

ANZ CLEARING SERVICES

TERMS AND CONDITIONS | 09.2015

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BACKGROUND

- A. Correspondent has requested ANZ to allow Correspondent to open and operate Accounts pursuant to which Correspondent is the account holder and ANZ is the bank, and to obtain certain other ANZ Services.
- B. When Correspondent receives or uses any ANZ Service, Correspondent agrees that these Terms and Conditions apply to the Correspondent.

1. ANZ SERVICES

Without limiting ANZ's rights in clause 15.2(b), ANZ shall not at any time be obliged to commence or carry out any ANZ Service or any part of an ANZ Service in the event that any identity checks, verification procedures, security procedures or other internal ANZ policy requirements that ANZ may, at its discretion, impose in respect of that ANZ Service have not been complied with by the Correspondent to ANZ's satisfaction.

2. THE RELATIONSHIP AND PROVISION OF ANZ SERVICES

2.1 Relationship

These Terms and Conditions set out the relationship between the parties and the ongoing provision and operation of ANZ Services. Unless specifically agreed otherwise in writing, each ANZ Service will be provided by ANZ to Correspondent on the basis that:

- (a) Correspondent acts as principal for its own account and not as agent, fiduciary or trustee for any customer of Correspondent or any other entity;
- (b) the relevant Product Terms apply;
- (c) there will be no relationship (in contract, tort or otherwise) between ANZ and any customer of Correspondent arising from the provision by ANZ of an ANZ Service to Correspondent;
- (d) ANZ's relationship with Correspondent is that of banker/customer, and nothing in any Product Terms will be taken as constituting either party as a servant or agent or employee of the other party; and
- (e) each of ANZ and Correspondent acknowledges and agrees that it is not, for the purpose of the Product Terms and each ANZ Service, the legal representative, agent, joint venturer or partner of the other party for any purpose.

In making Payments in accordance with the Product Terms, ANZ acts solely as bank and as paying bank in accordance with the Rules or otherwise in the making of a Payment in the ANZ Location for Correspondent. ANZ incurs no other obligation to Correspondent and no obligation whatsoever to any Beneficiary, Sender (other than Correspondent), Beneficiary Bank or other party, other than an obligation arising pursuant to the Law or the Rules. In making a Payment, ANZ's only obligation is to act in accordance with each Instruction, the relevant Product Terms, the Law and the Rules. All Fees, Payment

details and other matters are agreed between the parties only, reflecting the relationship of bank (ANZ) and customer (Correspondent). Nothing in the Product Terms is intended to create obligations to, or rights of, any other party.

2.2 ANZ may assess each ANZ Service

Unless specifically agreed otherwise in writing, ANZ shall not be obliged to provide any ANZ Service to Correspondent and the provision of any ANZ Service to Correspondent shall not oblige ANZ to provide any other ANZ Service to Correspondent.

2.3 Service Level Agreement

ANZ and Correspondent may agree a Service Level Agreement in relation to any ANZ Service. Notwithstanding anything to the contrary in any other agreement, each Service Level Agreement is not intended to be legally binding and shall not give rise to any obligation on or liability of either ANZ or Correspondent.

2.4 Originator Information

Correspondent hereby instructs ANZ and ANZ agrees to, in the course of making a Payment or otherwise and to the extent practical and permitted under the Rules, provide all Originator Information to the relevant Payment System and the Beneficiary Bank or otherwise as required by Law or Sanction or applicable requirement of any competent Authority.

2.5 Refusal to act on Instruction

Notwithstanding any other provision of these Terms and Conditions, ANZ may delay, decline or refuse to act (or, where relevant, may decline or refuse to continue to act (which, without limitation, may include declining or refusing to make a Payment)) on an Instruction (other than to seek clarification of it from Correspondent to the extent relevant) if:

- (a) on reasonable grounds, ANZ considers that an Instruction is unclear, contains incorrect, inaccurate or deficient information or contains insufficient information to enable ANZ to act on the Instruction;
- (b) the Instruction is not sent via SWIFT Message;
- (c) there are insufficient Cleared Funds in the Account to enable the corresponding Payment to be made;
- (d) the Instruction appears to be in breach of the Rules, the Law, or any Sanction or requirement of any competent Authority or may adversely affect ANZ's business reputation;
- (e) an event referred to in clause 16.3 has occurred or, in the case of an Insolvency Event, is reasonably suspected to have occurred; or
- (f) there is and continues to be an occurrence of Force Majeure.

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In the event that ANZ delays acting, or declines or refuses to act, on an Instruction, ANZ will, to the extent permitted by Law, promptly inform Correspondent by SWIFT Message.

2.6 Account Number has Precedence

Correspondent hereby instructs ANZ to comply with an Instruction by making a Payment to the account specified in the Instruction as the Beneficiary Account. ANZ shall have no responsibility to ensure that the holder of the account is the intended Beneficiary nor to ensure that other Payment details are consistent with that account.

2.7 ANZ's general right to refuse

Notwithstanding anything to the contrary, nothing in a Relevant Document shall require ANZ to undertake an act or omit to act if ANZ reasonably believes such act or omission would breach the Rules, the Law or any Sanction, a requirement of any competent Authority or any internal policy of ANZ.

3. PAYMENT COMMUNICATION AND CUT-OFF TIMES

3.1 SWIFT

- (a) All communications between the parties in relation to Payments (including each Instruction) shall be sent as a SWIFT Message (using the SWIFT Message type appropriate for that communication).
- (b) Correspondent will ensure that it provides ANZ with complete and accurate information necessary to enable ANZ to act on each Instruction.
- (c) ANZ may require persons authorised by Correspondent to send Instructions to ANZ to be identified according to any Law or other requirement reasonably specified by ANZ.

