

## Terms and Conditions for Tax Management New Zealand Limited Services

### 1. BACKGROUND AND INCORPORATION OF TERMS

- 1.1. Tax Management New Zealand Limited ("TMNZ") is a tax pooling intermediary registered with Inland Revenue. TMNZ has engaged the Trustee to provide custodial trustee services over the Tax Pooling Account and the bank accounts through which monies are paid for deposit to, or as a refund from, in relation to the Services.
- 1.2. These terms and conditions (the "Conditions", and each a "Condition") set out the rights and obligations of the Client and TMNZ in relation to the use of the Services and TMNZ's website and TMNZ Systems relating to the Services.
- 1.3. By registering as a Client in the TMNZ System, requesting or accepting supply of the Services, (whether through an Agent or not) the Client is agreeing to be bound by these Conditions.
- 1.4. Where the Client elects to communicate with TMNZ or access the Services through an accountant, tax agent, employee or any other person (the "Agent"):
  - (a) the Client is responsible for any acts or omissions of the Agent; and
  - (b) the Client represents that the Agent is authorised to contract with TMNZ on its behalf and the Client acknowledges and agrees that it is and will be bound by these Conditions, each Finance Request, Purchase Request, Sell Request, IRD Transfer Request, Associated Group Transfer Request and Tax Refund Request in the same manner as if it had been completed, submitted and agreed to by the Client itself.
- 1.5. Each Agent agrees to comply with these Conditions as if it were a Client. Each Agent who registers a Client for the Services, or requests or accepts the supply of the Services on its Client's behalf, warrants to TMNZ that it holds current written authorisation to act for and on behalf of that Client in relation to its tax affairs, including the use of the Services.
- 1.6. These Conditions apply in respect of every supply of Services by TMNZ to the Client and to the extent there is any conflict between the Conditions and any other document relating to the Services, these Conditions will prevail unless otherwise expressly agreed by TMNZ in writing.

### 2. TMNZ OBLIGATIONS

- 2.1. TMNZ shall:
  - (a) provide the Services with reasonable skill and care;
  - (b) use reasonable endeavours to ensure that the TMNZ website and TMNZ System are effective and reliable, although TMNZ does not guarantee that the Services will be continuous or fault-free; and
  - (c) notify Client of the occurrence of any Material Adverse Event that may have a material effect on the Client, within a reasonable time from becoming aware of it, giving details of it and any action taken (or to be taken) as a result.

### 3. CLIENT OBLIGATIONS

- 3.1. Each Client shall:
  - (a) follow TMNZ's directions regarding the use of the Services;



- (b) promptly following request from TMNZ, provide TMNZ with all such documentation and evidence as TMNZ or the Trustee may consider necessary or desirable for the purposes of satisfying its obligations under the Financial Transactions Reporting Act 1996 or the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("AML Act");
- (c) ensure all information provided to TMNZ is complete, accurate and up to date;
- (d) ensure that the Services are used only for their intended business use; and
- (e) comply with all applicable laws relating to the use of the Services.

3.2. For the purposes of verifying the identity of the Client:

- (a) Where the Client is an individual, the Client consents to their Personal Information provided being used with and, where necessary being disclosed to, the Verification Providers for the purposes of that information being electronically verified on an ongoing basis;
- (b) Where the Client is a body corporate or another entity separate from its Members, the Client warrants that it has obtained written consent from the relevant Members to their Personal Information being provided, used with and, where necessary being disclosed to, the Verification Providers for the purposes of that information being electronically verified on an ongoing basis;
- (c) In the event a Client or a Member does not consent to have their identity electronically verified, documents in a form acceptable to TMNZ must be provided to TMNZ to adequately evidence the identity of the Client and/or Member.

#### **4. CLIENT DEPOSITS INTO THE TMNZ TAX POOLING ACCOUNT**

4.1. A Client may make a Client Deposit at any time by either:

- (a) making a cash deposit in Cleared Funds into the Client Deposit Trust Account for the purpose of being paid into the TMNZ Tax Pooling Account (a "Cash Deposit") held by Inland Revenue;
- (b) transferring a deposit from the Tax Pooling Account of another tax pooling intermediary into the TMNZ Tax Pooling Account; or
- (c) transferring a credit balance from its Taxpayer Account into the TMNZ Tax Pooling Account.

4.2. The Trustee will ensure that each Cash Deposit received into the Client Deposit Trust Account is deposited into the TMNZ Tax Pooling Account and recorded in the Client's Tax Pooling Account in the TMNZ System. The Client shall indemnify TMNZ and the Trustee for any costs, losses or damages of whatever nature that arise as a result of any delay in a Cash Deposit clearing or a Cash Deposit failing to clear.

4.3. The Trustee will remit to the TMNZ Tax Pooling Account all funds received into the Client Deposit Trust Account on or before 4pm on each Provisional Tax Date.

4.4. Any funds received in the Client Deposit Trust Account after 4pm on a Provisional Tax Date may not be transferred to the TMNZ Tax Pooling Account until the next succeeding Business Day.

4.5. The Trustee shall hold each Cash Deposit received into the Client Deposit Trust Account from, on behalf or for the account of, the Client on trust for the Client until it is either paid into the TMNZ Tax Pooling Account or refunded to the Client.



- 4.6. TMNZ shall, to the greatest extent permitted by law, hold the benefit of each Tax Deposit in the TMNZ Tax Pooling Account generated by a Client Deposit on trust for the Client until it is:
- (a) transferred to another client of TMNZ and such transfer is recorded in the TMNZ System;
  - (b) credited to a Taxpayer Account;
  - (c) refunded to the Client; or
  - (d) transferred to the Tax Pooling Account of another tax pooling intermediary.
- 4.7. The Client acknowledges that making a Client Deposit does not satisfy any obligation the Client may have to make a payment to Inland Revenue.

## **5. TRANSFER OF TAX DEPOSITS**

- 5.1. Before the date which falls 60 days after the terminal tax date of a Client, the Client shall instruct TMNZ the relevant dates and amounts of Tax Deposits held in the TMNZ Tax Pooling Account that should be transferred to that Client's Taxpayer Account with Inland Revenue. TMNZ shall not be liable for any costs, losses, or damages of whatever nature caused by a Tax Deposit amount not being transferred to the Taxpayer Account of a Client due to insufficient or no instructions being provided to TMNZ by the above date.
- 5.2. On receipt of an IRD Transfer Request and confirmation that the Client has a beneficial interest in the Tax Deposit referred to therein, the Trustee will instruct Inland Revenue to transfer that Tax Deposit to the Taxpayer Account specified in that IRD Transfer Request.
- 5.3. On receipt of an Associated Group Transfer Request, TMNZ shall ensure that such transfer is effected and recorded in the TMNZ System.

