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# Merchant Agreement

General terms and conditions

Feb 2025



# Disclosure of Important terms of the Merchant Agreement

Some of important terms contained in the NAB Merchant Agreement Terms and Conditions (**T&Cs**) that may affect you are briefly outlined below. Please note, the outline is a high-level summary and is not intended to be relied upon as a complete or accurate list of the all the terms that may affect you. Where any explanation of a provision includes examples of what is covered by a provision, that list may not be exhaustive. NAB recommends that you carefully review the NAB Merchant Agreement Terms and Conditions and the Quick Reference Guide available on [nab.com.au](http://nab.com.au) before accepting the offer of this product.

	Item	Item	Relevant clause
1.	Compliance with Data Security Standards	You must protect customer card data. If you accept transactions on-line you must also comply with the Payment Card Industry Data Security Standards. If you don't, your agreement may be suspended or terminated and you could be liable for fines imposed by the Card Schemes. You must also report data breaches to NAB within 24 hours. Clause 19 also deals with security of stored card data. If you use Batch Payments you have	Clause 3.6
2.	Provider of merchant services	NAB uses some third parties to provides parts of the merchant services. Clause 2 allows us to use any reputable provider for those services. We may also move you to new terms and conditions if that is necessary to move to a new provider and will provide reasonable notice of this. See clauses 17.2 and 27.2.	Clause 2 Clause 17.2
3.	Surcharging	If you opt to surcharge you must comply with the rules relating to not exceeding the cost of card acceptance and advising your customer the amount or rate of the surcharge prior to the customer presenting the card.	Clause 3.8
4.	Interactive Gambling	If you are a regulated interactive gambling service provider acceptance of transactions funded from a credit card in payment for gambling services are against the law.	3.9
5.	Website requirements	Your website must contain specified information including your privacy policy, data security measures and returns and refund policy.	4.5
6.	adopting multi factor authentication	If you accept card payments on-line and are notified of a chargeback on the grounds that the cardholder did not make the transaction, you are in the best position to resolve it in your favour if that transaction has been authenticated a using multi-factor authentication service that is approved by the card schemes. If you are experiencing chargebacks at a level unacceptable to NAB from a risk viewpoint, we may require you to introduce authentication or other card verification procedures to address chargeback risk at your cost. Failure to do so may result in termination of your Merchant Agreement. We may also terminate or suspend your participation in authentication on reasonable notice unless we need to provide less to manage a risk.	Clause 5.5
7.	MCR does not guarantee savings	Where you elect to activate Merchant Choice Routing (MCR) and or set thresholds on transactions to which it applies you are not guaranteed of savings. It is your responsibility and not NAB's to monitor your transactions to ensure MCR is in your interests.	Clause 8
8.	Invalid Transactions	Certain transactions are invalid according to scheme rules and we reserve the right to refuse to accept, delay, block or chargeback these transactions. These include transactions which are not authorised by the cardholder, no goods or services being supplied in connection with the transaction or transactions accepted for goods and service you did not supply.	Clause 10
9.	Foreign Currency Transactions	If your merchant services include acceptance of major currency transactions and you wish to accept a transaction for which you don't hold a relevant foreign currency account, we will insist that you open such an account before we settle that transaction to you. We may suspend or terminate the Foreign Currency service at any time on reasonable notice or shorter notice where required by law or a change in international financial conditions	Clause 11
10.	Taking Security	We may review your merchant facility having regard to risk factors listed in clause 12.1. We may also require financial and accounting data which you must provide within 30 days. Based on this review NAB may require security or further security from you in the form of a secured guarantee and indemnity or fixed non-withdrawable balance security on your nominated account. We may also subject your merchant facility to certain controls or limitations.	Clause 12

	Item	Item	Relevant clause
11.	Equipment	You are liable for the security and maintenance of any equipment we provide and may need to meet the cost of a replacement if it is lost or stolen. You are also liable for loss incurred if the equipment is used fraudulently, including through the use of fraudulent cards on that equipment.	Clause 16
12.	Indemnity	Except to the extent that we contribute to the loss you are liable for any loss we incur because you have breached the Merchant Agreement, engaged in conduct such as negligence or fraud, incurred excessive chargebacks or delayed in installing fraud management measures in accordance with clause 5.5.	Clause 24
13.	Set-off	Where you have liability under the indemnity in clause 24 or another provision, we can set that off against liability we have to you.	Clause 24
14.	Limitation of Liability	Where lawful, NAB limits its liability to you for losses caused by outages or partial outages of the merchant services (not including those which are due to its negligence, fraud or misconduct) to the cost of resupply of those services.	Clause 25
15.	Privacy	You must collect and use any personal information of your customers and your employees you collect using the merchant services, in accordance with Privacy Law. We may collect your personal and other information, including but not limited to, information about your merchant history including terminations with card schemes and other agencies. If we terminate your merchant services in certain circumstances, we may share similar information with the card schemes and other agencies. We also share your information with our related entities, suppliers and service providers including data analytics providers. If we believe reasonably that you are engaged in or are a victim of dishonest or criminal activity, we may share your information with law enforcement agencies.	Clause 26
16.	Changing the T&Cs	NAB has powers to amend the Merchant Agreement and your letter of offer in aspects such as pricing, available services and to implement card schemes rules. Where that change may impact you adversely, we will give you 30 days' notice. Where that is not the case, or we need to act quickly to address a risk it can be shorter or immediate.	Clause 27
17.	Termination	You or NAB can terminate the Merchant Agreement without notice on 60 days' notice without reason. NAB can also terminate for breach without notice if a breach cannot be remedied. If the breach can be remedied, we will provide you with 7 days' notice to do so and longer if your Merchant Agreement is a small business contract under the Australian Consumer Law. NAB may terminate with no or short notice where it is necessary to manage a risk specified in clause 29.4 eg unacceptable level of chargebacks. After termination you are required to maintain your settlement account for a period of 180 days to fund further debits including chargebacks.	Clause 29
18.	NAB Portals	If you are using a NAB Portal (as defined in the merchant agreement) you are responsible for the secure use of that portal by you and your users. You must ensure that all users keep credentials safe and you must not disclose or share passwords. You are liable for the access and use of any portal as if that access or use was made by you. You may be locked out if successive unsuccessful attempts at entering credentials are made.	Clauses 19 and 22.3
19.	Token Management	If you are accepting transactions on-line via a NAB Gateway, you may store cardholder data identifiable via a Token ID. If so, you indemnify NAB against loss incurred because you have not accurately entered data in creating the Token ID or have made an error selecting a Token ID after tokenisation.	Clause 20
20.	Bank Deposit	If your letter of offer specifies that you are required to establish a Bank Deposit under clause 43 you must maintain that limit in your Bank Deposit account. If the balance falls below that limit, transfers must be effected to reinstate the limit.	Clause 43

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## 1. Definitions

1.1 Unless the contrary intention appears, the following words have these meanings in this agreement:

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (and any equivalent State or Territory legislation) and any regulations made under it, and includes any consolidation, amendment, re-enactment or replacement of the legislation.

**authentication** means any one of a number of processes whereby, in the context of an electronic commerce transaction, the identity of a cardholder is authenticated through the “3D Secure” platform or by other means reasonably acceptable to us having regard to the requirements of, or guidance provided by industry bodies and the card schemes. ‘Authenticate’, ‘authenticated’ and ‘authenticating’ have similar meanings.

**authorisation** means, in respect of a transaction, our confirmation that at the time at which authorisation is given the card number exists and is valid, the card has not been reported lost or stolen at the time of the sales transaction and that there are sufficient funds available in the account being accessed to cover that transaction.

**banking day** means a day on which we are open for general banking business in Melbourne Australia except for Saturdays, Sundays and National Public Holidays.

**card not present transaction** means a transaction where any of the card, cardholder, or you are not physically present together at the time of the transaction and includes a transaction on a customer reference number, digital wallet or other tokenized payment.

**card schemes** means:

(a) Visa, MasterCard, eftpos and UnionPay.

**card scheme rules** means the rules and regulations which regulate participants in the card schemes.

**cardholder** means:

(a) for the purposes of clauses 5.4 and 5.5 and any other clauses relating to the authentication procedures, the person in whose name the credit or scheme debit card (as defined for the same purposes), has been issued;

(b) for the remainder of this agreement, the person in whose name the nominated card has been issued.

**certified** means that we have notified you in writing that you have the systems capability to participate in the authentication procedures.

**chargeback** means a debit to your account to reverse a credit made to your account in the circumstances described in clause 10.

**chip card** means a plastic card or phone, wearable or other device containing a computer chip that adheres to the industry standards for chip-enabled cards established by Europay, Mastercard and Visa, and such replacement or additional standards as advised to you.

**confidential information** means information and material we communicate to you in any form that we tell you is confidential or which we communicate to you in circumstances of confidence, in connection with this agreement. Confidential information includes any information relating to our business systems, customers, properties, assets or affairs or those of our related bodies corporate. It also includes all copies, notes and records and all related information based on, or arising out of, any disclosure by us of such information and material. Confidential information does not include information or material that is in the public domain (other than as a result of a breach of this agreement).

**consequential loss** means a loss that arises in circumstances where one party has breached a duty to the other, and which is indirect (for example, a loss of profits or earnings), but does not include loss that could not reasonably be considered as arising from the breach or which arises because of a failure by a party to mitigate the effect of that breach.

**contactless card** means a plastic card or other device containing a form factor capable of using radio frequency identification and near field communication in contactless transactions.

**contactless transaction** means a transaction using a contactless card and a contactless reader or other compatible device approved by us and which is accepted by us.

**credentials** means the user ID, password and personal identification number or other process of identification issued to or used by you and your authorized users to log into NAB Hive, NAB Gateway or to use other merchant services and includes those details as specified in the NAB Transact agreement and the NAB Gateway Service agreement as required.

**credit card** means a credit card that has been designated by the issuer as a credit card including a card loaded into a digital wallet; and which the card schemes recognise as being a credit card.

**data security standards** means the Payment Card Industry Data Security Standards (“PCIDSS”) mandated by the card schemes for the protection of the cardholder details and transaction information, and any additional or replacement standards of which we advise you from time to time.

**data breach** means any occurrence which results in the unauthorised access to, unauthorized disclosure of, or loss of confidential data or personal information relating to card transactions or cardholders stored by your business or any service provider or payment bureau providing storage or transmission services of or for that data.

**digital wallet** means software that enables a cardholder to digitally store their card details on a device owned by the cardholder to make transactions.

**e-commerce transaction** means a transaction between you and a cardholder initiated over the Internet and other networks using equipment.

**eftpos** means eftpos Australian Payments Plus which conducts the eftpos payments scheme.

**equipment** means an electronic terminal, computer, television, or telephone and includes:

- (a) Electronic Funds Transfer at Point of Sale terminals (EFTPOS terminals); and
- (b) any other authorised electronic terminal or device connected to our electronic banking system from time to time; and
- (c) any device onto which the NAB Easy Tap app has been downloaded pursuant to an agreement with us for that purpose; and
- (d) includes any software that we provide to be used in conjunction with the equipment

**fallback** means a process in which details of a transaction are read and stored by equipment but are authorised later than would normally be the case due to the equipment being unable to properly communicate with us for any reason.

**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Industry body** means an industry association representing the interests of industry collectively, of which NAB as an organization is a member, including the Australian Payments Network.

**intellectual property rights** means all rights, titles and interests, wherever subsisting throughout the world, and whether registered or not, in and to:

- (a) copyright, author’s rights, neighbouring rights, sui generis protection for the contents of databases, the protection of circuit layouts and rights of topography, designs; and
- (b) inventions, patents, utility models; and
- (c) trade secrets, know how, confidential information; and
- (d) trademarks, business names, trading styles and get up; and
- (e) any right contemplated by a treaty, convention or instrument administered by or under the auspices of the World Intellectual Property Organisation and includes the right to apply for the registration, grant or other insurance of such rights, titles, and interests.

**letter of offer** means the conditional letter of offer we give you in connection with the merchant services, the subject of this agreement and any variation of it.

**major currencies** means those designated as such in your letter of offer or as otherwise agreed between us.

**MCR or merchant choice routing** means the routing of debit transactions made on multi-network debit cards through the eftpos network rather than the other card scheme networks with the aim of potentially reducing the cost of the transaction.

**merchant portals** means either or both of the NAB Hive or the NAB Gateway portals or any other portal made available to you in connection with the merchant services as the context requires.

**merchant services** means the services referred to in clause 2.

**merchant portal user** means any one authorized to use a merchant service portal appointed in accordance with this agreement or a relevant user guide.

**minor currencies** means those designated as such in your letter of offer or as otherwise agreed between us.

**MOTO transaction** means a credit card or scheme debit card transaction involving an order for goods or services received by you by mail, telephone or email.

**NAB Gateway** means the merchant portal and service provided in the terms of this agreement that allows you to accept and manage e-commerce payments and provides customer management, reporting and checkout services as added to, updated or varied from time to time.

**NAB Gateway service** means our payments channel and reporting product known by that name as described in the agreement “NAB Gateway Terms and Conditions”.

**NAB Hive** means the merchant portal and service that allows you to view your transactions, manage data and submit requests to us online as added to updated or varied from time to time.

**NAB Transact service** means our payments channel and reporting product known by that name as described in the agreement “NAB Transact Terms and Conditions”.

**nominated account** means the account referred to in clause 11.1.

**nominated card** means a type of credit card or debit card including those cards when loaded into a digital wallet, which are identified as “nominated cards” in the letter of offer.

**non-standard card** means a type of card (if any) that is accepted by your equipment but is not a nominated card.

**notice** means any notice, request, consent or any other communication in connection with this agreement.

**password** unless the context indicates otherwise means the password which we issue you with so that you can participate in the authentication procedures and includes any later password which is substituted for the original one issued by us.

**payment bureau** means a third party used by you to transmit information between NAB and you on your behalf and includes any payment gateway used by you.

**person** includes an individual, firm, body corporate, unincorporated body or association, partnership, joint venture and any government agency or authority.

**personal information** has the meaning given to that term in the privacy law.

**personnel** means your employees, agents, advisers, auditors, consultants or contractors.

**PIN** means the personal identification number allocated by us or personally selected by the account holder.

**point of sale transaction** is a transaction where the card, cardholder, and you, are all physically present at the time of the transaction.

