

THE NATIONAL BANK OF NEW ZEALAND  
Subscriber Agreement

January 2007



These Terms and Conditions are current as at 03 January 2007.

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The National Bank of New Zealand, part of ANZ National Bank Limited



## BACKGROUND

The National Bank has a Facility (the “**Facility**”) whereby it can issue Digital Certificates to individuals to enable those persons to identify themselves and the entities they represent to various National Bank Internet Products offered by the Group and thus allow authenticated and controlled or limited access to those systems.

The Subscriber wishes to obtain access to the Facility and to those National Bank Internet Products for use by its employees, officers and other persons authorised by it.

The Subscriber accepts responsibility for the due issuance of the Digital Certificates and any use made of the Certificates issued at the request of the Subscriber.



## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Definitions

In this agreement, the following expressions have the following meanings:

**“Applicant”** means an individual nominated by an Authorised Officer of the Subscriber as a person in favour of whom a Certificate may be issued.

**“Authorised Officer”** means a director or secretary of the Subscriber, or any other person appointed in writing, from time to time, by the Subscriber to act as an Authorised Officer and includes specifically those persons listed in Item 3 of the Schedule to this agreement, who will be responsible for ensuring that the issuance and use of Certificates he or she is responsible for complies with the terms contained in the Governing Documents.

**“Certificate”** means a secure token based record that:

- (a) **identifies The National Bank’s Certification Authority as the issuer;**
- (b) names or identifies a Certificate Holder;
- (c) **contains the Public Key of the Certificate Holder;**
- (e) **identifies the Certificate’s Validity Period;**
- (f) **is digitally signed by The National Bank’s Certification Authority; and**
- (g) **is used in conjunction with the corresponding Private Key whenever the Certificate Holder creates a Digital Signature in order to authenticate the holder to The National Bank. A Certificate includes not only its actual content but also all documents expressly referenced or incorporated in it.**

**“Certificate Holder”** means an individual nominated by or on behalf of a Subscriber who is named or identified in a Certificate issued in respect of that Subscriber or in a Linked Certificate.

**“Commencement Date”** means the date of execution of this agreement.

**“Confidential Information”** means any information or know how provided by one party or its Representative to the other party or its Representative whether provided orally or in any other form, including information concerning the first party’s business, systems, technology and affairs and information provided in support of an application for the Facility or any Certificate.

**“CP”** means The National Bank PKI Certificate Policy (Subscriber) issued by The National Bank, which is applicable to the Certificates, as amended from time to time.



“**CPS**” means The National Bank PKI Certification Practice Statement issued by The National Bank, which is applicable to the Certificates, as amended from time to time.

“**Digital Signature**” means the transformation of an electronic record by one person using a Private Key and Public Key cryptography so that another person having the transformed record and the corresponding Public Key can accurately determine:

- (a) **whether the transformation was created using the Private Key that corresponds to the Public Key; and**
- (b) **whether the record has been altered since the transformation was made.**

“**Facility Terms**” means this agreement, the CP, CPS and the Glossary.

“**Fee Schedule**” means the schedule, from time to time published by The National Bank, setting out the fees applicable to the issuance, use, cancellation, suspension and revocation of Certificates and the creation, operation and termination of the Facility.

“**Force Majeure**” means any act of god, war, revolution, terrorist act or other unlawful act against public order or authority, an industrial dispute, a governmental restraint or any other event or cause which is not within the reasonable control of The National Bank.

“**Glossary**” means The National Bank PKI Glossary issued by The National Bank, as amended from time to time.

“**Group**” means Australia and New Zealand Banking Group Limited ABN 11 005 357 522 and all related companies including:

- (a) **all related bodies corporate (within the meaning of section 9 of *the Corporations Act 2001 (Australia)*);**
- (b) **ANZ National Bank Limited within the meaning of section 2(5) of the *Companies Act 1993 (NZ)*.**

“**Linked Certificate**” means a Certificate issued by The National Bank in favour of an organisation other than the Subscriber where an Authorised Officer of the Subscriber has through an National Bank Internet Product granted access or authority rights to one or more National Bank Internet Products on behalf of the Subscriber in respect of that Certificate.