## **6. REFUND OF TAX DEPOSITS**

- 6.1. On receipt of a Tax Refund Request and confirmation that the Client is the beneficial owner of the Tax Deposit referred to therein, the Trustee will instruct Inland Revenue to transfer that Tax Deposit plus accrued Use of Money Interest thereon (if any) (the "Tax Deposit Refund") to the Client Refund Trust Account. On confirming that the Tax Deposit Refund has been received into the Client Refund Trust Account in Cleared Funds, the Trustee will pay the Tax Deposit Refund into the Client Bank Account as soon as practicable. TMNZ shall not be liable for any costs, losses or damages of whatever nature due to any delay in payment of the Tax Deposit Refund or any Use of Money Interest to the Client Bank Account.
- 6.2. The Trustee shall hold each Tax Deposit Refund received from Inland Revenue into the Client Refund Trust Account in respect of the Client's Tax Deposits on trust for the Client until such amount is transferred to the Client Bank Account.

## **7. SALE AND PURCHASE OF TAX DEPOSITS**

- 7.1. A Client (a "Purchaser") may submit a Purchase Request at any time. If TMNZ has, or will have, sufficient Tax Deposits available to satisfy such Purchase Request, it shall:



- (a) for the purchase of a Tax Deposit where the Purchase Price is to be made in one single payment in full, confirm the Purchase Date and Purchase Price and/or invoice the Purchaser (“Tax Purchase”); or
- (b) for the purchase of a Tax Deposit where the Purchase Price is to be made in multiple future payments or instalments (“Flexitax”), confirm the arrangement requested.

A Purchase Request is not binding on either the Client or TMNZ until such written confirmation is issued by TMNZ and payment of the Purchase Price is received into the Purchase Price Trust Account.

- 7.2. Payments received into the Purchase Price Trust Account will be allocated in the following order, unless advised otherwise by the Client:
- (a) First, to any Tax Purchase that is confirmed and awaiting payment of the purchase price in full under Condition 7.1(a);
  - (b) Second, to any Flexitax arrangement that is set up in the TMNZ System under Condition 7.1(b), with the Purchase Price being allocated to the earliest Tax Date first;
  - (c) Third, in the absence of any instructions received from the Client and where no arrangement has been setup in the TMNZ System, to deposit into the Tax Pooling Account on or before the next succeeding Provisional Tax Date.
- 7.3. Each Purchaser shall pay the Purchase Price into the Purchase Price Trust Account in Cleared Funds by no later than 4pm three Business Days prior to the Purchase Date. On receipt of the Purchase Price:
- (a) in relation to a Tax Purchase, the beneficial interest in the Tax Deposit specified in the Purchase Request shall be transferred to the Purchaser and recorded in the TMNZ System; or
  - (b) in relation to a Flexitax arrangement, the beneficial interest in the Tax Deposit calculated by reference to the Purchase Price received less interest charged by TMNZ shall be transferred to the Purchaser and recorded in the TMNZ System.
- 7.4. The Trustee shall hold each Purchase Price received into the Purchase Price Trust Account in respect of a Purchase Request on trust for the Purchaser until the Trustee is satisfied that the beneficial interest in the Tax Deposit specified in the Purchase Request has been or will be transferred to the Purchaser and recorded in the TMNZ System.
- 7.5. A Purchaser shall have no right or interest in the Tax Deposit specified in a Purchase Request unless and until the Purchase Price is received by the time and in the manner required by these Conditions.
- 7.6. A Purchase Request is irrevocable when submitted to TMNZ unless (i) the Client has made a bona fide mistake and did not intend to acquire the Tax Deposit specified in the Purchase Request; and (ii) TMNZ agrees in writing to the Purchase Request being revoked.
- 7.7. A Client (a “Seller”) may submit a Sell Request at any time. If TMNZ determines in its sole discretion that it has, or will have, sufficient demand for the Tax Deposits offered for sale, it shall confirm in writing the Purchase Date and Sale Price. A Sell Request is not binding on either the Client or TMNZ until such written confirmation has been sent by TMNZ.



- 7.8. On the Purchase Date, the beneficial interest in the Tax Deposits specified in the Sell Request shall be transferred from the Seller and the Trustee will pay the Sale Price to the Seller's Client Bank Account or to the TMNZ Tax Pooling Account and recorded in the Client's Tax Pooling Account in the TMNZ System.
- 7.9. A Sell Request is irrevocable when submitted to TMNZ unless (i) the Client has made a bona fide mistake and did not intend to sell the Tax Deposit specified in the Sell Request; and (ii) TMNZ agrees in writing to the Sell Request being revoked.
- 7.10. The Client acknowledges and accepts that each sale or purchase of Tax Deposits between the Client and TMNZ may have a third-party counter-party and that TMNZ's ability to satisfy its obligations under that sale or purchase transaction may be conditional on the counter-party satisfying its obligations to TMNZ. In the event of the failure of the counter-party to satisfy its obligations to TMNZ with respect to the transaction:
  - (a) TMNZ reserves the right to cancel the sale or purchase transaction or reduce the amount of Tax Deposits specified in the Purchase Request or Sale Request; and
  - (b) TMNZ will not be liable for any costs, losses or damages of whatever nature suffered by the Client as a result of (a).
- 7.11. The Client, whether a Seller or a Purchaser, represents and warrants to TMNZ and the Trustee that each Tax Deposit or Purchase Price amount that it offers for sale or pays to the Purchase Price Trust Account as the case may be in accordance with these Conditions shall be legally and beneficially owned by the Client and free and clear of any encumbrance, security interest or any third party claim or interest.

