

1. Definitions

1.1 Defined terms

In this Agreement:

Acceptor means the account holder from whose Account a Direct Debit is to be debited;

Acceptor's Bank means the bank of the Acceptor;

Account means a customer's account with an Acceptor's Bank which may be direct debited in accordance with this Agreement;

Agreement means these general terms and conditions, the Application Form and the Initiator Guide;

Application Form means the standard initiator application form executed by the Initiator prior to the execution of this Agreement which sets out, amongst other things, the Direct Debit Service fees;

ASB Group of Companies means ASB Bank Limited and its Related Companies and "ASB Group Company" means any one of them;

Authority means a Direct Debits authority form authorising the Acceptor's Bank to debit the Acceptor's Account with payments initiated by the Initiator under the Standard Service or the Preferred Service;

Authorisation Code means the seven digit number that is allocated by ASB to the Initiator;

Business Day means a day (other than a Saturday or Sunday) on which registered banks are open for business in Auckland and Wellington;

Code of Practice means the rules and obligations set out in this Agreement for using the Direct Debit System;

Confirmation means, in respect of the Paperless Service, notice from the Initiator to the Acceptor under the Paperless Service satisfying the requirements set out at Clause 3;

Confirmation Specification means, the specifications of confirmations to be sent by the Initiator to the Acceptor under the Paperless Service that will be provided to the Initiator after it has been approved by ASB as an initiator who may initiate Direct Debits under the Direct Debit System;

Direct Debit means a transaction that is interchanged under the specifications of the Direct Debit System;

Direct Debit Input means transaction data in formats approved by ASB;

Direct Debit Service means the service whereby an Acceptor can authorise the Acceptor's Bank to accept Direct Debits and the Initiator can submit to ASB Direct Debits to be charged to the Acceptor's Account at the Acceptor's Bank;

Direct Debit System means the direct debit system overseen by PNZL where an Acceptor can authorise the Acceptor's Bank to accept Direct Debits to their Account and the Initiator can submit to the Initiator's Bank Direct Debits to be debited from the Acceptor's account at the Acceptor's Bank;

Direct Debit Transfer Advice means a written notice sent to the Initiator to inform the Initiator of a change in the Acceptor's bank Account used for Direct Debits;

Initiator means the person named as such in the Application Form;

Initiator Guide means ASB's "Initiator Guide" issued to initiators, and as re-issued and amended from time to time;

Instructions means instructions from the Acceptor to accept Direct Debits under the Paperless Service complying with the Paperless Service Specification;

Notice means notification in writing (including by electronic communication) of the amount of the Direct Debit and the date of the debit, by the Initiator to the Acceptor provided that if the Notice is given in writing by electronic communication then the Initiator must hold prior written consent of the Acceptor to communicate electronically;

PNZL means Payments New Zealand Limited;

Paperless Service means the standards and procedures of the Direct Debit System applying where an initiator receives Instructions from an Acceptor;

Paperless Service Specification means the specifications of Instructions to accept Direct Debits under the Paperless Service that will be provided to the Initiator after it has been approved by ASB as an initiator who may initiate Direct Debits under the Direct Debit System;

Preferred Service means the standards and procedures of the Direct Debit System applying where an initiator obtains an approved Authority completed and signed by the Acceptor and either retains the Authority or forwards a copy of the Authority to the Acceptor's Bank for loading;

Related Company has the same meaning in section 2(3) of the Companies Act 1993 except that references to "company" will be deemed to include companies whether incorporated or constituted in New Zealand or elsewhere;

Specification means the specifications of an Authority to accept Direct Debits under the Standard Service or the Preferred Service that will be provided to the Initiator after it has been approved by ASB as an initiator who may initiate Direct Debits under the Direct Debit System; and

Standard Service means the standards and procedures of the Direct Debit System applying where an initiator obtains an approved Authority completed and signed by the Acceptor and forwards the original Authority to the Acceptor's Bank for loading.