3.2 Cut-Off Times

A SWIFT Message received on a Business Day by the relevant Cut-Off Time shall be actioned for value on that Business Day (or on such later Business Day as specified in the SWIFT Message). SWIFT Messages received after that time may be actioned on the next Business Day (or on such later Business Day as specified in the SWIFT Message).

4. ACCOUNT OPERATION

4.1 No Overdraft

Unless specifically agreed by the parties in writing, Correspondent agrees not to permit any Account to be overdrawn. ANZ may at its absolute discretion act on any Instruction or otherwise validly debit an Account resulting in the Account being overdrawn. Any Fees and interest charges applicable to an overdrawn Account will be payable by Correspondent immediately on demand by ANZ. All such Fees and interest are payable at the rates advised by ANZ from time to time.

4.2 Authorised debits on an Account

Correspondent authorises ANZ to debit the following from an Account without prior consent from Correspondent:

- (a) Fees;
- (b) Taxes as required by Law; and
- (c) debit interest.

4.3 Priority

ANZ may determine the order of priority of any Payment to be made on any Business Day.

5. BANK DRAFTS AND CHEQUES

5.1 Bank Drafts

- (a) Bank drafts may be drawn on an Account.
- (b) ANZ is under no obligation to pay, and may in its absolute discretion dishonour, any bank draft drawn on the Account unless and until it has received a SWIFT Message from Correspondent identifying the bank draft and containing all material information consistent with the bank draft.

5.2 Cheques

- (a) Correspondent may deposit a Cheque into an Account by sending the Cheque (in the manner and with accompanying documents as advised by ANZ from time to time) to ANZ at the address notified by ANZ for this purpose from time to time.
- (b) The risk of loss or non-delivery of a Cheque sent by Correspondent is to be borne entirely by Correspondent. ANZ has no responsibility for the loss or non-delivery of Cheques sent by Correspondent and ANZ's records of the Cheques actually received by it are conclusive for all purposes.

6. ANZ DIGITAL CHANNEL

6.1 Authorised Users

In respect of the ANZ Digital Channel, Correspondent acknowledges and agrees that:

- (a) Correspondent will be responsible for identifying and establishing the appropriate Authorised Users and for ensuring that only those Authorised Users have access to the ANZ Digital Channel;
- (b) ANZ may require each Authorised User to be identified according to any Law or any other requirement reasonably specified by ANZ. ANZ may, in its discretion, not grant (or not continue to grant) access to the ANZ Digital Channel or not answer an ANZ Digital Enquiry until any and all identity checks, verification procedures or other security procedures that ANZ may, at its discretion, impose, have been complied with by Correspondent to ANZ's satisfaction;

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- (c) each Authorised User will continue to be authorised until such time as ANZ receives written notice from Correspondent to the contrary and until receipt of such notification, ANZ will be entitled to rely on, and will be fully protected in acting on, the information relating to the Authorised Users previously provided to ANZ;
- (d) it must only use the ANZ Digital Channel for its own confidential internal use and it will use all reasonable precautions to prevent fraudulent or unauthorised access to the ANZ Digital Channel;
- (e) it will ensure that all Credentials are provided only to those of its employees who are Authorised Users and that each Authorised User is required:
 - (i) to maintain the strict confidentiality and secrecy of his/her Credential; and
 - (ii) not to record his/her Credential in written form;
- (f) it will notify ANZ immediately by SWIFT message if Correspondent believes or suspects that there has been or may be any fraudulent or unauthorised access to, or use of, the ANZ Digital Channel or any Credential or any breach of any other security procedure prescribed by ANZ (a "Security Alert"), and unless and until Correspondent notifies ANZ as provided above, Correspondent will remain responsible for, and be bound by, any communications which ANZ receives that are accompanied by, or sent following input of, a valid Credential, regardless of whether such communications were, in fact, made or authorised by Correspondent. If, after investigation, the Security Alert is determined to be false, Correspondent remains bound by the communication; and
- (g) following ANZ's receipt of a notice referred to in clause 6.1(f) above, ANZ may take such action as it considers appropriate to seek to mitigate or remedy the relevant Security Alert, including suspending Correspondent's further use of ANZ Digital Channel until such time as the Security Alert has been resolved.

6.2 Availability of the ANZ Digital Channel

- (a) **(Real Time)** ANZ will use reasonable endeavours to ensure that the ANZ Digital Channel is provided on a Real Time basis. However, in accordance with clause 6.2(c), ANZ makes no warranty or representation to Correspondent that the ANZ Digital Channel will always be so provided.
- (b) **(Responsibility of Correspondent)** Correspondent acknowledges and agrees that:
 - (i) as electronic services are subject to interruption, unavailability or breach of security for a variety of reasons, access to and use of the ANZ Digital Channel is offered on an 'as is, as available' basis only. Correspondent is responsible for ensuring that Correspondent has adequate contingency plans to enable Correspondent to transact business by other means should there be an interruption to or unusual delay in respect to the ANZ Digital Channel and Correspondent acknowledges ANZ is not liable for

any inaccurate content or information in the ANZ Digital Channel or if the information available via the ANZ Digital Channel is not at any stage provided in Real Time; and

- (ii) it will take appropriate steps to ensure that its systems have the appropriate software to access the ANZ Digital Channel and are protected against malware, viruses and unauthorised access.

