

## Terms and Conditions of the Cardmember Agreement ICBC VISA Credit Card

**(From Industrial and Commercial Bank of China (New Zealand) Limited)**

### IMPORTANT:

THIS AGREEMENT CONTAINS THE TERMS AND CONDITIONS APPLICABLE TO YOUR CARD(S) AND YOUR CARD ACCOUNT(S). PLEASE READ THIS AGREEMENT THOROUGHLY BEFORE USING OR SIGNING A CARD OR USING ANY OF THE SERVICES. BY USING OR SIGNING OR RETAINING A CARD OR USING ANY OF OUR SERVICES, YOU WILL BE DEEMED TO HAVE ACCEPTED ALL THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT AND WILL BE BOUND BY THEM. YOUR USE OF THE CARD WILL BE GOVERNED BY THIS AGREEMENT. IF YOU DO NOT WISH TO BE BOUND BY THIS AGREEMENT, CUT YOUR CARD IN HALF AND RETURN THE PIECES TO US. USE OF THIS CARD IS DEEMED TO BE ACCEPTANCE OF THIS AGREEMENT. YOU SHOULD NOT USE THE CARD BEFORE OR AFTER THE PERIOD OF VALIDITY PRINTED ON THE FACE OF THE CARD.

### 1. Definitions

In this Agreement, the following words shall have the following meanings, unless the context otherwise requires:

- (a) "Account Holder" means a person in whose name the Card Account is opened and maintained;
- (b) "ATM" means an automated teller machine;
- (c) "Balance Transfer" means a transfer of the debit balance on any credit card held with any credit card issuer or any account with other banks (other than the Bank) to a Card Account;
- (d) "Bank" means Industrial and Commercial Bank of China (New Zealand) Limited ("ICBC (New Zealand)"), its successors and assigns;
- (e) "Card" means any ICBC VISA credit card linked to a Card Account, whether a principal or supplementary card, whether "platinum", "gold" or "classic", and including a generic or affinity or "co-brand" card, issued by the Bank pursuant to this Agreement;
- (f) "Card Account" means an account in New Zealand Dollars opened and maintained by the Bank for the purposes of recording debits and credits in respect of usage of the Cards under this Agreement;
- (g) "Cardmember" means a Person in whose name a Card has been issued and, where the context permits or requires, includes a supplementary cardmember, any of their respective personal representatives and lawful successors (and may or may not include the Account Holder as the context may require);
- (h) "Card Transaction" means any purchase of goods and/or services or any transfer or cash advances effected by the use of a Card;
- (i) "Charge" means any amount debited to a Card Account as shown on the Statement;
- (j) "Credit Reference Agencies" means any data user who carries on a business of providing a consumer credit reference service, whether or not that business is the sole or principal activity of that data user;
- (k) "Hotline" means the Bank's 24-hour credit card customer service telephone number (649) 379 5588;
- (l) "ICBC Group" means Industrial and Commercial Bank of China Limited and its subsidiaries;
- (m) "Minimum Payment" means, the aggregate, as specified in each Statement, of (i) the higher of a specified amount or a percentage, determined by the Bank from time to time (the currently applicable amount and percentage being specified in the attached Schedule), of the outstanding amount in New Zealand Dollars in relation to the Card Account on the current Statement, (ii) any unpaid minimum payment in New Zealand Dollars in relation to the Card Account, specified in previous Statements and (iii) the amount by which the outstanding amount in New Zealand Dollars in relation to the Card Account shown on the current Statement exceeds the credit limit assigned to the applicable Card Account, which shall be paid by a Cardmember (if the Charges are attributable to such Cardmember's use of a Card) and/or the Account Holder on or before each Payment Due Date;
- (n) "New Zealand Dollars" means the lawful currency for the time being of New Zealand;
- (o) "Payment Due Date" means the date on which the debit balance of a Card Account for any month owed by a Cardmember is payable as specified in the relevant Statement;

- (p) "Person" means any individual, firm, company or other legal or natural person whatsoever;
- (q) "PIN" means the personal identification number for the time being selected by the Cardmember to identify himself/herself when using a Card;
- (r) "Statement" means a monthly statement of account sent by the Bank to the Account Holder, which constitutes a continuing disclosure statement for the purposes of the Credit Contracts and Consumer Finance Act 2003 and sets out the amount then due to the Bank in respect of the Card Account;
- (s) "Transaction" means any Card Transaction and such other credit card facilities or services as the Bank may from time to time provide or arrange; and
- (t) "Visa" means Visa Worldwide Pte. Limited or any related entity.

Headings are for convenience only and do not affect interpretation. Words denoting the singular shall include the plural, and words denoting one gender shall include all genders.

## 2. Application of this Agreement

- 2.1 All facilities made available by the Bank to any Person in respect of a Card or a Card Account are subject to the terms and conditions of this Agreement (as may be amended from time to time) and any other applicable terms and conditions. A Person becomes subject to such terms and conditions (if not already so subject) by signing, activating or using a Card or permitting its use.
- 2.2 This Agreement shall be binding on each successor, personal representative and person lawfully acting on behalf of any Cardmember.

## 3. The Cards

- 3.1 All Cardmembers shall sign their Cards immediately upon receipt and before using them.
- 3.2 Each Card is at all times property of the Bank, is not transferable, may not be copied or reproduced and must be surrendered immediately upon the Bank's request.

