from a Nominated Card Scheme (Breach Notice). The Merchant acknowledges that ANZ may receive a Breach Notice without having received a non-compliance alert from the Nominated Card Scheme. If ANZ receives a Breach Notice, ANZ will:
    - (A) promptly notify the Merchant 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 in ANZ's discretion) to the Merchant;
    - (B) notify the Merchant of the deadline for paying the fine and/or penalty (such deadline not to exceed 30 days from the date of ANZ's notice); and

- (C) provide the Merchant with the opportunity to discuss the nature of the Breach Notice and any actions or remediation works which may be necessary to assist the Merchant 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 the Merchant's obligation to pay the fine and/or penalty imposed by the Nominated Card Scheme.
- (v) The Merchant must pay the fine and/or penalty detailed in the Breach Notice to ANZ within the timeframe specified by ANZ and in a manner agreed between the parties.
- (vi) For the avoidance of doubt, the Merchant agrees that it is liable for all fines and/or penalties imposed by the Nominated Card Schemes (whether imposed on ANZ or the Merchant directly) as a result of the Merchant's breach of the Nominated Card Scheme rules.
- (vii) In this Condition 14.2, "Merchant" means the person named as merchant in the Letter of Offer (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 Condition.

### **14.3 PRIVACY AND CONFIDENTIALITY**

- (i) ANZ will collect and use information about you during the course of your relationship with ANZ. This Condition 14.3 sets out when and how ANZ may collect, use and disclose this information.
- (ii) If you are a corporation, you agree to obtain the consent of your directors and shareholders for ANZ to collect, use and disclose their personal information as provided in this Condition 14.3.
- (iii) It is important that the information ANZ holds about you is up to date. You must let ANZ know when information you have provided ANZ has changed.
- (iv) Unless otherwise stated, this clause applies to individuals and non-individuals (e.g. companies). Collection, use and disclosure of information

- (v) ANZ may use and disclose the information we collect about you for the following purposes:
  - (a) to assist in providing information about a product or service;
  - (b) to consider your request for a product or service;
  - (c) to enable ANZ to provide a product or service;
  - (d) to tell you about other products or services that may be of interest to you;
  - (e) to assist in arrangements with other organisations (such as developers of Third Party Apps) in relation to the promotion or provision of a product or service;
  - (f) to manage accounts and perform other administrative and operational tasks (including risk management, systems development and testing, credit scoring, staff training, collecting debts and market or customer satisfaction research);
  - (g) to consider any concerns or complaints you raise against ANZ and/or to manage any legal action involving ANZ;
  - (h) to identify, prevent or investigate any fraud, unlawful activity or misconduct (or suspected fraud, unlawful activity or misconduct);
  - (i) to identify you or establish your tax status under any Australian or foreign legislation, regulation or treaty or pursuant to an agreement with any tax authority; and
  - (j) as required by relevant Laws, codes of practice and external payment systems.

### **Absence of relevant information**

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

### **Information required by law etc.**

- (vii) ANZ may be required by relevant laws to collect certain information from you. Details of laws that require us to collect information about individuals (personal information) and why these laws require us to collect personal information are contained in ANZ's Privacy Policy and at [www.anz.com/privacy](http://www.anz.com/privacy).

## Providing your information to others

- (viii) ANZ may provide your information to:
- (a) any related entity of ANZ which may use the information to: carry out ANZ's functions and activities; promote its own products and services; assess your application for one of its products or services; manage your product or service; perform administrative and operational tasks (including debt recovery); or comply with regulatory requirements and prudential standards;
  - (b) an organisation that is in an arrangement with ANZ to jointly offer products and/ or has an alliance with ANZ to share information for marketing purposes (and any of its outsourced service providers or agents), to enable them or ANZ to: provide you with products or services; and/or promote a product or service;
  - (c) any agent, contractor or service provider ANZ engages to carry out or assist its functions and activities (for example, mailing houses or debt collection agencies);
  - (d) an organisation that assists ANZ to identify, prevent or investigate fraud, unlawful activity or misconduct;
  - (e) regulatory bodies, government agencies, law enforcement bodies and courts;
  - (f) other parties ANZ is authorised or required by Law or court/ tribunal order to disclose information to;
  - (g) participants in the payments system (including Nominated Card Schemes, payment organisations and merchants) and other financial institutions (such as Nominated Card issuers or banks);
  - (h) other credit providers;
  - (i) insurers and reinsurers;
  - (j) any person who introduces you to ANZ;
  - (k) your referee(s);
  - (l) your joint borrower(s) or account holder(s); and
  - (m) your authorised agents; your executor, administrator or trustee in bankruptcy; your legal representative; your attorney; or anyone acting for you in connection with your account.

- (ix) If you are an individual and do not want us to tell you about products or services, phone 13 13 14 or your ANZ Manager to withdraw your consent.
- (x) ANZ may disclose information to recipients (including service providers and ANZ's related 30 entities) which are (1) located outside Australia and/or (2) not established in or do not carry on business in Australia. You can find details about the location of these recipients in ANZ's Privacy Policy and at [www.anz.com/privacy](http://www.anz.com/privacy). Credit Reporting
- (xi) If you are an individual customer, you agree that ANZ may obtain information about your credit history and credit worthiness, including credit liabilities, repayments and defaults, from a credit reporting body (including a body that provides information on commercial activity and commercial credit worthiness) and use it to assess any application for credit, to manage your credit and for the purposes of debt collection. ANZ may also disclose information about you to credit reporting bodies. Information about credit reporting, including the name and contact details of these credit reporting bodies, when ANZ may disclose your information to them to include in a report about your credit worthiness, and how you can request credit reporting bodies not use your information in certain circumstances, is available at [www.anz.com/privacy](http://www.anz.com/privacy). If you would like a hard copy of ANZ's Privacy Policy please call 13 13 14 or visit any ANZ branch.

### **ANZ Privacy Policy**

- (xii) ANZ's Privacy Policy ([www.anz.com/privacy](http://www.anz.com/privacy)) contains information about:
  - (a) the circumstances in which ANZ may collect personal information from other sources (including from a third party);
  - (b) how to access personal information and seek correction of personal information; and
  - (c) how you can raise concerns that ANZ has breached the Privacy Act or an applicable code and how ANZ will deal with those matters. Collecting sensitive information
- (xiii) ANZ will not collect sensitive information about you, such as information about your health, without your consent. Personal information you provide about someone else

- (xiv) If you give ANZ personal information about someone else, please show them a copy of this Condition 14.3 so that they may understand the manner in which their personal information may be used or disclosed by ANZ in connection with your dealings with ANZ.