- (c) **(No warranty)** To the maximum extent permitted by Law, ANZ makes no, and disclaims all, warranties, undertakings, guarantees, conditions, covenants and representations, including pre-contractual representations, in each case whether express, statutory, implied or otherwise arising from course of performance, course of dealing or usage of trade (or their equivalents under the laws of any jurisdiction), that the ANZ Digital Channel (or access to any portion thereof) will be uninterrupted (including delay-free) or error-free or that defects in the same will be correctable or corrected. Correspondent assumes the responsibility to take adequate precautions against damages to its operations which could be caused by defects, interruptions or malfunctions in the ANZ Digital Channel.

6.3 Liability and Termination

- (a) **(Liability)** ANZ will not be liable to Correspondent or any other person in connection with Correspondent's use of the ANZ Digital Channel.
- (b) **(Termination)** Without limitation to clause 15, each of Correspondent and ANZ have the right to terminate the provision by ANZ to Correspondent of the ANZ Digital Channel on 30 days' notice to the other party, such notice to be provided by SWIFT Message.

6.4 Intellectual Property

- (a) Correspondent acknowledges and agrees that all Intellectual Property Rights in the software, data, documents or anything forming part of or used in relation to the ANZ Digital Channel are owned by either ANZ or a third party and Correspondent does not have, and operation or use of the ANZ Digital Channel does not give Correspondent, any right, title or interest in such Intellectual Property Rights.
- (b) Correspondent agrees and undertakes not to do anything which interferes with, tampers with or otherwise adversely affects any ANZ or third party Intellectual Property Rights forming part of or used in relation to the ANZ Digital Channel.

6.5 Security

Correspondent will not:

- (a) decompile, disassemble, reverse engineer, modify, enhance, adapt, translate, resell, distribute, licence, sublicense, assign or make copies of, or remove any copyright or proprietary notice from ANZ's or a third party's intellectual property or software which forms part of the ANZ Digital Channel; and

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- (b) use ANZ or any third party's intellectual property or the software of the ANZ Digital Channel to develop other software or computer applications or tools.

7. LIABILITY AND INDEMNITY

- (a) ANZ will not be liable for any Loss incurred by Correspondent, the Beneficiary, the Sender or any other person arising in connection with:
 - (i) Correspondent's use of the ANZ Services;
 - (ii) ANZ acting (or refusing to act) on an Instruction or any other instruction received from Correspondent in accordance with these Terms and Conditions; and
 - (iii) any possible delay or non-payment of a Payment because of any legal encumbrance, including, but not limited to, any pledge, levy, attachment or temporary injunction on the Beneficiary Account;except for direct Loss caused to Correspondent by ANZ's gross negligence, wilful misconduct or fraud.
- (b) Correspondent will indemnify (and continue to indemnify) ANZ for and against, any Loss incurred by ANZ or any of its affiliates, agents or customers in connection with:
 - (i) ANZ exercising or performing any of its rights or obligations under any Relevant Document;
 - (ii) any failure, delay or refusal by Correspondent to comply with any Relevant Document; or
 - (iii) the items listed in paragraph (a) above.
- (c) To the extent permitted by Law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to each ANZ Service and/or the Product Terms are excluded.
- (d) For the avoidance of doubt, neither party is liable to the other party (or to any third party) for any indirect, incidental or consequential loss, loss of business opportunity, goodwill, loss of profit, business interruption or special or exemplary damages.

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties

Each party represents and warrants in favour of the other party as follows:

- (a) **(Power):** It has all the necessary power to enter into and perform its obligations under and, to carry out the transactions contemplated by the Relevant Documents to which it is a party, and to carry on its business as now conducted or contemplated.
- (b) **(Authorisations):** All necessary resolutions have been duly passed and all consents, approvals and other procedural matters in relation to the execution (including by SWIFT Message), delivery or performance by it and the validity and enforceability of the Relevant Documents to which it is a party and the transactions

contemplated by the Relevant Documents to which it is a party have been obtained or effected.

- (c) **(Binding obligations):** Each Relevant Document to which it is a party including in the case of a Correspondent where accepted by SWIFT Message constitutes legal, valid and binding obligations on it and is enforceable in accordance with its terms.
- (d) **(Transactions permitted):** In agreeing and giving effect to each Relevant Document to which it is a party, it has not contravened and will not contravene or violate in any respect a provision of any Law, its constitution or other constituent documents or any deed, agreement or any document to which it is a party.
- (e) **(Consents and licences):** It has all necessary licences, consents and registrations in the relevant ANZ Location and elsewhere, to enable it to conduct its business generally and it is duly incorporated, established and validly existing under the Laws of its country of incorporation, establishment or constitution (as the case may be).
- (f) **(Disclosure of Information):** To the extent that it discloses any information (to the other party), it is authorised to do so and the disclosure does not breach any Law or contract.

8.2 Repetition

The representations and warranties contained in clause 8.1 shall be deemed to be repeated continuously while any Relevant Document remains in force.

8.3 Reliance on representations and warranties

The parties acknowledge that each of them agrees to enter into each Relevant Document to which it is a party in reliance on the representations and warranties in clause 8.1 given by the other party.

9. UNDERTAKINGS

9.1 Mutual Undertaking

Each party undertakes to the other that it will ensure that all authorisations, licences, consents and registrations required for:

- (a) its agreement to and performance of each Relevant Document to which it is a party and the transactions contemplated hereby; and
- (b) the validity and enforceability of each Relevant Document to which it is a party, are obtained and promptly renewed and, at all times, maintained in full force and effect.