## 4. Credit Limit

- 4.1 The Card Account will be subject to a credit limit determined by the Bank, at its sole discretion, and notified to the Account Holder and each Cardmember. The total Charges incurred under the Card Account by the Cardholder(s) must not exceed such credit limit. Such credit limit may be varied by the Bank in accordance with clause 16.
- 4.2 A Cardmember may apply for a review of his/her assigned credit limit for the applicable Card Account at any time but the Bank shall not be obliged to approve the application.
- 4.3 The Bank may at its sole discretion (but shall not be obliged to) permit Card Transactions to be effected in excess of the credit limit for the applicable Card Account, and a Cardmember (to which the Card Transactions relate) and the Account Holder shall be jointly and severally liable for such Transaction in accordance with the terms of this Agreement.
- 4.4 The Bank may also refuse to authorise any Card Transaction that a Cardmember wishes to effect even though such Card Transaction would not cause the credit limit to be exceeded where it has reasonable grounds to do so.

## 5. Use of the Card

- 5.1 Each Card may be used in respect of the Card Account at any branch of the Bank and other financial institutions, ATMs, and merchants which accept such Card for effecting Transactions.
- 5.2 A Card may also be used to access a Cardmember's bank account with the Bank, and such Cardmember agrees that such service shall be subject to any relevant terms and conditions of the Bank from time to time in effect in addition to the terms and conditions under this Agreement. Each Cardmember is advised to read through such terms and conditions of the Bank before proceeding to use such service.

- 5.3 Each Cardmember shall use a Card, and the Account Holder shall ensure that each Cardmember uses a Card:
- (a) so that the credit limit for each Card Account (including but not limited to any cash advance limit or limit on Balance Transfer amounts) from time to time notified by the Bank to the Account Holder as applicable to such Card Account is not exceeded; and
  - (b) within the validity date (if any) and the expiry date embossed on a Card.
- 5.4 A Cardmember's right to use a Card shall be suspended:
- (a) if such Card is lost or stolen; or
  - (b) if the Bank is informed by a Cardmember that the PIN is or may be known to any other Person; or
  - (c) if the Bank believes, in its sole discretion, that there are reasonable grounds for suspension of such Card.
- 5.5 The Account Holder and any Cardmember may request that a renewal and/or replacement Card be issued to each Cardmember following expiry, loss or theft of a Card. If any renewal and/or replacement Card is issued, the Bank shall be entitled to charge the relevant fee.
- 5.6
- (a) The Bank may at any time in its sole discretion and without giving any reasons, terminate any right of any Cardmember to use his/her Card to access his/her bank account with the Bank on reasonable notice.
  - (b) The Bank shall notify any Cardmember in writing of such termination referred to in Clause 5.6(a), and such Cardmember shall then return such Card, duly cut in two or otherwise defaced, to the Bank. Until such Card is returned to the Bank, and a replacement Card is issued in accordance with Clause 5.6 (c) below, the right to use his/her Card by such Cardmember shall be suspended.
  - (c) If a Cardmember has returned such Card in accordance with Clause 5.6 (b) above, the Bank shall issue to such Cardmember a replacement Card, which shall no longer enable such Cardmember to access his/her bank account with the Bank.
- 5.7 No Card is transferable and a Cardmember shall not permit his/her Card to be used by any other person in any circumstances whatsoever.
- 5.8 Each Cardmember undertakes to act in good faith at all times in relation to all dealings with the Bank.
- 5.9 A Cardmember shall not use a Card or the Card Account for any illegal purposes. The Bank is entitled, in its sole and absolute discretion, to refuse to act on or give effect to any Card Transaction instruction if the Bank has reason to believe that such instruction is given in connection with any illegal transaction. The Bank reserves the right to reverse or cancel any Card Transaction which it suspects or has reason to believe is for the purpose of or otherwise related to any illegal transaction. The Cardmember agrees that the Bank does not owe him/her any duty and/or obligation whatsoever to monitor and block the use of the Card for any unlawful activities.
- 5.10 If any Cardmember uses the Card to purchase goods and/or services through online internet sites or portals, the Cardmember shall be solely responsible for the security of such use at all times. The Cardmember agrees that the entry of the Card information on the internet shall be sufficient proof of the authenticity of such instructions. The Bank shall not be under any obligation to verify the identity or the authority of the person entering the Card information and the Bank shall not be liable for acting on such use of the Card regardless of whether the person is authorised or otherwise and regardless of the circumstances prevailing at the time of the Transaction. However, the Bank reserves the discretion to not carry out any such Transactions over the internet if the Bank has any reason to doubt its authenticity or if in the Bank's opinion it is unlawful or otherwise improper to do so or for any other reason.

## 6. Cardmember Information

- 6.1 The Account Holder and any Cardmember will promptly notify the Bank in writing of any change of employment, business, residential address, work place address, email address, or telephone number, and of any change in personal or financial circumstances which might be material to the Bank in permitting the use or the continued use of a Card.
- 6.2 Each Cardmember agrees to the Bank recording the telephone conversations or any verbal communication between a Cardmember and the Bank.
- 6.3 The Bank shall be entitled to disclose to any merchant to whom the Card may be presented, Visa or any member institution of VISA, the account number and any other information which may be necessary to facilitate the use of the Card or the processing of any Transaction effected or to be effected through the use of the Card.

