

EZYPAY

Banking Agreement

New Zealand



Banking Agreement

This agreement applies to all users of the Ezypay payment service who have been approved to accept Visa and Mastercard transactions. This agreement is made between (1) you, the sub-merchant; (2) ASB Bank Limited (ASB); and (3) Ezypay Pty Ltd (Ezypay).

1 Definitions

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

ASB refers to the ASB Bank Limited, NZBN 9429039435743.

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

Card Schemes means, unless otherwise agreed by the parties, Visa and MasterCard.

Card Scheme Rules means the rules and regulations which regulate participants in the Card Schemes.

Cardholder means the Person in whose name the Card has been issued.

Chargeback is the reversal of a previously successful sales transaction.

Card means a card that has been designated by the issuer as a Visa or MasterCard card.

Data Breach means any occurrence which results in the unauthorised access by a third party to confidential data relating to card transactions stored by your business or any entity engaged by you to provide storage or transmission services in respect of that data.

Data Security Standards means the Payment Card Industry Data Security Standards ("PCIDSS") mandated by the Card Schemes for the protection of Cardholder details and transaction information, and any additional or replacement standards of which You are advised from time to time.

Payment Service means the service provided by Ezypay Pty Ltd.

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

Personal Information refers to information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received by You from any source as a consequence of the performance of the rights and obligations under this Agreement.

PIN means the personal identification number allocated by a card issuer or personally selected by the account holder.

Privacy Law means all legislation and principles relating to the collection, use, disclosure, storage and granting of access rights to Personal Information, including the Privacy Act, 1993 (NZ).

Related Company has the meaning given to it in the Companies Act, 1993 (NZ).

Relevant Law means any:

- (a) statute, ordinance, code or other law including regulations and other instruments under them that are relevant to the obligations and rights of this Agreement; and
- (b) any code of practice, guidelines or standards issued by relevant regulators or industry bodies, including any card scheme rules relevant to this Agreement.

Sub-Merchant means a company domiciled in New Zealand that has agreed to the Payment Facilitator Sub-Merchant Terms and submits Card Transactions under Ezypay's Merchant Facility with ASB.

Transaction Receipt means a document used as evidence for a transaction.

We, Us and **Our** means, collectively, ASB and Ezypay.

You and **Your** means the Person to whom the Payment Service is provided by Us

2 Approval to use payment services

2.1 You acknowledge that:

- (a) Acquiring services are provided to Ezypay by ASB;
- (b) the operation of this Agreement is conditional on ASB approving an application for Ezypay to provide the Payment Services to You; and
- (c) We can disclose information about Your merchant history, a data breach and relevant Personal Information:
 - (i) to any Card Scheme, and card fraud detection agencies, information about You for any purpose related to the operation of those schemes, information about termination of payment services and reason(s) for termination of ASB merchant solutions; and
 - (ii) where the law requires or permits us to do so.
- (d) ASB is bound by Card Scheme Rules and all correspondence and discussions between Card Schemes and ASB are confidential as between ASB and the Card Schemes.

2.2 You represent and warrant that:

- (a) any information You provide to Ezypay in connection with an application for Ezypay to provide the Services is complete, accurate and not misleading or deceptive; and
- (b) You have complied with Your obligations under Privacy Law; and
- (c) You are able to satisfy Your obligations and responsibilities under this Agreement; and

- (d) You are a valid registered New Zealand business and domiciled in New Zealand (in accordance to scheme location rules).

2.3 You acknowledge and agree:

- (a) that Ezypay and ASB are authorised to obtain from third parties financial and credit information relating to You in connection with our decision to approve Your application and in respect of our continuing evaluation of Your financial and credit worthiness; and
- (b) that any information collected by Ezypay may be disclosed by Us to ASB.

3 Your obligations

3.1 You:

- (a) must immediately notify Ezypay of any change to Your financial position which may affect Your ability to perform Your obligations under this Agreement; and
- (b) must provide Ezypay with prior written notice of any change in your place of business not carry on business in a place which has not been approved by Ezypay and must not move Your place of business without our prior written consent; and
- (c) only submit a sales transaction where You are the supplier of the goods and/or services; and
- (d) not submit transactions on behalf of a third party, act as a payments facilitator, or a payment service provider; and
- (e) must provide Ezypay and ASB with all information and assistance reasonably required to perform their obligations and to deal with any queries in relation to the Payment Service, including a copy of this Agreement; and
- (f) must comply with all applicable Scheme Rules, as amended from time to time;
- (g) that the Card Schemes are the sole and exclusive owner of any Card Scheme branding;
- (h) not to contest the ownership of the Card Scheme branding for any reason;
- (i) the Card Schemes may at any time, immediately and without advance notice, prohibit You from using any form of Card Scheme Branding any reason;
- (j) Card Schemes have the right to enforce any provision of the Scheme Rules and to prohibit You and/or Ezypay from engaging in any conduct the Card Scheme deems could injure or could create a risk of injury to the Card Schemes, including injury to reputation, or that could adversely affect the integrity of the Interchange System, the Card Schemes Confidential Information or both; and
- (k) You will not take any action that could interfere with or prevent the exercise of this right by a Card Scheme.