## **8. TAX FINANCE**

- 8.1. A "Tax Finance Right" is the right to purchase the Dated Tax Deposit specified in an Approved Finance Request at its par value on the Maturity Date in accordance with these Conditions. TMNZ agrees to sell and the Client agrees to purchase each Tax Finance Right applied for in an Approved Finance Request.
- 8.2. The Client may apply to purchase a Tax Finance Right by submitting a completed Finance Request to TMNZ. If TMNZ approves the Finance Request, it shall send to the Client either one or both of: (i) written confirmation of the Maturity Date, the Finance Fee and the date the Finance Fee is payable and/or (ii) an invoice setting out those details. A Finance Request is not binding on either the Client or TMNZ until such written confirmation or such invoice has been sent to the Client.
- 8.3. The Client may purchase a Tax Finance Right described in an Approved Finance Request by depositing the Finance Fee into the Fee Trust Account in Cleared Funds by no later than 9am on the date specified in the confirmation and/or such invoice. TMNZ has no obligation to accept any Finance Fee received other than in accordance with these Conditions.
- 8.4. The Client may request to sell a Tax Finance Right by giving notice to TMNZ no later than five Business Days prior to the Maturity Date.
- 8.5. After receipt of a notice received by TMNZ under Condition 8.4, TMNZ, in its sole discretion, may choose to purchase the Tax Finance Right from the Client by providing a confirmation notice and the price payable for purchasing the Tax Finance Right.
- 8.6. TMNZ reserves the right to reject any Finance Request in its sole discretion at any time prior to receipt of the Finance Fee in accordance with these Conditions.



- 8.7. The Trustee shall hold each Finance Fee received into the Fee Trust Account from, on behalf or for the account of, the Client on trust for the Client until:
- (a) the Trustee is satisfied that:
    - (i) a Dated Tax Deposit of an amount at least equal to the Tax Amount specified in the relevant Approved Finance Request, has been or will be deposited into the TMNZ Tax Pooling Account in respect of the Client; and/or
    - (ii) if the Client were to pay a Settlement Amount in accordance with these Conditions, TMNZ will have the necessary rights to require the Trustee to instruct Inland Revenue to transfer that Dated Tax Deposit to the Client's Taxpayer Account in accordance with Condition 9.3 below, and thereafter, TMNZ; or
  - (b) such amount is refunded to the Client, and provided that the benefit of any interest accrued or accruing on the Finance Fee shall be held on trust for TMNZ.
- 8.8. TMNZ shall ensure that sufficient Tax Deposits are held in the TMNZ Tax Pooling Account at all times to enable it to deliver a Dated Tax Deposit of an amount equal to the Tax Amount to the Client in accordance with these Conditions should the Client exercise its Tax Finance Right in full.

## **9. EXERCISE OF TAX FINANCE RIGHT AND DELIVERY OF TAX DEPOSITS**

- 9.1. The Client may exercise a Tax Finance Right in full or in part. A Tax Finance Right may only be exercised on or before the Maturity Date.
- 9.2. If the Client wishes to exercise a Tax Finance Right, it shall:
- (a) notify TMNZ in writing by 4pm on the fifth Business Day prior to the Maturity Date of the amount of Dated Tax Deposit it wishes to purchase on the Maturity Date; and
  - (b) pay the Settlement Amount into the Settlement Trust Account in Cleared Funds by no later than 10am one Business Day prior to the Maturity Date.
- 9.3. On receipt of the Settlement Amount in accordance with these Conditions, the Trustee will transfer the beneficial interest in a Dated Tax Deposit equal to the Settlement Amount to the Client on the Maturity Date and records such transfer in the TMNZ System and, unless otherwise agreed with the Client, instruct Inland Revenue to transfer such Dated Tax Deposit to the Client's Taxpayer Account.
- 9.4. Neither TMNZ nor the Trustee shall be obliged to make or procure the transfer any amount of Dated Tax Deposit pursuant to Condition 9.3 above if the Client does not pay the Finance Fee and the Settlement Amount at the times and in the manner required by these Conditions.
- 9.5. If the Client notifies TMNZ that it wishes to exercise its Tax Finance Right in accordance with Condition 9.2(a), it shall be obliged to pay the Settlement Amount in accordance with Condition 9.2(b) and shall be liable for any costs, losses or damages of whatever nature that arise out of its failure to do so.
- 9.6. If the Client fails to notify TMNZ that it wishes to exercise a Tax Finance Right in accordance with Condition 9.2(a) above, the Client shall, unless TMNZ agrees otherwise



in its sole discretion, be deemed to have elected not to exercise that Tax Finance Right and the Tax Finance Right will be automatically terminated.

9.7. The Trustee shall hold each Settlement Amount received in Cleared Funds into the Settlement Trust Account from, on behalf or for the account of, the Client on trust for the Client until:

- (a) the Trustee is satisfied that:
  - (i) the Client has been recorded in the TMNZ System as the deposit holder of a Dated Tax Deposit of an amount equal to the Settlement Amount; or
  - (ii) instructions have or will be given to Inland Revenue to transfer a Dated Tax Deposit of an amount equal to the Settlement Amount to the Taxpayer Account specified in the relevant Approved Finance Request;

and thereafter, TMNZ; or

- (b) such amount is refunded to the Client,

provided that the benefit of any interest accrued or accruing on the Settlement Amount (or any part thereof) shall at all times be held on trust for TMNZ.

## 10. EXTENSION OF MATURITY DATE

10.1. The Client may request that the Maturity Date be deferred until a specified date in the future at least 5 Business Days before the Maturity Date (an "Extension"). On receipt of such request, TMNZ may (but shall not be obliged to):

- (a) quote to the Client the additional Finance Fee payable in accordance with Condition 8;
- (b) advise the Client of any other revised terms applicable to the Extension; and
- (c) state a period (the last day of which being the "Final Acceptance Date") during which the Client can accept such terms.

10.2. Any Extension is conditional on acceptance of the revised terms by the Client in writing and receipt of the additional Finance Fee into the Fee Trust Account in Cleared Funds by no later than 9am on the Final Acceptance Date.

## 11. SUSPENSION OR TERMINATION OF SERVICES

11.1. TMNZ may at any time and without cause immediately suspend or terminate the agreement to which these Conditions relate (including terminating any of the Client's Tax Finance Rights then outstanding), restrict, suspend or cancel the provision of its Services and access to the TMNZ System to that Client.