## 15. AUDIT

If there is a dispute involving a Transaction or ANZ suspects that fraud is involved, the Merchant authorises ANZ, or its agent, to enter the Merchant's Premises during the Merchant's normal business hours to examine and take copies of the Merchant's books of account and records and records as they relate to the disputed transaction or suspected fraud.

## 16. FEES, CHARGES, OTHER PAYMENTS AND GST

- (i) The Merchant must pay to ANZ the fees, charges, fines and/or penalties described in the Agreement (both actual and contingent), the Application and the Letter of Offer at the times and in the manner set out in the Agreement, that Application and the Letter of Offer (as the case may be), as varied under Condition 16(v) from time to time.
- (ii) The Merchant authorises ANZ to debit the Merchant Account without notice for:
- (a) all fees, charges and costs owing to ANZ by the Merchant under the Agreement;
  - (b) the value of any over credits paid by ANZ to the Merchant due to errors and omissions;
  - (c) all credits paid by ANZ 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 Merchant Account;
  - (e) all Taxes incurred or payable by ANZ in connection with the Agreement, the Merchant Facilities, any transaction contemplated by the Agreement, the Merchant Account or any Electronic Terminal;

- (f) all fines, penalties and other charges incurred by ANZ as a result of any act or omission of the Merchant including a breach of this Agreement by the Merchant;
  - (g) any fees, charges or penalties imposed on ANZ by any Nominated Card Scheme due to the nature of the Merchant's business;
  - (h) all fines and/or penalties levied by a Nominated Card Scheme as a result of the Merchant's breach of any Nominated Card Scheme rules specified in this Agreement or otherwise notified to the Merchant from time to time; and
  - (i) all other amounts owing to ANZ by the Merchant under the Agreement. If ANZ debits the Merchant Account, ANZ will give the Merchant written notice that ANZ has done this.
- (iii) The Merchant must pay on demand by ANZ any amount referred to in Condition 16(ii) which remains unpaid by the Merchant because there are insufficient funds in the Merchant Account to satisfy the payment of that amount in full.
  - (iv) ANZ may continue to charge the Merchant the Terminal Rental Fee for an Electronic Terminal and for stationery, promotional materials, or equipment (including Merchant and Terminal ID Cards) supplied in connection with the Agreement until the Merchant has returned all of these items or they have otherwise been recovered by ANZ, irrespective of whether the Agreement has been terminated or (in relation to the Terminal Rental Fee) another Electronic Terminal has been provided.
  - (v) ANZ reserves the right to vary the fees and charges in accordance with Condition 31.
  - (vi) The Merchant may incur charges from your telecommunications provider or internet service provider (as applicable) for using ANZ BladePay. Any such charges are the Merchant's sole responsibility and any matters regarding these charges should be raised with the Merchant's telecommunications provider or internet service provider (as applicable).

## 16.1. GST

- (i) Terms used in this Condition 16.1 have the same meaning as those defined in the A New Tax System (Goods and Services Tax) Act 1999 ("GST Act") unless provided otherwise.
- (ii) The parties each have an ABN and are registered for GST.
- (iii) Subject to Condition 16.1(v), any fees payable under the Agreement are inclusive of all Australian state, federal, sales, excise, personal property, and other taxes, stamp duty, customs and other duties or levies.
- (iv) Any reference in this Agreement to fee, price, value, sales, revenue, or similar amount ("Revenue") shall be a reference to that Revenue exclusive of GST, unless and to the extent that the Revenue is expressly agreed to be GST inclusive.
- (v) If any supply made under or in connection with this Agreement is subject to GST, the supplier may increase the consideration otherwise provided for by the amount of that GST and recover such additional amount from the party liable for payment of the consideration. This clause does not apply to the extent that the consideration is expressly agreed to be GST inclusive.
- (vi) If the recipient is required to reimburse the supplier for any costs, the amount must be reduced to the extent that the supplier is entitled to claim an input tax credit in respect of those costs. A party will be assumed to have an entitlement to claim a full input tax credit unless it demonstrates otherwise prior to the date on which the consideration must be provided.
- (vii) No payment of any amount in respect of GST is required until the supplier has provided a tax invoice or adjustment note, as the case may be, to the recipient. The supplier must provide a tax invoice or adjustment note to the recipient as required by the GST Act.



## 17. ELECTRONIC TERMINALS

If approved, ANZ will provide the Merchant and any Authorised User with: the Electronic Terminal, being the ANZ BladePay device pre-loaded with ANZ FastPay Next Generation; and access to the ANZ FastPay App Catalogue.

### 17.1 GENERAL

- (i) Unless otherwise agreed the Merchant must arrange at the Merchant's cost for a telecommunication supplier to install and maintain any necessary telecommunications infrastructure and associated services to enable the use of the Electronic Terminal. ANZ is not responsible for maintaining telecommunications requirements in connection with the Agreement.
- (ii) The Merchant must:
  - (a) only download apps to the Electronic Terminal that are authorised by ANZ and available in the ANZ FastPay App Catalogue;
  - (b) enable the Cardholder to use the Electronic Terminal keypad without the Cardholder's use of the keypad being observed by either security cameras, observation mirrors, reflective surfaces or by any other person, including by closed circuit television and internal monitoring devices;
  - (c) notify ANZ immediately if any Electronic Terminal (or part of an Electronic Terminal) is not operating, is malfunctioning or has (or the Merchant suspects it has) been tampered with in any way;
  - (d) use reasonable care and diligence to prevent and detect unauthorised use of any Electronic Terminal;
  - (e) allow any properly authorised and suitably identified ANZ employee, agent or contractor free access to Electronic Terminals during normal business hours for the purposes of inspection or testing of Electronic Terminals and for the purposes of maintenance of the Electronic Terminal;
  - (f) only use the Electronic Terminal for the purposes of the Agreement;
  - (g) use the Electronic Terminal in accordance with the Agreement and any applicable manufacturer's manual, warranty or conditions of use;

- (h) notify ANZ in the event that the Merchant is aware or should reasonably be aware that the Electronic Terminal is being used fraudulently or otherwise improperly;
  - (i) take proper care of and maintain regular servicing of the Electronic Terminal as directed by ANZ. The Merchant is responsible for all maintenance costs as advised by ANZ including payment for the costs of any repairs to or replacement of the Electronic Terminal which are necessary because of the Merchant's neglect or misuse;
  - (j) delete the ANZ FastPay Next Generation app from the Electronic Terminal and download a new version of the ANZ FastPay Next Generation app from the ANZ FastPay Next Generation App Catalogue when notified to do so;
  - (k) cease using the Electronic Terminal if notified by ANZ, acting reasonably, to do so;
  - (l) Take reasonable steps necessary to prevent damage to your Electronic Terminal and to stop unauthorised use of the Electronic Terminal;
- (iii) The Merchant must not, without ANZ's prior written consent (such consent not to be unreasonably withheld):
- (a) Download any app to the Electronic Terminal that is not available in the ANZ FastPay App Next Generation Catalogue or make any alteration or addition to an Electronic Terminal or otherwise tamper with an Electronic Terminal. If ANZ provides such written consent, all costs applicable to the change to the Electronic Terminal are payable by the Merchant.
  - (b) Use any app to process Transactions on the Electronic Terminal other than ANZ FastPay Next Generation.
  - (c) Act fraudulently or maliciously in relation to ANZ BladePay. As examples, you will not copy, modify, adversely effect, reverse engineer, hack into or insert malicious code into the ANZ FastPay App or the Electronic Terminal; and

