



Credit Cards Merchant Services Agreement

General Terms and Conditions (ENZ Network)

› Contents

Section	Page
1. Definitions	2
2. Term	4
3. Services provided by the bank	4
4. Merchant's obligations	4
5. Fees	5
6. Invalid transactions	6
7. Chargebacks	6
8. Indemnity	6
9. Exclusivity	6
10. Termination	6
11. Termination fee	8
12. Dispute resolution	8
13. Combination and set-off	9
14. Consent	9
15. Miscellaneous	10
16. Governing law	10
Schedule 1: Card Present Transactions	10
Schedule 2: Card Not Present Transactions	11
Schedule 3: Fees	12



Credit Card Merchant Services Agreement

General Terms and Conditions

1. Definitions

1.1 Definitions: In this Agreement, unless the context otherwise requires:

"Application Form" means the merchant services application form executed by the Merchant which sets out, among other things, the types of Transactions that the Merchant is authorised to process and the Services that the Bank will provide the Merchant or any other application executed by the Merchant and the Bank in relation to the provision of Card merchant services.

"Authorisation" means the service provided to the Bank to enable the Merchant to seek approval for a Transaction, including checks on whether the Card account number quoted is a Valid Card, the availability of funds and whether the Card has been reported lost or stolen.

"Business Day" means any day (other than a Saturday and Sunday) on which banks are open for general banking business in Auckland and Wellington.

"Card" means a Visa Card or MasterCard Card.

"Cardholder" means a person to whom a Card has been issued.

"Card Present Transaction" means a Transaction which is effected through an imprinter or an EFTPOS terminal used by the Merchant and the Cardholder in each case to authorise the electronic transfer of funds between the Cardholder's nominated account and the Merchant's account in circumstances where the Cardholder and the Card are present when processing that Transaction.

"Card Not Present Transaction" means a Transaction where the Cardholder and the Card are not present when processing that Transaction and includes:

- (a) a Sales Transaction; and
- (b) an Ecommerce Transaction.

"Connectivity Fee" has the meaning given to that term in paragraph 1.3 of Schedule 3.

"Credit Voucher" means any Transaction receipt evidencing a Merchant's refund or price adjustment to be credited to a Cardholder's account.

"Deposit Account" means the account nominated by the Merchant in the Application Form as the account to which any amounts to be paid to the Merchant pursuant to this Agreement are to be credited, or such other account as notified by the Merchant to the Bank from time to time for this purpose.

"E-Commerce Transaction" means a transaction entered into by a Cardholder with the Merchant via the Internet.

"EFTPOS" means Electronic Funds Transfer at Point of Sale.

"EFTPOS Services Agreement" means the agreement between the Merchant, and ENZ for the supply of EFTPOS services.

"ENZ" means EFTPOS New Zealand Limited.

"Fees Account" means the account nominated by the Merchant in the Application Form as the account from which any merchant fees or any other amounts payable to the Bank pursuant to this Agreement are to be deducted, or such other account as notified by the Merchant to the Bank from time to time for this purpose.

"Fixed Term Agreement" applies to this Agreement if it is specified as applying in the Application Form or if otherwise specified by the Bank in writing to the Merchant.

"Initial Term" means, in respect of a Fixed Term Agreement, the period specified as such in the Application Form or as otherwise specified by the Bank in writing to the Merchant.

"Interchange Fee" has the meaning given to that term in paragraph 1.2 of Schedule 3.

"Interchange Rate" means the current nominated Visa or MasterCard interchange rate (expressed as a percentage or fixed fee per Transaction depending on the Interchange Type) applicable to a Transaction that the Bank pays to the issuing bank of the Card used for that Transaction.

"Interchange Type" means the type of interchange assigned to a Transaction by Visa or MasterCard determined by a number of factors, including the nature of the Transaction, Card type used for the Transaction and the processing environment of the Transaction.

"Internet" means an electronic network that connects computer networks and organisational computer facilities around the world.

"MasterCard" means MasterCard International, Inc and any of its related companies.

"MasterCard Card" means a card issued pursuant to and in accordance with a licence granted by MasterCard and which bears, among other things, the word "MasterCard".

"Merchant" means the person named as such in the Application Form.

"Merchant Operating Guide" means the Bank's "Merchant Operating Guide" issued to merchants, and as re-issued and amended from time to time.

"Merchant's Bank" means the bank at which the Merchant operates the Deposit Account and the Fees Account.

"Merchant Service Fee" has the meaning given to that term in paragraph 1.1 of Schedule 3.

"Open Term Agreement" applies to this Agreement if it is specified as applying in the Application Form or if otherwise specified by the Bank in writing to the Merchant.

"PAN Entry Transaction" means a Sales Transaction processed by the manual key entry of transaction data, being Card account number, expiry date and transaction amount into an EFTPOS terminal.

"Paymark" means Paymark Limited.

"Paymark ENZ Aggregation Agreement" means the agreement between Paymark and ENZ enabling ENZ devices to connect to the Paymark System.

“Paymark Merchant Agreement” means the agreement between the Merchant and Paymark for access to the Paymark system through the ENZ aggregation services.

“Pre-Authorisation Transaction” means, in respect of a Transaction, Authorisation of that Transaction obtained prior to the time or date upon which payment is required to be made by the Cardholder.

“Recurring Transaction” means a Card Not Present Transaction for which a Cardholder grants written permission for the Merchant to periodically charge the Cardholder’s Card for recurring goods or services provided.

“Sales Transaction” means a Transaction transacted by mail order or telephone order.

“Sales Voucher” means any manually imprinted or EFTPOS terminal printed Transaction record.

“Services” means the services provided to the Merchant as specified in the Application Form.

“Subsequent Term” means, in respect of a Fixed Term Agreement, each further period equal to the term of the Initial Term for which this Agreement extends pursuant to clause 2.2, or such other period as otherwise agreed in writing by the parties.

“Tipping Transaction” means a Card Present Transaction effected through an EFTPOS terminal in respect of which the Cardholder authorises a tip for services provided by the Merchant to that Cardholder.

“Transaction” means a transaction where a Card is used to pay the Merchant for goods or services.

“Valid” means in respect of:

- (a) a Card: a Card that is not expired and not listed with a card issuer as being lost or stolen;
- (b) a Sales Voucher or Credit Voucher: a Sales Voucher or Credit Voucher, as the case may be, that has been completed in accordance with this Agreement, does not breach any provision of this Agreement and contains any other information that the Bank, at any time, notifies the Merchant should be recorded on it; and
- (c) a Transaction: a Transaction which has been completed in accordance with this Agreement, does not breach any provision of this Agreement and is not deemed to be an invalid Transaction pursuant to clause 6.

