

National Bank Share and Bond Trading



TERMS AND CONDITIONS FOR NATIONAL BANK SHARE AND BOND TRADING

Share and Bond Trading Terms – Introduction and Purpose

- A These Terms form a three-party legal contract between the Customer, The National Bank and Direct Broking in relation to the trading and custody of Securities using Share and Bond Trading.
- B Direct Broking will provide the Share and Bond Trading service, including implementing the Customer's Orders and instructions, hosting the Share and Bond Trading Website and providing the Information Service and Custody Service. The National Bank is not providing the Share and Bond Trading service, and will simply process payments and receipts from and to the Settlement Bank Account.
- C These Terms are divided into 5 parts and specify:
- In Part A:** The definitions applying to certain terms used throughout these Terms and provisions to assist in the interpretation of these Terms.
- In Part B:** The Customer's obligations, rights and responsibilities to The National Bank and Direct Broking in relation to the services provided to the Customer pursuant to these Terms.
- In Part C:** The obligations, rights and responsibilities owed to the Customer by The National Bank and Direct Broking in relation to the services provided to the Customer pursuant to these Terms.
- In Part D:** Additional specific obligations, rights and responsibilities of the parties which apply if the Customer utilises the Custody Service.
- In Part E:** Other important matters, including provisions relating to the privacy of information, termination of access to Share and Bond Trading and amendments to these Terms.
- D The Customer should read these Terms carefully before accepting them, and in particular should read and understand:
- the Risk Warnings as set out in clause 6 of these Terms;
 - the discretion conferred on Direct Broking with respect to the manner in which Direct Broking may implement the Customer's Orders, as set out in clause 9.4g of these Terms; and
 - the authority conferred on Direct Broking with respect to the encryption and retention of the Customer's FIN(s) as set out in clause 6.2 of these Terms.

Agreement

Part A: Interpretation and Definitions

1 Interpretation

- 1.1 **Definitions:** In these Terms, capitalised terms given a particular meaning in the Participant Rules but not defined below, shall have respectively the same meaning when used in these Terms, and:
- "Affiliate"** in respect of Direct Broking or The National Bank means any person or company that is a related company of Direct Broking or The National Bank respectively (or would be a related company if it were a company under the Companies Act 1993) within the meaning of section 2(3) of the Companies Act 1993;
- "Agent"** means any custodian, sub-custodian, nominee, delegate, execution agent or other agent (other than a Clearance System and The National Bank) appointed by Direct Broking at any time pursuant to Part D of these Terms or otherwise employed or engaged by Direct Broking to provide all or part of the services to be provided to the Customer pursuant to these Terms, and shall include any such person appointed, employed or engaged by an Agent;
- "Application Monies"** means any amount (excluding Fees) payable by the Customer upon or in connection with the exercise of any option, warrant, or similar right, or the subscription for, or purchase of, any Security;
- "ASX"** means Australian Stock Exchange Limited;
- "Authorised Representative"** means any person who is specified as an authorised representative in the application form signed by or on behalf of the Customer for the Share and Bond Trading service (or as subsequently advised to Direct Broking in writing) and is therefore authorised to place Orders, give instructions or enter into transactions pursuant to these Terms but is not authorised to change the Customer's name, address or other Share and Bond Trading account details (provided that an Authorised Representative may make elections or respond to prompts on behalf of the Customer when using the Share and Bond Trading Website, whether in relation to the Customer's Tax status, Corporate Actions or any other matters);
- "Business Day"** means (as the context may require):
- in respect of New Zealand, any day other than a Saturday or a Sunday on which registered banks are open for normal banking business in Wellington or Auckland and which is a Business Day for the purposes of the Participant Rules;

- in respect of any other jurisdiction, any day in that jurisdiction other than a Saturday or Sunday on which the primary securities exchange in that jurisdiction is open for trading;

"Buy Order" means an order to Direct Broking placed, or purporting to be placed, by the Customer through Share and Bond Trading to buy specified Securities (and, where permitted by Direct Broking, may include such orders placed by telephone, fax or email);

"Clearance System" means any recognised central clearing or depository system and other clearing agency or settlement system as may be used under these Terms from time to time;

"Contract Note" means, in relation to any Order, a written contract note for that Order as required by rule 11.16 of the Participant Rules;

"Corporate Action" has the meaning set out in clause 17;

"CSN" means a "Common Shareholder Number" or "CSN" within the meaning of the Participant Rules;

"Custody Securities" means Securities, and any other type of assets, of which the Customer is the legal or beneficial owner that Direct Broking agrees to hold (or to have held by an Agent) on the Customer's behalf in accordance with Part D of these Terms;

"Custody Service" means the service under which Direct Broking agrees to hold (or arrange for the holding by an Agent of) Securities or other assets in custody on the Customer's behalf, in accordance with Part D of these Terms;

"Customer" includes, jointly and severally, if more than one person, the Customer named in the Share and Bond Trading application form and any Authorised Representatives, including each such person's administrators, executors and successors, in each case having satisfied all "know your client" requirements of The National Bank and Direct Broking;

"Direct Broking" means Direct Broking Limited and its successors and assigns;

"Direct Nominees Limited" is the Agent (being an Affiliate of Direct Broking) which will act as the nominee company for the holding of Custody Securities pursuant to Part D of these Terms;

"Disclosure Statement" means Direct Broking's Share and Bond Trading disclosure statement;

"Fees" means the brokerage, fees and commissions applicable to Orders or the Custody Service (in each case as set out on the Share and Bond Trading Website and as may be amended and updated by Direct Broking from time to time in accordance with clause 31) together with any costs and expenses incurred in executing Orders or providing the Custody Service and includes the brokerage, fees, margins and commission referred to in clause 3.1;

"Government Agency" means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity;

"Information Service" means the service described in clause 12;

"NZ GST" means New Zealand goods and services tax within the meaning of the Goods and Services Tax Act 1985 together with any related interest, penalties, fines or other charges;

"Order" means either a Buy Order or Sell Order that the Customer may place using Share and Bond Trading;

"Participant Rules" means the New Zealand Exchange Limited Participant Rules and Good Broking Practice as amended from time to time;

"Security" means any financial asset (other than cash) or security which Direct Broking agrees to buy or sell on behalf of the Customer pursuant to an Order, including a security as defined in section 2D of the Securities Act 1978 (excluding paragraphs (d) and (e) of section 2D(1)), and "Securities" shall be construed accordingly;

"Sell Order" means an order placed, or purporting to be placed by the Customer to Direct Broking through Share and Bond Trading, to sell specified Securities (and, where permitted by Direct Broking, may include such orders placed by telephone, fax or email);

"Settlement Bank Account" means the Customer's account with The National Bank nominated as such by the Customer and is the account:

- from which debits may be made to meet any Application Monies and/or Fees; and
- from which funds may be debited following execution of a Buy Order; and
- to which funds may be credited following settlement of a Sell Order; and
- to which dividends, distributions, interest or other amounts payable on or in relation to any Custody Securities may be credited;

"Share and Bond Trading" means the internet based online share and bond trading service described in clause 9.1 of these Terms;

"Share and Bond Trading Helpdesk" means the helpdesk that is available to assist the Customer (and other customers of The National Bank) in the use of Share and Bond Trading, which can be called on 0800 885 564;

"Share and Bond Trading Website" means the Website at <http://sharesandbonds.nationalbank.co.nz> hosted by Direct Broking;

"Taxes" means taxes, levies, imposts, charges, duties (including stamp and transaction duties), assessments, deductions, withholdings and related liabilities, (including additions to tax, interest, penalties, fines and expenses) imposed on or in respect of the Customer, the Customer's Securities (including Custody Securities), any income or other payment to the Customer, or Orders or other transactions effected under these Terms by any Government Agency (in New Zealand or elsewhere), including any such amounts on-charged to Direct Broking by any Agent; provided that "Taxes" does not include income tax imposed on or measured by the net income of Direct Broking or any Agent;

"Terms" means these Terms and Conditions for National Bank Share and Bond Trading as may be amended from time to time;

"The National Bank" means The National Bank of New Zealand, part of ANZ National Bank Limited, and its successors and assigns; and

"Trade" means the execution of Orders by Direct Broking pursuant to these Terms and "Trading" shall have a corresponding meaning.

1.2 Interpretation: In these Terms:

- a. a reference to a gender includes a reference to each other gender;
- b. a reference to a statute, rule or regulation or a provision thereof includes a reference to it as amended or re-enacted from time to time;
- c. a reference to a person includes a reference to a firm, trustee, corporation or other corporate body.