- (iv) If ANZ determines that the continued use of the Electronic Terminal by the Merchant may cause loss to the Merchant or ANZ (through fraudulent activities or otherwise) ANZ may require the Merchant to replace that Electronic Terminal with another terminal nominated by ANZ.
- (v) To the extent that the Electronic Terminal or any Third Party App downloaded to the Electronic Terminal presents any links to third party websites not owned or operated by ANZ, ANZ is not responsible for the availability of these sites or their contents.
- (vi) The Merchant agrees that the Electronic Terminal remains the property of ANZ and undertakes to protect, and not prejudice, ANZ's proprietary right to the Electronic Terminal.
- (vii) The Merchant is responsible for any loss, theft or damage to the Electronic Terminal including where the damage occurs as the result of any app other than ANZ FastPay Next Generation being downloaded to the Electronic Terminal and including the amount of any Electronic Terminal non-recovery fee that ANZ may charge the Merchant, in ANZ's absolute discretion. In the event of such loss, theft or damage, the Merchant must pay ANZ the actual cost of repairing or replacing (either with a new or second-hand Electronic Terminal of the same, or substantially the same make and/or model) the Electronic Terminal.

## **17.2 ANZ FASTPAY APP CATALOGUE AND THIRD PARTY APPS**

- (i) Third Party Apps available for download to the Electronic Terminal are not supplied by ANZ.
- (ii) When the Merchant downloads a Third Party App from the ANZ FastPay App Catalogue, the Merchant is agreeing to any terms and conditions for that app, whether provided by the developer of the Third Party App or ANZ and the Merchant and any Authorised User must comply with those terms and conditions.
- (iii) The Merchant and any Authorised User must not tamper with or circumvent any security technology included with the Third Party App or any security requirement mandated or recommended by the Third Party App developer.

- (iv) The Merchant must immediately update all Third Party Apps and apply any patches released by the Third Party App developer to maintain security and eliminate any vulnerabilities in the Third Party App.
- (v) The Merchant must direct any questions regarding the functionality of a Third Party App or complaints or disputes relating to the Third Party App to the developer of the Third Party App.
- (vi) ANZ is not responsible or liable for the performance or continued availability of any Third Party App. ANZ is not responsible or liable for any loss or damage (including consequential loss or damage) suffered by the Merchant related to the Third Party App.
- (vii) ANZ may either remove a Third Party App or request that the Merchant remove a Third Party App from the Electronic Terminal if ANZ determines that the continued use of that Third Party App may cause loss to the Merchant or ANZ.

Any failure by the Merchant or an Authorised User to comply with the Third Party App terms and conditions, breach by the Merchant or an Authorised User of Conditions 17.2(iii), (iv) or failure by the Merchant or an Authorised User to remove a Third Party App from the Electronic Terminal within the timeframe requested by ANZ may result in the Merchant being liable for any loss or costs suffered or incurred by ANZ.

## **18. ELECTRONIC TERMINALS - SECURITY**

- (i) The Merchant must take all steps that are, in the circumstances, reasonable to ensure that each Electronic Terminal is protected against loss, theft, unauthorised access or use, modification or other misuse. The Merchant agrees that such steps include, ensuring that, at the start and at the close of business each day, each Electronic Terminal is secure and has not been lost or stolen or tampered with in any way.
- (ii) The Merchant must immediately notify ANZ by telephone as soon as the Merchant becomes aware (or should reasonably have become aware) that an Electronic Terminal has been stolen, lost or may otherwise have been altered, tampered with or compromised.

- (iii) Any breach of this Condition 18 by the Merchant may result in the Merchant being liable for any loss or costs suffered or incurred by ANZ as a result of theft or loss of, or other breach of security in connection with, an Electronic Terminal, including, any loss arising from any unauthorised or fraudulent use of an Electronic Terminal that occurs before the Merchant gives notice to ANZ in accordance with Condition 18(ii).
- (iv) If the Merchant:
  - (a) ceases trading; or
  - (b) no longer requires the Merchant Facilities, the Merchant must, within 7 days of either (a) or (b) above occurring, terminate the Agreement in accordance with Condition 29.

## 19. MERCHANT OPERATING GUIDES

ANZ will provide the Merchant with all applicable Merchant Operating Guides at ANZ's cost. The Merchant Operating Guide includes policies, procedures and other information the Merchant requires for the day-to-day operation of the Merchant Facilities, including requirements set down under Nominated Card Scheme rules.

## 20. TRAINING

- (i) The Merchant agrees to participate in any training offered by ANZ (at ANZ's expense) that is in any way connected with the provision of Merchant Facilities under this Agreement.
- (ii) ANZ will be deemed to have provided training to the Merchant if it has provided training to an employee, contractor or agent of the Merchant.
- (iii) The Merchant is responsible at the Merchant's cost for training the Merchant's employees, contractors or agents who are to operate Electronic Terminals or otherwise process Transactions so that those employees, contractors and agents are familiar with the Merchant's obligations under the Agreement and Transactions are processed in accordance with the Agreement.

## 21. SUPPLY OF STATIONERY

ANZ may supply the Merchant with, and may charge the Merchant for the supply of any stationery requirements in accordance with the Letter of Offer or as otherwise agreed by ANZ from time to time in writing.

## 22. INDEMNITY

The Merchant indemnifies ANZ against all claims, damages, actions, losses and liabilities (including all fines, penalties and other charges incurred by ANZ as a result of any act or omission of the Merchant) which ANZ or any of its employees, contractors or agents suffers or incurs arising directly or indirectly from:

- (i) the negligence or fraud of the Merchant or an employee, contractor or agent of the Merchant;
- (ii) the failure of the Merchant, or an employee, contractor or agent of the Merchant, to observe any of the Merchant's obligations under the Agreement;
- (iii) the operation of any Third Party App on the Electronic Terminal;
- (iv) any dispute arising between the Merchant and the Cardholder in respect of the supply, use, quality or fitness for purpose of goods or services;
- (v) any use of an Electronic Terminal by the Merchant or its employees, contractors or agents;
- (vi) any representation, warranty or statement made by the Merchant or its employees, contractors or agents to the Cardholder; or
- (vii) any misrepresentation, breach of contract and/or failure of consideration relating to any contract for the supply of goods or services by the Merchant to a Cardholder, except that the Merchant is not obliged to indemnify ANZ or its employees, contractors or agents against any claims, damages, actions, losses or liabilities which are solely the result of the fraud, wilful default or gross negligence of ANZ or its employees, contractors or agents. ANZ will also take reasonable steps to mitigate any claims, damages, actions, losses or liabilities which are the subject of this indemnity.