“Visa” means Visa International Service Association and any of its related companies.

“Visa Card” means a card issued pursuant to and in accordance with a licence granted by Visa and which bears, among other things, the word Visa.

1.2 Interpretation: In this Agreement, unless the context requires otherwise:

If more than one person is named as the **Merchant**, each reference to the Merchant is a reference to each Merchant separately and to all Merchants together.

References to an **agreement** or document includes such agreement or document as may be amended, modified or supplemented from time to time.

References to **clauses and Schedules** are to clauses of and Schedules of this Agreement.

Derivatives of any defined word or term have a corresponding meaning.

A **gender** includes each other gender and a reference to

“its” includes a reference to “his” or “her” as the context requires.

The **headings** to clauses and paragraphs shall be ignored in construing this Agreement.

The word **including** and other similar words do not imply any limitation.

A reference to any **legislation** includes a reference to that legislation as from time to time amended, re-enacted or substituted, includes regulations, orders in council and other instruments from time to time issued or made under that legislation and, unless otherwise stated, is a reference to New Zealand legislation.

All **moneys** to be paid to the Merchant in terms of this Agreement shall be paid in New Zealand currency to the Merchant’s Deposit Account at the Merchant’s Bank.

An **obligation not to do anything** includes an obligation not to suffer, permit or cause that thing to be done.

References to **paragraphs** are to paragraphs of the relevant Schedule.

Any **party** to this Agreement includes its successors and permitted transferees and assigns.

References to a **person** includes an individual, body corporate, an association of persons (whether corporate or not), a trust and any other entity (in each case, whether or not having a separate legal personality).

The **plural** includes the **singular** and vice versa.

1.3 Agreement: This Agreement consists of:

- (a) these general terms and conditions;
- (b) the specific terms and conditions contained in any applicable Schedule;
- (c) the Application Form; and
- (d) the Merchant Operating Guide.

If there is any inconsistency between the above documents, the Bank shall determine in its absolute discretion which terms shall prevail.

1.4 Additional Services: If the parties agree in writing that the Merchant may process additional Transactions or the Bank may provide the Merchant additional Services not selected in the Application Form, the terms of the relevant Schedule applicable to those Transactions or Services will be deemed to apply to the Merchant from the date of such written agreement.

1.5 EFTPOS Services Agreement and Paymark Merchant Agreement: This Agreement is supplemental to the EFTPOS Services Agreement and Paymark Merchant Agreement, which together govern the Merchant’s use of EFTPOS. The provision of the Services by the Bank to the Merchant is conditional (for the benefit of the Bank) on the Merchant entering into, and keeping in force, the EFTPOS Services Agreement and Paymark Merchant Agreement.

1.6 Trade Purposes: The parties agree: (a) the goods and services provided under this Agreement are not of a kind ordinarily acquired for personal, domestic or household use or consumption, and are to be supplied and acquired in trade; and (b) to the maximum extent permitted by law to contract out of the provisions of the Consumer Guarantees Act 1993 if, notwithstanding (a) such Act were deemed to apply.

1.7 Joint and several obligations: Where any Merchant consists of more than one person, the obligations of that Merchant under this Agreement shall be both joint and several.

2. Term

2.1 Term: If the Application Form is approved by the Bank, this Agreement shall commence on the date of the Application Form and shall continue:

- (a) if this Agreement is a Fixed Term Agreement, for the Initial Term and each Subsequent Term until terminated in accordance with clause 2.2 or clause 10; or
- (b) if this Agreement is an Open Term Agreement, until terminated in accordance with clause 10.

2.2 Automatic Extension: If this Agreement is a Fixed Term Agreement and unless the Merchant gives the Bank at least 60 days' written notice of termination before the end of the Initial Term or any Subsequent Term, as the case may be, at the end of the Initial Term this Agreement will automatically be extended for further periods equal to the term of the Initial Term until terminated in accordance with clause 10.

3. Services Provided by the Bank

3.1 Services: Subject to the terms of this Agreement, the Bank will provide the Merchant with the Services specified in the Application Form, or as otherwise agreed in writing by the parties from time to time.

3.2 Bank's Obligations: The Bank will:

- (a) accept all Valid Transactions, Sales Vouchers and Credit Vouchers issued by the Merchant relating to this Agreement;
- (b) supply the Merchant with Sales Vouchers and other supplies including Card decals and promotional material upon such terms and conditions as agreed from time to time between the Merchant and the Bank; and
- (c) forward to the Merchant once each calendar month a separate statement showing the aggregate amount of all Transactions processed during the previous month.

3.3 Settlement:

- (a) The Bank shall credit the Merchant's Deposit Account in respect of a Valid Transaction accepted by the Bank, on the Business Day of its deposit with the Bank, with an amount equal to the amount debited to the Cardholder's Card in respect of that Valid Transaction.
- (b) Funds deposited into the Deposit Account in relation to a manually printed Valid Sales Transaction may not be available until three Business Days after the lodgement date. For all other types of Valid Transactions, if the Bank is also the Merchant's Bank funds will be available on the same Business Day if effected prior to the Merchant's EFTPOS settlement cut-off time for that Business Day or the following Business Day if effected after the Merchant's EFTPOS settlement cut-off time. If the Merchant's Bank is not the Bank such funds may not be processed by the Merchant's Bank until the following Business Day and will become available in accordance with the Merchant's Bank's normal policies and procedures.
- (c) The Bank is under no obligation to make any payment to the Merchant or any other person, or to do any other act, in respect of a Transaction which is not Valid.

3.4 The Bank reserves the right to refuse to process Transactions made using equipment that is faulty or likely

to affect the quality or integrity of Transactions, whether or not it is certified by the Bank, ENZ or Paymark.

