

# PayWay

**Terms and Conditions**

October 2018



**200 years**  
proudly supporting Australia

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# SECTION A

## Terms and Conditions that apply to all Products

### 1. Introduction

- 1.1 These terms and conditions apply to the following products:
- 1.1.1 **“PayWay Additional Transactional Reporting”** means the reporting function that allows you to consolidate reporting of your PayWay Payments, BPAY® Payments, Post Billpay Payments, Remittance Processing Service and Bill Payment Processing Service (Branch Payments);
  - 1.1.2 **“PayWay API”** means the Application Programmer Interface software that can be integrated into your application software to process Card Transactions. It enables you to integrate our Card processing functions into your existing front-end systems;
  - 1.1.3 **“PayWay Batch”** means the facility which lets you make batch Payments for multiple customers by Card;
  - 1.1.4 **“PayWay Connect”** means the service that allows you to programmatically download Settlement Reports through an Application Programmer Interface;
  - 1.1.5 **“PayWay Match”** means the facility that allows your customers to make Payments to you by direct credit using a Virtual Account;
  - 1.1.6 **“PayWay Net”** means the facility that allows your customers to make Card Transactions and/or PayPal Transactions. PayWay Net uses a secure website hosted by us, with real-time authorisation of Card Transactions;
  - 1.1.7 **“PayWay Payment Card”** means the facility that allows your customers to make Payments to you by Card, by Direct Debit, using the BPAY® Scheme or over the counter at Australia Post. Plastic payment cards are issued by us. PayWay Payment Card can also be used in conjunction with PayWay Phone, PayWay Net and PayWay Recurring Billing products;
  - 1.1.8 **“PayWay Phone”** means the Interactive Voice Response (IVR) technology that allows your customers to make Card Transactions over the phone with real-time authorisation;
  - 1.1.9 **“PayWay Recurring Billing and Customer Vault”** means the facility that allows you to enter and store data relating to your customers and collect Payments by Card or Direct Debit from your customers. You can collect regular Payments from your customers by entering the payment amount and frequency along with your customers Card or Direct Debit details. For variable Payments, you can complete and upload a spreadsheet containing a list of the amounts to be debited or send a payment message from your system; and
  - 1.1.10 **“PayWay Virtual Terminal”** means the facility that allows your staff to collect Card Transactions and receive real-time authorisation through the PayWay Website hosted by us and accessed via your desktop, smartphone or tablet.
- 1.2 If you have entered into an MSA, then this Agreement is also subject to the terms and conditions set out in the MSA. To the extent there is any inconsistency between this Agreement and the MSA, the terms of this Agreement will prevail.

## 2. Definitions and interpretation

2.1 The following words have these meanings in this Agreement unless the contrary intention appears:

**“Access Code”** includes all usernames and passwords issued to access a Product or the PayWay Website.

**“Account”** means any Westpac settlement, billing and split surcharging business account nominated by you for the purposes of this Agreement.

**“ADC”** (being an Account Data Compromise) means any event where we or you (or any of your officers or employees) suspect or have confirmation of unauthorised access to Cardholder Data.

**“Adjustment”** means an Error Correction or a Reversal.

**“Agreement”** means this Agreement, including Application, the Schedules, as amended from time to time, the PayWay Fees and Charges Sheet, the MSA and BPAY<sup>®</sup> Sub-biller Agreement and Operations Manual (as applicable).

**“APCA”** means the Australian Payments Clearing Association Limited ABN 12 055 136 519.

**“Application”** means the application submitted by you to us nominating the Product(s) you wish to use.

**“Australia Post”** means Australian Postal Corporation a body corporate established pursuant to the Postal Services Act 1975 and continued by the *Australian Postal Corporation Act 1989* of the Commonwealth of Australia.

**“Australia Post Authorised Holiday”** means any day declared by Australia Post to be a holiday for some or all of its employees, contractors or agents.

**“BECS”** means the system known as the Bulk Electronic Clearing System (CS2) from time to time adopted by APCA for the purpose of co-ordinating, facilitating and protecting the conduct and settlement of electronic exchange between participating institutions.

**“BECS Procedures”** means the published procedures of BECS administered by APCA as amended from time to time.

**“BECS Regulations”** means the published regulations of BECS administered by APCA as amended from time to time.

**“BPAY<sup>®</sup>”** means BPAY<sup>®</sup> Pty Ltd ABN 69 079 137 518 which operates an electronic payments scheme through which your customers direct us to make payments to you (“the **BPAY<sup>®</sup> Scheme**”).

**“BPAY<sup>®</sup> Biller Agreement”** means the BPAY<sup>®</sup> Biller Agreement Terms and Conditions and the BPAY<sup>®</sup> Biller Operations Manual – BPAY<sup>®</sup> Payments entered into between you and us.

**“BPAY<sup>®</sup> Sub-biller Agreement and Operations Manual”** means the Sub-biller Agreement and associated Operations Manual required to be entered into if you take up a PayWay Payment Card.

**“Business Day”** means any Monday to Friday on which banks are open for business in New South Wales, but in relation to Post Billpay, excludes an Australia Post Authorised Holiday.

**“Card”** means:

- a valid Transaction Card issued by a member or affiliate of Visa on which the Visa marks appear;
- a valid Transaction Card issued by a member or affiliate of Mastercard<sup>®</sup> on which the Mastercard marks appear;
- a Charge Card; or
- any other valid Transaction Card issued by another entity which we request you honour and you agree to honour.

**“Card Scheme”** means the Visa, Mastercard<sup>®</sup>, American Express<sup>®</sup>, Diners Club and JCB card schemes and any other similar schemes that we are a member of or participate in.

**“Cardholder”** means a person to whom a Card has been issued.

**“Cardholder Data”** means the account information of a Cardholder.

**“Charge Card”** means a Card issued under any one of the following Card Schemes: American Express, Diners Club or JCB.

**“Cut-Off Time”** means such time or times on any Business Day, or such other time or times on any day as notified by us to you from time to time. For BPAY® Payments, cut-off times will be determined by the Payer’s financial institution. For Post Billpay Payments, cut-off times will be determined by Australia Post.

**“DDR Service Agreement”** means a debit user’s binding agreement given for the benefit of a customer as to the basis on which it will provide direct debit services to that customer through BECS, in such form as Westpac may approve.

**“Debit Item”** means a debit Payment instruction entered into the System by you.

**“Digital Certificate”** means a digitally signed statement that binds the identifying information of a user, computer, or service to a public/private key pair.

**“Direct Debit”** means the direct debit made as a result of us fulfilling a Direct Debit Request.

**“Direct Debit Request”** means a direct debit request specified in the completed Customer Application (as defined in clause 35.1.2).

**“Direct Debit Request Service Agreement”** means the agreement headed “Direct Debit Request Service Agreement” included in the Customer Application.

**“Documentation”** means the documents issued by us to you in relation to the Products.

**“Electronically”** means electronic communication to your nominated electronic address that is in the Payway Portal or making particulars of changes available on the PayWay Website.

**“Error Correction”** means a transaction (other than an Erroneous Payment Instruction) to correct an error and which is intended to result in:

(a) a credit to the account of a Payer to reimburse that Payer for an amount equal to any:

- (i) mistaken Payment;
- (ii) unauthorised Payment;
- (iii) Payment induced by or resulting from the fraud of any person (including a participant in the BPAY® Scheme); and

(b) a corresponding debit to the Account if the Account has been, or will be, credited with the amount of the original Payment Instruction giving rise to the error; and

(c) a related advice being sent to you notifying you of the correction of that error.

**“Erroneous Payment Instruction”** means a Payment instruction initiated by a third party erroneously or included by us in a Settlement Report in error.

**“Force Majeure Event”** means any event or circumstance beyond our control after the exercise of reasonable diligence (which, for the avoidance of doubt, includes, but is not limited to, strikes, demonstrations, lockouts, labour disputes, acts of God, acts of nature, acts of governments or their agencies, fire, flood, storm, riots, power shortages or power failure; sudden or unexpected system failure or disruption by war, sabotage or inability to obtain sufficient labour, raw material, fuel or utilities).

**“FraudGuard”** means an application that helps to manage fraud by putting a number of checks in the transaction process which the Payment must pass before being approved.

**“GST”** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**“ID Code”** means the identification number allocated to each Post Office by Australia Post.

**“Intellectual Property Rights”** means all patents, patent applications, Trade Marks, designs, copyright, know-how, trade secrets, eligible layout rights, domain names, internet addresses, trade, business or company names or other proprietary rights in confidential information, and all other intellectual property rights whether registered or unregistered and rights to apply for any of the same, whether created on or after the date of this Agreement.

**“Law”** includes any law, statute, regulation, ordinance, proclamation, by-law, statutory instrument or order, rules (including the Rules) or codes of conduct issued by regulatory bodies.