## 23. ANZ LIABILITY

- (i) To the extent permitted by Law, ANZ will not be responsible for any loss or damage (including consequential loss or damage) suffered by the Merchant under the Agreement including, but not limited to, loss or damage suffered because an Electronic Terminal or any telephone line or other communications device or service is malfunctioning or not operating, except loss or damage attributable to the negligence or wilful default of ANZ. To remove any doubt and without limiting the generality of this provision, ANZ 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. ANZ 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 an Electronic Terminal supplied by ANZ is malfunctioning or not operating, ANZ's liability is only to repair or replace the Electronic Terminal.
- (iii) ANZ is not liable for any loss, liability or damage which a Merchant may suffer or incur resulting from ANZ's failure to credit the Merchant Account due to technical or administrative difficulties relating to the banking system used for the transfer of funds to the Merchant Account.

ANZ is not liable for any loss, liability or damage suffered by the Merchant as a result of the use of any Third Party App or the incompatibility of any Third Party App with the Electronic Terminal.

ANZ is not liable for any loss the Merchant may suffer as a result of another person, not being an Authorised User, accessing and using the Electronic Device.

ANZ is not liable for from any security breach, if you have acted fraudulently (either alone or together with any other person), if you have installed applications on the Electronic Terminal other than those available from the ANZ FastPay Next Generation App Catalogue, or if you have caused or contributed to that loss, for example, by failing to comply with any term of this Agreement.

## 24. THIRD PARTY BUREAU SERVICES

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

## 25. APPOINTMENT OF AGENT,

Subcontractor or Other Party

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

## 26. PROMOTIONAL MATERIAL

- (i) ANZ will supply the Merchant with Nominated Card signs, decals and other promotional material as agreed in the Letter of Offer or otherwise in writing from time to time.
- (ii) The Merchant must prominently display in the Merchant's Premises each Nominated Card decal and other promotional material supplied by ANZ or ANZ's authorised representative.
- (iii) Where the Merchant is authorised in writing by ANZ to accept Internet orders, the Merchant must display logos, signs or other promotional material supplied by ANZ or ANZ's authorised representative on the Merchant's website wherever payment options are presented to the Cardholder.



- (iv) The Merchant must not use any promotional material in relation to ANZ or any Nominated Card Scheme except as authorised by ANZ. The Merchant must not use the name, logo, any trademarks, brand names, business names or copyright belonging to ANZ or any Nominated Card Scheme without the prior written approval of ANZ.
- (v) The Merchant authorises ANZ to publish the name, address, telephone number, facsimile number and email address of the Merchant and to use any logo applicable to the Merchant in any correspondence, circular or publication of ANZ.
- (vi) The Merchant must only advertise goods and services which can be purchased with a Nominated Card in Australian currency or any other currency authorised in writing by ANZ.
- (vii) The Merchant must not state or represent in any way that ANZ is responsible or liable for the operation, performance or availability of Third Party Apps.

## **27. REPRESENTATIONS AND WARRANTIES**

- (i) When the Merchant supplies Transaction details to ANZ, whether the Transaction is processed electronically or manually, the Merchant represents and warrants to ANZ that:
  - (a) all Transaction details are true and correct;
  - (b) the Merchant has complied with the requirements of the Agreement applicable to processing of Transactions;
  - (c) the Merchant is not aware of any fact which would cause the Transaction to be an Invalid Transaction;
  - (d) the Merchant has complied with all applicable Laws in carrying out its obligations in connection with the Transaction under the Agreement;
  - (e) the information the Merchant has provided ANZ in the Application remains true and correct and not misleading in any material respect; and
  - (f) the Merchant is not in breach of the terms and conditions relating to any Third Party App loaded to the Electronic Terminal.

- (ii) The Merchant represents and warrants to ANZ that the Merchant has power to enter into and perform its obligations under the Agreement and that the Agreement is valid, binding and enforceable against the Merchant.
- (iii) The Merchant represents and warrants to ANZ that the information the Merchant has provided ANZ in the Application is true and correct and not misleading in any material respect.
- (iv) The Merchant acknowledges that the issue of a Nominated Card to a Cardholder is not a representation or warranty by ANZ or the Nominated Card issuer as to the Cardholder's credit worthiness or identity.

## **28. SUSPENSION OF MERCHANT FACILITY OR FREEZING OF MERCHANT ACCOUNT**

- (i) ANZ reserves the right to suspend the Merchant Facilities or freeze the Merchant Account and refuse to allow withdrawals of funds from the Merchant Account, or both suspend the Merchant Facilities and freeze the Merchant Account, immediately on notice to the Merchant if any of the events listed in Condition 29(ii) occurs. When exercising this right ANZ is not required to notify the Merchant of the date on which the suspension or freezing of the Merchant Account, or both, as the case may be, will end.
- (ii) When ANZ suspends the Merchant Facilities or freezes the Merchant Account, or both, as the case may be:
  - (a) the Merchant must not accept any Nominated Cards as payment for goods or services; and
  - (b) ANZ is not obliged to accept any Transactions processed by the Merchant after notification of suspension.
- (iii) ANZ may during the period of suspension or freezing of the Merchant Account, or both, as the case may be, terminate the Merchant Facilities under Condition 29.

## 29. TERMINATION

- (i) Either the Merchant or ANZ may at any time terminate the Agreement by giving the other notice in writing. The notice does not need to include any reason and will take effect:
  - (a) where no Electronic Terminal(s) are supplied by ANZ under the Agreement, on the date of such notice; or
  - (b) where Electronic Terminal(s) are supplied by ANZ under the Agreement, on the date which is the earlier of:
    - (A) the date on which all Electronic Terminal(s) are returned by the Merchant and/or recovered by ANZ; or
    - (B) the date that is 30 days from the date on which the notice was given.
- (ii) ANZ may terminate the Agreement immediately by notice to the Merchant should any of the following occur:
  - (a) an Insolvency Event occurs in relation to the Merchant;
  - (b) the Merchant breaches any of its material obligations under the Agreement;
  - (c) the Merchant does not process any Transactions with ANZ for a continuous period of six months;
  - (d) in ANZ's reasonable opinion, the Merchant is involved in an unacceptably high number of chargebacks, Refund requests or retrieval requests, without justification acceptable to ANZ;
  - (e) it becomes illegal or impossible in practice for ANZ to continue to provide the Merchant Facilities to the Merchant;
  - (f) the Agreement becomes in whole or a material part void, voidable or unenforceable or a claim is made to that effect, in each case because of a change in the Law or a change in the circumstances of the Merchant;
  - (g) the Merchant processes a Transaction that the Merchant knew, or ought to have known, was fraudulent or illegal;