1.2 Interpretation

In this Agreement the table of contents and headings are for convenience only and do not affect the interpretation of this Agreement and, unless the contrary intention appears:

- (a) words importing the singular only will also include the plural, and vice versa and words importing any gender will also include all other genders;
- (b) a reference to any instrument (such as an agreement or document) is to that instrument (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time and from time to time;
- (c) a reference to a party is a reference to a party to this Agreement and includes that party's executors, administrators, successors and permitted assigns; and
- (d) the term "person" includes an individual, firm, company, corporation, unincorporated body, organisation constituted or established by statute, undertaking, government, state or agency of a state, or any association or partnership (whether or not having separate legal personality).

2. General responsibilities

2.1 ASB may require, and the Initiator agrees to provide, information in relation to the Initiator's business practises, creditworthiness and financial position at any time so that ASB may assess whether the Initiator should continue to be approved as an initiator who may initiate Direct Debits under the Direct Debit System. The Initiator also agrees to grant ASB or any of its employees or agents access to payment records and related documents for the purposes of validating payments or checking compliance with this Agreement.

2.2 Initiator's responsibilities

The Initiator undertakes that it will:

- (a) at all times comply with the provisions of this Agreement;
- (b) for the Standard Service and the Preferred Service, obtain from each Acceptor a valid and binding, completed and executed Authority that meets the requirements specified in Clause 3 before initiating Direct Debits to the Acceptor's Account;
- (c) for the Paperless Service, obtain from each Acceptor valid and binding Instructions that meet the requirements specified in Clause 3 before initiating Direct Debits to the Acceptor's Account;
- (d) update the Acceptor's Account on the effective date specified on receipt of a Direct Debit Transfer Advice notice as detailed in section 3.3(a) from the Acceptor's Bank;
- (e) for the Paperless Service, provide a written Confirmation to the Acceptor that meets the requirements specified in Clause 3;
- (f) initiate Direct Debits strictly in accordance with the Authority or Instructions;
- (g) investigate and deal promptly and in good faith with any query, claim or complaint relating to disputed Direct Debits that is received from ASB or any Acceptor and to assist ASB to deal with these queries, claims or complaints;
- (h) retain Authorities under the Preferred Service, and Instructions and the Confirmation under the Paperless Service in written form for seven years after the last Direct Debit transaction is processed on the Acceptor's Account under the Authority.
- (i) use the wording and identification marks as prescribed in the Initiator Guide.

2.3 ASB's responsibilities

ASB will:

- (a) provide the Initiator with an Authorisation Code following approval by ASB of the Initiator's Application Form;
- (b) notify PNZL of the Initiator's name, Authorisation Code, whether the Initiator is using the Paperless Service, the Preferred Service or the Standard Service, and the date upon which the Initiator will begin to initiate Direct Debits; and
- (c) notify PNZL of any change in the information referred to in clause 2.3(b) above or if the Initiator ceases to be an approved Initiator.

3. Authorities and Instructions

3.1 Approval of Authority and Instructions

- (a) For the Standard Service, Preferred Service and Paperless Service, the Initiator must obtain ASB's approval of the Authority to be used by the Initiator to obtain an Acceptor's consent to receive Direct Debits to their Account, before the Authority is produced.
- (b) For the Paperless Service, the Initiator must obtain ASB's approval of the format, content, medium and procedures to be used by the Initiator for obtaining Instructions, before any Instructions are obtained. The Initiator must also obtain ASB's approval of the format, content, medium and procedures to be used by the Initiator for the Confirmation, before any Instructions are obtained.
- (c) The Authority must comply with the Specification.
- (d) The Instructions must comply with the Paperless Service Specification.
- (e) The Confirmation must comply with the Confirmation Specification.
- (f) Once the Authority is approved, ASB will provide an approval code which must be recorded on the Authority in the panel provided at the bottom left hand corner of the form. The Authority must not be used until the approval code has been issued by ASB.
- (g) Any change to the approved Authority, Instructions or Confirmation once the approval code has been issued must be approved by ASB (at its sole discretion), and a new approval code issued. Any amended Authority, Instructions or Confirmation must not be used until a new approval code has been issued.