## 7. PIN

- 7.1 The PIN is selected by the Cardmember himself/herself, it shall remain effective until it is cancelled by, or with the agreement of, the Bank. A Cardmember may change the PIN at any time by such means as the Bank may prescribe and the new PIN shall take effect immediately.
- 7.2 A Cardmember shall not select a PIN that is unsuitable such as:
- (a) birth dates, months or years;
  - (b) sequential numbers (e.g. 1234);
  - (c) number combinations that may be easily guessed (e.g. 1111);
  - (d) parts of the Cardmember's telephone number;
  - (e) parts of numbers in the order in which they are printed on any of the Cardmember's cards; and
  - (f) other easily accessible personal data (e.g. driver licence or other numbers easily connected the Cardmember).
- 7.2 A Cardmember shall not disclose the PIN of a Card to any other Person (including the police, Bank staff, or family members) and shall act in good faith and exercise reasonable care and diligence in keeping such PIN secret. In particular, a Cardmember shall:
- (a) not record the PIN in writing; and
  - (b) take care to ensure no one can see him or her entering the PIN at ATMs or at other points of sale or at computer terminals.
- 7.3 If a Cardmember becomes aware that the PIN is or may be known to any other Person, he/she shall as soon as reasonably practicable inform the Bank or call the Hotline. Such Cardmember shall change the PIN as soon as possible (if applicable). If a Card incorporates a facility to enable such Card to be used to access a Cardmember's bank account with the Bank using the PIN, such Cardmember shall also as soon as reasonably practicable inform the Bank through the Hotline or by any other means acceptable to the Bank in accordance with the Bank's terms and conditions governing such bank account.

## 8. Charges

- 8.1 The Account Holder and each Cardmember agree to pay to the Bank and authorises the Bank to debit the Card Account for all Charges, which includes, but is not limited to, the following Charges:
- (a) the amount of any Balance Transfer agreed to by the Bank;
  - (b) the amount of the Card Transactions; and
  - (c) any amount due in respect of the use of any other facility or service that the Bank may from time to time provide or arrange.
- 8.2 The Card Account may be debited as provided in Clause 8.1 above even though the Charges were incurred (without limitation) by (i) telephone, fax, mail order or direct debit authorisation, or (ii) use of a Card over the internet, through an ATM, merchant's point of sale terminal, credit card pay phone or any other facility permitting use of a Card without the execution of a sales draft or the signature of the Account Holder or any Cardmember.
- 8.3 The Account Holder or a Cardmember must make either partial payment or full payment of the Charges on or before the Payment Due Date. The minimum partial payment shall be the Minimum Payment.
- 8.4 The Bank may issue a supplementary Card to a proposed Cardmember (other than the Account Holder) at the joint request of the Account Holder and the proposed Cardmember. The Account Holder shall be liable for the use of both the Account Holder's Card and any supplementary Cards issued to Cardmembers (other than the Account Holder) at the joint request of the Account Holder and the proposed Cardmember. The Account Holder shall be jointly and severally liable with the Cardmember (to which the Charges relate) for the total amount of Charges incurred by such Cardmember due to the Bank in respect of the Card Account.
- 8.5 Each Cardmember (other than the Account Holder) is also liable jointly and severally with the Account Holder to the Bank for total amount of Charges attributable to his/her own use of a Card. The Bank shall have complete discretion in recovering any Charges incurred by a supplementary Cardmember from either the Account Holder or the supplementary Cardmember or both. The supplementary Cardmembers shall not be liable for the use of any Card by any other Cardmember or by the Account Holder.
- 8.6 Subject to Clause 11.3 below, a Cardmember's failure to sign any sales or cash advance voucher will not relieve the Account Holder and/or such Cardmember from liability to the Bank in respect thereof.

- 8.7 Charges in any currency other than New Zealand Dollars will be converted into New Zealand Dollars at the prevailing exchange rate determined by the Bank (in consultation with, if applicable, Visa) on the day of conversion and debited to the Card Account in New Zealand Dollars.

## 9. Interest, Fees and Expenses

- 9.1 The Bank may also charge interest to your Card Account as follows:

- (a) an interest charge calculated on a daily basis on each cash advance and accruing from the date of such advance until the date upon which it is finally repaid in full; and
- (b) an interest charge calculated on a daily basis on the outstanding Charges (other than cash advances, where sub-paragraph (a) above applies), and the interest charge specified in this sub-paragraph from the Transaction date to the current Statement date unless the Bank (to which the applicable Card Account relates) receives in full the total amount due as specified in the last Statement on or before the Payment Due Date stipulated in that Statement; if the total amount due as specified in the last Statement (to which the applicable Card Account relates) is not received by the Bank by the latest due date stipulated in that Statement, the interest charge payable under this sub-paragraph (b) will only apply to Charges (other than cash advances as aforesaid) incurred before the date of the last Statement as from the respective dates such Charges are incurred, notwithstanding that such Charges will not be payable until the Payment Due Date specified in the current Statement; new Transactions (other than cash advances as aforesaid) incurred between the dates of the last and current Statements are entitled to the repayment grace period subject to the Bank's sole discretion.

- 9.2 The interest rates applicable (which may change from time to time in our sole discretion) are prescribed in the "Personal and home loan banking fees and limits" brochure (the "Fees and Charges Brochure"), and a copy of the Fees and Charges Brochure currently in force is supplied with this Agreement.

- 9.3 The Bank may also debit the following fees, charges and expenses to a Card Account:

- (a) an initial and/or annual fee for the use of the applicable Card Account and each Card (which may vary depending on the type of Card);
- (b) a handling charge for the supply of reissued or replacement Cards;
- (c) a handling charge for each cash advance;
- (d) a late payment charge, if at any time the Minimum Payment has not been paid by the latest Payment Due Date as specified in a Statement;
- (e) an "over limit" charge if any credit limit or cash advance limit or limit on Balance Transfer amounts applicable to a Card is exceeded;
- (f) an ATM balance enquiry fee if you use your Card to check your Card Account balance at an ATM outside of New Zealand;
- (g) an ATM cash withdrawal fee if you use your Card to withdraw cash at an ATM outside of New Zealand;
- (h) an international transaction fee if you use your Card to make purchases outside of New Zealand;
- (i) other fees, charges and expenses, at such rates and in such amounts as the Bank may from time to time determine. Whenever possible, the Bank will inform you of any non-standard charges before payment is due.