## 12. CONSEQUENCES OF EARLY TERMINATION

12.1. If TMNZ exercises its right to early termination of the agreement to which these Conditions relate pursuant to Condition 11.1, Inland Revenue requires TMNZ to wind up the TMNZ Trust Tax Pooling Account pursuant to section 15T(2) of the Tax Administration Act 1994 or TMNZ is otherwise prevented from providing the Services:

- (a) TMNZ will promptly notify any affected Client;



- (b) any affected Client shall elect to either:
  - (i) transfer its Tax Deposits to the Client's Taxpayer Account; or
  - (ii) transfer its Tax Deposits to the Tax Pooling Account of another intermediary.
- (c) TMNZ shall use reasonable endeavours to ensure that the Client can exercise each of its outstanding Tax Finance Rights on the relevant Maturity Date. If TMNZ is unable to do so because the TMNZ Tax Pooling Account will be wound up prior to the Maturity Date or otherwise, all the Client's Tax Finance Rights shall be immediately terminated;
- (d) unless otherwise agreed with the Client, the Trustee shall refund to the Client all amounts held on trust for the Client in the Client Deposit Trust Account, the Client Refund Trust Account, the Purchase Price Trust Account, the Fee Trust Account and the Settlement Trust Account, provided that any amount paid to the Client under this Condition shall be net of any amounts owing by the Client to TMNZ under these Conditions or otherwise.

### **13. INLAND REVENUE MAY REFUSE TRANSFER**

- 13.1. The Client acknowledges that Inland Revenue may refuse to accept a request to transfer a Tax Deposit from the TMNZ Tax Pooling Account to a Taxpayer Account or may reverse such a transfer for any reason, including if Inland Revenue considers that the transfer is made for the purpose or effect of tax avoidance or otherwise does not meet the requirements set out in subpart RP of the Tax Act.
- 13.2. If, for any reason whatsoever, Inland Revenue does not accept or action any instruction from the Trustee to transfer a Dated Tax Deposit from the TMNZ Tax Pooling Account to the Client's Taxpayer Account made in accordance with these Conditions, then unless otherwise agreed in writing the relevant Dated Tax Deposit shall be treated, to the greatest extent permitted by law, as if it had been deposited into the TMNZ Tax Pooling Account on the Client's behalf on the Tax Date for the purposes of section RP18 of the Tax Act.

### **14. PAYMENTS**

- 14.1. All payments made by or on behalf of, the Client to TMNZ or a Trust Account operated by the Trustee under these Conditions shall be made free and clear of any withholding, deduction (including set-off and counterclaim) or condition and shall be credited or deposited in Cleared Funds free from any lien or security interest to the bank account notified by TMNZ or the Trustee to the Client for that purpose.
- 14.2. All payments or credits to, or for the account of, the Client will be made net of any tax required by law to be withheld, deducted or paid by TMNZ, except to the extent that TMNZ is satisfied that the Client is exempt from any such tax or is a person in respect of whom any such withholding, deduction or payment is not required to be made. If TMNZ becomes liable to make any payment in respect of tax payable by the Client in relation to any such payment or credit, the Client shall immediately indemnify TMNZ in respect of any costs, losses or damages of whatever nature arising from such liability.
- 14.3. All payments made by the Client shall specify the Client's IRD number in the reference field and the Tax Year in the code field.
- 14.4. Where payments received do not specify the Client's IRD number, TMNZ is not liable for any cost, losses, or damages of whatever nature arising from any delays or inability to





match the payment received to a Client arrangement or transaction or transfer any Tax Amount to the Client's Taxpayer Account on time.

## **15. CONSENT TO RETRIEVE AND USE GOVERNMENT AGENCY INFORMATION**

- 15.1. In connection with the provision of the Services, the Client consents to TMNZ retrieving, accessing, and using specific data from Inland Revenue.
- 15.2. This data may include, but is not limited to, General Approval (GA) and Criteria and Methodologies (CAM) dates, amounts, Tax Year, balance date, supplementary return status, and dates.
- 15.3. This consent is valid until explicitly revoked by the Client in writing.
- 15.4. TMNZ shall not be liable for any inaccuracies in the data provided by Inland Revenue. It is the Client's responsibility to ensure that the information held by Inland Revenue is accurate and up to date.

## **16. DISCLOSURES**

- 16.1. TMNZ notifies the Client that:
  - (a) it has administration and information technology systems that satisfy the requirements of section 15S of the Tax Administration Act 1994 and will maintain and operate those systems as required by that section;
  - (b) none of its partners are discharged or undischarged bankrupts; and
  - (c) none of its partners have been convicted of any offence involving dishonesty.
- 16.2. TMNZ advises the Client that:
  - (a) the operation of the TMNZ Tax Pooling Account is not subject to Inland Revenue's oversight or audit; and
  - (b) Inland Revenue has no liability for any costs, losses or damages of whatever nature related to the TMNZ Tax Pooling Account.

## **17. LIMITATION OF LIABILITY**

- 17.1. Neither TMNZ nor the Trustee will be liable for any costs, losses or damages of whatever nature, unless, in the case of TMNZ, such costs, losses or damages are directly attributable to the wilful misconduct of TMNZ, its officers, employees or agents. In no case shall TMNZ or the Trustee be liable for any consequential, special, incidental or exemplary losses, damages or expenses, loss of profit or loss of opportunity.
- 17.2. Any liability of TMNZ shall be limited to the net fees earned by TMNZ in respect of the transaction or transactions that gave rise to the loss.
- 17.3. The Trustee acts only as custodial trustee in respect of the TMNZ Tax Pooling Account and the bank accounts through which monies are paid for deposit to, or as a refund from, in relation to the Services. The Trustee's liability is limited to the funds for the time being held on trust in those accounts.
- 17.4. Without restricting Condition 17.1, 17.2 and 17.3, neither TMNZ nor the Trustee will be liable for any costs, losses or damages of whatever nature that are directly or indirectly attributable to:
  - (a) non-compliance by a Client with its tax obligations;