Part B: The Customer's Obligations

2 Use of Share and Bond Trading

- 2.1 The Customer or any Authorised Representative may instruct Direct Broking to buy and sell Securities for the Customer. The Customer or any Authorised Representative must place all Sell Orders in accordance with clause 9.5 and all Buy Orders in accordance with clause 9.7. All instructions or Orders relating to Custody Securities must comply with the provisions of Part D as well as clauses 9.5 and 9.7 (except to the extent such clauses are inconsistent with Part D).
- 2.2 If the Customer wishes to amend or cancel an Order, the Customer must do so only by giving specific instructions to Direct Broking for the amendment or cancellation of that Order. In the event that part of the Customer Order is filled prior to the amendment or cancellation instruction being effected, the Customer will be liable to settle the partially filled Order.
- 2.3 The Customer acknowledges that all Orders, or instructions to amend or cancel an Order, received by Direct Broking outside the trading hours of NZX or outside the trading hours of any overseas securities exchange on which the relevant Securities are listed, may not be implemented or effected until the later of:
 - a. the commencement of the next Business Day in New Zealand; or
 - b. the commencement of the next Business Day in the jurisdiction of the relevant overseas securities exchange.
- 2.4 The Customer will not place Orders that will breach, or are likely to cause Direct Broking or any Agent to breach, any of the Participant Rules or any other rule, regulation or law (whether in New Zealand or any other jurisdiction) which is binding on the Customer, Direct Broking or any Agent, including, without limitation, rules, regulations or laws relating to insider trading, market manipulation or similar conduct.
- 2.5 It is the Customer's responsibility to ensure that:
 - a. all details relating to the Customer's Orders and instructions are accurate, including without limitation the name and symbol of the Security, the volume of the Security and the total value of the Order;
 - b. it maintains sufficient contact with Direct Broking while there is an outstanding Order on the Customer's account so as to enable the Customer to identify and resubmit a withdrawn or lapsed Order;
 - c. there are at all times sufficient funds in the Settlement Bank Account to pay all amounts payable in connection with all Orders placed or instructions given by or on behalf of the Customer (including all Fees and Taxes) and the Customer acknowledges that if for any reason there are insufficient funds in the Settlement Bank Account:
 - i. the Settlement Bank Account may become overdrawn; and/or
 - ii. completion of Orders may be delayed or Orders may be withdrawn;
 - iii. the Customer's borrowing limits with The National Bank may be exceeded, leading to a default in the Customer's obligations to The National Bank under facilities or securities held by or with The National Bank; and/or
 - iv. the Customer incurring interest and fees on the Settlement Bank Account if the Customer's borrowing limits are exceeded;
 - d. it is aware of and monitors its own Tax status and how applicable Tax rules apply to the Customer and any transactions undertaken by the Customer pursuant to these Terms, whether in New Zealand or any other jurisdiction;

- e. all obligations with respect to Taxes as may be required by any Government Agency in New Zealand or elsewhere are complied with, including paying Tax and completing, filing and retaining all Tax returns and reports (including evidence of foreign Tax credits, if applicable) on any transactions contemplated by these Terms.

- 2.6 The Customer must, immediately upon receipt of a Contract Note from Direct Broking, check the details on the Contract Note and advise Direct Broking immediately of any errors or omissions.
- 2.7 If the Customer is a trust, the Customer acknowledges and agrees that Orders must be placed in the name of trustees on behalf of the trust.
- 2.8 The Customer undertakes to notify the Share and Bond Trading Helpdesk immediately in writing should any of the information specified by the Customer at the time of registration for Share and Bond Trading become incorrect and the Customer agrees to provide at that time the necessary updated information.
- 2.9 Where the Customer comprises more than one person, then each person constituting the Customer (each an "account holder") is jointly and severally liable for:

- a. the Customer's performance of its obligations and responsibilities under these Terms;
- b. any instructions or Orders given or placed by any or all of them and any Authorised Representative; and
- c. any instructions or Orders given or placed using the Customer's Share and Bond Trading password.

3 Brokerage, Fees and Charges

3.1 Fees: The Customer agrees:

- a. to pay all Fees, Taxes and all other applicable costs or charges payable by the Customer under these Terms, including fees and charges for the provision of Share and Bond Trading, the Custody Service and any fees and interest charged under clause 3.2;
- b. that it will incur foreign exchange charges and other fees on all transactions under these Terms that require funds to be converted to or from New Zealand dollars. For the purposes of conversion into or from one currency to another, the exchange rate or exchange rates used is a midpoint rate derived from wholesale buy and sell rates quoted by foreign securities exchange market participants and which are compiled by a supplier of financial market data. The exchange rate or rates for a particular transaction will be those applicable at the time at which and on the date at which the Contract Note is generated. Please note that the time the Contract Note is generated will not necessarily be the time at which the Order is matched in the Trading System. The exchange rates used are displayed on the Share and Bond Trading Website and are refreshed from time to time throughout the day. A currency conversion margin is then added to the exchange rate. The applicable currency conversion margin is detailed on the Share and Bond Trading Website and is included in the total transaction amount charged to the Customer. The National Bank and Direct Broking each receive a share of the currency conversion margin charged. However, because of factors such as the timing and volumes of foreign currency transactions, the margin charged does not necessarily reflect the total profit to The National Bank and/or Direct Broking on foreign currency transactions; and
- c. that such amounts will be deducted from the Settlement Bank Account by direct debit or by deduction from Securities sale proceeds, as the case may be.

- 3.2 **Default Interest:** Where any amount owing from the Customer to Direct Broking is overdue, Direct Broking may at Direct Broking's option charge the Customer an administration fee to cover incidental costs that result or that are incurred in recovering this amount and may charge interest on the net amount owing in the Customer account at the rate of up to 10% per annum above the overdraft rate charged by Direct Broking's bankers, accruing on a daily basis from the date the amount becomes overdue down to the date of actual payment.

- 3.3 **NZ GST:** If all or part of any payment to be made by the Customer under or in connection with these Terms is consideration for a taxable supply within the meaning of the Goods and Services Tax Act 1985, the Customer must pay to the supplier the amount of NZ GST for which the supplier is liable in respect of that supply upon receipt of a valid invoice.

- 3.4 **Other Taxes:** If any Taxes become payable or are required to be deducted or withheld with respect to any payment to be made to, by or on behalf of the Customer in connection with the provision of Share and Bond Trading or the Custody Service, such Taxes will be payable by the Customer and Direct Broking or any Agent may deduct or withhold Taxes from such payment or any funds held on the Customer's behalf and apply such payment or funds in satisfaction of those Taxes. If any Taxes become payable with respect to any prior payment made to, by or on behalf of the Customer, Direct Broking or the Agent may deduct or withhold funds in satisfaction of such prior Taxes. The Customer shall remain liable for any deficiency. Where two or more rates potentially apply in respect of any deduction or withholding, Direct Broking or the Agent may select the relevant rate to apply in its discretion, which the Customer acknowledges may be a higher rate than might otherwise apply to the Customer.

- 3.5 **Tax Gross up:** If a law requires the Customer (which term includes for the purposes of this clause Direct Broking or any Agent on the Customer's behalf) to deduct or withhold an amount in respect of Taxes from a payment under these Terms (whether the payment is by the Customer or by Direct Broking or any Agent on the Customer's behalf) such that Direct Broking or any other recipient of the payment would not actually receive on the due date the full amount provided for under these Terms, then:

- a. the Customer agrees to deduct or withhold the amount for the Taxes (and any further deduction applicable to any further payment due under paragraph c. below); and
- b. the Customer agrees to pay an amount equal to the amount deducted or withheld to the relevant authority in accordance with applicable law and give the original receipts to Direct Broking within 10 Business Days after the day on which the original receipts were issued; and
- c. the amount payable is increased so that, after making the deduction or withholding and further deductions or withholdings applicable to additional amounts payable under this clause, Direct Broking will receive (at the time payment is due) the amount it would have received if no deductions or withholdings had been required.

4 The Customer's Representations and Warranties

- 4.1 The Customer represents and warrants to The National Bank and Direct Broking that:
- a. the Customer can meet all obligations and commitments arising from or connected with any Orders placed or instructions given to Direct Broking;
 - b. when the Customer gives Direct Broking an Order to sell Securities on the Customer's behalf, the Customer has legal, free and clear ownership of those Securities, unencumbered by any security interest or other interest;
 - c. in respect of any Custody Securities, the Customer is the beneficial owner of the Custody Securities, or it acts as trustee on behalf of the beneficial owner, and the Custody Securities are unencumbered by any security interest or other interest;
 - d. if the Customer is a company or other body corporate, the Customer has been incorporated in accordance with the laws of the place of incorporation, the Customer is validly existing under those laws (and in the case of an overseas company, the Customer is carrying on business in New Zealand as a branch) and the Customer has power and authority to apply for, access and use Share and Bond Trading;
 - e. all authorisations necessary for the Customer to agree to be bound by and comply with these Terms and to access and use Share and Bond Trading are in full force and effect; and
 - f. the Customer's obligations under these Terms are valid and binding and enforceable against the Customer in accordance with these Terms.