- (h) ANZ reasonably determines that the continued provision of the Merchant Facilities to the Merchant may damage the reputation of ANZ or otherwise reasonably considers that ANZ or the Merchant may suffer loss if it continues to provide the Merchant Facilities to the Merchant;
  - (i) any of the information provided by the Merchant in the Application or otherwise to ANZ is or becomes incorrect, or false or misleading in a material respect;
  - (j) the Merchant's 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 the Merchant; or
  - (k) the Cardholder has not received the goods or services as required by the terms of the Transaction (and, in the case where the Merchant is not the provider of the goods or services and acts as agent for the provider of the goods or services, the goods or services have not been provided by the principal) and the Merchant has failed to provide ANZ with proof of receipt of, and satisfaction with, the goods or services by the Cardholder within 5 Business Days of ANZ's request to do so.
- (iii) Termination of the Agreement or any part of it does not affect any rights or obligations of the Merchant or ANZ that arose prior to termination. In particular, any obligation the Merchant has under the Agreement to indemnify ANZ or to pay ANZ 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) The Merchant Account will be closed by ANZ within 30 days of the date on which the Merchant Agreement was terminated.
- (vi) On giving or receiving a notice to terminate the Agreement, the Merchant must immediately arrange with ANZ for the recovery of all stationery (excluding stationery paid for by the Merchant), promotional material, or equipment (including Electronic Terminals) supplied in connection with the Agreement.

- (vii) If the Agreement is terminated for any reason, ANZ reserves the right to charge the Merchant a closure administration charge, in accordance with the Letter of Offer or other agreement, as the case may be.
- (viii) The Merchant authorises ANZ 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 or Nominated Card Scheme; and
  - (c) give a banker's opinion to other financial institutions with whom the Merchant may make application for other merchant facilities. The Merchant acknowledges that the disclosure of this information may affect the Merchant's ability to successfully apply for merchant facilities in the future.
- (ix) The obligations contained in Conditions 12, 13, 14, 16, 16.1, 17, 18, 22, 23, 28, 29, 30 and 44 survive termination of the Agreement.

## 30. SET OFF

- (i) ANZ may upon notice to the Merchant set off any Liability owed by ANZ to the Merchant on any account against any Liability owed by the Merchant to ANZ under or in connection with this agreement, and including without limitation, ANZ may:
  - (a) combine or consolidate the Retention Account (where such account is opened in the name of the Merchant) with any other account in the name of the Merchant at any branch or office of ANZ (in Australia or elsewhere); or
  - (b) appropriate and apply amounts standing to the credit of the Retention Account in or towards the payment or discharge of any Liability owed by the Merchant to ANZ.

For the purposes of this Condition, "Liability" means any debt or monetary liability or any other claim which is capable of being reduced to or expressed as a monetary liability. Liability includes future or contingent liability (in addition to present and actual liability) where ANZ has reasonable grounds to believe the liability will arise in the future and that if the relevant amounts are not set off, they may not be possible to recover in the future.

- (ii) If ANZ exercises its right of set off, combination or appropriation under Condition 30(i) in respect of any Liability that is contingent, unascertained or unliquidated, ANZ may estimate the amount of that Liability in good faith and exercise its right of set off, combination or appropriation in respect of that estimate. If the actual liability proves to be less than the amount set off, combined or appropriated, ANZ must pay the Merchant the amount of the difference. If the actual liability proves to be more than the amount set off, combined or appropriated, the Merchant must pay to ANZ the amount of the difference. To give effect to this condition, ANZ may at any time convert any amount (for example, amounts standing to the credit of the Retention Account, or any Liability) in one currency into another currency as it thinks appropriate, at a prevailing market rate of exchange that ANZ chooses in accordance with its usual practice at that time.
- (iii) Where the Merchant is a partnership, unincorporated joint venture or sole trader and the Merchant Account is in the name of one or more, but not all partners or joint venturers, or is a joint account in the names of the sole trader and one or more other persons, the Merchant must procure that an "Irrevocable Authority to Debit" in a form approved by ANZ is completed and signed.

## 31. VARIATION

- (i) ANZ may vary a term of the Agreement at any time by giving the Merchant notice in writing no later than the day on which the variation takes effect for the following types of changes:
  - (a) changes required by a change to the Law or the rules of any Nominated Card Scheme;
  - (b) the introduction of, changes to, or the removal of, any Nominated card; and

- (c) any changes which, in ANZ's reasonable opinion, are required to protect the Merchant; Cardholders and/or ANZ from the risk of fraudulent or illegal activity.
- (ii) ANZ may introduce a new fee or charge under this Agreement, or increase an existing fee or charge, at any time by giving the Merchant 30 days' notice in writing of the new or increased fee or charge, unless otherwise agreed with the Merchant.
- (iii) ANZ may vary any other term of the Agreement at any time by giving the Merchant reasonable notice of the change, which may include notice on the day the variation takes effect, if that is reasonable in the circumstances. For example it will be reasonable in the circumstances to give notice on the day of the change if ANZ reasonably considers the change has a neutral effect on your obligations or reduces your obligations (however these examples do not limit the circumstances in which it may otherwise be reasonable). Despite this clause, ANZ will always give you notice in accordance with any applicable laws or industry codes (such as the Code of Banking Practice) which require any minimum notice periods or specific methods of notification.
- (iv) The Merchant acknowledges that where ANZ agrees to an increase in the Merchant's Refund limit, Authorised Floor Limit or tipping limit in respect of the Merchant Facilities, additional or increased incidence of liabilities or losses may arise as a result, including from erroneous or fraudulent Transactions.

## **32. NOTICE**

- (i) The Merchant acknowledges that ANZ may deliver notices to it in any of the ways listed in Condition 32(ii) and consents to notices being delivered in any of these ways. A notice sent to the Merchant's Representative or any other person nominated by the Merchant will be deemed to be a notice sent to the Merchant.
- (ii) A notice must be in writing 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 ANZ, if sent by email, at the time when the email enters the Merchant's information system; or
  - (e) when the party sending the notice is ANZ, if delivered via [www.anz.com](http://www.anz.com) under the 'Small Business' tab and listed in a prominent position in the 'Merchant Services' section of that website, on the third day after the posting of the notice to that website.
- (iii) The address, facsimile number or email address to be used for notices is the last address, facsimile number or email address advised by a party. The Merchant must inform ANZ immediately of any change of the Merchant's address, facsimile number or email address.