- 9.4 The fees, charges and expenses of the Bank (which may change from time to time) are prescribed in the Fees and Charges Brochure, and a copy of the Fees and Charges Brochure currently in force is supplied with this Agreement.

## 10. Payment of Charges

- 10.1 Subject to Clause 10.2, payments to the Card Account shall be in New Zealand Dollars.

- 10.2 Card Account payments:

- (a) Charges in the Card Account shall be settled in New Zealand Dollars at any branches of the Bank in New Zealand or by other means as advised by the Bank from time to time.
- (b) The Bank may (exceptionally but without any obligation) accept other foreign currencies acceptable for payments to the Card Account.
- (c) In the event of payment in accordance with clause 10.2(b) above, the foreign currencies will be converted into New Zealand Dollars at the exchange rate quoted by the Bank as applicable on the date of conversion.

- (d) If the amount of New Zealand Dollars after the conversion of such foreign currency does not cover the total New Zealand Dollars Charges outstanding in the Card Account, the Account Holder and a Cardmember (to which such Charges in New Zealand Dollar relate) shall remain jointly and severally liable for any difference caused by such exchange conversion.

10.3 All payments by Cardmembers:

- (a) shall be deemed not to have been made until such time as the relevant funds have been received in cleared and available funds by the Bank.
- (b) shall be payable without any deduction or withholding on account of any other amount whatsoever whether by way of set-off, counterclaim or otherwise, and notwithstanding any legal limitation, disability or incapacity of any Person.
- (c) Payments to the Card Account may be applied in the following order or in such other way as the Bank thinks fit:
- (i) fees, interest charges and charges that are not provided for in Clause 8.1(a) to (c) above, including, legal and collection fees, handing charges, late payment charges, over limit charges and any other service fees and charges that are not provided for in Clause 8.1(a) to (c) above;
  - (ii) outstanding billed principal amount of such charges provided for in Clause 8.1(a) to (c) above; and
  - (iii) outstanding unbilled principal amount of such charges as provided for in Clause 8.1(a) to (c) above.

10.4 All payments into or credits made to the Card Account will be applied by the Bank in accordance with Clause 10.3, and if the payment is in excess of the outstanding balance of the Charges in respect of the applicable Card Account, such excess will be applied to fund future Card Transactions or Charges as and when they are debited to such Card Account. Any credit balance in the Card Account shall not, in any case, bear interest.

10.5 If a Cardmember and/or the Account Holder is/are required by any applicable laws or regulations to make any deduction or withholding from any sum payable by such Cardmember and/or the Account Holder to the Bank hereunder, then the liability in respect of that deduction or withholding shall be the liability of such Cardmember and/or the Account Holder such that after the making of such deduction or withholding the net payment shall be equal to the amount which the Bank would have received had no such deduction or withholding been made. It shall be the sole responsibility of such Cardmember and/or the Account Holder to effect payment of such deduction or withholding to the relevant authority within the applicable time limit and such Cardmember and the Account Holder shall indemnify the Bank against all claims, demands, actions, proceedings, damages, losses, costs and expenses including all legal fees and disbursements brought against or incurred by the Bank for all consequences of such Cardmember's and/or the Account Holder's failure to do so.

## 11. Records

- 11.1 Subject to Clauses 11.3 and 11.4 below, the Bank's record of the amount of any Charge incurred using a PIN, over the internet, by means of an ATM, point of sale terminal, other computer terminal, any telecommunication devices or by any other means shall, whether or not authorised by a Cardmember, in the absence of manifest error, be final and binding on the Account Holder and such Cardmember.
- 11.2 If a Card Transaction does not originate from a sales draft, the Bank shall be entitled to debit the amount of such Card Transaction to the applicable Card Account as if it had been submitted to the Bank in writing and signed, and the Account Holder and each Cardmember hereby authorise the Bank to do so.
- 11.3 The Account Holder must examine each Statement and must notify the Bank in writing at Ground Floor, 2 Queen Street, Auckland CBD, New Zealand within 25 days from the issue date of such Statement of any unauthorised or incorrect Charges arising from whatever cause, including forgery, fraud, lack of authority or negligence of the Account Holder, any Cardmember or any other Person. After such period, the Transaction may be unable to be reversed and the Account Holder and/or Cardmember may be liable for the unauthorised Charge, unless any such unauthorised Charge arose from any of the following:
- (a) any unauthorised Transactions arising from forgery or fraud by any third party including any employee, agent or servant of the Account Holder and a Cardmember and in relation to which the Bank has failed to exercise reasonable care and skill;
  - (b) unauthorised Transactions arising from forgery or fraud by any employee, agent or servant of the Bank; or
  - (c) other unauthorised Transactions arising from the wilful default or gross negligence on the part of the Bank or any of its employees, agents or servants.
- 11.4 Where the Account Holder or a Cardmember reports an unauthorised Transaction before the Payment Due Date, the Account Holder or such Cardmember may give a written request to the Bank to withhold the obligation to make payment of the disputed amount during the investigation period by the Bank and requesting that any interest charges be suspended in respect of the disputed amount while it is under

investigation by the Bank. The Bank may (but is not obliged to) consider such request provided that (1) the unauthorised Transaction is reported to the Bank immediately upon detection of the same and (2) the Account Holder and/or the Cardmember has not acted fraudulently and (3) the Account Holder and/or the Cardmember extends his/her full cooperation and assistance to the Bank in carrying out the investigation and recovery process. If, however, the report made by the Account Holder or such Cardmember is subsequently proved to be unfounded or if the investigation discloses that the Account Holder and/or the Cardmember is involved in the incurring of any unauthorised Transactions, the Bank reserves the right to re-impose the interest charges on the disputed amount over the whole period, including the investigation period. The duration of any investigation period shall be at the sole discretion of the Bank (but shall be no longer than 30 days except in circumstances which are beyond the control of the Bank) and the Account Holder, and such Cardmember shall follow the instructions of the Bank and fully cooperate with the Bank in relation to any such investigation concerning the disputed amount.

