

Client Fund Service terms and conditions

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1. General

- 1.1 These Terms are a contract between you and the Bank. You should read these Terms carefully as they place certain requirements and liabilities on you.
- 1.2 You must accept these Terms before you can use the Service. Your acceptance will be effected when the Bank receives your signed registration form for the Service to be provided to you on these Terms (as amended from time to time).
- 1.3 In these Terms, unless the context otherwise requires:
 - a. words with initial capital letters have the meanings given to them in clause 15;
 - b. words importing the singular include the plural and vice versa; and
 - c. clause headings are for convenience only and do not affect the interpretation of these Terms.
- 1.4 These Terms are in addition to, and are to be read in conjunction with:
 - a. the Standard Terms (which shall apply to the Service and be deemed to form part of and to be incorporated in these Terms as if set out here in full);
 - b. the specific terms and conditions applicable to all Accounts you hold with the Bank from or to which Client Funds are Debited or Credited through the Service; and
 - c. the specific terms and conditions applicable to particular services or facilities provided in respect of such Accounts (including without limitation under the Account Operating Mandate and the Manual Instructions Indemnity).

To the extent that there is any inconsistency between these Terms and such other terms and conditions, these Terms prevail.
- 1.5 Your obligations and responsibilities under these Terms apply subject to the restrictions on your liability under clause 8. The Bank's obligations and responsibilities under these Terms apply subject to the restrictions on its liability under clause 9.
- 1.6 It is your sole responsibility to identify whether you hold any Client Funds on trust and, if so, the terms of the relevant trust(s) and your powers and obligations thereunder (including without limitation whether you are authorised to co-invest Client Funds forming part of different trust funds).

The Bank assumes no responsibility to advise you, and accepts no liability for any guidance given to you by any Bank employee, in this regard. The Bank recommends that you obtain independent legal advice if you are unsure of the capacity in which you hold and must invest Client Funds.
- 1.7 Personal information about you and your clients will be collected and held by the Bank for the purposes set out in our Master Privacy Policy, available at [bnz.co.nz](https://www.bnz.co.nz).
- 1.8 If you propose to invest Client Funds held on trust, through the Service (as where you are a solicitor or firm of solicitors), these Terms apply subject to clauses 3.5 and 4.10.

2. Service

General

- 2.1 The Service is designed to assist Bank customers who:
 - a. hold funds on trust for, or to the account of, a number of Clients; and

b. are required or wish to place such funds on interest-bearing deposit.

More particularly, the Service enables you to segregate Client Funds so deposited into separate notional accounts (termed Client Accounts), each opened in your name as our customer, but each allowing you to note a particular Client's name against it. This enables you to invest and manage each particular amount of Client Funds separately through the Service, without needing to open separate customer profiles and their accompanying logins for each Client.

At present, the Service only allows you to place Client Funds on call, not on term deposit.

Registration

2.2 To register for the Service, you must complete:

- a. a registration form, in the Bank's current form (which registration form records your account operating mandate for the CFS Account and provides for the appointment of Authorised Signatories in respect of the Service, all subject to clause 2.4);
- b. the Bank's online registration procedures;
- c. a Manual Instructions indemnity, in the Bank's current form; and
- d. such other application documentation as the Bank may from time to time reasonably require.

Your application is subject to the Bank's approval.

2.3 You agree that the Manual Instructions Indemnity:

- a. will remain in full force and effect at all times while the Service is provided to you; and
- b. applies to all Instructions by Authorised Signatories under these Terms.

Modification

2.4 You may apply to the Bank to add or remove Authorised Signatories, alter the degree of authorisation required for Instructions to be effective or otherwise modify the Service provided to you. Such application must be made in the manner from time to time required by the Bank for the Service and is subject to approval by the Bank. You acknowledge that:

- a. modifications approved by the Bank under this clause 2.4 will apply to the Service alone, and will not alter any other operating mandate you have with the Bank; and
- b. modifications you make to other operating mandates you have with the Bank will not apply to the Service.

Restrictions

2.5 The Service is only available:

- a. on the CFS Account nominated by you in respect of which the Bank has agreed to provide the Service pursuant to your Application; and
- b. in respect of such services as the Bank from time to time determines.

2.6 You may not use the Service, or permit it to be used, for any purpose other than carrying out lawful banking transactions and enquiries on the CFS Account and Client Accounts.

3. Accounts

3.1 Operating the Service requires:

- a. a Clearing Account;
- b. a CFS Account; and
- c. one or more Client Accounts for each Client whose funds are being invested through the Service.

3.2 The Clearing Account is an operating Account which you hold with the Bank:

- a. into which all Client Funds will be deposited prior to being invested through the Service; and
- b. to which each amount of Client Funds invested through the Service will generally (subject to these Terms) be retransferred when the relevant investment matures or is otherwise terminated.

When you register for the Service, you must specify which Account will operate as your Clearing Account.

3.3 The CFS Account is an Account which you hold with the Bank and to which all Client Funds being invested through the Service are transferred from the Clearing Account. Each amount of Client Funds is held on deposit in the CFS Account for the duration of its investment through the Service.

When you register for the Service, you must specify which Account will operate as your CFS Account.

3.4 A Client Account is a notional account opened through the Service in your name as our customer, but that allows you to note a particular Client's name against it, as more fully set out in clause 4.

Trust funds

3.5 If you hold Client Funds on trust, the following additional provisions apply to the Service as provided to you:

- a. The Clearing Account must be a trust account.
- b. The CFS Account must be a trust account, different from the trust account nominated as the Clearing Account.
- c. You undertake that the CFS Account:
 - i. will not be used as an operating account; and
 - ii. will only receive deposits of Client Funds being Credited to Client Accounts.

To illustrate, if you are a solicitor or firm of solicitors, your Clearing Account would be your general solicitor's trust account while your CFS Account would be a separate, dedicated trust account.

d. By using the Service, you warrant to the Bank on a continuing basis that:

- i. the Clearing Account and CFS Account nominated in your Application are trust accounts, duly operated as such;
- ii. the CFS Account is at all times operated in accordance with clause 3.5c; and
- iii. you have all necessary authority and consents to co-invest all Client Funds through the Service and to establish each Client Account and operate it as it is in fact being operated.

