

ASB's Purchasing Terms

30 June 2021

1. When these Terms apply

- 1.1. These Terms apply when ASB purchases Goods or Services from a Supplier.
- 1.2. If ASB and the Supplier have agreed a separate written agreement for the provision of Goods and Services, that written agreement will take precedence over these Terms. Any terms or conditions that the Supplier may purport to apply (for example in a quote) are excluded (unless ASB expressly agrees to any of those terms in writing or via an electronic acceptance method).
- 1.3. The Supplier accepts these Terms when the Supplier completes Registration.

2. Purchase Order

- 2.1. The Purchase Order is an offer by ASB to purchase the Goods and Services on these Terms.
- 2.2. The Supplier will be deemed to accept the Purchase Order on the earlier of the performance of the Services, the shipment of the Goods or on acknowledgement of a Purchase Order. Within 48 hours of receipt of a Purchase Order the Supplier must notify ASB in writing if the Supplier rejects that Purchase Order.
- 2.3. An accepted Purchase Order will form part of these Terms.

3. Performance and Delivery

- 3.1. The Supplier must:
 - (a) perform the Services and/or deliver the Goods:
 - (i) in accordance with the Purchase Order and these Terms; and
 - (ii) on or before the day that is 5 Business Days from the date that the Purchase Order was issued (except as otherwise agreed between the parties or specified on the Purchase Order);
 - (b) perform its obligations under these Terms and the Purchase Order in a diligent and professional manner with the degree of skill and care that is normally exercised by professionals that supply services or goods of a similar nature;
 - (c) comply with the ASB Supplier Code of Conduct (as published on ASB's website or otherwise notified to you); and
 - (d) deliver the Goods to the correct Delivery Location in good condition and without damage caused by delivery (including using appropriate packaging to

protect the contents from damage and keep them clean and dry).

- 3.2. Any inspection, testing or acceptance of Goods or Services by ASB will not relieve the Supplier of its obligations under these Terms.
- 3.3. Time is of the essence with respect to the performance of the Services and delivery of the Goods.

4. Supplier warranties

- 4.1. The Supplier warrants that:
 - (a) the Supplier representative that completes Registration and accepts any Purchase Order is properly authorised to act for the Supplier;
 - (b) it holds all licences, approvals, permits, consents, rights (including Intellectual Property Rights) necessary to perform the Services and/or deliver the Goods;
 - (c) the Goods and/or Services will comply with all applicable laws, standards and codes and the use of the Services and/or Goods by ASB will not breach any law;
 - (d) it will only use appropriately skilled and trained Personnel to perform its obligations under the Purchase Order and these Terms;
 - (e) the Goods and/or Services will meet any specifications described in the Purchase Order; and
 - (f) the Goods will:
 - (i) be new and unused;
 - (ii) correspond with any description or sample provided by the Supplier to ASB;
 - (iii) be fit for their intended purpose, and free from any defects in materials, workmanship and manufacture; and
 - (iv) be free from any security interest, encumbrance, charge, lien or liability.
- 4.2. Without limiting ASB's rights or remedies under these Terms or at law, if any of the warranties in clauses 4.1(c), 4.1(d), 4.1(e), or 4.1(f) are incorrect, ASB may elect, at ASB's discretion, to require the Supplier to promptly repair or replace the non-conforming Goods.

5. Third party warranties

- 5.1. The Supplier will transfer or assign to ASB any third-party warranties relating to the Goods and/or Services, or if it is unable to do so, will hold those third party warranties for the benefit of ASB.