3.2 Completion of Authority, Instructions and Confirmation

The Initiator agrees to:

- (a) initiate Direct Debits strictly in accordance with the approved Authority or Instructions at all times;
- (b) for the Standard Service, send each original completed Authority to the Acceptor's Bank to enable it to load the Authorisation Code. If the Initiator requires a confirmation copy of the Authority, the Initiator must forward a copy of the Authority to the Acceptor's Bank together with an addressed postage pre-paid envelope at the time the Authority is sent for loading;
- (c) for the Standard Service, allow a period of at least 10 Business Days before initiating a Direct Debit after forwarding an Acceptor's Approved Authority to the Acceptor's Bank;
- (d) for the Preferred Service, retain each Authority, and for the Paperless Service, retain the Instructions;
- (e) for the Preferred Service and the Paperless Service, allow a period of at least five Business days from the date that PNZL circulates an update to the central register of approved preferred initiators and paperless initiators identifying the Initiator as an approved preferred initiator or an approved paperless initiator;
- (f) ensure that correct account information appears on each Authority, Instructions and Confirmation;
- (g) for the Standard Service and the Preferred Service, ensure that the Authority is completed and signed by the Acceptor;
- (h) for the Paperless Service, ensure that Instructions are given in writing (including by electronic communication but not by way of SMS) or by telephone, and in accordance with the procedures approved by ASB in Clause 3.1(b); and
- (i) for the Paperless Service, send Confirmation in writing (including by electronic communication but not by way of SMS) to the Acceptor within five Business Days of receipt of Instructions.

3.3 Provision of Authority to Acceptor

Where an Acceptor has completed an Authority, the Initiator must, if requested by the Acceptor, promptly provide the Acceptor with either a copy of the completed Authority or written advice of its principal terms and conditions.

(a) Direct Debit Transfer Advice Notice

- (i) The Acceptor's Bank may advise the Initiator of a change to the Acceptor's Account that can be Direct Debited with a Direct Debit Transfer Advice. Such notice will form part of the Acceptor's Authority, and must be provided to the Acceptor on request as part of the Authority under clause 3.3.
- (ii) The format of the Direct Debit Transfer Advice is prescribed in the Initiator Guide.

3.4 Offer option of Authority

If, during the process of collecting Instructions from the Acceptor under the Paperless Service, the Acceptor requests a form to sign, the Initiator must offer the option of signing an Authority under either the Standard Service or the Preferred Service.

3.5 Refusal to accept Authority or Instructions

The Initiator acknowledges that the Acceptor's Bank may refuse to accept an Authority or Instructions at its sole discretion. Where this occurs under the Preferred Service or the Paperless Service, the Initiator may choose to send the original approved Authority to the Acceptor's Bank for loading under the Standard Service. The Acceptor's Bank may still refuse to accept the Authority at its sole discretion.

3.6 Termination or alteration of Authority or Instructions by Acceptor

- (a) Where an Acceptor cancels its Authority or Instructions by giving the Initiator notice, or where the relationship between the Initiator and the Acceptor giving rise to the Authority or Instructions is terminated, the Initiator must immediately amend its records and not initiate any more Direct Debits against the Acceptor's Account.
- (b) The Initiator must complete a new Authority or obtain new Instructions in accordance with Clause 3.2 and give Notice in accordance with Clause 4 each time an Acceptor changes the Account to be debited.

3.7 Cancellation by Acceptor under Preferred Service or Paperless Service

- (a) Where an Acceptor cancels an Authority under the Preferred Service or Instructions under the Paperless Service, the Initiator acknowledges that the Acceptor's Bank will block all Direct Debits initiated by the Initiator for nine months from the date of cancellation.
- (b) During this period, the Initiator may forward a new original Authority signed by the Acceptor after the date of cancellation to the Acceptor's Bank for loading under the Standard Service, or a copy of a new Authority signed by the Acceptor after the date of cancellation to the Acceptor's Bank for loading under the Preferred Service.

