

DATED _____

(Effective from 24 February 2020)

RESERVE BANK OF NEW ZEALAND

and

("the Accountholder")

EXCHANGE SETTLEMENT ACCOUNT TERMS AND CONDITIONS
(Incorporating Service Levels)

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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 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 approved by that Settlement Accountholder that is used for the purpose of transmitting Valid Instructions to ESAS for processing, and includes SWIFT.

Act means the Reserve Bank of New Zealand Act 1989.

Authorised Payment Instruction means, in respect of a Settlement Accountholder, a Payment Instruction that is received by the System:

- (a) via SWIFT, either from that Settlement Accountholder or from another Settlement Accountholder approved by that Settlement Accountholder;
- (b) via an Accountholder Submitting System (other than SWIFT) approved by that Settlement Accountholder and that is or remains authorised by that Settlement Accountholder for Settlement in accordance with any of the authorisation options available in the System;
- (c) via another Prescribed method; or
- (d) via the Automated ORRF,

and **Authorised** and **Authorisation** have corresponding meanings.

Automated ORRF means the Automated Overnight Reverse Repo Facility provided by the Reserve Bank and accessible through ESAS.

Business Continuity Plan means that plan developed by the Reserve Bank detailing the business continuity processes that are to apply if a System Fault occurs or other problems arise 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 Auckland or Wellington.

Conditional Payment Instruction means a Payment Instruction that has one or more conditions associated with its Settlement, including a condition specifying a deferred Settlement date.

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, as modified or replaced from time to time, which provides the functionality to enable real time settlement and irrevocability of payments through Settlement Accounts. For the avoidance of doubt, **ESAS** and **System** shall exclude any part of SWIFT.

ESAS Day has the meaning set out in Schedule C, subject to clause 9.1.

ESAS Terms and Conditions means the terms and conditions governing the operation of Settlement Accounts and the use of the System between the Reserve Bank, on the one hand, and each Settlement Accountholder, on the other hand (and includes, where relevant, these Terms and Conditions).

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.

Fees means the fees charged by the Reserve Bank, for the Accountholder's use of the System, in accordance with the policy set out in Schedule A.

Force Majeure Event has the meaning given in clause 16.1.

Insolvency Administrator means a trustee, administrator, receiver, statutory manager, liquidator, or analogous officer.

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

Minimum Account Balance means:

- (a) where a Settlement Accountholder has more than one Settlement Accounts and the Reserve Bank has specified a minimum combined balance for those Settlement Accounts, that balance; or
- (b) in any other case, the minimum account balance for the relevant Settlement Account as specified by the Reserve Bank,

which:

- (c) must be a positive or zero balance; and
- (d) may 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 Insolvency Administrator 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; or
 - (ii) seeking any reorganisation, arrangement, composition, readjustment, administration, liquidation, dissolution or similar relief,

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 an Insolvency Administrator of it or any material part of its property; or
- (f) the appointment of a statutory manager of it under either the Act or the Corporations (Investigation and Management) Act 1989; or
- (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 that Settlement Accountholder's Settlement Account (or one of them) and credit one or more other Settlement Accounts (including another Settlement Account of that Settlement Accountholder) and, for the avoidance of doubt, may be an Authorised Payment Instruction or an Unauthorised Payment Instruction (and, in either case, may be a Conditional 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 these Terms and Conditions.

Prescribed means prescribed by the Reserve Bank by notice in writing to the Settlement Accountholders.

Prescribed Access and Participation Criteria means the Prescribed criteria for access to the System and for the participation requirements imposed on its users, covering matters such as operational capacity, financial resources, legal powers, and risk management expertise.

Processing Machine means the computer equipment on which ESAS operates.

Recipient means the Settlement Accountholder in whose favour an Authorised Payment Instruction is made.