“**Loss**” means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages incurred by a person, and includes:

- (c) **the cost of any action taken by the person to protect itself against any loss or to preserve any right it has under the Facility Terms;**



- (d) **any taxes or duties payable by the person in connection with the Facility Terms (other than tax on its assessable income); and**
- (e) **where applicable, legal costs on an indemnity basis or on a solicitor and own client basis, whichever is higher.**

“**Representative**” of a party means that party's director, officer or employee.

“Subscriber's Certificate” means any:

- (f) **Certificate issued to an Authorised Officer (whether issued in respect of the Subscriber or some other person), or any Certificate issued to a Certificate Holder pursuant to an Authorised Officer's request even if such issuance is effected through the fraudulent or improper use of the Facility; or**
- (g) **Linked Certificate.**

“**Technology**” means the relevant computer software, Secure Token (including the Certificate and any application/software stored on the device) and reader (if any) to be provided to the Subscriber by The National Bank.

## **1.2 Definitions and interpretation**

- (1) Unless otherwise defined:
  - (a) **in this agreement, words and phrases used in this agreement and defined in the Glossary, have the same meaning; and**
  - (b) **in the CPS or the CP, words and phrases used in the CPS or the CP and defined in the Glossary have the same meaning.**
- (2) The interpretations and provisions in respect of construction and general interpretation contained in this agreement are deemed incorporated in the CPS and CP.

## **1.3 Precedence**

The documents making up the Facility Terms must be read in the following order of precedence:

- (1) the clauses in this agreement, then
- (2) the CP, then
- (3) the CPS, then
- (4) the Glossary.



If any conflict occurs between the provisions of any of the above, the documents lower in the order of precedence must be construed as narrowly as necessary to resolve that conflict. If the conflict is not resolved by reading down, the conflicting provisions are severed from the document lower in the order of precedence. The remaining provisions of that document remain enforceable to the fullest extent possible.

## **2 PROVISION OF FACILITY**

### **2.1 Request for facility**

The Subscriber acknowledges and confirms its request that the Facility be made available for its use upon the terms and conditions of and subject to the Facility Terms.

### **2.2 Acknowledgment of Facility implications**

The Subscriber acknowledges and represents to The National Bank that it is aware that the use of the Facility allows the issuance of Certificates to be held by individuals, and that the Subscriber will be fully responsible for any and all transactions which may be effected by or through the use of those Certificates, even if such transaction may be fraudulent or effected by a person other than the individual who was intended to hold the Certificate.

### **2.3 Application of CP and CPS**

The Subscriber agrees to be bound by the provisions of the CP and the CPS, which are deemed to be incorporated in this agreement.

## **3 SUBSCRIBER'S RESPONSIBILITY FOR APPLICANTS**

The Subscriber is fully and solely responsible for:

- (1) validating the identity of Applicants to the Subscriber's satisfaction;
- (2) validating the identity of Applicants in accordance with the Facility Terms and any other requirements notified by The National Bank to the Subscriber from time to time; and
- (3) the accuracy and completeness of the information provided by an Applicant in accordance with the Facility Terms or otherwise in order to obtain a Certificate.

## **4 SUBSCRIBER'S RESPONSIBILITY FOR AUTHORISED OFFICER**

The Subscriber must at all times have and maintain at least one Certificate Holder who is an Authorised Officer. The Subscriber warrants, covenants and agrees that each Authorised Officer has authority by use of his or her Certificate to bind the Subscriber in all respects, including without limitation, by:



- (1) variation of the Facility Terms;
- (2) making application for the issuance of further Certificates, on behalf of the Subscriber;
- (3) facilitating the issuance of further Certificates to Certificate Holders; and
- (4) creating Linked Certificates.

The Subscriber specifically acknowledges and agrees that any Authorised Officer has authority to appoint further Authorised Officers.