**“Ledger FI”** means, in relation to a Debit Item, the body corporate who is a participant in BECS and to whom the Debit Item is addressed.

**“Mastercard”** means Mastercard International Incorporated.

**“Merchant Facility”** means a facility made available to you to enable you to accept Payments using a Card.

**“MOD10V1 and MOD10V5”** means the check digit routine function of validating the Payer data supplied.

**“MSA”** means the Merchant Business Solutions Card Acceptance by Business Terms and Conditions and letter of offer agreed to by you regarding your Merchant Facility as amended from time to time.

**“Nominated Staff”** means a staff member who is nominated by you as being authorised to operate any Product on your behalf.

**“Payer”** means a client of yours that pays, or proposes to pay, you using a Product.

**“Payer Direction”** means a direction initiated by a Payer to effect a Payment to you using a Product.

**“Payment”** means any amount remitted to or instructed to be remitted to you by a Payer using the BPAY<sup>®</sup> Scheme, BECS, a Card, the Products (including any surcharge if applied), or, if clause 36 applies, by cash, cheque or EFTPOS over the counter at Australia Post by the Payer using the PayWay Payment Card.

**“PayPal Customer”** means any person that has accepted PayPal’s User Agreement and successfully completed PayPal’s account registration process.

**“PayPal Payment”** means an online payment made by a PayPal Customer using their PayPal account.

**“PayWay Fees and Charges Sheet”** means the document containing the fees and charges applicable to your Products which forms part of this Agreement.

**“PayWay Portal”** means the PayWay Portal accessed through the PayWay Website with your user name and password.

**“PayWay Technical Helpdesk”** means the service centre which provides you with technical assistance in relation to Products each Business Day (excluding public holidays) between the hours of 8.30am and 5.30pm on 1300 727 111.

**“PayWay Website”** means the internet website [www.payway.com.au](http://www.payway.com.au).

**“PayWay 1300 Number”** means the telephone number provided to you by us for PayWay Phone.

**“Personal Information”** has the meaning given to it under the *Privacy Act 1988* (Cth).

**“Planned Outage”** means a period of time, other than an unscheduled interruption, that we may interrupt the supply of services supporting the Products for routine maintenance or upgrading or other similar processes relevant to, networks. So far as possible, Planned Outages will:

- (a) occur outside normal business hours;
- (b) be for the shortest possible time on each occasion; and
- (c) be at a time that will minimise inconvenience to you.

**“Post Office”** means a facility in Australia where postal services are provided by or on behalf of Australia Post.

**“Post Billpay”** means the facility whereby Australia Post will accept account Payments for you.

**“Privacy Act”** means the *Privacy Act 1988* (Cth).

**“Privacy Law”** means all legislation (including the Privacy Act), regulations, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information.

**“Product”** means the product(s) described in clause 1.1 provided by us to you.

**“Product Screen”** means a screen that allows you to perform a Payment, process a refund and perform enquiries on previous Payments via the PayWay Website. This excludes Australia Post and BPAY<sup>®</sup> payments.

**“Receipt”** means the receipt issued by Australia Post showing the Post Office name and ID Code, the details of the Payment, including the amount of the Payment, the Payment method (cash or cheque), the amount tendered and the change given. The receipt will also show a unique terminal and sequence number, and the time and date of the Payment.

**“Refund”** has the same meaning given to it in clause 9.1.

**“Related Body Corporate”** has the same meaning as in the *Corporations Act 2001* (Cth).

**“Reversal”** means a transaction that:

- (a) is initiated by us to cancel an Erroneous Payment Instruction;
- (b) may involve the making of a debit or credit adjustment to the account of the Payer to which the Erroneous Payment Instruction relates; and
- (c) may involve an Adjustment to the Account named in the Erroneous Payment Instruction, if the Erroneous Payment Instruction has been applied to that Account.

**“Rules”** means the Card Scheme rules set by Card Schemes from time to time;

**“Settlement Report”** means an electronic transaction report in a format that will be provided for download via the PayWay Website.

**“Small Business”** means a business having:

- (a) less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods; or
- (b) in any other case, less than 20 full time (or equivalent) people.

**“Trade Mark”** means any logo, symbol, trade mark, trade name, service mark, brand name, domain name, company or trading name, trading get up and similar right, whether registered or unregistered, belonging to us or any Related Body Corporate.

**“Transaction”** means a Payment, Refund, or any other transaction which involves the transfer of funds between you and a Payer using the Products.

**“Vendor Hardware”** means all hardware and equipment owned or controlled by you required for you to access a Product under the terms of this Agreement.

**“Vendor Software”** means all the software owned or controlled by you used in relation to a Product.

**“Virtual Account”** means the BSB and account number allocated to you for the purpose of receiving direct credit payments from a particular Payer under PayWay Match.

**“Visa”** means Visa Inc.

**“Westpac”**, “we”, “us” or “our” means Westpac Banking Corporation ABN 33 007 457 141.

**“Westpac Group”** means Westpac and its Related Bodies Corporate.

**“You or your”** means the person named in the Application. If there is more than one person named in the Application, it includes any one or more of you and each of you is severally and jointly liable under this Agreement.

**“3-D Secure”** means an application for authenticating Cardholders during an online purchase, including the “Verified by Visa” and “Mastercard Secure” identification protocols.

2.2 For the purposes of this Agreement:

- 2.2.1 the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates;
- 2.2.2 the singular includes the plural and vice-versa;
- 2.2.3 the failure by any party to exercise any right under this Agreement does not mean that party has waived that right;
- 2.2.4 the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;

- 2.2.5 a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- 2.2.6 a reference to time is to Sydney time;
- 2.2.7 a requirement to:
- (a) give any information in writing (which, without limitation, includes making a claim or request or providing an authority, notification or advice);
  - (b) retain a document; or
  - (c) produce a document,
- may be met by means of an electronic communication generated by a method which enables that information or the information contained in that document to be readily accessible so as to be useable for subsequent reference and which provides a reasonable means of assuring the integrity of that information or the information contained in that document, except to the extent the validity of that means of electronic communication is otherwise limited by any applicable law.
- 2.2.8 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- 2.2.9 a reference in this Agreement to any Law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision (however described).

### **3. Availability of Products**

- 3.1 By completing the Application, you offer to enter into an agreement with us on the terms of that Application and this Agreement. We will accept that offer by providing you with the Access Codes necessary to access a Product.
- 3.2 Your access to the Products will continue until this Agreement is terminated.
- 3.3 We grant you a non-exclusive, non-transferable and revocable licence to use the Products on these terms.
- 3.4 You must enter into an MSA prior to using any PayWay Credit Card Product.
- 3.5 If you select the Payway Payment Card you will need to be appointed as a BPAY® Sub-biller and agree to the BPAY® Sub-biller Agreement and Operations Manual.
- 3.6 If you select PayWay Additional Transactional Reporting you will need to enter into the relevant agreement for the underlying service being either the BPAY® Biller Agreement, Post Billpay, or Remittance Processing Service Module for outsourcing of mail receivables to Westpac or Bill Payment Processing Service Module for acceptance of bill payments at Westpac.

### **4. Undertakings, Representations and Warranties**

- 4.1 You undertake and agree:
- 4.1.1 that you will be liable for any and all acts of your representatives, employees, officers, Nominated Staff and third parties who have access to a Product in relation to the use of any Product;
  - 4.1.2 to ensure that only those Nominated Staff and third parties who have received adequate training from you have access to a Product;
  - 4.1.3 to ensure that you, and all Nominated Staff and third parties who access a Product and the PayWay Website, keep all Access Codes confidential, secret and secure. You will be held liable for any Payments arising out of an Access Code being used by an unauthorised third party as a result of a breach of this clause; and
  - 4.1.4 to ensure that, prior to a person being given access to a Product, that they are made aware of our rights and of the terms and conditions and Documentation which apply to the Products.
  - 4.1.5 to comply at all times with your obligations set out in this Agreement;