9.2 Correspondent Undertakings

- (a) **(Account balance):** Correspondent will ensure that the balance of each Account is comprised of sufficient Cleared Funds to enable ANZ to act on each Instruction and to make each corresponding Payment and to make the debits specified in clause 4.2.

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- (b) **(Incorrect credit or debit entry to Account):**
Correspondent will inform ANZ immediately by SWIFT Message in the event that it identifies any incorrect credit or debit entry to an Account. In the absence of notification pursuant to this clause within 30 days of the relevant statement, statements will be deemed to be correct.
- (c) **(Error, dispute or suspicion of fraud etc):**
Correspondent will inform ANZ as soon as possible of any error, dispute or suspicion of fraud or illegality in respect of an Account or any other ANZ Service or any Payment or Instruction.
- (d) **(Information):** Correspondent undertakes to provide ANZ with all information and documentation as ANZ may reasonably request from time to time, including as may be required by Law or any agreement or arrangement with any local or foreign Authority. Correspondent acknowledges that all information provided to ANZ shall be accurate, complete, up to date and not misleading.
- (e) **(Changes to information):** Correspondent undertakes to promptly notify ANZ of any changes to information previously provided to ANZ. Correspondent agrees that until it has notified ANZ of such change and ANZ has had a reasonable opportunity to act on such notification, ANZ may rely on the information previously provided to it.

9.3 Reliance on undertakings

The parties acknowledge that each party has agreed to each Relevant Document to which it is a party in reliance on the undertakings given by the other party in clauses 9.1 and 9.2.

10. FEES AND TAXES

10.1 Fees

- (a) Correspondent will pay each Fee in accordance with the terms of these Terms and Conditions and/or the appropriate Relevant Document.

10.2 Costs, Taxes and Expenses

- (a) All direct costs and expenses incurred by either party in successfully enforcing its rights under a Relevant Document will be met by the other party.
- (b) Any Fees or other amounts for or in respect of a specific ANZ Service not detailed in the relevant Product Terms will be charged at ANZ's usual charges for that ANZ Service.
- (c) Correspondent on request will provide Tax information and documentation to ANZ relating to the products and services provided to it.
- (d) If at any time any Tax is required by Law to be paid in respect of, or withheld or deducted by ANZ from, any amounts paid or payable to Correspondent under any Relevant Document, ANZ will deduct or withhold the required amount of Tax from the payments and pay the net amount to Correspondent. Subject to this clause, if

any additional amount of Tax is required by Law to be paid by ANZ in respect of the amounts paid under a Relevant Document, ANZ may deduct these amounts from the next amount paid to Correspondent or, if it is after ANZ has made all payments to Correspondent, Correspondent agrees to immediately reimburse ANZ for the amount of any such Tax. If at any time any Tax is required by Law to be paid in respect of, or withheld or deducted by Correspondent from, any amounts paid or payable to ANZ under any Relevant Document, the sum payable by Correspondent to ANZ shall be increased to the extent necessary to ensure that ANZ receives a sum net of any deduction or withholding equal to the sum which it would have received had no such deduction been made or required to be made.

10.3 Nominated Account

Correspondent hereby authorises ANZ to debit the Account advised by Correspondent to ANZ to be the Account to which any amounts payable by Correspondent under a Relevant Document, these Terms and Conditions or the Product Terms should be debited.

Correspondent shall make all payments pursuant to the ANZ Service free and clear of and without deduction for Taxes.

11. SET-OFF

- (a) In addition to the rights of set-off ANZ may have as a matter of Law or otherwise, upon a breach of these Terms and Conditions by, or an Insolvency Event in relation to, the Correspondent, ANZ will have the right (but not be obliged) without prior notice to Correspondent or any other person, to set-off or apply any obligations of Correspondent owed to ANZ (whether or not matured or unmatured, actual or contingent or present or future and whether or not arising under a Relevant Document, and regardless of the currency, place of payment or the booking office of the obligation) against any obligation of ANZ owed to Correspondent (whether or not matured or unmatured, actual or contingent or present or future and whether or not arising under a Relevant Document, and regardless of the currency, place of payment or the office or branch of ANZ to which the obligation relates).
- (b) For the purpose of setting off obligations in different currencies, ANZ may convert either obligation at the applicable market exchange rate reasonably selected by ANZ on the relevant date.
- (c) If the amount of an obligation is unascertained, ANZ may in good faith estimate that amount and set-off in respect of the estimate, subject to the relevant party accounting to the other when the amount of the obligation is ascertained.
- (d) This clause shall not constitute a mortgage, charge, lien or other security interest upon any of the property or assets of either party to these Terms and Conditions.

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12. INTELLECTUAL PROPERTY RIGHTS

12.1 Existing Material

Nothing in these Terms and Conditions is intended to transfer title to either party's Intellectual Property Rights in respect of material, information, know how, skills, methodologies, products or tools existing at the date of these Terms and Conditions.

12.2 New Material

All Intellectual Property Rights in any material created under these Terms and Conditions will, from the time of its creation, vest in the party creating the material, or on whose behalf the material was created by a third party.

13. CONFIDENTIALITY AND DISCLOSURE

13.1 ANZ's obligations

ANZ's confidentiality and privacy obligations are set out in the Country Schedule for each relevant ANZ Location.

13.2 Disclosure of information

Correspondent agrees and acknowledges that ANZ may disclose any information relating to the Correspondent (including, without limitation, relating to any transactions contemplated under these Terms and Conditions, and its Account(s)) to any local or foreign Authority with whom ANZ has an agreement or arrangement which requires ANZ (or through another ANZ Group Member) to disclose information about the Correspondent or any account information.

