

DATED \_\_\_\_\_

*(Effective from 11 October 2011, consolidating all changes to September 2011)*

**RESERVE BANK OF NEW ZEALAND**

**and**

\_\_\_\_\_  
("the Accountholder")

\_\_\_\_\_  
EXCHANGE SETTLEMENT ACCOUNT TERMS AND CONDITIONS  
*(Incorporating Service Levels)*  
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**TABLE OF CONTENTS**

1. DEFINITIONS AND INTERPRETATION	1
2. OPENING AND OPERATION OF THE ACCOUNT	5
3. PAYMENT INSTRUCTIONS	6
4. SETTLEMENT	7
5. IRREVOCABILITY OF PAYMENTS	8
6. NOTIFIABLE EVENTS	8
7. CONFIDENTIALITY	8
8. SUSPENSION AND CLOSING OF SETTLEMENT ACCOUNT	9
9. SUSPENSION OF SYSTEM/ALTERATION TO ESAS DAY	10
10. INVALID TRANSACTIONS	10
11. ESAS GENERAL SYSTEM REQUIREMENTS	11
12. FIXES, CHANGES OR ENHANCEMENTS TO ESAS	12
13. BUSINESS CONTINUITY	13
14. OTHER RESERVE BANK OBLIGATIONS WITH REGARD TO ESAS	13
15. TRANSACTION FEES	14
16. FORCE MAJEURE	14
17. LIMITATION OF LIABILITY	15
18. ACCOUNTHOLDER'S REMEDIES	16
19. DISPUTE RESOLUTION	16
20. MISCELLANEOUS	17
SCHEDULE A	21
SCHEDULE B	25
SCHEDULE C	26
SCHEDULE D	27
SCHEDULE E	28
SCHEDULE F	29

**RESERVE BANK OF NEW ZEALAND**  
**EXCHANGE SETTLEMENT ACCOUNT**  
**TERMS AND CONDITIONS**

The Accountholder named on the covering page to these Terms and Conditions (“Accountholder”) and the Reserve Bank of New Zealand (“Reserve Bank”) agree to be bound by these Terms and Conditions, governing the operation of the Accountholder’s Settlement Account or Settlement Accounts with the Reserve Bank and the provision of certain services relating to ESAS, as they may be amended from time to time by agreement by the Accountholder and the Reserve Bank.

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these Terms and Conditions, unless the context otherwise requires:

“**Account Enquiry**” means a Valid Instruction enquiring as to the status of the Accountholder’s Settlement Account or Payment Instructions.

“**Accountholder Submitting System**” means, in respect of a Settlement Accountholder, any computer system connected to ESAS that is used for the purpose of transmitting Valid Instructions to ESAS for processing.

“**Act**” means the Reserve Bank of New Zealand Act 1989.

“**Authorised Payment Instruction**” means, in respect of a Settlement Accountholder, a Payment Instruction which, for the time being is and remains Authorised by that Settlement Accountholder for Settlement in accordance with any of the authorisation options available in the System and “**Authorised**” and “**Authorisation**” have corresponding meanings.

“**Business Continuity Plan**” means that plan to be developed between the Reserve Bank and the Settlement Accountholders detailing the business continuity processes that are to apply in the event of the occurrence of a System Fault or other problems in connection with the services and facilities made or to be made available to the Accountholder by the Reserve Bank with respect to the Accountholder’s use of ESAS.

“**Business Day**” means any day (not being a Saturday or a Sunday) on which registered banks are open for business in either Auckland or Wellington.

“**Core Business Hours**” has the meaning set out in Schedule F.

“**ESAS**” and “**System**” mean the exchange settlement account system owned, operated and managed by or on behalf of the Reserve Bank which provides the functionality to enable real time settlement and irrevocability of payments through Settlement Accounts, the service boundary of which being the Reserve Bank communication equipment which provides a point of access to ESAS by the Accountholder. For the avoidance of doubt

“ESAS” and “System” shall exclude any part of the telecommunications network and infrastructure owned and operated by or for the Society for Worldwide Interbank Financial Telecommunication.”

“**ESAS Day**” has the meaning set out in Schedule C, subject to the provisions of clause 9.1.

“**Exempted Accountholder**” means CLS Bank International and any other Settlement Accountholder which is approved in writing as an “Exempted Accountholder” by the Reserve Bank, the Accountholder and each other Settlement Accountholder.

“**Invalid Transaction**” means, in respect of a Settlement Accountholder, a transaction performed by ESAS which does not match a Valid Instruction.

“**Live Operation Date**” means the date on which ESAS starts live operation for and in respect of all its operations, and Settlement is undertaken on a real time basis.

“**Minimum Account Balance**” means in respect of a Settlement Accountholder, the Settlement Account balance from time to time set by the Reserve Bank for that Settlement Accountholder which, for the avoidance of doubt, may be a positive, negative or zero balance and may, if the Reserve Bank considers necessary, be subject to specific conditions.

“**Notice**” means a written communication from one party to the other in connection with, or for the purposes of, these Terms and Conditions, other than an instruction initiated via ESAS or which, in an emergency, is communicated to the Reserve Bank (in the manner agreed) for processing by ESAS.

“**Notifiable Event**” means, in respect of the Accountholder:

- (a) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement or composition with, its creditors; or
- (b) its admitting in writing its inability to pay its debts as they become due from its own money; or
- (c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- (d) the presentation or filing of an application in respect of it:
  - (i) in any court or before any agency alleging or for its bankruptcy, or liquidation (or any analogous proceeding) unless it can be demonstrated by the Accountholder to be vexatious or that it is otherwise unlikely to result in the liquidation of the Accountholder, in either case within a period of time to be specified by the Reserve Bank;
  - (ii) seeking any reorganisation, arrangement, composition, readjustment, administration, liquidation, dissolution or similar relief,

under any present or future statute, law or regulation, such application (except in the case of an application for liquidation or any analogous proceeding) not having been stayed or dismissed within 30 days of its filing; or

- (e) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of it over all or any material part of its property;
- (f) the appointment of a Statutory Manager under either the Act or the Corporations (Investigation and Management) Act 1989;
- (g) the occurrence of any event having a substantially similar effect to any of the events specified in (a) to (f) above under the law of any applicable jurisdiction.

**“Payment Instruction”** means, in respect of a Settlement Accountholder, a Valid Instruction to debit a Settlement Accountholder’s Settlement Account and credit one or more other Settlement Accountholder’s Settlement Accounts and, for the avoidance of doubt, may be an Authorised Payment Instruction or an Unauthorised Payment Instruction.

**“Payment Instruction Queue”** means the queue of Payment Instructions (comprising Authorised Payment Instructions and Unauthorised Payment Instructions) received in ESAS for Settlement in accordance with the Terms and Conditions.

**“Processing Machine”** means the computer equipment on which ESAS operates.

**“Recipient”** means the Settlement Accountholder in whose favour an Authorised Payment Instruction is made, but does not include the Settlement Accountholder who initiates that Authorised Payment Instruction.

**“Regulator”** means the Reserve Bank of New Zealand in its capacity as regulator performing the functions and exercising the powers conferred on it under Parts 5B and 5C of the Act; and includes any successor organisation performing those functions or equivalent functions.

**“Service Level Requirements”** are those service level requirements set out in Schedule F as they may be amended from time to time in accordance with clause 11.

**“Settlement”** means, in respect of an Authorised Payment Instruction, the successful posting for value of all debits and credits to the relevant Settlement Accounts of the amounts notified in that Authorised Payment Instruction, and **“Settled”** has a corresponding meaning.