4. Notice of Direct Debits to Acceptors

4.1 Period of advance Notice - 10 calendar day rule

- (a) The Initiator must give Acceptors advance Notice of:
 - (i) the net amount to be Direct Debited; and
 - (ii) the due date of the debiting.
- (b) The advance Notice is to be forwarded not more than two calendar months before the date of initiation of each individual Direct Debit by the Initiator, but so as to reach the Acceptor at least 10 calendar days before the initiating date.

- (c) The advance Notice must include the following message, in such manner as the Acceptor's attention will be readily drawn to it:
"Unless advice to the contrary is received from you by [date*] the amount of \$[] will be directly debited to your _____ (Acceptor Bank) account on the earlier of [processing date] or the next business day where the processing date is not a business day [(and at regular ()ly intervals thereafter*)]."

* This date must be at least two days prior to the initiating date to allow for amendment of input.

** These words must be included for fixed sum payments at regular intervals.

- (d) Direct Debits are to be initiated only on the date advised in the Notice to the Acceptor.

4.2 Two days advance Notice

- (a) Where ASB is satisfied that there is an established commercial practice in the business or trade between the Initiator and the Acceptor that normal trade credit requires payment in less than 10 calendar days, then ASB may, in its sole discretion, approve a minimum period of advance Notice of two Business Days.

- (b) The advance Notice must include the following message:

"The amount of \$[], will be directly debited to your (Acceptor Bank) account on [processing date]."

4.3 No advance Notice

- (a) Where ASB is satisfied that contractual agreements as part of normal business between the Initiator and the Acceptor involve monetary payments by the Initiator on behalf of the Acceptor (e.g. bureau style payroll operations or money management arrangements), ASB may, in its sole discretion, approve the waiving of advance Notice.

- (b) Where ASB waives advance Notice, the Initiator must provide the Acceptor with Notice no later than the day that the Direct Debit is initiated by the Initiator which includes the following message:

"The amount of \$[], was directly debited to your (Acceptor Bank) account on [processing date]."

4.4 Waiving of Notice

ASB may, in its sole discretion, not require the Initiator to give notice to Acceptors where each payment is of the same amount and is to be initiated at regular predetermined intervals (such interval not to exceed twelve months), or payments are regular as to frequency but variable as to amounts (and the Acceptor receives a schedule detailing each payment amount and each payment date).

5. Processing Direct Debits

5.1 Use of Direct Debit Service

The Initiator will be entitled to use the Direct Debit Service to initiate Direct Debits by Direct Debit Input or other media acceptable to ASB.

5.2 Inclusion of Authorisation Code

The Initiator must include the Authorisation Code in every transaction record submitted.

5.3 Direct Debit Input

- (a) The Initiator may deliver Direct Debit Input as an electronic file input in the format as referred to in the Direct Debit Guide.
- (b) The Initiator must deliver the Direct Debit Input to the approved Direct Debit file delivery server no later than 6pm on the due date of the file. The Direct Debit Input must not be sent to ASB more than one month before the due date of the file.
- (c) ASB will process the Direct Debit Input in accordance with the current Direct Debit rules and timeframes, or on such other day as may be agreed by ASB. ASB will only process Direct Debit Input if it is strictly in accordance with the Authority or the Instructions and the Initiator has complied with the terms of this Agreement.
- (d) Processing of Direct Debit Input shall be at ASB's absolute discretion. ASB will notify the Initiator as soon as practicable where it exercises its discretion not to process Direct Debit Input.
- (e) Amendments to Direct Debit Input (including, but not limited to, stopping individual transactions contained within the file, dropping or deleting a whole batch) already lodged by the Initiator for processing will be accepted by ASB on a best endeavours only basis and the Initiator acknowledges that ASB accepts no responsibility whatsoever for processing or failing to process such amendments.
- (f) Under no circumstances will ASB amend the Account numbers or the amount of a transaction.
- (g) The Initiator must notify ASB immediately upon becoming aware of any act, error or omission arising out of or in relation to Direct Debit Input.