You indemnify the Bank for each Cost it incurs if you don't comply with the above warranties. This indemnity takes the form of you paying the Bank, on demand, the amount that the Bank tells you it needs to be compensated for that Cost, except to the extent that the Cost arises as a result of fraud, negligence or willful misconduct by the Bank or its officers, employees or agents

4. Client Accounts

Opening

- 4.1 As and when required, a particular Client's name may be added to your Client List. Once that has been done, one or more Client Accounts may be opened in the name of that Client.

Client Accounts may also be opened in the joint names of Clients listed in the Client List.

Before a particular Client's name can be added to your Client List you agree that you will: verify the identity of that Client; keep and provide to us if requested such records as may be required to prove to our satisfaction the identity of that Client; and advise the Client of your obligation to provide us with such information if requested by us.

Deposits

- 4.2 An Instruction that a particular amount of Client Funds must be transferred from the Clearing Account to the CFS Account must specify the Client Account to which that amount must be Credited.

The Client Account so specified will be Credited with the relevant amount immediately after that amount has been transferred to the CFS Account as Instructed.

- 4.3 Client Funds Credited to a particular Client Account will be treated as separately invested in the relevant Client Account. Thus, the Bank will:

- Credit the interest on the credit balance of a particular Client Account (as calculated in accordance with clause 4.4) to that Client Account; and
- provide separate account information in respect of the principal and interest Credited to each Client Account.

Interest

- 4.4 A Client Call Account will bear interest on its credit balance from time to time at the rate and on the terms that apply to your Client Call Accounts.

- 4.5 On the interest payment date, the interest on a Client Call Account will either be capitalised or Credited to the Clearing Account or another Account, as Instructed (subject to clause 4.10).

Deduction of commission

- 4.6 The Service enables commission to be deducted from the Interest to be Credited to Client Accounts or particular Client Accounts, as follows:

- If the Online Service is provided to you, you may give standing directions in your Application specifying:
 - that commission is to be deducted;
 - the rate of deduction; and
 - the Account to which such commission must be Credited.
- If the Manual Service is provided to you, the rate at which commission is to be deducted and the Account to which it must be Credited may be specified in the Instruction given when opening the relevant Client Account.

Tax deductions

- 4.7 If the Bank has been supplied with a particular Client's IRD number and tax rate, the Bank will (to the extent required or permitted by law from time to time):

- deduct withholding tax from the interest to be Credited to the Client Account(s) opened in that Client's name at that rate; and
- send the withholding tax certificate in respect of such interest either to you or directly to that Client, at his or her address as last notified to the Bank (as the Bank may determine).

Otherwise, the Bank will deduct withholding tax from the interest Credited to Client Accounts at the rate prescribed by law in the circumstances.

Withdrawals

- 4.8 If the Online Service is provided to you, then (subject always to clause 4.10), monies Credited to a Client Account and maturing, being withdrawn, or otherwise falling due for repayment will be Credited out of the Client Account as follows:

- Principal monies Credited to a Client Account will on the due date for repayment thereof be Credited to the Clearing Account.
- Interest monies Credited to a Client Account will on the due date for payment thereof be Credited to the Nominated Account you selected for that purpose in your Application.

Subject to clause 4.10, the Nominated Account may be either the Clearing Account or another Account held by any Person with any financial institution. That direction may be varied (either generally or in relation to specific Client Accounts) by way of a subsequent Instruction given and (if required under your Application) authorised through the Service (see clause 5.7). Failing any contrary direction in your Application or such subsequent Instruction, the Bank will on the due date for payment Credit all such interest to the Clearing Account.

- 4.9 If the Manual Service is provided to you, then (subject always to clause 4.10) the Instruction given to open a particular Client Account may direct the Account(s) ("Nominated Account(s)") to which the interest and principal Credited to that Client Account, must be Credited when due. Subject to clause 4.10, a Nominated Account may be either the Clearing Account or another Account held by any Person with any financial institution.

Failing any such direction, the Bank will on the due date for payment credit all such interest and principal to the Clearing Account.

- 4.10 If the CFS Account is a trust account (as required where you hold Client Funds on trust), the Bank:

- recommends, and may require, that all monies Credited to Client Accounts (whether on account of principal or interest) and maturing, being withdrawn or otherwise falling due for repayment, be Credited to the Clearing Account when due; and
- reserves the right to refuse any Instruction to the contrary.

- 4.11 You acknowledge that where interest and/or principal monies must be Credited to a Nominated Account held with another financial institution:
- a. the Service:
 - i. will enable a User (for the Online Service) or Authorised Signatory (for the Manual Service) to confirm whether the Bank has Debited the relevant amount from the Client Account and CFS Account; but
 - ii. will not enable a User to confirm whether that amount has been received by the Receiving Financial Institution; and
 - b. while the Bank will use reasonable endeavours to effect payment to the Receiving Financial Institution in accordance with the relevant Credit Instruction (subject to these Terms), the Bank cannot guarantee that the intended payee will receive those funds.

Reliance

- 4.12 Subject to these Terms, you agree that the Bank:
- a. may rely on (and you hereby authorise the Bank to act on) any Instruction given and (if required) authorised in the manner required under these Terms, without any enquiry as to the identity or authority of the Person giving that Instruction; and
 - b. will not in any way be liable to you for acting on any such Instruction.

In particular, you acknowledge and agree that:

- i. will neither the Bank nor any Receiving Financial Institution is under any obligation to validate an Account number specified in a Credit Instruction against any other information given to the Bank or that Receiving Financial Institution (such as the payee's name);
- ii. if an incorrect Account number is specified in a Credit Instruction, the funds may be credited to an incorrect Account;
- iii. any payment made by the Bank in consequence of an erroneous Credit Instruction can be recovered from the Account so Credited only if the holder of that Account consents thereto, so that you may suffer loss as a result; and
- iv. the Bank will co-operate with you and the relevant Receiving Financial Institution as reasonably necessary to try to recover any payment made in error, at your sole cost; but neither the Bank nor the Receiving Financial Institution has any liability to you if any such attempt fails.

The provisions of this clause 4.12 are also for the benefit of, and may be enforced by, every Receiving Financial Institution under subpart 1, part 2, of the Contract and Commercial Law Act 2017.