**“Settlement Account”** means, in respect of a Settlement Accountholder, the exchange settlement account maintained by the Reserve Bank for that Settlement Accountholder, or where the Settlement Accountholder has more than one exchange settlement account, each such account.

**“Settlement Accountholder”** means the holder of a Settlement Account with the Reserve Bank and includes the Accountholder and, to the extent applicable under the Terms and Conditions, shall be deemed to include the Reserve Bank.

**“Settlement Accountholder Group”** means any group of Settlement Accountholders, however constituted, which is formed for the purpose of providing views to, and consulting with, the Reserve Bank in connection with ESAS, and in particular, those matters referred to in Schedule B.

**“Settlement Submission Mechanism”** means the ESAS mechanism (or mechanisms) currently in operation or introduced by the Reserve Bank from time to time pursuant to clause 4.1, which determine the order, and the combination, in which Authorised Payment Instructions in the Payment Instruction Queue are tested and Settled.

**“Settlement Tests”** means the tests set out in clause 4.3 which Payment Instructions must satisfy before Settlement may be effected.

**“System Fault”** means a fault, malfunction or error in ESAS such that ESAS is unable to perform the functions it is required to perform for the time being or to meet the Service Level Requirements including but not limited to, problems in the Settlement Submission Mechanism and delays in or inability to access the Account Enquiry function, and errors in the System resulting in Invalid Transactions.

**“Terms and Conditions”** means these terms and conditions and all schedules attached or incorporated by reference.

**“Transaction Fees”** means the fees charged by the Reserve Bank for the Settlement of the Accountholder’s Payment Instructions in accordance with the policy set out in Schedule A.

**“Unauthorised Payment Instruction”** means, in respect of a Settlement Accountholder, a Payment Instruction which:

- (a) has not yet been Authorised by that Settlement Accountholder for Settlement; or
- (b) has previously been Authorised for Settlement but in respect of which a Valid Instruction has been received by ESAS revoking that Authorisation;

and which is held in ESAS within the Accountholder Payment Instructions Queue, separate from Authorised Payment Instructions queued for Settlement.

**“Valid Instruction”** means, in respect of a Settlement Accountholder, an instruction received by the System;

- (a) which is from an Accountholder Submitting System approved by that Settlement Accountholder; and
- (b) in respect of which all mandatory fields have been completed; and

- (c) in respect of which all mandatory and any optional completed fields have been correctly interpreted by the System;

or, in the case of an emergency, an instruction transmitted in the manner agreed between the Reserve Bank and the Accountholder.

- 1.2 Words importing one gender include the other.
- 1.3 The plural number includes the singular and vice versa.
- 1.4 References to clauses and schedules are references to clauses and schedules in these Terms and Conditions, as they may be amended from time to time in accordance with these Terms and Conditions.
- 1.5 Headings are inserted for convenience of reference and do not alter the interpretation of these Terms and Conditions.
- 1.6 A reference to any legislation includes any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendments to, re-enactment of, or replacement of that legislation.
- 1.7 The terms “Accountholder Submitting System”, “Payment Instruction Queue”, “Authorised Payment Instruction”, “Invalid Transaction”, “Minimum Account Balance”, “Payment Instruction”, “Settlement”, “Unauthorised Payment Instruction” and “Valid Instruction” where used in these Terms and Conditions shall be interpreted as a reference to those terms as they apply to the Accountholder, except where the context in which those terms are used requires that those terms apply in respect of any or all Settlement Accountholders.
- 1.8 The term “receive” where used in these Terms and Conditions with reference to Valid Instructions received by ESAS, shall be interpreted as meaning actually received in ESAS or, where actual receipt is prevented due to a System error or System Fault, delivered from the Accountholder’s Submitting System to the ESAS service boundary.
- 1.9 These Terms and Conditions and the performance of them are governed by New Zealand law.

## ***PART A: OPERATION OF ACCOUNT***

### **2. OPENING AND OPERATION OF THE ACCOUNT**

- 2.1 The Reserve Bank will open and will (subject to clause 8) maintain a Settlement Account for the Accountholder. It is acknowledged by both parties that an Accountholder may hold or control more than one Settlement Account from time to time.
- 2.2 In consideration of the Reserve Bank making ESAS available to the Accountholder for the Settlement of Payment Instructions and other related functions, the Accountholder agrees to pay the Transaction Fees. The Transaction Fees and the dates or times by

which such fees are to be paid, are determined by the Reserve Bank in accordance with the fee setting policy set out in clause 15.1 and Schedule A for the time being.

- 2.3 Subject to these Terms and Conditions, the Accountholder will at all times while the Settlement Account remains operational ensure there are sufficient funds in the Account to meet or exceed the Minimum Account Balance. The Settlement Account is to be operational until it is closed by the Accountholder, or terminated or suspended by the Reserve Bank in accordance with clause 8.
- 2.4 Interest may be paid on credit balances in the Account at the rate and in the manner determined by the Reserve Bank as notified from time to time. Interest may also be charged by the Reserve Bank on any debit balances in the Account at the rate and in the manner determined by the Reserve Bank as notified from time to time.
- 2.5 The opening and maintaining of a Settlement Account by the Accountholder does not confer any particular prudential status on the Accountholder nor does it represent any form of endorsement by the Reserve Bank. The Accountholder will not make any statement or take any actions in any manner or form which might result in any person inferring that the Accountholder is a registered bank, has any particular prudential status or has any endorsement from the Reserve Bank.

### **3. PAYMENT INSTRUCTIONS**

- 3.1 Subject to clause 3.2, in respect of the Accountholder, the Reserve Bank:
  - 3.1.1 is entitled to rely on all Valid Instructions;
  - 3.1.2 undertakes to act on all Valid Instructions in accordance with their respective terms and in accordance with these Terms and Conditions.
- 3.2 The Accountholder undertakes, in respect of any Valid Instructions which cannot be received or interpreted by ESAS due to a System Fault or System error, to resubmit without delay those Valid Instructions which the Accountholder wishes to be actioned, upon request by the Reserve Bank or upon the Accountholder otherwise becoming aware that the Reserve Bank is unable to act upon that Valid Instruction due to a System Fault or System error.
- 3.3 An Authorised Payment Instruction shall not be Settled if Settlement of that Authorised Payment Instruction would, upon Settlement, reduce the balance of the Accountholder's Settlement Account below the Minimum Account Balance provided that, where any applicable Settlement Submission Mechanism then in operation allows simultaneous Settlement of Authorised Payment Instructions of the Accountholder and the Recipient or Recipients (where the Recipient, as a Settlement Accountholder, has initiated Authorised Payment Instructions in favour of the Accountholder) and the Accountholder and each Recipient has elected to allow such simultaneous Settlement, all amounts debited and credited to the Accountholder's Settlement Account pursuant to such simultaneous Settlement (of one or more Authorised Payment Instructions), shall be taken into account in determining if the Accountholder's Settlement Account will be reduced below the Minimum Account Balance.