5.4 Settlement to Initiator

Once ASB has processed the Direct Debit Input, it will credit the Initiator's nominated account with the aggregate amount of all amounts to be debited against Acceptor's Accounts.

5.5 Unpaid Direct Debits

The Initiator may collect any previously unpaid Direct Debits using the Direct Debit Service provided the Initiator complies with the notice provisions at Clause 4.

6. Dishonours

- (a) Following notification from the Acceptors Bank, ASB will deduct from the Initiator's nominated account the value of all dishonoured items received.

- (b) The Initiator irrevocably agrees to ASB debiting the Initiator's nominated account with the aggregate value of all debits to the Acceptor's Accounts which have for any reason been reversed.
- (c) The Initiator agrees to have sufficient funds in its nominated account to cover dishonours.

7. Disputes in relation to Direct Debit Service

- (a) Subject to sub-clause (c) below, the Initiator acknowledges that any dispute as to payment effected by the Direct Debit Service shall be settled entirely between the Initiator and the Acceptor.
- (b) If ASB receives notification from an Acceptor Bank of a dispute in relation to a Direct Debit under the Preferred Service or the Paperless Service, and as a consequence requests a copy of the relevant Authority signed by the Acceptor, or the relevant Instructions and Confirmation from the Initiator, the Initiator must promptly send a copy of the Authority, Instructions or Confirmation to ASB within five Business Days. If the Initiator does not provide the Authority, Instructions or Confirmation within this time, ASB will advise the Acceptor Bank that no Authority, Instructions or Confirmation is held and the Acceptor Bank may reverse the disputed Direct Debits.
- (c) Under the Paperless Service, the Initiator acknowledges that where an Acceptor is not reasonably satisfied that the Instructions authorise the Acceptor's Bank to accept the Direct Debit(s) against the Acceptor's Account (provided notification of the dispute is received by ASB not later than nine months after the first Direct Debit is processed under the Instructions), ASB may reverse all Direct Debits processed under the disputed Instructions and debit the Initiator's nominated account for this amount plus any fees incurred as a result of the reversal. The Initiator must update its records and ensure that no further Direct Debits for that Acceptor are submitted for processing.

8. Fees and Payment

8.1 Fees

- (a) The Initiator will pay ASB the fee set out in section 6 of the Application Form for each Direct Debit.
- (b) The Initiator will pay ASB the fee set out in section 6 of the Application Form for each dishonour.
- (c) The Initiator will pay ASB the application fee set out in section 6 of the Application Form. The application fee is payable at the time the Application Form is submitted to ASB and shall be payable whether the application is accepted by ASB or not. If the Initiator is accepted by ASB, ASB will refund the application fee to the Initiator on completion of the first set of Direct Debits.
- (d) The Initiator will pay ASB any fees or charges imposed in accordance with Clause 8.2.

8.2 Payment

- (a) The Initiator authorises ASB to debit the fees and any charges to the Initiator's nominated account.
- (b) The Initiator will provide ASB with all authorities and information to enable ASB to debit its nominated account with the fees and any charges.
- (c) If any fee or charge debited to the Initiator's nominated account is returned unpaid, and remains unpaid for a period of 30 days, ASB may suspend the Initiator from the Direct Debit Service in accordance with Clause 11.6.

8.3 Variation of fee

ASB may vary any fee, or advise the Initiator of any additional fee or charge, applicable to this Agreement (including but not limited to any third party charges incurred by ASB such as charges from a communications provider, processor or PNZL) at any time by 30 days prior written notice to the Initiator.

9. Indemnities

9.1 Limited liability

Subject to Clause 9.2, ASB and the ASB Group of Companies have no liability to the Initiator for any loss, damages, injury or claim of any kind (whether direct, indirect, consequential, or damage or loss of business or profits suffered by the Initiator) however caused, and suffered by or made against the Initiator or any third party arising out of:

- (a) this Agreement;
- (b) the Direct Debit Service or any other service described in this Agreement;
- (c) any payment method described in this Agreement; and
- (d) any operation on their nominated account.