Third party claims

- 4.13 Clients have no authority to give Instructions in relation to the CFS Account or Client Accounts. However, if the Bank receives a claim to funds Credited or to be Credited to the CFS Account or to a particular Client Account, the Bank may in its discretion refuse to comply with any Instruction in relation to those funds until:
- a. ordered to comply by a Court of competent jurisdiction;
 - b. indemnified (to the Bank's reasonable satisfaction) against all liability or loss which the Bank may incur or suffer if it complies with such Instruction; or
 - c. the claim has been resolved to the Bank's reasonable satisfaction.

Account closing

- 4.14 A Client Account must have a nil balance before it can be closed.
- 4.15 All Client Accounts must be closed before the CFS Account can be closed.

5. Operation of Online Service

- 5.1 This clause 5 applies if the Bank provides the Online Service to you.

Access

- 5.2 The Bank will use all reasonable endeavours to provide online access to the Service at all times.
- However, the Bank will every night undertake batch processing outside normal business hours (usually from 8pm to 2am, although this is subject to change). During such times:

- a. Users can log-in to the Service to view the Client List and access information about the CFS Account, Client Accounts and pending Instructions; but
- b. all other functions (including opening and closing Client Accounts and giving Credit Instructions) will be disabled.

Furthermore the Bank will periodically undertake other system maintenance and upgrades outside normal business hours. During such times users will not be able to login to the service whatsoever.

- 5.3 If at any time online access to the Service is disrupted due to internet outage or any system or equipment failure (whether at your end, the Bank's end, or otherwise), then (notwithstanding anything to the contrary in this clause 5):
- a. any User who is an Authorised Signatory may by Manual Instructions signed by him or her request such information and reports in relation to the Client List, CFS Account and Client Accounts as are from time to time made available through the Service; and
 - b. an Instruction may be given by Manual Instruction signed by the same number and level of Users (being Authorised Signatories) as would be required to give and (if required) authorise that Instruction online.

You agree that if the Bank receives any Instruction so given by Manual Instruction, the Bank may assume that access to the Service has been disrupted, and may accordingly act on that Instruction, without the need for further enquiry.

The provisions relating to information delivery and the processing, variation and cancellation of Instructions given by Manual Instruction pursuant to the Manual Service, as set out in clause 6, will apply (subject to all necessary amendments) to requests and Instructions by Manual Instruction under this clause 5.3. You must ensure that there are at all times sufficient Authorised Signatories to give and (if necessary) authorise Instructions by Manual Instruction when online access to the Service is disrupted.

Range of Users

- 5.4 A range of Users may be appointed to log-in to and use the Service. A particular User's authority to engage in a given transaction through the Service will depend on his or her level of authorisation, as set out in clauses 5.7 to 5.11.

- 5.5 The range of Users is:
- Administrators;
 - Authorisers; and
 - Sub-users.
- 5.6 There must at all times be at least one Administrator. The appointment of other Users is optional, depending on your requirements.

Administrators

- 5.7 An Administrator is the highest level of User. An Administrator has authority to:
- appoint or remove Users (as set out in clause 5.10) and grant them specified Access Rights. (However, an Administrator cannot appoint a User as an Authorised Signatory.)
 - allocate all User IDs, set all Users' initial Passwords and reset all Users' Passwords.
 - allocate all User IDs, set all Users' initial Passwords, reset all Users' Passwords, apply for NetGuard Tokens for individual Users and apply for a single NetGuard Token to be used for a range of internet banking services (as set out in clause 5.14e).
 - add a new Client to, delete a Client from, and amend a Client's details in, the Client List.
 - open and (once it has a nil balance) close any Client Account.
 - generally instruct the transfer of Client Funds from the Clearing Account to the CFS Account and give any Instruction in respect of the CFS Account and all Client Accounts.
 - authorise Controlled Instructions initiated by other Users.
 - Subject to clause 5.20, request the Bank to cancel or amend an Instruction after it has been given and (if required) authorised, if the Bank has not yet fully processed it.
 - view all information relating to the Client List, Clearing Account, CFS Account, Client Accounts and pending Instructions which is from time to time made accessible to Users through the Service.
 - apply for NetGuard Bypass, as set out in clause 5.15.

However, you are able to specify in your Application that Controlled Instructions, being Instructions to:

- vary the directions given in your Application under clause 4.8b) relating to the Account to which interest Credited to Client Accounts must be paid when due (either generally or in relation to particular Client Accounts);
 - Credit any monies to, or Debit any monies from, the CFS Account; or
 - Credit any monies to, or Debit any monies from, a Client Account,
- require additional authorisation. In that case, any Controlled Instruction given by an Administrator will need to be authorised by another Administrator or an Authoriser before being processed.

Authorisers

- 5.8 An Authoriser has authority to:
- add a new Client to, delete a Client from, and amend a Client's details in, the Client List.
 - open and (once it has a nil balance) close any Client Account.
 - generally instruct the transfer of Client Funds from the Clearing Account to the CFS Account and give any Instructions in respect of the CFS Account and all Client Accounts, subject to authorisation of Controlled Instructions by an Administrator or another Authoriser, if so required under your Application.
 - authorise Controlled Instructions initiated by other Users.
 - view all information relating to the Client List, Clearing Account, CFS Account, Client Accounts and pending Instructions which is from time to time made accessible to Users through the Service.

Sub-users

- 5.9 A Sub-user has authority to:
- add a new Client to, delete a Client from, and amend a Client's details in, the Client List.
 - initiate Controlled Instructions in respect of each Client Account for authorisation by an Administrator or (if appointed) Authoriser.
 - view all information relating to the Client List, Clearing Account, CFS Account, Client Accounts and pending Instructions which is from time to time made accessible to Users through the Service.

All Controlled Instructions given by a Sub-user require authorisation. In your Application you must specify whether Controlled Instructions given by Sub-users require one or two such authorisations. A Controlled Instruction given by a Sub-user will not be processed until the necessary authorisations have been given.

Appointment of Users

- 5.10 The following provisions apply to the appointment of Users:
- The only Persons who may be Administrators are:
 - you (but if you are joint holders then any of you, and if you are a company, then a director); or
 - authorised signatories for your Clearing Account and CFS Account under your Account Operating Mandate.
 - In your Application you must appoint an Administrator. The Bank recommends that you (or if you are a company, a director) are appointed as the first Administrator.
 - Additional or replacement Administrators may be appointed by:
 - the existing Administrator (subject to the Bank receiving your signed authorisation); or
 - you.