#### 4. SETTLEMENT

- 4.1 Payment Instructions received by ESAS will be Settled by ESAS in accordance with this clause 4 and the applicable Settlement Submission Mechanism determined by the Reserve Bank. Such applicable Settlement Submission Mechanism shall be advised to the Accountholder by the Reserve Bank by written notice issued to the Accountholder and each other Settlement Accountholder pursuant to this clause 4.1. Each notice issued under this clause 4.1 shall:
- (a) be given at least five Business Days prior to the relevant Settlement Submission Mechanisms coming into effect; and
  - (b) form part of the Terms and Conditions, until varied or revoked by the Reserve Bank issuing a further written notice to the Accountholder and each other Settlement Accountholder providing details of, and the reasons for, the variation (having regard to the Reserve Bank's duties pursuant to clause 20 (Amendments)), at least five Business Days prior to that variation or revocation taking effect.
- 4.2 All Payment Instructions will be sent by the System to the Payment Instruction Queue for testing in accordance with the Settlement Tests set out in clause 4.3 and in accordance with the Settlement Submission Mechanism and, if the Settlement Tests are satisfied, will be Settled by the System.
- 4.3 A Payment Instruction received by ESAS will not be Settled unless the following Settlement Tests are satisfied:
- (a) the Payment Instruction is an Authorised Payment Instruction; and
  - (b) the requirements of clause 3.3 are satisfied.
- 4.4 The Reserve Bank and the Accountholder acknowledge that where the relevant Settlement Submission Mechanism in operation so allows, one or more Payment Instructions may be processed by the System and Settled simultaneously. Where Payment Instructions are Settled simultaneously (whether on a bi-lateral or multi-lateral basis) they are Settled and posted in gross to the relevant Accountholder's Settlement Account and are not subject to bi-lateral netting or multi-lateral netting.
- 4.5 An Authorised Payment Instruction will be Settled at the point in time at which ESAS successfully posts for value all debits and credits to the relevant Settlement Accounts in the amounts notified in that Authorised Payment Instruction.
- 4.6 All Payment Instructions which have not been Settled by ESAS before the end of an ESAS Day will be deleted from the Payment Instruction Queue. The Accountholder may resubmit any deleted Payment Instructions on the following ESAS Day.

- 4.7 The Reserve Bank may temporarily suspend the operation of any or all of the Settlement Submission Mechanisms if the Reserve Bank considers it reasonably necessary to do so to respond appropriately to:
- (a) a System Fault or detection of a potential System Fault;
  - (b) any threat or perceived threat to the maintenance of a sound and efficient financial system.
- 4.8 The Reserve Bank will use all reasonable endeavours to:
- (a) notify the Accountholder in writing of all actions it takes pursuant to clause 4.7 prior to, or as soon as possible after, taking such action; and
  - (b) correct the System Fault and/or remove or avoid any threat or perceived threat to the financial system so that the operation of the Settlement Submission Mechanism is restored as soon as possible following suspension.

## **5. IRREVOCABILITY OF PAYMENTS**

- 5.1 Upon Settlement of an Authorised Payment Instruction, all payments credited to and debited from Settlement Accounts shall be final and irrevocable from the moment at which they are posted to the relevant Settlement Account. The Accountholder and the Reserve Bank acknowledge that Settled Authorised Payment Instructions may not be reversed.

## **6. NOTIFIABLE EVENTS**

- 6.1 The Accountholder acknowledges that the Reserve Bank and each of the Settlement Accountholders relies on, and places trust in, all other Settlement Accountholders for the continuing successful Settlement of Authorised Payment Instructions. The Accountholder, in recognition of this reliance, immediately upon the occurrence, or threatened occurrence, of a Notifiable Event will:
- (a) if the Accountholder has good reason to doubt its authority to continue to make payments, enter such Valid Instructions into the System as are necessary to ensure that no further Payment Instructions are Settled: and
  - (b) notify the Reserve Bank of the occurrence, or threatened occurrence, of that Notifiable Event and the steps (if any) the Accountholder is taking to ensure that it continues to have authority to issue Payment Instructions.

## **7. CONFIDENTIALITY**

- 7.1 The Reserve Bank and the Accountholder will apply the normal rules of banker's confidentiality to all Account Enquiries, Payment Instructions and Settlements but these rules shall not prevent disclosure to any employees, consultants or agents (including

lawyers and auditors) of a party that needs to know that information for the purposes of enabling a party to perform its obligations or to exercise its rights under or in connection with these Terms and Conditions. Furthermore, the Reserve Bank acknowledges that the disclosure of confidential information of the Accountholder would be likely to unreasonably prejudice the commercial position of the Accountholder and if the Reserve Bank intends to accede to any request it receives under the Official Information Act 1982 for information concerning the Accountholder, it will immediately notify the Accountholder of that intention.

- 7.2 Subject to clause 7.1, these Terms and Conditions and the Schedules shall be a public document and each of the Reserve Bank and the Accountholder may disclose or publish:
- (a) aggregate or summary data on the operation of the System;
  - (b) educational and descriptive information about ESAS.
- 7.3 The Accountholder may discuss and exchange information with any other Settlement Accountholder regarding any aspect of the operation or administration of ESAS.
- 7.4 Each party will instruct and be responsible for its employees, consultants and agents, including its lawyers and auditors, who will have access to confidential information to maintain the confidentiality of that information in a manner consistent with these Terms and Conditions. Each party will exercise the same degree of care (but no less than reasonable care) to safeguard the confidentiality of the other party's confidential information as it would exercise to safeguard the confidentiality of its own confidential information.
- 7.5 The provisions of this clause 7 will survive closure of the Settlement Account.

## **8. SUSPENSION AND CLOSING OF SETTLEMENT ACCOUNT**

- 8.1 The Accountholder may close its Settlement Account upon giving the Reserve Bank 10 Business Days written notice (or such lesser notice as may be agreed by the Reserve Bank) of its intention to close that Settlement Account.
- 8.2 Upon receipt of notice in accordance with clause 8.1 the Reserve Bank will notify all other Settlement Accountholders of the proposed date and time of termination of the Accountholder's Settlement Account. No new Payment Instructions may be initiated on that Settlement Account after the proposed date and time of termination.
- 8.3 On the proposed date and time of termination of the Accountholder's Settlement Account, the Reserve Bank will close that Settlement Account and refund to the Accountholder any amount standing to the credit of that Settlement Account after deducting any fees, charges or interest outstanding in respect of that Settlement Account and after all payment obligations in respect of Authorised Payment Instructions validly accepted through ESAS and any securities repurchase obligations have been met. Any debt outstanding on the termination of the Accountholder's Settlement Account will be a debt due to the Reserve Bank recoverable from the Accountholder.

8.4 The Accountholder acknowledges the Reserve Bank's right, acting reasonably, to suspend or terminate the operation of the Accountholder's Settlement Account at any time, on notification to the Accountholder or as soon as practicable following such suspension or termination.

8.5 The Reserve Bank will notify the Accountholder as soon as reasonably practicable if a Settlement Account of any other Settlement Accountholder is suspended or terminated.

## **9. SUSPENSION OF SYSTEM/ALTERATION TO ESAS DAY**

9.1 The Reserve Bank and the Accountholder agree that, for the purposes of these Terms and Conditions, the ESAS Day and the hours of operation for the System will be as specified in Schedule C, subject to variation of the same as set out in this clause 9.

9.2 The Reserve Bank may temporarily suspend operation of the System and/or may temporarily extend or shorten one or more ESAS Days for such period of time considered by the Reserve Bank to be reasonably necessary to respond appropriately to:

- (a) a System Fault or detection of a potential System Fault; or
- (b) widespread disruption to Settlement Accountholders' access to the System;
- (c) any threat or perceived threat to the maintenance of a sound and efficient financial system.