### **33. RELATIONSHIP OF THE PARTIES**

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

### **34. ASSIGNMENT**

This Agreement is binding on the parties, their executors, administrators, successors and permitted assigns. The Merchant must not transfer any of the Merchant's rights or obligations under the Agreement unless ANZ consents in writing. ANZ may transfer any of its rights or obligations under the Agreement on giving 14 days prior notice to the Merchant. To remove any doubt ANZ may at any time arrange with a third party to provide any of the services ANZ is obliged to provide to the Merchant under the Agreement.



## 35. SEVERABILITY

If in any jurisdiction, a provision of the Agreement is illegal or unenforceable, the Agreement is to be interpreted for the purposes of that jurisdiction only, as if it had never included the provision so far as the provision is illegal or unenforceable.

## 36. WAIVER

The rights ANZ has under the Agreement cannot be waived except by ANZ giving the Merchant written notice waiving the particular rights. In particular, ANZ does not waive any right that ANZ has in connection with the Agreement merely because ANZ does not exercise it or does not exercise it as soon as ANZ can.

## 37. MERCHANT'S CONTINUOUS OBLIGATIONS

- (i) The Merchant must immediately notify ANZ in writing:
  - (a) if circumstances arise which may have a material adverse effect on the Merchant's business, assets or financial condition or the Merchant's ability to perform the Merchant's obligations under the Agreement. It is advisable that the Merchant informs ANZ promptly when it is in financial difficulty; or
  - (b) if the Merchant sells, leases or transfers its business or any of the Premises; or
  - (c) if a Merchant changes the address where it carries on business or otherwise changes its contact details (eg, telephone number, facsimile number or email address) or starts carrying on business at any other place; or
  - (d) if the Merchant changes the nature, scope or type of its business.
- (ii) The Merchant must provide copies of its latest financial statements and any other financial information (including bank statements) reasonably requested by ANZ within 30 days of a request by ANZ.
- (iii) When requested by ANZ, the Merchant must promptly complete and submit all forms and documents supplied or requested by ANZ within 30 days of a request by ANZ.

## 38. SECURITY

- (i) At any time, ANZ may request that the Merchant provide ANZ with Security of a type, and to secure an amount, specified by ANZ and the Merchant must provide such Security. In specifying the type of Security and amount secured under this clause, ANZ will act in accordance with what is reasonably necessary to protect its legitimate commercial interests.
- (ii) If ANZ specifies a time by which the Security must be provided, the Merchant must provide the Security to ANZ by that time.
- (iii) Without limiting Conditions 13 (Merchant Accounts), 30 (Set Off) or 38(i) above, if ANZ believes there is a likelihood of any of the events in Condition 29(ii) occurring, or such events do occur, ANZ may by notice in writing to the Merchant, in its absolute discretion, retain portions of the Merchant's settlement proceeds in a separate suspense account. Such suspense accounts can be either a Retention Account designated under Condition 13.2 (Retention Account) or a separate suspense account. ANZ may retain the Security until ANZ is satisfied that:
  - (a) the risk of any of the events in Condition 29(ii) occurring, or ceasing to occur, no longer exists; and/or
  - (b) no Transactions will be charged back by Cardholders.

## 39. GOVERNING LAW

This Agreement is governed by the Law in force in the State or Territory where ANZ's office shown in the Letter of Offer is located. ANZ and the Merchant agree to submit to the non exclusive jurisdiction of the courts having jurisdiction under that Law in relation to any proceedings about or in connection with the Agreement.

## 40. APPLICATION OF THE CODE OF BANKING PRACTICE

The Code of Banking Practice applies to the provision of the Merchant Facility if the Merchant is an individual or Small Business.

## 41. DISPUTE RESOLUTION PROCEDURES

- (i) Where the Merchant has a complaint in relation to the provision of the Merchant Facilities, it should speak with the ANZ Merchant Services in the first instance. If the complaint cannot be resolved promptly, a supervisor within ANZ Merchant Services will take responsibility for resolution of the complaint. ANZ's aim is to resolve any complaint within ten Business Days. If this is not possible, ANZ will keep the Merchant informed on the progress of the matter and how long ANZ expects it will take to resolve the complaint.
- (ii) If the Merchant is an individual or a Small Business and is not satisfied with the steps taken by ANZ to resolve the complaint, or with the result of ANZ's investigation, the Merchant may wish to contact an alternative dispute resolution scheme, such as:

Financial Ombudsman Service  
GPO Box 3  
Melbourne Vic 3001  
Tel: 1800 367 287  
Fax: (03) 9613 6399  
Web: [www.fos.org.au](http://www.fos.org.au)

## 42. MEANINGS OF WORDS AND EXPRESSIONS IN THE AGREEMENT:

**"Australian Business Number"** (ABN) has the same meaning as in A New Tax System (Australian Business Number) Act 1999 (Cth).

**"Agreement"** means the agreement constituted by the Merchant's acceptance of ANZ's offer on the terms and conditions set out in the Letter of Offer and comprising the documents referred to in Condition 1, as varied from time to time.

**"ANZ"** means Australia and New Zealand Banking Group Limited ABN 11 005 357 522.

**"ANZ Group"** means ANZ and its related bodies corporate (within the meaning of Section 9 of the Corporations Act 2001 (Cth)).

**“App Catalogue”** means the online repository of apps provided by Third Party Application developers and made available to Merchants by ANZ for use on the Electronic Device

**“Application”** means the application form (or other mode of application permitted by ANZ from time to time) completed, and submitted to ANZ, by the Merchant for the Merchant Facilities and, for the avoidance of doubt, includes all supporting documentation provided to ANZ in connection with the Merchant’s application and the Secure Internet Site Declaration.

**“Authorisation Centre”** means the authorisation centre approved by ANZ for the purposes of the Agreement and the details of which are notified to the Merchant by ANZ.

**“Authorised Floor Limit”** means the total value of sales or payment which the Merchant is authorised to make to a Cardholder in any one Transaction without ANZ’s consent.

**“Business Day”** means a week day on which ANZ is open for general banking business in at least one of its branch locations in Australia.

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

**“Cardholder Data”** means any Cardholder details, including without limitation the Cardholder name, card number, expiration number or validation code.

**“Card Imprinter”** means any card imprinter to be used to process Transactions manually.

**“Chargeback”** means a Transaction that ANZ charges back to the Merchant in accordance with Condition 12.

**“Compliance Requirements”** means all applicable Laws and the requirements of all applicable Nominated Card Schemes and regulatory bodies and includes the Payment Card Industry Data Security Standard and any requirements of the Australian Payments Clearing Association.

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

“**CVV2**” means Card Verification Value, being the 3-digit number positioned on the back of a Nominated Card.