13.3 Correspondent's obligations

- (a) Correspondent shall treat all information it receives relating to ANZ, each ANZ Service and each Relevant Document as confidential and may only disclose such information to those of its Representatives as necessary to allow the proper operation and use of a corresponding ANZ Service. Correspondent shall ensure that each such Representative is aware of Correspondent's obligations and complies with them.
- (b) In no case may Correspondent disclose any of ANZ's confidential information to a third party other than a Representative (except to its auditors, lawyers or other third parties whose review is mandated by Law) without ANZ's prior written consent, which shall be conditional upon the third party's agreement to be bound by suitable obligations of confidentiality.

14. FORCE MAJEURE

14.1 Force Majeure

Neither Correspondent nor ANZ will be liable for any Loss (whether direct or indirect), nor be liable for any act, omission or failure to perform under a Relevant Document if such Loss, act, omission or failure arises from any occurrence of Force Majeure. The party claiming the benefit of this clause must promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under a Relevant Document, and the likely duration of the non-performance, and must take all reasonable steps to remedy or reduce the occurrence of Force Majeure. For the avoidance of doubt, the obligations under the corresponding Relevant Document of the party giving the notice are suspended to the extent to which they are affected by the Force Majeure as long as the Force Majeure continues.

14.2 Best endeavours

The party affected by Force Majeure will use its best endeavours to mitigate the effect of that Force Majeure and to continue to perform its obligations under each Relevant Document (although this does not require the party to settle any industrial dispute in any way it does not want to). This clause is to be read subject to any Relevant Document dealing with exclusions and limitations of liability.

15. COMPLIANCE WITH LAWS

15.1 General Compliance

Correspondent undertakes to comply with the Law insofar as such Law affects any Relevant Document and undertakes to ensure that all Payments made by ANZ in accordance with any Instruction will not breach the Rules, any Law, Sanction or requirement of any competent Authority and will not be made for any illegal or fraudulent purpose.

15.2 Anti-Money Laundering and Counter-Terrorism Financing

Without prejudice to any other provision of any Relevant Document:

- (a) Correspondent undertakes to comply with all anti-money laundering and counter-terrorism financing Laws and Sanctions which are applicable to Correspondent in the jurisdictions in which it operates and transacts business;
- (b) Correspondent agrees that ANZ may delay, block or refuse to process any Instruction or Payment without incurring any liability if ANZ suspects that:
 - (i) any Instruction or Payment may breach any applicable Law or Sanction or applicable requirement of any competent Authority; or

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- (ii) any Instruction or Payment involves any person, country, product or entity that is itself sanctioned or is connected directly or indirectly to any person, country, product or entity that is sanctioned under any Sanction; or
 - (iii) any Instruction or Payment may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful.
- (c) Correspondent will provide all information to ANZ which ANZ reasonably requires in order to manage money-laundering or terrorism-financing or economic and trade sanctions risk or to comply with any applicable Law or Sanction or applicable requirement of any competent Authority;
- (d) Correspondent agrees that ANZ and any ANZ Group Member may disclose any information concerning Correspondent or any person named in an Instruction to any Authority or where required by any applicable Law or Sanction or applicable requirement of any competent Authority without informing Correspondent;
- (e) Correspondent declares and undertakes to ANZ that any Payment and/or processing of any Instruction by ANZ will not breach any applicable Law or Sanction.
- (v) there is a material adverse change in Correspondent's financial position which ANZ, in its sole and absolute discretion, has determined may affect Correspondent's ability to comply with its obligations under this Agreement; and
- (b) by 10 days' written notice if:
- (i) there is a material change in ownership or control of either party; or
 - (ii) the other commits a breach (which is not a material breach) of the Relevant Document and the Terminating Party has given written notice of the breach and the other has failed to remedy the breach within 30 days or such longer period as is specified in the notice.

16. TERM AND TERMINATION

16.1 Term

Each Relevant Document shall have effect until terminated in accordance with this clause or such other clause expressed to override this clause.

16.2 Voluntary Termination

Either party may terminate a Relevant Document without cause at any time by giving the other party 60 days' prior written notice of termination.

16.3 Termination for Fault

A party (the "Terminating Party") may terminate a Relevant Document:

- (a) immediately by written notice if:
 - (i) the other party commits a material breach of the Relevant Document;
 - (ii) an Insolvency Event occurs in relation to the other party;
 - (iii) acting under the Relevant Document would cause that party to be in breach of any applicable Law, Sanction or requirement of any competent Authority;
 - (iv) required to do so in compliance with any Law, Sanction or requirement of any competent Authority or any internal policy; or

16.4 Consequence of Termination

- (a) If there is any credit balance in the Account after the Correspondent fully discharged its payment obligations hereunder (including without limitation the fees, overdraft principal, interests, taxes and indemnities), ANZ shall, upon closing the Account, transfer such balance to the account designated by the Correspondent, or such other account of the Correspondent known to ANZ in absence of the designation.

16.5 Suspension

ANZ may suspend an Account or an ANZ Service in whole or in part (without prejudice to its rights under clause 16.3 for any reason without prior notice to Correspondent including, without limitation, where:

- (a) an Account or the provision of an ANZ Service is the subject of any dispute or third party claim;
- (b) ANZ considers that there is an insufficient balance in an Account;
- (c) ANZ considers it necessary to protect the interests of any party in respect of an Account or the provision of any ANZ Service;
- (d) ANZ considers it necessary to clarify the authority of an Authorised User;
- (e) ANZ considers that an Account or ANZ Service is not being operated in a satisfactory manner; or
- (f) one of the events referred to in clause 16.3 has occurred or is suspected to have occurred.