5 Customer Authorities

- 5.1 The Customer and each Authorised Representative authorises The National Bank to disclose and provide to Direct Broking all information and documents relating to the Customer, any Authorised Representative or the Customer's Securities as may be required by Direct Broking for the purposes of verifying the identity of the Customer or any Authorised Representative or in connection with Direct Broking performing its services under these Terms.
- 5.2 The Customer authorises Direct Broking and The National Bank to disclose information relating to the Customer, any Authorised Representative or the Customer's Securities in the circumstances set out in clause 24.
- 5.3 The Customer authorises The National Bank to debit the Settlement Bank Account with any amounts payable by the Customer under these Terms, including the amounts set out in clause 8.1.
- 5.4 The Customer consents to and authorises Direct Broking to send, or cause to be sent, to the Customer, from time to time, electronic and other communications for the purposes of administering the Customer's Share and Bond Trading account or otherwise as Direct Broking considers necessary or expedient in connection with the provision of services by Direct Broking under these Terms.
- 5.5 The Customer consents to and authorises Direct Broking and The National Bank to send, or cause to be sent, to the Customer, from time to time, electronic or other communications regarding products and services offered by Direct Broking or The National Bank and any of their related companies and third parties.
- 5.6 The Customer authorises Direct Broking or any Agent to execute as custodian such certificates of ownership, affidavits, declarations or other certificates as Direct Broking shall be obliged to do under and pursuant to applicable law in connection with any Custody Securities or as may be reasonably necessary (in the opinion of Direct Broking or any Agent) in connection with any Custody Securities or the provision of the Custody Service.
- 5.7 The Customer authorises Direct Broking or any Agent in relation to any Custody Securities, without any need for further express instructions, to:
- a. surrender Custody Securities in temporary form for Custody Securities in definitive form;

- b. endorse for collection cheques, drafts and other negotiable instruments; and
 - c. in general attend to all non-discretionary details in connection with the sale, exchange, substitution, purchase, transfer and other dealings with the Custody Securities.
- 5.8 If the law requires Direct Broking or any Agent to deduct or withhold an amount in respect of Taxes (whether in New Zealand or any other jurisdiction) from any income or other payments to the Customer in connection with Share and Bond Trading or the Custody Service, the Customer authorises Direct Broking or that Agent to make such deductions or withholdings without any further express instructions. Where two or more rates potentially apply in respect of any such deduction or withholding, Direct Broking or the Agent may select the relevant rate to apply in its discretion, which the Customer acknowledges may be a higher rate than might otherwise apply to the Customer. Any income or other payments by Direct Broking to the Customer in connection with any Custody Securities will be paid net of Taxes.
- 5.9 The Customer irrevocably authorises Direct Broking and any Agent to, and agrees that any of them may, use any amount held on the Customer's behalf or sell any Securities held on the Customer's behalf and use the proceeds to repay any outstanding debt or amount owed or payable to Direct Broking or any Agent, without prior notice or demand.
- 5.10 As a condition of accessing the Share and Bond Trading Helpdesk, the Customer acknowledges and agrees that:

- a. the Customer or the Authorised Representative will need to correctly answer the relevant security questions asked by the Share and Bond Trading Helpdesk operator in order to verify the Customer's or the Authorised Representative's identity;
- b. phone calls may be recorded;
- c. neither Direct Broking nor The National Bank accepts any liability or responsibility for any loss or damage caused by any information provided by the Share and Bond Trading Helpdesk being inaccurate, incomplete, incorrect, out of sequence, out of date or arising out of any error, omission delay or non-availability of any such information, nor the use of, or reliance on, such information (including without limitation, any loss of profit or any other damage, direct or consequential).

6 Risk Warnings:

- 6.1 The Customer acknowledges that:
- a. it is aware of, and accepts, the risks associated with trading Securities (both generally and in particular over the Internet) and that, apart from endeavours to ensure secure transmission of messages via Share and Bond Trading by using 128-bit encryption technology, neither Direct Broking nor The National Bank have any control over Internet security, or the acts or omissions of third parties (including any Clearance System, counterparty or Internet provider). Neither Direct Broking nor The National Bank shall be liable for any loss or damage resulting from transmission errors, technical faults, interruptions, malfunctions, unauthorised access to the Share and Bond Trading Website, network overloads, any other deficiencies on the part of the telecommunications or network providers, or breaches of Internet or email security generally;
 - b. except where investment advice is specifically sought by the Customer and expressly and specifically provided in writing by Direct Broking to the Customer, Direct Broking does not give advice of any kind nor offer any opinion with respect to the nature, potential value or suitability of any particular Security transaction or investment strategy;
 - c. while access may be given to investment research reports and other information (via the Information Service or otherwise), the availability of such information does not constitute a recommendation to buy or sell any of the Securities discussed or referred to therein;
 - d. when placing an Order with or giving instructions to Direct Broking, the Customer must rely on its own judgement, the Customer's own evaluation of its financial circumstances and investment objectives and is solely responsible for determining the suitability of its investment decisions and the implications thereof;
 - e. the Customer is cautioned that investment decisions involve risk and the Customer is advised to seek professional advice (whether of an investment, legal, accounting and Tax or other nature) as to the suitability of any Security or investment before making a decision to invest;
 - f. New Zealand and overseas Taxes may affect the return on the Customer's investments through Share and Bond Trading. Customers are advised to obtain their own independent professional Tax advice relevant to their particular circumstances before investing or trading through Share and Bond Trading. Neither Direct Broking nor The National Bank or their Affiliates makes any representation about the Tax implications of any Customer investment or transaction through Share and Bond Trading;

- g. different Tax rules and consequences may apply to the Customer depending upon the Customer's Tax status, the nature of any investment transactions undertaken by the Customer and the quantity and composition of the Customer's investments. It is the Customer's responsibility to be aware of and to monitor its own Tax status and how applicable Tax rules apply to the Customer and any transactions undertaken by the Customer pursuant to these Terms, whether in New Zealand or any other jurisdiction;
 - h. it is the Customer's responsibility to ensure that the Customer's registration details with all relevant Securities registries, and the Customer's account details with Direct Broking, are kept up to date and accurate and that a failure to do so, or any inconsistency between the Customer's account details with Direct Broking and those held by a relevant Securities registry, may result in delays in completing Orders and/or the disbursement of sale proceeds;
 - i. participation in the financial markets incurs a level of risk that the Customer must take into consideration. Security prices and yields and the amount of any income generated by Securities may vary, either up or down, as a result of a number of factors (including market risk, company, sector and country exposure risk, currency exchange risk and economic and political risk) impacting on the Securities and the issuer of the Securities;
 - j. none of Direct Broking, The National Bank or their respective directors, officers, agents or employees, guarantee the repayment of any investment or continued value of any investment in Securities or any return from any investment in Securities made by the Customer or the payment of any income in respect of any investment made by the Customer pursuant to these Terms;
 - k. different financial instruments and markets bear different levels of risk. This is also the case for different types of trading such as trading in derivatives;
 - l. a warrant or option is a time-limited right to subscribe for or purchase shares, debentures, loan stock or government securities and is generally exercisable against the issuer of the warrant or option. A relatively small movement in the price of the underlying Security results in a disproportionately large movement, favourable or unfavourable, in the price of the warrant or option. The prices of warrants and options can therefore be volatile. It is essential for anyone who is considering purchasing warrants or options to understand that the right to subscribe or purchase which a warrant or option confers is invariably limited in time with the consequence that if the investor fails to exercise this right within the pre-determined time-scale determined by Direct Broking then the investment becomes worthless. The Customer should not buy a warrant or option unless it is prepared to sustain a total loss of the money the Customer has invested plus any commission or other transaction charges. Although warrants and options can be utilised for the management of investment risk, warrants and options may be unsuitable for many investors;
 - m. trading or investing in overseas markets involves an additional level of risk and requires the Customer to be aware of and comply with the laws and regulations that apply in those markets. Before trading or investing in an overseas market, the Customer should seek professional advice regarding these risks and how these laws and regulations apply to the Customer;
 - n. if the Customer uses the Custody Service, the Customer should be aware that:
 - i. Corporate Actions may be cancelled or reversed by an issuer (in some cases after considerable time has passed since the Corporate Action), and that the Customer may be liable to return Securities or repay moneys received in connection with any such cancelled or reversed Corporate Action; and
 - ii. Custody Securities are generally held in a pooled or omnibus account in the name of Direct Nominees Limited or an Agent appointed by Direct Nominees Limited. In certain circumstances, this can result in the Customer not benefiting from certain corporate actions to the same extent the Customer might have benefited if the Customer's Custody Securities were registered in a separate parcel; for example, a rights issues where each separately registered shareholder has an equal right to participate, regardless of the total number of shares held by each shareholder.
- 6.2 Customer's FASTER Identification Number (FIN) for New Zealand Securities Trading:**
- a. Where the Customer provides Direct Broking with the Customer's FIN, Direct Broking will encrypt it as soon as reasonably practicable.
 - b. Unless Direct Broking is prevented at law, Direct Broking will delete any unencrypted FIN from any document on which it is recorded, such that the FIN is not legible.
 - c. Unless the Customer instructs otherwise, the Customer authorises Direct Broking to hold the encrypted FIN. Where the Customer instructs that Direct Broking is not authorised to hold or continue to hold the encrypted FIN, Direct Broking will delete it as soon as reasonably practicable.
 - d. Direct Broking will hold the encrypted FIN on its computer system. Direct Broking may use the FIN to:
 - i. transfer any of the Customer's Securities, when applicable, and in accordance with these Terms;
 - ii. verify that the Customer FIN is correctly matched to the Customer's CSN.
 - e. The Customer acknowledges that in the event that a person obtains the FIN that the Customer provides Direct Broking prior to encryption or decodes the encrypted FIN that Direct Broking holds, there is the risk that the person may:
 - i. use the Customer FIN to fraudulently transfer any of the Customer's Securities to another person;
 - ii. disclose the FIN to another person who then does the above.
 - f. The Customer acknowledges that, if Direct Broking holds the Customer's encrypted FIN and the Customer's CSN, Direct Broking will have unlimited ability to transfer Securities to other persons. However, Direct Broking will only use a Customer's FIN in accordance with the Customer's instructions or Orders and Direct Broking undertakes that it will at all times use reasonable endeavours to protect the Customer's FIN from unauthorised use and unauthorised access.
- 6.3 Disclosure Statement:** The Customer acknowledges that the Customer has received and read a Disclosure Statement from Direct Broking.
- 7 Customer Liability and Indemnities**
- 7.1 Indemnities:** The Customer will, on demand, indemnify Direct Broking and The National Bank and their respective Affiliates from and against any and all losses, costs, claims, damages, penalties, fines, expenses, liabilities and Taxes which Direct Broking or The National Bank and their respective Affiliates may incur or suffer as a result of or in connection with these Terms, including as a result of or in connection with:
- a. any breach of these Terms on the Customer's part, or on the part of any person for whom the Customer is responsible in terms of these Terms;
 - b. Direct Broking and/or The National Bank (as the case may be) relying in good faith on, and/or implementing, instructions given by a person who is not an Authorised Representative unless there were reasonable grounds for Direct Broking or The National Bank (as the case may be) to doubt the identity or authority of that person;
 - c. Direct Broking or The National Bank having to pay funds to any other person in settlement of an Order where the Customer has failed to provide Direct Broking (or The National Bank, if applicable) with funds for that Order by the due date;
 - d. a failure to settle or pay any amount due in respect of a contract, instruction, Order or Custody Securities;
 - e. a failure to provide or a delay in providing, the Customer CSN or any other information required or requested by Direct Broking;
 - f. any Authorised Representative giving unauthorised or incorrect instructions or Orders or failing to comply with the terms and conditions of these Terms;
 - g. any liability for Taxes including any such liability resulting from any delay or omission by the Customer to pay any Taxes or to otherwise comply with any obligations under these Terms or at law in relation to Taxes (whether in New Zealand or any other jurisdiction); and/or
 - h. Direct Broking or any Agent relying on any information provided by or on behalf of the Customer with respect to Taxes, including any Tax deficiencies arising in connection with the provision of such information or Direct Broking or any Agent relying on such information.
- 7.2 Other Liability to The National Bank:** The Customer will be liable for some or all loss suffered by The National Bank arising from any security breach caused or permitted by the Customer or the Customer's failure to comply with these Terms, and in that event, the Customer's liability will extend to include any liability of The National Bank to Direct Broking or any third party arising out of the Orders placed or other transactions given by the Customer with or to Direct Broking, or that are placed using the Customer Share and Bond Trading password. The Customer will not be liable to The National Bank for any such loss or liability if and to the extent that any other contract, agreement or conditions of use which apply as between the Customer and The National Bank provide that the Customer will not be liable for such loss or liability.
- 7.3 Indemnities to Continue:** The indemnities in this clause 7 are continuing obligations, independent of the other obligations of the parties under these Terms and continue after these Terms end. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under these Terms.
- 7.4 Affiliates:** This clause 7 confers a benefit on each Affiliate, and is enforceable by each Affiliate under the Contracts (Privity) Act 1982.
- Part C: Obligations of Direct Broking and The National Bank**
- 8 The National Bank's Obligations**
- 8.1 Debits:** The National Bank may debit the Settlement Bank Account with:
- a. the amount(s) notified to it by Direct Broking as the amount(s) required to cover and settle the full value of any Order or instruction placed or given by the Customer; and