The Reserve Bank will endeavour to notify the Accountholder of all actions it takes pursuant to this clause 9.2 prior to, or as soon as possible after, taking such action, but so that following correction of that System Fault or access disruption and/or removal of that threat or perceived threat to the financial system, the Reserve Bank shall, as soon as possible thereafter, restore operation of the System and/or reinstate normal hours of operation for the ESAS Day.

9.3 Subject to clause 9.2, the ESAS Day start time and the other times specified in paragraphs 1(a) and 1(b) of Schedule C, will not be changed without prior consultation by the Reserve Bank with the Settlement Accountholders and any Settlement Accountholder Groups.

## **10. INVALID TRANSACTIONS**

10.1 If either the Reserve Bank or the Accountholder suspects that a System Fault has occurred, it shall notify the other immediately and the Reserve Bank shall notify all other Accountholders affected by that malfunction accordingly.

10.2 Immediately upon becoming aware of the occurrence of a System Fault, the Reserve Bank and the Accountholder (together with each other affected Settlement Accountholder) shall take all reasonable steps to ensure, as far as practicable, that:

- (a) no Invalid Transactions have been recorded in any Settlement Account; and
- (b) no Valid Instructions or Settlements have been lost.

- 10.3 Without limiting clauses 10.1 and 10.2, upon determining that a System Fault has occurred the Reserve Bank shall:
- (a) notify all Settlement Accountholders accordingly; and
  - (b) take such remedial action as is reasonable in the circumstances (including effecting work around and temporary fixes) to fix the System Fault as soon as possible; and
  - (c) take such further action as is required of it pursuant to clause 13 and the Business Continuity Plan.
- 10.4 Any Invalid Transactions recorded in the System shall be corrected in the manner determined most appropriate by the Reserve Bank after consultation with, and taking due account of the views of, the affected Settlement Accountholders. The Reserve Bank will also take such reasonable steps as are appropriate (consistent with the Business Continuity Plan) to recover any lost or corrupted data (including data relating to Valid Instructions or Settlements that have been lost).
- 10.5 It is expressly acknowledged and agreed by the Accountholder that, unless the Accountholder is or becomes an Exempted Accountholder (in which case clauses 10.5(a) and (b) shall not apply in any respect), in respect of Invalid Transactions:
- (a) the amount of any credit posted to the Accountholder's Settlement Account is held by the Accountholder on trust for the Settlement Accountholder or Settlement Accountholders who have had (in aggregate) corresponding debits posted to their Settlement Accounts, or, to the extent that no other Settlement Accountholder's Settlement Account has been debited, for the Reserve Bank;
  - (b) if the Reserve Bank, or another Settlement Accountholder pursuant to clause 20.4(g), seeks to enforce clause 10.5(a) against the Accountholder, by requiring the payment to it of any such amount credited to the Accountholder's Settlement Account on the basis that it is held on trust by the Accountholder's Settlement Account for the Reserve Bank or that other Settlement Accountholder (as the case may be), the Accountholder will not challenge the validity of this clause 10.5 or the trust declared by this clause 10.5.
- 10.6 The Reserve Bank confirms that a clause in identical terms to clause 10.5 appears in the Terms and Conditions applying to each other Settlement Accountholder.
- 10.7 For the avoidance of doubt, clause 10 does not apply to any payments made pursuant to, and in accordance, with Valid Instructions.

## **PART B: OPERATION OF EXCHANGE SETTLEMENT ACCOUNT SYSTEM**

### **11. ESAS GENERAL SYSTEM REQUIREMENTS**

- 11.1 The Reserve Bank and the Accountholder agree that ESAS is performing satisfactorily upon meeting the Service Level Requirements set out in Schedule F and the Reserve

Bank will take into account the Service Level Requirements when exercising its powers and discretion's under clause 12.

- 11.2 The Service Level Requirements shall be reviewed periodically at not less than annual intervals, the first such review to take place within six months of the Live Operation Date. Any review of the Service Level Requirements may be initiated by the Reserve Bank, a Settlement Accountholder or a Settlement Accountholder Group and will be subject to the change control provisions in Schedule E.
- 11.3 Any change in the Service Level Requirements agreed by the Reserve Bank following consultation with the Settlement Accountholders and any Settlement Accountholder Groups, will be effected by substitution of the existing Schedule F with a new Schedule detailing the new Service Level Requirements and the new Service Level Requirements will then form part of these Terms and Conditions.

## **12. FIXES, CHANGES OR ENHANCEMENTS TO ESAS**

- 12.1 Any fixes, changes or enhancements to ESAS that the Reserve Bank considers to be necessary to:
- (a) ensure ESAS continues to perform in accordance with the Service Level Requirements; or
  - (b) meet any additional reasonable performance requirements of the Settlement Accountholders beyond those specified in the Service Level Requirements; or
  - (c) change the functionality of ESAS from the level of functionality in ESAS on the Live Operation Date;

will be implemented by the Reserve Bank on the condition that the Reserve Bank can recoup the cost of such changes or enhancements through adjustments in the Transaction Fees (and the transaction fees payable by all other Settlement Accountholders) in accordance with Schedule A.

- 12.2 Any change or enhancement to ESAS for the purposes of clause 12.1(b) or clause 12.1(c) will be implemented by the Reserve Bank in accordance with the change control terms of Schedule E and following consultation with, and taking due account of the views of, the Settlement Accountholders and any Settlement Accountholder Group. Any Settlement Accountholder and any Settlement Accountholder Group may also propose changes or enhancements to ESAS for the purposes of clause 12.1(b) and clause 12.1(c) pursuant to the change control terms of Schedule E and in that event the Reserve Bank will consult with, and take due account of, the views of other Settlement Accountholders and any other Settlement Accountholder Group.
- 12.3 The Reserve Bank will use reasonable endeavours to consult with, and take due account of the views of, the Settlement Accountholders or any Settlement Accountholder Group if a fix is required in order to ensure ESAS continues to perform in accordance with the Service Level Requirements. However, the Reserve Bank will not be obliged to consult with the Accountholder or any other Settlement Accountholder or Settlement

Accountholder Group if a fix is required urgently and any delay in effecting that fix is likely to cause major inconvenience to any Settlement Accountholder.

### **13. BUSINESS CONTINUITY**

13.1 The Reserve Bank and the Accountholder will work together to ensure the Business Continuity Plan is maintained on an ongoing basis.

13.2 As part of the Business Continuity Plan the Reserve Bank shall:

- (a) maintain back-up for its Processing Machines; and
- (b) provide supporting infrastructure, such as power supply and conditioning and continuity, for all sites where Processing Machines are located; and
- (c) locate at least one Processing Machine and its associated infrastructure at a separate physical location of sufficient distance from the other machines so as to reduce the likelihood that both locations would be affected by the same regional disaster; and
- (d) keep the possibility of loss of data or delays in archive reporting to a minimum when switching processing between machines.

### **14. OTHER RESERVE BANK OBLIGATIONS WITH REGARD TO ESAS**

14.1 The Reserve Bank and the Accountholder acknowledge that although, as at the Live Operation Date, Settlement Accountholders comprised only registered banks, the Reserve Bank will, as a matter of policy also allow financial institutions other than registered banks to become Settlement Accountholders.