4. Merchant's Obligations

4.1 General Undertakings: The Merchant undertakes that it will:

- (a) at all times observe the provisions of this Agreement, the Paymark Merchant Agreement and the EFTPOS Services Agreement;
- (b) at all times observe and comply with MasterCard or Visa rules, regulations and programs (including but not limited to MasterCard's Business Risk Assessment and Mitigation (BRAM) program, Visa's Global Brand Protection Program (GBPP), MasterCard's Secure Data Program (SDP) and Merchant Registration Program (MRP), Visa's Account Information Security (AIS) and Visa Third Party Agent rulings), as applicable;
- (c) implement and comply with the Payment Card Industry Security Standards, as applicable;
- (d) not make any warranty or representation whatsoever in relation to any goods or services supplied by it which may bind the Bank, Visa or MasterCard;
- (e) display predominantly in its place or places of business the Card decal insignia supplied;
- (f) not use any advertising or promotional material in relation to any Card except as authorised by the Bank. The Merchant shall use advertising or promotional material only to indicate which Cards are acceptable as payment and shall not infringe upon the Visa or MasterCard Card marks or logos in such a way as to create the impression that the Merchant's goods or services are sponsored or in any way affiliated to Visa or MasterCard;
- (g) not collect or store any Cardholder information or any sensitive account information without the Bank's consent;
- (h) keep all systems and media containing Transaction information (physical or otherwise, including but not limited to Card imprints and Sales Vouchers) in a secure manner in line with industry best practice and as specified in the Payment Card Industry Security Standards and the Visa & MasterCard data security programs, to prevent access by or disclosure to anyone other than as permitted by clause 4.1(i). The Merchant must destroy in a manner that will render the data unreadable all such media that the Merchant no longer deems necessary or appropriate to store;
- (i) not sell, purchase, provide or exchange any Cardholder information obtained by reason of a Transaction to any third party, other than:
 - (i) the Merchant's authorised personnel;
 - (ii) the Bank;
 - (iii) the relevant Card issuer;
 - (iv) the relevant Card scheme (being Visa or MasterCard);
 - (v) any person authorised to receive such information in any applicable Schedule; or
 - (vi) as required by law,and in each case in accordance with all applicable laws;
- (j) permit the Bank, Visa and MasterCard (as applicable)

or any of their respective employees, contractors or agents access to its premises at any time during normal business hours for the purpose of conducting an on-site inspection or investigation to check compliance with this Agreement or for the purposes of compliance with the relevant Card scheme rules and regulations;

- (k) provide the Bank with all information and assistance it reasonably requires to perform its obligations and to deal with any queries in relation to any Transaction or the provision of any Services, including copies of records, logs and purchase requests in accordance with the requirements set out in the Merchant Operating Guide;
- (l) inform the Bank in writing promptly of any change to its Deposit Account or Fees Account and provide a replacement validly executed direct debit authority in relation to any new Fees Account;
- (m) notify the Bank of any proposed change in the nature of the business undertaken by the Merchant by notice in writing at least five days' prior to that proposed change; and
- (n) notify the Bank of any proposed change in ownership of the Merchant by notice in writing at least 14 days' prior to the proposed change being effected.
- (o) with respect to equipment used for transactions:
 - (i) comply with the relevant equipment user guide;
 - (ii) only use equipment certified or approved by the Bank or ENZ;
 - (iii) ensure that equipment is used in accordance with the Merchant's agreement with the Bank and/or the equipment supplier; and
 - (iv) without limiting any other clause of this agreement, allow Bank employees, contractors or agents to enter the Merchant's premises as reasonably required by the Bank to install, maintain and remove equipment the Bank owns or supplies and inspect the condition and operation of equipment owned by others.

4.2 Undertakings relating to Transactions: The Merchant undertakes that it will:

- (a) not accept a Transaction for providing cash to a Cardholder in lieu of, or in addition to, providing goods or services;
- (b) lodge all Credit Vouchers with the Bank within three Business Days after issue of that voucher;
- (c) not apply a surcharge to a Transaction that does not bear a reasonable relationship to the Merchant's cost of accepting the applicable Card. Any surcharge must be clearly disclosed to the Cardholder at the time of purchase as a Merchant surcharge;
- (d) not require, or post signs (whether at its place of business, on its website or elsewhere) indicating that the Merchant requires, a minimum amount below which, or a maximum amount above which, the Merchant shall refuse to accept an otherwise Valid Card;
- (e) establish a fair policy for the exchange or return of merchandise paid for by the use of a Valid Card and give credit upon each return, not in cash but by the issue of a Credit Voucher; and
- (f) comply with all relevant laws and contractual requirements in:

- (i) carrying on its business;
- (ii) entering into transactions; and
- (iii) performing its obligations under this agreement.

4.3 Refunds: If the Merchant is authorised to process refunds of Transactions, the Merchant undertakes to process any refund to the original Card used only and in accordance with directions received from the Bank.

4.4 Pre-authorisation Transactions: If the Merchant is authorised to process Pre-Authorisation Transactions, the Merchant undertakes that, in respect of each Pre-Authorisation Transaction, it will not:

- (a) request an Authorisation for any amount in excess of the total value of the applicable Transaction; or
- (b) seek Authorisation of a Transaction more than 5 days prior to the date on which payment of the Transaction is to be made.

4.5 Liability and authorisation: The Merchant:

- (a) will at all times be liable for the full amount of any chargebacks validly claimed by a Cardholder including the amount of any surcharge;
- (b) will at all times be liable for any loss, cost, expense, damage or liability resulting from any misuse of Cardholder account and Transaction information by the Merchant or any failure to keep Cardholder account and Transaction information secure; and
- (c) is liable for and irrevocably authorises the Bank or the Merchant's Bank, as the case may be, to debit the Fees Account with:
 - (i) any fee, cost, charge, liability or expense or other amount that becomes payable by the Merchant to the Bank pursuant to this Agreement;
 - (ii) the total amount of any Credit Voucher issued by the Merchant;
 - (iii) any overcredits made in respect of Transactions due to errors or omissions;
 - (iv) any credits due to the Bank arising in respect of Transactions that are not Valid;
 - (v) any chargebacks effected by the Bank pursuant to clause 7;
 - (vi) any fees, fines, penalties or other amounts imposed on the Bank by Visa or MasterCard as a result of any act or omission of the Merchant, its employees, officers or agents; and;
 - (vii) any other amount that is owing to the Bank by the Merchant on any account.

4.6 Security: If requested, the Merchant must provide the Bank with security of a type specified by the Bank sufficient to secure the Merchant's present, future and contingent obligations under this Agreement, as assessed by the Bank.

5. Fees

5.1 Payment: The Merchant will pay to the Bank the fees set out in, and in accordance with, Schedule 3.

5.2 Variation of fees: The Bank may vary the fees, or advise the Merchant of any additional fees, applicable to this Agreement at any time by prior notice to the Merchant in accordance with clause 15.2.