b. the Fees, Taxes and any other costs associated with any Orders or instructions placed or given by the Customer or with services provided by The National Bank or Direct Broking under or in connection with these Terms, provided that if the debit of any such amount would exceed the amount of any minimum balance or agreed overdraft on the Settlement Bank Account, The National Bank may decline to debit the Settlement Bank Account and, if applicable, the Buy Order will not be settled until the Settlement Bank Account has sufficient available cleared funds to meet such payments.

8.2 Credits: The National Bank agrees to credit the Settlement Bank Account with the amount(s) received from Direct Broking which Direct Broking advises are:

- a. the proceeds of any Sell Order, less the Fees associated with that Sell Order; and/or
- b. interest, dividends, distributions or other amounts payable on or in connection with any Custody Securities, less the Fees and Taxes associated with such amounts.

8.3 The National Bank's Share of Fees: The National Bank will receive a share of all Fees (net of third party costs and charges). Direct Broking will collect all Fees and credit to The National Bank its share of such Fees.

8.4 The National Bank not Liable for Acts and Omissions of Direct Broking:

- a. The Customer acknowledges that Direct Broking is responsible for providing the Information Service, the Share and Bond Trading Service and the Custody Service and that The National Bank has no liability for, and does not guarantee the obligations, representations or warranties of Direct Broking under these Terms.
- b. The National Bank is not responsible for, and does not guarantee, the accuracy or currency of any information placed on the Share and Bond Trading Website by Direct Broking nor any information provided by the Share and Bond Trading Helpdesk. The National Bank accepts no liability or responsibility for any loss or damage caused by such information being inaccurate, incomplete, incorrect, out of sequence, out of date or arising out of any error, omission delay or non-availability of any such information, nor the use of, or reliance on, such information.
- c. Without limiting any other provision of these Terms, The National Bank shall not be liable to the Customer or any other person (whether in contract, negligence or otherwise) for any direct or indirect loss or damage arising directly or indirectly from:
 - i. any failure by Direct Broking to perform its obligations under these Terms or for any other act or omission of Direct Broking or any Agent or any of their respective employees or officers;
 - ii. the failure of Share and Bond Trading or the Custody Service for any reason;
 - iii. any action taken by any person in reliance on the information or any data appearing on the Share and Bond Trading Website, whether or not such information or data is provided by Direct Broking or The National Bank;
 - iv. the Customer's inability to recover from Direct Broking or any Agent any loss or liability suffered or incurred by the Customer arising out of any act, omission or failure of Direct Broking or any Agent or their respective employees or officers due to any limitation on the liability of those persons set out in these Terms or elsewhere, and all such liability is expressly excluded to the fullest extent permitted by law.
- d. No Liability for Indirect or Consequential Loss or Loss of Income: Without limiting the limitations on The National Bank's liability set out in these Terms, The National Bank shall not be liable to the Customer for any indirect or consequential loss suffered or incurred by the Customer, or for any loss of income, business, profit or savings whether as a result of the Customer's or any other person's inability to complete a transaction or Order or honour an obligation or otherwise.

9 Direct Broking's Obligations

9.1 Provision of Share and Bond Trading: Direct Broking agrees to provide the Customer Share and Bond Trading by which the Customer may:

- a. have internet access to price, data and other information about Securities, and market research information available on the Share and Bond Trading Website;
- b. place Orders to buy and sell listed Securities on the markets conducted and administered by NZX, ASX and any other securities exchange agreed between The National Bank and Direct Broking from time to time, in accordance with these Terms and the laws, rules, customs and practises of those markets, as in force from time to time.

9.2 Availability of Share and Bond Trading: Direct Broking will endeavour to provide access to the Share and Bond Trading Website (but does not warrant or represent that access will be available) 24 hours per day, 7 days per week. However, downtime must be allowed for scheduled maintenance of the system and unexpected outages.

9.3 Customer's Client Account:

- a. Direct Broking will open an account within its trading system for the Customer. If any consent or other requirements of Direct Broking are not satisfied (which may include signed authorities from all Authorised Representatives), the Customer's account will be opened in the same name as the legal name of the person(s) or entity(ies) that own the Settlement Bank Account.
- b. Before Direct Broking will open an account within its trading system for the Customer, or accept any instruction or Order from the Customer or any Authorised Representative, Direct Broking must have received the documentation requested within the Share and Bond Trading application form. The Customer and each Authorised Representative must provide Direct Broking with clear copies of current and valid verification of their identity. This may take the form of a valid driver's licence or passport or other photo identification acceptable to Direct Broking.
- c. The Customer's account within Direct Broking's trading system will be used for the purpose of processing Orders and other transactions through Share and Bond Trading. Instructions to Trade on the Customer's account may only be given by the Customer or an Authorised Representative. Any Orders placed or instructions given by an Authorised Representative or using the Share and Bond Trading password shall be deemed to have been placed or given by the Customer.
- d. Direct Broking is entitled to act and rely upon, and the Customer will be bound by, instructions or Orders which appear to have been duly authorised by the Customer or an Authorised Representative and without any enquiry as to the identity or authority of the person placing the Order or giving the instruction.
- e. Direct Broking may, at its discretion in consultation with The National Bank, impose whatever limits or conditions it considers appropriate on the Customer's trading account and that these limits or conditions may be changed by Direct Broking at any time without an obligation to provide the Customer with any explanation, where a decision is made to do so.
- f. The Customer or any Authorised Representative may instruct Direct Broking to deal in Securities. Direct Broking may at any time, and its sole discretion, decline such instructions or cancel any Order or generally prohibit or restrict Trading in Securities, without the need to provide any reason for its decision.