- 4.1.6 to execute any directions and authorities we require to give effect to any of your obligations under this Agreement;
  - 4.1.7 promptly inform us if you are unable to comply at any time with one or more of your obligations under this Agreement, including if you are, for any reason, not entitled to claim a Card Payment that has been processed, or attempted to be processed, by use of a Product; and
  - 4.1.8 notify us promptly (and, in any event, within 2 Business Days) after you become aware of any defect, error or malfunction in a Product which materially affects your use or the Payer's use of the Product.
- 4.2 You must not make any warranty or representation whatsoever in relation to any of your goods or services which may bind us.
- 4.3 You acknowledge that by processing a Transaction, you warrant to us that:
- 4.3.1 all particulars relating to the Transaction are true and correct; and
  - 4.3.2 the Transaction is valid.
- 4.4 You represent and warrant that:
- 4.4.1 you are legally entitled to the proceeds of each Transaction and that the administration of those Transactions meets your legal obligations under Australian laws;
  - 4.4.2 you have all the necessary power and authority to enter into and perform all your obligations under this Agreement;
  - 4.4.3 you have sought independent legal advice as to whether the processing and settlement of Transactions via PayWay (including the application and administration of Payer surcharge payments) will comply with your legal obligations;
  - 4.4.4 all information provided by you to us is true in all material respects at the date of this Agreement or, if later, when provided. Neither that information nor your conduct and the conduct of anyone on your behalf in relation to the Transactions contemplated by this Agreement, was or is misleading, by omission or otherwise;
  - 4.4.5 you have complied and will continue to comply with all Laws binding on you;
  - 4.4.6 if you are a body corporate, you are validly existing under the laws of the place of your incorporation and have taken all necessary action to authorise the entry into and performance of this Agreement; and
  - 4.4.7 you will not initiate, engage in or effect a Transaction that may be in breach of Australian law (or the law of any other country).
- 4.5 You warrant and undertake that you will not:
- 4.5.1 perform or allow any third party to perform maintenance or repair work, alterations or modifications of any nature whatsoever to a Product or Documentation, without our express prior written consent;
  - 4.5.2 attempt to change any Product Screens as part of a Product offering;
  - 4.5.3 decompile, disassemble, reverse engineer, modify, enhance or alter the whole or any part of a Product, except as you are legally authorised to do by the *Copyright Act 1968* (Cth) and then only to the extent allowed by that Act;
  - 4.5.4 copy a Product or the Documentation or allow anyone else to do so except as and to the extent which is reasonably necessary for your own secure backup purposes;
  - 4.5.5 remove, deface or obscure any identification or copyright notices on a Product;
  - 4.5.6 make any warranty or representation in relation to any of your goods or services which purports to, or which may, bind us; or
  - 4.5.7 do anything that would affect our ability to debit your Account.

- 4.6 You agree and acknowledge that we will not be in breach of this Agreement:
- 4.6.1 if Transactions are delayed, blocked or refused where we have reasonable grounds to believe that there is a contravention of Australian law or the law of any other country;
  - 4.6.2 if we, from time to time, require additional information from you to assist us in complying with Australia's anti-money laundering and counter-terrorism financing legislation or regulations and you agree to provide that information to us as soon as practicable; and
  - 4.6.3 where legally obliged or authorised to do so, we disclose information to regulatory and law enforcement agencies, other financial institutions, other members of the Westpac Group, or service providers who perform functions on behalf of us.

## 5. Records

- 5.1 You undertake and agree to:
- 5.1.1 maintain records of any defect, error or malfunction in a Product which materially affects your use or the Payer's use of the Product and make those records available to us, on request.
  - 5.1.2 provide us with clear and legible documentation relating to any Transaction made using a Product within the timeframe specified by us to you in writing. If this obligation is not complied with, we may treat the Transaction as invalid and make any necessary Adjustments to the Account.
  - 5.1.3 provide us, as soon as is practicable, with any additional information required by us from you to assist us in complying with Australia's anti-money laundering and counter-terrorism financing legislation or regulations.

## 6. Use of Products

- 6.1 You undertake and agree:
- 6.1.1 to access and use the Product(s) in strict accordance with the operating instructions contained in the Documentation and solely for the performance of the specific business functions designated in the Documentation;
  - 6.1.2 to allow Westpac, or any other party specified by us from time to time, to inspect and audit your use of any Product and any technology used to access a Product from time to time on giving 1 Business Day prior notice but only if such inspection and audit does not unduly interfere with the ordinary course of your business;
  - 6.1.3 to comply with the MSA (where applicable) and pay all fees and charges attaching to your Merchant Facility;
  - 6.1.4 to investigate and deal with, in good faith, any query, claim or complaint relating to alleged wrongful or wrongful debits that are received from a Payer or received from or via us (not including the day of receipt) within 3 Business Days of receiving such query, claim or complaint (or within such other reasonable period, if any, specified by us);
  - 6.1.5 that subject to clause 6.1.6 below, you will accept any claim referred to in clause 6.1.4 above and pay the disputed amount to us in any manner agreed between us and you. Failure to respond to any query, claim or complaint within the time period specified in this clause will allow us to draw against your Account for the amount claimed to facilitate Payment to the claimant;
  - 6.1.6 that if you dispute a claim mentioned in clause 6.1.4, you will provide us with full particulars of reasons for disputing the claim; and
  - 6.1.7 that you will advise us of, and keep us informed of any changes to, the contact details for those persons authorised within your organisation to receive queries, claims and complaints of the kind referred to in clause 6.1.4.

## 7. Transactions

- 7.1 You must only use a Product to process Transactions in Australia.
- 7.2 When processing Transactions, you may incur additional data usage charges from your provider. You are responsible for meeting all data usage charges incurred when processing Payments. We recommend that you contact your provider to confirm the details of your plan and discuss any potential charges with them.
- 7.3 You must clearly, prominently and unequivocally inform the Payer of your identity so that the Cardholder can readily distinguish you from any similar supplier of goods or services and from other third parties. You must also provide notice to the Payer that you are responsible for the Transactions, including the goods or services acquired in return for the Transaction, as well as for related customer service, dispute resolution and performance of the terms and conditions of the agreement between you and the Payer.
- 7.4 You are responsible for ensuring that a Transaction is approved before providing a Payer with goods and/or services. We take no responsibility, and will not provide compensation to you, where goods or services are provided by you but where the Transaction is declined or has not cleared.
- 7.5 You acknowledge and agree that:
- 7.5.1 subject to clause 7.6, a Payer Direction may be made via a Product at any time, but will only be processed by us at the end of the Business Day on which it is received, and if it is not received by us on a Business Day, or prior to the Cut-Off Time on a Business Day, it will be processed at the end of the next Business Day;
  - 7.5.2 a Payer Direction will only be accepted if used in conjunction with a Product;
  - 7.5.3 each time a Payer uses a Product and enters the information requested, we will:
    - (a) obtain “real time, on-line authorisation” for the Card Payment;
    - (b) execute the Transaction by debiting the Payer’s account and
    - (c) accumulate all Payer Directions received prior to the Cut-Off Time;
    - (d) after completing each Transaction we will provide the Payer with a receipt number. You will ensure that each Payer is advised to retain the receipt number as proof that the Transaction was made. This clause does not apply to PayWay Payment Card or PayWay Recurring Billing and Customer Vault.
- 7.6 At the end of each Business Day, we will calculate the total bulk value (determined by our payment system of all Transactions processed via any Product) of all Transactions received by us prior to the Cut-Off Time, on that Business Day. Depending on the payment option used, funds will be available in your Account within 1-4 Business Days.
- 7.7 You acknowledge and agree that any Transactions received by us after the Cut-Off Time, will be processed by us and included in the transaction information on the following Business Day.
- 7.8 We may refuse to accept or may Chargeback any Card Payment which is a sales Transaction if:
- 7.8.1 we consider that the Transaction is not a valid Card Payment;
  - 7.8.2 the Cardholder disputes liability for any reason; or
  - 7.8.3 the Cardholder asserts a claim for set-off or a counterclaim.
- 7.9 You undertake to abide by the Documentation to minimise fraud and Chargebacks.
- 7.10 If an error occurs in processing a Payer Direction we will debit or credit the Account as necessary with the Adjustment amount and notify you (if the Transaction relates to the PayWay Payment Card, Australia Post may notify us of the error). Such notification will be given via the daily Settlement Reports which can be downloaded from the PayWay Website or by providing details of the original Transaction to which the Adjustment relates on the Settlement Reports. If the original Transaction was made through Australia Post or BPAY® notification is only via an entry on your bank statement and details of Adjustments do not appear on the Settlement Reports.

- 7.11 Each Business Day we will:
  - 7.11.1 record in the Settlement Report, all Payer Directions received and processed up until the Cut-Off Time on that Business Day; and
  - 7.11.2 make the Settlement Report available for view and download on the PayWay Website.
- 7.12 We will not be responsible or liable for any delay that might occur in the processing of Payer Directions where:
  - 7.12.1 there is a public or bank holiday on the day, or on the day after, a Payer gives a Payer Direction;
  - 7.12.2 a Payer Direction is received either on a day which is not a Business Day or after the Cut-Off Time on a Business Day;
  - 7.12.3 the information received from a Payer cannot be verified or is incorrect;
  - 7.12.4 there is a Planned Outage;
  - 7.12.5 such delay is due to Force Majeure;
  - 7.12.6 another financial institution participating in BPAY® Payments does not comply with its obligations under the BPAY® Scheme; or
  - 7.12.7 you fail to comply or are suspected on reasonable grounds of failing to comply with your obligations under this Agreement, or are suspected on reasonable grounds of being involved in fraud, and Payments to you are suspended pending resolution of the issue.