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 the 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 in accordance with clause 4.5, 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 that Settlement Accountholder has more than one exchange settlement account, each such account. Where a Settlement Accountholder has more than one exchange settlement account, each reference to its Settlement Account shall:

- (a) where the reference is in the context of an Payment Instruction, be deemed to refer to the exchange settlement account of that Settlement Accountholder that relates to that Payment Instruction; and
- (b) otherwise, unless the context requires otherwise, be deemed to refer to all exchange settlement accounts of that Settlement Accountholder.

Settlement Accountholder means the holder of a Settlement Account and includes the Accountholder and, to the extent applicable under these Terms and Conditions, the Reserve Bank.

Settlement Accountholder Group means any group of Settlement Accountholders that 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 that 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.

SWIFT means the telecommunications network and infrastructure owned and operated by or for the Society for Worldwide Interbank Financial Telecommunication.

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:

- (a) problems in the Settlement Submission Mechanism;
- (b) delays in or inability to access the Account Enquiry function; and
- (c) errors in the System resulting in Invalid Transactions.

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

Unauthorised Payment Instruction means a Payment Instruction that is not Authorised.

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

- (a) which is from:
 - (i) SWIFT or another Accountholder Submitting System, or which is otherwise submitted by that Settlement Accountholder using another Prescribed method; or
 - (ii) the Automated ORRF;
- (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 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 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, Settlement Account, 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 they 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 Fault, delivered 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 SETTLEMENT ACCOUNT

2. OPENING AND OPERATION OF THE SETTLEMENT ACCOUNT

- 2.1 The Reserve Bank will open and will (subject to clause 8) maintain a Settlement Account for the Accountholder. The 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, the Accountholder agrees to pay the Fees. The Fees, and the dates or times by which they 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.
- 2.3 Subject to these Terms and Conditions, the Accountholder will, at all times while it has one or more Settlement Accounts operational, ensure there are sufficient funds in each Settlement Account to meet or exceed the applicable 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 (a) If the relevant interest rate is positive, interest must be paid on credit balances in the Settlement Account, at the rate and in the manner Prescribed. The Reserve Bank will make any deduction or withholding required by law in respect of any such payment of interest to the Accountholder, and will make any payment required in respect of that deduction or withholding.

- (b) If the relevant interest rate is negative, interest must be charged on credit balances in, and deducted from, the Settlement Account, at the rate and in the manner Prescribed.
- 2.5 The Reserve Bank may open and maintain a loan account for the Accountholder (the **Loan Account**), which is an account separate from the Settlement Account. The Reserve Bank will set from time to time, and notify the Accountholder of, the maximum amount to be lent to the Accountholder under the Loan Account. Interest must be paid on amounts lent under the Loan Account at the rate and in the manner Prescribed. The Reserve Bank may set off any amount owed by it to the Accountholder in relation to a Settlement Account against any amount owed to it by the Accountholder in relation to a Loan Account.
- 2.6 The opening and maintaining of a Settlement Account by the Accountholder does not confer any prudential status on the Accountholder, nor does it represent any endorsement by the Reserve Bank. The Accountholder will not make any statement or take any action that might result in any person inferring that the Accountholder is a registered bank or has any particular prudential status (unless that is in fact the case), or has any endorsement from the Reserve Bank.
- 2.7 In order to continue to operate a Settlement Account and use the System, the Accountholder must, at all times, comply with the Prescribed Access and Participation Criteria.