## **5 SUBSCRIBER'S RESPONSIBILITY FOR CERTIFICATE HOLDERS**

The Subscriber is fully responsible for ensuring that the usage of Subscriber's Certificates is in accordance with the Facility Terms. In particular and without limitation on the foregoing, the Subscriber is fully responsible for:

- (1) any transaction initiated by or approved by any person through the use of any Subscriber's Certificate, whether or not such transaction is one within the authority of the Certificate Holder or Subscriber, and even if such transaction is effected fraudulently;
- (2) the due discharge and performance of all obligations placed upon Certificate Holders under the Facility Terms;
- (3) appropriate training and induction of Certificate Holders in respect of the proper use of the Certificates, the requirements of the Facility Terms, and in particular the safekeeping of the Certificates, the Private Key and the Certificate Holder's pass-phrase;
- (4) ensuring that The National Bank is notified immediately in the event of the compromise or loss of any of the Subscriber's Certificates, Smart Cards, or the pass-phrase or Private Key of any Certificate Holder; and
- (5) ensuring the Subscriber's Certificates are only used for the purposes of identification to, or the effecting of any transaction with, a member of the Group and not for any other purpose.

## **6 SUBSCRIBER AND CERTIFICATE HOLDER OBLIGATIONS**

- 6.1 Subscribers must ensure that each Applicant provides complete and accurate responses to all requests for information made by or on behalf of The National Bank during the application, certification and authentication of identity processes.
- 6.2 Subscribers and Certificate Holders must comply with the Facility Terms and The National Bank Internet Products Terms.
- 6.3 The Subscriber and Certificate Holder agree:



- (1) any document or file signed with a Subscriber's Certificate Digital Signature is conclusive proof that the relevant Certificate Holder signed such document or file;
- (2) not to contest the validity or enforceability of such signed document under statute or under general law;
- (3) such signed document or file (whether the original or a copy of the original), if introduced as evidence in any judicial, arbitration, mediation or administrative proceeding is admissible to the same extent as though it had originated in a physical form;
- (4) to take reasonable precautions to prevent any compromise, modification, loss, disclosure or unauthorised use of any of the Subscriber's Certificates, Smart Cards or pass-phrase or Private Key of any Certificate Holder;
- (5) to review any Certificate issued to the Subscriber or Certificate Holder immediately following receipt to ensure that all information included in the Certificate is accurate and to notify The National Bank immediately if any of the information contained in the relevant Certificate is incorrect at the time of issuance or at any time after issuance;
- (6) to only use the Certificate and the corresponding Private Key for purposes authorised under the relevant Certificate Policy and only in a manner consistent with the Facility Terms and The National Bank Internet Products Terms;
- (7) to promptly instruct The National Bank to revoke a Certificate upon any actual or suspected loss, disclosure, or other compromise, of the Private Key or the relevant Certificate; and
- (8) to advise The National Bank when:
  - (a) **information contained in the Certificate becomes inaccurate, false or misleading;**
  - (b) **the Certificate Holder is no longer employed or affiliated with the Subscriber, nor holds a licence, permit, certification, registration, credentials or other authority identified in the Certificate; and**
  - (c) **a Certificate Holder is no longer authorised by the Subscriber to use or hold a Certificate.**

## **7 SUBSCRIBER'S RESPONSIBILITY FOR USE OF CERTIFICATES**

The Subscriber acknowledges and warrants that it is fully responsible for any and all liabilities and Losses arising from, and transactions effected or initiated by:



- (1) Proper Use: the authorised use of the Subscriber's Certificates, Smart Cards, pass-phrases or Private Keys;
- (2) Improper Use: the unauthorised use of the Subscriber's Certificates, including use by any third party who may have stolen or otherwise come into the possession of a Subscriber's Certificate or the Smart Card, pass-phrase and/or Private Key of any Certificate Holder; or
- (3) Linked Certificates: any use of a Subscriber's Certificate to operate a National Bank Internet Product in respect of another subscriber where the Subscriber has consented to linking of the relevant Certificate to such National Bank Internet Product.