14.2 The Reserve Bank agrees with the Accountholder to:

- (a) notify the Accountholder immediately it becomes aware of any System Fault;
- (b) ensure the Accountholder is able to make real time enquiries on ESAS regarding the status of its Payment Instructions;
- (c) keep accurate and secure records of all the Accountholder's Payment Instructions and Settlements for a period of 7 years from the date the same is received by ESAS in accordance with Schedule F;
- (d) have ESAS audited by external auditors as part of the annual audit of the Reserve Bank and obtain, and provide the Accountholder with a copy of, an audit report as prescribed in Schedule D;
- (e) consider any recommendations of the Reserve Bank's external auditors in connection with ESAS and if the Reserve Bank considers any of those recommendations should reasonably be acted on, it will consult with, and take

due account of the views of, the Settlement Accountholders and any Settlement Accountholder Groups, with regard to any proposed action.

## **15. TRANSACTION FEES**

- 15.1 The Accountholder acknowledges the Reserve Bank's right to set the Transaction Fees so as to recover its costs (but no more) in providing, managing and operating the System and administering the Settlement Accounts, and that the Transaction Fees chargeable to the Accountholder may be adjusted by the Reserve Bank from time to time within the framework set out in Schedule A.
- 15.2 The Reserve Bank agrees to apply the same fee structure to all Settlement Accountholders utilising the same services within ESAS.
- 15.3 The Accountholder acknowledges that the Reserve Bank may change any aspect of the framework set out in Schedule A provided (and subject to clause 15.4) that such change does not alter the cost recovery principle set out in clause 15.1, following consultation with, and taking due account of the views of, the Settlement Accountholders and any Settlement Accountholder Groups.
- 15.4 The Reserve Bank and the Accountholder further agree that if the Reserve Bank is legally obliged, at any time in the future, to charge Transaction Fees on a basis that alters the cost recovery principle set out in clause 15.1 the Accountholder and the Reserve Bank shall agree to either:
- (a) sever clause 15.1 and Schedule A from the Terms and Conditions in accordance with clause 20.2; or
  - (b) renegotiate these Terms and Conditions, it being acknowledged by the Reserve Bank that these Terms and Conditions (such as, but not limited to, those concerning liability limitations, payment for changes and fixes to the System after the Warranty Period and the absence of liquidated damages entitlements following Service Level Requirement failures) have been accepted on the basis that the Transaction Fees are being charged solely on a cost recovery basis.

## **16. FORCE MAJEURE**

- 16.1 Neither party will be liable for any act, omission or failure to fulfil its obligations under these Terms and Conditions if and to the extent that such act, omission or failure arises from any cause reasonably beyond its control which prevents compliance with that party's obligations under these Terms and Conditions, (called a "Force Majeure Event").
- 16.2 An event is not a Force Majeure Event if:
- (a) the effect of the event could have been avoided had a party performed its obligations under the Business Continuity Plan;

- (b) the effect of that event could have been prevented or avoided by exercising a reasonable standard of care;
- (c) it is an event for which the party concerned or any subcontractor of that party is directly responsible.

16.3 The party unable to fulfil its obligations due to a Force Majeure Event will immediately:

- (a) notify the other party in writing of the Force Majeure Event which has resulted in its failure to fulfil its obligations, the extent to which the Force Majeure Event prevents compliance with the party's obligations, the reasons why, and the expected duration of the Force Majeure Event; and
- (b) use all reasonable endeavours to avoid or remove the cause of the Force Majeure Event and perform its obligations as soon as possible and in the meantime, to mitigate the effect of such Force Majeure Event.

## **17. LIMITATION OF LIABILITY**

17.1 The Accountholder acknowledges and agrees that:

- (a) the Transaction Fees have been or will be set by the Reserve Bank pursuant to clause 15 and Schedule A having regard only to recovering the cost to the Reserve Bank of providing, managing and operating the System and administering the Settlement Accounts;
- (b) the potential damage or loss that might be suffered by the Accountholder by reason of the failure of the Reserve Bank to observe or perform any of its obligations under these Terms and Conditions or to take or omit to take any action, is wholly disproportionate to the fees that the Reserve Bank expects to receive under these Terms and Conditions;
- (c) subject as provided in this clause 17.1(c) the Reserve Bank will not be liable for any act or failure to act in the performance of its obligations under these Terms and Conditions, nor for the consequences of such acts or omissions and will therefore not be liable to the Accountholder for any loss, costs, claims, demands or other damages suffered or incurred by the Accountholder, arising out of these Terms and Conditions or the performance of them, unless such liability arises from the proven gross negligence, wilful default, fraud or theft of the Reserve Bank or any of its officers or employees (in which case the Reserve Bank will be liable only for the amount of any funds lost from the Accountholder's Settlement Account as a direct result of such proven gross negligence, wilful default, fraud or theft which is not reasonably able to be recovered by the Accountholder (taking reasonable steps to do so without delay) and provided that the immediate cause of any such loss from the Accountholder's Settlement Account is not due to any act or omission on the part of the Accountholder).

17.2 For the avoidance of doubt, it is expressly agreed that in no event will the Reserve Bank be liable to the Accountholder for any indirect, special, incidental or consequential loss or damages of any kind and however arising (including loss of revenues or profits, lost

data, business interruptions, or loss arising from errors, or breaches of security, in the Accountholder's own systems, including the Accountholders Submitting System) even if advised of the possibility of such loss.

## **18. ACCOUNTHOLDER'S REMEDIES**

18.1 The Reserve Bank acknowledges that failure on its part to perform the obligations it has agreed to perform under these Terms and Conditions or the Business Continuity Plan could result in significant losses being incurred and/or irreparable harm being suffered by the Accountholder that are not or that is not, by these Terms and Conditions compensatable or fully compensatable in damages recoverable from the Reserve Bank as a result of its contractual breach. The Reserve Bank therefore further acknowledges that the Accountholder has (in addition to any other remedy available to it at law, in equity or otherwise) the right to apply for urgent interlocutory relief and substantive relief (by whatever court ordered remedy sought by the Accountholder and available to it from the courts) to stop the Reserve Bank from acting in default of, or requiring the Reserve Bank to act in accordance with these Terms and Conditions and/or the Business Continuity Plan in the performance of those obligations.

## **19. DISPUTE RESOLUTION**

19.1 Any dispute arising in connection with the Terms and Conditions which cannot be settled by negotiation between the parties will be referred to dispute resolution in accordance with this clause 19. The party considering a dispute has arisen must send a notice to the other party setting out a full description of the matters in dispute.

19.2 Pending the resolution of the dispute, the parties will continue to perform all their obligations under these Terms and Conditions.

19.3 The Chief Executive Officers of the parties must personally or through nominees attempt to resolve the dispute, on the basis that the parties wish to retain an ongoing relationship.

19.4 If the Chief Executive Officers are unable to resolve any dispute within 14 days of receipt of the notice or any longer time that they may agree then either party may give to the other notice that the dispute is not settled and requiring that the parties endeavour to resolve the dispute by mediating in accordance with clauses 19.6 to 19.7 (a "mediation notice").

19.5 If no mediation notice is given within 10 Business Days following the expiry of the time period referred to in clause 19.4, then clauses 19.6 to 19.7 shall not apply to the relevant dispute (unless both parties subsequently agree otherwise) and either party may then take such steps (if any) to resolve the dispute in another way including referral of the dispute for adjudication before the Court.

19.6 If a mediation notice is served on a party in accordance with clause 19.4 the Reserve Bank and the Accountholder agree that the mediation will be conducted in the terms of the standard LEADR New Zealand mediation agreement in existence at the time. The mediation will be conducted by a mediator and at a fee to be agreed between the parties, failing agreement for which (within 10 Business Days following the date of receipt of

the mediation notice), the mediator will be selected and the mediator fee will be determined by the Chair for the time being of LEADR New Zealand.