3. PAYMENT INSTRUCTIONS

- 3.1 Subject to clause 3.2, in respect of the Accountholder, the Reserve Bank:
- (a) is entitled to rely on all Valid Instructions;
 - (b) need not act on any instructions that are unclear, in which case the Reserve Bank will seek clarification from the Accountholder and will have no liability for any costs, losses or expenses suffered or incurred by any person as a result of any delay taken to clarify the instructions; and
 - (c) undertakes to act on all Valid Instructions in accordance with their terms and 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, 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.
- 3.3 An Authorised Payment Instruction shall not be Settled if Settlement would reduce the balance of the Accountholder's Settlement Account below the applicable Minimum Account Balance provided that, where the Settlement Submission Mechanism 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), 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 applicable 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 Mechanism coming into effect; and
 - (b) form part of these 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 20.4), 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 and the Settlement Submission Mechanism and, if the Settlement Tests are satisfied, will be Settled.
- 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;
 - (b) in the case of a Conditional Payment Instruction, each condition has been satisfied; and
 - (c) the requirements of clause 3.3 are satisfied.
- 4.4 Where the relevant Settlement Submission Mechanism in operation so allows, two or more Payment Instructions may be processed by the System and Settled simultaneously. Where Payment Instructions are Settled simultaneously (whether on a bilateral or multilateral basis), they are Settled and posted in gross to the relevant Accountholder's Settlement Account and are not subject to bilateral netting or multilateral 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 A Payment Instruction which relates to an ESAS Day and which has not been Settled before the end of that ESAS Day (excluding any Conditional Payment Instruction specifying one or more conditions that are not required to be satisfied on or before that ESAS Day) will:
- (a) if it was received by the System via SWIFT or another Prescribed method, be cancelled and deleted from the Payment Instruction Queue; or
 - (b) if it was received by the System from an Accountholder Submitting System (other than SWIFT) and:
 - (i) was Authorised, be cancelled and deleted from the Payment Instruction Queue; or
 - (ii) was not Authorised, be carried over to the following ESAS Day, on which it may become Authorised.

The Accountholder may resubmit any cancelled and 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 it considers it is reasonably necessary to do so to respond appropriately to:
- (a) a System Fault or detection of a potential System Fault; or
 - (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 maintenance of a sound and efficient 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 the relevant Settlement Accounts in respect of that Authorised Payment Instruction shall be final and irrevocable. Settled Authorised Payment Instructions may not be reversed.

6. ACCOUNTHOLDER'S NOTICE OBLIGATIONS

- 6.1 The Accountholder will:

- (a) immediately upon the occurrence, or threatened occurrence, of a Notifiable Event in respect of it:
 - (i) 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
 - (ii) notify the Reserve Bank of that 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; and
- (b) immediately notify the Reserve Bank if it becomes aware of circumstances (including operational problems or threats) that could reasonably be expected to adversely affect:
 - (i) its ability to comply with these Terms and Conditions or any Prescribed Access and Participation Criteria; or
 - (ii) its ability to transact within the System.

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; and
 - (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 closing 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 shorter 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 the closing of the Accountholder's Settlement Account. No new Payment Instructions may be initiated on that Settlement Account after the proposed date and time of closing.

8.3 On the proposed date and time of closing 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 closing of the Accountholder's Settlement Account will be a debt due to the Reserve Bank that is payable on the closing date and is recoverable from the Accountholder.

8.4 The Reserve Bank, acting reasonably, may suspend or terminate the operation of the Accountholder's Settlement Account at any time (including, without limitation, following a failure by the Accountholder to comply with clause 14.1), 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 by 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 carry out maintenance on the System or 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; or
- (c) any threat or perceived threat to the maintenance of a sound and efficient financial system.

The Reserve Bank will:

- (d) endeavour to notify the Accountholder of all action it takes pursuant to this clause 9.2 prior to, or as soon as possible after, taking such action; and
- (e) as soon as possible following correction of that System Fault or access disruption and/or removal of that threat or perceived threat to the maintenance of a sound and efficient financial system, 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 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 Settlement Accountholders affected by that System Fault 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;
- (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 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 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; and
 - (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 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 these 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 and the Reserve Bank will take into account the Service Level Requirements when exercising its powers and discretions under clause 12.
- 11.2 The Service Level Requirements shall be reviewed periodically. 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 F detailing the new Service Level Requirements, and the new Service Level Requirements will then form part of these Terms and Conditions.
- 11.4 The Reserve Bank may Prescribe rules relating to the operation of the System, including rules dealing with:
- (a) the manner in which Settlement Accountholders may connect to the System, whether via the internet or SWIFT messaging, or otherwise; and
 - (b) security and access requirements (including user authentication requirements) for the System.

