

UNDERTAKING

This undertaking is made by American Express Australia Limited ACN 108 952 085 ('**American Express**') of 12 Shelley Street, Sydney in favour of the Reserve Bank of Australia ('**Reserve Bank**') of 65 Martin Place, Sydney and dated 18 March 2013.

For the purposes of this undertaking:

- an 'American Express Card' is any credit card or charge card bearing the name 'American Express' and/or any logo, service mark, trademark, trade name, tagline or other proprietary designation owned by American Express or any related body corporate (within the meaning given to that term in the *Corporations Act 2001*) of American Express;
- the 'American Express Payment System' is the system under which American Express Cards are used to make payments in Australia;
- the 'Surcharging Standards' are the Standard titled *Standard No. 2, Merchant Pricing for Credit Card Purchases* for the MasterCard Credit Card Payment System and the Standard with the same title for the Visa Credit Card Payment System, both of which originally came into force on 1 January 2003 and were varied by variations published in the *Gazette* on 12 June 2012 and 28 November 2012;
- the 'MasterCard Credit Card Payment System' is the MasterCard system designated by the Reserve Bank as a payment system (designation published in the *Gazette* on 12 April 2001); and
- the 'Visa Credit Card Payment System' is the Visa system designated by the Reserve Bank as a payment system (designation published in the *Gazette* on 12 April 2001).

In consideration of the Reserve Bank not designating the American Express Payment System under the terms of the *Payment Systems (Regulation) Act 1998* ('Act') for the purposes of determining a standard on merchant pricing in substantially the same terms as the Surcharging Standards (copies of which are attached to this undertaking) pursuant to the Act, American Express will voluntarily comply with paragraphs 4, 6, 7, 9 and 10 (and only those paragraphs) of the Surcharging Standards on the basis that references in those paragraphs to:

- (a) 'this Standard' and 'This Standard' are references to this undertaking;
- (b) 'credit cards issued under the Scheme' are references to 'American Express Cards' and 'credit cards of all types issued under the Scheme' are references to 'American Express Cards of all types', and other references to:
 - (i) 'the Scheme' are references to 'the American Express Payment System';
 - (ii) 'credit card' are references to 'credit card or charge card';
- (c) 'rules of the Scheme' (except in paragraph 4) are references to 'rules of the American Express Payment System'; and
- (d) 'card schemes' are references to 'card payment systems',

and on the basis that:

- (a) the definition of 'acquirer' in paragraph 4 is deleted;

(b) the definition of 'merchant service fee' in paragraph 4 is replaced with:

'merchant service fee' means a transaction-based fee charged to a merchant for providing services to the merchant to allow the merchant to accept credit card or charge card transactions, whether charged on an *ad valorem* or flat-fee basis, or charged on any other basis; and

(c) the definition of 'rules of the Scheme' in paragraph 4 is replaced with:

'rules of the American Express Payment System' means the terms of any agreement between American Express and any merchant and any rules, by-laws, procedures, manuals or other documents or instruments which govern or regulate the acceptance of American Express Cards by a merchant or participation in the American Express Payment System.

This undertaking comes into force on 18 March 2013 and will then replace the previous undertaking provided to the Reserve Bank by American Express which came into force on 1 September 2004.

American Express reserves the right to withdraw this undertaking by giving the Reserve Bank not less than six (6) months' (or any shorter period agreed by the Reserve Bank) prior notice of its intention to do so.

American Express acknowledges that the Reserve Bank reserves its rights to proceed with a designation of the American Express Payment System under the Act at any time should it consider this best serves the purposes of the Act.

Signed by American Express Australia Limited in accordance with s.127 of the *Corporations Act 2001* by:



Signature of Director



Signature of Company Secretary

TRACEY BOWRA.

Name of Director

John Allan Galletta

Name of Company Secretary

Merchant Pricing for Credit Card Purchases

Objective

The objective of this Standard is to promote:

- (i) efficiency; and*
- (ii) competition*

in the Australian payments system by providing merchants the freedom to make a reasonable charge according to the means of payment.

Amended and restated Standard

1. This Standard is an amended and restated Standard of that gazetted on 27 August 2002.

Application

2. This Standard is determined under Section 18 of the *Payment Systems (Regulation) Act 1998*.
3. This Standard applies to the credit card system operated within Australia known as the MasterCard system or the MasterCard network card system designated on 12 April 2001 by the Reserve Bank of Australia under Section 11 of the *Payment Systems (Regulation) Act 1998*, and referred to in this Standard as the Scheme.

4. In this Standard:

an ‘acquirer’ is a participant in the Scheme in Australia that provides services to a merchant to allow the merchant to accept a credit card;

‘credit card’ means a card issued under the rules of the Scheme that can be used for purchasing goods or services on credit, or any other article issued under the rules of the Scheme and commonly known as a credit card;

‘credit card transaction’ or ‘transaction’ means a transaction in Australia between a credit card holder and a merchant involving the purchase of goods or services using a credit card;

‘merchant’ means a merchant in Australia that accepts a credit card for payment for goods or services;

‘merchant service fee’ means a transaction-based fee charged to a merchant for acquiring credit card transactions from that merchant whether collected on

an *ad valorem* or flat-fee basis, or charged as a blended rate across all credit card types or on an interchange plus acquirer margin basis or any other basis;

‘rules of the Scheme’ mean the constitution, rules, by-laws, procedures and instruments of the Scheme as applied in Australia, and any other arrangement relating to the Scheme by which participants in the Scheme in Australia consider themselves bound;

terms defined in the *Payment Systems (Regulation) Act 1998* have the same meaning in this Standard.