Data Security Standards

- 3.2 This clause applies to you if collect payment data directly from a cardholder or store any cardholder data. In addition to the other provisions of this agreement, 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. 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) or sensitive authentication data after authorization (even if encrypted); and
 - (c) if Ezypay or ASB advise you that you must comply with the Payment Card Industry Data Security Standards, you must, at your own expense, successfully complete the protocols for PCIDSS within the time frame stipulated by Ezypay or the Card Schemes. You acknowledge and agree that if you fail to do so:
 - (i) Ezypay or ASB may terminate the merchant services; and
 - (ii) You are liable for any fine imposed upon ASB by the Card Schemes as a result of your failure to comply; and
 - (d) If you have suffered a Data Breach:
 - (i) You must advise Ezypay as soon as you become aware of the data breach; and
 - (ii) you must give ASB and its agents full access to your systems and databases to facilitate a forensic analysis to ascertain the extent of the breach.

Your duties to Cardholders

- 3.3 Subject to the other provisions of this Agreement, You:
- (a) must accept any valid and acceptable Card in a transaction; and
 - (b) must perform all obligations (including supplying all goods and/or services) to the cardholder in connection with the sale; and
 - (c) must not exchange any information or document relating to a Cardholder's account number, or Card number, or a transaction, to any Person other than:
 - (i) Ezypay;
 - (ii) ASB; and
 - (iii) the card issuer; or
 - (iv) as required by law; and
 - (d) if You collect or store Cardholder information, You must comply with any Data Security Standards notified to You; and
 - (e) You may not transfer or attempt to transfer financial liability under this Agreement by asking or requiring a Cardholder to waive his or her dispute rights.

Recurring transactions

- 3.4 You may only process a transaction as a recurring transaction if:
- (a) you have obtained cardholder permission (either electronically or in hardcopy) 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 request for the goods or services was initially accepted online.

Indemnity

- 3.5 You agree to indemnify and hold Ezypay harmless from and against any fines imposed by a Card Scheme because of your conduct in relation to the merchant services, including any fines imposed as a result of an unacceptable rate of chargebacks.

4 Website requirements

- 4.1 You must provide us reasonable access to view, monitor and audit the pages of Your web site.
- 4.2 You may be required to make changes to your website or otherwise that we deem necessary or appropriate to ensure that you remain compliant with the Scheme Rules governing the use of the Card Scheme branding.

5 Card acceptance requirements

- 5.1 You must:
- (a) use reasonable care to detect unauthorised use of a Card; and
 - (b) notify Ezypay if You become aware of or suspect fraud on the part of a Cardholder; and
 - (c) establish a fair policy for dealing with refunds and disputes about transactions and include information about that policy on Transaction Receipts as required by Ezypay; and
 - (d) only submit a transaction as a refund to a Cardholder if it is a genuine refund of a previous sale transaction. The refund must be processed to the same card that was used in the original sales transaction and be for the original sale amount; and
 - (e) not process a refund transaction as a way of transferring funds between Your accounts; and
 - (f) not ask a Cardholder to reveal their PIN or any other secret identifier; and

- (g) contact Ezipay for instructions if the identification of a Cardholder or the validity of the Card is uncertain; and
- (h) not knowingly submit for processing any transaction that is illegal or that You should have known is illegal.

5.2 For remote transactions, you must:

- (a) take reasonable steps to verify the identity of the Person You are dealing with, in order to confirm that they are the genuine Cardholder; and
- (b) record reasonable identification details of the Person You are dealing with, as well as the commencement and expiry dates of the Card.

6 Transaction receipt

- 6.1 Unless we have agreed that we will provide the transaction receipt to the cardholder, You must give the Cardholder a copy of the Transaction Receipt for each transaction, but You must not charge a fee for doing so.
- 6.2 You must provide Ezipay with the Transaction Receipt and any other required evidence of the transaction within seven (7) days if You are asked by Ezipay to provide it.
- 6.3 If You wish to change Your Internet or email address, or telephone number appearing on the Transaction Receipt, You must notify Ezipay in writing at least fifteen (15) Banking Days prior to the change taking effect.

7 Invalid or unacceptable transactions

- 7.1 A transaction is not valid if:
 - (a) the transaction is illegal as per applicable laws; or
 - (b) this Agreement was terminated before the date of the transaction; or
 - (c) You have not complied with Your obligations in clause 3.3; or
 - (d) for any other reason, the Cardholder is entitled under the Card Scheme Rules to a chargeback of the transaction.
- 7.2 A transaction for a sale or refund 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 ASB or Ezipay decide, in their discretion, is not acceptable.
- 7.3 You acknowledge and agree that ASB or Ezipay may:

- (a) refuse to accept a transaction if it is invalid or unacceptable, or may charge it back to you if it has already been processed, even if we have given you an authorisation; and
- (b) reverse a sales transaction as a chargeback, and debit your account for the amount of the chargeback, for any of the reasons in clauses 8.1 and 8.2 and any other reason we notify you of from time to time; and
- (c) without limiting the above, delay, block, freeze or refuse to accept any transaction where ASB or Ezypay has reasonable grounds to believe that the transaction breaches New Zealand law or sanctions or the laws or sanctions of any other country.