- 11.5 Any Card Account Statement or notice or any amendment to this Agreement that is sent by the Bank to the Account Holder shall be considered to have been sent and received by each Cardmember at the same time.

## 12. Rights of the Bank

- 12.1 Nothing in this Agreement shall affect the Bank's right of set-off, transfer and application of monies at law or pursuant to any other agreement from time to time subsisting between the Bank and any Person.

- 12.2 The Bank is entitled (but not legally obliged):

- (a) to give effect to any instruction given by any Person to effect payment of sums due under this Agreement from another account with the Bank;
- (b) to set-off or transfer, at any time and without prior notice, any monies of whatever description standing in the books of the Bank to the credit of the Account Holder, whether held singly or jointly with others and whether in New Zealand Dollars or any other currency in or towards discharge of the total amount debited to the Card Account; and
- (c) to set-off or transfer, at any time and without prior notice, any monies of whatever description standing in the books of the Bank to the credit of a Cardmember, whether held singly or jointly with others and whether in New Zealand Dollars or any other currency in or towards discharge of the total amount of Charges in the Card Account attributable to his/her own use of a Card.

For the purpose of set-off of funds in any currency other than New Zealand Dollars, the Bank may convert the currency into New Zealand Dollars at the prevailing exchange rate determined by the Bank at the time of conversion. If the Bank exercises its rights under this Clause 12.2(b) and 12.2(c), it shall promptly notify the Account Holder or, as the case may be, the Cardmember to which such exercise of rights relates.

- 12.3 The Bank is entitled to check the Account Holder's and/or the Cardmember's credit standing at any time as and when it deems fit and appropriate without notice to the Account Holder and/or the Cardmember.
- 12.4 The Bank shall be entitled to appoint agent(s) for various services as the Bank thinks fit and appropriate which shall include but is not limited to Card processing or collection of all sums due and the Bank shall be entitled in its absolute discretion to disclose to such agent(s), without giving any notice to the Account Holder and/or the Cardmember(s) or providing any reason, all information pertaining to the Card to facilitate the services rendered by such agent(s) on behalf of the Bank.

## 13. Exclusion and Limitation of Liability

- 13.1 The Bank shall not be under any liability whatsoever to the Account Holder or any Cardmember in respect of any loss or damage arising directly or indirectly from:
- (a) any defect in any goods or services paid for by the use of a Card or any claim or complaint by a Cardmember against the supplier of such goods or services, or any other dispute between a Cardmember and any such supplier. For the avoidance of doubt, each Cardmember and the Account Holder shall remain fully liable for any Charges incurred in respect of the relevant goods or services. By signing a voucher or Transaction report or entering the PIN or other identifying number or password at an electronic banking facility or internet, the Cardmember indicates his/her acceptance that the Transaction amount is correct;
  - (b) the refusal of any Person, ATM, point of sale terminal, other computer terminal, internet website or any telecommunication devices to honour or accept a Card whether or not instructed by the Bank;
  - (c) save as provided in Clause 11.3 above and in Clause 13.2(a) below, the incurring of a Charge other than by a Cardmember;