9.2 ASB indemnity

ASB hereby indemnifies the Initiator against all losses, claims, expenses or liabilities incurred or suffered by the Initiator as a direct result of the wilful default or gross negligence of ASB, its employees or agents.

9.3 No consequential loss

The liability of ASB under Clause 9.2 shall not extend to any indirect or consequential loss or damage or any loss of business or profits suffered by the Initiator.

9.4 Initiator indemnity

The Initiator indemnifies ASB and the ASB Group of Companies against any claim, demand, action, liability, loss, cost, or expense (whether direct, indirect or consequential) suffered or incurred by ASB or any ASB Group Company as a result of:

- (a) any error, mistake or fraud on the part of the Initiator or its employees or agents in preparing any Direct Debit Input or other media resulting in ASB:
 - (i) debiting to any Account and causing to be paid to the Initiator any sum of money to which the Initiator is not entitled; or
 - (ii) failing to make a payment in accordance with the terms of an Authority or Instructions,
- (b) any reversal by ASB of a Direct Debit entry to an Account on instructions given by the Initiator pursuant to this Agreement;
- (c) the failure of the Initiator to comply with any of its obligations under this Agreement;
- (d) any other act or omission by, the Initiator or any of its employees, officers, or agents whatsoever; or
- (e) any dispute between the Initiator and the Acceptor.

9.5 Survival of clause

Clause 9 continues after the termination of this Agreement.

10. Warranties and Undertakings

Each party warrants and undertakes that:

- (a) it has and will maintain full corporate power and authority to enter into, perform and observe its obligations and duties under this Agreement and that the execution, delivery and performance of its obligations under this Agreement have been duly and validly authorised by all necessary corporate action;
- (b) the execution and delivery of this Agreement by it or on its behalf and the performance by it of its obligations under this Agreement will not result in a breach of the terms and conditions of, or constitute a default under, any other agreement, undertaking or arrangement to which it is a party or bound, or breach of any order, writ, rule, regulation, injunction or decree of any Court, administrative agency or governmental body or any statute, rule or regulation applicable to it or by which it may be bound;
- (c) this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with its terms; and
- (d) all consents, authorisation, approvals, and registrations required to be obtained, made or effected by it or under or by virtue of the laws of New Zealand in conjunction with, or arising out of, the execution and delivery by it of, and the performance by it of its obligations under, this Agreement have been fully obtained and are, and will continue to be, in full force and effect, and any condition contained in them or otherwise applicable has been, and will continue to be, complied with and fulfilled.

11. Term and Termination

11.1 Term

If the Application Form is approved by ASB, this Agreement shall commence on the date of the Application Form and shall continue until it is terminated in accordance with this Clause 11 of this Agreement.

11.2 Termination by either party

- (a) Either party may terminate this Agreement by giving the other party 30 days written notice. Such termination will have effect from the date 30 days after such notice is received by the other party.
- (b) Either party may terminate this Agreement with immediate effect upon given written notice to the other party, after the occurrence of any of the following:
 - (i) a receiver, administrator or manager is appointed in respect of any part of the whole of the other party's assets or business;
 - (ii) any proceedings are commenced or a petition is filed for the winding up of the other party, whether voluntary or otherwise, or a notice is issued for the summoning of any meeting at which any resolution proposing the winding up of the other party is proposed to be moved;
 - (iii) the other party enters into a formal proposal for compromise with creditors under the Companies Act 1993;
 - (iv) in the event of the other party breaching any of the terms of this Agreement which breach is capable of remedy, and failing to remedy that breach within ten Business Days notice in writing of that breach; or
 - (v) in the event of the other party materially breaching any of the terms of this Agreement which breach is unable to be remedied.