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

“**Electronic Terminal**” means ANZ BladePay, an electronic device with ANZ FastPay Next Generation loaded (including the attached card reader, cables and peripherals), for processing Transactions using Nominated Cards and for initiating the credit or debit of funds to facilitate the settlement of those Transactions.

“**Guarantor**” means a person who has given, gives or is to give a Security and includes the person’s executors, administrators, successors and transferees.

“**Insolvency Event**” means any of the following:

- (a) the Merchant has a receiver, receiver and manager, mortgagee in possession or voluntary administrator appointed to the Merchant or any of the Merchant’s assets;
- (b) the Merchant becomes subject to any other form of external administration;
- (c) a resolution is passed for winding up of the Merchant or an order is made for winding up of the Merchant;
- (d) an application for winding up of the Merchant is presented, which relates to an amount of money owed by the Merchant which is not bona fide in dispute;
- (e) a credit provider, credit reporting agency or other financial institution reports that, in their opinion, the Merchant is insolvent and unable to meet its financial commitments as they fall due;
- (f) if the Merchant is a partnership, the partnership is dissolved or the Merchant resolves to dissolve the partnership; or
- (g) if the Merchant is an individual, the Merchant becomes, or is declared, bankrupt or dies.

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

“**Invalid Transaction**” means a Transaction that is invalid under Condition 11.

**“Key”** means a key which unlocks an Electronic Terminal from a Terminal Stand or Terminal cable.

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

**“Letter of Offer”** means the letter in which ANZ made the offer of Merchant Facilities to the Merchant.

**“Material Adverse Effect”** means a material adverse effect on:

- (a) the Merchant’s ability to comply with its obligations under the Agreement; or
- (b) the Guarantor’s ability to comply with its obligations under the Security; or
- (c) the rights and remedies of ANZ under the Agreement; or
- (d) the business, operation, property, condition (financial or otherwise), cashflows or prospects of the Merchant’s business; or
- (e) the effectiveness or priority of any Security or Security Interest granted under the Agreement; or
- (f) the validity or enforceability of any document that forms part of the Agreement. “Merchant” means the person named as Merchant in the Letter of Offer.

**“Merchant Account”** means the bank account or accounts nominated by the Merchant for the purposes of the Agreement.

**“Merchant Facilities”** means the services and facilities ANZ makes available to the Merchant under the Agreement.

**“Merchant Operating Guide”** means each current merchant operating guide which is provided by ANZ to the Merchant, as varied from time to time.

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

**“Nominated Card”** means each card being a debit card or credit card or both described in the Letter of Offer and/or any other card authorised by ANZ for the purposes of the Agreement and notified to the Merchant 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 the Australian Payments Clearing Association and any other payment industry body notified to the Merchant from time to time.

**“Nominated Provider”** means a third party service provider engaged by ANZ to carry out certain functions or activities connected with the Merchant Facilities or any obligation of ANZ under this Agreement.

**“Permitted Security Interest”** means a Security Interest provided for by one of the following transactions if the transaction does not secure payment or performance of an obligation:

- (a) a transfer of an account or chattel paper in respect of which the Merchant or its Guarantor is the transferor; or
- (b) a commercial consignment in respect of which the Merchant or its Guarantor is the consignee; or
- (c) a PPS lease in respect of which the Merchant or its Guarantor is the lessee.

**“Premises”** means the various locations or location where the Merchant conducts business and is authorised by ANZ to accept Nominated Cards.

**“PPSA”** means the Personal Property Securities Act 2009 (Cth).

**“PPSA terms”** (unless the contrary intention appears in these General Conditions) the following terms used in the context of the PPSA, have the same meaning as in the PPSA: account, amendment demand, chattel paper, commercial consignment, control, financing statement, financing change statement, perfect, personal property, PPS lease, purchase money security interest, serial number, verification statement.

**“Reasonable Identification Details”** means:

- (a) the Cardholder’s name (as it appears on the card);
- (b) the Cardholder’s home address (not a PO Box);
- (c) delivery address (if not same as home address);
- (d) the Cardholder’s signature (unless the order is made by telephone or via the Internet); and
- (e) the Cardholder’s contact telephone number.

**“Receipt”** means a sales voucher or transaction record or Refund voucher or transaction record (as applicable).

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

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

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

**“Retention Account”** means a bank account held with ANZ designated for the purposes of and subject to the conditions set out in Condition 13.2 (Retention Account), opened either (in ANZ’s absolute discretion) in the name of ANZ (whether as nominee for the Merchant or otherwise) or the Merchant.

**“Retention Amount”** means the total amount to be retained in the Retention Account as notified by ANZ in a Retention Notice from time to time.

**“Retention Notice”** means a written notice from ANZ to the Merchant notifying the Merchant that ANZ proposes to establish a Retention Account, or if a Retention Account has already been set in relation to the Merchant, ANZ requires the Retention Amount to be increased.

**“Review Event”** means an event that, at any time after the PPSA starts to apply, ANZ determines has had, or is likely to have, a Material Adverse Affect.

**“Security”** means any guarantee or guarantee and indemnity or bill of sale, mortgage charge or other security interest or any authority to appropriate and set-off deposits ANZ may request the Merchant to provide under Condition 38.

**“Security Interest”** means any:

- (a) security interest under the PPSA including security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust or title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or



- (c) licence to use or occupy; or
- (d) third party right or interest, or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or allow them to exist.

**“Small Business”** means a business having:

- (a) less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods; or
- (b) in any other case, less than 20 full time (or equivalent) people.

**“Taxes”** means all taxes, levies, imposts, duties and charges, including, but not limited to, stamp duty, financial institutions duty, goods and services tax, consumption tax, value added tax or similar tax.

**“Terminal Cables”** means a cable which may connect Electronic Terminals to a permanent fixture and includes the Key.

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

**“Terminal Rental Fee”** means the amount specified in the Letter of Offer as the terminal rental fee, which is payable in consideration for the provision of an Electronic Terminal, manual imprinter or any other equipment by ANZ.

**“Terminal Stands”** means a stand in which certain Electronic Terminals may be stored and locked and includes the Key.

**“Third Party App”** means any app developed by a third party that is downloaded to the Electronic Terminal.

**“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 the Merchant manually or electronically.

**“Transaction Voucher”** includes a sales voucher or transaction record or Refund voucher or transaction record (as applicable) or any transaction record used in processing Transactions manually.

## 43. INTERPRETATION

- (i) If the Merchant consists 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 documents forming the Agreement the following order prevails:
  - (a) Letter of Offer;
  - (b) Special Conditions; and
  - (c) General Conditions. In the event there is an inconsistency between the General Conditions or the Special Conditions and any Terminal Guide, the General Conditions 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 reenacted.
- (vi) A reference to "you" is a reference to the Merchant and in Condition 14.3, if you are a corporation, includes your directors and shareholders.
- (vii) A reference to "mail" includes information sent or received by facsimile or email.
- (viii) The meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.