6. Invalid Transactions

6.1 A Transaction shall be deemed invalid if:

- (a) the transaction it records is illegal; or
- (b) the applicable Card is not current or has expired at the time of the Transaction; or
- (c) the applicable Card is not a Valid Card; or
- (d) the price charged to the Cardholder for goods or services under the Transaction is in excess of the Merchant's normal price as mentioned in clause 4.2(c); or
- (e) in relation to a Card Not Present Transaction, the Cardholder asserts that the Transaction is not authorised; or
- (f) the Transaction it records or any part of that Transaction is deemed to be a cash advance; or
- (g) the Merchant has failed to observe this Agreement.

7. Chargebacks

7.1 The Merchant acknowledges and agrees that Authorisation of a Transaction is not a guarantee of payment by the Bank. Accordingly the Bank may refuse to accept, or having accepted may charge back to the Merchant, any Transaction if:

- (a) the Transaction is an invalid Transaction;
- (b) the Cardholder disputes his or her liability for any reason;
- (c) the Cardholder asserts a claim or set-off or a counterclaim;
- (d) the Bank disputes liability for any reason;
- (e) the Transaction represents the refinancing or transfer or an existing Cardholder obligation that is deemed not to be collectable or arising from the dishonour of a Cardholder's personal cheque;
- (f) the Merchant is unable to make available to the Bank copies and records of Sales Vouchers or other purchase requests as required by this Agreement; and
- (g) the Merchant has failed to provide the Cardholder with the goods or services covered by the Transaction.

8. Indemnity

8.1 Limited liability: Subject to clause 8.2 and to the extent permitted by law, the Bank has no liability to the Merchant for:

- (a) the failure of the card payment system; or
- (b) the failure by Paymark to comply with its obligations under the Paymark Merchant Agreement; or
- (c) the failure by ENZ to comply with its obligations under the EFTPOS Services Agreement; or
- (d) the failure of any EFTPOS terminal; or
- (e) the failure of any third party e-commerce payment solutions or provider.

8.2 Bank indemnity: The Bank hereby indemnifies the Merchant against all losses, claims expenses or liabilities incurred or suffered by the Merchant as a result of:

- (a) the failure of the card payment system; or

- (b) the unauthorised use of the card payment system; where that failure or unauthorised use of the card payment system is a consequence of the wilful default or gross negligence of the Bank, its employees or agents.

8.3 No consequential loss: To the extent permitted by law the liability of the Bank under clause 8.2 shall not extend to any indirect or consequential loss or damage or any loss of business or profits suffered by the Merchant.

8.4 Merchant indemnity: The Merchant indemnifies the Bank against any loss, cost, expense, damage or liability (whether direct, indirect or consequential) suffered or incurred by the Bank as a result of:

- (a) the failure of the Merchant to comply with any of its obligations under this Agreement; or
- (b) any incorrect or misleading information supplied to the Bank by the Merchant or any information withheld by the Merchant that would have made any information provided to the Bank incorrect or misleading; or
- (c) any other act of, or omission by, the Merchant or any of its employees, officers, or agents whatsoever (including but not limited to, the completion of a Transaction, the processing of refunds, the use of an EFTPOS terminal, the completion of a Sales Voucher or Credit Voucher, the collection and storage of Cardholder account and Transaction information); or
- (d) any action taken by the Bank, Visa or MasterCard as a result of any act of, or omission by, the Merchant or any of its employees, officers or agents, including, but not limited to, any fees, fines, penalties or other amounts imposed by Visa or MasterCard on the Bank as a result of any such act or omission; or
- (e) any dispute between any or all of the Merchant, any Cardholder and the Bank.

9. Exclusivity

9.1 The Merchant agrees that during the Term of this Agreement it shall not receive any merchant services from any other financial institution, other than from American Express Company, Diners Club International Limited, Japan Credit Bureau or JCB International, unless expressly agreed in writing by the Bank.

10. Termination

10.1 Termination by Merchant:

- (a) Fixed Term Agreement: If this Agreement is a Fixed Term Agreement, the Merchant may terminate either:
 - (i) the whole Agreement; or
 - (ii) the application of any Schedule if it no longer wishes to process the particular types of Transactions to which the Schedule applies, by giving the Bank 60 days' prior written notice, provided that if the Merchant terminates the Agreement or any Schedule prior to the end of the Initial Term or the end of any Subsequent Term (as applicable), the Merchant may be required to pay a termination fee in relation to each type of Transaction as set out in clause 11.
- (b) Open Term Agreement: If this Agreement is an Open Term Agreement, the Merchant may terminate either:
 - (i) the whole Agreement; or
 - (ii) the application of any Schedule if it no longer

wishes to process the particular types of Transactions to which the Schedule applies,

by giving the Bank 10 days' prior written notice.

10.2 Deemed termination: The Merchant will, at the Bank's election, be deemed to have terminated the whole Agreement if it:

- (a) commences processing any Transaction with another supplier and ceases processing with the Bank; or
- (b) ceases to process one or more of the Cards chosen on the Application Form, or a type of Transaction specified on the Application Form, unless consented to by the Bank; or
- (c) commences processing a type of Transaction listed on the Application Form without the prior written consent of the Bank; or
- (d) processes such volume of Transactions under this Agreement or takes any other actions which, in the Bank's opinion, indicate that the Merchant intends to terminate this Agreement (in whole or in part) or intends to commence processing with another supplier.

10.3 Termination by Bank:

- (a) Fixed Term Agreement: If this Agreement is a Fixed Term Agreement, the Bank may terminate this Agreement, or any part of it:
 - (i) at the end of the Initial Term or any Subsequent Term, as applicable, by giving the Merchant written notice not later than 30 days' prior to the end of that Initial Term or Subsequent Term; or
 - (ii) immediately upon written notice to the Merchant, if:
 - (A) the Merchant becomes insolvent, is declared bankrupt or has applied for entry to or has been admitted to the no asset procedure under the Insolvency Act 2006; or
 - (B) an order is made by the Court, or the Merchant passes a resolution, for the winding up of the Merchant, or a receiver, administrator or similar officer is appointed in respect of any of the Merchant's assets; or
 - (C) the Merchant breaches this Agreement; or
 - (D) the Merchant has, in the Bank's reasonable opinion, processed an excessive number of chargebacks or fraudulent Transactions; or
 - (E) any information provided by the Merchant to the Bank becomes false, incorrect or misleading; or
 - (F) without the prior written consent of the Bank, there is a change in the nature of the business undertaken by the Merchant; or
 - (G) without the prior written consent of the Bank, there is a change in ownership or control of the Merchant; or
 - (H) the Bank considers that the Merchant or any of its employees may have been or may be likely to use any Services fraudulently or where the security or integrity of any Service or the reputation of the Bank has been, or is likely to be, in