11.3 Termination by ASB

ASB may terminate this Agreement with immediate effect upon given written notice to the Initiator, after the occurrence of any of the following:

- (a) in ASB's opinion, the creditworthiness of the Initiator has changed and the Initiator should no longer be approved as an initiator who may initiate Direct Debits under the Direct Debit System;
- (b) ASB considers that the Initiator or any of its employees may have been or may be likely to use the Direct Debit Service fraudulently or where the security or integrity of the Direct Debit Service has been, or is likely to be, in ASB's opinion, jeopardised by the Initiator or any other person; and
- (c) the banks participating in the Direct Debit System requiring at their discretion, the withdrawal of the Initiator from the Direct Debit System. For the avoidance of doubt, neither ASB nor any participating bank will be liable for any loss that the Initiator incurs as a result of withdrawal from the Direct Debit System.

11.4 Consequences of termination

- (a) Upon termination of this Agreement, the Initiator agrees to:
 - (i) not submit any further Direct Debits for processing;
 - (ii) give Acceptors written notice of termination of this Agreement; and
 - (iii) retain such funds in their nominated account as ASB consider necessary to meet payment of any amounts that may from time to time be owing to ASB pursuant to Clause 9. The Initiator must retain such funds in the Initiator's account until it is released from this obligation by notice in writing from ASB.
- (b) Where the Initiator is using the Preferred Service, upon termination the Initiator agrees to also provide ASB with all original signed Authorities or copies of those Authorities (in such form as can be reproduced as evidence in court proceedings) loaded under the Initiator's Authorisation Code.
- (c) Where the Initiator is using the Paperless Service, upon termination the Initiator agrees to also provide ASB with all original Instructions and Confirmations or copies of those Instructions and Confirmations (in such form as can be reproduced in court proceedings) loaded under the Initiator's Authorisation Code.
- (d) Where the Initiator is using the Preferred Service or the Paperless Service, upon termination ASB will:
 - (i) retain the Authorities, Instructions and Confirmations provided to it by the Initiator for seven years after cancellation of each Authority, and for seven years after the date of the last Direct Debit made under the relevant Instruction;
 - (ii) forward copies of the Authorities, Instructions and Confirmations to the Acceptor's Bank when requested; and
 - (iii) arrange for the central register to be updated.

11.5 Certain rights and obligations to continue

Save for the obligations contained in Clauses 6, 7, 8, 9, 10, 11 and 18 each party's further rights and obligations cease immediately on termination of this Agreement, but termination does not affect a party's accrued rights and obligations at the date of termination (including any rights to claim damages).

11.6 Suspension

Without prejudice to ASB's rights of termination under Clauses 11.2 and 11.3, in the event that any fee or charge payable under this Agreement is returned unpaid, and remains unpaid for a period of 30 days, ASB may immediately and without notice suspend the availability of the Direct Debit Service to the Initiator until such time as ASB has either:

- (a) been paid all fees and charges owing; or
- (b) terminated this Agreement in accordance with clause 11.2.

12. Relationship

The parties acknowledge that:

- (a) nothing contained in this Agreement is to be read or construed so as to constitute the relationship of employer and employee, principal and agent, partnership or of joint venture between the parties; and
- (b) neither party may pledge or purport to pledge the credit of any other party or make or purport to make any representations, warranties or undertakings for any other party.

13. Group Benefit

13.1 ASB Group

This Agreement is for the benefit of the ASB Group of Companies. Where ASB is provided a right or benefit under this Agreement, any ASB Group Company may take advantage of that right or benefit. However, nothing in this Clause 13 makes any ASB Group Company (other than ASB) a party to this Agreement.

13.2 Assignment

ASB may assign to any member of the ASB Group of Companies all of the terms of this Agreement including without limitation, the benefits and obligations of this Agreement.

13.3 Application

This Clause 13 has effect despite any other Clause in this Agreement.