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6. Payment and invoices

- 6.1. ASB will pay the Supplier all undisputed Fees by the 20th day of the month (**Payment Month**) that follows the date of a correctly rendered invoice, provided that ASB has received that correctly rendered invoice on or before the 5th day of that Payment Month.
- 6.2. Unless otherwise agreed in writing, the Fees exclude GST, but are inclusive of all other taxes and amounts including freight, insurance or other expenses that the Supplier may incur in the delivery of the Goods and performance of the Services.
- 6.3. The Supplier must issue a tax invoice to ASB that:
 - (a) is in accordance with the Goods and Services Tax Act 1985;
 - (b) identifies the Goods and/or Services that the invoice relates to;
 - (c) displays the Purchase Order reference; and
 - (d) shows the amount of correctly calculated Fees and any other amounts payable by ASB in accordance with the Purchase Order.
- 6.4. For avoidance of doubt, the system generated tax invoice based on information supplied by Suppliers shall be deemed the final tax invoice issued by the Supplier to ASB in respect of the supply of the Goods and/or Services, unless the Supplier is a non-resident for New Zealand tax purposes.
- 6.5. If the Supplier is a non-resident for New Zealand tax purposes, the Supplier issued invoice is deemed the final invoice in respect of the underlying supply of Goods and/or Services. The non-resident Supplier must also specify on the invoice the value of the services performed in New Zealand, as well as any other information that may be relevant in the determination of ASB's NRCT withholding obligation. In the absence of such information on the invoice, ASB shall withhold NRCT on the full invoiced amount at the appropriate withholding rate determined in accordance with the New Zealand Income Tax Act 2007.
- 6.6. ASB may withhold tax from payments due to the Supplier under the Purchase Order to the extent that such withholding is required by law. If any withholding tax is required by law, the Fees will not be increased and ASB will not be required to pay any additional amount to the Supplier on account of that withholding. In the event that no tax is withheld and ASB is liable to withhold tax from the payments made under the

Purchase Order, the Supplier will pay within 30 days of receiving notice from ASB, the amount of withholding tax and any related interest or penalties.

6.7. If ASB disputes any invoice:

- (a) the Supplier must continue to provide any Goods or Services and perform its obligations in accordance with the relevant Purchase Order and these Terms; and
- (b) ASB is not obliged to pay the amount(s) in dispute, until the dispute is resolved in accordance with clause 26.

7. Title and risk

- 7.1. Unless otherwise agreed, title and risk to the Goods passes to ASB on full payment for the Goods.
- 7.2. ASB does not accept any risk or responsibility for any Supplier equipment or materials used at ASB's premises.

8. Term and Termination

- 8.1. Subject to earlier termination in accordance with these Terms, the Purchase Order commences on the Commencement Date and continues for the Term.
- 8.2. ASB may terminate or cancel the Purchase Order in whole or part without cause by giving the Supplier 14 days' notice in writing.
- 8.3. ASB may terminate the Purchase Order immediately by notice to the Supplier if:
 - (a) the Supplier commits a breach of these Terms or the Purchase Order which is capable of remedy, and fails to remedy that breach within 30 days from the date ASB notifies the Supplier of the breach;
 - (b) the Supplier commits a breach of these Terms or the Purchase Order, which is not capable of remedy;
 - (c) the Supplier's conduct, in ASB's reasonable opinion, may bring ASB into disrepute or adversely affect ASB's image or reputation;
 - (d) an insolvency event occurs in relation to the Supplier. The Supplier must notify ASB as soon as it becomes aware that an insolvency event has occurred, or is likely to occur, in relation to the Supplier; or
 - (e) if a change in control of the Supplier occurs. The Supplier must promptly notify ASB if a change in control of the Supplier occurs.

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8.4. The Supplier may terminate the Purchase Order with immediate effect if ASB commits a material breach of its obligations under these Terms and ASB has not remedied that breach within 30 days of receiving a notice detailing that breach and requiring it to be rectified.

9. Statutory Management

9.1. For as long as ASB's conditions of registration, or any legal requirement or policy of the Reserve Bank requires ASB to continue to be able to carry out one or more function(s) that are directly or indirectly supported by the relevant Services, in the context of a statutory manager being appointed under section 117 of the Reserve Bank of New Zealand Act 1989 or section 38 of the Corporations (Investigation and Management) Act 1989 to manage ASB, the Supplier irrevocably agrees that in the event that a step has been taken in connection with the appointment of a statutory manager or a statutory manager is appointed in respect of ASB, the Supplier irrevocably agrees that (subject to clause 9.3) the Supplier will not, while ASB is under statutory management, terminate any Purchase Order or suspend any Services provided in accordance with these Terms, except with the prior written consent of the statutory manager.

9.2. For the avoidance of doubt, ASB will continue to pay the Fees (if any) for the provision of the Services while it is under statutory management.

9.3. The requirement of clause 9.1 will cease to apply:

- (a) where a statutory manager has been appointed to ASB, the statutory manager suspends the payment of any Fees owing to the Supplier under the relevant Purchase Order prior to the statutory management taking effect, including a suspension under section 44 of the Corporations (Investigation and Management) Act 1989, section 127 of the Reserve Bank of New Zealand Act 1989 or otherwise (except if such suspension is due to the Supplier's material breach of the Supplier's obligations under these Terms and/or the Purchase Order);
- (b) where a statutory manager has been appointed to ASB and ASB has an on-going payment obligation to the Supplier, the statutory manager has not incurred that obligation as contemplated by section 145 of the Reserve Bank of New Zealand Act 1989;
- (c) if a liquidator is appointed in respect of ASB; or

(d) ASB commits a material breach of these Terms and, after 30 days' written notice by the Supplier requesting ASB to remedy the breach, the breach remains unremedied.