the Bank's opinion, jeopardised by the Merchant or any other person; or

- (I) in the Bank's opinion, the Merchant is unlikely to be able to meet the Merchant's payments or other obligations to the Bank; or
- (J) in the Bank's reasonable opinion, the Merchant is unlikely to be able to meet any applicable Card scheme rules or regulations; or
- (iii) Immediately if the EFTPOS Services Agreement, Paymark Merchant Agreement or the Paymark ENZ Aggregation Agreement is terminated.
- (b) Open Term Agreement: If this Agreement is an Open Term Agreement, the Bank may terminate this Agreement, or any part of it:
 - (i) by giving the Merchant 10 days' written notice; or
 - (ii) immediately upon written notice to the Merchant, if:
 - (A) the Merchant becomes insolvent, is declared bankrupt or has applied for entry to or has been admitted to the no asset procedure under the Insolvency Act 2006; or
 - (B) an order is made by the Court, or the Merchant passes a resolution, for the winding up of the Merchant, or a receiver, administrator or similar officer is appointed in respect of any of the Merchant's assets; or
 - (C) the Merchant breaches this Agreement; or
 - (D) the Merchant has, in the Bank's reasonable opinion, processed an excessive number of chargebacks or fraudulent Transactions; or
 - (E) any information provided by the Merchant to the Bank becomes false, incorrect or misleading; or
 - (F) without the prior written consent of the Bank, there is a change in the nature of the business undertaken by the Merchant; or
 - (G) without the prior written consent of the Bank, there is a change in ownership or control of the Merchant; or
 - (H) the Bank considers that the Merchant or any of its employees may have been or may be likely to use any Services fraudulently or where the security or integrity of any Service or the reputation of the Bank has been, or is likely to be, in the Bank's opinion, jeopardised by the Merchant or any other person; or
 - (I) in the Bank's opinion, the Merchant is unlikely to be able to meet the Merchant's payments or other obligations to the Bank; or
 - (J) in the Bank's reasonable opinion, the Merchant is unlikely to be able to meet any applicable Card scheme rules or regulations; or

- (iii) immediately if the EFTPOS Services Agreement, Paymark Merchant Agreement or the Paymark ENZ Aggregation Agreement is terminated.

10.4 Right to terminate on increase of Merchant Service Fee:

If the Bank increases the Merchant Service Fee applicable to any Transaction type and the Merchant objects to that increase in writing to the Bank within 30 days of receipt of notice of the increase, the Merchant may terminate the whole Agreement by giving the Bank 30 days' prior written notice.

10.5 Without prejudice: Termination of this Agreement shall be without prejudice to the rights of either party against the other in respect of any obligations remaining unfulfilled as at the date of termination.

10.6 Consequences of termination: Upon termination of this Agreement, the Merchant agrees to return to the Bank the imprinter, the imprinter plate, Card decals and promotional material and all other bank related stationary including Sales Vouchers, terminals, and any other property provided to the Merchant by the Bank or its third party suppliers.

10.7 Suspension: Without prejudice to the Bank's rights of termination under clause 10.3, in the event the Bank considers that:

- (a) the Merchant or any of its employees may have been or may be likely to use any Services fraudulently or where the security or integrity of any Service or the reputation of the Bank has been, or is likely to be, in the Bank's opinion, jeopardised by the Merchant or any other person; or
- (b) the Merchant is unlikely to meet the Merchant's payment or other obligations to the Bank; or
- (c) the Merchant is unlikely to be able to meet any applicable Card scheme rules or regulations,

the Bank may either:

- (d) immediately and without notice suspend the availability of the relevant Service or Services to the Merchant; or
- (e) redirect any transaction settlement proceeds received or due to the Merchant into a suspense account, until such time as the Bank has either:
 - (i) resolved that the reason for the suspension in this clause 10.7 has not occurred or is not likely to occur; or
 - (ii) terminated this Agreement in accordance with clause 10.3.

11. Termination Fee

11.1 Termination fee: If this Agreement is a Fixed Term Agreement and:

- (a) the Merchant terminates, or is deemed to have terminated, this Agreement, or any part of it, before the expiry of the Initial Term or any Subsequent Term, as the case may be (other than as a direct result of the Bank having breached its obligations under this Agreement); or
- (b) the Bank terminates this Agreement because the Merchant has breached its obligations under this Agreement; or
- (c) the EFTPOS Services Agreement or Paymark Merchant Agreement are terminated because the Merchant has breached its obligations under such agreement(s) and as a consequence the Bank terminates this Agreement,

then the Merchant will, subject to clause 11.2, on demand immediately pay to the Bank, in addition to any other amounts that are payable by the Merchant under this Agreement, by way of liquidated damages:

- (d) the sum of \$3,000 per Transaction type, if termination occurs prior to the date falling 12 months after the date of this Agreement or, if this Agreement is extended in accordance with clause 2.2, prior to the date falling 12 months after the final day of the Initial Term or the final day of any applicable Subsequent Term; or
- (e) if termination occurs:
 - (i) on or after the date falling 12 months after the date of this Agreement but prior to the final day of the Initial Term; or
 - (ii) if this Agreement is extended in accordance with clause 2.2, on or after the date falling 12 months after:
 - (A) the final day of the Initial Term but prior to the final day of the immediately succeeding Subsequent Term; or
 - (B) the final day of any Subsequent Term but prior to the final day of the immediately succeeding Subsequent Term,

an amount equal to:

- (iii) the average of the 12 most recent Merchant Service Fee payments per Transaction type which were or are payable by the Merchant to the Bank, or if fewer than 12 Merchant Service Fee payments have been or are payable by the Merchant, the average of all such Merchant Service Fee payments made or payable by the Merchant to the Bank,

multiplied by:

- (iv) the number of months remaining per Transaction type before the end of the Initial Term or the Subsequent Term, as the case may be, or if the Initial Term or the Subsequent Term has less than two months remaining, two, being, in each case, the Bank's current reasonable pre-estimate of damages, costs and expenses which arise from the early termination of this Agreement.

11.2 Circumstances where no termination fee: If the Bank is satisfied, in its discretion, that this Agreement or any part of it, is terminated due to:

- (a) the Merchant becoming insolvent, being declared bankrupt or applying for entry to or being admitted to the no asset procedure under the Insolvency Act 2006; or
- (b) the winding up of the Merchant or a receiver, administrator or similar officer being appointed in respect of any of the Merchant's assets; or
- (c) a change in ownership or control of the Merchant where the Bank has consented to such change; or
- (d) the Merchant terminates this Agreement in accordance with clause 10.4,

then the Merchant will not be required to pay any termination fee payable under clause 11.1.