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 (including through improvements to security and operational reliability),

will be implemented by the Reserve Bank on the condition that the Reserve Bank can recoup the cost of such fixes, changes or enhancements through adjustments in the Fees (and the 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) or 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;
- (b) provide supporting infrastructure, such as air conditioning and uninterrupted power supply, for all sites where Processing Machines are located;
- (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;

- (d) keep the possibility of loss of data or delays in archive reporting to a minimum when switching processing between machines; and
- (e) take such other steps as the Reserve Bank considers appropriate to ensure it is able to minimise delays and disruptions that may arise following the occurrence of a System Fault.

14. OTHER OBLIGATIONS WITH REGARD TO ESAS

14.1 The Accountholder agrees with the Reserve Bank to:

- (a) as and when requested by the Reserve Bank, and at its own cost:
 - (i) supply such information as is deemed necessary by the Reserve Bank for the purposes of these Terms and Conditions (including for the purpose of enabling external auditors to conduct an audit of the System under clause 14.2(d)); and
 - (ii) comply with the directions of the Reserve Bank relating to the System, any transaction within the System, or the Accountholder's Settlement Account, where those directions are, in the Reserve Bank's opinion, necessary or advisable:
 - (A) for the purposes of compliance with Part 5B or 5C of the Act; or
 - (B) in order to ensure the sound and efficient operation of the System;
- (b) ensure all information or documents provided to the Reserve Bank by or on behalf of it are accurate and complete in all material respects when provided, and will promptly notify the Reserve Bank if that ceases to be the case;
- (c) access and use the System in a lawful and responsible manner and solely for its proper purpose; and
- (d) prevent any unauthorised access or connection to, or misuse of, the System.

14.2 The Reserve Bank agrees with the Accountholder to:

- (a) provide the Accountholder with such ancillary services (such as account statements and System training) as are agreed from time to time;
- (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 they are received by or recorded in 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; and
- (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, 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. FEES

- 15.1 The Reserve Bank may set the Fees so as to recover its costs (but no more) in providing, managing and operating the System and administering the Settlement Accounts. The Fees chargeable to the Accountholder may be adjusted by the Reserve Bank from time to time within the framework set out in Schedule A, and are to be paid in the manner notified by the Reserve Bank to the Accountholder.
- 15.2 The Reserve Bank will apply the same fee structure to all Settlement Accountholders utilising the same services within ESAS.
- 15.3 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 If the Reserve Bank is legally obliged to charge 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 these 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 and the absence of liquidated damages entitlements following Service Level Requirement failures) have been accepted on the basis that the 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 its obligations under these Terms and Conditions (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; or

- (b) the effect of that event could have been prevented or avoided by exercising a reasonable standard of care; or
- (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, the extent to which the Force Majeure Event prevents compliance with its 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 Fees have been and 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; and
- (c) the Reserve Bank will not be liable for any losses, costs, claims, demands or other damages suffered or incurred by the Accountholder arising out of:
 - (i) any act, or failure to act, by the Reserve Bank under these Terms and Conditions; or
 - (ii) the consequences of such acts or omissions,

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:

- (iii) 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

- (iv) to the extent 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 The Reserve Bank will not be liable to the Accountholder for any indirect, special, incidental or consequential loss or damage 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 its Accountholder 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, 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 these 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 mediation rules for Resolution Institute 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 Resolution Institute.
- 19.7 Each party will bear its own costs and expenses 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(a) 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:**
- (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 these Terms and Conditions and of any amendments to these Terms and Conditions.
 - (c) The Reserve Bank will inform the Accountholder and each other Settlement Accountholder 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, 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) 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 the ESAS Terms and Conditions with another Settlement Accountholder without the prior written consent of the Accountholder.
- (f) Notwithstanding paragraph (a), clauses 5, 7, 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) Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 applies to 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) and may be enforced by other Settlement Accountholders.
- (h) Following the agreement of Settlement Accountholders to amend the ESAS Terms and Conditions that apply to them, 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 ESAS 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 ESAS Terms and Conditions.
- (j) Where the commencement date of an amendment to the ESAS Terms and Conditions is determined under clause 20.4(i)(A) or (B), the Reserve Bank must, as soon as practicable, notify the Accountholder 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 the Accountholder that the amendment will not commence.