9.4. Clauses 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 24, 26, 30, 31, 32, 33 and any other provisions of these Terms and/or the Purchase Order which are expressly or by implication intended to come into or continue in force on or after such termination will survive the termination, cancellation or expiry of the Purchase Order and/or these Terms.

10. Intellectual Property Rights

10.1. To the extent that ASB is required to use any Supplier IP to receive the Goods and Services, the Supplier grants to ASB a perpetual, transferable, royalty free, worldwide, irrevocable, non-exclusive licence to use, copy, distribute, adapt, and communicate the Supplier IP in a manner that is contemplated and consistent with the operation and use of the Goods and Services so that ASB may obtain the full benefit of the Goods and Services.

10.2. Any New IP vests in ASB on creation, free of all rights and interest of the Supplier. To the extent the Supplier has any rights in and to any New IP, the Supplier hereby assigns to ASB any rights, title and interest (including all Intellectual Property Rights) that the Supplier has in and to any New IP. The Supplier agrees to do all further acts, including signing any documents in order to give effect to this clause.

10.3. The Supplier warrants that:

- (a) the Goods and Services do not, and ASB's use of the Goods and Services will not, infringe on the rights (including Intellectual Property Rights) of any person; and
- (b) it has all necessary rights to assign any Intellectual Property Rights in and to any New IP to ASB in accordance with clause 10.2.

10.4. For the Term, ASB grants the Supplier a non-exclusive, non-transferable, royalty-free licence for the Supplier to use the ASB IP solely for the purpose of, and only to the extent necessary for the Supplier to provide the Services in accordance with these Terms and the Purchase Order.

11. Indemnity

11.1. The Supplier indemnifies ASB for any claim, action, proceeding, damage, loss, liability, cost, charge, expense (including reasonable legal costs and expenses on a solicitor and client basis), outgoing or payment paid, suffered or incurred by ASB that arises out of or is in connection with:

- (a) any claim, action or proceeding that the use, modification, adaptation or any other exploitation of the Services or Goods infringes the Intellectual Property Rights of any person;
- (a) any damage to property of ASB or a third party, or any death or injury of persons that is caused by any act or omission of the Supplier (or its Personnel) in connection with the performance of the Services or Goods; and/or
- (b) the Supplier's breach of these Terms and/or the Purchase Order.

12. Liability

12.1. To the maximum extent permitted by law, ASB's aggregate liability under each Purchase Order and these Terms whether under contract, tort (including negligence) or statute will not exceed an amount equal to the total amount of Fees under the applicable Purchase Order, and ASB will not be liable for consequential, indirect, special or incidental losses.

13. Confidentiality

13.1. The Supplier acknowledges and agrees that ASB Confidential Information is secret and confidential to ASB and its Related Companies and that the Supplier does not acquire any rights or interests of any kind in or to any ASB Confidential Information.

13.2. The Supplier must:

- (a) keep confidential all ASB Confidential Information and must not communicate, reveal, supply or make known or available any ASB Confidential Information to any person except as permitted by these Terms;
- (b) not use ASB Confidential Information for a purpose other than the performance of its obligations to provide the Goods and Services;
- (c) safeguard the ASB Confidential Information in accordance with these Terms and do all things necessary, prudent or desirable in order to safeguard the confidentiality of the ASB Confidential Information.

13.3. To the extent necessary for the purposes of carrying out its obligations under the Purchase Order and these Terms, and on a "need to know" basis, the Supplier may disclose ASB Confidential Information to its employees and professional advisors provided that the Supplier is responsible for ensuring that such employees and professional advisors observe all of the obligations of confidentiality under these Terms.

13.4. The obligations of confidentiality under these Terms do not extend to information which is required to be disclosed by any law, authority, judicial body, regulator or stock exchange, provided that the Supplier discloses only the minimum amount of ASB Confidential Information required to satisfy any the relevant law or rule, and before disclosing any ASB Confidential Information, the Supplier gives reasonable notice to ASB and takes all reasonable steps (whether required by ASB or not) to maintain that ASB Confidential Information in confidence.

14. Privacy

14.1. This clause 14 applies to any Personal Information provided to, or obtained or accessed by the Supplier in the course of providing the Goods or Services to ASB or otherwise in connection with these Terms.