**portal authentication service** means a device and/or mechanism issued by NAB designed for secure use of any identification service made available by NAB to allow access to the merchant portals

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it and the following words have the respective meanings given to them in the PPSA: financing statement, financing change statement and security interest.

**pre-authorisation** means that a transaction that is to be processed at a later time has been authorised up to the value of the proposed transaction.

**pre-authorisation receipt** means a document used to evidence pre-authorisation.

**privacy law** means all legislation and principles and industry codes or policies, relating to the collection, use, disclosure, storage and granting of access rights to personal information.

**Protect your business from Card Fraud and Payment Scams Website** means the information and material available on our web- site relating to fraud prevention that we will provide you with following your acceptance of the letter of offer and as updated by us from time to time.

**recurring transactions** means multiple transactions at predetermined intervals, not exceeding one year, pursuant to an agreement between with a cardholder to purchase goods or services over a period of time.

**related body corporate** has the meaning given to it in the *Corporations Act 2001* (Cth).

**relevant law** means any:

- (a) statute, ordinance, code or other law including regulations and other instruments under them; and
- (b) any code of practice, guidelines or standards issued by relevant regulators or industry bodies including the Australian Payments Network, whether or not having the force of law; and
- (c) any card scheme rules applicable to the confidential information, the provision of the merchant services and any other obligations to be performed under this agreement.



**SCA** means strong customer authentication and refers to a number of technology platforms which enable verification of a cardholder's identity through the use of at least 2 of 3 independent factors based on the something the cardholder knows (like a password), possesses (such as a mobile phone) or is, (including biometric data) and includes any technology which replaces or is replacing an existing technology.

**scheme debit card** means a debit card that has been designated by the issuer as a scheme debit card including a scheme debit card loaded into a digital wallet and which the card schemes recognise as being a scheme debit card.

**small business contract** has the meaning of that term when used in the Australian Consumer Law (ACL) from time to time or if applicable the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) from time to time. With effect from 9 November 2023, small business contracts under the ACL include contracts which are entered into or renewed after that date where either (or both) of the following apply:

- (a) the business makes the contract in the course of carrying on a business and the business employs fewer than 100 persons; or
- (b) the turnover of the business for the last income year (within the meaning of the *Income Tax Assessment Act 1997* (Cth)) was less than \$10,000,000. The calculation of the turnover will be worked out using the rules in the ASIC Act.

This agreement may be a Small Business Contract where it meets these requirements. For the removal of doubt, this agreement may be a Small Business Contract even if you are not a 'small business' within the meaning of that term in the Banking Code of Practice.

**supplementary conditions** means any supplement to this agreement containing provisions relating to specialised merchant services or services enhancing the merchant services to which we have referred you prior to you entering into this agreement, or notified by us to you from time to time.

**this agreement** means all the documents referred to in clause 3.1.

**token ID** means a unique identifier selected by you that will enable you to identify your customer in NAB Gateway reporting.

**trade practices legislation** means the *Competition and Consumer Act 2010* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth) and equivalent State legislation.

**transaction** includes a sales transaction, refund transaction and cash transaction.

**transaction receipt** means a document including an electronic document used to evidence a transaction.

**UnionPay** means the card scheme known as UnionPay International.

**UnionPay card** means a debit card or credit card that is branded as a UnionPay card.

**UnionPay terminal** means an EFTPOS terminal that we have told you can be used to process UnionPay card transactions.

**user guide** means any guide (excluding the Quick Reference Guide), manual or instructions provided updated or replaced by us to you to enable you to use the merchant services which we have made available to you from time to time, including via nab.com.au or your merchant portal.

**we, our** and **us** refers to the National Australia Bank Limited.

**you** and **your** means the person or persons named as the addressee in the letter of offer. If there is more than one addressee, you refers to each addressee individually as well as collectively.

**your electronic equipment** means the electronic equipment controlled, provided, or approved by you to facilitate e-commerce transactions and includes the application programming interfaces and other software applications installed by and used by you in connection with that equipment.

1.2 In this agreement, unless the contrary intention appears:

- (a) a reference to:
  - (i) this agreement, another instrument or any schedule, supplementary conditions or annexure includes any variation or replacement of any of them; and
  - (ii) a statute, ordinance, code or other law includes regulations and other instruments made under it and any consolidations, amendments, re-enactments or replacements of any of them; and
  - (iii) the singular includes the plural and vice versa; and
  - (iv) one gender includes the others; and
  - (v) a person includes a reference to the person's executors, administrators, successors and permitted assigns and substitutes (including persons taking by novation); and
  - (vi) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later; and

- (vii) any thing (including any amount) is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
  - (viii) a dollar or the symbol “\$” is a reference to Australian dollars; and
  - (b) an agreement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally; and
  - (c) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
  - (d) the words “including”, “for example” or “such as” are not to be used as, nor interpreted as, words of limitation.
- 1.3 Headings are inserted for convenience only and do not affect the interpretation of this agreement.

## **2. Merchant services**

Subject to relevant law and this agreement, we will provide you with the merchant services as varied by us from time to time, described in the letter of offer, this agreement, applicable supplementary conditions, user guides and in any other agreement for specific merchant services that we enter into with you from time to time. The merchant services include NAB Hive and NAB Gateway. You agree that we may use any reputable provider or providers to provide you with the merchant services.

## **3. Your obligations**

### **General obligations**

- 3.1 You must comply with, and pay any fees that apply to you in relation to:
- (a) these general terms and conditions; and
  - (b) the letter of offer signed or accepted by you; and
  - (c) the user guides and any merchant services guide, manual or instructions provided by us to you, and which are relevant to the merchant services you are using pursuant to this agreement including those if any published on NAB Hive or NAB Gateway whether specifically mentioned in this agreement or not; and
  - (d) the information and guidance contained on the Protect your Business from Card Fraud and Payment Scams website; and
  - (e) the terms and conditions relating to any specific merchant services whether contained in this or another agreement, including those in applicable supplementary conditions; and
  - (f) if you are a NAB Transact service or NAB Gateway service merchant:
    - (i) the relevant user guide; and
    - (ii) the NAB Transact Terms and Conditions and NAB Gateway Terms and Conditions, (as applicable).
- 3.2 To the extent of any inconsistency between the documents or provisions referred to in clause 3.1, the following rules shall apply:
- (a) the letter of offer prevails over all other documents; and
  - (b) the terms and conditions for specific merchant services including those contained in applicable supplementary conditions prevail over these general terms and conditions; and
  - (c) unless specified otherwise, these general terms and conditions prevail over the remaining documents.
- 3.3 This agreement must be read subject to the eftpos scheme rules.
- 3.4 You must:
- (a) promptly notify us of any change to your financial position which may affect your ability to perform your obligations under this agreement; and
  - (b) promptly notify us of any change in your place of business or your directors if any and
  - (c) not change your business name without giving us prior notice and not substantially change the type of goods and services you sell without our prior written consent; and

- (d) inform us of and seek our consent prior to any change in control of your business. For the purposes of this clause “control” has the meaning given to that term in the *Corporations Act 2001* (Cth); and
- (e) allow our employees, contractors, or agents or those of any card scheme, reasonable access to your premises during normal business hours to check your compliance with this agreement or for the purposes of the relevant card scheme rules; and
- (f) provide us with all information and assistance we reasonably require to perform our obligations and to deal with any queries in relation to our provision of the merchant services; and you acknowledge that if we are not satisfied with your responses or if you fail to respond in a timely manner, then we may take this into account when deciding whether to exercise the suspension or termination rights under clause 28.4; and
- (g) observe and implement the fraud prevention procedures set out in the “NAB Protect your Business from Card Fraud and Payment Scams website” and any other fraud prevention material we provide you including the fraud prevention pack, fraud prevention video and fraud prevention fliers. You must also observe and implement any fraud prevention techniques demonstrated to you by us in any training sessions.

### **UnionPay card terms and conditions**

- 3.5 Consistent with clause 3.2, this clause prevails over any other inconsistent provisions of this agreement. You agree that:
- (a) You will follow the prompts on your terminal for any UnionPay card transaction; and
  - (b) UnionPay card transactions have a floor limit of zero and can only be processed and authorised electronically not manually or in fallback mode; and
  - (c) a UnionPay card can only be processed on a UnionPay terminal by swiping the card through that terminal in the presence of the UnionPay cardholder; and
  - (d) pre-authorisations on a UnionPay cards must be evidenced by the UnionPay card holder signing a pre- authorisation receipt or a transaction receipt as applicable; and.
  - (e) a UnionPay card transaction can only be refunded if:
    - (i) the transaction is refunded to the UnionPay card used in the original sales transaction and in the presence of the UnionPay cardholder; and
    - (ii) the UnionPay card holder used their PIN and signed the transaction receipt in both the original UnionPay card transaction and the refund transaction; and
    - (iii) details of the original sales transaction match the details of the refund transaction; and
    - (iv) any other requirements set out in the UnionPay User Guide have been followed; and
  - (f) a UnionPay card transaction must not be processed to give the UnionPay cardholder cash; and
  - (g) if the transaction involves the delivery of goods or services you must retain evidence of that delivery by, amongst other things, retaining a copy of the delivery invoice noting expected delivery date on the original copy; and
  - (h) a UnionPay card holder must enter their PIN in connection with a debit transaction but subject to clause 3.5(e)(ii) asking for a PIN is otherwise optional.

### **Data security standards**

- 3.6 You acknowledge and agree:
- (a) you must protect stored cardholder data, regardless of the method used to store such data. Data storage also includes physical storage and security of cardholder data. Some examples of other data storage which must be secured include an access or excel database and hard copy files. Storage should be kept to the minimum required for business, legal, and/or regulatory purposes; and
  - (b) you must not store the personal identification number (PIN), sensitive authentication or card verification data after authorization (even if encrypted); and
  - (c) if you use a service provider who stores or transmits cardholder data, you are responsible for ensuring the security of that data; and
  - (d) if we tell you that you must comply with the Payment Card Industry Data Security Standards, you must, at your cost, successfully complete the protocols for PCIDSS as amended from time to time within the time frame stipulated by us or the card schemes. You acknowledge and agree that if you fail to do so:
    - (i) we may suspend or terminate the merchant services (see clause 28.4); and
    - (ii) you are liable for any fine imposed upon us under relevant law as a result of your failure to comply, except to the extent the fine is the result of NAB’s fraud, negligence or misconduct; and
    - (iii) you are liable for any penalties which the card schemes levy if you suffer a card data compromise incident, and have not complied with the PCIDSS Accreditation program; and

- (e) you agree to comply with any data security guides, manuals or materials made available to you for the purposes of this agreement via our website, this includes the PCIDSS materials currently available at <https://www.nab.com.au/content/dam/nabrwd/documents/guides/payment-and-merchants/payment-card-industry-data-security-standards.pdf>, and any data security material published via NAB Hive as amended from time to time; and
- (f) you agree that any software or hardware you purchase, create, or otherwise utilise for the purpose of selling goods or services online does not retain its original password before installing a system on your network which is used for the acceptance of card payments or other security parameters. You agree that all passwords are changed on a regular basis; and
- (g) you grant enduring rights to NAB to contact any service providers that enable you to acquire credit card transactions. This clause is limited to the purpose of determining the extent of a data breach, assessing remedies for that data breach and assessing the level of compliance with PCIDSS; and
- (h) NAB is obliged to report all data breach events to card schemes or any person involved in any card scheme, law enforcement agencies and or regulatory agency whether we have been requested by that agency to provide that information or not. You grant irrevocable and enduring consent for NAB to release details of any such data breach to the aforementioned bodies; and
  - (i) if you have suffered a data breach you must notify NAB within 24 hours and give NAB and its agents full access to your systems and databases to facilitate a forensic analysis to ascertain:
    - (A) what data has been compromised and how; and
    - (B) what weaknesses in the system permitted the unauthorised access to the data base, disclosure or loss of data from the data base or of any device containing data; and
    - (C) whether data was created, deleted, altered, copied or manipulated in any manner; and
    - (D) how many cardholders have been affected and the nature of the data accessed, disclosed or lost
  - (ii) if you use the services of any external service provider, you give NAB and its agents full access to necessary outsourced components such as data bases and web hosting systems; and
  - (iii) all costs of the forensic analysis must be paid by you; and
  - (iv) To continue processing card transactions, you must undergo a full Payment Card Industry Data Security Standard ("PCIDSS") accreditation. All costs of this accreditation exercise must be paid by you.

### **Your duties to cardholders**

3.7 Subject to the other provisions of this agreement, you:

- (a) must accept any valid and acceptable nominated card in a transaction; and
- (b) must only send us a sales transaction if the cardholder has received the goods and services from you, unless the cardholder has agreed to receive them later; and
- (c) must not accept a nominated card in a credit card transaction for the purpose of giving a cardholder cash; and
- (d) may accept any valid and acceptable nominated card in a debit card transaction for giving a cardholder cash but you must not charge a fee for this; and
- (e) must not sell, purchase, provide or exchange any information or document relating to a cardholder's account number, or nominated card number, or a transaction, to any person other than:
  - (i) us; and
  - (ii) the agents you use in your business for an approved purpose; and
  - (iii) the card issuer; and
  - (iv) any other person as required by relevant law; and
- (f) must, if you do sell, purchase, provide or exchange any such information referred to in clause 3.7(e), do so in compliance with all relevant law including privacy law; and must destroy any document that is no longer required to be retained, in a manner which makes the information unreadable; and
- (g) must take reasonable steps to ensure that the information and documents mentioned in clause 3.7(e) are protected from misuse and loss and from unauthorised access, modification, or disclosure; and
- (h) must not indicate or imply that we or any card scheme endorse any goods or services or refer to a nominated card in stating eligibility for goods, services or any membership; and
- (i) must not accept a nominated card or a transaction which is of a type we have (acting reasonably) previously advised you is not acceptable to us; and
- (j) must provide sufficient training to your employees to ensure you meet your obligations under this agreement; and
- (k) must prominently and unequivocally inform the cardholder of your identity at all points of cardholder interaction (including on any relevant web site, promotional material and invoice) so that the cardholder can readily distinguish you from any supplier of goods or services to you or any other third party; and

- (l) must not unfairly distinguish between issuers of a nominated card when processing a transaction; and
- (m) must not refuse to complete a transaction solely because a cardholder refuses to provide additional identification information in circumstances where you do not legitimately require that information and we do not require you to obtain it.