## **8. Your Account**

- 8.1 You undertake to maintain the Account by keeping it in a credit balance.
- 8.2 You authorise us to debit your Account in respect of:
  - 8.2.1 all service charges, fees and other charges set by us and which are notified to you from time to time, including the fees and charges described in your PayWay Fees and Charges Sheet;
  - 8.2.2 all government charges, duties and taxes including GST that apply in relation to any Product or Transaction;
  - 8.2.3 maintenance services required because of any neglect or fault of you, or any third party authorised by you to use or access a Product, or any defect or malfunction in any Vendor Hardware or Vendor Software that interrupts the operation of a Product;
  - 8.2.4 the supply and/or installation or variation to a Product or related services requested by you, if we agree to provide such new releases or related services;
  - 8.2.5 any work done by us that relates to Vendor Hardware or Vendor Software when we:
    - (a) review performance of Vendor Hardware or Vendor Software or its effect on a Product; or
    - (b) perform work requested by you in connection with the installation or connection of Vendor Hardware or Vendor Software;
    - (c) provide any other information including any analysis or reports requested by you;
  - 8.2.6 any fees, costs or expenses that we must pay to any bank or other financial institution through which a Payer Direction is processed due to the Transaction to which a Payer Direction relates not being a valid Transaction for the purposes of claiming a debtor being charged back to us under the rules of the relevant financial institution or Card Scheme;
  - 8.2.7 any fees, fines or penalties that we are required to pay as a direct or indirect result of your failure to observe your obligations under this Agreement;
  - 8.2.8 any moneys paid by us to you with respect to Transactions where we are investigating the validity of the Transaction or a suspected Chargeback;
  - 8.2.9 Adjustments or Chargebacks;
  - 8.2.10 any deficiency on a Payment made by you disclosed in an audit or check by us;
  - 8.2.11 the full amount of the refund of any Transaction, less any charges we have debited to the account relating to the Transaction;

- 8.2.12 all other credits we have made in respect of Transactions due to errors, omissions or fraud caused directly or indirectly by you;
  - 8.2.13 the value of Transactions which are invalid;
  - 8.2.14 any other money you owe us under this Agreement; and
  - 8.2.15 reasonable enforcement expenses under this Agreement, including any amount reasonably incurred by the use of our staff and facilities, in the event of a breach of this Agreement.
- 8.3 If we debit the Account in accordance with this clause and the Account contains insufficient funds, then the transaction may be reversed and you will be regarded as not having made the transaction.
- 8.4 You will pay on demand the amount of any debt you owe to us under this Agreement which remains unpaid. Should you fail to pay any debt which you owe us, we may commence enforcement action and report your default to a credit reporting agency, which may affect your credit rating and your ability to obtain finance in the future. We may also set-off any amount due for payment by you to us against any amount due for payment by us to you.
- 8.5 Without limiting clause 8.2, we may debit or credit your Account with the amount of any deficiencies or charges we establish are payable following an audit or check of your Account.

## **9. Refunds**

- 9.1 You must establish a fair policy for the exchange or return of goods, for the re-performance of services, and for the handling of refunds and disputed amounts, which complies with all applicable Laws including the Australian Consumer Law. In accordance with clause 9.2, you agree to give credit to Payers in respect of any refunds for goods or services or disputed amounts (as applicable) by means of a refund transaction ("Refund") rather than in cash or by cheque.
- 9.2 You can only process a Refund via the Product used to process the original Payment.
- 9.3 We are not responsible for any unauthorised Refunds processed through any Product, even if those Refunds may cause your Account to be debited by the amount of the Refund.

## **10. Invalid Transactions**

- 10.1 A Transaction will constitute an "Invalid Transaction" if:
- 10.1.1 you did not hold a valid Direct Debit Request (where required by this Agreement) for the Transaction; or
  - 10.1.2 you fail to comply with all messages displayed on the PayWay Website in relation to the Product and/or the Transaction.

## **11. Information technology**

- 11.1 You undertake and agree to:
- 11.1.1 provide and maintain suitable equipment, operating system software and network infrastructure in accordance with the Documentation to access any Product;
  - 11.1.2 provide your own internet connectivity and sufficient bandwidth to and from your location to enable access to a Product;
  - 11.1.3 maintain a secure back up of Vendor Software on any infrastructure and technology which accesses a Product for the security and backing up of all data which is under your control, including data downloaded from any Product by you. We will not be liable or responsible to you in any way if you fail to do so;
  - 11.1.4 address and resolve all service and support issues associated with software and hardware provided to you by third parties and which is used to access a Product. The PayWay Support Centre is not obliged to, and will not provide support or service in relation to these matters.

## 12. Trustees

- 12.1 If you are trustee of a trust, you undertake and agree to:
- 12.1.1 comply with the terms of the trust and your duties as trustee of the trust;
  - 12.1.2 use all equipment and carry out all transactions in accordance with this Agreement exclusively for proper trust purposes;
  - 12.1.3 not do anything which may result in the loss of your right to indemnity from the trust assets or the termination of the trust;
  - 12.1.4 remain sole trustee of the trust; and
  - 12.1.5 not re-settle, set aside or distribute any of the assets of the trust without our consent unless compelled to do so by the current terms of the trust document.

## 13. Proprietary and Other Rights

- 13.1 We retain exclusive ownership of all copyright and other Intellectual Property Rights embodied in or related to a Product. Despite anything to the contrary in this Agreement, title to a Product will at no time pass to you or any other third party and will at all times remain with us.
- 13.2 You will not remove or otherwise alter in any way any Trade Mark, copyright notice or any other proprietary notice or legend or the like affixed to, or otherwise embedded in, a Product. This clause also applies to the BPAY® Scheme logo and Trade Mark and the Australia Post logo and Trade Mark.
- 13.3 You will not divulge or otherwise allow to be divulged to any person for use for your own benefit (except as permitted herein) or for the benefit of any third party any information relating to a Product or our business which is not in the public domain or which otherwise constitutes confidential information.
- 13.4 You agree:
- 13.4.1 to obtain our prior written consent before using any Trade Mark (which consent may be granted or withheld by us in our sole discretion);
  - 13.4.2 to comply with any Trade Mark use guidelines or directions provided by us to you from time to time; and
  - 13.4.3 not to take any action which will adversely affect the value attached to the Trade Marks, our Intellectual Property Rights, or our business.

## 14. Debit User's Responsibilities and Acknowledgements

- 14.1 You will:
- 14.1.1 in respect of every customer, prior to processing any Transactions:
    - (a) obtain a valid and binding Direct Debit Request; and
    - (b) enter into, and provide to the customer in writing, a DDR Service Agreement;
  - 14.1.2 issue Debit Items strictly in accordance with the arrangements made between yourself and your customer, comply with the applicable DDR Service Agreement and not exceed the conditions (if any) specified in the Direct Debit Request provided by the customer;
  - 14.1.3 inform customers of any change in the terms of the debit arrangements, as set out in the Debit User's Agreement) at least 14 days before the change is implemented (or within such other period, if any, agreed with or specified by us);
  - 14.1.4 act promptly in accordance with any instruction given by a customer to cancel or suspend a Direct Debit Request or to stop or defer individual Debit Items from time to time;
  - 14.1.5 investigate and deal with in good faith any query, claim or complaint relating to alleged or wrongful debits that are received from a customer or received from or via us (not including the day of receipt) within 3 business days of receiving such query, claim or complaint (or within such other period, if any, specified by us); and you will accept the claim and pay the disputed amount to us in any manner agreed between you and us;
  - 14.1.6 if you dispute the claim, you must provide us with full particulars of reasons for disputing the claim, which must include evidence of your authority to debit (ie: a manually signed Direct Debit Request);

- 14.1.7 retain all Direct Debit Requests or evidence thereof given to you (including copies of all Forms PD-C which are required to be provided to the Ledger FI) for a period of not less than 7 years from the date of the last debit made under the relevant Direct Debit Request, and produce these on request by us or the Ledger FI for verification of your authority to debit.
- 14.2 You acknowledge and agree:
- 14.2.1 that you are aware of Westpac's potential liability under Westpac's indemnity to each Ledger FI arising from the Debit User issuing Debit Items from BECS (and its implications in terms of any liability of the Debit User to Westpac) in circumstances where the Debit User has initiated debits in reliance on incorrect account information provided by a customer in a Direct Debit Request;
- 14.2.2 if you fail to respond to any query, claim or complaint within the time period specified in clause 14.1.5, we may draw against your Account for the amount claimed to facilitate payment to the claimant.