However, there may not be more than two Administrators at any one time.
 - An Administrator may be removed by you or (if there are two Administrators) the other Administrator. However, you must ensure that there is at least one Administrator at all times.

- e. If you require the appointment of one or more Authorisers (to assist the Administrators in giving Instructions and/ or authorising Controlled Instructions), you may specify this in the Application. The Administrator (or if there are two Administrators, either of them) may then appoint as many Authorisers as required.
- f. The Administrator (or if there are two Administrators, either of them) may appoint as many Sub-users as required.
- g. Only individuals may be appointed as Users.
- h. It is your responsibility to ensure that an Administrator promptly updates all User details and details of all Access Rights afforded to those Users.

5.11 For the avoidance of doubt:

- a. an Administrator can be appointed only by yourself or (subject to the Bank receiving your signed authorisation) by another Administrator;
- b. you can appoint or remove any Administrator notwithstanding that you may never have been, or no longer be, an Administrator yourself (provided that you must ensure that there must at all times be no less than one and no more than two Administrators);
- c. where two Administrators have been appointed, they both have the same rights and either one can remove the other; and
- d. only you can nominate the Clearing Account and CFS Account, specify whether or not Authorisers are able to be appointed, specify whether or not Controlled Instructions given by Administrators or Authorisers require additional authorisation, appoint or remove Authorised Signatories or (save as contemplated by clause 5.7j.i) otherwise alter your mandate to the Bank pursuant to your Application.

Security

5.12 A User must enter a valid Access Number, User ID, Password and (unless NetGuard Bypass applies under clause 5.15) NetGuard Log-in Code in order to log-in to and use the Service.

5.13 The Administrator must allocate a User ID and initial Password to every User. The Password must thereafter be changed by that User.

5.14 NetGuard:

- a. A NetGuard Log-in Code is a set of numbers randomly generated by a NetGuard Token and valid for approximately one minute. The User is required to enter the NetGuard Log-in Code which is valid at the time of use.
- b. A User must enter a NetGuard PIN to cause a particular NetGuard Token to generate a NetGuard Log-in Code.
- c. Every User requires a unique NetGuard Token. A NetGuard Token may only be used by the User to whom it is currently issued (so that Users may not share NetGuard Tokens or borrow each other's NetGuard Tokens). However, the Administrator may apply to the Bank that a User may reuse a NetGuard Token previously issued to a different User provided:
 - i. the NetGuard Token is still in the physical possession of the Administrator or you; and
 - ii. the NetGuard Token has been deactivated.

Such application must be made in the manner from time to time required by the Bank and is subject to approval by the Bank.

A NetGuard Token cannot be reused pursuant to this clause if it is currently being used in respect of internet banking for Accounts which other nominated customers hold with the Bank (pursuant to clause 5.14e.ii).

- d. The Bank will issue a NetGuard Token to a User upon application by you or the Administrator. Such application must be made in the manner from time to time required by the Bank and is subject to approval by the Bank.
- e. You or the Administrator may apply that a particular User may use a single NetGuard Token to conduct internet banking in respect of both:
 - i. the CFS Account (together with the Client Accounts opened under it) through the Service; and
 - ii. as the application may specify:
 - other Accounts you hold with the Bank, through other internet banking services provided to you by the Bank (such as through the Internet Banking for Business service); and/or
 - Accounts which other nominated customers (such as your related companies, if you are a company) hold with the Bank.

Such application must be made in the manner from time to time required by the Bank and is subject to approval by the Bank. Clause 5.15b will apply whenever such approval is granted.

- f. The Bank will mail all NetGuard Tokens issued under clause 5.14d, to the Relevant User at the address the Bank currently holds for you. The Bank will separately notify the Relevant User of the initial PIN number needed to activate the NetGuard Token issued to him or her. In respect of NetGuard Tokens reused pursuant to clause 5.14c the Bank will separately notify the Relevant User of the unblock code required to reactivate the NetGuard Token that has been reassigned to him or her. During the activation process (or reactivation process as the case may be) the Relevant User will be required to select a new NetGuard PIN. The Relevant User can change his or her NetGuard PIN at any time.
- g. NetGuard Tokens will at all times remain the Bank's sole property and must be returned to the Bank upon demand.

5.15 NetGuard Bypass:

- a. If a User is for any reason unable to access his or her NetGuard Token (for example because a lost or stolen NetGuard Token is still in the process of being replaced, or because the User has forgotten his or her NetGuard Token elsewhere), the Administrator may apply to the Bank that the Users be temporarily enabled (in accordance with the Bank's processes and policies from time to time) to log-in to and use the Service without their having to enter NetGuard Log-in Codes ("NetGuard Bypass").
Such application must be made in the manner from time to time required by the Bank and is subject to approval by the Bank.
- b. If any User may use a single NetGuard Token to log-in to and use a range of internet banking services (as contemplated by clause 5.14e), any activation of NetGuard Bypass will automatically apply to all internet banking services able to be accessed using that NetGuard Token. Consequently:
 - i. You accept and agree that, where any User may use the same NetGuard Token to log-in to and use the Service as well as any other internet banking service which the Bank provides to you, then any NetGuard Bypass approved in respect of the Service will also apply in respect of such other internet banking service (and vice versa).

This provision prevails over any inconsistent provisions under any mandate or other terms and conditions governing the relevant internet banking services or the Accounts in respect of which they are provided.

- ii. The Bank will not approve NetGuard Bypass where the same NetGuard Token may be used to conduct internet banking in respect of several different customers' Accounts unless each such customer (or a Person authorised by such customer to operate its relevant Accounts) consents to the application.

If your Administrator consents to a NetGuard Bypass application made by or on behalf of another such customer, your Administrator will be deemed to have applied for NetGuard Bypass in respect of the Service.

- c. You acknowledge and agree that NetGuard Bypass may expose you and your business to increased risk of fraudulent use of the Service and that you accept such risk.