12. Dispute Resolution

12.1 Dispute Resolution: The parties agree to use their best efforts to resolve any dispute, which may arise under this

Agreement through good faith negotiations. No party shall commence litigation in relation to any dispute unless the following mediation process has first been undertaken:

- (a) either party may initiate mediation by giving written notice to the other party;
- (b) if the parties cannot agree a mediator within two working days of the notice, the President for the time being of the LEADR (Lawyers Engaged in Alternative Dispute Resolutions) or its successor will select the mediator;
- (c) the parties shall continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen and pending the final settlement of any matter referred to in mediation.

12.2 Injunctive Relief: Nothing in this clause 12 shall preclude either party from taking immediate steps to seek injunctive relief before a New Zealand Court.

13. Combination and Set-Off

13.1 The Merchant authorises the Bank, at its discretion, to combine the Merchant's account with any or all other accounts whether alone or together held at the Bank and to set off any credits in those accounts against any amount due and payable to the Bank by the Merchant:

- (a) on death or bankruptcy of any Merchant;
- (b) at the discretion of the Bank, if any Merchant is in breach of this Agreement;
- (c) where funds are owing to the Bank by reason of chargeback effected pursuant to clause 7; or
- (d) upon termination of this Agreement.

This clause 13 does not prejudice, and is in addition to, any other right of set-off, combination of accounts, lien or other similar or related right to which the Bank is, or may at any time be, entitled.

14. Consent

14.1 Authorisation: The Merchant authorises:

- (a) the Bank and its agents and other third parties (whether in New Zealand or overseas) that provide services to the Bank (together its "Agents") to supply to other credit providers, credit reference agencies, Paymark, ENZ, Visa, MasterCard and any other parties referred to in the Schedules, any information collected and held by the Bank and its Agents at any time in connection with this Agreement; and
- (b) other credit providers, credit reference agencies, Paymark, ENZ, Visa, MasterCard and any other parties referred to in the Schedules to provide any information about the Merchant to the Bank and its Agents which the Bank may require in connection with this Agreement.

14.2 Credit information authorisation: If the Merchant is an individual then, without limiting clause 14.1, the Merchant authorises:

- (a) the Bank's credit reference agency to:
 - (i) hold the Merchant's personal information on its systems and use the Merchant's personal information to provide its credit reporting services; and
 - (ii) provide the Merchant's personal information to its customers when they use its credit reporting services;

- (b) the Bank to use its credit reference agency in the future for purposes related to the provision of credit to the Merchant;
- (c) the Bank to give its credit reference agency information about any default in the Merchant's payment obligations to the Bank; and
- (d) the Bank's credit reference agency to give information about the Merchant's default in its payment obligations to the Bank to the credit reference agency's other customer.

14.3 Acknowledgement: Pursuant to the Privacy Act 1993, the Merchant understands and acknowledges that if it is an individual:

- (a) this Agreement collects personal information about it;
- (b) the information is being collected to:
 - (i) determine the Merchant's suitability as a Card merchant and providing the Merchant with Services;
 - (ii) provide the Merchant with the use of, and information about, any other Bank products and services and products and services of the Bank's related companies (whether incorporated or constituted in New Zealand or elsewhere);
 - (iii) administering and maintaining any products or services provided to the Merchant by the Bank or by the Bank's related companies (whether incorporated or constituted in New Zealand or elsewhere);
 - (iv) managing the Merchant's relationship with the Bank so, for example, the Bank can respond to the Merchant's queries;
 - (v) monitoring products and services for fraud and crime detection purposes; and
 - (vi) conducting market research, data processing and statistical analysis,
- (c) The Merchant authorises the Bank to obtain information from the Bank's related companies (whether incorporated or constituted in New Zealand or elsewhere) for the above purposes;
- (d) the intended recipients of the information are:
 - (i) the Bank and its related companies (whether incorporated or constituted in New Zealand or elsewhere), agents, Visa, MasterCard, other providers of credit, credit reference agencies, debt collection agencies, ENZ and Paymark;
 - (ii) research firms engaged by the Bank to carry out customer surveys and conduct market research;
 - (iii) other banks (including overseas banks), agents, contractors or other financial service providers assisting with international transactions and same day cleared payments;
 - (iv) the police, certain governmental agencies or other financial institutions where the Bank reasonably believes that disclosure will assist the investigation, detection and/or prevention of fraud or other criminal offences;
 - (v) guarantors and proposed guarantors;
 - (vi) any previous or current employer of the Merchant, if the Bank needs to consider the Merchant's employment history and income; and
 - (vii) any other party authorised by the Merchant,

- (e) certain laws require the Bank to disclose information about the Merchant;
- (f) the information is being collected and held by the Bank's Cards Department, PO Box 35, Shortland Street, Auckland 1140. Any information collected about the Merchant by an agent may also be held by that agent in an overseas jurisdiction. Such agents are subject to the laws of their jurisdiction, which may require the disclosure of the Merchant's personal information from time to time;
- (g) failure to provide this information or unfavourable information ensuing from any credit checks may result in the Bank cancelling this Agreement; and
- (h) the Merchant has rights of access to, and correction of, this information to the extent that it is not evaluative material pursuant to section 29(1)(b) Privacy Act 1993.

14.4 Electronic Communication

- (a) You consent to us giving to you documents, notices and communications in relation to your products and services in electronic form by electronic communication through for example:
 - (i) FastNet Business or FastNet Classic; or
 - (ii) Any other internet banking system provided by us; or
 - (iii) Any application available through your mobile device approved by us for this purpose.
- (b) You agree that any such electronic communication is taken to be dispatched by us and received by you at the time it is uploaded to the relevant system.
- (c) You consent to any such documents, notices and communications being in a commonly used format (for example, PDF) and being accessible by commonly used software (for example, Internet Explorer).

15. Miscellaneous

15.1 Assignment: The Merchant is not entitled to assign or transfer all or any its rights and obligations under this Agreement without the prior written consent of the Bank. The Bank may assign or transfer any of its rights and obligations under this Agreement to any person.

15.2 Variations: The Bank reserves the right to vary the terms of this Agreement from time to time and to provide a minimum of 14 days' notice of the variation to the Merchant in at least one of the following ways:

- (a) by direct communication with the Merchant;
- (b) by advice or display in the Bank's branches;
- (c) by notice in the media (such as public notices); or
- (d) by notice on our website, or by any other electronic banking channel used by the Merchant.