ANZ will, to the extent permitted by Law, advise Correspondent as soon as practicable if an Account or the provision of an ANZ Service is suspended.

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17. EFFECT OF TERMINATION

The termination of these Terms and Conditions or other Relevant Document will not affect the rights or liabilities of either party which have accrued prior to the date of termination. The following clauses survive termination: clauses 7 (*Liability and Indemnity*), 10 (*Fees and Taxes*), 13 (*Confidentiality and Disclosure*), 18 (*Notices*) and 19.11 (*Governing Law and Jurisdiction*).

18. NOTICES

Without prejudice to any communication between ANZ and Correspondent with respect to a Payment in accordance with clause 3.1, all other notices, requests, demands, consents, approvals, agreements, or other communication by a party to a Relevant Document to the other party may be:

- (a) by SWIFT Message; or
- (b) may be delivered by hand, prepaid post, email or facsimile to the address or facsimile number notified by the party for that purpose from time to time, in which case they will be deemed to be duly given or made:
 - (i) in the case of delivery in person, upon handing to an employee of the other party at the address specified; or
 - (ii) in the case of email, only when received by either ANZ or Correspondent in legible form; or
 - (iii) in the case of facsimile transmission sent between 9am and 4pm on a Business Day, upon completion of transmission and, in the case of a facsimile sent after 4pm on a Business Day, or at any time on a non-Business Day, as at 9am the next Business Day, but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in that place.

19. GENERAL

19.1 ANZ SEPARATE AND SEVERAL CONTRACTS

Each ANZ Service and each Relevant Document is a contract between the relevant ANZ Group Member and Correspondent. Each contract of each separate ANZ Group member is a separate and several contract from each contract of each other ANZ Group Member and, for the avoidance of doubt:

- (a) no ANZ Group Member is responsible for or guarantees the performance of any other ANZ Group Member in relation to an ANZ Service or a Relevant Document and Correspondent will have recourse only to the corresponding ANZ Group Member in relation to any ANZ Service and Relevant Document; and

- (b) any ANZ Service provided by an ANZ Group Member is neither a deposit with nor other liability of any other ANZ Group Member.

19.2 Change of name or merger or Insolvency Event

Correspondent agrees to notify ANZ in writing in advance of any legal name change or merger involving it. Correspondent agrees further to inform ANZ as soon as possible of the occurrence of any Insolvency Event.

19.3 Entire Agreement

These Terms and Conditions (including the documents referred to) supersede all previous agreements in respect of its subject matter and embody the entire agreement between the parties with respect to the matters dealt with in these Terms and Conditions and there are no oral or written understandings, representations, warranties or commitments of any kind, express or implied, in relation to the matters dealt with in these Terms and Conditions that are not expressly set out in these Terms and Conditions.

19.4 Amendment

- (a) ANZ may make changes, variations or alterations (together "**Amendments**") to a Relevant Document by providing 30 days' prior notice to Correspondent. The Correspondent agrees that any Amendments to a Relevant Document may be communicated by way of SWIFT and shall be binding on the parties.
- (b) ANZ's obligation to notify Correspondent within 30 days will not apply where:
 - (i) the changes are outside ANZ's control (except to the extent that such notification is otherwise required by Law); or
 - (ii) such changes are required by Law to take immediate effect or to take effect within a period less than 30 days, in which case they will take effect immediately or within that lesser period specified by ANZ.

19.5 Third Party Rights

No person who is not a party to any Relevant Document shall have any right to enforce or to enjoy the benefit of any provision of the Relevant Document.

19.6 Remedies

The rights, powers and remedies provided in the Relevant Documents are cumulative and not exclusive of any rights, powers or remedies provided at Law.

19.7 Inconsistency

- (a) These Terms and Conditions set out the basis on which ANZ may provide the ANZ Services to Correspondent.
- (b) If there is any inconsistency between the documents mentioned below then:
 - (i) if the document lower in the list states that it prevails over the other documents to the extent of any inconsistency, it will so prevail; and

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- (ii) otherwise, the document higher in the list prevails over the document lower in the list to the extent of that inconsistency.
- (c) If the inconsistency is still not resolved, the conflicting provisions are severed from the document lower in the list.
- (d) The hierarchy of documents:
 - (i) any Product Terms;
 - (ii) any Country Schedule;
 - (iii) these Terms and Conditions.
- (e) The hierarchy of documents set out above do not apply to clauses 13 (*Confidentiality and Disclosure*), 14 (*Force Majeure*), 15 (*Compliance with Laws*), and 16 (*Term and Termination*), so that, in the event of any inconsistency, those clauses shall prevail.

19.8 Assignment

- (a) ANZ may at any time assign, transfer or otherwise dispose of any or all or part of its rights, benefits and/or obligations under a Relevant Document or in respect of any ANZ Service without Correspondent's consent.
- (b) Correspondent shall not assign a Relevant Document nor any rights or obligations under a Relevant Document without the written prior consent of ANZ.

19.9 Waiver

No failure to exercise and no delay in exercising any right, power or remedy under a Relevant Document operates as a waiver. Nor does any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. Waivers must be in writing and signed by the party to be bound by the waiver.