## **8 THE NATIONAL BANK OBLIGATIONS**

The National Bank will:

- (1) comply, and ensure that its employees comply, with the conditions and obligations set out in the relevant CP and the practices set out in the CPS;
- (2) generate Certificates only on the receipt of properly formatted and verified Certificate requests;
- (3) make and receive Suspension and Revocation requests and take appropriate action;
- (4) issue a new Certificate to a Certificate Holder that suspects its Keys or Certificates have or may have become compromised or after receiving a properly formatted and verified request from the relevant Certificate Holder or Authorised Officer for a new Certificate;
- (5) ensure a copy of the relevant CP and the CPS is made accessible to each Subscriber;
- (6) correctly identify individuals requesting, or ensure procedures for identifying individuals have been followed by parties requesting Key issuance and Key Certification;
- (7) accept and verify the integrity and validity of Keys presented for certification; and
- (8) ensure that Private Keys and key transport access control mechanisms are not obtained by third parties prior to being received by a Certificate Holder.

## **9 ASSIGNMENT AND SUB-CONTRACTING**

The National Bank may, at its absolute discretion, assign all or part of its rights in relation to the Facility or engage sub-contractors to perform some or all of its obligations it has in relation to the Facility.



## **10 PRIVACY – APPLICANTS AND CERTIFICATE HOLDERS**

The Subscriber acknowledges that certain personal information, as specified in the Facility Terms, or as provided by an Applicant, will be collected and used by the Group, and various third parties associated with the operation of the Facility, in connection with the Facility and otherwise as specified in the Facility Terms. The Subscriber agrees to obtain from all Applicants and Certificate Holders an appropriate form of consent in respect of such collection, use and disclosure by the Group in accordance with the requirements of the Privacy Principles established under the *Privacy Act 1993 (NZ)* and any other relevant legislation.

## **11 PAYMENT OF FEES**

Fees may be payable in respect of the Facility. Where applicable, The National Bank will publish a Fee Schedule on a web-site made available to Subscribers. The Subscriber agrees to pay the fees (if any) in respect of the use of the Facility at the rates and within the timeframe specified in the Fee Schedule.

## **12 TECHNOLOGY**

### **12.1 Software licence**

The National Bank grants to the Subscriber a non-exclusive licence to use the Technology solely in connection with the Facility. This licence is only for the term of the Facility.

### **12.2 Return of materials**

Any Technology or other materials supplied by The National Bank under this agreement:

- (1) remain at all times the property of The National Bank or its licensors;
- (2) must be cared for maintained serviced and operated by the Subscriber at its expense in all respects except to such extent as The National Bank may otherwise agree; and
- (3) must be delivered up to The National Bank on demand at any time.

### **12.3 Other access equipment**

The Subscriber is solely responsible for obtaining and maintaining all other computer equipment and software and communications systems required to access the Facility.

### **12.4 Reservation of rights and liability**

All copyright, design or other industrial or intellectual property right of any kind subsisting in the Technology, associated documentation or any information supplied or received by the Subscriber in respect of the Facility is reserved to The



National Bank and its licensors, respectively. The Subscriber must not use, copy or deal with all or any of the same except in respect of the Facility and for purposes authorised specifically by The National Bank. In particular, the Subscriber:

- (1) agrees not to allow any other person access to the Facility except with The National Bank's prior written consent; and
- (2) acknowledges The National Bank provides no warranties in respect to any industrial or intellectual property provided to the Subscriber in connection with the Facility and that The National Bank disclaims all liability in relation to the provision of and use of that industrial or intellectual property.

### 13 WARRANTIES

Subscriber acknowledges, warrants and covenants that:

- (1) it has examined all information relevant to risks, contingencies and other circumstances arising from the creation and operation of the Facility and Certificates;
- (2) it is empowered to enter into this agreement and to do all things required by the Facility Terms and all things have been done which are necessary to make this agreement legally enforceable according to its terms and fully valid and binding on Subscriber; and
- (3) no statement or representation made by it or on its behalf to The National Bank before entering into this agreement is misleading or deceptive in any material respect.