- (b) the Client's failure to exercise any Tax Finance Right, in whole or in part or provide instructions to TMNZ within the timeframes required in these Conditions;
  - (c) Inland Revenue delaying or disallowing a transfer of a Tax Deposit from the TMNZ Tax Pooling Account for any reason, including where Inland Revenue considers that the request for transfer is made for the purpose or effect of tax avoidance;
  - (d) the Client's failure to make any payment at the time or in the manner required by these Conditions;
  - (e) the Trustee's delay or failure to: (i) transfer any Cash Deposit from the Client Deposit Trust Account to the TMNZ Tax Pooling Account; (ii) instruct Inland Revenue to transfer a Tax Deposit to a Taxpayer Account in whole or in part in accordance with Conditions 5.2 or 9.3; or (iii) take any other action contemplated by these Conditions;
  - (f) bad faith, fraud, negligence or breach of these Conditions or any other agreement or arrangement (including any agency agreement or arrangement between the Client and its Agent) on the part of any employee, officer or agent of the Client;
  - (g) the Client's failure to provide TMNZ or the Trustee with complete, accurate and up to date information;
  - (h) any change in law that adversely affects the tax pooling regime;
  - (i) any failure or delay in the performance of any obligations in these Conditions if the failure or delay results from events, circumstances, or causes beyond the reasonable control of TMNZ or the Trustee;
  - (j) any Material Adverse Event that is beyond the reasonable control of TMNZ; or
  - (k) the winding up of the TMNZ Tax Pooling Account.
- 17.5. The Client acknowledges that TMNZ and the Trustee act solely on the basis of the information supplied to them by the Client. TMNZ and the Trustee rely on the accuracy of that information and assume no obligations to enquire as to, or investigate, its accuracy.
- 17.6. The Client will, on demand, indemnify TMNZ and the Trustee against any cost, losses or damages of whatever nature incurred by TMNZ or the Trustee as a result of any fraud, negligence or breach of these Conditions by the Client, its officers, employees and agents (including any failure to pay or cause to be paid any amount due under these Conditions on its due date or any breach of any warranty or undertaking). To the extent it is reasonably able to do so, TMNZ will take reasonable steps to mitigate any such cost, losses and damages.
- 17.7. Neither TMNZ nor the Trustee will be liable to refund or pay any rebate of any Finance Fee paid by the Client with respect to any Tax Finance Right that lapses in whole or in part.
- 18. NO ADVICE**
- 18.1. TMNZ will not under these Conditions provide any tax or other advice to the Client in connection with its use of its Services, the submission of any Finance Request, Purchase Request, Sell Request, IRD Transfer Request, Associated Group Transfer Request or Tax Refund Request, the exercise of any Tax Finance Right, the acceptance of these Conditions or the management of its tax affairs generally. The Client agrees that it is



solely responsible for seeking its own tax or other advice and that neither TMNZ nor the Trustee is responsible or in any way liable for the Client's tax obligations.

- 18.2. To the extent that TMNZ provides any guidance to the Client in relation to tax pooling under these Conditions, the Client shall not rely on that guidance as constituting advice and the Client should seek confirmation or advice from their advisor.

## **19. DISPUTES**

- 19.1. Subject to Condition 19.7, a Client may not commence any arbitration relating to a dispute between the parties unless the Client has complied with Conditions 19.2 to 19.4.
- 19.2. If the Client has a dispute in relation to these Conditions or the Services, the Client may give TMNZ notice of the nature and details of the dispute.
- 19.3. Within 10 Business Days of receipt of the notice of dispute, senior managers of the Client and TMNZ shall meet to endeavour to resolve the dispute.
- 19.4. If the dispute is not resolved within 20 Business Days of receipt of the notice of dispute, either party may by notice to the other party refer the dispute to mediation. The mediation will be in Auckland and conducted under the Resolution Institute mediation rules. If the parties do not agree on a mediator or the mediator's fees within 10 Business Days of receipt of the notice of mediation, the mediator shall be appointed or the fees set by the chair of the Resolution Institute (or his/her nominee) at the request of either party. The parties shall bear the mediator's fees equally.
- 19.5. If the dispute is not resolved within 20 Business Days of the appointment of the mediator, either party may by notice to the other party refer the dispute to arbitration. The arbitration will be conducted in Auckland by a single arbitrator under the Arbitration Act 1996 (excluding clauses 5 and 7 of the Second Schedule to that Act). If the parties do not agree on an arbitrator within 5 Business Days of receipt of the notice of arbitration, the arbitrator shall be appointed by the President of the New Zealand Law Society (or his/her nominee) at the request of either party.
- 19.6. Regardless of any dispute, the Client shall continue to perform its obligations under these Conditions to the extent practicable, but without prejudice to its respective rights and remedies.
- 19.7. Nothing in this Condition 19 will preclude a party from seeking urgent interlocutory relief before a court.

## **20. ASSOCIATED GROUPS**

- 20.1. A Client, including an Agent, may request the creation of an Associated Group of two or more Clients on whose behalf it is authorised to act. Each Client agrees that it shall not attempt to create an Associated Group or add any Client to any existing Associated Group unless, following such creation or addition, each member of that Associated Group would be entitled to transfer excess tax from its Taxpayer Account to the Taxpayer Account of each other member of the Associated Group with a transfer date of the date the tax was paid pursuant to section 173M of the Tax Administration Act 1994 (the "Group Criteria").
- 20.2. TMNZ may request documentary or other evidence that any member of any Associated Group meets the Group Criteria at any time. TMNZ may refuse to create an Associated Group, refuse to add a Client to an existing Associated Group or remove any Client from



an Associated Group if, in its sole discretion, TMNZ considers that any Client does not meet the Group Criteria.

- 20.3. It is the Client's responsibility to notify TMNZ if any member of an Associated Group should cease to be a member of that group for any reason.

## **21. CONFIDENTIALITY**

21.1. TMNZ reserves the right to disclose confidential information about the Client to the extent necessary to comply with its legal obligations. In particular, TMNZ may disclose confidential information about the Client to:

- (a) the Trustee, to the extent necessary to allow it to perform its duties as trustee;
- (b) Inland Revenue, to the extent necessary to provide the Services;
- (c) third parties to the extent reasonably necessary to provide the Service or seek professional advice in relation to these Conditions of transactions contemplated by them, but subject to the third party first accepting the disclosure is to be treated in confidence;
- (d) any other third-party supplier of services, provided the prior consent of the Client is obtained; and
- (e) any Government or regulatory agency, to the extent necessary to comply with its obligations under the AML Act or any other anti-money laundering legislation and regulations.

Otherwise, TMNZ will not disclose confidential information held or received by it in relation to the Client under or by reason of these Conditions except where such information is already publicly available or where it is required to do so by law.