- (d) subject to Clauses 13.2 and 13.6 below, access to the use of a Card and/or services by a Cardmember or any other person whether or not authorised;
  - (e) the Bank's inability to execute any of a Cardmember's instructions due to prevailing market conditions or other causes beyond the control, and not attributable to any default or negligence, of the Bank;
  - (f) the exercise by the Bank of its right to demand and procure surrender of a Card prior to the expiry date embossed on its face, whether such demand and surrender are made and/or procured by the Bank or by any other Person or computer terminal on the Bank's behalf;
  - (g) the exercise by the Bank of its right (i) to modify, suspend or withdraw any of the facilities, services or benefits from time to time available in respect of a Card pursuant to Clause 16.1(a) and (b) below, (ii) to amend the credit limit (including but not limited to any cash advance limit or limit on Balance Transfer amount) applicable to a Card or a Card Account pursuant to Clause 16.1(c) below, or (iii) to terminate a Card or a Card Account pursuant to Clause 17 below;
  - (h) any act of fraud, forgery or gross negligence of a Cardmember or any other Person (not being an employee, agent or servant of the Bank), including (without limitation) such Cardmember's failure to observe Clauses 7 and 13.4 or follow any other recommendation of the Bank from time to time regarding the safety and secrecy of a Card and the PIN;
  - (i) any act or omission of any third party (other than agents of the Bank) through which facilities of a Cardmember or the Account Holder may be made available provided that the Bank shall have exercised reasonable care and skill in connection with its dealings with such third party;
  - (j) the inaccuracy in any information or data provided by the Account Holder or a Cardmember, or any damage to or loss or inability to retrieve any data or information, that may be stored in a Card or any microchip or circuit or device in a Card; or
  - (k) any dispute between the Account Holder and any Cardmember or between Cardmembers.
- 13.2 Provided a Cardmember has not acted fraudulently or negligently, such Cardmember and the Account Holder shall not be liable for loss incurred:
- (a) where a Card Transaction instruction effected by the Bank was given by use of a Card before a Cardmember or the Account Holder received a Card, or given through the use of a lost, stolen or counterfeit Card after the Bank has received proper notice of the loss or theft of the Card or that the PIN is or may be known to any other Person from such Cardmember through the Hotline in accordance with Clauses 7.3 or 13.4 (as the case may be) or any other means acceptable to the Bank; or
  - (b) directly as a result of a fault in any ATM and other facilities which was not obvious or was not advised by a message or notice on display or otherwise drawn to such Cardmember's attention.
- 13.3 In the event of any proceedings which a Cardmember and/or the Account Holder may bring against the Bank for any cause whatsoever, such Cardmember and/or the Account Holder agree(s) that the Bank's liability shall not exceed those amounts wrongly charged to the Card Account (and interest on such amounts).
- 13.4 A Cardmember shall report to the Bank (through the Hotline) as soon as reasonably practicable upon discovery of the loss or theft of any Card or the loss, theft or disclosure to a third party of any PIN.
- 13.5 A Cardmember shall provide to the Bank all material information as to the circumstances of the loss or theft of a Card or disclosure of PIN and take all reasonable steps to assist the Bank to recover any losses so incurred.
- 13.6 The liability of a Cardmember and the Account Holder to the Bank for unauthorised Charges prior to giving notice under Clauses 7.3 or 13.4 (as the case may be) above shall be limited to the amount specified in the attached Schedule save where such Cardmember has:
- (a) acted fraudulently or negligently;
  - (b) contributed to the unauthorised Charges, for example (but not limited to) breach these terms and conditions by:
    - (i) selecting an unsuitable PIN;
    - (ii) failing to reasonably safeguard the Card;
    - (iii) keeping a written record of the PIN;
    - (iv) parting with the Card and/or disclosing the PIN to any other person;
    - (v) failing to take reasonable steps to prevent disclosure when entering the PIN; or
    - (vi) unreasonably delaying or failing to report to the Bank in accordance with Clauses 7.3 or 13.4 (as the case may be) above,



whereupon such Cardmember and the Account Holder shall be jointly and severally liable for such unauthorised Charges.

- 13.7 The maximum liability of the Cardmember and the Account Holder for unauthorised charges arising in the circumstances set out in Clauses 13.6(a) and 13.6(b) will be the lesser of:
- (a) the actual loss at the time of notification; or
  - (b) the maximum amount that the Cardmember would have been entitled to withdraw from his or her bank account between the time the Card was lost or stolen and the time that the Cardmember notified the Bank.
- 13.8 The liability of any Cardmember to the Bank for any unauthorised Transactions under such Cardmember's bank account with the Bank prior to serving notice under Clause 13.4 will be determined in accordance with the Bank's terms and conditions with respect to such bank account from time to time in effect.
- 13.9 Any Indemnity given to the Bank under these Terms and Conditions will survive termination of the Card Accounts.

#### 14. Disclosure of Personal Data

- 14.1 To enable the Bank to consider whether to provide the Account Holder and/or the Cardmember with any account, product or service (collectively, "service" or "services") the Account Holder and/or the Cardmember is required to supply to the Bank from time to time the Account Holder's and/or the Cardmember's personal details and information ("Personal Data") and failure to do so may result in the Bank's inability to provide such service. The Personal Data will be used for considering the Account Holder's and/or the Cardmember's request and subject to the Bank agreeing to provide such service, the Personal Data (which shall thereafter include, without limitation, all details and information pertaining to any of the Account Holder's and/or Cardmember's accounts held with the Bank and any of the Account Holder's and/or Cardmember's Transactions and dealings with or through the Bank – collectively, "Personal Data") will be used in connection with the purposes set out below.
- 14.2 The Account Holder and/or Cardmember agrees that the Bank may use, store, disclose, transfer, compile, match, obtain and/or exchange (all whether within or outside New Zealand) such Personal Data to, from or with any person as the Bank may consider necessary including without limitation:
- (a) any member of the ICBC Group which (i) provides group management oversight of the Bank and/or global and regional support, or (ii) carries on business within the financial services industry, or (iii) is a provider of services to other members of the ICBC Group;
  - (b) any banks, credit or charge card companies or merchants in credit or charge card enquiries;
  - (c) any information gathering or processing organisation conducting survey(s) or analysis or developing system applications on the ICBC Group's behalf;
  - (d) VISA;
  - (e) any person or organisation involved in the sending or delivering of any communication to your last known address on our records;
  - (f) any credit bureaus or Credit Reference Agencies established by any other authorities;
  - (g) any debt collection agencies that may be appointed by the Bank for any and all purposes including without limitation in connection with such service and/or in connection with matching for whatever purpose (whether or not with a view to taking any adverse action against the Cardmember) any Personal Data held by that debt collection agency with the Personal Data concerning the Cardmember in the Bank's possession; and/or
  - (h) to such persons, including any service provider or third party:
    - (i) for the purpose of promoting, improving and furthering the provision of other services by the Bank and any member of the ICBC Group to the Cardmember generally; and/or
    - (ii) for the purpose of fraud or crime prevention, audit and debt collection and so that services may be processed for the Bank; and/or
    - (iii) for the purpose of investigating, reporting, preventing or otherwise in relation to money laundering, terrorist financing and criminal activities generally; and/or
    - (iv) for the purpose of any legal process initiated by or served on, the Bank (whether or not the Bank is a party); and/or

- (v) for any other purposes as may be in accordance with the Bank's general policy on disclosure of Personal Data as set out in statements, circulars, notices or other terms and conditions made available by the Bank to the Cardmember from time to time.