- 19.7 Each party will bear its own costs and expenses that it incurs, in its preparation for, its attendance at, its representation at, and its conduct of, any mediation.
- 19.8 Nothing in this clause 19 shall preclude either party from first seeking urgent interlocutory and substantive relief from the Court.

## **20. MISCELLANEOUS**

- 20.1 **Waiver:** No delay, neglect or forbearance by either party in enforcing against the other any provision of these terms and conditions will be a waiver, or in any way prejudice any right of that party.
- 20.2 **Severability:** Subject to clause 15.4, if any provision of these Terms and Conditions is held to be invalid, illegal or unenforceable, such provision will be severed and the remainder of these Terms and Conditions will remain in full force and effect.
- 20.3 **Assignment and security interests:**
- (a) Neither party may assign or transfer its rights or obligations under these Terms and Conditions without the prior written consent of the other party but this clause 20.3 shall not operate to require the prior consent of the Reserve Bank in the event of a merger or amalgamation of a Settlement Accountholder with another person.
- (b) The Accountholder agrees that it will not grant any security interest (within the meaning of the Personal Property Securities Act 1999) in respect of its Settlement Account, and acknowledges that the Reserve Bank will not recognise any security interest purported to be granted in respect of a Settlement Account.
- 20.4 **Amendments:** In respect of amendments to these Terms and Conditions:
- (a) an amendment to these Terms and Conditions must be in writing, signed by an authorised representative of both parties;
- (b) the Reserve Bank will (and is hereby authorised by the Accountholder to) advise all other Settlement Accountholders of the terms of these Terms and Conditions and of any amendments to these Terms and Conditions;
- (c) the Reserve Bank will inform the Accountholder and each other of the Settlement Accountholders of any amendments to, the ESAS Terms and Conditions that operate between it and every other Settlement Accountholder and will ensure that all ESAS Terms and Conditions authorise the Reserve Bank to provide such information to the Accountholder and to other Settlement Accountholders (which the Accountholder hereby authorises);
- (d) if the Reserve Bank is party to any ESAS Terms and Conditions that are different from these Terms and Conditions or if such different terms arise from an amendment to those ESAS Terms and Conditions, then the Reserve Bank will

offer to enter into an agreement with the Accountholder amending these Terms and Conditions so as to incorporate those different terms (or such of them as the Accountholder reasonably requests);

- (e) the Reserve Bank agrees that each set of ESAS Terms and Conditions will contain a provision in the same terms as this clause and the Reserve Bank will not amend any such provision in another set of ESAS Terms and Conditions without the prior written consent of the Accountholder;
- (f) notwithstanding paragraph (a) of this clause, clause 5, clause 7, clause 10.5 and this clause 20.4 may only be amended with the prior written consent of all Settlement Accountholders (including the Accountholder) and the Reserve Bank;
- (g) clauses 10.5, 13.1 and this clause 20.4, which are intended to be for the benefit of other Settlement Accountholders (as well as the Accountholder) may be enforced by other Settlement Accountholders.
- (h) Following the agreement of Accountholders to amend the Terms and Conditions, the Reserve Bank will notify the Regulator of the proposed amendment in accordance with section 156ZB of the Act;
- (i) If the Regulator has not disallowed the amendment under section 156ZC of the Act, the commencement date of any amendment to the Terms and Conditions shall be
  - (i) the earlier of:
    - A. the day after the date on which the Reserve Bank receives notice from the Regulator that it has decided not to disallow the amendment; or
    - B. the day which is 21 working days after the date on which the Regulator first received notice of the proposed amendment under section 156ZB of the Act; or
  - (ii) any later date specified by the proposed amendment to be the commencement date of the amendment to the Terms and Conditions.
- (j) Where the commencement date of an amendment to the Terms and Conditions is determined under 20.4(i), A or B, the Reserve Bank must as soon as practicable notify Accountholders of the actual date the amendment is to commence.
- (k) If the Regulator has disallowed the amendment under section 156ZC of the Act the Reserve Bank must as soon as practicable notify Accountholders that the amendment will not commence.

## 20.5 Notices

20.5.1 Notices are to be sent by facsimile, personal delivery, or courier to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for this purpose by the addressee to the other party.

20.5.2 **Deemed Delivery:** No Notice is to be effective until received. However, any Notices will be deemed to be received:

- (a) if delivered personally or by courier, when delivered at the recipient's address;
- (b) if sent by facsimile transmission, on the date that transmission is received by the recipient in legible form, it being agreed that the onus of proving receipt:
  - (i) is on the sender; and
  - (ii) will not be met only by a transmission report generated by the sender's facsimile machine which indicates the transmission was sent;

provided that if any Notice is deemed to be received at a time that is after 5.00pm on a Business Day, then notwithstanding those paragraphs it shall instead be deemed to have been received at 9.00am on the next following Business Day.

20.5.3 The initial facsimile number and address of each party is set out below:

- (a) **The Reserve Bank of New Zealand**  
 2 The Terrace  
 WELLINGTON  
 Attention: Chief Financial Officer, Financial Services Group  
 Facsimile: (04) 473-8554  
 Telephone: (04) 472-2029; and
- (b) **Accountholder:** [ ]

These Terms and Conditions have been signed on Date \_\_\_\_\_

**SIGNED** on behalf of the **THE RESERVE BANK OF NEW ZEALAND** by:

\_\_\_\_\_  
Name of Authorised Person

\_\_\_\_\_  
Signature of Authorised Person

\_\_\_\_\_  
Position Held

\_\_\_\_\_  
Date

in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Occupation of Witness

\_\_\_\_\_  
Place of Residence

**EXECUTED** by [.....] by its Attorney:

\_\_\_\_\_  
Name of Attorney

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney

\_\_\_\_\_  
Signature of Attorney

in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Occupation of Witness

\_\_\_\_\_  
Place of Residence

## **SCHEDULE A**

### **METHOD OF ESTABLISHING AND CHARGING TRANSACTION FEES**

Outlined below is the approach to the allocation of ESAS costs and the setting of Transaction Fees taken by the Reserve Bank.

#### **1. Marginal Cost Approach to Transaction Fees**

- 1.1 The Reserve Bank sees the introduction of real time interbank settlement capability as an important step in reducing systemic risk in the financial system. Consistent with this objective the Reserve Bank, together with the industry, was also keen to see this change introduced with minimal extra costs being imposed.
- 1.2 The Reserve Bank has not taken a commercial approach to the setting of Transaction Fees. There is no cost of capital, project management costs or any element to cover system performance risk incorporated into the fee structure. Rather, the Reserve Bank has taken a marginal cost approach to both the capital cost of the System and the annual operating costs. This has resulted in the costs being considerably less than those being incurred in almost all other jurisdictions. This has been possible because the Reserve Bank has leveraged off existing systems and infrastructure.
- 1.3 Consistent with this, the Reserve Bank has also adopted a cost recovery approach to setting Transaction Fees seeking only to charge Settlement Accountholders the marginal costs incurred.