- 21.2. The Client will keep confidential any information it receives from TMNZ or the Trustee which is of a confidential nature or identified as such, or is otherwise commercially sensitive, including details of customers, clients, suppliers, and pricing, process, product, software or technical information of TMNZ or the Trustee. The Client may only disclose such confidential or commercially sensitive information to the extent that such information is already publicly available or where it is required to do so by law.

## **22. INTELLECTUAL PROPERTY**

22.1. TMNZ has intellectual property rights in (or has a licence for) the Services, the TMNZ Systems, processes, software and website provided to the Client. These rights may include trade marks, patents, copyright, know how, designs, trade secrets and other proprietary rights or forms of intellectual property (whether registered or unregistered) and information confidential to TMNZ ("Intellectual Property"). TMNZ or its licensors retains ownership of all of its Intellectual Property and any Intellectual Property rights arising from any improvement or change to any service, process or software, including the TMNZ System. The Client acknowledges that it has no claim to TMNZ's Intellectual Property either under these Conditions or as a result of TMNZ providing information, Services, website or software access (including access to the TMNZ System) to the Client.

- 22.2. The Client shall not copy or reproduce (whether digitally, electronically, by linking, or in hard copy or by any means whatsoever) or use any of TMNZ's Intellectual Property without TMNZ's prior written consent, unless such copying, reproduction or use is for the Client's personal reference or is required for the purpose of using TMNZ's website, its



content or any service supplied by TMNZ, in the manner in which it is intended to be used.

### **23. USE OF SERVICES**

- 23.1. The Client agrees that it is acquiring the Services for the purpose of payment of tax under the Tax Act and the Tax Administration Act 1994. The Client may not use the Services to operate a tax pool, or resell or otherwise provide tax pooling Services to any other person without the prior written consent of TMNZ.
- 23.2. The Client agrees that it is acquiring the Services for the purposes of a business as defined in the Consumer Guarantees Act 1993 and that the provisions of that Act do not apply to any Services provided by TMNZ to the Client.
- 23.3. The Client agrees that, for the purposes of the Fair Trading Act 1986, TMNZ is providing, as the Client is acquiring, the Services 'in trade' and that sections 9, 12A, and 13 of that Act will not apply to the Services or any dealings related to the Services.

### **24. VERIFICATION OF IDENTITY INFORMATION**

- 24.1. A Client, including their relevant Members, must have their identity verified in accordance with the AML Act where required under the AML Act and the partial exemption applicable to tax pooling intermediaries.
- 24.2. Each Client consents to the Personal Information provided to TMNZ being used and if necessary disclosed to the Verification Providers and authorises the Verification Providers to use any information they hold in their databases about the Client to compare against the information the Client has provided, including the credit file header database.
- 24.3. The Client submitting the Personal Information to TMNZ by any means warrants that they have received written or electronic consent of the relevant Members or individuals to whom the Personal Information relates, to have that Personal Information electronically verified on an ongoing basis by TMNZ and the Verification Providers.
- 24.4. The Client providing Personal Information of a Member to TMNZ to be electronically verified indemnifies TMNZ against any costs, losses or damages of whatever nature arising in the event that TMNZ electronically verifies the identity of that Member in reliance of the confirmation received that the individual has given their consent to have their identity electronically verified.
- 24.5. A person who is required to have their identity verified may choose not to have their Personal Information electronically verified. In such a case, the Client shall notify TMNZ of that person's election not to have the Personal Information electronically verified, or cancellation of their previous consent, and the Client shall then provide certified copies of documents acceptable under the AML Act evidencing the relevant Personal Information required.
- 24.6. In the event adequate or sufficient evidence is not made available to TMNZ to verify the Personal Information of a person, TMNZ may, at its sole discretion, suspend or cancel any account or registration or halt any proposed transactions for a Client related to that person.
- 24.7. TMNZ shall not be liable in any way for any costs, losses, or damages of whatever nature caused as a result of any halted or cancelled transaction.
- 24.8. A person's ongoing consent to have their identity electronically verified shall be deemed to have expired if:



- (a) that person, or a Client of which they are a Member, ceases to be a Client of TMNZ and has not transacted with TMNZ in the previous 36 months; and
- (b) a period of 36 months has passed since the date on which consent was given.

## **25. PROVIDING PERSONAL INFORMATION TO OTHER REPORTING ENTITIES**

25.1. In accordance with section 33 of the AML Act:

- (a) Client consents to TMNZ providing relevant identity information and relevant verification information to Client's tax agent; and
- (b) Client consents to your tax agent providing relevant identity information and relevant verification information to TMNZ for the purposes of establishing a business relationship and undertaking a tax pooling transaction with TMNZ.

25.2. Client may advise TMNZ in writing at any time that you withdraw your consent for Client's Personal Information to be provided to Client's tax agent.

25.3. With your prior consent, TMNZ may provide or obtain Client's identity information and relevant verification information to or from other reporting entities as defined in the AML Act.

## **26. PRIVACY**

26.1. TMNZ adheres to its privacy policy which can be found at <https://www.tmnz.co.nz/privacy-policy/>. If the Client provides any Personal Information to TMNZ, TMNZ's privacy policy will apply.

## **27. GENERAL**

27.1. TMNZ has established, and will be responsible for maintaining, an arrangement with the Trustee that allows, and facilitates, the Trustee acting in accordance with, and as contemplated by, these Conditions.

27.2. The Client acknowledges that TMNZ will receive remuneration from providing the Services including, where applicable, earning a margin on certain transactions contemplated in these Conditions.

27.3. Any provision in these Conditions which confers, or purports to confer, a benefit on the Trustee is for the benefit of and enforceable by the Trustee under section 12 of the Contract and Commercial Law Act 2017.

27.4. TMNZ reserves the right to restrict or suspend the future rights of the Client regarding the purchase or sale of Tax Deposits or access to other Services under these Conditions if at any time the Client is in breach of, or not meeting any material obligations under, these Conditions. TMNZ will give the Client notice of any such restriction or suspension.

27.5. TMNZ may amend these Conditions at any time by providing at least 14 days prior notice to the Client of such amendments. Notices of such changes may be in the form of advertisements on the TMNZ website or by email to the Client.

27.6. The Tax Finance Rights and all other rights and obligations of the Client under these Conditions are personal to the Client and may not be assigned, resold or otherwise disposed of by the Client without the prior written consent of TMNZ.