9.4 Orders:

- a. A failure by the Customer to settle a contract by the due date may result in charges, the reversal of the Order at the Customer's expense and liability and/or the Customer being suspended from Trading on the Customer's account.
- b. Direct Broking is under no obligation to accept any Order or instruction from the Customer and reserves the absolute right to decline to act on the Customer's behalf in relation to any particular Order or instruction without explanation or notice. Additionally, where Direct Broking believes an Order or instruction to be ambiguous, incomplete or unclear, Direct Broking reserves the right not to act on that Order or instruction. Where an Order or instruction is accepted, Direct Broking will act only within the parameters of the Customer's Order or instruction and the Customer agrees to pay all brokerage, fees, costs and charges relating to that Order or instruction in accordance with clauses 3 and 8.1. All Orders shall remain current until the Order is completed or cancelled by the Customer or Direct Broking.
- c. When the Customer places a request to cancel an Order, the cancellation of that Order is not guaranteed. Orders will only be cancelled if the Customer's request is received during Trading Hours and matched up with the Order before the Order is executed. The Customer may not treat any Order as having been executed or cancelled until the Customer has received a transaction confirmation from Direct Broking via mail, e-mail or the Share and Bond Trading Website (the choice of which shall be determined by Direct Broking at its discretion).
- d. Except as provided in the following paragraph, in relation to Securities traded on the Trading System, Orders will be retained in the Trading System for a maximum of four weeks, while in relation to Securities traded on the Stock Exchange Automated Trading System operated by ASX, Orders will be retained in the Stock Exchange Automated Trading System for a maximum of three weeks. For other jurisdictions, Orders may be retained for longer or shorter periods, depending on the relevant rules.
- e. NZX or any other regulatory body may withdraw an Order or Direct Broking may withdraw an Order from Direct Broking's Order processing system. While Direct Broking may endeavour to notify the Customer if an Order is withdrawn, Direct Broking does not guarantee that Direct Broking will be successful and accepts no responsibility for any expenses, costs or losses (including any consequential loss and any loss of income, profit, business or saving) suffered or incurred directly or indirectly by the Customer as a result of the withdrawal or expiry of an Order.

- f. Instructions and Orders to purchase or sell Securities shall be attended to by Direct Broking in the order in which they are received and entered into the Trading System. Orders may be transferred into a pool account prior to the allocation of Securities. In that case, Direct Broking will allocate the relevant Securities at Direct Broking's discretion having regard to:
 - i. the overriding obligation that Direct Broking act in the best interests of Share and Bond Trading customers (including the Customer);
 - ii. the size of each Order comparative to any other orders;
 - iii. the nature of the instructions or discretion given to Direct Broking by the Customer;
 - iv. the time each Order was received;
 - v. the nature of the market for the Securities to be allocated (particularly volume and price volatility); and
 - vi. such other relevant factors as Direct Broking may consider appropriate.
- g. Unless the Customer instructs otherwise, Direct Broking will implement the Customer's Orders by placing them to the market in such manner as Direct Broking considers appropriate having exercised this discretion with reasonable care. This means Direct Broking may:
 - i. accumulate or bundle Orders coming to market;
 - ii. delay executing the Customer's Orders; or
 - iii. delay Orders to satisfy crossings.
- h. The Customer may at any time give Direct Broking an instruction either generally, or in relation to a particular transaction, as to how the Customer wishes an Order to be implemented.

9.5 Common Shareholder Number (CSN) and Other Information:

- a. Direct Broking is required to include the Customer CSN on all Orders submitted to New Zealand markets. Where the Customer Securities are not held on a CSN, Direct Broking will require the Customer to provide sufficient information for a holding to be merged to a CSN and/or for a new CSN to be allocated. The Customer acknowledges that this process may cause a delay in the purchase or sale of Securities which are the subject of an Order.
- b. When giving an Order to sell Securities on a New Zealand market, the Customer must include a valid CSN, or, in the case of Securities which are not transferred electronically, a completed transfer form and certificate, before Direct Broking will accept the Order. In the case of Securities listed on an overseas securities exchange, the Customer must provide Direct Broking with the necessary identification numbers, documentation and data, when required by Direct Broking.
- c. Before placing an Order in respect of Australian Securities, the Customer must arrange to open a CHESS account through Direct Broking.
- d. Failure to provide the correct data or documentation will entitle Direct Broking to buy back or resell the Securities, which are the subject of the Contract Note.

9.6 Sale Proceeds:

- a. Sale proceeds will be paid by direct credit to the Settlement Bank Account.
- b. Where the Customer submits a Sell Order with respect to Securities quoted in a foreign currency, sale proceeds will be converted to New Zealand dollars in accordance with clause 3.1b and the conversion price will be shown on the Contract Note, unless the Customer has the instructions and facilities in place and Direct Broking is willing and able to make payment in the foreign currency.
- c. Under the Participant Rules, where the registration address details provided to Direct Broking differ from those held by the relevant share registry, Direct Broking is obliged to withhold the distribution of sale proceeds until the addresses are reconciled. The Customer agrees that the Customer will reconcile the addresses immediately upon them becoming inconsistent.

9.7 Purchase Process:

- a. All Buy Orders will attract the brokerage whether fully or partially completed. Application Monies on rights transactions attract brokerage.
- b. Where the Customer submits a Buy Order with respect to Securities quoted in a foreign currency, the purchase price (and any Fees) will be converted from New Zealand dollars to the relevant foreign currency in accordance with clause 3.1b and the conversion price will be shown on the Contract Note, unless the Customer has the instructions and facilities in place and Direct Broking is willing and able to receive payment in the foreign currency.

- c. When the Customer places a Buy Order, the Customer owes Direct Broking all settlement obligations in relation to the Buy Order directly to Direct Broking and the Customer must ensure that the amount of funds the Customer is at that time able to withdraw from the Settlement Bank Account for the purposes of Share and Bond Trading is sufficient to cover the full value of the Order (including brokerage and other fees and charges). Direct Broking is under no obligation to check the balance of the Settlement Bank Account and the Customer will remain liable for all settlement obligations arising out of Buy Orders whether or not the Customer had sufficient funds available in the Settlement Bank Account to cover the Buy Order.
- d. Where the Customer fails to meet a delivery obligation, Direct Broking shall have the right to pass on, and the Customer shall have the obligation to meet, any charge or levy incurred by Direct Broking as a result of the Customer's failure to make delivery of funds within the time needed to enable Direct Broking to meet the time limits imposed by the Participant Rules. Where the Customer has failed to settle with Direct Broking, the parties shall have the rights and obligations imposed by the Participant Rules and/or the settlement rules in the applicable market regarding cancellation of the contract and mitigating any loss relating to that failure to settle. Any payment made by the Customer or on the Customer's account to Direct Broking will be applied in the following order, that is: to pay Direct Broking's brokerage and fees, then to pay any charges incurred in settling the purchase, including debt recovery and finally to pay the purchase price for the Securities. Any profit made by Direct Broking exercising such rights will be retained by Direct Broking but any loss incurred will be to the Customer's account.
- e. Where any amount owing from the Customer to Direct Broking in relation to any purchase of ASX Securities remains unpaid after the purchase has settled, Direct Broking is authorised by the Customer to instruct the relevant Australian Securities Registry to transfer the purchased ASX Securities from the Customer's holding/account to Direct Broking and Direct Broking will have the rights referred to clause 9.7c in respect of the Customer's failure to settle or complete a contract or failure to pay any amount due in respect of an instruction or Order.
- f. Securities purchased by the Customer using Share and Bond Trading will be registered in the name of the Customer using the Customer's CSN (in the case of Securities traded on the markets operated by NZX) or holder identification number (HIN) (in the case of Securities traded on the markets operated by ASX).

9.8 Security Interest, Set Off and Lien:

- a. Without prejudice to Direct Broking's rights under the Participant Rules or other provisions of these Terms, at law or otherwise, the Customer agrees that Direct Broking and Direct Nominees Limited shall each have a lien and charge over and security interest in all the Customer's present and future Securities acquired using Share and Bond Trading and any other Securities, documents and moneys from time to time held by or under the control of Direct Broking or Direct Nominees Limited (but for the avoidance of doubt excluding any of the Customer's bank accounts with The National Bank or funds standing to the credit of such bank accounts), as security for the due payment of all amounts (including interest and damages) now or at any time hereafter owing or payable by the Customer to Direct Broking or Direct Nominees Limited on any account whatsoever.
- b. The Customer irrevocably authorises Direct Broking and Direct Nominees Limited to, and agrees that Direct Broking and Direct Nominees Limited may, use any amount held on the Customer's behalf, or sell any Securities held on the Customer's behalf and use the proceeds, to repay any outstanding debt or amount owed or payable to Direct Broking or any Agent, without prior notice or demand.
- c. To the extent permitted by law, Direct Broking may, without prior notice to the Customer, set off any payment obligation owed to Direct Broking by the Customer in connection with these Terms against any payment obligation owed by Direct Broking to the Customer under these Terms regardless of the place of payment or currency of either obligation (and for such purpose may make any currency conversion necessary).
- d. To the extent that Part 9 of the Personal Property Securities Act 1999 (the "PPSA") applies with respect to the security interest granted pursuant to this clause 9.8, the Customer waives its rights to:
 - i. receive a statement of account under section 116 of the PPSA;
 - ii. receive notice of any proposal made by Direct Broking to retain collateral under section 121 of the PPSA;
 - iii. redeem collateral under section 132 of the PPSA; and
 - iv. receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by Direct Broking in respect of any collateral.