- 14.3 The Cardmember understands that the Bank, or any member of the ICBC Group or any third party to whom the Bank has transmitted information about the Personal Data, will be obliged to disclose such information if legally compelled to do so (whether by New Zealand law or the law of any jurisdiction to which such information is transmitted). The Bank may transfer the Personal Data outside New Zealand. Other countries may not provide the same level of protection for data as New Zealand. However, all Personal Data held by the ICBC Group or by its sub-contractors or agents will be afforded a high level of protection against any unauthorised or accidental disclosure, access or deletion. The Cardmember agrees to the Personal Data being used as described and that it may be transferred as stated above. The Bank may use, analyse and assess information held about the Cardmember and the Cardmember's account, including the nature of the Account Holder's and/or the Cardmember's Transactions, to give the Account Holder and/or the Cardmember information about products and services from members of the ICBC Group and those of selected third parties which the Bank thinks may interest the Customer via telephone, mobile phone, electronic media, post or other means. The Bank may pass this information to other members of the ICBC Group so that they may do the same unless the Customer has objected to such disclosure for purposes of cross-selling. The Account Holder and/or the Cardmember is entitled to request details (including copies) of the information that the Bank holds about the Account Holder and/or the Cardmember and to require the Bank to correct any inaccuracies. The Bank may charge a fee for the providing of any data. Requests for further information should be addressed to:  
Level 11, 188 Quay Street, Auckland CBD, New Zealand
- 14.4 The Account Holder and/or the Cardmember may, at any time, choose not to receive direct marketing information. The Account Holder and/or the Cardmember needs to write to ICBC (NZ) Branch at Ground Floor, 2 Queen Street, Auckland CBD, New Zealand with the Account Holder's and/or Cardmember's request and the Bank will delete the Account Holder's and/or the Cardmember's name from its direct marketing mailing lists without charge.

## 15. Transfer, Assignment and Sub-Contracting

For the avoidance of doubt, the Bank may at any time transfer, assign, delegate or sub-contract any or all of its rights or obligations under this Agreement to any Person without prior notice to the Account Holder or any Cardmember.

The Account Holder and/or the Cardmember shall in no event transfer, assign, delegate or sub contract any or all of its rights or obligations under this Agreement.

## 16. Amendment

- 16.1 The Bank may at any time and from time to time, on 14 days' prior notice to the Account Holder and/or the Cardmember:
- (a) vary, revise or change this Agreement and any fees, charges and interest and charge rates payable or applicable under this Agreement; and/or
  - (b) add to, reduce, modify, suspend or withdraw any of the facilities, services or benefits from time to time available in respect of a Card; and/or
  - (c) amend the credit limit (including but not limited to any cash advance limit and any Balance Transfer limit) applicable to a Card or the Card Account.
- 16.2 If the Account Holder or a Cardmember does not accept such amendment, he/she shall give written notice to the Bank before the effective date of the amendment, terminating the use of a Card and, if appropriate, the Card Account and returning his/her Card to the Bank cut in two or otherwise defaced. Any debit balance on the Card Accounts shall also be paid in full at that time. If the Account Holder and/or a Cardmember uses his/her Card or retains a Card after the effective date of an amendment, the Account Holder and such Cardmember shall be deemed to have agreed to such amendment in all respects without reservation.
- 16.3 The Bank shall give notice of any amendment referred to in this Clause 16 in any form either in writing, in the Statements or by display at its branches, press advertisement or such other form as the Bank thinks fit and appropriate, stipulating a date on which such amendment shall take effect.

## 17. Termination

- 17.1 (a) The Account Holder may at any time by giving reasonable notice in writing to the Bank or by such other method as the Bank may deem appropriate terminate the Card Account.

- (b) Subject to Clause 17.1(c), such notice will not take effect until such written notice and all Cards (including any supplementary Cards), duly cut in two or otherwise defaced, have been received by the Bank.
  - (c) In relation to any supplementary Card issued to a Cardmember, the Account Holder shall remain liable for the use of such Card until it is returned to the Bank, or the Bank who shall act promptly, is able to implement the procedures which apply to lost Cards if the Account Holder so requests.
  - (d) The Account Holder agrees that he/she may be liable for any costs and expenses arising from the Bank implementing the procedures applying to lost Cards pursuant to Clause 17.1(c) above.
  - (e) A Cardmember may also request cancellation of his/her Card by notice to the Bank accompanied by return of a Card. For the avoidance of doubt, supplementary Cards may be terminated by either the Account Holder or such supplementary Cardmember by giving reasonable written notice to the Bank accompanied by the return of the Card, duly cut in two or otherwise defaced.
  - (f) A Cardmember's right to use a Card shall be terminated upon termination of this Agreement pursuant to this Clause 17.
  - (g) No refund of the annual fee or any part thereof will be made to the Account Holder and/or the Cardmember, unless the Account Holder and/or Cardmember has terminated the Card and/or Card Account pursuant to clause 16.2.
- 17.2 The Bank may at any time, with or without notice as the Bank may determine in the circumstances, terminate the Card Account or a Card without giving any reasons. For the avoidance of doubt, these would include when the Bank is informed by a Cardmember that his/her PIN is or may be known to any other Person.
- 17.3 On termination of the Card Accounts (and notwithstanding any prior agreement between the Bank and the Account Holder or any Cardmember to the contrary) or on the death or bankruptcy of an Account Holder the total sum due to the Bank as reflected in a Card Account, and the amount of any Charges incurred after termination, shall become immediately due and payable by the Account Holder and, as the case may be, the Cardmembers. Interest will accrue thereon and thereafter at such reasonable rate as the Bank may from time to time notify to the Account Holder and such Cardmembers having regard to all the circumstances, including whether the Account Holder has died or gone bankrupt. The Account Holder shall be liable for all outstanding Charges together with interest under a Card Account notwithstanding the termination of this Agreement and each Cardmember shall be liable jointly and severally with the Account Holder for all outstanding Charges together with interest attributable to his/her own use of a Card under a Card Account notwithstanding the termination of this Agreement. The Bank shall have complete discretion in recovering any Charges incurred by a supplementary Cardmember from either the Account Holder or the supplementary Cardmember or both. The supplementary Cardmembers shall not be liable for the use of any Card by any other Cardmember or by the Account Holder.