## **Surcharging**

3.8 In respect of surcharging:

- (a) you must disclose to a cardholder before a transaction is completed any fee that you will charge for completing the transaction and do it in such a way that allows the transaction to be cancelled, without the cardholder incurring any cost; and
- (b) for each card type, the surcharge must not exceed your cost of acceptance including charges made by a third-party service provider in connection with acceptance of the card for that card scheme type. For more detail on how to calculate a surcharge that complies with the Reserve Bank of Australia standard see <https://www.nab.com.au/business/payments-and-merchants/merchant-support-centre/rba-surcharging>; and
- (c) when refunding a transaction, you must refund any surcharge charged on the transaction amount. For partial refunds, the surcharge must be pro-rated.

## **Interactive Gambling Act**

3.9 If you are a regulated interactive gambling service provider as defined in the Interactive Gambling Act 2001 (Cth) you must:

- (a) not accept a transaction made on a credit card or an account, service or facility by which payment is made from a credit card linked to that account, service or facility; and
- (b) take steps to identify and block any transaction to which clause 3.9(a) applies; and

## **4. Accepting nominated cards**

otherwise comply with any provisions of the Interactive Gambling Act as amended from time to time regulating the acceptance of payments by a regulated interactive gambling service provider. Accepting nominated cards

4.1 You must:

- (a) use reasonable care to detect forged or unauthorised signatures or the unauthorised use or forgery of a nominated card; and
- (b) notify us if you become aware of or suspect fraud on the part of a cardholder; and
- (c) not deliberately reduce the value of any one transaction by:
  - (i) splitting a transaction into two or more transactions unless the first represents a deposit and the second the balance owing; or
  - (ii) allowing a cardholder to purchase items separately; and
- (d) establish a fair policy for dealing with refunds and disputes about transactions and include information about that policy on transaction receipts as required by us; and
- (e) only process a transaction as a refund which includes partial refund to a cardholder if it is a genuine refund of a previous sale transaction. If you process a refund transaction, the refund must be processed to the same card that was used in the original sales transaction, for the original sale amount, and must not be given in cash or by cheque; and
- (f) not state or set a minimum or maximum amount for a nominated card transaction without our prior written consent; and
- (g) not ask a cardholder to reveal their PIN or any other secret identifier (other than by discretely entering it on the terminal when prompted to do so); and
- (h) contact us for instructions if the identification of a cardholder or the validity of the nominated card is uncertain; and
- (i) process a quasi-cash transaction (a purchase of goods easily converted into cash such as gaming chips, money orders or foreign cash) as a purchase transaction not a cash out transaction.
- (j) not accept any card in order to process any transaction if that card has been issued to you, a member of your immediate family or issued to another person under the terms of a facility in your name.

## Point of sale transactions

4.2 For a point of sale transaction, you must:

- (a) always:
  - (i) insert a chip card into your terminal and follow the prompts, or
  - (ii) in the case of a contactless transaction enable a contactless card to be read by your terminal, contactless reader or equipment, otherwise swipe or insert it following any prompts including those indicating the need for a PIN and/or a signature; and
- (b) where prompted or required to obtain a signature, verify that the signature (if any) on a nominated card matches the signature on the transaction receipt; and
- (c) verify that the cardholder resembles the person in any photograph intended for identification on the nominated card; and
- (d) offer the cardholder a copy of the transaction receipt immediately after completing the transaction; and
- (e) if we ask you to, but without endangering you or your personnel, retain by reasonable, peaceful means any nominated card that does not have the usual card security features; and
- (f) include the disclosure we require on all transaction receipts if you wish to limit your acceptance of returned goods or services or establish a policy for making price adjustment.

Clauses 4.2(b), (c), (e) and (f) above do not apply to a contactless transaction unless the equipment prompts you to obtain a PIN or signature.

4.3 For transactions using equipment:

- (a) you must:
  - (i) comply with the relevant equipment user guide; and
  - (ii) only use equipment approved by us; and
  - (iii) ensure that you use equipment only as permitted by your agreement with us or the supplier; and
  - (iv) without limiting any other clause of this agreement, allow our employees, contractors or agents to enter your premises as reasonable during normal business hours to:
    - (A) install, inspect, maintain and remove equipment we own; and
    - (B) inspect the condition and operation of equipment owned by others; and
  - (v) process all transactions by reading card data with the equipment; and
- (b) you must not:
  - (i) process a transaction by manually keying details into the equipment unless the transaction is a MOTO transaction or an e-commerce transaction and then only if you have our prior consent in writing to do so; or
  - (ii) process a transaction including by deliberately engineering a situation in which a transaction must be processed through fallback or without authorisation at any time (Chip Decision Override), whether by interfering with the equipment, requesting the supplier of your equipment to make changes to your equipment or otherwise without our prior consent in writing.
  - (iii) process a transaction on equipment in any place outside of Australia.
- (c) any consent we may provide under clause (b), may be subject to you providing us with indemnities connected with the risks of operating in fallback or using key entry.

## Website requirements

4.4 If you wish to accept payments through your website, you must notify us of the URL and your website must clearly display the following information:

- (a) your business name (and Australian Business Number as applicable) and with our approval the name that best identifies you for the purposes of the website; and
- (b) the address of your approved place of business; and
- (c) your business contact details, including telephone and facsimile numbers and an email address; and
- (d) a complete description of the goods and services available for purchase on your web site with the price advertised in dollars or the price advertised in a foreign currency we have authorised you to process transactions in; and
- (e) a clear statement that your business is an Australian business and that all transactions will be billed in dollars or in the foreign currency we have authorised; and
- (f) details of your return and refund policy, including how a transaction can be cancelled by a cardholder; and



- (g) details of your delivery times for goods and services. Delivery times are to be appropriate for your type of business. If the delivery is to be delayed, the cardholder must be notified of the delay and an option provided to them to obtain a refund; and
  - (h) details of any Australian export restrictions (if applicable); and
  - (i) details of your privacy policy and how you intend to deal with, or share, personal information obtained from and about the cardholder; and
  - (j) a description of the measures you must maintain the security of:
    - (i) cardholders' account data; and
    - (ii) any other information which, by notice, we require you to display from time to time.
- 4.5 You must ensure the name of your website either corresponds with or otherwise connects with the name appearing on cardholder statements enabling your customers to identify you without confusion.
- 4.6 If you wish to undertake substantial changes to the payment pages of your web site including any changes which affect authentication, you must give us at least 10 banking days' prior notice. This will enable us to use a test mode while changes are being undertaken. We will not commence the live operation of the merchant services until we have completed acceptance tests of your website and are satisfied that it is compatible with the merchant services.
- 4.7 You must provide us reasonable access to view, monitor and audit the pages of your website and you must notify us of any change in your website URL.
- 4.8 If you are routing transactions on scheme debit cards through eftpos, a notice advising your customers of that fact.
- 4.9 Prior to commencing live operation of the merchant services on your web site, you must undertake your own testing in the test mode to ensure any reporting requirements you have are working to your satisfaction, and when we are satisfied all of our operational requirements are met, we will approve you for live operation
- 4.10 Your web site payments page must be protected by Transport Layer Security or any other form of security method approved by us.

### **Recurring transactions and free trials**

- 4.11 You may only process a transaction as a recurring transaction if:
- (a) you have obtained cardholder permission to periodically charge for a recurring service; and
  - (b) you retain this permission for the duration of the recurring services and make it available to us on request; and
  - (c) you provide a simple and accessible online cancellation procedure if the cardholder's request for the goods or services was initially accepted online.
- 4.12 You must not:
- (a) include partial payment for goods or services purchased in a single transaction; or
  - (b) complete a recurring transaction if you receive a decline response or a cancellation notice from the cardholder.
- 4.13 This clause 4.13 only applies if you accept recurring transactions with free trials or promotional discount periods. If you offer introductory free trials or promotional discounts as part of an ongoing recurring transaction arrangement (whether or not) the customer has ordered the goods or services) (free trials) you must comply with the following and make the following disclosures when you enroll a cardholder:
- (a) Provide a digital receipt, even if no payment is yet due, confirming your cardholder's consent to the free trial, including terms and conditions, the amount and frequency of future payment obligations.
  - (b) Send a reminder email or text message advising that any free trial period is over, including a link to a cancellation page, at least 7 days before processing the first transaction after the end of the trial period.
  - (c) Deliver a clear message that the free trial has ended. For example, "End Trial" in the merchant descriptor that appears on the cardholder's statement.
  - (d) You must provide cardholders with a simple way to cancel their recurring transactions e.g. over the internet, even if the cardholder signed up for the free trial offer over the phone or in person.
  - (e) inform a cardholder not billed in the transaction currency that each instalment amount may vary due to currency conversion rate fluctuations; and
  - (f) obtain authorisation for all transactions; and
  - (g) not add any finance charges to the instalment transaction.

## Quasi-cash transactions

- 4.14 Clauses 4.14 to 4.17 (inclusive) apply to merchants conducting quasi-cash transactions (a transaction involving the purchase of goods easily converted into cash such as gaming chips, money orders or foreign cash). To the extent that there is any inconsistency between this clause and the other provisions of the agreement, clauses 4.15 to 4.18(inclusive) will prevail. To the extent you fail to comply with the obligations under this clause or we need to manage risk, we may take action to suspend or terminate the merchant services under clause 28.
- 4.15 You must identify the cardholder as follows:
- (a) where the card doesn't include a photograph of the cardholder, you must sight positive identification of the cardholder, and indicate the type of identification sighted, including any serial number, on the transaction receipt; or
  - (b) where the card bears a photograph of the cardholder, you must note on the transaction receipt that you verified the cardholder's identity by the photograph on the card.
- 4.16 You must verify the following:
- (a) the signature on the card matches the signature on the transaction receipt and, where clause 4.16(a) applies, on the identification presented; and
  - (b) where clause 4.16(b) applies, the Cardholder resembles the photograph intended to be used as identification on the card.
- 4.17 You must clearly disclose to the cardholder any commission you charge for accepting a quasi-cash transaction and include it in the total transaction amount, before completing the transaction.

## 5. Authorisation and authentication

### Authorisation

- 5.1 You must obtain authorization by following the prompts on the equipment and comply with any authorisation procedures of which we advise you, including those relating to e-commerce transactions and MOTO transactions.
- 5.2 For a MOTO transaction or an e-commerce transaction requiring goods to be shipped, you may obtain authorisation from us up to seven calendar days before the date on which the goods are actually shipped.
- 5.3 You must seek to recover or retain a nominated card used in a card present transaction by reasonable, peaceful means when we request you to do so. You must notify us when you have recovered or retained a nominated card and comply with such further instructions we give you.
- 5.4 You acknowledge and agree that authorisation is not a guarantee of payment. An authorisation only confirms that at the time of the authorisation the card number exists, is valid, the card has not been listed as lost or stolen and that the card has sufficient funds to cover the transaction. It does not guarantee that the person using the card is the genuine cardholder or that the card is not a forgery. If you have received pre- authorisation, you may cancel it up to thirty days from the time you obtained it but only if:
- (a) the transaction has not yet been processed; and
  - (b) at the time of cancellation, both the cardholder and the card are present; and
  - (c) the card used for the cancellation is the same one used in the pre-authorisation.

### E-commerce transaction authentication and verification

- 5.5 In respect of authentication:
- (a) you acknowledge and agree that to participate in the authentication procedures you must:
    - (i) currently be receiving e-commerce merchant services from us; and
    - (ii) comply with all manuals, guides or directions we or the card schemes give you from time to time regarding authentication that we post or amend on [nab.com.au](http://nab.com.au) including at **Protecting Your Online With 3-D Secure Banking – NAB**
  - (b) unless we agree otherwise, send us an authentication request each time a cardholder purchases goods or services from you on your website; and
  - (c) carry out any additional authorisation procedures arising out of authentication of which we advise you in writing; and
  - (d) if you send us an authentication transaction, or a transaction that you attempted to authenticate but couldn't within the confines of the scheme rules because either:
    - (i) the card issuer isn't a registered participant in authentication or,
    - (ii) the card issuer did not respond to your authentication request,which we then authorise and process, provided you are using an authentication process approved by the card schemes, we will not charge it back to you on the basis that the cardholder claims that they were not the person who purchased goods and services from you on your website; and



- (e) authentication may not prevent you incurring a chargeback which is raised because you accepted an invalid transaction in breach of clause 9.
- (f) the procedures relating to authentication have been established by the card schemes and may be varied by them from time to time. You agree to comply promptly with any new or different requirements of which we notify you. If the authentication process you are using is no longer approved by the card schemes you risk incurring chargebacks as if you were using no authentication process at all; and
- (g) we may decide to terminate or suspend your participation in authentication at any time (see clause 28.4). We will endeavour to give you reasonable notice of this decision, however, we may not give you advance notice (for example if it is reasonably necessary for us to act quickly to manage a risk); and
- (h) after termination of authentication or during any period of suspension of authentication we will process your transactions as if you had never been a participant in authentication and the usual chargebacks will apply
- (i) If you are experiencing a level of chargebacks which is unacceptable to us, having regard to relevant law or the guidance or requirements of any industry body, we may require that you participate in such authentication or card verification procedures as are reasonably necessary at your cost to reduce your chargebacks to an acceptable level including procedures which incorporate SCA factors. We may also, acting reasonably, require you to implement other measures necessary for chargeback reduction. Failure to do so within a reasonable timeframe as determined by us will be a material breach for the purposes of clause 28.4, and which could result in the suspension or termination of the merchant services under this agreement.