## 44. ANTI MONEY LAUNDERING AND SANCTIONS

- (i) The Merchant agrees that ANZ may, in its 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 its obligations under this Agreement; without incurring any liability, if ANZ suspects, for any reason, that:

- (d) an action it is required or requested to take under this Agreement;
  - (e) its involvement in any Transaction that is any way connected with this Agreement; or
  - (f) its performance of any service for any person in connection with this Agreement; might in any way cause ANZ:
  - (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. For the purposes of this Condition, the circumstances listed in paragraphs (g) to (k) above are collectively described as "unlawful acts".
- (ii) The Merchant must provide all information to ANZ which ANZ reasonably requires 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 ANZ with respect any Transaction, requested action or obligation applicable to ANZ; and/or
  - (c) to avoid involvement in any unlawful act.
- (iii) The Merchant warrants and undertakes to ANZ that it will not request ANZ to take any action, or to perform any obligation, in connection with this Agreement that might cause ANZ to be involved in any unlawful act on the part of ANZ. Should the Merchant become aware that ANZ might become involved in an unlawful act in connection with this Agreement, the Merchant must immediately tell ANZ of the fact or circumstance that might cause ANZ to be at risk or involvement in an unlawful act. Should the Merchant become aware that ANZ has become involved in an unlawful act, as a result of its performance of any action or obligation in connection with this Agreement, the Merchant must immediately tell ANZ of the facts or circumstances that has caused this to occur.
- (iv) The Merchant agrees that ANZ may disclose any information concerning the Merchant to any Law enforcement agency or court where required to do so under any Law or regulation (including a Law or regulation of a foreign place or jurisdiction).

## **45. TERMINAL STANDS AND CABLES**

This condition applies if the Merchant has Terminal Stands and/or Terminal Cables. ANZ may require a Merchant to acquire Terminal Stands and/or Terminal Cables from ANZ as a condition of supplying or continuing to supply an Electronic Terminal to the Merchant.

- (i) The Merchant must pay a one-off fee for the Terminal Stands and/or Terminal Cables if so requested by ANZ. The Merchant will be given 30 days' written notice of the fee (if any) at the time of making a request for the Terminal Stand and/or Terminal Cable or, where ANZ requires the Merchant to acquire the Terminal Stand and/or Terminal Cable, at the time ANZ informs the Merchant of this requirement.

- (ii) Title to the Terminal Stands and/or Terminal Cables transfers to the Merchant on the date the Merchant pays the one-fee (if any) to ANZ, or if no fee is payable, on the date the Merchant receives the Terminal Stands and/or Terminal Cable from ANZ.
- (iii) To the extent permitted by law, ANZ accepts no liability or responsibility, and provides no warranties, in respect of the use, operation or performance of the Terminal Stands and/or Terminal Cables.
- (iv) ANZ will supply a Key with the Terminal Stand and/or Terminal Cable. The Key will lock and unlock the Electronic Terminal from the Terminal Stand and/or Terminal Cable. The Merchant must keep the Key in a safe place at all times and must not leave the Key in the Terminal Stand and/or Terminal Cable.
- (v) In the event the Terminal Stand and/or Terminal Cable is damaged or inoperable, ANZ agrees to replace the Terminal Stand and/or Terminal Cable once only for no fee.
- (vi) In the event the Merchant loses or misplaces a Key, ANZ agrees to replace the Key once only for no fee.
- (vii) The Terminal Stands and Terminal Cables will be supplied with installation instructions. The Merchant is responsible for installing the Terminal Stands and/or Terminal Cables in the Merchant's premises in accordance with these instructions. ANZ accepts no liability for any loss or damage suffered by the Merchant, or to the Merchant's premises, in connection with the installation or removal of the Terminal Stands and/or Terminal Cables.
- (viii) The Merchant agrees to follow all reasonable security directions of ANZ in connection with the Terminal Stands, Terminal Cables and Electronic Terminals.

## 46. PERSONAL PROPERTY SECURITIES ACT (PPSA)

### 46.1 PPSA FURTHER STEPS

If ANZ determines that any document that forms part of the Agreement is or contains a Security Interest for the purposes of the PPSA, the Merchant agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which ANZ asks and considers necessary for the purposes of:

- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective; or
- (ii) enabling ANZ to apply for any registration, or give any notification, in connection with the Security Interest so that the security interest has the priority required by ANZ; or
- (iii) enabling ANZ to exercise rights in connection with the Security Interest.

### 46.2 PPSA UNDERTAKING

If the Merchant or its Guarantor holds any Security Interests for the purposes of the PPSA and if a failure by the Merchant or its Guarantor to perfect such Security Interests would result in a Material Adverse Effect, the Merchant agrees to implement, maintain and comply in all material respects with, procedures for the perfection of those Security Interests. These procedures must include procedures designed to ensure that the Merchant or its Guarantor takes all steps under the PPSA to continuously perfect any such Security Interest including all steps necessary:

- (i) for the Merchant or its Guarantor to obtain, the highest ranking priority possible in respect of the Security Interest; and
- (ii) to reduce as far as possible the risk of a third party acquiring an interest free of the Security Interest. If ANZ asks, the Merchant agrees to arrange at the Merchant's expense an audit of the PPSA procedures. ANZ may ask the Merchant to do this if it reasonably suspects that the Merchant is not complying with this clause.

### **46.3 COSTS OF FURTHER STEPS AND UNDERTAKING**

Everything the Merchant or its Guarantor is required to do under this clause is at the Merchant's expense. The Merchant agrees to pay or reimburse the reasonable costs of ANZ in connection with anything the Merchant or its Guarantor is required to do under this clause (including any charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.)

### **46.4 NO PPSA NOTICE REQUIRED UNLESS MANDATORY**

ANZ need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

### **46.5 DISCLOSURE OF CONFIDENTIAL INFORMATION UNDER THE PPSA**

The Merchant and its Guarantor agree that despite anything else in the Agreement, neither the Merchant nor ANZ, may disclose any information of the kind referred to in section 275(1) of the PPSA (including any information or documents in connection with any Security) unless section 275(7) of the PPSA otherwise applies. Without the consent of ANZ, the Merchant and its Guarantor also agree:

- (i) not to authorise the disclosure of any information of the kind referred to in section 275(1) of the PPSA in response to a request made under that section;
- (ii) not to request ANZ to give the Merchant or its Guarantor any information of the kind referred to in section 275(1) of the PPSA.

Australia and New Zealand Banking Group Limited (ANZ) ABN 11 005 357 522. AFSL Number 234527. Item No. 94556 12.2017 W587148