9.9 Contract Notes:

- a. Direct Broking will issue Contract Notes at its discretion (by either emailing the Customer a PDF Contract Note, posting the Customer a physical Contract Note, or posting a PDF of the Contract Note on the Share and Bond Trading Website) confirming the details of any Orders implemented on the Customer's behalf. The Customer must, immediately upon receipt, check the details on the Contract Note and advise Direct Broking immediately of any errors or omissions. While Direct Broking cannot guarantee correction of any error or omission, Direct Broking will take all practicable and reasonable steps to remedy such an error or omission. Failure to notify Direct Broking of any irregularity within three Business Days of the issue of a Contract Note will confirm the Customer's acceptance of the accuracy of the Contract Note, which will be final and binding on the Customer.
- b. Any failure to provide the Customer with a Contract Note shall not release the Customer from any of its obligations in respect of the relevant Order or otherwise under these Terms.
- c. Direct Broking accepts no responsibility or liability where an email containing a Contract Note does not reach the Customer for any reason (whether due to rejection by the Customer's service provider or otherwise) and the Customer agrees that any non-delivery to the Customer will not affect the Customer's obligations under the Contract Note, that is, the settlement date for that Order is unaffected.
- d. Where the Customer places an Order for Australian listed Securities with or through a CHESS sponsor, the CHESS sponsor is required by ASX to issue a confirmation to the Customer in respect of the resulting transaction unless ASX has waived the requirement or consented to the CHESS sponsor relying on an instructing broker to confirm the terms of the transaction to their customer. Notwithstanding that the CHESS sponsor may issue a confirmation, Direct Broking will issue to the Customer a Contract Note in respect of the resulting transaction. For the purposes of these Terms, the Contract Note issued by Direct Broking will have priority ahead of and will apply to the exclusion of any confirmation issued by the CHESS sponsor and the Customer will be bound by the Contract Note issued by Direct Broking.

9.10 Disclosures of Interest:

- a. Direct Broking and certain persons associated with it are defined by the Participant Rules to be Prescribed Persons.
- b. The Participant Rules require Direct Broking to disclose to the Customer that from time to time Prescribed Persons may have a Threshold Interest (within the meaning of clause 9.10c) in Securities which they recommend to the Customer or which the Customer may buy or sell.
- c. A Threshold Interest is a percentage or dollar value interest, set by Direct Broking's at its discretion under the Participant Rules, in the Securities of any Issuer.
- d. The Customer should be aware that Prescribed Persons may have a Threshold Interest in a Security in which the Customer may have an interest. Direct Broking may be acting as principal in Securities in which the Customer may have an interest. Direct Broking may be acting as agent for the buyer and seller in a transaction and may be earning income from both parties to that transaction.

10 Disputes in Respect of Executed Orders

10.1 If the Customer disputes any details of a transaction as recorded on a Contract Note or the details of any Orders or instructions given or alleged to have been given by the Customer or an Authorised Representative, the Customer must notify the Share and Bond Trading Helpdesk in the first instance of the dispute, giving the following information:

- a. the amount and nature of the disputed transaction;
- b. the unique Order, trade or transaction ID and the date on which the disputed transaction occurred; and
- c. any such additional information as Direct Broking may reasonably require.

10.2 Direct Broking and The National Bank will investigate the issue(s) in dispute and advise the Customer of the outcome of that investigation within 15 Business Days of receiving the complaint.

10.3 In investigating the dispute, Direct Broking and The National Bank may refer to any relevant telephone recording and internet logs and, if requested by the Customer, will also allow the Customer to listen to any relevant telephone recording and view relevant internet logs.

11 Limitation of Direct Broking's Liability

11.1 Placing an Order with or giving instructions to Direct Broking, either electronically or otherwise, does not guarantee acceptance of the Order or instruction or execution of the Order, and the Customer agrees that Direct Broking shall not be responsible or liable for any expenses, costs, losses, damages or claims that result where any Order is not executed or an Order is cancelled or instructions are not accepted.

11.2 Direct Broking will not be liable to the Customer or any other person (whether in contract, negligence or on any other basis) for any liability, loss, damage, cost or expense arising directly or indirectly from:

- a. any breach by Direct Broking of these Terms, or any act, omission, default, error or delay by Direct Broking or any of its employees or agents (including any overseas broker or agent) in the performance of Direct Broking's obligations under these Terms;
- b. Direct Broking being unable to implement an Order due to technical difficulties. Furthermore, in a technical environment, should an error occur with respect to the tracking of any account holding or Order entry, the true, actual and correct transaction or position will be restored. It is the Customer's responsibility to ensure account correctness and accuracy and to contact Direct Broking immediately with any discrepancies;
- c. any delay in distribution of sale proceeds caused by inconsistent registration details;
- d. a delay in the purchase or sale of Securities which are the subject of an Order due to a need to merge a Customer's holding to a CSN or allocate a new CSN;
- e. any delay by Direct Broking in exercising any right or power attached to or associated with any Custody Securities in circumstances where the Customer does not have sufficient funds in the Settlement Bank Account or has not given Direct Broking clear and complete instructions in relation to the exercise of such right or power, together with all information necessary for Direct Broking to exercise such right or power, at least three Business Days prior to the due date for such exercise;
- f. any acts or omissions of any Clearance System;
- g. any information on the Share and Bond Trading Website or provided by the Share and Bond Trading Helpdesk being inaccurate, incomplete, incorrect, out of sequence, out of date or arising out of any error, omission delay or non-availability of any such information, nor the use of, or reliance on, such information;
- h. any software Direct Broking may supply from time to time (via "download" or "diskette") or for any consequences resulting from or occurring during transport of that software online, including the contamination of that software or the Customer's computer with any viruses. It is the Customer's responsibility to install on its computer adequate virus protection;
- i. except to the extent set out in clause 13, the acts, omissions, defaults or insolvency of any third party including, but not limited to, any broker, counterparty or issuer of Securities;
- j. any delay or omission to pay any Taxes or any failure to otherwise comply with any obligations under these Terms or at law in relation to Taxes (whether in New Zealand or any other jurisdiction);
- k. Direct Broking or any Agents relying on any information provided by the Customer or any Authorised Representative with respect to Taxes; or
- l. any Corporate Action being reversed or cancelled by an issuer of Custody Securities.

11.3 Without prejudice to the limitations on Direct Broking's liability set out in these Terms:

- a. Direct Broking shall not be liable to the Customer for any indirect or consequential loss suffered or incurred by the Customer or for any loss of income, business, profit or saving, whether as a result of the Customer's or any other person's inability to complete a transaction or Order or honour an obligation, a breach of these Terms by Direct Broking or otherwise;
- b. Direct Broking's liability under or in connection with these Terms, or any Order or instruction given by the Customer, shall be limited to direct loss suffered or incurred by the Customer as a result of gross negligence or willful default by Direct Broking or Direct Nominees Limited or any of their respective employees or as a result of fraud or dishonesty on the party of Direct Broking's or Direct Nominees Limited's employees, in any such case being loss:
 - i. detailed in a written notice given by the Customer to Direct Broking within six months of the Customer becoming aware, or of when the Customer reasonably should have become aware, of the circumstances giving rise to the loss; and
 - ii. unless resolved before then, in respect of which the Customer commences legal proceedings within a further six months;
- c. in no circumstances shall the liability of Direct Broking or any Affiliate under these Terms with respect to the provision of any Custody Services exceed the market value (at the time such liability arose) of the Custody Securities held on the Customer's behalf in respect of which such liability arose. This clause 11.3c confers a benefit on each Affiliate, and is enforceable by each Affiliate under the Contracts (Privity) Act 1982;

- d. Direct Broking is responsible for the performance of only those duties expressly set forth in these Terms and the Participant Rules. Direct Broking shall not have any implied duties or obligations;
 - e. Direct Broking's performance of these Terms is subject to relevant laws, regulations, decrees, orders and governmental acts, and the rules, operating procedures and practices of any relevant securities exchange, Clearance System or market where or through which Orders or instructions are to be carried out and to which Direct Broking is subject and as exist in the country in which any Securities or funds are held; and
 - f. Direct Broking is not responsible for the form, accuracy or content of any notice, circular, report, announcement or other material not prepared by Direct Broking.
- 11.4 Without limiting the other provisions of this clause 11, Direct Broking cannot guarantee, and to the extent permitted by law, shall not be liable (whether in contract, negligence or on any other basis) for the accuracy, availability, completeness, timeliness or the correct sequencing of information which Direct Broking transmits or provides or otherwise makes available to the Customer in relation to Share and Bond Trading (including balances, statements, transactions, holdings, corporate actions and valuations) and generally available information such as securities exchange prices and foreign exchange rates are provisional and non-binding. Direct Broking is not responsible for any decision made or action taken by the Customer in reliance on such information or for the interruption or non-availability of any information or Share and Bond Trading.

12 Information Service

- 12.1 The distribution of information and data contained in the Share and Bond Trading Website, and the provision of Share and Bond Trading, may be restricted by law in some countries. Neither this information and data nor Share and Bond Trading constitutes an offer or solicitation in any jurisdiction in which such an offer or solicitation is not authorised or to whom it is unlawful to make such an offer or solicitation.
- 12.2 No information, including without limitation, prices, data or research views provided through the Share and Bond Trading Website constitutes an offer or recommendation or advice (whether of an investment, legal, Tax, accounting or other nature) to the Customer to act or omit to act in any manner, including to buy, sell, defer or alter a decision, to take or not to take certain other actions affecting Securities (for example, in respect of Corporate Actions notified to the Customer), or otherwise trade all or any of the Securities mentioned on the Share and Bond Trading Website. All such information is provided for information purposes only.
- 12.3 If a Security has a research recommendation by an analyst (for example, "outperform" or "buy") this does not mean, and should in no circumstance be construed as a statement or opinion, that the Security is a suitable investment for the Customer and it does not constitute a recommendation or advice to the Customer.
- 12.4 Prices and company announcements from the NZX, ASX or any other securities exchange displayed on the Share and Bond Trading Website are on at least a 15 to 20 minute delayed basis (from the time first released on the relevant market). Prices and company announcements provided by Direct Broking's financial information providers are on a delayed basis of at least 15 minutes. Live data may be available to the Customer depending on the Customer's level of trading activity.
- 12.5 The trading and pricing information that appears on the Share and Bond Trading Website is sourced from the NZX, ASX or other relevant securities exchange and other information providers and may not be redistributed. Any redistribution by the Customer constitutes a breach of these Terms. Direct Broking is not responsible for the content of information sourced from third parties.
- 12.6 The information placed on the Share and Bond Trading Website by Direct Broking, including without limitation price, data, education content and research, is provided in good faith and has been obtained from sources believed by it to be reliable and accurate, but its accuracy, timeliness, correctness and completeness cannot be, and is not, guaranteed. Neither Direct Broking nor The National Bank accepts any liability or responsibility for any loss or damage caused by such information being inaccurate, incomplete, incorrect, out of sequence, out of date or arising out of any error, omission delay or non-availability of any such information, nor the use of, or reliance on, such information (including without limitation, any loss of profit or any other damage, direct or consequential). Information is subject to change without notice.