## **6. Transaction receipt**

- 6.1 You must prepare a transaction receipt for each transaction (except a contactless transaction or a recurring transaction where the cardholder has elected not to receive a receipt) in accordance with clause 6.2, but you must not charge a fee for doing so.
- 6.2 The information contained on the transaction receipt must be identical with any other copy and must legibly include:
  - (a) the amount, date and time of the transaction; and
  - (b) a brief description of the goods or services; and
  - (c) details of any cash provided; and
  - (d) any special terms or disclosures specified in the quick reference guide relevant to a subscription transaction;
  - (e) the currency symbol if it is in a foreign currency; and
  - (f) for e-commerce transactions:
    - (i) the merchant's name most recognisable to the cardholder; and
    - (ii) contact information for service enquiries; and
    - (iii) terms and conditions of sale, if restricted; and
    - (iv) exact date free trial ends, if offered; and
    - (v) cancellation policy; and
    - (vi) web site address; and
  - (g) any other information we advise you is required including any special terms or disclosures specified in the quick reference guide relevant to a subscription service.
- 6.3 You must offer the cardholder a copy of the transaction receipt:
  - (a) immediately after completing the transaction
  - (b) for a card not present transaction as soon as possible following their request unless it is generated automatically.
  - (c) The receipt may be in electronic form in the case of an e-commerce or contactless transaction or with the cardholder's consent.
- 6.4
- 6.5 For at least 18 months after a transaction, you must retain:
  - (a) for a point of sale transaction, the original transaction receipt; or
  - (b) for a card not present transaction, the transaction receipt and any document that is evidence of the cardholder's request to you to charge amounts through the nominated card.
- 6.6. You must provide us with the transaction receipt and any other required evidence of the transaction within seven days if we ask for it. If you fail to do so to our satisfaction, we may charge a sales transaction back to you if the amount cannot be collected from the cardholder.
- 6.7 You agree to allow us to examine your books of account or records relating to any transaction.

## 7. Processing transactions

- 7.1 You must give us information about a transaction:
- (a) by entering the transaction immediately if you are using live equipment;
  - (b) within the time frames we specify from time to time in relation to other transaction methods.
- 7.2 In giving us information on a transaction or otherwise for the purposes of this agreement, you must ensure that:
- (a) all the particulars are true; and
  - (b) the transaction is valid and acceptable; and
- 7.3 In giving us the information on a transaction you give us an irrevocable order to act in relation to that information in accordance with this agreement.
- 7.4 You must give us information about a transaction only in the form and using a method approved by us for your use.
- 7.5 We have no obligation to process a transaction until we are satisfied any information received in relation to the transaction is in accordance with this agreement (and that it is not an invalid or unacceptable transaction as described in clause 9). We will not be liable for any failure to process a transaction under this provision, except to the extent of our fraud, negligence or misconduct.

## 8. Merchant Choice Routing

- 8.1** MCR may be enabled for your merchant services in the following ways;
- (a) by NAB automatically and as a feature of the fees applicable to your merchant services.
  - (b) as a result of you contacting us and asking that MCR be enabled.
  - (c) by NAB after notice to you that we intend to enable MCR for your merchant services.
- with the exception of MCR enabled in accordance with 8.1(a) above MCR may be disabled on your request if it was previously enabled on your request or by NAB after acting reasonably in its commercial interests. MCR may be incompatible with other merchant services you receive or plan to receive from NAB or third parties and therefore not available to you.

### 8.2 Your Decisions about MCR

If MCR is enabled for your merchant services other than in accordance with clause 8.1(a) above, you agree that you will monitor your fees and any thresholds applying to your MCR, to ensure that it meets your needs, failing which you agree to consider contacting NAB to arrange having MCR disabled. Find out more about MCR in the NAB merchant Quick Reference Guide at

<https://www.nab.com.au/content/dam/nabrwd/documents/terms-and-conditions/payment-and-merchants/nab-merchant-agreement-quick-reference-guide.pdf> and on [nab.com.au/merchantchoicerouting](https://www.nab.com.au/merchantchoicerouting)

### 8.3 NAB's decision about MCR

- (a) Where NAB enables or disables MCR in accordance with this clause it does so making no warranty or representation that such enablement or disablement will result in cost reductions
- (b) While NAB will take reasonable care in making decisions about MCR pursuant to this clause, except where due to our willful breach or willful misconduct and subject to relevant law, it does not accept any responsibility for any detrimental changes in your fees resulting from the enablement or disablement of MCR whether initiated by NAB or at your request.

## 9. Using a payment bureau

- 9.1 If you choose to use a payment bureau in connection with the transmission of information including any information in connection with authentication to us, you must:
- (a) notify us in writing before you commence using, or change your payment bureau; and
  - (b) give us such information as we may reasonably require in relation to that payment bureau; and
  - (c) only use a payment bureau that we, acting reasonably, have approved; and
  - (d) ensure that any payment bureau you use has and maintains a bureau certification agreement or any other agreement we require with us; and
  - (e) only use a payment bureau where that payment bureau is registered as a third party processor with the card schemes.
- 9.2 Any payment bureau you use is at your cost and risk.
- 9.3 You acknowledge and agree that we are not responsible for any losses, claims, damages, costs, terms or expenses suffered by you (including consequential loss) arising from or in connection with any act or failure to act by your payment bureau in connection with a transaction or the merchant services, except to the extent arising from our fraud, negligence or misconduct.

- 9.4 If you use a payment bureau to inform us about transactions, we may rely on any information or instruction that we receive as if that information or instruction was received from you.
- 9.5 This also applies to any information we process in reliance on the information received from the payment bureau on your behalf.
- 9.6 Should a payment bureau cease operating or cease to be registered or approved by us we will no longer accept transactions sent by that payment bureau. Further, we will not be responsible for any ongoing costs, including migration which will be your responsibility.

## **10. Invalid or unacceptable transactions**

- 10.1 A transaction is not valid if:
- (a) the transaction is illegal; or
  - (b) the signature on the, transaction receipt or authority is forged or unauthorised; or
  - (c) the transaction is before or after any validity period indicated on the nominated card; or
  - (d) we have told you not to accept the nominated card; or
  - (e) the transaction is not authorised by the cardholder; or
  - (f) it is a manual transaction recorded on a voucher; or
  - (g) the particulars on the transaction receipt given to the cardholder are not identical with the particulars on any other copy; or
  - (h) you did not actually supply the goods, services or cash to a genuine customer as required by the terms of the transaction, or have indicated your intention not to do so; or
  - (i) the transaction did not relate to the actual sale of goods or services to a genuine customer; or
  - (j) the goods, services or cash were supplied outside Australia without our consent; or
  - (k) the transaction is offered, recorded or billed in a currency you are not authorised to accept; or
  - (l) this agreement was terminated before the date of the transaction; or
  - (m) you have not complied with your obligations in clause 3.7; or
  - (n) the details are keyed into equipment and you did not legibly record on a transaction receipt the information required by clause 6.2; or
  - (o) it is a point of sale transaction in which the nominated card was not presented; or
  - (p) it is a card not present transaction and you did not record the required details for the transaction; or
  - (q) it is a debit card transaction in which you charged a cardholder a fee for the provision of cash; or
  - (r) it is
    - (i) a debit or credit transaction processed offline where the amount of the transaction or transactions on the same occasion is more than your applicable floor limit unless you obtained authorisation from us; or
    - (ii) you collected or refinanced an existing debt including, without limitation, the collection of a or payment for previous card charges; or
  - (s) it occurs during a period in which your rights under this agreement were suspended under clause 28.4 or after this agreement was terminated; or
  - (t) you cannot give a transaction receipt as required by clause 6.1.
- 10.2 At our election, a transaction for a sale, refund or provision of cash is not acceptable if:
- (a) the cardholder disputes liability for the transaction for any reason or makes a claim for set-off or a counterclaim; or
  - (b) it is of a class which we, acting reasonably, have previously notified you is not acceptable.
- 10.3 You acknowledge and agree that we may:
- (a) refuse to accept a transaction if it is invalid or unacceptable, or may charge it back to you if we have already processed it even if we have given you an authorisation (either electronically or by telephone); and
  - (b) reverse a sales transaction as a chargeback for any of the reasons in clauses 10.1 or 10.2 or any other reasonable basis of which we notify you of from time to time; and
  - (c) without limiting the above, delay, block, freeze or refuse to accept any transaction, make any payment, or suspend or cease to provide the merchant services in whole or in part acting reasonably having regard to clause 29

## 11. Settlement of transactions and your nominated account and Foreign Currency Transactions

- 11.1 You must have at least one account with us for settling transactions in dollars unless we agree otherwise.
- 11.2 You must use your nominated account primarily for business purposes.
- 11.3 If we receive notice from an authorised statutory body requiring us to garnish amounts on your nominated settlement account, we may redirect amounts the subject of the garnish notice, until the terms of the notice are satisfied or we are lawfully directed to cease garnishing the nominated account.
- 11.4 We will also debit your nominated account with the amount of all valid and acceptable refund transactions and chargebacks.
- 11.5 Each month we will make available details of the amount of all transactions processed in the previous month unless we have agreed with you to do otherwise. We may make those details available by:
- sending you a statement by email or to your postal address; or
  - making it available to you on NAB Hive if you have been activated or on another online portal to which you have access; or
  - by some other means we make known to you.
- 11.6 We may elect to not send you a statement in relation to any period during which no transactions have been conducted via your Merchant facility but will still make that statement available to you on request made to the merchant support centre or your banker. You must promptly review all of your statements and should raise any query within 3 months of the date of payment or the due date for payment. We may charge a reasonable investigation fee.
- 11.7 Under normal conditions we will pay to your nominated account the amount of all valid and acceptable sales and cash transactions processed by you and settled by us in the agreed currency or dollars within 5 banking days.

### Foreign Currency Transactions

- 11.8 This clause 11.8 and clauses 11.9 to 11.10 apply to you if we receive a transaction from you in foreign currency whether or not we have agreed with you in the terms of your letter of offer to process transactions in foreign currency. If we have such an agreement with you, you must have an account for recording foreign currency transactions in addition to your nominated account.
- 11.9 In respect of major currencies: if you send us a transaction in a major currency we will, subject to this clause, process and settle it to your NAB foreign currency account held in that currency without conversion.
- refunds of major currency transactions are settled to your foreign currency account in the appropriate currency so no conversion is applied. However, adverse movements in exchange rates may affect the value of the original transaction.
  - any chargebacks received in foreign currency will be processed by NAB in the same foreign currency.
  - you should inform your customer that they may incur a foreign currency conversion fee in connection with a foreign currency transaction or in the event that the chargeback or refund processed by us is subsequently converted from dollars to the cardholder's domestic currency (e.g. by a card scheme or the card issuer).
- 11.10 In respect of minor currencies:
- if you send us a minor currency transaction the card schemes will convert it into dollars using their standard exchange rates at the time of the sale or refund conversion.
  - minor currency refunds and chargebacks will be processed in dollars, and debited against your nominated account. You should inform your customer that they may incur a foreign currency conversion fee in the event that the chargeback or refund processed by us is subsequently converted from dollars to the cardholder's domestic currency (e.g. by a card scheme or the card issuer).
  - From time to time one or more of the card schemes may determine (not necessarily after due notice) that a currency is no longer an authorised currency. In this event that currency ceases to be an authorised currency. If we receive a transaction from you in a currency which has ceased to be an authorised currency, but before we have been able to give you notice of the change, we will notify you in accordance with clause 11.11.
  - You may request in writing that additional currencies be designated as authorised currencies. We may approve or not approve this request at our discretion and notify you in writing accordingly.
  - We may, having regard to our legitimate business interest, and with 30 days' notice:
    - suspend or terminate the entire multi-currency merchant services; or
    - withdraw our consent to processing foreign currency transactions in all or any of the authorised currencies.We may determine to do so for any reason and without the need to give any notice where it is reasonably necessary to manage an immediate and material risk, including because of:
    - any change in relevant law; or
    - any change in national or international financial, political or economic conditions, currency exchange rates, currency availability or exchange controls; or

- (v) any event or contingency which materially and adversely affects the interbank markets, the banking system or us generally.
  - (f) Where currency conversion is at rates used by the card schemes or supplied by Currency providers, we will not be aware of the applicable rates at the time of conversion and so cannot advise you of them. Please talk to us if you would like more information about this.
- 11.11 You agree that if you receive a foreign currency transaction (whether or not you have a Multi-currency facility with NAB), and do not have a foreign currency account in the relevant foreign currency, you will be requested to open a foreign currency account in the relevant currency. If you do not open such an account, NAB will not conduct a foreign currency conversion on your behalf.

## 12 NAB's right to Security or a fixed balance security

### NAB may require a review

12.1 NAB may review your merchant facility from time to time. The review may address all or any of the following:

- (a) any change in the volume or value of transactions processed;
- (b) the nature of your business or any change in the nature of your business, including the goods and services it provides and the rate of chargebacks, or other risks associated with that industry;
- (c) the level of MOTO transactions or transactions effected using key entry;
- (d) your history of or potential for chargebacks, disputed transactions, refunds and other transactions including disputed transactions;
- (e) the future dated risk (delay between transaction and delivery of goods or services) associated with providing merchant services to you;
- (f) the imposition, or potential for imposition, of fines levied on us by card schemes or industry bodies because of the nature of your business or your conduct and
- (g) your liability or potential liability for fees, charges, and other costs you incur with us and the level of those.
- (h) your method or any change in your method of card or payment acceptance including an increase in the percentage of card not present transactions;
- (i) the effectiveness of your fraud mitigation technology and controls including whether or not they are up to date and/or approved by the card schemes.
- (j) your history of compliance with the terms of this agreement
- (k) any other factors relevant to the level of risk we assume in providing you with these merchant services

12.2 In order for NAB to complete its review it may reasonably require information in the form of data, reports including accounting and financial data and information about your fraud and risk management strategies and policies. You agree to provide this data within 30 days of NAB's request.

12.3 NAB may acting reasonably and taking into account the matters listed in clause 12.1, within a time frame reasonably determined by us, require one or more of the following:

- (a) security or further security in the form of a guarantee or indemnity and/or security over property for an amount or increased amount to be determined by us;
- (b) that the nominated account be subjected to a minimum balance (fixed balance security) in accordance with clause 12.4;
- (c) the introduction of controls or restrictions on your use of the merchant services such as removing certain functions from your terminal or reducing your refund limit.