## **15. Limitation of Liability**

- 15.1 The law confers rights, guarantees and remedies on you in relation to the provision by us of goods and services which cannot be excluded, restricted or modified and we do not exclude, restrict or modify those.
- 15.2 With the exception of any guarantees, conditions, rights or warranties that are implied or imposed by Law in relation to this Agreement and may not legally be excluded, we give no guarantee, warranty or representation in respect of the use, performance or failure of any Product, or any services provided by us, and all other terms, conditions, guarantees and warranties, whether express or implied, are expressly excluded.
- 15.3 You acknowledge that our liability for breach of any condition, right, guarantee or warranty that cannot be excluded from the Agreement by Law is limited at our discretion to the amount of any fee or charge paid to us by you for your use of any impacted Product whilst the breach is subsisting.
- 15.4 Subject to this clause, to the extent permitted by Law, we will not be liable whether in contract, tort (including negligence) or otherwise to you or persons claiming through you for:
- 15.4.1 special, consequential or indirect or incidental loss or damage of any kind (including exemplary or punitive damages);
- 15.4.2 loss of business, profits or income whether actual or anticipated;
- 15.4.3 any delay that might occur in the processing of Payments, or any lost Payments that might occur, if a Product is not available for any reason;
- 15.4.4 any disruption caused by:
- (a) a malfunction of a Product; or
- (b) any period when a Product is unavailable;
- 15.4.5 any delay by us in crediting your Account; or
- 15.4.6 our failure to credit your Account due to technical or administrative difficulties relating to the banking system used for the transfer of funds.
- 15.5 Clause 15.4 applies notwithstanding that we or any of our employees, contractors or agents are aware of the likelihood of such loss or damage.
- 15.6 You will be liable in contract or in tort or otherwise for or in respect of any indirect or consequential loss, damage, injury or expense suffered by us arising out of or in respect of this Agreement or any breach of this Agreement or any other act or omission in connection with this Agreement, whether negligent or not, including loss of profits or income.

## 16. Indemnity

- 16.1 You indemnify us and agree to keep us indemnified, and hold us harmless from and against all losses, claims, liabilities, damages, costs, demands, actions, suits and proceedings, charges and expenses, including reasonable legal fees, disbursements and other expenses that we may suffer or incur or which may be made against us relating to or arising from or in connection with:
- 16.1.1 your use of the Products or services under this Agreement, the BPAY<sup>®</sup> Biller Agreement, the BECS Procedures, the BECS Rules or Card Scheme Rules (as they apply to a Product);
  - 16.1.2 the debiting to the account of any Payer and the Payment to you of any sum or sums of money the debiting of which was not at the time authorised by such Payer under a Payer Direction or to which you were not then legally entitled;
  - 16.1.3 the making of any Payment not in accordance with the terms of any Payer Direction;
  - 16.1.4 the failure to make any Payment in accordance with the terms of any Payer Direction;
  - 16.1.5 your failure to comply with your obligations under this Agreement or any negligent or wilful act or omission by you or any of your employees, agents or contractors in relation to this Agreement;
  - 16.1.6 any error, negligence or fraud relating to a Transaction by you, your officers, employees, servants, agents or contractors;
  - 16.1.7 you initiating Payments in reliance on incorrect account information provided by a Payer;
  - 16.1.8 you obtaining a Payer Direction from a Payer in an electronic format or over the telephone where you are unable to provide proof of authorisation by a Payer sufficient in the opinion of a court of law or a government agency or an authority which is binding on either us or you, to render such Payer Direction valid and binding on the Payer regardless of whether you complied with this Agreement;
  - 16.1.9 a Payer's failed Payment or use of an expired Card;
  - 16.1.10 any dispute between you and a Cardholder;
  - 16.1.11 any potential or actual liability of us under our indemnity to other Ledger FIs arising from us issuing Debit Items through BECS;
  - 16.1.12 any breach by you of the Privacy Laws; or
  - 16.1.13 any failure to pay any charges or fees payable by you under this Agreement.
- 16.2 Each indemnity given by you under this Agreement is a continuing obligation and continues after this Agreement ends. You agree that it is not necessary for us to incur expense or make payment before enforcing the relevant indemnity.
- 16.3 Any payments made by you pursuant to an indemnity given under this clause must be automatically increased by the amount of any GST liability incurred by us in respect of those payments.

## 17. The Code of Banking Practice

- 17.1 This clause applies to you if you are an individual or Small Business.
- 17.2 You acknowledge that the relevant descriptive information referred to in 15.1 and 15.2 of the Code of Banking Practice is set out in our account terms and conditions booklet or product disclosure statement which contain information about:
- 17.2.1 account opening procedures;
  - 17.2.2 our obligations regarding the confidentiality of your information;
  - 17.2.3 complaint handling procedures;
  - 17.2.4 bank cheques;
  - 17.2.5 the advisability of you informing us promptly when you are in financial difficulty; and
  - 17.2.6 the advisability of you reading the terms and conditions applying to the relevant banking service.
- 17.3 You acknowledge that each relevant provision of the Code of Banking Practice will apply to the Products from the date we adopt that provision.



## 18. Confidentiality

- 18.1 You will, and will cause your employees, agents and contractors to, keep strictly confidential and not use for any purpose other than the performance of your obligations pursuant to this Agreement, any and all information and materials relating to the Payer or the business and financial affairs of Westpac (including the format and specifications of our Products) which you, your employees, agents or contractors come into possession of in the course of or arising from the implementation of this Agreement or the performance of your obligations under this Agreement to the extent that such information and materials are not in the public domain as a direct or indirect result of any act or omission on the part of you or any of your employees, agents or contractors. This provision will survive the termination of this Agreement.

## 19. Product Suspension

- 19.1 We may suspend your access to one or more Products without notice to you if we:
- 19.1.1 consider that we could suffer a loss as a result of your continued access to the Product;
  - 19.1.2 think we could be subject to fraud if we continue to provide you with access to a Product;
  - 19.1.3 have reasonable grounds to suspect fraudulent activity in relation to any Product; or
  - 19.1.4 are unable to contact you to discuss a material matter relating to your use of a Product.
- 19.2 We will inform you as soon as practicable after we suspend your access to a Product under this clause.
- 19.3 Whilst your access to a Product is suspended, you must not submit Transactions for processing and we will not process any Transactions you do submit.
- 19.4 Whilst we will use all reasonable endeavours to act promptly to restore access to a Product when we are reasonably satisfied that the clause of the suspension has been removed, you acknowledge and agree that we will not be liable or responsible to you in any way if there is any delay in restoring access to a Product when a suspension has been lifted.
- 19.5 We may suspend a file or Transaction without notice to you if:
- 19.5.1 we have reasonable grounds to suspect fraudulent activity in relation to any Transaction;
  - 19.5.2 you receive a 'payment stopped' message from another financial institution; or
  - 19.5.3 the account is invalid or has been closed.

## 20. Termination

- 20.1 We may at any time and in our absolute discretion, by not less than 14 days' prior notice to you (subject to clause 20.3) terminate this Agreement and cancel your access to a Product.
- 20.2 You may terminate this Agreement by giving not less than 30 days prior written notice to us.
- 20.3 You acknowledge and agree that despite anything to the contrary in this Agreement, we may, at any time without notice or liability to you, suspend and/or terminate your access to or use of a Product or terminate this Agreement for any reason. The grounds on which we may do so include but are not limited to the following:
- 20.3.1 we reasonably consider that you have breached any of your obligations under this Agreement, or any other agreement that governs your use of any Product including but not limited to the MSA (where applicable), the BPAY® Biller Agreement, the BPAY® Sub-biller Agreement and Operations Manual, Remittance Processing Service Module for outsourcing of mail receivables to Westpac or Bill Payment Processing Service Module for acceptance of bill payments at Westpac;
  - 20.3.2 we have concerns about your solvency;
  - 20.3.3 we suspect that you or any of your Nominated Staff or third parties have not been properly authorised as users of any Product;
  - 20.3.4 we have reasonable grounds to suspect that you have fraudulently processed Payments, or have knowingly allowed fraudulent Payments to be processed through any Product or your Merchant Facility;