14.2. The Supplier acknowledges that it is Using Personal Information solely for the purposes of providing Goods and Services to ASB and solely on behalf of ASB and will not Use such information for its own, or any other, purpose.

14.3. If the Supplier is Using any Personal Information it must comply with, and ensure that its Personnel comply with:

- (a) the Privacy Legislation (whether or not the Privacy Act directly applies to it) and will not do or omit to do anything which would result in ASB being in breach of any applicable Privacy Legislation; and
- (b) any of ASB's Policies or standards that relate to privacy notified by ASB to the Supplier from time to time.

14.4. The Supplier will notify ASB as soon as practicable (and no later than 24 hours) upon the receipt of a privacy request or complaint from an individual in relation to Personal Information.

14.5. The Supplier will co-operate with any reasonable requests or directions of ASB concerning the collection, security, use and disclosure of Personal Information, or the rights of individuals to access and correct such Personal Information.

14.6. The Supplier will notify ASB of any Data Breach in accordance with clause 17 of these Terms.

14.7. 'Use' and 'Using' in relation to Personal Information under this clause 14 refers to any and all uses of and/or operations performed on Personal Information, including collecting, creating, hosting, holding, accessing, recording, organising, storing, adapting or altering, processing, retrieving, using, analysing, disclosing, making available, combining, blocking, anonymising, erasing and destroying Personal Information.

15. Data Security

15.1. Without limiting any other clause in these Terms, including clauses 13 and 14, with respect to the provision of the Goods and Services, the Supplier must establish maintain and enforce:

- (a) appropriate physical, technical and organisational security procedures and safeguards to protect Information Assets and the Services against unauthorised or unlawful access or use or accidental loss or destruction or damage, and any anticipated threats or hazards to their security or integrity or availability and privacy, commensurate with the consequences of a Security Incident, the nature of the Information Assets and vulnerabilities and threats to those Information Assets and the Services;
- (b) appropriate encryption safeguards in accordance with Best Practice to secure all data repositories in the Supplier's systems and any electronic communications between ASB and the Supplier, which contain ASB Data or ASB Confidential Information;
- (c) monitoring controls in accordance with Best Practice to enable identification and detection of an actual or suspected Security Incident in the Supplier or any permitted third-party environment (including but not limited to implementing firewalls, intrusion prevention/detection systems, up to date anti-virus software and regular event alerting and monitoring); and
- (d) an appropriate information classification policy which is reviewed and updated regularly to ensure that information, including ASB Data and ASB Confidential Information is protected in accordance with Best Practice and in a manner commensurate with the risk based on the nature of the information.

15.2. The Supplier will provide ASB with all information and details as reasonably requested by ASB to verify that the Supplier complies with clause 15.1.

15.3. The Supplier will not allow or permit access to or transfer of any ASB Confidential Information or ASB Data (excluding general configuration data) outside of New Zealand or any other country in which the ASB Data or ASB Confidential Information was originally stored without ASB's prior written consent (which will not be unreasonably withheld).

15.4. The Supplier will not make ASB Confidential Information and ASB Data available to any third party without the prior written consent of ASB. If the ASB Data or ASB Confidential Information is given to, or assessed by, a third party in connection with these Terms, the Supplier will ensure that any permitted third party who has access to ASB Data and ASB Confidential Information agrees to keep it secure on the terms consistent with these Terms.

15.5. The Supplier will allow ASB, if requested, to assess the Supplier's information security capabilities including security and monitoring controls ("**Security Review**") (i) directly following a Security Incident or a material change in the Services; or (ii) otherwise not more than once annually on reasonable notice.

15.6. If the outcome of a Security Review identifies the need for the Supplier to have a Security Incident Response Plan, the Supplier must implement and maintain a Security Incident Response Plan and test the Security Incident Response Plan periodically.

15.7. Where the Security Incident Response Plan is provided by the Supplier then the Supplier will provide ASB with all information reasonably required by ASB from time to time in relation to the Security Incident Response Plan (which may be provided in summary form if ASB consents to receive the information in such form) and the Supplier will not make any changes to such Security Incident Response Plan which would result in a material adverse effect on ASB or is otherwise inconsistent with the information security requirements (including notification) set out in these Terms.