5.16 Security measures:

You must ensure compliance with the following security measures (and you hereby agree to do so):

- a. All Passwords must be suitably secure alpha-numeric combinations (e.g. they may not comprise birth dates or reflect other easily accessible personal data).
- b. No User's Password or NetGuard PIN may be the same as, or similar to, any other password or personal identification number of that User.
- c. Every Password and NetGuard PIN must be periodically changed (at such intervals as is consistent with safe internet use) to one not previously used by the User.
- d. A User's Password as set or reset by an Administrator must be known only by that User and the Administrator(s), while a User's self-selected Passwords and NetGuard PINs must be known only by that User.

In particular:

- i. the Administrator(s) must use appropriately secure notification systems;
- ii. Passwords and NetGuard PINs must not be disclosed to any other Person (including bank staff, police or family members) or in response to any emails requesting disclosure;
- iii. Passwords and NetGuard PINs must not be recorded, nor stored (including electronically) in a form or manner in which they may be accessible or intelligible to, or decodable by, any other Person; and
- iv. Users must avoid being observed while entering a Password or NetGuard PIN on a Computer or NetGuard Token and must not leave a Computer or NetGuard Token unattended while logged in to the Service.
- e. All NetGuard Tokens must be kept safe from loss, theft and damage and no NetGuard Token may be accessed or used by any Person other than the Relevant User.
- f. The records for the Clearing Account, CFS Account and Client Accounts must be carefully checked and the Bank must be promptly advised of any error, discrepancy or unauthorised transaction.
- g. The Bank must be notified immediately if:
 - i. a User's Password as set or reset by an Administrator has become or may be known to anyone other than that User or an Administrator;
 - ii. a User's self-selected Password or a NetGuard PIN has become or may be known to anyone other than that User; or
 - iii. a NetGuard Token is lost or stolen or has been or is at risk of being used by anyone other than the Relevant User.

Such notice must be given by submitting the notification form provided for that purpose on the Bank's website or calling 0800 999 4242 or (if calling from overseas) 0064 4 931 8234 (international call charges will apply). In addition, in the case of paragraphs (i) and (ii) above the relevant Password or NetGuard PIN must be changed immediately.

- h. Appropriate anti-virus, firewall, anti-spyware, critical operating system security updates and other security software must be established and maintained up to date on every Computer used for the purposes of the Service to protect against code contamination, unauthorised access and data theft. No attachments or software from untrustworthy or unknown sources may be opened or run on any such Computer.
- i. No User may use an account segregation system or software which:
 - i. lets a User see all your online accounts from different websites on the one website;
 - ii. requires a User to input or disclose a Password or NetGuard PIN; and
 - iii. is not provided by the Bank.
- j. Every User must follow all reasonable security warnings from time to time given by the Bank (including by posting on its website) about the appropriate processes and safeguards to follow when using the Service or conducting internet banking generally.

- 5.17 If a set number (as determined by the Bank in its sole discretion from time to time) of incorrect log-in attempts are made due to the use of an invalid Password or NetGuard Log-in Code, then the Bank will suspend access to the Service by the User whose User ID was entered. If this happens, the Administrator must contact the Bank for assistance to reinstate the User's access to the Service.

- 5.18 If a set number (as determined by the Bank in its sole discretion from time to time) of incorrect attempts are made to generate a NetGuard Log-in Code due to the use of an invalid NetGuard PIN, then the relevant NetGuard Token will be deactivated. If this happens, the Administrator must contact the Bank for assistance to reactivate that NetGuard Token.

Processing of Instructions

- 5.19 Subject to clause 5.3, Instructions will generally be processed as and when they are given and (if required) authorised. However, certain Instructions (including in particular Instructions to Credit an Account held with another financial institution) will generally be processed overnight (or if the following day is not a Business Day, then by the next Business Day).
- 5.20 An Instruction can generally not be withdrawn or amended once it has been given and (if required by these Terms) authorised. However, amendment or cancellation of Instructions that have not yet been fully processed may be possible in exceptional instances, at the Bank's sole discretion. The Administrator should contact the Bank for assistance. The Bank is unlikely to be able to assist without the signed agreement of all relevant Account owners.

6. Operation of manual service

- 6.1 This clause 6 applies if the Bank provides the Manual Service to you.
- 6.2 The Manual Service enables Client Accounts to be opened and operated, and account information in relation to such Client Accounts to be obtained, by Manual Instructions.

- 6.3 Manual Instructions must be:
- signed by the number of Authorised Signatories required under your Account Operating Mandate; and
 - clearly state the name(s) of, and be signed by, the Authorised Signatory(ies) giving that Instruction.
- 6.4 The following operating Instructions can be given:
- an Instruction to Credit monies to, or Debit monies from, the CFS Account or a specified Client Account; and
 - an Instruction to close a specified Client Account once it has a nil balance.
- 6.5 An Authorised Signatory may at any time give an Instruction (or give a standing Instruction) requesting the following information:
- the Client List, showing each Client's details and details of his or her Client Accounts;
 - the account details of the CFS Account and all, or any specified, Client Accounts (including all account balances, transaction histories, transaction details and other account details);
 - such other information relating to the CFS Account and the Client Accounts as is from time to time made accessible to Authorised Signatories through the Manual Service.
- The Bank will deliver such information in accordance with its delivery practices from time to time (as advised by the Bank upon request).
- 6.6 Instructions are only processed on Business Days, at various times as determined by the Bank from time to time.
- 6.7 An Authorised Signatory may at any time by Manual Instructions request the variation or cancellation of an Instruction that has not yet been processed by the Bank. The Bank will endeavour to cancel or vary the Instruction as requested, but has no obligation to do so.

7. Instructions

General

- 7.1 Subject to these Terms, you are responsible for every Instruction (including every Instruction to Debit and Credit monies) in relation to the CFS Account and each Client Account, regardless of whether that Instruction is from you, an Authorised Signatory, a User, a Person otherwise authorised by you or any other Person acting with or without your knowledge or consent.
- 7.2 You are responsible to ensure that all information included in an Instruction is complete, accurate and correct.
- 7.3 An Instruction must not be subject to any conditions. The Bank will act on a conditional Instruction as if it were an unconditional Instruction.
- 7.4 No daily or transaction limits can be placed on Instructions or particular categories of Instructions.
- 7.5 The Bank is not obliged to act on any Instruction which appears, in the Bank's opinion, to be contrary to any applicable law, regulation, government, court, regulatory body's or applicable professional body's order, rule, or direction, or in circumstances in which the Bank deems it legally inadvisable to act upon such Instruction.