15.3 Partial Invalidity: The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

15.4 Waivers and consents: No waiver by the Bank of its rights under this Agreement will be effective unless it is signed in writing by the Bank. Any consent under this Agreement must also be in writing signed by the Bank. Any such waiver or consent may be given subject to any conditions the Bank deems appropriate and shall be effective only in the instance and for the purpose for which it was given.

15.5 No implied waiver: No failure to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.

15.6 Time: Time is of the essence for the performance by the Merchant of its obligations under this Agreement.

15.7 Survival of Covenants: The Merchant's obligations under clauses 4.1(d), (f), (g), (h), (i), (j), (k), 4.5, 5, 7, 8.4, 11 and 13 and the Bank's rights under clauses 8.1, 8.3, 13 and 14 will survive the termination of this Agreement.

15.8 System security: The Merchant agrees to provide the Bank, or a Card scheme endorsed third party, with access to view, monitor and/or audit the pages of its website for security purposes to ensure compliance with any relevant laws or Bank or Card scheme requirements.

15.9 Compliance certification: From time to time the Bank may require the Merchant to provide satisfactory certification that particular Transactions comply with any relevant law or scheme rules. The Merchant may be required to meet the costs of complying with any Visa or MasterCard programmes applicable to its business that may be introduced from time to time.

16. Governing Law

16.1 This Agreement is governed by and is to be construed in accordance with New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts.

Schedule 1: Card Present Transactions

1. Application

1.1 Application: The terms of this Schedule 1 apply to the Merchant if:

- (a) "EFTPOS", "Paper (manual imprinter)" and/or "Credit Cards" Transactions have been selected as a Transaction on the Application Form and the Bank has approved that Application Form; or
- (b) the parties have otherwise agreed, in accordance with clause 1.4, that the Merchant may process any Card Present Transactions,

to the extent of such Card Present Transactions so selected. The Merchant acknowledges and agrees that the approval by the Bank of one type of Card Present Transaction shall not be, and shall not be deemed to be, approval of other types of Card Present Transactions.

1.2 Supplemental: This Schedule forms part of, and is subject to, the general terms and conditions set out in the Agreement.

2. Definitions

2.1 In this Schedule, unless the context otherwise requires: "Authorised Floor Limit" means, in relation to a Card Present Transaction, the total value of sales the Merchant is authorised from time to time to make to a Cardholder on any one occasion without the Bank's consent.

3. Merchant's Obligations

3.1 In addition to the undertakings set out in the Agreement, the Merchant also undertakes that it will:

- (a) before proceeding with a Card Present Transaction, perform the transaction utilising the highest security method available as advised by ASB;
- (b) obtain prior Authorisation for:
 - (i) any sale in excess of the Authorised Floor Limit in which a Sales Voucher is used, and not split sales or process more than one Transaction where the total sales would be in excess of the Authorised Floor Limit; and
 - (ii) if the Merchant is authorised to process Tipping Transactions, any Tipping Transaction.
- (c) lodge all Sales Vouchers with the Bank within three Business Days after issue of that voucher;
- (d) use reasonable care when accepting Sales Vouchers to detect fraud or forged unauthorised signatures, including checking the signature matches the signature of the Sales Voucher;
- (e) inform the Cardholder of all terms and conditions relative to a particular Transaction and perform all obligations to the Cardholder in connection with the Transaction, prior to the banking of the Sales Voucher with the Bank;
- (f) if in response to an Authorisation request the Merchant is advised to obtain or hold onto a Card or is given other instructions, the Merchant shall use its best efforts by reasonable and peaceful means to comply, without placing its own safety in jeopardy;
- (g) not process any Tipping Transaction unless it has been authorised by the Bank to do so; and
- (h) if the Merchant is authorised to process Tipping Transactions, it will ensure that before accepting any Tipping Transaction:
 - (i) the Cardholder is made aware that a tip has been added and have the opportunity to decline it; and
 - (ii) the tip amount does not exceed 20% of the Transaction amount (exclusive of the tip amount).

4. Disputes

- 4.1** The Merchant acknowledges that any disputes that the Merchant may have with any customer of the Merchant in respect of any Card Present Transaction shall be settled entirely between the Merchant and the customer.

Schedule 2: Card Not Present Transactions

1. Application

- 1.1 Application:** The terms of this Schedule 2 apply to the Merchant if:
- (a) any type of Card Not Present Transaction has been selected as a Transaction on the Application Form and the Bank has approved that Application Form; or
 - (b) the parties have otherwise agreed, in accordance with clause 1.4, that the Merchant may process any, or any additional, Card Not Present Transaction,
- to the extent of the type of Card Not Present Transactions so selected. The Merchant acknowledges and agrees that the approval by the Bank of one type of Card Not Present

Transaction shall not be, and shall not be deemed to be, approval of other types of Card Not Present Transactions.

- 1.2 Supplemental:** This Schedule forms part of, and is subject to, the general terms and conditions set out in the Agreement.

2. Merchant Acknowledgement

- 2.1** The Merchant acknowledges and agrees that:

- (a) by electing to process Card Not Present Transactions it accepts the increased risk of processing transactions where there is no physical Card and the Cardholder's identity or authority may at a later time be questioned;
- (b) it accepts all risks associated with processing a Card Not Present Transaction, including all costs, loss or liability incurred by the Merchant or any other person as a consequence of the processing of that Transaction;
- (c) it accepts all liability for the value of any Card Not Present Transaction where the Cardholder denies any knowledge or involvement with such Transaction; and
- (d) where a Card Not Present Transaction has not been validly authorised by the Cardholder (including where the Cardholder denies any knowledge or involvement with such Transaction) or is in some other way invalid, the value of the Transaction will be charged back to the Merchant's account in accordance with clause 7.

3. Merchant's Additional Obligations

- 3.1 All Card Not Present Transactions:** In addition to the undertakings set out in the Agreement, the Merchant also undertakes, in relation to each Card Not Present Transaction, that it will:

- (a) perform all obligations to Cardholders in relation to a Card Not Present Transaction immediately after any such Transaction has been successfully completed including the dispatch or fulfilment of goods or services agreed to be supplied;
- (b) not present the Card Not Present Transaction for payment until the goods are shipped or the services are performed, unless the Cardholder has agreed to a delayed delivery of goods or performance of services that was properly disclosed to the Cardholder at the time of the Transaction;
- (c) not use any other means to process a Card Not Present Transaction if, in response to an Authorisation request made by the Merchant in relation to that Transaction, that Transaction is declined; and
- (d) seek Authorisation of all Card Not Present Transactions;
- (e) in relation to any Recurring Transaction, immediately update Card account number details when so requested by the relevant Cardholder or the relevant Card issuing bank.