### 14 TERM & TERMINATION

#### 14.1 Term

- (1) This agreement will continue indefinitely until terminated in accordance with **clause 14.2** or terminated by either party on 10 Business Days prior written notice to the other party.
- (2) Upon termination, The National Bank may in its absolute discretion provide a pro-rata refund of any fees paid pursuant to **clause 11**.



#### **14.2 Termination for cause.**

A party may terminate this agreement immediately by notice to the other party if:

- (1) the other party does not pay any amount when due under the Facility Terms, and has failed to pay the amount after being given 5 Business Days notice requiring it to do so;
- (2) the other party is subject to an Insolvency Event;
- (3) the other party commits a breach of the Facility Terms which is capable of being remedied and the breach is not remedied within 5 Business Days of a notice to the party in breach specifying the breach and requiring it to be remedied; or
- (4) the other party commits a breach of the Facility Terms which is not capable of being remedied.

#### **14.3 Termination not to prejudice rights**

Termination of this agreement does not prejudice the accrued rights or remedies of the parties.

#### **14.4 Consequences of termination**

Termination of this agreement terminates the Facility. Termination of the Facility terminates all Certificates issued to Certificate Holders. In such a case all the Certificates which were issued under this agreement will be revoked by The National Bank as near to as practicable to the date of termination. The Subscriber will nevertheless remain fully liable for any and all transactions effected or initiated prior to such revocations being effected.

#### **14.5 Survival of provisions**

**Clauses 12.4, 13, 14.4, 16 and 18** survive termination of this agreement for any reason.

### **15 AMENDMENT OF FACILITY TERMS**

#### **15.1 Changes do not require consent**

The Subscriber acknowledges and agrees that The National Bank:

- (1) reserves the right to vary from time to time the Facility Terms in accordance with the mechanism contained in **clause 15.2** without obtaining the Subscriber's or an Authorised Officer's consent to the variation; and
- (2) may make continued access to the Facility conditional upon receiving from the Subscriber or Authorised Officer acceptance of the varied Facility Terms.



## 15.2 Changes require notice

The National Bank may by notice to the Subscriber vary the Facility Terms by:

- (1) publishing the varied Facility Terms on The National Bank website which is accessible by the Authorised Officer; and
- (2) sending the Subscriber a notice in respect of such change at least 10 Business Days in advance of the date from which such change becomes effective.

## 16 LIABILITY AND LIMITATIONS

### 16.1 Indemnity by Subscriber

Subscriber fully indemnifies The National Bank, each member of the Group and their respective Representatives against all Loss arising directly or indirectly as a result of:

- (1) any breach of the Facility Terms (including warranties) by the Subscriber or any Certificate Holder;
- (2) use of the Technology or the Facility;
- (3) any misuse of a Subscriber's Certificate by any third party other than The National Bank, any member of the Group or their respective Representatives; and
- (4) any unlawful, negligent or reckless act or omission of Subscriber, its Representatives or Certificate Holders in the use of the Facility or the performance of the Facility Terms.

The above indemnity:

- (1) operates whether or not the Loss arises directly or indirectly as a result of breach of contract, negligence, breach of duty, breach of statute or otherwise;
- (2) may be enforced by any of the persons in whose favour it is made and before incurring any expense or making any payment to any person; and
- (3) is a continuing obligation of the Subscriber, separate and independent of any other obligation.

### 16.2 General Group limitation

Except as set out in **clause 16.4**, The National Bank, each member of the Group and their respective Representatives ("**Relevant Party**") is not liable to the Subscriber or its Representatives for any Loss which the Subscriber or its Representatives may suffer or incur in respect of:



- (1) any act or omission of a Relevant Party or its Representatives, including Suspension or Revocation of any Certificate;
- (2) any delay or failure by a Relevant Party to perform its obligations under the Facility Terms;
- (3) the provision of the Facility or the Technology to the Subscriber; or
- (4) any event of Force Majeure.