8. Your liability

- 8.1 You are not liable for:
- any losses for which the Bank is liable under clause 9, including any losses to the extent that they result from fraud, negligence or wilful misconduct by the Bank or its officers, employees or agents;
 - any unauthorised transaction through the Service by a Person who is not a User, before an Administrator could access the Service for the first time (unless you or a User acted fraudulently or negligently or otherwise contributed to such unauthorised transaction being conducted);
 - any unauthorised Instruction given using a NetGuard PIN, if the initial PIN number used to activate the relevant NetGuard Token was not delivered to the Relevant User, unless:
 - the Bank was given an incorrect address to which to deliver that initial PIN number; or
 - you or a User acted fraudulently or negligently, or otherwise contributed to such unauthorised Instruction being given; or
 - any unauthorised Instruction given while the Service was suspended or after the Service was terminated by the Bank.

- 8.2 If you have promptly reported to the Bank the actual or possible:

- disclosure of a Password or NetGuard PIN;
- loss or theft of a NetGuard Token; or
- unauthorised access to the Clearing Account, CFS Account or a Client Account through the Service,

then you are not liable for any loss arising from any of the above events occurring after the Bank has been notified of this. This protection will not apply if you or a user have acted fraudulently or negligently or have contributed to such unauthorised disclosure, loss, theft or unauthorised access.

- 8.3 Subject to clauses 8.1 and 8.2, and save as provided in clause 9, you will be liable if an unauthorised transaction occurs through the Service, including if:
- you or a User acted negligently or fraudulently; or
 - you breached these Terms (including without limitation clause 5.16, for example by failing to ensure that a Password was suitable as a password, failing to ensure that no Password (including an initial Password) or NetGuard PIN was disclosed to other Persons, or failing to notify the Bank promptly of actual or possible disclosure); or
 - appropriate internet banking security measures were not adopted by any Person in connection with any NetGuard Token used in respect of both your CFS Account and other Accounts, as contemplated by clause 5.14(e).

In that event, your maximum liability will be the lesser of:

- the actual loss at the time of notification to the Bank; or
- the maximum amount deposited in the Clearing Account and the CFS Account (inclusive of any amounts Credited to Client Accounts) between the time the unauthorised access occurred and the time you notified the Bank.

Fraudulent and Unauthorised Transactions

- 8.4 If you, an Authorised Signatory or a User use the CFS Account or a Client Account (or allow it to be used) to process:
- fraudulent transactions; or
 - transactions that have not been authorised by the relevant Client,
- you may be liable for some or all of the loss suffered by the Person who has been defrauded or by such Client.

9. The Bank's liability

- 9.1 You acknowledge that:
- the Service may expose you to increased risk of fraud in respect of Client Funds by Authorised Signatories, Users or third parties; and
 - you accept such risk.
- 9.2 The Bank will take all reasonable precautions on its part to ensure that the information input through the Service will remain confidential and protected from unauthorised access by third parties. However, except as otherwise required under the Consumer Guarantees Act 1993 (if applicable under the Standard Terms), the Bank will not be responsible for any loss, damage or liability to you or your business arising from the loss, alteration or disclosure of any information transmitted which is the result of any event, activity or circumstance beyond the Bank's reasonable control.
- 9.3 The Bank will use reasonable care and skill in providing the Service. However, subject to complying with its obligations under the Consumer Guarantees Act 1993 (if applicable under the Standard Terms), the Bank will not be responsible for any loss, damage, cost, expense or liability (whether in contract, tort or otherwise, and whether direct, indirect or consequential, and whether economic or otherwise) that you or your business suffer or incur by reason of, or in connection with, the provision or operation of the Service save to the extent that this results from fraud or negligence on the part of the Bank, its agents, its officers or its employees.
- 9.4 In particular, but without limiting the generality of the foregoing, the Bank will not be responsible for any loss incurred by reason of or in connection with:
- any forgery of an Authorised Signatory's signature (unless the forgery was evident);
 - any Instructions given or authorised without authority or in excess of authority;
 - any use of Access Rights or a Password or NetGuard PIN without authority or in excess of authority;
 - any data input error;
 - an Authorised Signatory's or User's inability to access the Service or any application associated with or reliant on the Service at any time, any failure or delay in providing the Service or a malfunction of any systems or equipment supporting the Service (including without limitation the NetGuard system, any NetGuard Tokens, or any telecommunications equipment);
 - any event or cause outside the Bank's reasonable control (including, but not limited to, failure
 - of a Receiving Financial Institution, power failure or fluctuations, equipment, systems or
 - telecommunication link defects or failures, or strikes, lockouts or industrial disturbances); or
 - any fraudulent act, negligence or error on the part of yourself, any Authorised Signatory or User or any of your employees, agents, consultants or contractors (whether acting within the terms of their appointment or not) and/or any third party.
- The Bank reserves the right to request access to the Computers used by Users to verify compliance with clause 5.16. If you refuse the Bank's request for access then the Bank may refuse your claim.
- 9.5 Except as otherwise required under the Consumer Guarantees Act 1993 (if applicable under the Standard Terms), and notwithstanding any other provision of these Terms (including without limitation clause 9.3), the Bank will not in any circumstances be liable for any:
- indirect; or
 - consequential,
- damage, liability or loss (including without limitation loss of profits) that you or your business suffer or incur by reason of, or in connection with, the provision or operation of the Service, whether or not such damage, liability or loss is attributable to the Bank, its officers, agents or employees and/or any other Persons.
- 9.6 The Bank will not have any responsibility or liability for any internal or external use that you, an Authorised Signatory, a User or anyone else may make of any data, information or any other statement provided through or in relation to the Service.
- 9.7 You (and if more than one, each of you jointly and severally) indemnify the Bank fully against any Costs the Bank incurs in relation to the CFS Account and every Client Account (not being liability, loss or damage for which the Bank is liable under these Terms). Without limiting the foregoing, you indemnify and continue to hold indemnified the Bank in full for any Costs resulting from any Person claiming against the Bank as a consequence of the Bank performing an Instruction.