20.5 Notices

- (a) Notices are to be sent by personal delivery, e-mail, or courier to the addressee at the e-mail address, or street 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.
- (b) No notice is to be effective until received. However, any notices will be deemed to be received:
- (i) if delivered personally or by courier, when delivered at the recipient's address; or
 - (ii) in the case of an e-mail, on the Business Day on which it is received in readable form by the recipient,

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.

- (c) The initial e-mail address, and street address of each party is set out below:
- (i) **Reserve Bank of New Zealand**
2 The Terrace
WELLINGTON
Attention: Head of Banking
Telephone: (04) 472-2029
E-mail: steve.gordon@rbnz.govt.nz
 - (ii) **Accountholder:** []

These Terms and Conditions have been signed on _____ Date_____

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

Name of Authorised Person

Position Held

Signature of Authorised Person

Date

in the presence of:

Signature of Witness

Name of Witness

Occupation of Witness

Place of Residence

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

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**FRAMEWORK FOR SETTING FEES
(clause 15)****1. General principle of cost recovery**

The Reserve Bank will set Fees so as to recover its costs in providing, managing and operating ESAS and administering the Settlement Accounts. Nothing in this Schedule authorises the Reserve Bank to set Fees on anything other than a cost recovery basis.

2. Reset frequency

The Reserve Bank will set Fees at least annually, but not more often than quarterly.

3. Matters to be considered in setting Fees

The Reserve Bank will set Fees prospectively, having regard to:

- a) the general cost recovery principle described in clause 1 above;
- b) the specific costs identified in clauses 4, 5 and 6 below;
- c) the effect of any scheduled update or replacement of ESAS;
- d) any previous under- or over-recovery of costs;
- e) the desire to limit volatility in Fees over the short- to medium-term;
- f) the anticipated transaction volumes for ESAS;
- g) any government guidance or policy applicable to the Reserve Bank or the setting of Fees; and
- h) any other considerations required by law or good commercial practice.

4. Operational costs

The Reserve Bank will take account of the operational costs in relation to ESAS and the Settlement Accounts when setting Fees. These include, but are not limited to, costs associated with:

- a) Reserve Bank staff supporting ESAS in the Reserve Bank's offices;
- b) hardware, networks and software licensing, support and maintenance;
- c) SWIFT and telecommunications;
- d) travel related to ESAS and its development;
- e) administration, audit, assurance and advice; and
- f) related computer and office expenses (including allocated rental and space costs).

5. Capital expenditure

The Reserve Bank will take account of the amortised costs of capital expenditure in relation to ESAS and Settlement Accounts when setting Fees. The Reserve Bank will estimate the expected useful life of the assets associated with that capital expenditure and will amortise costs on a straight line basis. Amortised costs of capital expenditure may include, but are not limited to, the costs associated with:

- a) software licensing and development;

- b) hardware; and
- c) bringing major new software, networks and hardware and major changes in those components into production, including the costs of project management, staff costs, contract and professional fees, testing, support, training, assurance, and other capital costs.

6. Future costs

The Reserve Bank may take account of costs planned, or likely, to be incurred in relation to ESAS, any update or replacement of ESAS, or the Settlement Accounts for a period of up to three years following each date at which Fees are to be set. For that purpose, the Reserve Bank may, in setting Fees for a particular period, plan to over-recover actual costs for that period.

7. Financing costs excluded from cost recovery

The Reserve Bank will not take account of the costs of financing capital expenditure when setting Fees.