14. Assignment

Subject to Clause 13.2, neither party shall transfer or assign any of their rights or obligations arising in relation to this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

15. Dispute Resolution

15.1 Notice of dispute

If any dispute arises out of, or in connection with, this Agreement (other than a dispute in relation to the Direct Debit Service), the party claiming a dispute has arisen will give written notice to the other party specifying the nature of the dispute and neither party will commence proceedings relating to the dispute unless that party has complied with the provisions of this Clause 15. On receipt of a notice claiming a dispute has arisen, the parties must endeavour in good faith to resolve the dispute.

15.2 Mediation

If the parties do not resolve the dispute within 14 Business Days of receipt of the notice claiming a dispute has arisen (or such further period as may be agreed in writing between the parties), then the parties will mediate the dispute in accordance with the standard mediation agreement of LEADR New Zealand Incorporated (Lawyers Engaged in Alternative Dispute Resolution), and the Chair of LEADR (or the Chair's nominee) will select the mediator and determine the mediator's fee.

15.3 Parties must continue to perform

Pending resolution of any dispute, the parties will continue to perform their obligations under this Agreement without prejudice to their respective rights and remedies.

15.4 Equitable relief

Nothing in this Clause will preclude either party from taking steps to seek equitable relief before a New Zealand Court.

16. Authorised contacts

- (a) The authorised ASB representative is the Initiators ASB Relationship Manager or Branch.
- (b) The authorised contacts for the Initiator are as set out in section 1 of the Application Form.
- (c) Any change to these representatives must be notified to the other party by prior written notice.

17. Force Majeure

Neither party shall be liable for any failure or delay in complying with any obligation imposed on such party under this Agreement if:

- (a) the failure or delay arises from circumstances beyond the reasonable control of that party, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, compliance with a law or governmental order, fire, equipment failure, communication line failures or power failures;
- (b) that party, on becoming aware of the cause, promptly notifies the other party in writing of the nature and expected duration of, and the obligation affected by the cause and keeps the other party informed of any changes in the nature of the cause and cessation of such cause; and
- (c) that party uses its best endeavours to:
 - (i) mitigate the effects of the cause on that party's obligations under this Agreement; and
 - (ii) perform that party's obligations under this Agreement on time despite the cause.

18. General

18.1 Entire agreement

This Agreement constitutes the entire agreement, understanding and arrangement between the parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral. The terms of this Agreement shall not bind the parties until the Commencement Date. There are no oral or written understandings, representations or commitments of any kind, express or implied, not expressly set out in this Agreement.

18.2 Severance

If any provision of this Agreement is prohibited, invalid or unenforceable, that provision will be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement.

18.3 Waiver

Delay by either party to enforce at any time a provision of this Agreement or to require at any time performance of an obligation by the other party shall not be construed to be a waiver of that provision nor affect the right of either party to thereafter enforce each and every provision of this Agreement. Any single or partial exercise of any power, remedy or right does not preclude any other or further exercise of it or the exercise of any other power, remedy or right under this Agreement.

18.4 New Zealand law

This Agreement shall be construed and take effect in accordance with the laws of New Zealand and shall be subject to the non-exclusive jurisdiction of the Courts of New Zealand.

18.5 Costs

Each party shall be responsible for payment of their own costs of and incidental to preparation, completion, and execution of this Agreement.

18.6 Amendments to Agreement

- (a) ASB may amend this Agreement by written notice to the Initiator as is required from time to time to ensure ongoing compliance with the Direct Debit System rules published by PNZL.
- (b) Save in respect of amendments made pursuant to clause 18.6(a), amendments to this Agreement will only be effective if recorded in writing and duly executed by each party to this Agreement.

18.7 Further assurances

Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all agreements, documents, instruments and acts reasonably required of it or them by notice from the other party effectively to carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

18.8 Code of Practice

The Initiator may, with the prior approval of ASB, use the Code of Practice in its documentation. The Initiator agrees that where such approval is given, the Initiator shall use the Code of Practice published by ASB, as amended from time to time, and subject to such reasonable directions regarding its use as ASB may give to the Initiator from time to time.