10. Suspension and termination

- 10.1 The Bank may at any time suspend or terminate your use of the Service in whole or in part. The Bank will normally give you at least 14 days' notice before suspending or terminating your use of the Service (whether in whole or in part), unless the suspension or termination is:
- in compliance with a Court order;
 - where you have acted unlawfully;
 - where you have breached these Terms, the terms and conditions governing the Clearing Account or CFS Account or the terms and conditions governing any service or facility provided to you through the Service;
 - where you have, or an Authorised Signatory or User (as the case may be) has, acted abusively to the Bank's staff; or
 - where the Bank is otherwise so entitled under the Banking Code.
- The Bank isn't liable if you suffer any loss because of such suspension or termination.
- 10.2 You may terminate the Service provided to you at any time by giving not less than three Business Days' written notice of termination to the Bank.

- 10.3 If the Service is suspended or terminated:
- all pending Instructions will be cancelled thereby; and
 - all monies Credited to Client Accounts (together with all accrued but unpaid interest thereon) will be Credited to the Clearing Account, following which the Client Accounts (and in the case of termination, the CFS Account) will be closed.
- 10.4 Any suspension or termination of the Service will not affect obligations incurred by you in relation to the Service prior to such suspension or termination. All amounts due and owing to the Bank in respect of the Service, if not already due and payable, will become immediately due and payable at termination.
- 10.5 Where the Application for the Service was made in the name of two or more Persons ("Holders"), termination by some of those Holders ("Departing Holders") of their use of the Service does not affect the rights and obligations of:
- the remaining Holders in relation to their use of the Service, whether prior to or after the termination time that applies to the Departing Holders; or
 - the Departing Holders in relation to any use of the Service, whether by themselves or the remaining Holders, prior to the termination time that applies to the Departing Holders.

11. Variations

- 11.1 The Bank may vary these Terms unilaterally from time to time. The Bank will give you at least 14 days' notice of any such variation, unless it is necessary in the circumstances for the Bank to give a lesser notice period (for example, where it is necessary to protect the security of the Service).
- 11.2 The Bank has the right, in its sole discretion, by prior notice to change or cancel any of the services that are offered through the Service or to cancel the Service itself.

12. Fees and charges

- 12.1 You must pay the Bank on demand the fees and charges if any (calculated at the Bank's prevailing rates, as notified by the Bank from time to time) for your ongoing use of the Service and any NetGuard Tokens supplied by the Bank.
- 12.2 You authorise the Bank to debit such fees and charges from any Account you hold with the Bank.
- 12.3 The Bank may from time to time:
- vary the amount, frequency or time for payment of any fees or charges; and
 - introduce new fees and charges, relating to the Service and NetGuard Tokens. The Bank will keep you advised of any such changes in accordance with the Banking Code.
- 12.4 You are responsible for all telecommunication and internet service provider costs associated with your use of the Service.
- 12.5 You acknowledge that another financial institution may impose fees and charges where any commission or Client Funds are transferred to an Account held with that financial institution.

13. Notices

- 13.1 All notices from the Bank required to be in writing shall be:
- in writing signed (including electronically) by an authorised officer of the Bank (this includes correctly authorised email messages from the Bank);
 - given by email, letter, or (for general communications) by displaying information at the Bank's branches or in statements in the printed media, including public notices, and (for changes to information posted on the Bank's website, including variations of these Terms) by displaying notice of such changes on that website (provided that if at any time the Banking Code imposes additional notice requirements, then the Bank will comply with those requirements); and
 - deemed to be duly given if left at the address of the first named party in the registration form for the Service, sent by prepaid ordinary post (airmail if posted from a place outside New Zealand) to that party's address, sent via email to that party's email address or (for general communications) if displayed in one of the ways described at clause 13.1(b).
- 13.2 All notices and other communications from you to the Bank under these Terms or in relation to the Service (other than Instructions) shall be:
- in writing signed by you (and if more than one, each of you), or if you are a company, an authorised officer; and
 - delivered or sent by prepaid ordinary post (airmail if posted from a place outside New Zealand) to the address in clause 13.5 (or as otherwise advised by the Bank from time to time).
- 13.3 A notice is taken to be received:
- in the case of a posted letter, on the third day after posting;
 - in the case of an email, when it enters the recipient's Computer (and is effective when received even if the recipient is unaware thereof), provided that any termination notice given by you under clause 10.2 shall be deemed given on the later of the above date or the date of actual receipt.
- 13.4 An email is deemed to be sent from the place where the sender has its place of business and to be received where the recipient has its place of business (or if the sender or receiver has more than one place of business, then its principal place of business, or if it has no place of business, then its usual place of residence).
- 13.5 All notices from you to the Bank should be sent to:
- Client Fund Service
Bank of New Zealand Customer Account Services PO Box 2112, Wellington

14. Miscellaneous

- 14.1 You acknowledge and agree that:
- the Bank may from time to time require proof, to its satisfaction, of the identity of yourself, any Person authorised to give Instructions through the Service and any Person for whose benefit or on whose behalf funds are invested through the Service; and

- b. you will promptly on request provide the Bank with such proof.
- 14.2 The Bank's records of transactions through, or access to, the Service shall (in the absence of manifest error) be prima facie evidence of such transactions or access.
- 14.3 The Bank will comply with the Banking Code as it applies to these Terms.
- 14.4 You must obtain all necessary government approvals, and comply with all requirements, as may be necessary from time to time in relation to any Instruction.
- 14.5 These Terms shall be governed by and interpreted according to the law of New Zealand. You submit to the non-exclusive jurisdiction of the New Zealand courts to hear and determine all disputes arising under these Terms or in connection with the Service.

15. Meaning of words

In these Terms (unless the context otherwise requires):

"Access Number" means a numerical code which the Bank allocates to your CFS Account and which every User must enter when logging in to the Service.

"Access Rights" means, in relation to CFS Account and the Client Accounts, the access available to a User (as allocated from time-to-time by an Administrator pursuant to these Terms).

"Account" means an account held by any Person with a financial institution, including the Bank.

"Account Operating Mandate" means the account operating mandate given by you to the Bank in respect of:

- a. the Clearing Account (to the extent that transactions are conducted on it through the Service); and
- b. the CFS Account, as recorded in the registration form which you provided under clause 2.2a., together with all modifications thereto under clause 2.4.

"Administrator" means, in relation to the Online Service, an individual appointed to oversee the operation of the Service as it relates to the Clearing Account, CFS Account and the Client Accounts, appoint and remove Users, allocate Access Rights and otherwise administer and use the Service as provided in these Terms.