### Fixed Balance Security

12.4 We may, at any time having regard to the results of a review of your merchant services in accordance with clauses 12.1 and 12.2, decide acting reasonably and to protect the Bank from an immediate and material risk, that that your nominated account is subject to or no longer subject to a minimum non-withdrawable balance (fixed balance) and the amount of that fixed balance. The fixed balance may represent the whole or any part of the funds in your nominated account.

12.5 A decision made under clause 12.4 will take immediate effect without notice to you. You will be notified in writing of our decision as soon as practicable after it being made. Once a fixed balance has been imposed you cannot, without our written consent, substitute another account for the nominated account.

12.6 Once we have an imposed a fixed limit on your nominated account you will be unable to withdraw funds other than any amounts which exceed that balance until we notify you in writing that we have determined that the fixed balance no longer applies.

12.7 Subject to clause 27 and acting reasonably reset the fixed balance by increasing or decreasing it from time to time to manage the risk of providing services to you under this agreement (including as identified in clause 12.4).

12.8 Without limiting our discretion in any respect, the amount of the fixed balance from time to time may be determined having regard to any or all of the matters set out in clause 12.1.

- 12.9 We will not lift the fixed balance from your nominated account until your entire liability to us whether actual or contingent has been satisfied in full. We are under no obligation to provide alternative financial accommodation in the interim.
- 12.10 You agree that the nominated account is not intended to be a 'circulating asset' for the purpose of the PPSA.
- 12.11 Nothing in this clause 12:
- (a) affects our ability to exercise any rights of set-off arising by relevant law, this agreement or the terms of the nominated account; or
  - (b) with the exception of clause 12.3 (a) is intended to create a charge.
- 12.12 If your nominated account is held with another financial institution you irrevocably appoint any one of our employees whose title includes the words "head of" or "manager" as attorney and or agent to:
- (a) do any of the things you are obliged to do under this agreement with respect to your nominated account; and
  - (b) request that the financial institution at which your nominated account is held to immediately advise us of:
    - (i) the balance of the nominated account; and
    - (ii) any steps you take to close the nominated account, subject it to any form of security; and
    - (iii) any action taken by any creditors with respect to its value; and
  - (c) exercise any of these rights and entitlements pursuant to any direct debit request you have signed in our favour.

### **13 Non-standard cards**

- 13.1 We agree to facilitate the transmission of non-standard card transaction information between you and certain non-standard card issuers provided that:
- (a) we are satisfied that you and the relevant non-standard card issuer can receive and participate properly in such transmission; and
  - (b) you have given us your current merchant numbers for each of the relevant non- standard card issuers.
- 13.2 To accept non-standard cards, you must contact and establish a separate agreement with the card issuer. We accept no responsibility for your acceptance of any non-standard cards, whether you do so with equipment supplied by us or otherwise, other than to the extent of our processing of transactions. If you have an agreement with a non-standard card issuer, you may have access to remedies directly with them to the extent they are responsible.
- 13.3 NAB may acting in a commercially reasonable way, require you to accept a non-standard card that you are not already accepting.

### **14 Promotional material and advertising**

- 14.1 You agree that we may publish or advertise your acceptance of and the manner in which you can accept nominated cards to current and potential cardholders.
- 14.2 You agree that we may publish promotional material relating to our products and services and material relating to product and services from other providers on the merchant portals.
- 14.3 You must:
- (a) display promotional material we supply you prominently at the point of sale at each of your business premises and on any web site you maintain to indicate you accept nominated cards for transactions except where we agree otherwise; and
  - (b) use advertising and promotional material for the nominated cards or which show a card scheme logo or mark only with our consent and in the manner we approve.

### **15 Costs, fees and other payments**

- 15.1 You must pay us the amounts listed in clause 15.2.
- 15.2 You authorise us to withdraw, without notice, the following amounts from your nominated account or if there are insufficient funds from any other account you have with us:
- (a) all fees, charges and costs in connection with the merchant services and any use of equipment as set out in the letter of offer; and
  - (b) any amount you owe us for a refund transaction which was paid to you, but which was not a valid or acceptable transaction; and
  - (c) all over-credits paid by us on sales and cash transactions due to errors or omissions; and
  - (d) all credits paid by us on sales and cash transactions which we have determined to chargeback under clause 10.3; and



- (e) all stamp duties, taxes, and other government charges levied on the merchant services, equipment we supply, your accounts with us and this agreement; and
- (f) any amounts found to be due to us during an audit or check by us; and
- (g) all fees, charges and costs agreed to be paid to us for the processing of information in connection with a loyalty program; and
- (h) all fines, penalties, or similar costs (however described) imposed on us by card schemes or industry bodies because of your conduct in relation to the merchant services including where your conduct results in a rate of chargebacks that, acting reasonably we deem unacceptable or because you failed to comply with the PCIDSS or any other provision of this agreement. An unacceptable rate of chargebacks includes one which is declared unacceptable under card scheme rules or relevant law; and
- (i) all costs, charges and expenses of any description incurred by us or any person referred to in clause 3.4(e) in connection with this agreement including our administration costs and the amount of any reasonable charges and disbursements for legal advice and assistance to us; and
- (j) all other amounts you owe us under this agreement.

We will only exercise our rights under this clause fairly and reasonably having regard to amounts that are reasonably attributable to your actions or inaction and also having regard to the card scheme rules. If you wish to avoid amounts being debited from your account other than your nominated account, you should ensure your nominated account contains sufficient funds.

15.3 You must pay on demand from us any balance that remains unpaid because there are insufficient funds in your nominated account, or other accounts with us, to pay the amounts due under clause 15.2. However, if we hold security over your assets (other than a nominated account or other account you hold with us) which secures your obligations under this agreement, we will not commence any enforcement action against you under that security unless:

- (a) we need to act quickly to manage a material and immediate risk; or
- (b) we have given you a period of at least 30 days to pay the amount demanded under this clause.

15.4 If we reasonably require it, you must provide us with an authority and request in a form, and subject to terms and conditions we require, to direct debit your nominated account at another institution with the amounts referred to in this clause.

15.5 Unless otherwise specified, all fees payable under or in connection with this agreement are inclusive of GST.

15.6 If GST is imposed on the merchant services supplied by us under or in connection with this agreement, where any amount or consideration ("consideration") payable or to be provided by or on behalf of you under or in connection with this agreement in relation to the merchant services is exclusive of GST ("GST-exclusive consideration"), we may in addition to that GST-exclusive consideration, recover from you, or from a person acting on your behalf, an additional amount on account of GST.

15.7 The additional amount described in clause 15.6 is to be calculated by multiplying the GST-exclusive consideration for the relevant supply, by the GST rate prevailing at the time of the supply.

15.8 Any additional amount on account of GST recoverable from you under clause 15.7 shall be calculated without any deduction or set-off of any other amount, except where you have a right of set-off at law (e.g. because of a court order).

## 16. Using our equipment

16.1 You must have the equipment that we require from time to time. You may obtain your electronic equipment or equipment from us or others if we advise you that your electronic equipment is approved by us.

### Installation of equipment

16.2 You must prepare a site at your business premises which meets our installation site specifications (see clause 16.3) for the installation of any equipment we supply you, including (if required) a power supply. You will bear the cost of this preparation.

16.3 The installation site:

- (a) must allow the cardholder to enter transaction information without being observed; and
- (b) must not be in the vicinity of security cameras or any reflective surface that might allow the information being entered by the customer to be observed or recorded.

16.4 you must install a communication facility such as internet including wireless connectivity if required to facilitate the use of the equipment at your cost. Ongoing maintenance of the line will be your responsibility and at your cost.

## **Relocation and alteration of equipment**

16.5 You must notify us if you move any equipment we own to a new location. You must not make any alterations or additions to any equipment we own without our written consent. Any relocation or alteration of equipment will be at your cost.

We may replace or upgrade any equipment we own and attend your premises to do so, after providing you with reasonable notice.

## **Maintenance of equipment**

16.6 You must take proper care of any equipment we own and follow all our directions for its maintenance and protection. You must also properly maintain your electronic equipment you have obtained from others.

16.7 You are responsible for any loss or damage to equipment we own resulting from fire, theft, explosion, flood, civil commotion or other act in or around your premises.

16.8 If you neglect, misuse, lose or damage our equipment you must pay us the full cost of any necessary repairs or replacements. We may choose whether equipment should be repaired or replaced. We may reasonably determine the replacement value.

16.9 You must not allow any person except our employees, contractors, or agents to service or repair any equipment we own.

16.10 We must maintain equipment we own at our own expense in all other circumstances of normal use.

## **Ownership of equipment**

16.11 Equipment we own always remains our property even if it is attached to any other property. If the equipment is attached to any other property, at our request you must obtain from the owner of that property an acknowledgment that we own the equipment, and that the owner has no interest in it.

16.12 You must not part with possession or control of equipment we own unless we ask you to.

## **Insurance of equipment**

16.13 The insurance policy on your premises must cover equipment we own for its maximum insurable value.

## **Breakdown, malfunction and theft of equipment**

16.14 You must tell us promptly when you become aware that any part of the merchant services is not operating normally or fully, whether we are, or someone else is, responsible for its operation. This could include the breakdown or malfunction of equipment or a communication line or web site. If we are responsible for the operation of that part of the merchant services, we must repair it as quickly as possible.

16.15 You must not, by any act or omission, cause a situation where equipment cannot operate normally unless we tell you to do so because we believe the equipment may be being used for fraudulent activity.

16.16 You must tell us immediately if any equipment is stolen, damaged or otherwise interfered with, whether we are, or someone else is, responsible for its operation.

16.17 Subject to clause 24, you are responsible for any losses arising from the fraudulent use of the equipment regardless of who owns the equipment. This includes losses arising from the fraudulent use of equipment such as fraudulent refunds and use of fraudulent nominated card.

## **Software**

16.18 You must comply with any reasonable additional terms and conditions we prescribe from time to time in relation to software that we supply to you and permit us to amend or replace that software either remotely by attending at your premises or by asking you to upload or replace software after providing you with reasonable notice. Where in our reasonable opinion, the amendment or upgrade of the software is required to manage a risk, such notice may be short or not provided according to the level of that risk.

## **Equipment security and prevention of unauthorised access**

16.19 You must take all reasonable steps to ensure that your terminal is protected against loss, theft, unauthorised access or use, modification or other misuse. Such steps include regularly changing all passwords in accordance with the relevant user guide and not disclosing any passwords to anyone other than your authorised personnel.



## The terms and conditions that apply to NAB Hive and NAB Gateway

### 17. Providing you access to NAB Hive and NAB Gateway

- 17.1 Clauses 17 to 18 inclusive apply to your access to and use of NAB Hive. If you also accept payments via your website using NAB Gateway, clauses 17 to 22 also apply to you. Access to NAB Gateway may require some changes to your electronic equipment.
- 17.2 Not all merchants will receive access to NAB Hive and NAB Gateway immediately. We will:
- (a) advise you when you are eligible for access; and
  - (b) provide you with instructions on how to access the merchant portals; and
  - (c) notify you with respect to your credentials; and
  - (d) issue you with a new or varied letter of Offer if we determine that is necessary.

### 18. NAB Hive and NAB Gateway

- 18.1 You must comply, and you must ensure that your merchant portal users comply with the terms of this agreement relevant to NAB Hive or NAB Gateway whichever you are using.

### 19. Authorities and Reporting – NAB Gateway and NAB Hive

- 19.1 After logging into the merchant portals, you will be directed by the relevant user guide and the content of the portal itself on the use and functions of the merchant portal, which may include:

- (a) creating additional merchant portal users; and
- (b) assigning functions to the merchant portal users which may include:
  - (i) access to all functions; and
  - (ii) access to some of the functions; and
  - (iii) other functions specified in the user guides or permitted by the merchant portals.

The functions available via NAB Hive or NAB Gateway and their use and access via the merchant portals will be subject to the user guides and the operation and functionality of the services themselves at all times.

- 19.2 We may amend, add to, remove and introduce new functionality to or from a merchant portal or a merchant service. We will advise you of these changes in accordance with this agreement. We will act fairly and reasonably, in accordance with clause 27 when doing so.
- 19.3 You are liable for any use of a merchant service including NAB Hive or NAB Gateway by a merchant portal user as if the merchant portal had been used to access the merchant service by you. You are also responsible for all instructions given using the merchant service access via the merchant portal, which are authorised by the use of the credentials of a merchant portal user or undertaken by another person with the knowledge or consent of you or of a merchant portal user. You are not liable under this clause to the extent of our fraud, negligence, or misconduct.
- 19.4 (a) You should ensure that each of your merchant portal users have been provided with, and has read the relevant parts of this agreement and the relevant user guides before using any of the merchant portals or the merchant services accessible via the merchant portals.
- (b) We may require you and any merchant portal user to be identified according to any relevant laws or any other requirements reasonably specified by us.