27.7. Each notice or communication given under these Conditions must be in writing and delivered personally or sent by post or email to the address of the relevant party



designated for that purpose. Client's designated notice address is the email or physical address held by TMNZ. TMNZ's designated notice address is:

Tax Management New Zealand Limited  
Level 5, Citigroup Centre, 23 Customs St East, Auckland 1010  
PO Box 105 435, Auckland 1143  
Email: office@tmnz.co.nz

No notice or communication to or with TMNZ shall be effective until actually received by TMNZ. Either party may update their designated notice address by providing reasonable notice to the other party.

- 27.8. If any Condition is illegal, unenforceable or invalid such Condition will be severed from these Conditions without affecting the legality, enforceability or validity of the remaining Conditions.
- 27.9. Any calculation of any amount by TMNZ under these Conditions shall be conclusive in the absence of manifest error. The Client acknowledges and agrees that unless otherwise stated any interest earned on the TMNZ Tax Pooling Account and the bank accounts through which monies are paid for deposit to, or as a refund from, in relation to the Services will belong to TMNZ. All payments and amounts will be in New Zealand dollars.
- 27.10. Time shall be of the essence in relation to the performance by the Client of its payment obligations under these Conditions.
- 27.11. The agreement to which these Conditions relate:
- (a) constitutes the entire understanding and agreement of the parties relating to the matters dealt with in these Conditions; and
  - (b) supersedes and extinguishes all prior agreements, statements, representations and understandings whether verbal or written given by or made between the parties relating to matters dealt with in these Conditions.
- 27.12. No party will be deemed to have waived any right under these Conditions unless the waiver is in writing. A failure to exercise or a delay in exercising any right under these Conditions will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other Condition.
- 27.13. The warranties, covenants, undertakings, agreements or other obligations of a party shall not merge or be extinguished on any settlement made in relation to these Conditions but shall remain in full force and effect.
- 27.14. Conditions 17 (Limitation of Liability), 21 (Confidentiality), 22 (Intellectual Property), 27 (General) and any payment obligations of the Client that remain outstanding shall survive termination of the agreement to which these Conditions relate.
- 27.15. These Conditions are governed by New Zealand law. The Client submits to the non-exclusive jurisdiction of the courts of New Zealand.

## **28. DEFINITIONS**

In these Conditions, unless the context otherwise requires:



“Account Bank” means Westpac New Zealand Limited or such other registered bank selected by TMNZ, and approved by the Trustee, from time to time;

"Agent" is defined in Condition 1.4;

“Approved Finance Request” means each Finance Request submitted by, on behalf of or for the account of, the Client and approved by TMNZ in accordance with these Conditions and shall include such amendments (including to the Finance Fee and the Maturity Date) as may be agreed between TMNZ and the Client from time to time;

“Associate” means, in relation to the Client, any other Client who is a member of the same Associated Group;

“Associated Group” means a group of two or more Clients, each of whom would be entitled to transfer excess tax from its Taxpayer Account to Taxpayer Account of each other Client in the Associated Group with a transfer date of the date the tax was paid pursuant to section 173M of the Tax Administration Act 1994;

“Associated Group Transfer Request” means a written request by a Client, either via TMNZ’s website or otherwise, to transfer the beneficial interest in a Tax Deposit held in the TMNZ Tax Pooling Account on the Client’s behalf to one of its Associates;

'AML Act" is defined in Condition 3.1(b);

“Business Day” means any day (other than a Saturday or Sunday) on which banks are open for general banking business in Auckland;

"Cash Deposit" is defined in Condition 4.1(a);

“Cleared Funds” means funds received by the Trustee which the Trustee determines in its sole discretion are freely available to it for its use in accordance with these Conditions;

“Client” means a person receiving Services from TMNZ, which may include a New Zealand taxpayer, or legal entity representing that taxpayer, together with any associated or related parties that are registered in the TMNZ System. Client also includes an agent acting on behalf of the taxpayer, including but not limited to, a tax agent, and employee, director or owner of the taxpayer;

“Client Bank Account” means the bank account recorded in the TMNZ System as the bank account into which all payments for the account of the Client should be made;

“Client Deposit” means each of the following:

- a) a payment received from, on behalf or for the account of, the Client into the Client Deposit Trust Account for the purpose of being paid into the TMNZ Tax Pooling Account;
- b) a deposit received into the TMNZ Tax Pooling Account from, on behalf or for the account of, the Client from the Tax Pooling Account of another tax pooling intermediary; and
- c) a deposit received into the TMNZ Tax Pooling Account from the Client’s Taxpayer Account;

“Client Deposit Trust Account” means the bank account with the Account Bank in the name of the Trustee established for the purpose of receiving Cash Deposits from, on behalf or for the account of, Clients;





"Client Refund Trust Account" means the bank account with the Account Bank in the name of the Trustee established for the purpose of receiving Tax Deposit Refunds from Inland Revenue in respect of Clients' Tax Deposits;

"Client's Tax Pooling Account" means the Client's allocation in the TMNZ Tax Pooling Account visible to the Client in the TMNZ System;

"Dated Tax Deposit" means a Tax Deposit with an Effective Date on or before the Tax Date;

"Effective Date" means, in relation to a Tax Deposit, the Effective Date specified in the TMNZ System for that Tax Deposit, which will be:

- a) in the case of a Tax Deposit that was deposited into the TMNZ Tax Pooling Account from the Tax Pooling Account of another intermediary, the date on which that Tax Deposit was first received into a Tax Pooling Account; and
- b) in the case of a Tax Deposit that was deposited into the TMNZ Tax Pooling Account from the Client Deposit Trust Account or a Taxpayer Account, the date on which the Tax Deposit was received into the TMNZ Tax Pooling Account;

"Extension" has the meaning given in Condition 10.1;

"Fee Trust Account" means the bank account with the Account Bank in the name of the Trustee established for the purpose of receiving amounts paid for the purpose of satisfying a Client's obligation to pay a Finance Fee;

"Finance Fee" means, in relation to an Approved Finance Request, the amount specified as the "Finance Fee" in that Approved Finance Request and paid or payable by the Client in accordance with these Conditions;

"Finance Request" means an irrevocable written request by the Client to purchase a Tax Finance Right made either via TMNZ's website to access the TMNZ System or in such other form as TMNZ may agree, in each case, setting out (among other things) the Tax Date, Tax Amount, Maturity Date and Finance Fee;