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16. Secure Data Destruction

16.1. The Supplier will return or destroy (as ASB's discretion) any ASB Data or ASB Confidential Information in its or its Personnel's possession or control:

- (a) promptly on request from ASB; or
- (b) within a reasonable time period when it is no longer required by the Supplier for the purposes of these Terms

16.2. ASB may request that the Supplier confirms to ASB in writing that it has complied with this clause 16.

17. Security Incident

17.1. If the Supplier becomes aware of a Security Incident the then the Supplier must:

- (a) immediately, and in any event no later than 24 hours after becoming aware of the Security Incident, notify ASB in writing using the contact details referred to in clause 17.2;
- (b) provide ASB with all relevant information regarding the Security Incident including sufficient information to allow ASB to meet any contractual or legal obligations to report or inform individuals or regulators of the Security Incident, unless prohibited by law or otherwise instructed by a law enforcement authority;
- (c) co-operate, and use reasonable endeavours to ensure that any third party co-operates, with ASB in any investigation of the Security Incident including complying with ASB's reasonable instructions to mitigate the effect of a Security Incident on ASB or its customers;
- (d) and to the extent not prohibited or restricted by law (including any confidentiality obligations to Supplier's other customers), provide any other details in respect of the Security Incident that ASB requests until it is rectified; and
- (e) conduct its own investigation of the Security Incident and implement rectification measures if an actual incident or breach occurred or ensure that a potential Security Incident does not become an actual Security Incident.

17.2. The Supplier must notify ASB of any Security Incident using the contact details below or other contact details as ASB advises from time to time.

ASB CSIRT	csirt@asb.co.nz
ASB Risk Team	line2rpm@asb.co.nz
Privacy & Compliance	asbprivacyofficer@asb.co.nz

18. Supplier Due Diligence

18.1. The Supplier must carry out appropriate reference and background checks (including such checks requested by ASB) on the Supplier's Personnel having regard to the nature of the Services and Goods and the financial services industry. The Supplier will, on the request of ASB, provide evidence of its compliance with this obligation.

19. Health and Safety

19.1. The Supplier must:

- (a) comply with, and ensure that all Supplier Personnel engaged in the provision of the Services and Goods comply with, Health and Safety Law and any and all ASB directions, instructions, requests, policies or requirements relevant to, associated with or necessary for compliance by the Supplier or ASB with Health and Safety Law and including any such matters of which the Supplier has been informed by ASB orally or in writing, at the Supplier's cost;
- (b) consult, cooperate and coordinate with ASB and any other relevant party in the provision of Services and/or supply of Goods to ensure that the Supplier and ASB understand any risks to health and safety arising from the provision of the Services and/or supply of Goods, and the controls to be implemented to mitigate those risks, and to provide ongoing verification that the risks are being controlled. The Supplier will do all things necessary to assist, and refrain from doing anything that may impede ASB or its Personnel in discharging their obligations under the Health and Safety Law;
- (c) perform the Services in a manner that does not cause ASB to breach its obligations under the relevant Health and Safety Law; and
- (d) upon the reasonable request by or on behalf of ASB, demonstrate compliance with such requirements including providing evidence of measures taken to achieve such compliance.

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19.2. Any breach by the Supplier of this clause 19 which exposes Personnel or other people at ASB's premises to risk to their health and safety will be considered a material breach by the Supplier of its obligations under these Terms which is not capable of remedy, and will entitle ASB to terminate the provision of the affected Services.

20. Modern Slavery Compliance

20.1. In providing the Goods and Services, the Supplier will and will use reasonable endeavours to ensure that its Personnel and Supply Chain Participants comply with:

- (a) all applicable laws, statutes, regulations or codes from time to time in force relating to or prohibiting or criminalising Modern Slavery (“**Modern Slavery Laws**”); and
- (b) ASB policies, the Supplier Code of Conduct and bank standards and procedures notified to the Supplier by ASB as they relate to Modern Slavery;

20.2. The Supplier will notify ASB promptly upon becoming aware, of any actual, alleged or reasonably suspected Modern Slavery in its operations or Supply Chain.

20.3. On request by ASB, the Supplier will provide ASB within a reasonable period of time all information that ASB reasonably requires to:

- (a) comply with ASB's reporting or due diligence obligations in connection with Modern Slavery (including those applicable to ASB as part of a group that has obligations to comply with laws relating to reporting on Modern Slavery); and
- (b) investigate any actual, alleged or suspected instances of Modern Slavery notified under clause 20.2.

20.4. ASB may terminate this Agreement with immediate effect by giving written notice to the Supplier, if ASB has reasonable cause to believe that the Supplier has committed a breach of clause 20.1 which is incapable of being remedied to ASB's reasonable satisfaction.