#### **2. Method of Cost Recovery**

##### **2.1 Initial Capital and Annual Operating Costs**

- 2.1.1 When considering the method to be adopted in recovering its costs the Reserve Bank was concerned that the method should be as neutral as possible in terms of its impact on current payment business practices and not create any significant barriers to the use of the System by current or future Settlement Accountholders. It also needed to be structured in a way that the costs were fair to both high and low volume users so that costs reflected the benefits (in terms of reduced settlement risk) received. These general criteria pointed toward a recovery method that was variable from the perspective of the Accountholder. The Reserve Bank was aware of the approach being taken in Australia where both a joining fee and an annual fee is proposed. However, the relatively low level of marginal costs incurred on ESAS meant that the Reserve Bank saw no need to seek immediate recovery of a portion of the capital costs and saw a variable approach to recovering operating costs as reasonable.
- 2.1.2 This approach led the Reserve Bank to the view that capital costs of ESAS should be spread over the expected life of the System (5 years) and, together with the annual operating costs, be recovered in each of those years. The question was then how to recover the annual operating costs and the portion of capital costs in each year. Following discussions with various parties the Reserve Bank

came to the view that recovering costs on a per transaction basis provided the fairest way both over time and between users. The effect of this method is that each transaction bears the same proportion of both capital and operating costs.

- 2.1.3 The Reserve Bank also considered the impact Austraclear settlement fees might have on the use of the autorepo functionality. Two main factors were considered. The first was the aim to keep the monetary policy tax impact of the System as low as possible. The second was to see that the Austraclear New Zealand system was not put in the position of gaining windfall profits through the introduction of autorepo in ESAS. The outcome of these considerations is that the Reserve Bank has also taken the view that the autorepo functionality is an integral part of the ESAS liquidity management tools and, as such, the costs of the functionality should also be recovered on a marginal cost basis. Consistent with this view it is not proposed to charge Austraclear security settlement fees for autorepo security transactions but to recover as part of the ESAS costs any marginal cost generated by autorepo activity.

## 2.2 Future Development and Enhancements

- 2.2.1 The Reserve Bank has also considered how future developments and enhancements might be treated. When responding to requests for enhancements to ESAS three options would seem to be available:

- (a) **Agree to the request:** Capital expenditure would be spread over the remaining life of the System and, together with any additional operating costs, be recovered through an increment in the Transaction Fees;
- (b) **Agree to the change and charge a fee up-front to those Settlement Accountholders requesting the change:** The Reserve Bank would respond in this way when it considered the change to be significant and sufficiently costly (possibly reaching this conclusion by considering how much would be added to Transaction Fees) but only to be to the benefit of a small number of Settlement Accountholders. Any changes agreed to on this basis would be made on the understanding that the innovation would be available to other users at a later date. Any agreement on Settlement Accountholders new access to the change would be reached at the time the change is made. Those arrangements may include a rebate on the amount paid by Settlement Accountholders originally requesting the change if over the first so many years after an innovation is introduced other Settlement Accountholders request access to the functionality and are charged fees for that access. It is not anticipated that any up front fees would confer any property rights in the system unless it was specifically agreed to the contrary at the time.
- (c) **Decline the request:** It is expected that this would only happen when the change requested was not considered appropriate for prudential reasons or it would cause damage to other Settlement Accountholders.

- 2.2.2 The Reserve Bank would expect to consult with Settlement Accountholders when determining which option was most appropriate in the circumstances.

Generally the Reserve Bank would anticipate agreeing on either option 2.2.1(a) or 2.2.1(c). The Reserve Bank expects 2.2.1(b) situations to occur only very infrequently.

### **3. Application of the Method of Cost Recovery**

3.1 The following points are worth noting:

- (a) The allocation of the marginal cost of annual operating costs and capital costs to ESAS are best estimates provided by the Reserve Bank's system person responsible for the System;
- (b) The total costs have been analysed into three categories, i.e. Core ESAS, Auto Repo Pricing, and Alternative Access.
- (c) Following the methodology in paragraph 3.1(b) above it is proposed that these capital costs be recovered as follows:
  - (i) Core ESAS and Autorepo pricing be recovered through Transaction Fees as this is functionality that is available to and will be able to be used by all Settlement Accountholders both present and future.;
  - (ii) The costs of alternative access will be an additional charge to any Settlement Accountholders that use that alternative access;
  - (iii) The changes to Austraclear because of the new reconciliation requirements in the real time environment are to be met through Transaction Fees.

### **4. Administration of Transaction Fees**

4.1 It is proposed to invoice Transaction Fees on a monthly basis. It is not intended to directly deduct them from account holder balances.

4.2 Transaction Fees will be set on a half-yearly basis and will be adjusted from the previous half-year to reflect the volume expected. This will involve ascertaining the level of under or over recovered cost from the previous half-year, estimating likely transaction volumes for the coming half-year and setting the revised Transaction Fees taking into account the expected costs for the new half-year and the expected transaction volumes. The overall aim is to just recover the costs of providing ESAS to account holders.

### **5. General Discussion of ESAS Property Rights**

5.1 It is probably worthwhile setting out for the record the Reserve Bank's views on ESAS property rights as it is in this context that the costs of building ESAS have been negotiated and the approach to Transaction Fees developed.

5.2 Austraclear Ltd was contracted to build the ESAS System for the Reserve Bank. As such the Reserve Bank is the proprietor of the System. However we recognised that the functionality going into the System was not unique and was not patentable. In designing

the System, we had drawn extensively on the thinking of other central banks. More broadly we considered that this was an area where most was to be gained through international sharing. Thus we did not seek to constrain Austraclear Ltd from using any of the ideas in our System in developing systems for others. As noted above this factor was taken into account in the contract negotiations.

- 5.3 Within New Zealand, ESAS is the Reserve Bank's banking system and, as the Reserve Bank has indicated throughout the development, it regards its ownership and control of the System as critical. The Reserve Bank must be able to modify the System to meet its changing needs over time. Obviously, as with any supplier, and particularly in this case where the Reserve Bank is in effect a monopoly supplier, it must be conscious of the needs of its customers and their ability and willingness to pay for the service. The arrangements for Transaction Fees and System enhancements outlined above have been developed with these issues in mind.
- 5.4 Some confusion does seem to have arisen in that by the Reserve Bank setting Transaction Fees based on marginal cost recovery and proposing a close involvement with Settlement Accountholders in any new development proposals, Settlement Accountholders will have some proprietary rights in the System. This is not the case. Settlement Accountholders have no proprietary rights in the System.

**SCHEDULE B****ASPECTS OF ESAS ON WHICH RESERVE BANK WILL CONSULT WITH SETTLEMENT ACCOUNTHOLDERS AND SETTLEMENT ACCOUNTHOLDER GROUPS****1. Matters on which Reserve Bank will Consult**

- 1.1 The Reserve Bank will consult with, and take into account the views of, Settlement Accountholders and Settlement Accountholder Groups:
- (a) on matters requiring consultation in terms of the Terms and Conditions;
  - (b) from time to time and where practicable, any issues of substance relating to ESAS except for those matters set out in clauses 2.4, 8.4, 9.2 and the setting of Minimum Account Balances.
- 1.2. Any Settlement Accountholder or Settlement Accountholder Group may initiate discussions with the Reserve Bank on ESAS related issues, in accordance with paragraph 1.1 above.

**2. Guidelines for Consultation**

- 2.1 Where consultation is required by these Terms and Conditions or is undertaken by the Reserve Bank:
- (a) the Reserve Bank will notify Settlement Accountholders and Settlement Accountholder Groups prior to any proposed action being undertaken in the exercise of its powers and discretions under these Terms and Conditions;
  - (b) the Reserve Bank will provide such notice as soon as reasonably practicable;
  - (c) the Reserve Bank will provide to Settlement Accountholders and Settlement Accountholder Groups an explanation of the reasons and relevant background material it has available in relation to its proposed action;
  - (d) the Reserve Bank may agree to meet with Settlement Accountholders and Settlement Accountholder Groups to discuss the proposed action;
  - (e) the Reserve Bank will give the Settlement Accountholders and Settlement Accountholder Groups the opportunity to make written/verbal submissions in relation to the proposed action.
  - (f) the Reserve Bank will take due account of the views and submissions expressed by Settlement Accountholders and Settlement Accountholder Groups;
  - (g) the Reserve Bank will notify Settlement Accountholders and Settlement Accountholder Groups of its view and consequent decision, and, where applicable, the expected time frame for implementation of that decision.