### 16.3 No liability for consequential loss

Neither The National Bank, any member of the Group nor any of their respective Representatives (collectively the "**Limited Persons**") is liable to the Subscriber or any Certificate Holder for any consequential, incidental or indirect loss or damage including loss of profit (whether consequential, incidental or indirect) resulting from a breach of any kind, including breach of contract, negligence of the Limited Persons, statute or otherwise.

### 16.4 Provisions implied by statute

To the extent permitted by law, The National Bank and each member of the Group excludes all implied warranties and conditions. If a law implies a condition or warranty and it cannot be excluded or modified in this agreement ("**Non-excludable Term**"), then the Non-excludable Term is taken to be included in this agreement. Where permitted by law, the liability of any member of the Group for any breach of the Non-excludable Term in respect of the Facility is limited at the option of The National Bank to any one or more of the following:

- (1) for goods, to:
  - (b) **replacement of the goods or supply of equivalent goods;**
  - (c) **repair of the goods;**
  - (d) **payment of the cost of replacing the goods or of acquiring equivalent goods; or**
  - (e) **payment of the cost of having the goods repaired, and**
- (2) for services, to:
  - (f) **supply of the services again; or**
  - (g) **payment of the cost of having the services supplied again.**



For the purposes of section 43(2) of the *Consumer Guarantees Act 1993 (NZ)*, the Subscriber represents that it will access and use the Facility and The National Bank Internet Products solely for the purposes of a business. The provisions of the *Consumer Guarantees Act 1993 (NZ)* that apply to the provision of goods and services are not to apply in respect of the goods and services supplied to the Subscriber's business.

### **16.5 Subscriber Liability**

In addition to the provisions set out in **clause 16**, Subscribers are also bound by any liability provisions contained in the relevant National Bank Internet Product Terms.

## **17 DISPUTE RESOLUTION**

If a dispute arises out of or relates to the Facility or the Facility Terms, or the breach, termination, validity or subject matter thereof, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law in any way relating to the same (collectively a **"Dispute"**), the parties agree to refer the Dispute to Arbitration administered by the Australian Commercial Disputes Centre (ACDC).

- (1) A party claiming that a Dispute has arisen must give written notice to the other party specifying the nature of the Dispute;
- (2) On receipt of the notice specified in (1), the parties must within 5 Business Days of receipt of said notice seek to resolve the Dispute;
- (3) If the Dispute is not resolved within 5 Business Days or within such further period as the parties agree then the Dispute is to be referred to ACDC;
- (4) The Arbitration shall be conducted in accordance with ACDC Arbitration Guidelines, which are hereby deemed incorporated; and
- (5) This clause shall not merge upon completion.

In the event that a Dispute also relates to other arrangements between the Subscriber and any member of the Group, and such arrangements are the subject of some conflicting dispute resolution mechanism, then the parties agree that the above mechanism will be the only mechanism applicable to the Dispute.

## **18 CONFIDENTIALITY**

### **18.1 Prohibited acts**

Without the other party's prior written consent, a party may not copy or disclose or cause to be copied or disclosed any Confidential Information of the other party except to the party's employee, legal adviser, auditor or other consultant who



requires the information for the purposes of the Facility or as otherwise stated in the Facility Terms.

## **18.2 Permitted uses**

Each party may only use the Confidential Information of the other party to the extent necessary to enable the party to perform its obligations under the Facility Terms.

## **18.3 Excluded information**

In this **clause 18**, Confidential Information does not include any information, which the receiving party can prove:

- (1) was in the public domain when it was disclosed to the receiving party;
- (2) becomes part of the public domain after being disclosed to the receiving party, except by being disclosed contrary to this agreement;
- (3) was already in the receiving party's possession when it was disclosed to the receiving party and was not otherwise acquired from the other party directly or indirectly; or
- (4) was lawfully disclosed to the receiving party by a third party having the legal right to disclose that information without requiring confidentiality.