- 20.3.5 you have a significant adverse credit event recorded against you;
  - 20.3.6 you have substantially changed your line of business, or the types of goods or services that you supply to your customers or clients, without first notifying us and receiving our consent;
  - 20.3.7 the ownership or control of your business, or your ability to meet liabilities as and when they fall due, changes;
  - 20.3.8 you have closed your (settlement) Account without notice;
  - 20.3.9 we are required to do so by an order, instruction or request of any Government Agency or emergency service or pursuant to the terms or rules of a Card Scheme;
  - 20.3.10 you have suffered an ADC;
  - 20.3.11 we reasonably believe that your connection to a Product will or may cause technical incapacity to the Product and that such incapacity would or may continue unless access or use is suspended or terminated;
  - 20.3.12 the MSA, the BPAY<sup>®</sup> Biller Agreement or BPAY<sup>®</sup> Sub-biller Agreement and Operations Manual, Remittance Processing Service Module for outsourcing of mail receivables to Westpac or Bill Payment Processing Service Module for acceptance of bill payments at Westpac is terminated for any reason.
- 20.4 We may terminate the Agreement on the grounds that you have not used a Product for a period of six (6) months. Under these circumstances we will endeavour to advise you, in writing, of our intention to terminate. Any notice of termination provided under this clause will be sent to your last known address as listed on the PayWay Portal. We will allow you a period of 14 days from the date of the notice in which to contact us. After that time, we may terminate the Agreement without further notice to you.
- 20.5 We may review your access to BECS from time to time.
- 20.6 We may immediately terminate your right to lodge Debit Items and cancel your access to BECS as a debit user (and withdraw your entitlement and access to any logo of APCA relating to direct debits) if in our opinion your circumstances have changed to the extent that you are no longer considered suitable by us to be a debit user of BECS.
- 20.7 On termination of this Agreement:
- 20.7.1 we will disconnect your access to any Products; and
  - 20.7.2 we will cease to process Payments on behalf of you.
  - 20.7.3 it is your obligation to reconcile your Account after termination of this Agreement and notify us of any discrepancies.
  - 20.7.4 if for any reason there are discrepancies in your Account then, subject to clause 15, our maximum aggregate liability to you for reimbursement will be limited to three months' worth of monthly applicable charges.
- 20.8 Termination of this Agreement does not affect any liabilities or obligations of either party incurred prior to termination. Clauses 15 and 16 survive termination of this Agreement, as well as any other clauses which, by their nature, survive termination.

## 21. Privacy

- 21.1 You agree that we may use information about your history and personal information about you, including information about you collected from third parties, for any one or more of the following purposes:
- 21.1.1 to assess and process your Application;
  - 21.1.2 to administer and manage the Products we supply to you under this Agreement;
  - 21.1.3 to facilitate our internal business operations, including fulfilling any legal requirements and systems maintenance and testing; and
  - 21.1.4 if you consent or where the Law requires or permits us to do so.

- 21.2 You acknowledge and agree that we may also use your personal information or give access to personal information about you to any member of the Westpac Group to:
- 21.2.1 assess your total relationship and product holding with the Westpac Group, analyse products and customer needs and develop new products; and
  - 21.2.2 inform you of products and services provided by any member of the Westpac Group or by preferred providers which we consider may be of value or interest to you, unless you tell us not to do so.
- 21.3 you undertake to comply, in all respects, with the Privacy Law in performing your functions, obligations and responsibilities including any other requirements we may impose on you from time to time. You must not do anything that will cause us, BPAY<sup>®</sup>, Australia Post, a Card Scheme or any other third party providing services in connection with this Agreement to breach any Privacy Law.

## **22. GST**

- 22.1 Unless stated otherwise in your PayWay Fees and Charges Sheet, the amounts payable to us under this Agreement do not include any GST.
- 22.2 To the extent that anything done or to be done under or in connection with this Agreement by us constitutes a taxable supply for the purposes of any GST legislation, the amounts expressed elsewhere in this Agreement as payable or to be provided in relation to that supply will automatically increase to include an additional amount on account of GST. Such amount will be calculated by multiplying the value of the amount payable or to be provided by you for the relevant taxable supply by the prevailing GST rate. Any additional amount paid or payable on account of GST will be calculated and will be payable by you without any deduction or set-off of any amount payable by us to you.
- 22.3 If, after a supply is made under this Agreement, it is determined on reasonable grounds that the amount of any GST paid or payable by us to the Commissioner of Taxation on that supply differs for any reason from the amount of GST recovered from you the amount of GST recovered or recoverable from you will be adjusted by us repaying to you the amount of the overpayment or by you paying to us the amount of the underpayment, as the case may be.

## **23. Changes**

- 23.1 You must notify us within 14 days of any changes in your company, or your trading name or address. You must continue to notify us of any changes in accordance with this clause for a period of 12 months after this Agreement is terminated. We will not be responsible for any errors or losses where we have not received adequate prior notice in accordance with this clause.
- 23.2 You must not substantially change your line of business, or the types of goods or services that you supply to your customers or clients, without first notifying us and receiving our written consent.
- 23.3 Without limiting clause 23.1, you must notify us immediately if the ownership or control of your business (including any delegation by way of power of attorney) or your ability to meet liabilities as and when they fall due changes. You acknowledge that, and agree to inform, any new owner of your business that the new owner will need to apply for a new Agreement with us if they wish to continue using any Products.

## **24. Notices**

- 24.1 We may provide you notices in writing, via the PayWay Portal or Electronically depending on the nature of the notice.
- 24.2 You authorise us to provide any notices or information required to be given under this Agreement Electronically.
- 24.3 Where we provide information Electronically or via the PayWay Portal, we will provide such notices and information in a format in which you can readily retrieve and retain it (for example, by printing or saving it). You acknowledge that if you change your email address, you must promptly notify us of your new email address. You undertake to ensure your contact details as contained on the PayWay Portal are up-to-date at all times.

- 24.4 Notice will be deemed to be received by you:
- 24.4.1 if sent via email or other direct electronic communication, at the later to occur of:
    - (a) 6 hours after it is sent if that occurs before 5.00 p.m. on a Business day; or
    - (b) 10.00 a.m. on the next Business Day;
  - 24.4.2 if posted on the PayWay Website, 3 Business Days after being published;
  - 24.4.3 if made available within the PayWay Portal, or other Westpac secured portal to which you have access, 3 Business Days after being made available; or
  - 24.4.4 if sent via post, 6 Business Days after posting.
- 24.5 You acknowledge that any notice we are required to give you, including changes to these Terms and Conditions, may be given to any individual authorised to access the PayWay Portal or other individual appointed by you and such notifications will be deemed to have been received by you.
- 24.6 You may give us a notice under this Agreement by email or telephone to either your Westpac Banking Representative or Relationship Manager.

## **25. Force Majeure**

- 25.1 Notwithstanding any provisions to the contrary in this Agreement, we will not be liable to you for any loss or damage (including whether direct or consequential), nor be in default under this Agreement, for failure to observe or perform any provision of this Agreement where that failure is caused by a Force Majeure Event.

## **26. Assignment**

- 26.1 This Agreement is binding on the parties, their executors, administrators, successors and assignees. Where you are two or more persons, your obligations under this Agreement will be joint and several.
- 26.2 You may not assign any of your rights under this Agreement without our prior written consent.
- 26.3 We may at any time assign or novate our rights and obligations under this Agreement by not less than 30 days' prior notice, without obtaining your consent. You appoint us and any person authorised by us to be your attorney to sign any document or do anything necessary to give effect to the assignment, novation or transfer contemplated in this clause.

## **27. Severance**

- 27.1 If any provision in this Agreement or any document to be entered into pursuant to or in connection with it is held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part will to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement will not be affected.

## **28. Relationship**

- 28.1 We and you hereby agree that our relationship under this Agreement is that of independent contractors and that neither party will be regarded as a partner, employee or agent of the other, or otherwise related to the other in a manner not expressly provided for in this Agreement. Neither party will have any authority to bind or represent the other except as expressly provided for in this Agreement.

## 29. Variation and Waivers

- 29.1 We may vary this Agreement at any time and will notify you of any changes as set out in the table below. Use of any Product(s) after notification of notification of any such change will constitute acceptance of those changes.

Type of Change	Timeframe for Notice	Method of Notification
New fee or charge (other than a government charge).	30 days in advance.	In writing, via the PayWay Portal or Electronically.
A new or varied government charge that directly or indirectly affects you.	In advance of the change, or as soon as practicable afterwards, unless the change has been publicised by a government agency, government or representative body.	In writing, via the PayWay Portal or Electronically.
Any other term or condition (including a variation of fees and charges).	In advance of the date of the change.	In writing, via the PayWay Portal or Electronically.

- 29.2 Notwithstanding anything else in this clause 29, advance notice of a change to this Agreement may not be given in some circumstances, for example, when a change is necessitated by an immediate need to restore or maintain the security of our systems or where you cannot be reasonably located.
- 29.3 No failure to exercise and no delay in exercising any right, power or remedy under this Agreement operates as a waiver. Nor does any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. Waivers are not effective unless they are in writing.

## 30. Governing Law

- 30.1 This Agreement will be governed by and interpreted in accordance with the laws of New South Wales and the parties irrevocably submit to the courts of New South Wales in respect of it.

## 31. What to do if you have a problem or dispute

- 31.1 Our service approach

If you have any problems with the service that we provide, we would like to hear about them. When you provide feedback, we have an opportunity to improve our service to you.

When we make a mistake or our service does not meet your expectations, please be assured that we will do all we can to find a solution for you in the fastest possible time. We will take action when things go wrong because problem resolution is a priority to us.