**SCHEDULE C****ESAS DAY/SYSTEM OPERATION**

The standard ESAS day shall run from 8.30am on a Business Day until 8.30am on the next Business Day, subject to the following special provisions:

- (a) In order to allow System back-up, the System will close for a period of approximately 15 minutes each Business Day commencing at a time determined by the Reserve Bank from time to time after consultation with Settlement Accountholders. Following such consultation, the Reserve Bank will give the Accountholder a minimum of 10 Business Days prior written notice of any change in the time of day at which such System back-up processes will occur.
- (b) The System will be closed for a period of up to 30 minutes from 8.30am each Business Day to undertake final end-of-day processing.

Changes to the ESAS day are governed by clause 9 of the Terms and Conditions.

**SCHEDULE D****EXTERNAL AUDIT REPORT  
(clause 14.2(d))****Audit Reports on the operation of the Reserve Bank Exchange  
Settlement Account System for period DDMMYYYY**

1. The Audit Report shall be presented annually, in two parts. Part One shall report on policies and procedures placed in operation to manage the computer systems in terms of the ESAS Terms and Conditions. Part Two shall report on the Transaction fees set in accordance with clause 15 and Schedule A of the ESAS Terms and Conditions.
2. Part One of the Audit Report shall describe:
  - (a) System risks identified in discussion with the Reserve Bank;
  - (b) control objectives established by the Reserve Bank to mitigate the System risks;
  - (c) policies and procedures developed to achieve the determined control objectives.
3. Part Two of the Audit Report shall report whether:
  - (a) the costs incurred or being incurred by the Reserve Bank which have been, or are being, applied in the calculation of Transaction Fees, are costs which are able to be taken into account by the Reserve Bank in setting Transaction Fees, in accordance with Schedule A for the time being; and
  - (b) Transaction Fees actually charged by the Reserve Bank conform to the fee setting policy set out in Schedule A for the time being.

## SCHEDULE E

### CHANGE CONTROL

1. The Accountholder or a Settlement Accountholder Group may request changes or enhancements to ESAS by submitting a written request to the Reserve Bank providing sufficient information concerning the proposed change or enhancement.
2. When the Settlement Accountholder or a Settlement Accountholder Group submits a request for a change or enhancement or the Reserve Bank wishes to make a change or enhancement to the System, the Reserve Bank will provide the Accountholder with a report (“report”) including the following information:
  - (a) details as to the effect (if any) of the proposed change or enhancement on the functionality and performance of ESAS;
  - (b) an estimate of the impact on the Transaction Fees involved.
3. If the Accountholder submits the request on its own account, the Reserve Bank may first refer the request to all other Settlement Accountholders and Settlement Accountholder Groups before preparing its report.
4. The Accountholder will notify the Reserve Bank following receipt of a report that it either:
  - (a) agrees with the report;
  - (b) wishes to discuss the report further; or
  - (c) in the case of a change or enhancement requested by the Accountholder, withdraws the request.
5. The Reserve Bank will then consider the report and either agree or decline the change requested by the Accountholder, or and in the case of a proposal for a change or enhancement made by the Reserve Bank, decide whether to proceed with that proposal in accordance with Schedule A, taking due account of the number of Settlement Accountholders supporting the proposed change.

## **SCHEDULE F**

### **Service Level Requirements**

1. For the purposes of these Service Level Requirements:
  - 1.1 “Core Business Hours” means the hours notified by the Reserve Bank to Settlement Accountholders after consultation with Settlement Accountholders in accordance with Schedule E.
  - 1.2 “Problem” means any failure or perceived failure of ESAS to perform the functions it is required to perform or to comply with the Service Level Requirements, or any other error or perceived error in the processing of Valid Instructions.
2. **System Response Times**
  - 2.1 Within Core Business Hours, the System will be capable of at least 5,000 Payment Instructions per hour.
3. **System Availability**
  - 3.1 ESAS will operate on a fully attended basis during Core Business Hours.
  - 3.2 ESAS will continue to operate outside Core Business Hours and may be unattended during these times.
  - 3.3 During Core Business Hours, ESAS will achieve, on an annual averaged basis, minimum availability of 99.9%, excluding any non-availability caused by communication network failures or other Force Majeure events.
4. **Help Desk**
  - 4.1 The Reserve Bank shall establish and maintain Help Desk Facilities that are adequately resourced and staffed, so as to enable the Reserve Bank to respond to requests from the Accountholder for assistance in relation to Problems during Core Business Hours.
  - 4.2 The Help Desk Services shall include:
    - (a) logging of all Problems reported including the time a request for assistance is received, details of the request made and the time the call is cleared;
    - (b) establishing the nature and scope of the Problem reported and settling with the Accountholder an agreed description of the Problem;
    - (c) (where appropriate) providing advice and assistance to the Accountholder as to how the Problem may be resolved, including suggesting alternative approaches which can be taken by the Accountholder and the steps that the Accountholder should undertake to effect any specified business continuity processes for which the Accountholder is responsible;

- (d) initiation of the escalation procedure set out in the Business Continuity Plan appropriate for the Problem reported;
- (e) tracking of the Problem through all phases of the Problem management process (as set out in the Business Continuity Plan) and reporting to the Accountholder as to the progress made in resolving the Problem (including final resolution of the Problem) pursuant to the requirements of the applicable escalation procedure and when requested by the Accountholder;
- (f) retention of the Problem logs for a period of 12 months.

4.3 The Reserve Bank will ensure that:

- (a) it responds immediately to any request made to the Help Desk for assistance;
- (b) the time taken by the Help Desk to establish the nature and scope of the Problem or to first report back to the Accountholder as to progress in establishing the nature and scope of the Problem is 30 minutes or less from the time of receipt of the request.

4.4 The Business Continuity Plan is to include a statement of the escalation procedures that are to apply for the resolution of Problems.

## **5. Archiving**

5.1 Settlements which are more than 10 Business Days old may be archived to secondary storage in ESAS as the system load requires.

5.2 Settlements which are more than six months old may be archived to tape, or other equally economical media, and stored securely by the Reserve Bank for a period of at least 7 years.

## **6. Account Enquiries and Retrieval**

6.1 Account Enquiries in respect of Settlements that occurred during the 10 Business Days prior to the date of the Account Enquiry will be responded to by ESAS within an average of five seconds.

6.2 Account Enquiries in respect of Settlements which have been archived to secondary storage will be responded to by ESAS on the Business Day on which the Account Enquiry is made.

6.3 Account Enquiries in respect of Settlements which have been archived to tape will be responded to within one Business Day of the date on which the Account Enquiry is made (following reloading of the Payment Instructions and Settlement details into ESAS).

6.4 The Accountholder has sole responsibility for the communications network between its Accountholder Submitting System and the service boundary of the System, being the

point at which the communication equipment owned and/or operated by the Reserve Bank for the purposes of operating ESAS provides a point of access to ESAS by the Accountholder.