"Application" means your original application to the Bank (made on the registration form provided by the Bank) to provide the Service to you, together with all modifications from time to time requested by you in accordance with clause 2.4.

"Authorised Signatory" means an individual:

- a. whom you have nominated, in the Account Operating Mandate, as authorised to:
 - i. give Instructions to transfer Client Funds from the Clearing Account to the CFS Account; and
 - ii. give Instructions in respect of the CFS Account (together with every Client Account opened under the CFS Account); and
- b. whose appointment as an Authorised Signatory has not been terminated by you in accordance with these Terms.

"Authoriser" means, in relation to the Online Service, an individual appointed by an Administrator to use the Service and authorise Instructions.

"Bank" means Bank of New Zealand and its successors and assigns.

"Banking Code" means the Banking Code issued by the New Zealand Banking Association, Te Rangapū Pēke (as the same may be amended or replaced from time to time).

"Business Day" means a day other than a Saturday, Sunday or gazetted public holiday observed in New Zealand (but includes provincial anniversary days).

"CFS Account" means an Account which you hold with the Bank:

- a. named as the CFS Account in your Application (as accepted by the Bank); and
- b. in which all Client Funds invested through the Service are in fact deposited (notwithstanding that such Funds are notionally invested in various Client Accounts).

"Clearing Account" means an Account which you hold with the Bank:

- a. named as the Clearing Account in your Application (as accepted by the Bank); and
- b. to which the principal monies and interest Credited to Client Accounts must (in default of any contrary Instruction in accordance with these Terms) be Credited on the due date for payment thereof.

"Client" means a Person for the benefit of whom, or for whose account, you hold funds (and includes, where the context so permits, Persons for whose joint benefit or for whose joint account you hold funds).

"Client Account" means a notional account opened through the Service in the name of a particular Client.

"Client Call Account" means a Client Account opened on terms that all funds Credited to it are invested at call.

"Client Funds" means monies held by you for the benefit or to the account of one or more Clients.

"Client List" means the list of Clients in respect of whom Client Accounts have been or can be opened.

"Computer" includes (without limitation) any device which may be used to access a computer or a network from a remote site or while mobile.

"Controlled Instructions" has the meaning given to that term in clause 5.7f.

"Costs" includes general costs, solicitor-client costs, fees, losses, liabilities and taxes.

"Credit":

- a. in relation to a Client Account, means to allocate funds deposited in the CFS Account to that Client Account;
- b. in relation to the CFS Account, means (as the context may require):
 - i. to transfer monies from the Clearing Account to the CFS Account; or
 - ii. to reallocate funds from a Client Account to the CFS Account;
 and
- c. in relation to any other Account, means to pay or transfer monies to that Account.

"Credit Instruction" means an Instruction to Credit funds to an Account or a Client Account.

“Debit”:

- a. in relation to a Client Account, means to reallocate funds from that Client Account to the CFS Account and then transfer the same from the CFS Account to another Account;
- b. in relation to the CFS Account, means (as the context may require):
 - i. to allocate funds from the CFS Account to a Client Account; or
 - ii. to transfer monies from the CFS Account to another Account; and
- c. in relation to any other Account, means to withdraw monies from that Account or to transfer monies from that Account to another Account.

“Manual Instructions” means providing the Bank with instructions without using the Online Service, by such methods as the Bank may allow from time to time.

“Manual Instructions Indemnity” means the indemnity provided by you under clause 2.2.c.

“Instruction” means any instruction given to the Bank through the Service in relation to the CFS Account or one or more Client Accounts (and includes where the context so permits a standing instruction given in your Application); and “to Instruct” bears a corresponding meaning.

“Manual Service” means the manual version of the Service.

“NetGuard” means the second-factor authentication security system supporting the Service which enables access to and use of the Service to be confined to Users who enter (in addition to the Access Number and their User IDs and Passwords) valid NetGuard Log-in Codes.

“NetGuard Bypass” means the temporary enabling of Users by the Bank (in accordance with the Bank’s processes and policies from time to time) to log-in to and use the Service without their having to enter NetGuard Log-in Codes.

“NetGuard Log-in Code” means a set of numbers randomly generated by a NetGuard Token.

“NetGuard PIN” means a set of numbers that enables a User to activate a NetGuard Token so that it will generate a NetGuard Log-in Code.

“NetGuard Token” means a device provided by the Bank which enables the Relevant User to source a NetGuard Log-in Code.

“Nominated Account” means, in relation to principal or interest Credited to a Client Account and falling due for repayment, the Account nominated in your Application or a subsequent Instruction as the Account to which such principal or interest must be Credited when due (subject to these Terms).

“Online Service” means the online version of the Service.

“Password” means a password that enables a User to log-in to and use the Service.

“Persons” includes individuals as well as companies and other bodies corporate.

“Receiving Financial Institution” means the financial institution that maintains an Account to which funds must be Credited pursuant to a Credit Instruction.

“Relevant User” in relation to a NetGuard Token means the User to whom that NetGuard Token is currently issued by the Bank.

“Service” means the Bank’s client fund management service provided pursuant to these Terms, and includes (unless the context otherwise requires) both the Online Service and the Manual Service.

“Standard Terms” means the Bank’s Standard Terms and Conditions for Operating Accounts (as amended from time to time).

“Sub-user” means, in relation to the Online Service, an individual duly authorised from time to time by an Administrator to use the Service in respect of the CFS Account and the Client Accounts and whose Access Rights are restricted to the rights specified in clause 5.9.

“Terms” means these Client Fund Service Terms and Conditions (as amended from time to time).

“User ID” means an alpha-numeric code that is allocated to a particular User by an Administrator and that is required to be entered by that User (in addition to the Access Number and that User’s Password and current NetGuard Log-in Code) when logging in to the Service.

“Users” means all Administrators, Authorisers and Sub- users appointed in respect of the CFS Account and the Client Accounts; and

“User” means any of them.

“You” and **“yours”** refers to the customer of the Bank making the Application. Where there is more than one such customer, “you” means all of such customers jointly and each of them severally. “You” includes your successors, permitted assigns and agents and, in relation to your rights to use the Service, any User.

Further Information

For more information, please contact us by calling 0800 269 4242 or visit bnz.co.nz