8. Joint costs

To the extent that any costs are incurred in respect of both ESAS and another system operated by the Reserve Bank (for example, NZClear), the Reserve Bank may apportion those costs on a basis that fairly reflects the contribution by each system to the overall cost incurred.

9. Invoicing

The Reserve Bank will invoice Fees on a monthly basis in arrears.

10. Information to Settlement Accountholders

The Reserve Bank will provide the following information to Settlement Accountholders from time to time:

- a) in connection with capital expenditure and amortisation calculations under clause 5, its estimates of the expected useful life of the assets, and any updates or revisions to those estimates; and
- b) its anticipated timeframe for the recovery or application of under- or over-recovered costs.

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 under the ESAS Terms and Conditions; and
 - (b) from time to time and where practicable, on 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 clause 1.1 above.

2. Guidelines for consultation

- 2.1 Where consultation is required by the ESAS 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 the ESAS 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; and
 - (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 (clause 9)

The standard ESAS Day shall run from 8.30am on a Business Day until 8.30am on the next Business Day. However, the System will be closed for Settlement 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 these Terms and Conditions.

SCHEDULE D

EXTERNAL AUDIT REPORT (clause 14.2(d))

1 AUDIT OF THE SYSTEM

1.1 Appointment and duties of auditor

- (a) The Reserve Bank shall appoint an auditor who shall be responsible for auditing the System. The auditor's duties shall include the following:
 - (i) reviewing the integrity of the System, including the maintenance of security and confidentiality over the data of individual Accountholders;
 - (ii) assessing the integrity of systems-generated information, including controls over the input, processing, accounting and reporting of all transaction data;
 - (iii) reviewing and evaluating the system of internal controls and accounting procedures of the System;
 - (iv) assessing whether the costs incurred or being incurred by the Reserve Bank which have been, or are being, applied in the calculation of Fees are costs which are able to be taken into account by the Reserve Bank in setting Fees, in accordance with Schedule A; and
 - (v) assessing whether Fees charged by the Reserve Bank conform to the fee setting policy set out in Schedule A for the time being.
- (b) Based on the results of the auditor's overall examination of the System, the auditor shall be instructed to:
 - (i) issue an annual audit report to the Reserve Bank in the form (the **prescribed form**) and at the time specified in clause 1.2 below; and
 - (ii) issue, at the expense of the Accountholder, a specific audit report in the prescribed form, such issue to be made upon the request of the Accountholder and either to the Accountholder or as it may direct by notification to the Reserve Bank.

1.2 Auditor's reports

- (a) In respect of the examination undertaken pursuant to clause 1.1 above, the auditor must issue its report to the Reserve Bank in the prescribed form within 60 days after each 30 June.
- (b) The audit report shall be presented in two parts:
 - (i) 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; and
 - (C) policies and procedures developed to achieve the determined control objectives.
- (ii) Part two of the audit report shall describe the outcome of the auditor's procedures over controls relevant to the areas specified in clause 1.1(a) above.

SCHEDULE E

CHANGE CONTROL (clauses 11.2 and 12.2)

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 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 or the Settlement Accountholder Group, as the case may be, 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; and
 - (b) an estimate of the impact on the 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:
 - (a) agrees with the report; or
 - (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, 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
(clause 11)

1. Definitions

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, which, as at the date of these Terms and Conditions, is 7.30am to 10.00pm on each Business Day.
- 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 The System will be capable of processing at least 5,000 Payment Instructions per hour during normal operations.

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 ESAS will achieve, on an annual averaged basis, minimum availability of 99.9%, excluding any non-availability caused by scheduled outages or maintenance, 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; and
 - (f) retention of the Problem log 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; and
 - (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 60 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. Account Enquiries and retrieval**
- 5.1 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.
- 5.2 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.
- 5.3 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).
- 5.4 The Accountholder has sole responsibility for:
- (a) 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; and

- (b) providing, and ensuring appropriate training and security in relation to, user access for that communications network and any other Prescribed method used by that Accountholder to submit Valid Instructions.