5. Each participant in the Scheme must do all things necessary on its part to ensure compliance with this Standard.
6. If any part of this Standard is invalid, it is ineffective only to the extent of such part without invalidating the remaining parts of this Standard.
7. This Standard is to be interpreted:
 - in accordance with its objective; and
 - by looking beyond form to substance.
8. This Standard originally came into force on 1 January 2003. This Standard as amended and restated comes into force on 18 March 2013.

Merchant Pricing

9. Neither the rules of the Scheme nor any participant in the Scheme shall prohibit:
 - (i) a merchant from recovering part or all of the reasonable cost of acceptance of credit cards issued under the Scheme by the merchant charging fees or surcharges to credit card holders; or
 - (ii) a merchant, in recovering part or all of the reasonable cost of acceptance of credit cards issued under the Scheme, from applying different fees or surcharges to credit card holders for different card types either within the Scheme or across card schemes.
10. For the purposes of paragraph 9, the merchant’s cost of acceptance of credit cards issued under the Scheme may, for the purpose of determination of a fee or surcharge, be determined by reference to:
 - (i) the cost to the merchant of the credit card transaction in relation to which the fee or surcharge is to be levied;
 - (ii) the average cost to the merchant of acceptance of all credit cards of all types issued under the Scheme; or

(iii) the average cost to the merchant of acceptance of a subset of credit cards issued under the Scheme that includes the type of credit card in relation to which the fee or surcharge is to be levied,

and includes, but is not necessarily limited to, in the case of (i), the applicable merchant service fee and, in the case of (ii) and (iii), all applicable merchant service fees.

Transparency

11. Each acquirer must notify, in writing, each merchant to whom the acquirer provides services of the provisions of this Standard (as amended) either before, or as soon as practicable after, this Standard (as amended) comes into force.

Merchant Pricing for Credit Card Purchases

Objective

The objective of this Standard is to promote:

- (i) efficiency; and*
- (ii) competition*

in the Australian payments system by providing merchants the freedom to make a reasonable charge according to the means of payment.

Amended and restated Standard

1. This Standard is an amended and restated Standard of that gazetted on 27 August 2002.

Application

2. This Standard is determined under Section 18 of the *Payment Systems (Regulation) Act 1998*.
3. This Standard applies to the credit card system operated within Australia known as the VISA system or the VISA network card system designated on 12 April 2001 by the Reserve Bank of Australia under Section 11 of the *Payment Systems (Regulation) Act 1998*, and referred to in this Standard as the Scheme.
4. In this Standard:

an 'acquirer' is a participant in the Scheme in Australia that provides services to a merchant to allow the merchant to accept a credit card;

'credit card' means a card issued under the rules of the Scheme that can be used for purchasing goods or services on credit, or any other article issued under the rules of the Scheme and commonly known as a credit card;

'credit card transaction' or 'transaction' means a transaction in Australia between a credit card holder and a merchant involving the purchase of goods or services using a credit card;

'merchant' means a merchant in Australia that accepts a credit card for payment for goods or services;

'merchant service fee' means a transaction-based fee charged to a merchant for acquiring credit card transactions from that merchant whether collected on

an *ad valorem* or flat-fee basis, or charged as a blended rate across all credit card types or on an interchange plus acquirer margin basis or any other basis;

‘rules of the Scheme’ mean the constitution, rules, by-laws, procedures and instruments of the Scheme as applied in Australia, and any other arrangement relating to the Scheme by which participants in the Scheme in Australia consider themselves bound;

terms defined in the *Payment Systems (Regulation) Act 1998* have the same meaning in this Standard.

5. Each participant in the Scheme must do all things necessary on its part to ensure compliance with this Standard.
6. If any part of this Standard is invalid, it is ineffective only to the extent of such part without invalidating the remaining parts of this Standard.
7. This Standard is to be interpreted:
 - in accordance with its objective; and
 - by looking beyond form to substance.
8. This Standard originally came into force on 1 January 2003. This Standard as amended and restated comes into force on 18 March 2013.

Merchant Pricing

9. Neither the rules of the Scheme nor any participant in the Scheme shall prohibit:
 - (i) a merchant from recovering part or all of the reasonable cost of acceptance of credit cards issued under the Scheme by the merchant charging fees or surcharges to credit card holders; or
 - (ii) a merchant, in recovering part or all of the reasonable cost of acceptance of credit cards issued under the Scheme, from applying different fees or surcharges to credit card holders for different card types either within the Scheme or across card schemes.
10. For the purposes of paragraph 9, the merchant’s cost of acceptance of credit cards issued under the Scheme may, for the purpose of determination of a fee or surcharge, be determined by reference to:
 - (i) the cost to the merchant of the credit card transaction in relation to which the fee or surcharge is to be levied;
 - (ii) the average cost to the merchant of acceptance of all credit cards of all types issued under the Scheme; or

(iii) the average cost to the merchant of acceptance of a subset of credit cards issued under the Scheme that includes the type of credit card in relation to which the fee or surcharge is to be levied,

and includes, but is not necessarily limited to, in the case of (i), the applicable merchant service fee and, in the case of (ii) and (iii), all applicable merchant service fees.

Transparency

11. Each acquirer must notify, in writing, each merchant to whom the acquirer provides services of the provisions of this Standard (as amended) either before, or as soon as practicable after, this Standard (as amended) comes into force.