13 Agents

- 13.1 Direct Broking may appoint any other person as its Agent to perform its obligations, or exercise any of its rights, under these Terms.
- 13.2 Provided that Direct Broking exercises reasonable care in the selection of such person, neither Direct Broking nor any of its employees, officers or directors are liable to the Customer for the solvency, acts or omissions of any Agent, but Direct Broking will make available to the Customer, when and to the extent reasonably so requested, any rights that Direct Broking may have against such Agent. This clause 13.2 does not apply to any Agent which is an Affiliate of Direct Broking. Direct Broking accepts the same level of responsibility for any such Affiliate as for Direct Broking's own acts.

- 13.3 In the unlikely event of a default by an Agent used by Direct Broking there may be an irreconcilable shortfall and customers may share that shortfall on a pro-rata basis.

Part D: Custody Services

This Part D applies only in respect of Customers that utilise the Custody Service. For the avoidance of doubt, the provisions of Parts A to C and E also apply to the provision of the Custody Service, except to the extent such provisions are inconsistent with the provisions of this Part D.

The Custody Service must be used for all trades involving Securities in any jurisdiction outside New Zealand or Australia.

14 Securities Held in Custody

- 14.1 Direct Broking will provide the Custody Service as set out in this Part D with respect to such jurisdictions, securities exchanges and Securities as Direct Broking may from time to time determine in its discretion. A list of these jurisdictions and details of any additional rules that may apply in respect of these jurisdictions, are available from Direct Broking upon request.
- 14.2 If the Customer wishes any Securities to be held on behalf of the Customer in accordance with this Part D, the Customer shall deliver to Direct Broking all necessary documentation and information to enable Direct Broking to deposit such Securities into custody and to otherwise provide the Custody Service with respect to such Securities.
- 14.3 Direct Broking shall not transfer, exchange, exercise rights attached to or otherwise deal with the Custody Securities except pursuant to these Terms or on the Customer's instructions or those of an Authorised Representative.
- 14.4 Custody Securities will be held in an omnibus or pooled account in the name of Direct Nominees Limited, an Agent appointed by Direct Broking or Direct Nominees Limited or a nominee company controlled by an Agent appointed by Direct Broking or Direct Nominees Limited.
- 14.5 The Customer's Securities are identified within Direct Broking's custody records separately from assets belonging to Direct Broking or Direct Nominees Limited.
- 14.6 Direct Broking or any Agent may in its discretion refuse to accept (in whole or in part) any deposit of Custody Securities.
- 14.7 For the avoidance of doubt, these Terms shall not be deemed to terminate solely as a result of any change in the Custody Securities held from time to time or because at any given time no Custody Securities are held.

15 Accepting Instructions

- 15.1 Direct Broking shall at its discretion and without any liability on its part, rely and act upon instructions from the Customer or an Authorised Representative to deal with all or part of the Custody Securities, and the Customer shall be bound by those instructions.
- 15.2 Instructions for the transfer of Custody Securities out of custody into the Customer's name or into another custody service must be in a form acceptable to Direct Broking.
- 15.3 Unless Direct Broking in its discretion determines otherwise in any particular case, Direct Broking will not accept instructions to trade or deal with any Custody Securities within three Business Days in the jurisdiction of the relevant securities exchange of any previous trade or dealing by the Customer (or by Direct Broking or any Agent on the Customer's behalf) of those same Custody Securities, or within such other applicable period required for the clearance of that previous trade or dealing.
- 15.4 Any instruction to trade or deal with any Custody Securities will be lodged (subject to clause 2.3) in the next open trading session on the relevant overseas securities exchange and such instruction will expire at the end of that session.

16 Records and Auditing

- 16.1 Direct Broking will maintain a full set of accounting records showing the ownership, receipt and disbursement and other movements of Custody Securities.
- 16.2 The receipt, holding and disbursement of Custody Securities and the administration of Trades by Direct Broking is subject to the Participant Rules and to periodic review by NZX inspectors. Direct Broking's accounting records will be audited by a Qualified Auditor (as defined by section 2C of the Securities Act 1978).
- 16.3 A record of Custody Securities will be available to the Customer online and will be updated as the Customer's Custody Securities change.
- 16.4 You agree that by entering into these Terms you consent to Direct Broking providing you with a report in respect of your Custody Securities in the manner required by the Participant Rules every six months.

17 Transactions Affecting Custody Securities

- 17.1 Direct Broking will use reasonable endeavours to keep the Customer informed of certain important events that affect the Customer's Custody Securities ("Corporate Actions") subject to Direct Broking having received prior written notice of such events from the relevant issuer and provided that the Custody Securities are traded on an approved securities exchange or registered in an approved jurisdiction as referred to in clause 14.1. Examples of such events include rights issues, bonus issues, takeovers, company reconstructions and the impending exercise/expiry of options, warrants and convertible bonds.
- 17.2 Subject to clause 17.3, Direct Broking will act in accordance with the Customer's instructions with respect to any Corporate Action that requires an election to be made by the holder of the relevant Custody Securities provided that it is practicable to do so, the Customer has sufficient funds in the Settlement Bank Account and the Customer has given clear and complete instructions, together with all information necessary to make the election, at least three Business Days prior to the date Direct Broking determines is the last date by which such election can be practicably made.
- 17.3 Notwithstanding any instructions that may have been given by the Customer as contemplated by clause 17.2:
- in respect of any Corporate Actions which provide an option for the holder to elect to receive a cash alternative (for example a takeover offer in which shareholders can elect to receive consideration in the form of either cash or shares in the offeror), Direct Broking may select the cash alternative without any need to refer to or obtain any consent from the Customer;
 - in respect of any Corporate Actions affecting a particular Security, Direct Broking may make such election as it determines in its discretion is appropriate without any need to refer to or obtain any consent from the Customer, if Direct Broking makes the same or equivalent election for all Securities held by Direct Broking whether on behalf of the Customer or other customers using the Custody Service;
 - following any Corporate Action, Direct Broking may effect any associated distributions to the beneficial owners of Custody Securities held in a pooled account in such manner as it determines in its discretion may be appropriate, having regard to the interests of such beneficial owners generally and the practicalities of making such distribution.
- 17.4 The Customer acknowledges that:
- due to Custody Securities being held in a pooled account, the Customer may not benefit from certain Corporate Actions to the same extent the Customer might have benefited if the Customer's Custody Securities were registered in a separate parcel; for example, a rights issues where each separately registered shareholder has an equal right to participate, regardless of the total number of shares held by each shareholder; and
 - Corporate Actions may be cancelled or reversed by an issuer, and the Customer may be liable to return Securities or repay moneys received in connection with any such cancelled or reversed Corporate Action.
- 17.5 Direct Broking will have no duty or responsibility as regards attendance at meetings or voting in respect of any of the Custody Securities or in respect of proxies received by it or any of its Agents in respect of any Custody Securities and/or for sending any proxies or giving any notice of the receipt of such proxies to the Customer. The Customer may not give any instructions to Direct Broking which conflict with this clause.
- 17.6 Any Custody Securities or other consideration received by Direct Broking in respect of Custody Securities shall, unless Direct Broking agrees otherwise, be held subject to these Terms.
- ## 18 Dividends and Income
- 18.1 Direct Broking will collect income (including dividends and distributions of any kind) and principal (including the proceeds of any disposal) in respect of any Custody Securities, and unless instructed otherwise, shall treat all monies received by it in accordance with the Participant Rules.
- 18.2 Unless otherwise agreed to by Direct Broking, all dividends and interest received will be converted into the currency of the Customer's Settlement Bank Account at the time of receipt by Direct Broking.
- 18.3 Direct Broking may deduct withholding Tax or any other Tax from any income or other payment in accordance with clause 5.8. The Customer is solely responsible for all Taxes or similar liabilities levied on or arising out of any Custody Securities and any payment due to the Customer. Direct Broking shall have no responsibility or liability with regard to the Customer's Tax status or position in any jurisdiction, and the Customer shall remain liable for any deficiency.
- 18.4 The Customer shall provide Direct Broking with such information regarding the Customer's Tax status (whether in New Zealand or any other jurisdiction) as is reasonably requested by Direct Broking from time to time. Direct Broking and any Agents shall be entitled to rely on any information provided by the Customer or any Authorised Representative as being correct. Any subsequent Tax deficiencies (in any jurisdiction) arising from the information provided are the Customer's responsibility, and the Customer shall indemnify Direct Broking

and any Affiliate from and against any claims, costs, liability or expenses associated with, or in remedying, such deficiency.