8 Settlement of transactions

- 8.1 Ezypay is responsible for disbursing to you, in accordance with your funding, reserve and payment arrangements with Ezypay, any settlement amounts received from ASB in respect of transactions processed under this agreement.
- 8.2 You agree to direct any queries regarding settlement to Ezypay.

9 No warranties by us

Neither Ezypay nor ASB make any warranties in respect of any of the services provided under this agreement. To the maximum extent permitted by law, any and all implied warranties and guarantees are excluded. In respect of any warranty or guarantee which is unable to be excluded under any relevant law, our liability in respect of a breach of that warranty or guarantee is limited to the re-supply of the goods or services or the payment of the cost of having the goods or services supplied again.

10 Exclusion of liability

To the maximum extent permitted by applicable law we are not liable to you or to any person for any act or omission (including negligence) of ours that results in any direct or indirect loss (including loss of profits), damage, injury or inconvenience you suffer because of any service failure, including any unavailability of the service, any delays or any errors. Under no circumstances will be liable to you for any lost sales, revenue or profit or loss of custom due to any service failure which results in you being unable to promptly accept payments from your customers.

11 Termination and suspension

- 11.1 ASB or Ezypay may suspend or terminate this Agreement or suspend then terminate this Agreement or any part of it at its sole discretion including if:

- (a) You are in breach of Your obligations under or arising out of this Agreement; or
- (b) if in Ezypay's or ASB's reasonable opinion, the processing of Your transactions exposes Ezypay or ASB to an unacceptable level of risk; or
- (c) You are or have engaged in conduct which exposes Ezypay or ASB to potential fines or penalties imposed under Relevant Law; or
- (d) Your business or Equipment is or has been targeted by a person engaged in fraudulent or dishonest activity whether with or without Your knowledge; or
- (e) you or any service provider (other than Ezypay or ASB) that you use in connection with your merchant services has suffered a data breach
- (f) a direction is made by a card scheme or under Relevant Law that the Payment Service be suspended or terminated; or
- (g) you have experienced an adverse change in financial circumstances; or
- (h) we have concerns about your solvency or if you come insolvent or are subject to any form of insolvency administration or a resolution is passed or an order is made for winding up; or
- (i) you have a significant adverse credit event recorded against you.

11.2 This Agreement will terminate automatically and immediately if:

- (a) Ezypay's registration as a member service provider or independent sales organisation with any card scheme is cancelled;
- (b) Ezypay's agreement with ASB for the provision of merchant services is terminated for any reason; or
- (c) any other agreement that you have with Ezypay in respect of Ezypay's payment processing services is terminated for any reason.

11.3 You authorise ASB to disclose to any Card Scheme advice of termination of this Agreement and the reasons for the termination. You acknowledge that the information concerning termination of this Agreement then becomes available to any member of the Card Schemes. This information, available to any member of the Card Schemes, may be used in assessing subsequent applications for merchant facilities.

11.4 This clause 11 survives termination of this Agreement.

12 Assignment

You may not assign or charge Your rights under this Agreement without our prior written consent.

13 Amendment

We may vary this agreement on 30 days' written notice to you.

14 Notices

- 14.1 You acknowledge that ASB or Ezypay may deliver notices to You in any of the ways listed in clause 14.2.
- 14.2 A notice must be in writing and is taken to be received:
- (a) if delivered personally, at the time of delivery;
 - (b) if sent by pre-paid post, on the third day after the posting;
 - (c) if sent by facsimile transmission, on the date the transmitting machine records transmission of the complete document;
 - (d) when the party sending the notice is the ASB or Ezypay, if sent by email, at the time when the email enters Your information system.
- 14.3 The address, facsimile number or email address to be used for notices is the last address, facsimile number or email address advised by a party. You must inform Ezypay immediately of any change of Your address, facsimile number or email address.

15 ASB Contact details

In the event that you have any concerns or questions not addressed by Ezypay, You can contact the ASB Merchant Acquiring team via email to acquiring@asb.co.nz.

16 Miscellaneous

- 16.1 Where there is inconsistency between the obligations contained in the Payment Facilitator Sub-Merchant Terms (this Agreement) and the Merchant Facility Agreement (between Ezypay and ASB), the Merchant Facility Agreement will prevail.
- 16.2 In the event of any inconsistency between any provision of the Payment Facilitator Sub-Merchant Terms and the Scheme Rules, the Scheme Rules will govern.