19.10 Severability

If for any reason a provision of a Relevant Document or part of one is illegal, invalid or unenforceable in any jurisdiction, it is to be read down or severed to the extent necessary so that it may not be so construed. The illegality, invalidity or unenforceability of any provision, or part of one, in any jurisdiction does not affect the legality, validity or enforceability of any other provision, or of that provision in any other jurisdiction.

19.11 Governing law and Jurisdiction

- (a) Each ANZ Service and each Relevant Document is governed by and to be construed in accordance with the Laws of the relevant Governing Jurisdiction.
- (b) In relation to any legal action or proceedings arising out of or in connection with an ANZ Service or Relevant Document, Correspondent and ANZ submit to the non-exclusive jurisdiction of the courts of the relevant Governing Jurisdiction and of any courts competent to hear appeals from those courts and waives any objection to proceedings in any such court on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

- (c) Notwithstanding the above, ANZ may take proceedings in any country where Correspondent has assets or conducts its business activities.
- (d) Correspondent irrevocably waives any sovereign and other immunity it may have in any jurisdiction from legal proceedings, attachment before or after judgment or execution of judgment.

19.12 Documents

- (a) Additional terms and conditions relating specifically to the provision by ANZ of or use by Correspondent of an ANZ Service in a particular ANZ Location are contained in the Country Schedule for that ANZ Location.
- (b) These Terms and Conditions and each applicable Country Schedule will be read and construed as one document.

20. DEFINITIONS AND INTERPRETATION

20.1 Definitions

In these Terms and Conditions, unless the contrary intention appears:

"Account" means each bank account denominated in the currency of the relevant ANZ Location between Correspondent as account holder and ANZ as bank.

"ANZ" means the ANZ Group Member specified in the Country Schedule as providing an Account in the relevant ANZ Location (and all of its branches and offices in that ANZ Location), including its successors, assigns and transferees.

"ANZ Digital Channel" means, in relation to any Account nominated by Correspondent in accordance with the procedures stipulated by ANZ from time to time, an on-line reporting service in respect of such Account which enables Correspondent to view Account balances and transaction details in Real Time and also to submit to ANZ for action ANZ Digital Enquiries. For the avoidance of doubt, aside from the ability to submit an ANZ Digital Enquiry, the balance and transaction reporting service supported by ANZ Digital Channel is provided on a 'read-only' basis.

"ANZ Digital Enquiry" means a question or request for information submitted through the ANZ Digital Channel by an Authorised User with respect to an Account.

"ANZ Group Member" means Australia and New Zealand Banking Group Limited (ANZBGL) and any related company or entity in which ANZBGL holds a direct or indirect ownership interest (including any subsidiary), including their respective successors, assigns and transferees and persons deriving title under any of them.

"ANZ Location" means the country or jurisdiction of the ANZ Group Member specified in the Country Schedule that is providing an Account and/or other ANZ Service.

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“ANZ Service” means:

- (a) each Account and other product or service provided for by these Terms and Conditions; and
- (b) each banking product and service agreed in writing to be an ANZ Service for the purposes of these Terms and Conditions.

“Authorised User” means a person who is authorised to use the ANZ Digital Channel and submit to ANZ on behalf of Correspondent an ANZ Digital Enquiry and whom Correspondent has identified to ANZ in such a manner as approved by ANZ.

“Authority” means any regulatory, administrative, government, quasi-governmental, law enforcement or supervisory body, judicial body, authority, entity, court or tribunal including a Minister of the Crown (in any right).

“Beneficiary” means a person who is the account holder of a Beneficiary Account.

“Beneficiary Account” means, in relation to a Payment, the account held at a bank registered, licensed or otherwise authorised to conduct banking business in the ANZ Location to which the Payment is to be credited, as specified in the corresponding Instruction.

“Beneficiary Bank” means the bank with which a Beneficiary Account is held.

“Business Day” means, in relation to an ANZ Service, any day (other than a Saturday, Sunday or Public Holiday) on which banks are open for business generally in the corresponding ANZ Location in relation to services of the same type as that ANZ Service.

“Cheque” means any travellers cheque, commercial/ personal cheque, draft or other instrument payable to or to the account of Correspondent and able to be processed and paid pursuant to the Rules.

“Cleared Funds” means, in respect of funds standing to the credit of any Account, that ANZ has received full and final payment in respect of such funds that cannot be reversed or cancelled.

“Correspondent” means the entity which opens and operates an Account.

“Country Schedule” means each schedule setting out supplemental terms and conditions in respect of an ANZ Service provided in a relevant ANZ Location.

“Credential” means identifiers or prescribed security procedures relating to Correspondent’s access to and/or use of the ANZ Digital Channel, which may include unique identifiers, user name(s) and/or passwords or other security information or procedures agreed between ANZ and Correspondent from time to time, which identify an Authorised User.

“Customer Information” means information acquired by any ANZ Group Member from and concerning Correspondent in the course of the banker-customer relationship and includes Personal Information (if applicable). For the avoidance of doubt, if the concept of Personal Information is applicable to a particular ANZ Location, such term is defined in the relevant Country Schedule.

“Cut Off Times” means, in relation to an Instruction, the times stipulated as such by ANZ in the relevant Service Level Agreement or from time to time by notice to Correspondent.

“Fee” means, in relation to an ANZ Service, each fee, cost, or charge advised by ANZ (whether by way of pricing terms or otherwise) to Correspondent from time to time as payable by Correspondent in relation to that ANZ Service.