- 19.5 Your obligations

You must:

- (a) establish policies, procedures, internal management rules and audit arrangements for the use of the merchant portals and access to NAB Hive and NAB Gateway by you and your merchant portal users which reflect your internal authorisation requirements, take account of any potential risk of fraud and are consistent with this agreement;
- (b) comply with, and ensure that your merchant portal users comply with, the policies and procedures referred to in paragraph (a);
- (c) only use the merchant portals for your own confidential internal use and purposes and in particular you must not grant any third party access to them or authority to operate the merchant portal or the merchant services accessible via the merchant portal on your behalf (except for merchant portal users and any payment bureau engaged by you that we approve if required) and you must not operate the merchant portal on behalf of or for the benefit of any third party except as agreed by us;

- (d) keep, and ensure that each of your merchant portal users keeps, any user credentials secure, including ensuring that merchant portal users:
    - (i) choose a new password or pin whenever they are required to do so by you or another merchant portal user who is authorised to issue that request;
    - (ii) not disclose their credentials to any other person;
    - (iii) not record or store their credentials anywhere;
    - (iv) take reasonable care when accessing the merchant portals to ensure that their credentials are not disclosed to any other person, in particular ensuring that they are not observed while entering their credentials;
    - (v) not provide their portal authentication service (if any) to any other person;
    - (vi) not use portal authentication (if any) other than in respect of the merchant portals and they acknowledge that, if a merchant portal user uses their portal authentication service for any other purpose, NAB may revoke the portal authentication service and cancel the availability of the merchant services accessed by that authentication service to you; (e) notify us immediately if you become aware that any credentials are compromised or divulged and immediately cease to use the affected credentials;
  - (f) notify us immediately if:
    - (i) a merchant portal user's computer or other device used to access and use a merchant portal is lost, stolen or fraudulently accessed;
    - (ii) you become aware of any unauthorised transaction or error on an account that appears to be connected with the use of the merchant portal; and
  - (g) take responsibility to use other means of effecting transactions and giving and obtaining information if for any reason a merchant portal is unavailable for use, or malfunctioning.
- 19.6 A merchant portal user may use the merchant portals and the relevant merchant services accessed by them in accordance with this agreement, unless their use of the service is cancelled or suspended under the agreement by you or another merchant portal user who is authorised to do so.
- 19.7 Access to the merchant services, or access to certain functionalities of the merchant services via the merchant portals, may be allowed by NAB only:
- (a) if the procedures and guidelines specified by NAB including in the user guides have been complied with; and
  - (b) if NAB has received any document or information, reasonably required by NAB or necessary to comply with relevant law including any document which identifies a merchant portal user.
- 19.8 Access to the merchant portal:
- (a) will be denied to a merchant portal user if they enter credentials incorrectly on a number of consecutive occasions which exceeds limits specified in the user guides; or
  - (b) may be denied if any verbal, written (including electronic) instruction given by you or a merchant portal user in connection with the merchant portal is made in language NAB considers to be inappropriate (for example, using threatening or abusive language, or making profane, derogatory, discriminatory or harassing comments).
- 19.9 NAB Hive and NAB Gateway Reporting
- (a) You acknowledge that:
    - (i) the accuracy of any information about a merchant service that a merchant portal user obtains through using the reporting and data functions available via the merchant portals is subject to review by NAB as part of its normal procedures, and also subject to any changes that may be required following such a review by NAB;
    - (ii) whilst NAB makes every reasonable effort to ensure that reporting and data made available are current, complete and accurate, reporting and data reflect the entries that have been posted in relation to the relevant merchant service that can be accessed via the merchant portal at the time the information is obtained, and so may not be completely up to date.
  - (b) You must carefully review the information that you obtain through using the reporting and data functions available via the merchant portals and notify us promptly of any errors, inconsistencies, or other discrepancies of which you become aware.
  - (c) Without limiting any other term of this agreement, NAB does not represent or warrant that the reporting and data functions of the merchant portal services can be used to satisfy any of your legal, audit, compliance, risk or other requirements.

## 20. Provisions relevant to NAB Gateway only

### 20.1 Token Management

NAB Gateway token management function allows you to store your customers' credit card, debit card and other details in a secure database. The token ID linked with your customers' details can then be used instead of card details for processing or managing payments through NAB Gateway.

### 20.2 Using Token Management

- (a) you must ensure that all details entered into token management are correct and up to date.
- (b) An instruction from you to us to process a transaction in relation to a token ID constitutes an instruction to us to process or manage that transaction in relation to the stored card and other details represented by that token ID
- (c) You indemnify us against any loss that we suffer as a result of any error made by you in entering, selecting the token ID or in entering card and other details prior to tokenisation or any failure by you to keep such details up to date, except to the extent the loss is caused by our fraud, negligence or misconduct.

20.3 If you are accepting batch payments or using the virtual terminal services as part of NAB Gateway your use of these services will be governed by clause 22 except where the context indicates otherwise.

## 21. NAB Products and the ePayments Code

If you access a NAB Product with NAB Transact or NAB Gateway that involves Personal EFT Transactions the ePayments Code provisions in the relevant NAB Product Terms will override these terms and conditions to the extent of any inconsistency.

## 22. NAB Transact and NAB Gateway Service

22.1 If we have agreed to provide you with the NAB Transact, NAB Gateway service or NAB Gateway, this clause 22 applies to your merchant services as specified in this clause in addition to the documents specified in clause 3.1(f).

22.2 The following terms have these meanings in this clause,

**API** means application programming interface; and

**batch data means;**

- (a) In the case of NAB Transact and the NAB Gateway service, a computer file containing details of transactions for processing by us in accordance with this agreement. For the purposes of the Batch Payment Service, these details include (in relation to each individual transaction) whether the card is a credit card scheme debit card or a charge card and the number and expiry date of that card, the cardholder's name, the transaction reference, your merchant number, the transaction type and the authorisation identification number; and
- (b) In the case of NAB Gateway service, batch data means transaction data delivered via API.

**batch payments report** means a computer file or other form of reporting containing a report of all transactions processed during a given period as a result of your use of the batch payments service or such reports as are specified in the user guides issued or made available to you in connection with NAB Transact, the NAB Gateway service or NAB Gateway.

**batch payments service** means the service that enables you to send us one or more transactions for processing at the same time.

**virtual terminal service** means the service that enables you to request authorisation of credit card transactions and non-standard card transactions online.

NAB Gateway service is a different product to the merchant service referred to in clauses 17 to 22 inclusive. NAB Gateway service is an electronic payables and receivables channel with its own set of terms and conditions.

### Batch payments

22.3 In respect of batch payments:

- (a) the batch payments service can only be used if you have been issued with credentials as part of that service; and
- (b) you will be taken to have requested authorisation and processing of all transactions in batch data once the batch data enters our computer systems; and
- (c) the internet is an inherently insecure network and you assume the risk that we may not receive batch data that you have sent us over this network using the batch payments service; and
- (d) we are not obliged to advise you each time we receive batch data for processing; and
- (e) we are entitled to assume that any batch data that has been sent from your computer system has been sent by you or with your authority and we are not obliged to and will not check if the batch data has been sent by you or with your authority.
- (f) **Virtual terminal service**

- 22.4 If you use or intend to use the virtual terminal service to obtain online authorisation of MOTO transactions, you acknowledge and agree that:
- (a) the virtual terminal service can only be used if you have a gateway service provider and have been issued with credentials as part of that service; and
  - (b) if the virtual terminal service is unavailable for any reason whatsoever, you must obtain authorisation of transactions by using another means permitted by us as set out in the user guide; and
  - (c) you are responsible for obtaining all the information we tell you must be obtained from your cardholders in order to obtain authorisation of transactions using the virtual terminal service.

## 23. Intellectual property

### Ownership of intellectual property

- 23.1 Subject to the remainder of this clause, you acknowledge that all intellectual property rights subsisting in the materials provided by us or developed by or for us in relation to this agreement, vest in us and are our property including:
- (a) cardholder detail lists (whether personalised or not) and the promotional material we supply you; and
  - (b) any trademark, business name, trading style or get up; and
  - (c) any computer program; and
  - (d) any report, file, script, inventory, database, record or information required to be created, maintained or provided by you pursuant to, this agreement.
- 23.2 At our reasonable request, you undertake to swear all oaths, make all declarations, execute all documents and do all other things necessary to vest in us any intellectual property rights in which we have right, title and interest.
- 23.3 Without limiting the generality of the remainder of this agreement, you must not, without our consent:
- (a) use or alter our trademarks, business names, trading styles or get ups whether as part of your corporate or business name or on or in relation to any goods or services; or
  - (b) reproduce or modify any of our computer programs; or
- 23.4 merge any report, file, script, inventory, database, record or information referred to in clause 23.1(d) in or with any other information that is held by you and that is not obtained or generated by you. If we allow you to use one of our trademarks, business names, trading styles or get ups, we grant you a royalty-free, non-exclusive licence during the term of this agreement or for any shorter period that we specify. This licence will allow you to use that trademark, business name, trading style or get up (as the case may be) in the manner and form which we notify you from time to time solely for the purposes of this agreement.
- 23.5 On termination of this agreement and at our request and cost, you will assign to us or our nominee all intellectual property rights in and to:
- (a) all software designed specifically for; and
  - (b) all modifications, enhancements and application development undertaken by you to software specifically for the purposes of, the merchant services.
- 23.6 You acknowledge and agree that:
- (a) the card scheme logos, names and holograms and all intellectual property rights subsisting in those logos, names and holograms belongs to, and is or will be, vested in the card scheme; and
  - (b) the eftpos logos, branding and, trademarks and all intellectual property and goodwill in them are vested in eftpos; and
  - (c) all rights, titles and interests in our trademarks and any intellectual property subsisting in them belongs to and is or will be vested in us and our related bodies corporate; and
  - (d) all goodwill arising from the use of our trademarks, business names, trading styles or get ups pursuant to this agreement is for the benefit of us and is and will remain vested in us and our related bodies corporate.

### eftpos branding and trademarks

- 23.7 You are granted a sub- licence to use eftpos's trademarks, branding and marketing messages (trademarks), for the purposes we specify from time to time, during the term of this agreement only, on the following terms and conditions:
- (a) You must not use eftpos's trademarks in a manner that is inconsistent with or detracts from those trademarks; and
  - (b) you must comply with any eftpos style guide relating to use of the trademarks which we provide to you; and
  - (c) upon termination of this agreement you must immediately cease using the trademarks and destroy all materials and paraphernalia that include the trademarks; and you agree that this sub- licence does not grant you a proprietary interest in the trademarks.

## 24. Indemnity and set-off

- 24.1 You agree to indemnify us for all losses and liabilities we incur because:
- (a) you breach an obligation that you have under this agreement including if we have agreed to that breach in writing on the condition that you are responsible for any loss resulting from that breach; or
  - (b) of any dispute between you and a cardholder over a transaction or between you and any payment bureau or provider engaged by you; or
  - (c) of any wilful default, negligence, fraud, act or omission by you or any of your agents or representatives relating to this agreement; or
  - (d) of any infringement by you or your agents or representatives of another person's intellectual property rights; or
  - (e) we process or effect any part of or step relating to a transaction in a foreign currency, except to the extent that we have contributed to the loss or liability through our own negligence, breach or misconduct; or
  - (f) there are excessive chargebacks or fraudulent transactions, as determined by the card schemes or an industry body; or
  - (g) of your refusal or delay in complying with clause 5.5 (j).
- except to the extent the loss or liability is caused by our fraud, negligence or misconduct.
- 24.2 Subject to the other provisions of this agreement, we agree to indemnify you for any amounts processed in accordance with this agreement, keyed in properly into equipment (where appropriate) and accepted as valid by our electronic banking system, but not paid into your nominated account.
- 24.3 We need not incur any expense nor make any payment before enforcing a right of indemnity conferred by this agreement.
- 24.4 This indemnity survives termination of this agreement.
- 24.5 If you have any liability to us under this clause or any other part of this agreement, we may set off that liability against any liability we have to you. However, if this is a small business contract, we will not exercise these rights unless you are in default, we give you notice or we are exercising our rights against a bank deposit account (in accordance with clause 43). Otherwise, if we exercise these rights without giving you prior notice (including because you are in default) we will notify you after exercising these rights.

## 25. Limitation of liability

- 25.1 We try to maintain your facility, including all equipment we supply to you and systems in good working order and with as little downtime as possible. However, there may be times where, due to technology issues or scheduled maintenance, you are unable to process transactions, access any part of the merchant services via the merchant portals or experience slower transaction response times than usual. We recommend you have a backup payment method in place for when this occurs.
- 25.2 Except where due to our fraud, negligence or misconduct, we are not liable for any loss including loss of revenue you incur if any part of the merchant services or any equipment we or others supply is not working properly or you can't process transactions for any reason.
- 25.3 To the maximum extent permitted by law, and except with respect to any implied condition or warranty the exclusion of which would contravene any relevant law (including the *Australian Consumer Law*) or cause any part of this clause to be void ("non-excludable condition"), we disclaim any implied warranties in respect of the equipment or your use of the equipment or the provision of merchant services under this agreement, including any implied warranties of merchantability or fitness for purpose.
- If non-excludable provisions apply to
- (a) the equipment that we have supplied you and that equipment is defective, our liability under any non-excludable condition will be limited to the cost of repairing or replacing the equipment or, if you prefer, refunding fees paid you relating to that equipment (if any) for any period during which it was not performing correctly; or
  - (b) merchant services provided to you under this agreement our liability under any non-excludable condition will be limited to the re-supplying of services or the cost of having those services resupplied or, if you prefer, refunding fees paid by you for any period during which we did not provide services because of matters reasonably within our control (if any), except to the extent that it would not be fair and reasonable for us to rely on a limitation contained in (a) or (b).

Neither party will be liable to the other for any consequential loss however caused.

## 26. Confidential information and privacy

26.1 You:

- (a) must keep any confidential information confidential; and
- (b) may use the confidential information but only in relation to this agreement; and
- (c) may disclose the confidential information to enable you to perform your obligations under this agreement but only to your permitted personnel to the extent that they have a need to know; and
- (d) must not copy the confidential information or any part of it other than as strictly necessary for the purposes of this agreement and must mark if required by us any such copy “Confidential – NAB”.

26.2 On termination or expiry of this agreement, or earlier on reasonable request by us, you must promptly return to us or destroy any or all copies of confidential information, in which case any right to use, copy and disclose that confidential information ceases.

26.3 Your obligations under this clause continue indefinitely in relation to confidential information, even if that confidential information is returned to us or destroyed, or this agreement expires or is terminated.

26.4 This clause 26 does not apply to the extent that you are obliged by relevant law to disclose the confidential information. If you are so obliged to disclose any confidential information, you must before doing so at our reasonable cost notify us (if permitted by law) of the impending disclosure and inform the person to whom the disclosure is to be made that the information is confidential.

26.5 When you collect personal information about a cardholder you must treat that information in accordance with privacy law and any other relevant law of which we notify you from time to time.