## **18.4 Return of Confidential Information**

Each party agrees that it will deliver to the other party any and all materials containing or embodying that other party's Confidential Information and any copies at the earlier of the other party's request or termination of this agreement, provided that a party may retain a copy of the relevant Confidential Information as required for record keeping purposes.

## **19 MISCELLANEOUS**

### **19.1 Severance**

If a provision of the Facility Terms or their application to any person or circumstance is or becomes invalid, illegal or unenforceable then the provision must, as far as possible, be interpreted as narrowly as possible to ensure that it is not illegal, invalid or unenforceable. If any provision or part of it cannot be so interpreted, then the provision or its part is taken to be void and severable. The remaining provisions of the Facility Terms are not affected or impaired in any way.



## 19.2 Waiver

If a party fails, delays, relaxes or indulges in exercising its power or right under the Facility Terms, this is not a waiver of that power or right. A single exercise of a power or right does not prevent any other or further exercise of it or the exercise of any other power or right under the Facility Terms. A power or right may only be waived if it is in writing and signed by the party to be bound by the waiver.

## 19.3 Governing law

Except where the contrary intention is expressed, the Facility Terms are construed according to and are governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute arising under the Facility Terms.

## 19.4 Entire agreement

The Facility Terms including the documents referred to in them, constitute the entire agreement between the parties concerning the subject matter of the Facility Terms. Any prior arrangement, agreement, representation or undertaking is superseded and, except as expressly provided, each party acknowledges that it has not relied on any arrangement, agreement, representation or understanding not expressly set out in the Facility Terms.

## 19.5 Fiduciary relationships

Issuing Certificates in accordance with the Facility Terms does not make The National Bank or any member of the Group an agent, fiduciary, trustee, or other representative of a Subscriber or any Certificate Holder.

## 20 INTERPRETATION

In the Facility Terms:

- (1) reference to:
  - (a) the singular includes the plural and the plural includes the singular;
  - (b) a person includes a body corporate;
  - (c) a party includes the party's executors, administrators, successors and permitted assigns;
  - (d) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") includes:
    - (i) that Statutory Provision as amended or re-enacted from time to time;



- (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision;
- (e) money is to New Zealand dollars, unless otherwise stated.
- (2) "including" and similar expressions are not words of limitation;
- (3) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (4) headings and any table of contents or index are for convenience only and do not form part of the Facility Terms or affect their interpretation;
- (5) a provision of the Facility Terms must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of them or the inclusion of the provision in the Facility Terms; and
- (6) if an act must be done on a specified day, which is not a Business Day, it must be done instead on the next Business Day.

## 20.1 Notice

### 20.2 Any notice, consent, request, or other communication under the Facility Terms must be made in an approved form, as set out below:

Form	Notice must be
Electronic – sent by Subscriber	Digitally signed by a party that is governed by The National Bank PKI schema.
Electronic – sent by The National Bank	E-mail to the relevant officer of the Subscriber.
Written – any party	Delivered to or sent by prepaid post, to the party's contact address. Transmitted, by facsimile, to the party's contact facsimile.



A notice, consent, request, or other communication is not deemed to be received, until the following occurs:

Form	Received when
Electronic – sent by Subscriber	The message has been received by the recipient's host machine, and the: <ul style="list-style-type: none"><li>• Digital signature has been verified and authenticated</li><li>• Certificate Policy applying to the relevant digital signature has been verified as valid.</li></ul>
Electronic – sent by The National Bank	A period of three hours has elapsed from the time the e-mail was sent.
Written – any party	It has been personally delivered to the recipient and not to a representative of the recipient, irrespective of the provision of impending consent.  Within three business days, after the first business day of postage within New Zealand, or seven business days, after the first business day of postage elsewhere, have elapsed.  The sender of a facsimile receives a confirmation report at the time of transmission, indicating a successful and complete transmission to the recorded recipient facsimile number.