- 31.2 If you have a complaint

It is your responsibility to, firstly, notify us of the situation. So please raise your complaint with any of the people handling your banking. You can contact us 24 Hours a day, 7 days a week from anywhere in Australia by:

Telephone: 1300 130 467

Email: Go to our website, [www.westpac.com.au](http://www.westpac.com.au) and click on 'Contact Us'.

Mail: Reply Paid 5265, Sydney NSW 2001.

We will aim to resolve the matter when you first contact us. If we cannot resolve your issues there and then, we will commit to taking the following steps:

Step 1 – Let you know who is handling your complaint.

Step 2 – Keep you informed of what is happening.

Step 3 – Aim to resolve your complain within 5 working days.

31.3 If you are not satisfied with our response or handling of your complaint, you may be able to lodge your complaint with a free, independent external dispute resolution scheme. If your complaint is lodged:

- **before 1 November 2018**, you may lodge your complaint with the Financial Ombudsman Service Australia:

Online: [www.fos.org.au](http://www.fos.org.au)

Email: [info@fos.org.au](mailto:info@fos.org.au)

Phone: 1800 367 287

Mail: Financial Ombudsman Service Limited GPO Box 3 Melbourne VIC 3001

- **on or after 1 November 2018**, you may lodge your complaint with the Australian Financial Complaints Authority:

Online: [www.afca.org.au](http://www.afca.org.au)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Phone: 1800 931 678

Mail: Australian Financial Complaints Authority GPO Box 3 Melbourne VIC 3001

### **32. Reasonableness**

32.1 We will act fairly and reasonably in accordance with our legitimate business interests in exercising our rights and discretions under this Agreement.

# SECTION B

## Terms and Conditions that apply to specific Products

### 33. PayWay API and PayWay Batch

Set out in this clause are the additional terms and conditions that apply to PayWay API and PayWay Batch.

- 33.1 You acknowledge and agree that we may enable and use the FraudGuard security feature with PayWay API.
- 33.2 The FraudGuard feature will not be provided with PayWay API unless you apply for that feature and continue to pay the relevant fee for that feature (as set out in your Fees and Charges Sheet or as amended from time to time). You acknowledge that FraudGuard may reduce the number of unauthorised and fraudulent transactions. This feature may not eliminate all unauthorised and fraudulent transactions and you must always use your own judgment before sending goods or supplying services in relation to any transaction using PayWay API.
- 33.3 We grant you a non-exclusive, non-transferable and revocable Digital Certificate to use PayWay API on the terms and conditions of this Agreement and the MSA but only while this Agreement and the Merchant Facility remains in force.
- 33.4 You undertake to store any account information of a Cardholder (Cardholder Data) in a secure manner, such that it cannot be reasonably compromised. You should only store Cardholder Data where there is a genuine business need to do so.

### 34. PayWay Phone, Net or Virtual Terminal

Set out in this clause are the additional terms and conditions that apply to PayWay Phone, Net or Virtual Terminal.

- 34.1 We agree to install a Product in order to allow you to view and export data relating to the Payers and to access details of moneys collected and remitted to you by us via a Product.
- 34.2 Each time a Payer accesses PayWay Phone, Net or Virtual Terminal and enters the information requested, Westpac will verify the details against your check digit routine which includes only MOD10V1 or MOD10V5 but, if you specify you do not require a check digit routine, this verification will not be done.
- 34.3 You must print on your invoices, statements or bills to your Payers, the following information:
  - 34.3.1 for PayWay Net holders, the PayWay Website;
  - 34.3.2 for PayWay Phone holders, the PayWay 1300 Number or such other 1300 or 1800 number nominated by you (at your cost) and a statement that credit card Payments can be made by telephone;
  - 34.3.3 your PayWay Biller Code; and
  - 34.3.4 the Payer reference number.
- 34.4 You acknowledge and agree:
  - 34.4.1 that you may enable and use Net 3-D Secure and/or FraudGuard with PayWay;
  - 34.4.2 the 3-D Secure and/or the FraudGuard feature(s) will not be provided with PayWay Net unless you apply for that feature and continue to pay the relevant fee for that feature (as set out in your PayWay Fees and Charges Sheet or as amended from time to time);
  - 34.4.3 that while 3-D Secure and FraudGuard may reduce the number of unauthorised and fraudulent Transactions these features may not eliminate all unauthorised and fraudulent Transactions and you must always use your own judgment before sending goods or supplying services in relation to any Payment using PayWay Net.

- 34.5 For PayWay Phone holders that elect to use their own 1300 or 1800 number (as opposed to the PayWay 1300 Number) in their Application, you agree to make the necessary arrangements with your telecommunications provider to allow us to use your nominated phone number. We will provide the respective local phone number that you must arrange your telecommunications provider to route your nominated phone number to.
- 34.6 For PayWay Phone holders:
- 34.6.1 The local phone number we provide you will be subject to change therefore, you agree to not distribute to third parties or publish any local phone number designated by us to you.
- 34.6.2 You will be responsible for any third party costs associated with this functionality.
- 34.6.3 We may from time to time agree to transfer incoming calls to the PayWay 1300 Number to your company (i.e. call centre). To apply for this option in your Application you must provide us with a freecall number to transfer the incoming calls to.
- 34.7 The PayPal Payment option within PayWay Net allows PayPal Customers to make PayPal Payments through the PayWay Website. If you select this option:
- 34.7.1 any PayPal Payments will be settled to your PayPal Business or Premium Account rather than to your Account under clause 8;
- 34.7.2 the rules and procedures relating to the processing and settlement of PayPal Payments, disputed PayPal Payments, adjustments in relation to PayPal Payments and your PayPal Business or Premium Account are determined by PayPal under the terms and conditions of your PayPal Business or Premium Account; and
- 34.7.3 clauses 7.5 to 7.10 do not apply in relation to the PayPal Payments.

### **35. PayWay Recurring Billing and Customer Vault**

Set out in this clause are the additional terms and conditions that apply to PayWay Recurring Billing and Customer Vault.

- 35.1 You agree and acknowledge that:
- 35.1.1 we will install you as a user on the system provided by Westpac to enable the provision of PayWay Recurring Billing (“the System”) to allow you to enter data relating to your customers (“Customers”) and to access details of moneys collected and remitted to you by us;
- 35.1.2 you will arrange for each Customer to complete and execute a Direct Debit Request and Direct Debit Request Service Agreement approved by us (“Customer Direct Debit Application”) and will identify the Customer pursuant to clause 35.2.3. An approved Customer Direct Debit Application is available for download from the PayWay Website;
- 35.1.3 if we allow you to accept Customer Direct Debit Applications on-line via a click-to-accept web page you must ensure that you comply with the requirements of this clause 35.1 and the BECS Procedures and BECS Regulations;
- 35.1.4 you will enter data from completed Customer Direct Debit Applications into the System. You must retain hard copies of the Customer Direct Debit Applications for at least 7 years from the date of the last debit made under the relevant Customer Direct Debit Application and must produce these on request by us for verification of your authority to debit the Card or other account with a bank or other financial institution against which the Direct Debit is to be debited (“Customer’s Account”). You acknowledge and agree that we are not responsible for checking the accuracy or completeness of the Customer information entered into the System by you;
- 35.1.5 we will, in accordance with details loaded into the System by you, periodically claim, against the Customer’s Account, Direct Debits. For the avoidance of doubt, this may be a regular series of Payments that are automatically debited periodically or variable Payments on an irregular basis and/or in different amounts;
- 35.1.6 we will remit periodically to you, the balance of Direct Debits collected by us on your behalf. We will remit the Direct Debits collected by us on your behalf to your account but they will not be available as cleared funds until such time (if any) that we have confirmation that the Direct Debits represent cleared funds in the Customer’s account.



- 35.1.7 where a Direct Debit is dishonoured, we will do one or more of the following:
- (a) require you to endeavour to contact the Customer to make arrangements for the remittance of an alternative Payment in lieu of the Direct Debit, or
  - (b) automatically relodge the Direct Debit claim against the Customer's account unless otherwise instructed to act per instructions received by you or the Customer via the PayWay Website; or
  - (c) report to you the dishonour of the Direct Debit; or
  - (d) debit the Account to recover the monies;

35.1.8 we may alter the functionality of the System to improve or enhance the Product or System at any time in our absolute discretion, but where this may have a material impact to your use of the Product or System will provide you with not less than 30 days' notice; and

35.1.9 we reserve the right to reject any Customer Direct Debit Application or any particular Direct Debit at our absolute discretion.