26.6 You acknowledge and agree that:

- (a) we may obtain from any card scheme or a person who is involved in any card scheme; information about your merchant history or personal information about you, a related body corporate or your personnel for any purpose relating to the operation of those card schemes. This could include, for example, information relating to previous services that are similar to the merchant services; and
  - (b) we can use information about your merchant history and your personal information and information about your personnel or a related body corporate, including information about you collected from third parties to assess and process your merchant application; and
  - (c) we can disclose information about your merchant history, a data breach or relevant personal information in the following circumstances:
    - (i) to any card scheme, industry body (including the Australian Payments Network), or any person who is involved in any card scheme or industry body, information about you for any purpose related to the operation of those schemes, card fraud detection agencies (including information about termination of merchant services and reason(s) for termination of merchant services); and
    - (ii) where the relevant law or any card scheme requires us to do so; and
    - (iii) where we have reasonable grounds to believe that either you are involved in dishonest or criminal activity, are a victim of such activity, may have information relevant to an inquiry into such activity or have experienced a data breach, to any state or federal law enforcement or regulatory agency whether or not we have been requested by that agency to provide such information; and
  - (d) in addition to possible disclosure to the countries specified in NAB’s Privacy Policy, your personal information may be transmitted to backup servers located in France; and
  - (e) we can disclose your information to any related entities of ours and to any outsourced service providers engaged by us (for example, terminal suppliers, mail houses, debt collection agencies (where necessary) or data analytics providers); and
  - (f) you may request details of confidential information we hold about you and correct any inaccuracies.
  - (g) we are bound by card scheme rules which make all correspondence and discussions between card schemes and us private and confidential and you are not entitled to participate in or otherwise request a copy of such correspondence.
- 26.7 You must ensure that your personnel comply with the relevant provisions of this clause 26. This clause survives termination of this agreement.
- 26.8 When you collect information about an individual including a merchant portal user or other employee, that will be disclosed to us under this agreement or otherwise in connection with the merchant services, in addition to any obligations you may have concerning confidential information you must ensure that the individual is aware of:
- (a) our identity, as an organisation which will collect that individual’s personal information and our contact details as notified by us to you from time to time;
  - (b) the fact that the individual has a right to request access to their personal information from us;
  - (c) the purposes for which the individual’s personal information is collected by us;



- (d) the organisations or types of organisations (if any) to which we disclose personal information of the kind collected about the individual, as notified by us to you;
- (e) the reason or relevant law that requires the personal information to be collected by us; and
- (f) the main consequences (if any) for the individual if all or part of their personal information is not provided to us, as notified by us to you.

## 27. Variation and new merchant services

### 27.1 When we can vary this agreement

We may make changes to any provision of this agreement from time to time. We can make changes without your consent under this clause 27. We promise to act reasonably when we make any changes and give you notice of any change, as set out in clause 27.4 (“Notice periods for changes to this agreement”) below. The changes we can make are:

- (a) withdrawing an existing merchant service, introducing new merchant Services, or replacing one or more of your existing merchant services with an existing or a new merchant service; or
- (b) introducing a new fee or charge, or varying the amount of an existing fee or charge, how it is calculated or when it is billed (e.g., we may vary fees or charges to reflect increases in our costs, regulatory changes, card scheme fee changes, changes in market conditions or a change in the scheme to which your transactions are routed); or
- (c) replacing, suspending or ceasing merchant services, or making other changes to this agreement:
  - (i) where necessary to comply with changes in relevant law; or
  - (ii) where necessary to deal with significant fraud or security issues;
  - (iii) to reflect changes made by card schemes or other payment service providers or relevant service providers, or changes to our business or technological systems; or
  - (iv) that are administrative or minor, that correct mistakes or omissions, or that we reasonably believe that you will benefit from.
- (d) any other change we consider to be necessary or reasonable to protect our legitimate business interests.

### 27.2 Notice of a new or replacement Merchant Service

- (a) We may introduce new merchant services from time to time.
- (b) When we introduce a new merchant service, we may give you advance notice, but this will not always be the case.
- (c) If however, the new merchant service replaces one of your existing merchant services, we will give you notice in accordance with clause 27.4 “Notice periods for changes to this agreement” below
- (d) We may post details of any new or replacement merchant services on Hive, including any new terms and conditions which apply to the merchant portals. You will be taken to have accepted the terms and conditions applying to any new or replacement merchant service when you download, use or access that merchant service for the first time (unless otherwise specified in any specific terms and conditions for that new or replacement merchant service).
- (e) You may need a new letter of offer before you can use a new merchant service.

**27.3** Where any variation made by us has, or would have, an adverse impact on you, you may terminate this agreement.

### 27.4 Notice periods for changes to this agreement

We will notify you of changes to this agreement as follows and using the methods specified in clause 32 Notices :

Type of Change	Time Frame
Changes which we believe are unfavourable to you	At least 30 days before the change takes effect. However, we may give a shorter notice period or no notice if we believe it is reasonably necessary to avoid or reduce a material and immediate risk, which includes an increase in our credit risk or loss or a risk to a third party provider which provides a service to us relevant to this agreement.
Changes to government fees and charges	Reasonably promptly after the government notifies us of the change. However, we do not have to notify you if the government publicises the introduction of the change.
Any other changes to the terms and conditions	As soon as reasonably possible. This includes changes to standard fees and charges and interest rates.

## 28. Representations and warranties

### 28.1 You represent and warrant to us that:

- (a) you are duly authorised to enter into this agreement and the obligations under this agreement are valid, binding and enforceable in accordance with its terms; and
- (b) if you are an incorporated body, you validly exist under the laws of your place of incorporation and have the power and authority to carry on your business as that business is now being conducted and using any name under which that business is being conducted; and
- (c) if you, a related body corporate or any officer, employee or agent of you or a related body corporate has at any time been listed on a database of terminated merchants maintained by any card scheme or have otherwise had merchant services terminated by another acquiring bank, you have disclosed that fact to us.
- (d) You confirm that the receipt of money by us in accordance with any instructions given by you will not breach any relevant law in Australia or overseas.
- (e) The representations and warranties set out in this clause 28.1 will be deemed to be repeated each day after the date you enter into this agreement.

28.2 If you have entered this agreement in your capacity as a trustee of any trust you confirm the following in relation to that trust:

- (a) the trust is validly formed and relevant documents comply with the relevant law; and
- (b) any copy of the trust document you have given us is a true and complete copy and discloses everything about the trust; and
- (c) you are and will remain properly appointed as the only trustee of the trust; and
- (d) there is currently no breach of the terms of the trust; and
- (e) you have and will do nothing to put at risk a full right of indemnity from the trust assets in respect of liability that has arisen or might arise under this agreement; and
- (f) this agreement and the transactions entered into under it are for proper trust purposes; and
- (g) you have done everything required under the trust document to enter into this agreement and the transactions it contemplates; and
- (h) none of the trust assets has or will be resettled or set aside; and
- (i) the trust has not terminated nor has any event for the vesting of the assets occurred.

## 29. Term, termination and suspension

29.1 This agreement commences on the date you accept our letter of offer and continues until terminated.

29.2 Either party may terminate this agreement for convenience at any time, upon 60 days' written notice to the other party. The parties may agree on a longer or shorter period of notice.

29.3 You must stop accepting a nominated card, class of cards, or category or type of transactions:

- (a) promptly if we give you notice to do so, for example, to manage a risk of a breach of relevant law, a chargeback risk, a sanctions risk, or risks associated with online gambling or quasi cash transactions; or
- (b) immediately if this agreement terminates.

29.4 We may suspend, terminate or suspend then terminate this agreement in whole or part at any time upon notice to you if:

- (a) you commit a material breach of this agreement which is incapable of being cured; or
- (b) you commit a material breach which is capable of remedy, but you fail to remedy the breach within 7 days of notice from us requiring you to do so (but if this is a small business contract we will give you 30 days' notice) except as set out below in this clause; or
- (c) you are engaged in activity which exposes us or has exposed us to potential fines or penalties imposed under relevant law; or
- (d) you have in our reasonable opinion:
  - (i) engaged in or are engaging in dishonest activity in respect of the merchant services; or
  - (ii) you have established a merchant facility without a genuine or current commercial purpose; or
- (e) you have made a material misrepresentation about the nature of your business or the purpose for which you have obtained any of the merchant services either in the course of application for any merchant services or during the term of this agreement; or
- (f) you fail to provide the data specified in clause 12.2 within the time specified or to provide the security or guarantee and indemnity referred to in clause 12.3(a) in a reasonable time; or



- (g) we believe that your equipment or facility is being targeted by persons engaged in fraudulent or dishonest activity whether with or without your knowledge; or
- (h) your merchant services are the subject of a direction made under relevant law that your merchant services be suspended or terminated; or
- (i) we reasonably believe that there is a material risk that you will not be able to meet your obligations under this agreement and you fail to provide us with adequate security that we reasonably request, such as a bank deposit; or
- (j) you have defaulted in any payment obligation that you have under another agreement that you have with us; or
- (k) we have material concerns about your solvency or if you become bankrupt or insolvent or are subject to any form of insolvency administration or a resolution is passed or an order is made for winding up; or
- (l) you have a significant adverse credit event recorded against you; or
- (m) you or any service provider that you use in connection with your merchant services has suffered a data breach; or
- (n) you are in breach of any other agreement that you have with us and (if applicable) have not remedied the breach within any grace period allowed; or
- (o) you do not process any transactions for a continuous period of 12 months; or
- (p) for any other reason, for example if it is reasonably necessary to:
  - (i) prevent an anticipated breach of the relevant law or the law of any other country;
  - (ii) prevent potentially fraudulent activity or a scam;
  - (iii) manage any risk, including non-compliance with the PCIDSS (see clause 3.6(d)) or your participation in authentication (see clause 5.5); or
  - (iv) prevent an anticipated material loss to you or us arising from the misuse or unauthorised use of the merchant services; or
  - (v) protect our staff or our customers from any harm physical or otherwise caused or threatened to be caused by you.

We may exercise the suspension rights under this clause 29.4 for as long as is reasonably necessary to manage any risks. Subject to clause 29.6, we will incur no liability to you where we do so. We cannot detect and prevent all such transactions.

We may not give you advance notice or we may need to give you shorter notice (for example, if it is reasonably necessary for us to act quickly to manage a risk or to comply with our obligations under any card scheme). If appropriate, we will give you a general reason for doing so. If we do not provide advance notice, and where it is reasonable to do so, we will advise you within a reasonable time of exercising our discretion under this clause.

We may continue any action under this clause 29.4 until we receive a satisfactory response to any reasonable request for information under clause 3.4(h).

29.5 If any of your merchant services or any part of them are provided by NAB via a third party which:

- (i) for any reason beyond NAB's control, can no longer provide that service and NAB is unable, acting reasonably to provide you with an acceptable alternative,
- (ii) we may terminate all or part of your merchant services including this agreement and or your NAB Transact Agreement on no less than 30 days' notice.

29.6 Where required by card schemes, you authorise us to disclose to any card scheme, advice of termination of the merchant agreement and the reasons for the termination. You acknowledge that the information concerning termination of the merchant agreement then becomes available to any member of the card schemes. This information may be used in assessing subsequent applications for merchant facilities.

29.7 The ending (including by expiration of the term of this agreement or by termination by us) or suspension of this agreement or any part of it, does not affect any of your or our rights and obligations which arose before it ended or was suspended.

This includes our right to chargeback transactions and our right to recover accrued fees, charges and costs.

29.8 When this agreement ends for any reason you must:

- (a) not process any further transactions;
- (b) pay any outstanding fees, charges or costs due to us under this agreement;
- (c) continue to reimburse us for any fees, charges costs or chargebacks or other losses we incur;
- (d) maintain an account for 180 days so that we can continue to charge fees and process chargebacks to your account;
- (e) return to us within 14 days all equipment supplied by us and any other material that we supplied and specify requires returning; and
- (f) continue to pay rental fees (if applicable) for any equipment supplied by us until you return that equipment to us.

- 29.9 If a part of this agreement that requires us to supply equipment is ended by you, then you must pay us:
- (a) any fees, charges and costs we have prepaid for services in connection with the equipment; and
  - (b) an amount to pay our costs of installation as determined by us if the part ends within 3 years of the equipment being installed.
- 29.10 You agree that we may disclose to any person the fact that all or part of this agreement or the merchant services has been terminated. You authorise us to disclose information concerning the termination to any credit provider for the purpose of notifying that credit provider of that termination and the reason for it occurring. Termination and subsequent listing of the termination may affect your ability to obtain merchant facilities with another acquirer.
- 29.11 This clause 29 survives termination of this agreement.

## **30. Our consent and discretion**

- 30.1 When we exercise a right or discretion under the terms of this agreement (like considering a request you make or deciding whether or not to do something), we will do it in a way that is fair and reasonable. This includes when we make changes to terms of this agreement (including any supplementary conditions) under clause 27, we give you notice to stop accepting a nominated card, class of cards, or category or type of transactions under clause 29.3(a), or fees and charges under clause 26. When we exercise a discretion under this agreement we may consider a number factors including but not limited to:
- (a) the requirements of any relevant law, including a card scheme;
  - (b) our legal obligations, industry codes and payment scheme rules and the expectations of our regulators;
  - (c) protecting our customers, staff and systems and the personal information we hold;
  - (d) whether any information you provided us is misleading, incorrect or incomplete, or you haven't provided us with information we reasonably need when asked;
  - (e) how our products and services are intended to be used (and how you have used them);
  - (f) our public statements, including those relating to protecting vulnerable persons, the environment or sustainability;
  - (g) community expectations and any adverse impact on our reputation;
  - (h) whether we need to take action to protect you or another person from a potential fraud or scam; or
  - (i) risk management, including sanctions risk management;
- 30.2 If we impose any conditions or requirements to any consent we give, or agree to any request that you make subject to conditions, then you'll need to comply with those conditions or requirements.
- 30.3 If we do not make a decision or do something straightaway, we may still do so later on. This includes where we delay or defer doing so, or we temporarily waive a requirement.
- 30.4 Our rights and remedies under this agreement are in addition to other rights and remedies given by law independently of this agreement.
- 30.5 Our rights and remedies may be carried out by any officer or employee of us, or any person we have authorised.
- 30.6 We're not responsible for any loss arising in connection with us exercising (or not exercising) our rights except to the extent caused by the fraud, negligence or misconduct of us, our related entities or our agents.