- 3.2 Additional undertaking for Sales Transactions:** If the Merchant is authorised to process Sales Transactions, the Merchant undertakes to display the brand marks for both Visa and MasterCard on all advertising and other promotional material associated with its mail order and

telephone order business. The brand marks are to be located in close proximity to wherever payment options are presented and must comply with clause 4.1(f).

3.3 Additional undertaking for PAN Entry Transaction:

If the Merchant is authorised to process PAN Entry Transactions, the Merchant undertakes that it will not use the PAN Entry Transaction facility to process Transactions in circumstances where the Cardholder and the Card are present but the magnetic stripe or microchip on or in the Card cannot be read by the EFTPOS terminal.

3.4 Additional undertaking for E-Commerce Transactions:

If the Merchant is authorised to process any type of E-Commerce Transactions, it undertakes that it will:

- (a) provide Payment Card Industry compliant, secure payment processing for transmission and processing of Card information; and
- (b) ensure that its website contains all of the following information:
 - (i) a complete and accurate description of all goods and services offered by the Merchant;
 - (ii) the Merchant's return and refund policy;
 - (iii) the currency of the purchase price for all goods and services offered by the Merchant;
 - (iv) to the extent known by the Merchant, whether any export restrictions, or legal restrictions apply to any goods or services offered by the Merchant;
 - (v) the Merchant's delivery and fulfilment policies and terms;
 - (vi) the country in which the Merchant is permanently resident and, if a company, its jurisdiction of incorporation;
 - (vii) the Merchant's privacy policy;
 - (viii) customer service contact details, including email address or telephone number, and a physical address in New Zealand for service;
 - (ix) obtain confirmation from customers that they're of age to purchase goods and services where those goods or services are subject to an age restriction; and
 - (x) a description of the method of security being used to secure Cardholder data.

4. Disputes

- 4.1** The Merchant acknowledges that any disputes that the Merchant may have with any customer of the Merchant in respect of any Card Not Present Transaction shall be settled entirely between the Merchant and the customer.

5. Survival of Covenants

- 5.1** The Merchant's obligations under paragraphs 2 and 4 will survive the termination of this Schedule and the Agreement.

Schedule 3: Fees

1. Transaction Fees

- 1.1 Merchant Services Fee:** Each month during the term of this Agreement a fee (the "Merchant Service Fee") will be calculated. The Merchant Service Fee for each Transaction type will be the greater of:

- (a) an amount equal to the rate for that Transaction type (as specified in the Application Form or as otherwise notified by the Bank to the Merchant) multiplied by the sum of:
 - (i) the total value of all Transactions of that type for that month; less
 - (ii) the aggregate amount of refunds for the particular Transaction type for that month; and
- (b) the minimum monthly Merchant Service Fee for that Transaction type, as specified in the Application Form or as otherwise notified by the Bank to the Merchant.

The total Merchant Service Fee for each month is equal to the sum of each Merchant Service Fee for each Transaction type calculated in accordance with this paragraph. The amount of the Merchant Service Fee to be debited will be specified on the statement of Transactions issued following the close of business each month and mailed to the Merchant.

- 1.2 Interchange Fee:** In addition to the Merchant Service Fee, for those Merchants on an Interchange Plus pricing plan (as specified in the Application Form or as otherwise notified by the Bank to the Merchant) a monthly interchange fee ("Interchange Fee") will be payable.

The Interchange Fee will be the sum of the variable interchange fees for each Transaction Interchange Type calculated as follows:

- (a) if the Interchange Rate for that Transaction Interchange Type is expressed as a percentage, that percentage multiplied by the sum of:
 - (i) the total value of all Transactions of that Interchange Type for that month; less
 - (ii) the aggregate amount of refunds, invalid Transactions or chargebacks for Transactions of that Interchange Type for that month.
- (b) if the Interchange Rate for that Transaction Interchange Type is expressed as a fixed per-transaction fee, that fee multiplied by:
 - (i) the total number of Transactions of that Interchange Type for that month; less
 - (ii) the aggregate number of refunds, invalid Transactions or chargebacks for Transactions of that Interchange Type for that month.

- 1.3 Connectivity Fee for Dial Up Connection:** In addition to the Merchant Service Fee and any Interchange Fee, for those Merchants who connect their terminal via dial up connection, a monthly connectivity fee ("Connectivity Fee") will be payable. The Connectivity Fee will be the amount notified by the Bank to the Merchant from time to time.

1.4 Direct Debit: The Merchant Service Fee, Interchange Fee and Connectivity Fee (if applicable) will be direct debited from the Merchant's Fees Account on the 10th Business Day following the last Business Day of the relevant month.

2. Other ASB Products

2.1 If other optional ASB products & services have been selected as a Service on the Application Form and the Bank has approved that Application Form, the fees for these Services will be set out on the Application Form. The fees will be payable monthly or as otherwise set out on the Application Form.

3. ASB E-Commerce Solutions

3.1 If an ASB E-Commerce solution has been selected as a Service on the Application Form and the Bank has approved that Application Form, the Merchant will pay the following additional fees:

- (a) Establishment Fee: upon execution of the Application Form, an "Establishment Fee" as specified in the Application Form; and
- (b) Urgent Establishment Fee: upon execution of the Application Form, an "Urgent Establishment Fee" as specified in the Application Form, if such fee is specified in the Application Form; and
- (c) Monthly Licence Fee: once a month during the term of this Agreement, a monthly licence fee at the rate specified in the Application Form as the "Monthly Licence Fee". The monthly licence fee will be direct debited to the Merchant's Fees Account at the same time as the Merchant Service Fee.

4. Variation

4.1 The Bank may:

- (a) vary the Merchant Service Fee, the minimum monthly Merchant Service Fee, and/or the Monthly Licence Fee (as applicable); or
- (b) advise the Merchant of any additional fees payable by the Merchant in respect of this Agreement,

at any time by prior written notice to the Merchant of the variation or additional fees in accordance with clause 15.2.

5. Construction

5.1 For the purposes of this Schedule, in relation to any Transaction type or Service agreed to be provided after the date of this Agreement, a reference to the Application Form shall be deemed to be a reference to any agreement entered into between the parties in accordance with clause 1.4 in relation to that additional Transaction or Service.

Keep in touch

- › Drop in to any ASB branch
- › Call 0800 803 804
- › Visit asb.co.nz
- › Visit us at facebook.com/asbbank
- › Follow us on twitter.com/asbbank