21. Reserve Bank Access to Information

21.1. The Supplier acknowledges and agrees that:

- (a) the Reserve Bank may from time-to-time request that the Supplier and/or ASB provide the Reserve Bank information and/or documentation relating to the Services;

(b) upon receipt of a request for information and/or documentation relating to the Services from the Reserve Bank and/or ASB, the Supplier will:

- (i) unless instructed otherwise by the Reserve Bank, notify ASB of any such request (where the Supplier receives a request directly from the Reserve Bank);
- (ii) subject to clause 21.2 below, provide to either ASB or the Reserve Bank (as the case may be) the information and/or documentation which is specifically requested by the Reserve Bank, to the extent that the requested information and/or documentation belongs to, or is accessible to the Supplier, in accordance with any timetable set by the Reserve Bank; and
- (iii) work with ASB to ensure that such information and/or documentation satisfies the Reserve Bank's request and requirements in relation to the request and is appropriately presented and explained.

21.2. Clause 21.1 does not oblige the Supplier to provide the Reserve Bank with access to any information that does not relate to the “outsourcing arrangement” as that term is defined in the Outsourcing Policy.

22. Business Continuity

22.1. The Supplier represents and warrants that it has at all times adequate business continuity and disaster recovery arrangements in respect of its own business, that will enable continuous availability of the Services after a disruptive event, in accordance with Best Practice and maintain a documented and tested business continuity plan in respect of the Services throughout the Term.

22.2. The Supplier will provide ASB such information (including copies of documented and tested business continuity plans for the Services as is reasonably requested by ASB from time to time):

- (a) to evidence the Supplier's compliance with clause 22.1; and
- (b) to assist ASB to comply with any obligation it has under the Outsourcing Policy to evidence that appropriate and adequate business continuity programmes and disaster recovery capabilities are in place for the purpose of ensuring the continuation of the Services.

23. No public announcements

23.1. The Supplier must not, without obtaining ASB's prior written consent (which may be withheld at ASB's sole discretion):

- (a) communicate, make any public announcements or publicise the existence of the Purchase Order or the Supplier's relationship with ASB in any way;
- (b) use ASB as a reference; or
- (c) refer to, publish on any media, communicate or use ASB's name or any trademark of ASB in any manner.

24. Record keeping

24.1. The Supplier must:

- (a) generate such documentation and records which are reasonably required to demonstrate the Supplier's compliance with these Terms, the Purchase Order and any applicable law; and
- (b) maintain such records in an accessible and secure form for any period required by law, or such other period as specified by ASB in writing or as is reasonably necessary in order for the Supplier to demonstrate its compliance with these Terms, the Purchase Order and any applicable Law.

25. Audits

25.1. On ASB giving the Supplier reasonable notice the Supplier must provide the ASB or its agents with access (during normal business hours) to the personnel, premises, documentation and operational records relating to the Services and Goods for audit and inspection purposes.

25.2. ASB will use all reasonable endeavours to avoid disruption to the Supplier's business and comply with all reasonable security and confidentiality requirements of the Supplier.

25.3. Without limiting any rights or remedies of ASB, if any audit reveals that the Supplier is not complying with these Terms and/or the Purchase Order, the Supplier must take such action as is necessary to promptly remedy the non-compliance and provide such evidence, reports or other information as is reasonably required by ASB to confirm that any non-compliance has been remedied.

25.4. Each party will bear its own costs associated with an audit, except if an audit reveals that the Supplier has breached the Terms and/or the Purchase Order in a

material way, then the Supplier will reimburse ASB for ASB's reasonable costs for carrying out the audit.

26. Dispute resolution

26.1. If a party considers that a dispute has arisen, it may give a notice to the other party. The notice must set out the particulars of the dispute. Promptly after the receipt of a notice of a dispute, a Supplier representative and an ASB representative must meet to discuss the dispute and negotiate in good faith to resolve the dispute. This clause does not prevent a party seeking urgent interlocutory relief.

27. Force Majeure Event

27.1. Neither party will be liable for a failure or delay in performing its obligations under these Terms and/or the Purchase Order provided that:

- (a) such failure or delay is directly attributable to a Force Majeure Event and could not have been prevented by reasonable precautions or circumvented or minimised by the non-performing party; and
- (b) the party unable to perform its obligations gives notice of the Force Majeure Event to the other party as soon as reasonably possible.

27.2. The Supplier acknowledges that ASB is not liable for any Fees for Services and/or Goods that the Supplier does not provide due to a Force Majeure Event.