## **31. Cardholder's credit worthiness**

- 31.1 You cannot infer from the fact that a cardholder has been issued with a nominated card, or that a transaction has been processed or an authorisation has been given, that we have guaranteed:
- (a) the cardholder's creditworthiness; or
  - (b) the correct identity of the cardholder; or
  - (c) that the transaction is valid and acceptable and will not be subsequently charged back or reversed

## **32. Rights of each party**

- 32.1 You must not assign or charge your rights under this agreement without our consent.
- 32.2 We may enter this agreement as principal or agent.
- 32.3 We may assign or otherwise deal with our rights under this agreement or in equipment we own in accordance with our legitimate business interests. We may not give you notice where we reasonably believe the assignment causes no detriment to you. You will have the same rights against an assignee as you do against us. We may disclose any information or document we consider reasonable to help us exercise this right at any time to a person to whom we assign or propose to assign our rights.

- 32.4 We may, without your consent subcontract any of our obligations under this agreement and if we do you must allow access to our subcontractors to your business premises for the purpose of installing equipment or auditing your compliance with this agreement. You will have the same rights against us for any acts performed by a subcontractor on our behalf.
- 32.5 The rights, powers and remedies which you and we have under this agreement are in addition to the ones provided independently by law (including, without limitation, any rights conferred under trade practices legislation). You and we may exercise the rights, powers and remedies under the relevant law and in equity as well as any of those provided by this agreement
- 32.6 If you or we do not insist upon or enforce a right arising from a breach of this agreement, that does not mean that you or we have given up or waived that right or any other right arising from that breach or any later breach.
- 32.7 Nothing contained or implied in this agreement constitutes you as the partner, agent, or legal representative of us for any purpose or creates any partnership, agency or trust, and you have no authority to bind us in any way.

### **33. Notices**

- 33.1 You agree that we may communicate with you in the following ways and a notice given to you by us is duly given if it is:
- (a) in writing; and
  - (b) given personally to the addressee at the address last advised); or
  - (c) sent by prepaid post to the address last advised (and until advised otherwise, the address last advised shall be the address for you and us as indicated in the letter of offer); or
  - (d) sent by facsimile to the facsimile number last advised; or
  - (e) sent by email to the email address last advised; or
  - (f) by being made available at NAB's website or another merchant portal of NAB platform in which case NAB will promptly notify you by way of statement message or electronic mail to your nominated electronic address that the information is available for retrieval and provide you with the ability to readily retrieve the information (eg. by providing you with a link to NAB's website or another merchant portal or NAB platform); or
  - (g) by being made available on NAB Hive if that merchant service has been activated in respect of your merchant services, at the relevant time; or
  - (h) notifying you in any other way permitted by law.
- 33.2 A notice given by you to us is duly given it is in writing signed by you and left at our address or sent by prepaid post to our address or sent by facsimile to our facsimile number.
- 33.3 Any legal process or notice of legal process (for example, a summons) may be served on you or us by delivering or leaving it at your or our last advised address or by any other method of service permitted by relevant law.
- 33.4 A notice takes effect from the time it is deemed to be received unless a later time is specified in it.

#### **When notices are taken to be received**

- 33.5 A notice is taken to be received:
- (a) for notices sent by post, on the 8th day after posting; and
  - (b) for notices sent by facsimile, on production of a transmission report by the transmitting machine that indicates that the whole facsimile was sent; and
  - (c) for notices sent by email, at the time that the communication enters your designated information system or is capable of being viewed from your computer, even if no person is aware of its receipt; and
  - (d) for notices made available on our website, at the time that you are taken to receive the email or statement message that we send to you to advise you that the notice is available for retrieval.
  - (e) If we have activated NAB Hive, at the time such notice has been posted on NAB Hive or included in a statement you can view on NAB Hive.
  - (f) You must promptly advise us of any change in your address or contact details and we shall endeavour to do likewise.
  - (g) You may change your nominated electronic address or withdraw your agreement to receive notices by electronic mail by giving us notice
  - (h) You may request a paper copy of a communication given electronically for 7 years from the time the information is given.

## 34. Further assurances

34.1 You agree, at your own expense, to:

- (a) execute and do everything else reasonably necessary or appropriate to bind you under this agreement and to execute, establish, pay stamp duty or other taxes on or in connection with any security we require in reliance on a provision of this agreement; and
- (b) use your best endeavours to cause relevant third parties to do likewise.

34.2 If we determine that this agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, you agree to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which we ask and consider necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
- (b) enabling us 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 us; or
- (c) enabling us to exercise rights in connection with the security interest.

Everything you are required to do under this clause 34.2 is at your expense (in particular, but not limited to, preparing, registering and maintaining any financing statement or financing change statement as required under the PPSA). You agree to pay or reimburse our reasonable costs in connection with anything you are required to do under this clause 34.2.

## 35. Disputes and general information

35.1 We will provide you upon request with general information dealing with our procedures for handling disputes, the time within which disputes will normally be dealt with and indicating that disputes will be dealt with by staff with appropriate powers to resolve disputes.

35.2 If you have raised an issue with NAB but do not feel it has been resolved to your satisfaction, you can contact the NAB Resolve team on 1800 152 015.

35.3 If your concerns have not been resolved to your satisfaction, you can lodge a complaint with the Australian Financial Complaints Authority (AFCA):

**Website:** [afca.org.au](http://afca.org.au)

**Email:** [info@afca.org.au](mailto:info@afca.org.au)

**Telephone:** 1800 931 678 (free call)

**In writing to:** Australian Financial Complaints Authority, GPO Box 3, Melbourne, VIC 3001

AFCA is an External Dispute Resolution (EDR) scheme to deal with complaints from consumers in the financial system. AFCA provides fair and independent financial services complaint resolution that's free to consumers.

## 36. Publicity

36.1. You agree not to make any press or other announcements or releases relating to this agreement and the transactions, the subject of this agreement, without our prior approval.

36.2 The approval required under clause 36.1 shall include the manner in which the announcement or release is to be made and its form and its content, unless and only to the extent that the announcement or release is required by law.

## 37. Governing law

This agreement is governed by the law in force in the Australian State or Territory where your address (detailed on the Letter of Offer) is located. If this address is not located in Australia, this agreement is governed by the law of Victoria. Any court cases involving this agreement can be held in the courts of any State or Territory of Australia with jurisdiction. You and we submit to the non-exclusive jurisdiction of those courts.

## 38. Taxation

38.1 We may be required to disclose information about your merchant services (eg. total turnover processed through the merchant services) to the Australian Taxation Office.

38.2 We may be required by taxation laws to remit amounts to the Australian Taxation Office if you do not provide your tax file number to us.

## **39. Banking Code of Practice**

- 39.1 NAB has adopted the Banking Code of Practice (Code) and relevant provisions of the Code apply to you, if you are an individual or a small business customer referred to in the Code.
- 39.2 You can obtain from NAB upon request:
- (a) information on NAB current interest rates and Fees and charges, if any;
  - (b) and a copy of the Banking Code of Practice.

## **40. Commissions**

- 40.1 We may pay a referral fee to any person that introduces your business to us. We may also receive commissions for referring your business to third parties. This includes American Express, who pays us a payment of up to \$200 per referral.

## **41. Hotel/motel reservation guarantee and advance accommodation deposit**

- 41.1 This clause 41 only applies where you have been authorised to accept card transactions to guarantee hotel/motel reservations or for advance accommodation deposits.
- 41.2 Where you have accepted a card transaction to guarantee a hotel/motel reservation or to accept a deposit in advance towards an accommodation reservation, you agree to:
- (a) handle the reservations in accordance with the card scheme rules; and
  - (b) honour these reservations in all circumstances; and
  - (c) cancel the reservation and, where necessary, issue a refund to the cardholder if the cardholder cancels the reservation in accordance with card scheme rules.
- 41.3 In relation to a guaranteed reservation, You must:
- (a) accept all cancellations prior to the specified time; and
  - (b) not require cancellation notification more than 72 hours prior to scheduled arrival date; and
  - (c) if the cardholder makes the reservation within 72 hours prior to the scheduled arrival date, ensure that the cancellation deadline is no earlier than 6.00pm merchant outlet time on the arrival date or date guaranteed; and
  - (d) if required that a cardholder cancel before 6.00pm merchant outlet time on the date guaranteed, a written copy of the cancellation policy, including the date and time that cancellation privileges expire, must be provided to the cardholder; and
  - (e) if the cardholder has not claimed or cancelled the hotel reservation service accommodation by the specified time, you must hold the rooms available according to the reservation until check-out time the following day. You may then complete a transaction receipt that must contain the following:
    - (i) amount of one night's lodging plus applicable tax; and
    - (ii) cardholder's name, account number in an truncated format, and expiration date; and
    - (iii) the words "No Show" on the signature line of the transaction receipt.
- 41.4 You shall have the guaranteed room available for the arrival of the cardholder. If for any reason you are unable to provide the room, you shall provide at no charge a comparable room for one night at some other establishment and a three minute local or long distance telephone call. You shall not have to hold accommodation available for subsequent nights if the cardholder has failed to appear for their reservation guarantee by checkout time following the first night of the guaranteed reservation.
- 41.5 If there is a dispute, you shall accept a chargeback where the cardholder claims that they cancelled the guaranteed reservation.
- 41.6 If there is a dispute in relation to a guaranteed reservation or an advance accommodation deposit, you shall accept a chargeback where the cardholder claims that they cancelled the reservation.

## **42. Express checkout**

- 42.1 This clause 42 only applies where you have been authorised to accept card transactions to permit express check out from hotels or motels.
- 42.2 You agree to handle the express checkout transactions as outlined in the card scheme rules. You shall, retain and make available to us the itemised hotel/motel bill. All disputes shall be resolved in accordance with the rules of the relevant card scheme.

## 43. Bank deposit

43.1 If, in your letter of offer or by some other document you agreed to give us a bank deposit or when acting reasonably and to protect the Bank from an immediate and material risk, we notify you that a bank deposit is required this clause applies to this agreement.

43.2 The following words have these meanings in this clause:

**bank deposit** means the deposit held pursuant to clause 43.3.

**bank deposit account** means the account in which the bank deposit is held.

**bank deposit limit** means, subject to clauses 43.3(f), (g) and (h), the amount described in your letter of offer under the heading 'Deposit Schedule' or otherwise notified in writing to you by us.

**NAB cash management account** means NAB's cash management account, the terms of which are governed by the terms and conditions for NAB Products as amended from time to time or a similar product replacing the cash management account from time to time.

**transfer amount** means the amount in dollars to be transferred whenever proceeds are credited to the settlement account, by debiting the settlement account and crediting the bank deposit account pursuant to clauses 43.3(f), (g) and (h).

### Bank deposit

43.3 Terms of the bank deposit account:

- (a) Unless we otherwise agree, you must have a bank deposit of the bank deposit limit held in an account with us for the purposes of this clause recorded in dollars.
- (b) Unless we otherwise agree, the bank deposit account must be a NAB Cash Management Account.
- (c) We may at any time determine that a bank deposit is required or is no longer required.
- (d) Unless otherwise agreed by us, you cannot alter the status of the bank deposit account.
- (e) You agree that to the extent required by this clause, the terms of this clause vary and form part of the terms and conditions of your bank deposit account.

### Bank deposit limit

- (f) We may at any time increase or decrease the amount of the bank deposit limit and will notify you in writing in accordance with clause 27.4 if we do so.
- (g) In our discretion, we may acting fairly and reasonably determine that:
  - (i) you must promptly cause there to be a bank deposit of any amount up to the bank deposit limit; or
  - (ii) the balance of the bank deposit may be less than the bank deposit limit provided that the balance is being increased by regular deposits of transfer amounts.
- (h) All transfer amounts, initial deposits and all other deposits into the account shall be counted towards the bank deposit limit.

### Transactions in respect of the bank deposit account

- (i) You agree and authorise us or, where your nominated account is held with another financial institution, to direct such financial institution to debit your nominated account with the transfer amount every time there are transactions processed to your nominated account pursuant to clause 11.
- (j) While the balance of the bank deposit amount is equal to or greater than the bank deposit limit, no amount shall be transferred under clause 43.3(g)(ii).
- (k) Unless otherwise determined by us and notified in writing, the transfer amount shall be 5% of the aggregate of the transaction amounts processed on the day in question. The transfer amount may be increased or decreased at any time in our absolute discretion.
- (l) The transfer amount once received by us shall be credited to the bank deposit account.
- (m) You may at any time deposit funds into the bank deposit account, provided you notify us and we agree prior to the deposit being made. Such deposit will be counted towards the bank deposit limit.
- (n) We may at any time, in our discretion and without notice to you, apply any part or all of the bank deposit against the full amount of all valid and acceptable refund transactions processed by you in the applicable currency or any other liabilities arising under this agreement.
- (o) We must give you information each month showing the full amount of all transactions processed by us during the previous month to the bank deposit account.

You must raise any issue that you have concerning an amount paid, or not paid to or from the bank deposit account within 3 months of the date of payment or of the date the payment was due. We may charge you a fee for investigating any such issue.

- (p) We will not release the amount of the bank deposit up to the bank deposit limit to you or at your direction, unless and until your entire liabilities whether actual or contingent under this agreement have been satisfied in full. We are under no obligation to provide or make available banking facilities to you including withdrawal by any means in respect of the bank deposit, except as provided for in clause 43.3(r).
  - (q) For the avoidance of doubt, you agree that no liability shall arise for us not permitting withdrawals from the bank deposit account provided that we have acted reasonably having regard to our legitimate commercial interests
  - (r) Should the balance of the bank deposit exceed the bank deposit limit at any time and for any reason the amount exceeding the bank deposit limit shall be repayable upon demand in accordance with banking practice for such an account.
- 43.4 You agree to do any reasonable act or execute any document including the direct debit documentation to provide for or facilitate the transfer of funds from the nominated account to the bank deposit account.
- (s) You must not create any encumbrance over or affecting or otherwise dealing with the bank deposit.
  - (t) For the avoidance of doubt, any fees and charges in connection with or related to the implementation of this clause, including the use of direct debit, shall be borne by you and recoverable where applicable by us including by set-off against the bank deposit account.
  - (u) Nothing in this clause affects our ability to exercise rights of set-off arising by relevant law or under the merchant agreement.
  - (v) Nothing in this clause 43 is intended to create a charge.
  - (w) This agreement is intended to be a close-out netting contract for the purposes of the *Payment Systems and Netting Act 1998* (Cth).