“Force Majeure” means, for a party, any occurrence or omission as a direct result of which the party is prevented from or delayed in performing any of its obligations under a Relevant Document and that is beyond the reasonable control of that party, including, but without limitation, acts of God, acts of nature, acts or inactions of an Authority, changes in Law or any order of any Authority, theft or malicious damage, fire, flood, storm, explosions, riots, civil disturbances, power shortages or power failures, telecommunications or technical failure, break downs, corruption or malfunctions (including to any Payment System), industrial disruption by third parties (including strikes or lockouts), acts of terrorism, sudden and unexpected system failure or disruption by war, sabotage or inability to obtain sufficient labour, raw materials, fuel or utilities.

“Governing Jurisdiction” means, in relation to an ANZ Service and a corresponding Relevant Document, the ANZ Location of the relevant ANZ Group Member which provides that ANZ Service.

“Insolvency Event” means, in relation to an entity:

- (a) a receiver, receiver and manager, trustee, administrator, other controller or similar official is appointed over any of the assets or undertaking of the entity;
- (b) the entity suspends payment of its debts generally or is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent;
- (c) the entity enters into or resolves to enter into an arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (d) the entity ceases to carry on its business or threatens to cease to carry on business or substantially alters the nature of its business;
- (e) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator to the entity;

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- (f) an application or order is made for the winding up or dissolution of the entity or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the entity, otherwise than for the purpose of amalgamation or reconstruction that has the prior written consent of ANZ; or
- (g) has the occurrence to the entity of anything analogous or having a substantially similar effect to any of the above conditions or matters under the Law of any applicable jurisdiction, and to the procedures, circumstances and events that constitute any of the above conditions or matters.

“Instruction” means an instruction from Correspondent to ANZ in relation to a Payment, in the form contemplated by these Terms and Conditions.

“Intellectual Property Rights” means, in relation to any person, all know-how, trade secrets, patents, inventions, trademarks, service marks, designs, business names, domain names, topographical or similar rights, copyrights, data base, circuit layout, software, source code and other rights and any interests (including by way of licence) resulting from intellectual activity in the industrial, scientific, literary or artistic fields in any of the foregoing (in each case whether registered or not and including all applications for the same) of that person.

“Law” means any common or customary law, equity, judgment, legislation, order, ruling, regulation, statute, by-law, rule, decree, guideline or directive, ordinance or any other legislative or regulatory measures, including any amendment, modification or re-enactment of them of or by any Authority.

“Loss” means any and all loss (including loss of profit), costs, expenses (including legal costs on a full indemnity basis), Tax, liability, demand, payment, action, claim (including claims which may be brought by third parties), suit, proceeding or damage of any kind (arising out of contract, tort, statute or otherwise and whether foreseeable or not).

“Originator Information” means in relation to a Payment made by Correspondent to give effect to an instruction from a Sender, all relevant information relating to that Sender, the Payment and the Instruction.

“Payment” means payment to a Beneficiary of an amount of money.

“Payment System” means, in relation to a Payment and an ANZ Location, the interchange and settlement or other payment system in place in that ANZ Location for the making of that Payment.

“Product Terms” means, in relation to an Account, these Terms and Conditions and in relation to each other ANZ Service, the terms and conditions applicable to the ANZ Service (each as amended or replaced from time to time) and each term implied into these Terms and Conditions or those terms and conditions by Law, the Rules or other banking practice.

“Real Time” in relation to the ANZ Digital Channel means the presentation by ANZ to Correspondent of information and data relating to an Account at a speed which is near instantaneous to, or where there has only been a short delay from, the time when the event or action actually occurred.

“Relevant Documents” means these Terms and Conditions, each document evidencing or constituting an ANZ Service (including Product Terms) and each other document that the parties agree will be a Relevant Document for the purposes of these Terms and Conditions. For the avoidance of doubt, a Service Level Agreement is not a Relevant Document.

“Representative” means a person’s directors, officers or employees.

“Rules” means, in relation to an ANZ Location, the industry or Payment System rules applicable to Payments together with all rules and requirements applicable to or implied into Payments by other generally accepted banking practice or Law in the ANZ Location.

“Sanction” means any economic or trade sanctions imposed by any Authority.

“Sender” means a party which uses Correspondent as its bank to make a Payment to a Beneficiary and can include Correspondent.

“SWIFT” means the Society for Worldwide Interbank Financial Telecommunication, a member-owned cooperative.

“SWIFT Message” means an authenticated message sent in accordance with the rules defined in the SWIFT User Handbook (as amended from time to time).

“Service Level Agreement” means, in relation to an ANZ Service, a written record of various operational and related matters in connection with that ANZ Service.

“Tax” means any tax, levy, impost, duty, penalty or interest or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“Terms and Conditions” means the ANZ Clearing Services Terms and Conditions.

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20.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to a clause is a reference to a clause in these Terms and Conditions;
- (c) the singular includes the plural and the converse;
- (d) a gender includes all genders;
- (e) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of the foregoing;
- (f) a reference to a party to these Terms and Conditions includes the party's successors and permitted substitutes or assigns;
- (g) a reference to these Terms and Conditions is to them as amended, notated, supplemented or replaced from time to time;
- (h) a reference to conduct includes, without limitation, an omission, statement or undertaking whether or not in writing;
- (i) a reference to "writing" includes any means of reproducing words in a tangible and permanently visible form, including electronic means;
- (j) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it and a reference to a provision of Law is a reference to that provision as amended or re-enacted;
- (k) mentioning anything after include, includes or including does not limit what else might be included; and
- (l) a reference to a schedule (including a Country Schedule) is to a schedule to these Terms and Conditions.