"Flexitax" has the meaning given in Condition 7.1(b);

"including" and similar words do not imply any limitation;

"Inland Revenue" or "IRD" means the Inland Revenue Department, which is a Department of State, constituted under section 5 of the Tax Administration Act 1994 and includes, for the avoidance of doubt, the Commissioner of Inland Revenue;

"IRD Transfer Request" means a written request by a Client, either via TMNZ's website to access the TMNZ System or otherwise, to transfer a Tax Deposit held in the TMNZ Tax Pooling Account on the Client's behalf to its Taxpayer Account or the Taxpayer Account of one of its Associates which specifies:

- a) the amount and Effective Date of the Tax Deposit to be transferred;
- b) the Tax Year and Taxpayer Account into which the requested Tax Deposit should be transferred;

"Material Adverse Event" means something having a material adverse effect on a person, including:

- a) on that person's financial condition or operations or on the consolidated financial condition or operations of it and its subsidiaries; or



- b) on its ability or willingness to perform and comply with its obligations under these Conditions or any document relevant to the performance of these Conditions, including any change in law or Inland Revenue approvals or policy;

“Maturity Date” means, in relation to an Approved Finance Request, the date specified as the date on which the Settlement Amount in that Approved Finance Request is payable or such other date as agreed by TMNZ and the Client in accordance with Condition 8.1;

“Members” means in relation to a Client that is a company, body corporate or other entity where persons have a beneficial ownership interest (whether contingent or discretionary or not) in or authority to make decisions on behalf of that Client entity, those persons, including relevant shareholders (direct and indirect), directors, trustees, beneficiaries, persons with power to appoint and remove trustees, settlors of a trust, employees or other authorised persons;

“Personal Information” means, in respect of a person, such information that sufficiently identifies a person by their name, address, date of birth, phone number, email address and country of residence or other such information required to be collected and verified under the AML Act;

“Purchaser” is defined in Condition 7.1;

“Purchase Date” means, in respect of a Purchase Request or a Sell Request, the date notified by TMNZ to the Seller or the Purchaser pursuant to Condition 7.1 as the date on which the sale or purchase of the Tax Deposit referred to in that Purchase Request or Sell Request will take place;

“Purchase Price” means, in respect of a Purchase Request, the amount notified by TMNZ to the Purchaser as the amount which must be paid by, or on behalf of, the Purchaser on the Purchase Date to purchase the Tax Deposit specified in that Purchase Request;

“Purchase Price Trust Account” means the bank account with the Account Bank in the name of the Trustee established for the purpose of receiving amounts paid for the purpose of satisfying a Client’s obligation to pay a Purchase Price;

“Purchase Request” means an irrevocable offer by a Client in writing, either via TMNZ’s website or otherwise, to purchase a Tax Deposit, which specifies:

- a) the amount of the requested Tax Deposit;
- b) the Effective Date of the requested Tax Deposit; and
- c) the Tax Year into which the requested Tax Deposit should be transferred;

“Provisional Tax Date” means the 15th or 28th of January, the 7th or 28th of May or the 28th of another month (excluding April & December) or, where this is not a Business Day, the immediately following Business Day;

“Sale Price” means, in respect of a Sell Request, the amount notified by TMNZ to the Seller as the amount which the Seller is entitled to receive in respect of the sale of the Tax Deposit specified in that Sell Request;

“Seller” is defined in Condition 7.7;

“Sell Request” means an irrevocable offer by a Client in writing, either via TMNZ’s website or otherwise, to sell a Tax Deposit which specifies:

- a) the amount of the Tax Deposit for sale; and
- b) the Effective Date of the Tax Deposit for sale;



“Settlement Amount” means an amount equal to the amount of Dated Tax Deposit the Client has notified TMNZ that it wishes to purchase on the Maturity Date in accordance with Condition 9.2(a);

“Settlement Trust Account” means the bank account with the Account Bank in the name of the Trustee established for the purpose of receiving Settlement Amounts from, on behalf of or for the account of, Clients;

“Services” means tax pooling and tax financing services, together with any connected and ancillary services, provided by TMNZ;

“Tax Act” means the Income Tax Act 2007;

“Tax Amount” means, in relation to an Approved Finance Request or Finance Request, the amount specified as the “Tax Amount” in that Approved Finance Request or Finance Request (as applicable);

“Tax Date” means, in relation to an Approved Finance Request or Finance Request, the date specified as the “Tax Date” in that Approved Finance Request or Finance Request (as applicable);

“Tax Deposit” means a deposit in the TMNZ Tax Pooling Account;

“Tax Deposit Refund” is defined in Condition 6.1;

“Tax Finance Right” is defined in Condition 8.1;

“Tax Pooling Account” has the meaning given to that term in section YA1 of the Tax Act;

“Tax Refund Request” means a written request by a Client, either via TMNZ’s website or otherwise, to refund a Tax Deposit held in the TMNZ Tax Pooling Account (or part thereof) which specifies:

- a) the amount and Effective Date of the Tax Deposit to be refunded; and
- b) the bank account into which the Tax Deposit should be refunded;

“Taxpayer Account” means the “tax account with the Commissioner” (as defined in section YA1 of the Tax Act);

“Tax Year” means the income year of the Client as set out in section YE 1 of the Income Tax Act 2007, which refers to the Client’s accounting year that corresponds to the relevant standard tax year ending 31 March;

“TMNZ” means the Tax Management New Zealand Limited (NZBN 9429036244713);

“TMNZ System” means the information technology system developed for TMNZ which is accessed via TMNZ’s website and used by TMNZ and the Trustee to provide the Services;

“TMNZ Tax Pooling Account” means the Tax Pooling Account with the Inland Revenue established by the Trustee in the name of TMNZ under section 15S of the Tax Administration Act 1994;

“Trustee” means the trustee appointed by TMNZ from time to time to provide custodial trustee services over the TMNZ Tax Pooling Account, currently Guardian Trust;

“Use of Money Interest” means use of money interest payable by the Inland Revenue in accordance with section 120D of the Tax Administration Act 1994;

“Verification Providers” means the Department of Internal Affairs, NZTA, Centrix Group Limited, Companies Office, Land Information New Zealand, White Pages, Orbis, Document Verification



Service of the Australian Government and any other organisation or agency in the business of providing electronic identity verification services engaged by TMNZ.

[Version: April 2024]