28. Assignment and subcontracting

28.1. ASB may at any time, by notice to the Supplier, novate, assign or transfer its rights and obligations under the Purchase Order and these Terms to a Related Company. Such novation, assignment or transfer will be at no additional cost to ASB or any of its Related Companies.

28.2. The Supplier may not subcontract, assign or transfer in whole or in part its rights and obligations under the Purchase Order or these Terms without the prior written consent of ASB (such consent may be given or withheld at ASB's sole discretion).

28.3. If ASB does consent to the Supplier engaging a subcontractor, the Supplier will not be relieved of any of its liabilities or obligations under these Terms and/or the Purchase Order and will be liable for any acts or omission of any of its subcontractors as if they were the acts or omissions of the Supplier.

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29. Amendments to these Terms

29.1. ASB may amend these Terms from time to time by posting the revised version of these Terms its website or notifying the Supplier by email or via the electronic messaging service available through the procurement portal provided by Unimarket Limited.

29.2. If the Supplier continues to perform its obligations under a Purchase Order following the effective date of any amendment, the Supplier will be deemed to have accepted the amendment to these Terms.

30. ASB Related Companies

30.1. For the purposes of Part 2 of the Contract and Commercial Law Act 2017, these Terms and any Purchase Order are entered into by ASB for itself and for the benefit of its Related Companies. Where ASB is provided a right or benefit under these Terms or any Purchase Order, any ASB Related Company may take advantage of that right or benefit provided that no ASB Related Company may bring proceedings against the Supplier under these Terms or any Purchase Order without ASB's prior written consent.

30.2. Nothing in this clause 30 makes any ASB Related Company a party to these Terms. The consent of any ASB Related Company is not required for any rescission, termination or amendment of these Terms.

31. Governing law and jurisdiction

31.1. These Terms are governed by New Zealand law and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand.

32. Definitions

ASB means ASB Bank Limited and its Related Companies.

ASB Confidential Information means any information:

- (a) regarding the business or affairs of ASB;
- (b) regarding the customers, clients, employees or contractors of, or other persons doing business with ASB;
- (c) relating to the Purchase Order;
- (d) which is by its nature confidential or which is designated as confidential by ASB; and/or
- (e) which the Supplier knows, or ought to know, is confidential.

ASB Data means all data and information in any form (including Personal Information) relating to ASB or any Related Company and their respective operations, facilities,

customers, personnel, assets (including hardware and software), products, sales and transactions and includes data which is produced, generated, modified, compiled, stored or processed in the provision of the Goods and/or Services for ASB.

ASB IP means all Intellectual Property Rights which are owned or licensed by ASB, including any New IP.

ASB Policies means those policies notified to the Supplier by ASB from time to time.

Best Practice means:

- (a) the exercise of that degree of professional skill, diligence, prudence, foresight and operating practice that reasonably would be expected from an experienced professional providing services similar to the Services; and
- (b) in accordance with the Law.

Business Days means any day other than a Saturday, Sunday, public holiday or bank holiday in Auckland, New Zealand.

Commencement Date means the commencement date set out in the applicable Purchase Order, or if no commencement date is specified, the date of the applicable Purchase Order.

Data Breach means an actual, or suspected, unauthorised or accidental access to, disclosure, use, modification, destruction, loss or alteration of ASB Data which is Personal Information.

Delivery Location means the delivery location specified in the Purchase Order.

Fees means the fees for the Goods and/or Services and set out or calculated in accordance with the Purchase Order.

Force Majeure Event means an event or circumstance that is beyond the reasonable control of a party.

Goods means the goods described in the Purchase Order.

GST means Goods and Services Tax imposed under the New Zealand Goods and Services Tax Act 1985.

Health and Safety Law means the Health and Safety at Work Act 2015, and includes any regulations, orders, safe work instruments, codes of practice and notices made, issued or approved under that Act, and any other relevant work or occupational health and safety legislation in force from time to time.

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Information Asset means any ASB information (including all ASB Data and ASB Confidential Information) and ASB information technology (including software and hardware) which the Supplier manages or accesses on behalf of ASB, or uses, produces, generates, modifies, compiles, stores or processes, or is otherwise made available to the Supplier, in connection with provision of the Goods and Services.

Intellectual Property Rights means all intellectual property rights throughout the world and includes rights in respect of copyright, patents, trademarks, designs, trade secrets, know-how, confidential information and circuit layouts and includes any application or right to apply for registration of any of the rights referred to in this definition.