19 Acknowledgements

- 19.1 Unless instructed otherwise, Direct Broking shall have no obligation to forward or take any other action whatsoever in connection with reports, notices, proxies, and other communications received in respect of any Custody Securities.

20 Termination and Redelivery

- 20.1 Direct Broking may at any time redeliver all or any Custody Securities to the Customer without terminating these Terms.
- 20.2 Termination of these Terms under clause 25 may require redelivery of the Custody Securities.
- 20.3 Within a reasonable period after notice of such termination, Direct Broking shall deliver to the Customer in person or by registered post to the Customer's address for the time being notified to Direct Broking, or by transfer to the Customer's bankers or agents, or otherwise as the Customer may direct, the balance of all Custody Securities held on the Customer's behalf.
- 20.4 Direct Broking's obligations under clause 20.3 and in any other event when the Customer requests a transfer of the Custody Securities to be made shall be subject to:
- compliance with applicable law or regulatory requirements and to reasonable notice having been given to and received by Direct Broking;
 - the rules and requirements of any securities exchange, Clearance System, sub-custodian or other Agent; and
 - the transfer or delivery of the Custody Securities being impracticable for any other reason,
- provided that Direct Broking may make such arrangements as it deems appropriate and at the Customer's expense in order that prompt delivery may be made.
- 20.5 If the Customer is indebted in any way to Direct Broking in respect of Custody Securities (for example, without limitation, in respect of unpaid fees or any payment made to the Customer by Direct Broking on account of interest, dividends or other income not yet collected by Direct Broking), Direct Broking may decline to redeliver such Custody Securities until such debt has been discharged.
- 20.6 The Customer acknowledges that its indebtedness and liability to Direct Broking shall be continuing until such time as Direct Broking is satisfied that it has received full and final settlement of payment due on the Custody Securities in respect of those amounts paid to the Customer. The Customer shall fully indemnify Direct Broking in the event of non-payment or part payment only.
- 20.7 The Customer shall bear all costs and risks of delivery of the Custody Securities to the Customer or another party, as instructed by the Customer, whether upon termination or otherwise.

Part E: Other Matters

21 Access to Share and Bond Trading Services

- 21.1 The terms of access set out on the Share and Bond Trading Website regulate the Customer's access to the Share and Bond Trading Website and form part of, and are deemed to be incorporated by reference into, these Terms.
- 21.2 Either Direct Broking or The National Bank may suspend the Customer's access to part or all of the Share and Bond Trading Service at any time without giving reasons and without prior notice. Neither Direct Broking nor The National Bank shall be liable to the Customer (whether in contract, negligence or otherwise) for any loss, damage, liability, cost or expense the Customer may suffer or incur as a result of the Customer being unable to place Orders or being unable to obtain other information from the Share and Bond Trading Website, either as a result of the Customer's access being suspended or otherwise.

22 Force Majeure

- 22.1 Neither Direct Broking nor The National Bank will be liable for any failure of Direct Broking or The National Bank to perform their respective obligations under these Terms if such failure is caused by any event of force majeure beyond their reasonable control or the reasonable control of their respective employees or agents or system providers. For the purposes of this clause, an event of force majeure includes, but is not in any way limited to, any inability to communicate with market makers or with other sharebrokers or financial market participants, financial intermediaries or any securities exchange or financial market, failure of any computer dealing or settlement system or information system, inability to obtain any necessary supplies for the proper conduct of business, and the actions or failures of any counterparty or any other broker or agent (including overseas brokers and agents) or system provider or information provider or of the systems of that broker or agent or system provider or information provider.

23 Consumer Guarantees Act

23.1 If the Consumer Guarantees Act 1993 applies to services supplied by Direct Broking and The National Bank under these Terms, then where such service is acquired, or held out as being acquired, by the Customer for business purposes, the Customer expressly acknowledges and agrees that the provisions of the Consumer Guarantees Act 1993 shall not apply to the Customer's use of that service.

24 Privacy Act

24.1 To enable the provision of Share and Bond Trading, The National Bank, and Direct Broking must disclose to each other certain information collected and held by them concerning the Customer and the Customer's accounts. Direct Broking collects and holds the Customer's personal information for the purposes of providing services under these Terms and administering, managing and monitoring those services, implementing Orders, acting on instructions from the Customer, and informing the Customer about products and services of Direct Broking or its related companies. The National Bank collects and holds the Customer's personal information for the purposes of providing banking and associated services to the Customer and informing the Customer about products and services of The National Bank or its related companies. The Customer consents to the collection, use and sharing of its personal information between Direct Broking and The National Bank for the above purposes and acknowledges that Direct Broking or The National Bank may record any instructions given by telephone and over the Internet.

24.2 In addition, Direct Broking may disclose personal or other confidential information concerning the Customer or the Customer's Securities:

- a. to representatives of Direct Broking, its Affiliates and Agents in the course of or in connection with the provision of Share and Bond Trading or the Custody Service (and such representatives, Affiliates and Agents may in turn disclose such information in the circumstances referred to in this clause 24.2) and to their respective auditors and professional advisers;
- b. in enforcing these Terms, in a proceeding arising out of or in connection with these Terms or to the extent that disclosure is regarded by Direct Broking or its Affiliates or Agents as necessary to protect its interests;
- c. if required by law, by any order or requirements of any Government Agency or any procedure for discovery in any proceedings;
- d. if required under the Participant Rules or any law, the rules of any securities exchange or regulations or any administrative guidelines, directive, request or policy whether or not having force of law and, if not having the force of law, with which responsible financial institutions similarly situated would normally comply; or
- e. with the prior written consent of the Customer.

24.3 The Customer may ask for access to, and request correction of, any of its personal information held by Direct Broking or The National Bank under these Terms.

24.4 When visiting the Share and Bond Trading Website, information may be collected (for statistical purposes) about the Customer, such as the pages visited and the products invested in. Such information may be disclosed to third parties but will not include information that could identify the Customer. Note that the Share and Bond Trading Website includes cookies (information the Customer's browser stores on the Customer's hard drive). These are necessary in order for Share and Bond Trading to operate.

25 Termination

25.1 Without limiting clause 14.3, any of the Customer, The National Bank or Direct Broking may terminate the Customer's access to Share and Bond Trading without notice, but without prejudice to any pre-existing rights or obligations of the Customer, Direct Broking, or The National Bank including, for the avoidance of doubt, completion of any matter to effect and settle a transaction and payment of any amount due to Direct Broking (or The National Bank) on that transaction.

26 Notices

26.1 The Customer shall give each of Direct Broking and The National Bank notice within 5 Business Days (in accordance with The National Bank's standard account terms and conditions for changing contact details) of any change in its name, address, telephone number or of other material circumstance affecting the Customer's Share and Bond Trading or its Settlement Bank Account.

27 Governing law/jurisdiction

27.1 These Terms and the agreement between the Customer and The National Bank and between the Customer and Direct Broking pursuant to them are governed by New Zealand law and New Zealand courts have jurisdiction.

27.2 Share and Bond Trading is available only to National Bank customers who are resident in and/or carry on business in New Zealand. Neither The National Bank nor Direct Broking gives any warranty that it is lawful for persons located outside New Zealand to access Share and Bond Trading.

28 Waiver

28.1 In relation to these Terms, no delay or failure to act will be construed as a waiver of or in any way prejudice, any of the rights of either The National Bank or Direct Broking. No waiver will be effective unless it is in writing. A waiver of a breach will not waive any other breach.

29 Further Assurances

29.1 Where requested the Customer shall perform such acts and sign and execute all such agreements, proxies, authorities or documents as may be required by Direct Broking for the performance or implementation of these Terms.

30 Severability

30.1 If any of the provisions of these Terms are held to be invalid, illegal or unenforceable, that provision will be severed and the remaining provisions will be enforceable.

31 Amendments

31.1 Amendments by The National Bank and Direct Broking:

The National Bank and Direct Broking, but not the Customer, have the right to amend these Terms at any time provided at least 14 days' notice has been given to the Customer by:

- a. direct communication to the Customer (by email or post); or
- b. by statements in the media or notices in branches of The National Bank (or any combination thereof),

and provided that the amendment or details of the amendment have been posted on the Share and Bond Trading Website.

31.2 NZX Participant Rules and Changes in Procedures and Trading Methods:

- a. If there are any changes to the Participant Rules which affect the terms of these Terms (and in particular affect the obligations that Direct Broking owes to third parties), the terms of these Terms will be deemed to have been altered to reflect those changes. Direct Broking may advise the Customer of such changes if they materially affect the Customer in the same manner as it may notify the Customer of any other amendment to these Terms.
- b. These Terms are to be read subject to any applicable trading restrictions or conventions that apply to alternative methods of trading Securities (for example, but not limited to, trading restrictions or conventions applicable to a particular Security or market, trading of unlisted Securities, or paper-based trading). In any such case, these Terms shall be deemed to be amended to the extent necessary to comply with such alternative trading methods and/or market conventions.

31.3 **Overseas Jurisdictions:** The Customer acknowledges that the procedures for trading of Securities applicable in overseas jurisdictions may differ from those reflected in these Terms. The Customer will observe relevant requirements of any overseas trading procedures. These Terms are deemed to be amended to the extent necessary, in the context of a particular transaction, to comply with overseas trading requirements.