**18. Automated Teller Machines, Bank Account Services and Other Facilities**

- 18.1 If a facility has been incorporated into a Card to enable such Card to be used to access to the Account Holder's and/or the Cardmember's bank account with the Bank, the terms and conditions of the Bank governing such bank account from time to time in force shall apply to the use of a Card for these purposes.
- 18.2 If the Bank introduces any other products, facilities or services to the Account Holder and/or the Cardmember through a Card, the same shall also be governed by their own specific terms and conditions from time to time in force.
- 18.3 If there shall be any conflict between any specific terms and conditions governing the ATM facility and any other products, facilities or services introduced by the Bank and this Agreement, the specific terms and conditions of each facility, product or service shall prevail.

**19. Notices**

- 19.1 Each Cardmember (other than the Account Holder) irrevocably appoints the Account Holder as his/her agent for the purposes of service by the Bank of:
  - (a) the Statement, including any notice (whether on the front or the reverse of the Statement) for which provision is made pursuant to this Agreement;
  - (b) any other demand, communication or notice made or given by the Bank pursuant to this Agreement; and
  - (c) legal process documents.
- 19.2 Any of the documents referred to in Clause 19.1 may be served by sending or making available the same (i) by ordinary post to the usual or last known address of the Account Holder, or (ii) by fax, email or otherwise over the internet and such document shall be deemed to have been duly served (a) if posted to an address in New Zealand, three business days after the date of posting, (b) if sent by fax, email or

otherwise over the internet, the business day after the date of sending unless the Bank has received evidence to the contrary, or (c) if posted to an address outside of New Zealand, seven business days after posting, save that in the case of legal process, the relevant documents may not be served by fax, email or over the internet unless permitted by law.

- 19.3 The Bank is not responsible for the Account Holder's or Cardmember's failure to receive a Statement or other communication if the Bank sends it to the usual or last known address, or in accordance with other contact information for the Card Account appearing in the Bank's record. The Bank is authorised to withhold Statements or other communication by post if previous mail to Account Holder's usual or last known address is returned for non-delivery due to address change and the Account Holder cannot be contacted. For mutual protection, the Account Holder must advise the Bank immediately of any address change or other information to keep the Bank's record current.
- 19.4 (a) Notwithstanding anything contained in this Agreement, except where the Bank has expressly been put on notice, the Bank is requested and authorised to act in accordance with and rely on any instruction or other notice or communication which may be or purport to be given or made available by telephone, fax or email or otherwise over the internet.
- (b) Subject to Clause 19.4(c) below, the Bank may (but shall not be obliged to) act on any notice which the Bank in good faith reasonably believes to be genuine and to have emanated from the Account Holder or any Cardmember (as the case may be).
- (c) The Bank may (but shall not be obliged to) verify the identity or authority of the Person giving or purporting to give the notice or as to the authenticity of any notice given by telephone, fax or email or otherwise over the internet.
- (d) Each Cardmember and the Account Holder undertakes to keep the Bank indemnified against all reasonable claims, demands, actions, proceedings, damages, losses, costs and expenses including all legal fees and disbursements brought against or reasonably incurred by the Bank and arising out of anything done or omitted pursuant to any telephone, fax or email or other internet notice received by the Bank, save in the case of the Bank's fraud or negligence.
- (e) The Bank may at its discretion (but shall not be obliged) to record notices given by telephone in writing and/or any other method determined by the Bank. The Bank's record of any such notice shall be conclusive and binding on the Account Holder or the Cardmember in whose name the notice was given in the absence of manifest error, fraud or negligence. The Bank may also require such Cardmember to confirm in writing any instructions given by telephone.

## 20. Expenses of Enforcement

The Account Holder and, as the case may be, every Cardmember shall indemnify the Bank in respect of any and all reasonable expenses properly incurred by the Bank in enforcing or attempting to enforce this Agreement including all reasonable legal fees, charges of debt collection agencies and disbursements. The Bank shall, on request, provide the Account Holder and, as the case may be, every Cardmember with a breakdown of all expenses he/she is liable to pay under this Clause 20.

## 21. Governing Law

- 21.1 The Agreement shall be construed and the provision of Card facilities shall be governed by New Zealand law, and subject to the non-exclusive jurisdiction of the New Zealand courts.
- 21.2 Any delay or failure by the Bank to exercise its rights and/or remedies under this Agreement does not represent a waiver of any of the Bank's rights.
- 21.3 If, at any time, any of these terms and conditions are or become illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining terms and conditions shall not be affected.
- 21.4 Nothing in this Agreement shall operate so as to exclude or restrict any liability of any party to this Agreement, to the extent that such exclusion or restriction is prohibited by the laws of New Zealand.

Effective Date : 30/06/2015