Law means all laws, binding rules, regulations, published regulatory guidance, regulatory requirements and any form of secondary legislation, resolution, policy, guideline or case law having the force of law from time to time, in each case, that are relevant to the provision, receipt or use of the Goods and Services and as amended, superseded or replaced from time to time.

Modern Slavery means internationally recognised exploitative practices including human trafficking, slavery, slavery-like practices, servitude, forced labour, forced marriage, debt bondage, the worst forms of child labour, deceptive recruiting for labour services.

New IP means any new Intellectual Property Right created or arising out of the provision of the Goods and/or Services.

NRCT means Non-Resident Contractors' Tax imposed under the New Zealand Income Tax Act 2007.

Outsourcing Policy means any policy issued from time to time by the Reserve Bank in respect of outsourcing functions by large banks in New Zealand, and as at the date of this agreement, means the document entitled "BS11: Outsourcing Policy", issued by the Reserve Bank in September 2017.

Personnel means, in relation to a party, the officers, employees, contractors, subcontractors and agents of such party.

Personal Information has the meaning given to "personal data" (or equivalent) in applicable Privacy Legislation and, for the purposes of the Privacy Act, shall have the meaning given to the term "Personal Information" in the Privacy Act.

Privacy Legislation means:

- (a) the Privacy Act 2020;
- (b) and any legislation from time to time in force in:
 - (i) the New Zealand jurisdiction; and

- (ii) any non-New Zealand jurisdiction (to the extent that ASB, any Personal Information or the Supplier is subject to the laws of that jurisdiction,

affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of Personal Information.

Purchase Order means an order for Goods and/or Services on these Terms that is submitted to the Supplier by ASB.

Registration means the online registration process that the Supplier must complete on ASB's procurement portal provided by Unimarket Limited.

Related Company means a related company as defined in section 2(3) of the Companies Act 1993 save that references to "company" in that section will be deemed to include companies whether incorporated or constituted in New Zealand or elsewhere, and **Related Companies** shall have the same meaning.

Reserve Bank means the Reserve Bank of New Zealand.

Security Incident means:

- (a) breach, incident or problem which does or could result in an actual or potential compromise of the confidentiality, availability or integrity of Information Assets or the Services and includes any:
 - (i) information security or data incident or breach that materially affects or has the potential to materially affect, financially or non-financially, ASB or the interests of deposit holders, beneficiaries or other customers of ASB; and
 - (ii) information security or data incident or breach that has been or is required to be notified by the Supplier to any regulatory or supervisory body, either in New Zealand or other jurisdictions anywhere in the world;
- (b) a Data Breach or an action that prevents ASB or the Supplier from accessing ASB Data which is Personal Information on either a temporary or permanent basis; and
- (c) a material information security control weakness in relation to any Information Asset or the Services that can't be remediated in a timely manner.

Security Incident Response Plan means the set of instructions, policies and procedures which the Supplier has in place for managing and responding to a Security Incident, the form of which is either prepared and maintained by the Supplier or provided by ASB to the Supplier.

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Services means the services described in the Purchase Order.

Supplier means the supplier identified on the Purchase Order.

Supplier IP means all pre-existing Intellectual Property Rights which are owned or licensed by the Supplier prior to the Commencement Date or created by the Supplier other than pursuant to providing the Services.

Supply Chain means the goods and services (including labour) that contribute to the Supplier's own goods and services, including goods and services sourced or used by the Supplier's or Supply Chain Participant.

Supply Chain Participant means any organisation or individual, from any jurisdiction, involved in the chain of production and provision of particular goods or services to the Supplier.

Tax means any tax, levy, charge, impost, duty, fee, deduction, or withholding which is assessed, levied, imposed or collected by any Government agency and includes, but is not limited to, GST, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above.

Term means the term specified in the Purchase Order, or if no term is specified means the period commencing from the Commencement Date until the date the Purchase Order is terminated in accordance with these Terms.

Terms means these terms and conditions.

33. Interpretation

33.1. In these Terms, unless a contrary intention appears:

- (a) a reference to legislation is to that legislation as consolidated, amended, re-enacted or replaced and includes any subordinate legislation issued under it.
- (b) if there is any inconsistency between any information contained in a Purchase Order and these Terms, the Purchase Order will take precedence;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a party to a document includes that party's successors and permitted assigns;
- (e) a "person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, estate, agency of state, municipal authority, government or statutory body, whether or not having separate legal identity; and
- (f) the terms "including", "for example", "such as" and similar terms do not imply any limitations.