35.2 You undertake and agree to:

35.2.1 assume responsibilities and obligations and do all things reasonably requested by Westpac to ensure Westpac's compliance with the BECS Procedures, BECS Regulations and Card Scheme Rules, including, without limitation, executing any documents or other instruments;

35.2.2 establish and maintain a fair policy for refunds, for return of merchandise and for correcting errors, and, for the avoidance of doubt, to ensure the policy for refunds, for return of merchandise and correcting errors complies with, where applicable, the BECS Procedures, BECS Regulations and Card Scheme Rules;

35.2.3 verify the identity of all Customers prior to the Customers executing Customer Direct Debit Applications;

35.2.4 enter data about a Customer in the System where such data is provided in, and in strict accordance with the terms of, the duly completed and executed Customer Direct Debit Application for that Customer;

35.2.5 immediately notify Westpac when a Customer Direct Debit Application has been terminated and immediately take Customer data off the System in relation to the terminated Customer Direct Debit Application; and

35.2.6 inform the Customer and Westpac of any change to the terms and conditions of the Customer Direct Debit Application at least 14 days before the change is implemented (or within such other period, if any, specified by us).

35.3 You undertake and agree to:

35.3.1 promptly, in accordance with any instruction given by a Customer to cancel or suspend a Direct Debit Request or to stop or defer an individual Debit Item from time to time, update the data in the System accordingly; and

35.3.2 do all things required by us to ensure that all Debit Items which are lodged as a result of a Product conform with the technical specifications of the BECS Procedures.

35.4 You undertake and agree to promptly inform us if you are unable to comply at any time with one or more of your obligations under this Agreement, including without limitation, if you are, for any reason, not entitled to claim a Direct Debit.

### **36. PayWay Payment Card**

Set out in this clause are the additional terms and conditions that apply to PayWay Payment Card.

36.1 If you order a PayWay Payment Card then you represent and warrant that you have entered into a PayWay Payment Card BPAY® Sub-biller Agreement and Operations Manual with us, prior to using a Product.

36.2 You acknowledge and agree that at all times (including after termination of this Agreement) we own, hold and retain all proprietary interest in PayWay Payment Card.

- 36.3 You acknowledge and agree:
- 36.3.1 to receive Payments on behalf of Payers using PayWay Payment Card through the BPAY® Scheme and, if you elect to do so and agree to clause 36.4 of this Agreement, over the counter at Australia Post, and authorise us to accept these Payments;
  - 36.3.2 that only the information set out on PayWay Payment Cards issued by Westpac must be used to make Payments;
  - 36.3.3 we may, from time to time, vary the appearance or specifications of the PayWay Payment Card.
  - 36.3.4 to establish and maintain a fair policy for refunds, for return of merchandise and for correcting errors, and, for the avoidance of doubt, to ensure the policy for refunds, for return of merchandise and correcting errors complies with the BPAY® Scheme;
  - 36.3.5 to assume responsibilities and obligations and do all things reasonably requested by us to ensure our obligations under the BPAY® Scheme, and, if applicable, Australia Post, are met within the timeframe(s) specified by us, including without limitation, executing any documents and other instruments to give effect to the authorisation in this clause;
  - 36.3.6 where you directly provide Personal Information to either us or Australia Post or both, you warrant and undertake that you have all requisite permission in writing from all persons to whom that Personal Information relates to provide that Personal Information to us or Australia Post or both. We and Australia Post may require Personal Information to be provided to Post Billpay, neither we nor Australia Post may be able to supply Post Billpay without all or part of this information; and
  - 36.3.7 Personal Information provided to us or Australia Post or both may also be:
    - (a) used to contact you or us (where the contact is by Australia Post) in the future about other requirements Australia Post or us may have for Post Billpay; or
    - (b) disclosed to third parties so they can assist in the supply of Post Billpay to you.The operation of this clause will survive the termination of this Agreement.
- 36.4 You acknowledge and agree that the following procedures will apply in relation to making Payments over the counter at a Post Office:
- 36.4.1 Payments under this Agreement may be made at any Post Office on a Business Day, excluding any Australia Post Authorised Holiday;
  - 36.4.2 Payments will be accepted by cash, cheque or EFTPOS. Australia Post will not accept Card Payments;
  - 36.4.3 if a cheque is presented for Payment it must be made payable to either you, the party named on the PayWay Payment Card or Australia Post;
  - 36.4.4 after completing and paying for one or more Payments Australia Post will issue a Receipt to the Payer summarising the Payments. Payers should retain the Receipt as proof that the Payment was made. The issuing of a Receipt by Australia Post does not deem a Payment to be finalised but rather just confirms that the Payment is being processed by Australia Post;
  - 36.4.5 Australia Post will not accept a Payment unless the person making the Payment produces a current PayWay Payment Card; and
  - 36.4.6 Australia Post is not required to accept any Payments pursuant to this Agreement via Post Billpay at a Post Office:
    - (a) during any period in which Post Billpay has been suspended at the Post Office for any reason or where a ban has been imposed on the performance of agency work by the staff at the Post Office by an industrial union;
    - (b) on a public holiday or an Australia Post Authorised Holiday in the locality in which the Post Office is situated;
    - (c) that is not equipped to accept Payments; or
    - (d) during any period when data communications between Australia Post and its processing and settlement facilitator or Westpac and the processing and settlement facilitator have been suspended or interrupted for any reason whatsoever.

- 36.5 If a cheque accepted for Payment is returned unpaid we will:
- 36.5.1 debit the amount of that dishonoured cheque together with any applicable dishonour fee to the Account; and
  - 36.5.2 forward a “cheque returned unpaid advice” and, where available to us, the relevant cheque to you. The cheque returned unpaid advice will contain the following details:
    - (a) the name of the drawer and the drawer bank;
    - (b) the amount of the cheque; and
    - (c) the reason for the dishonour (the “answer”).
- 36.6 You acknowledge that due to circumstances beyond our control, you may experience a delay in receiving a notice regarding dishonours (mentioned in clause 36.5.2 above). The reasons for such delay may include the necessity of Australia Post having to confirm through their records the details of the Payment. You agree that any such delays will not constitute a breach by us of this Agreement or any other related agreement or arrangement and you agree that you will not make or seek to make us liable for any losses incurred by you as a result of this delay.
- 36.7 If a cheque is lost or unrepresented, we will debit the amount of the lost or unrepresented cheque from the Account. We will endeavour to provide you with notice prior to debiting your Account.
- 36.8 You agree to:
- 36.8.1 direct all enquiries and complaints from Payers in respect of amounts alleged to have been paid to the Post Office where the Payment is alleged to have been made who will deal with such enquiries or complaints in accordance with clauses 36.9 to 36.13;
  - 36.8.2 deal with all other enquiries and/or complaints from your Payers; and
  - 36.8.3 contact us with any enquiries about the Settlement Report and debits or credits to your Account.
- 36.9 In the event of an enquiry the Payer will be required to provide a copy of the Receipt. Should the Receipt not be available, then the Payer must provide details of the Post Office where the Payment was alleged to have been made with sufficient information to enable the enquiry to be investigated. The information should include wherever possible:
- 36.9.1 amount paid;
  - 36.9.2 date of Payment;
  - 36.9.3 method of Payment;
  - 36.9.4 type of bill paid;
  - 36.9.5 any applicable reference number;
  - 36.9.6 whether the paid amount was split between more than one bill.
- 36.10 The respective Post Office’s Postal Manager will investigate the enquiry to ascertain reason for delay in Payment and advise the Payer of the outcome. If the problem is of a systems nature the Post Office will advise the Payer of the expected date of resolution. If the Payment was not processed correctly at the Post Office where the Payment took place, then the Payment will be immediately processed with advice to us of the problem and the corrective action taken.
- 36.11 If a Payment record indicates an amount paid, but not brought to account, then Australia Post will pay the amount to us (or a nominee) as agent for you.
- 36.12 If a Payment record indicates the amount was paid and processed, then Australia Post will advise us (or our nominee) to advise you that you will need to follow up the matter with the Payer.
- 36.13 If no record of Payment is found at the Post Office, the Payer will be advised to follow up the matter with you.
- 36.14 You must not impose a fee or charge on a Payer for making a Payment or Payments through Post Billpay unless you have provided Westpac with at least six months prior written notice of your intention to do so and Westpac has obtained the consent of Australia Post to the wording on the Payer’s Payment Card.

- 36.15 If you request to have your business logo included on your PayWay Payment Card you agree that:
- 36.15.1 we will need a copy of the logo in a specified format;
  - 36.15.2 a test print of the proposed PayWay Payment Card may be required by us before a batch is printed;
  - 36.15.3 we will not be liable if you do not choose to perform a test print; and
  - 36.15.4 we may change our specified format from time to time.
- 36.16 Upon providing us with any Intellectual Property Rights to be loaded onto a PayWay Payment Card, you:
- 36.16.1 represent and warrant that the you are the owner or licensee of those Intellectual Property Rights, and have the power and authority to grant the licence referred to in clause 36.16.2 below and that in providing them to us it will not cause Westpac to be in breach of any law; and
  - 36.16.2 subject to clause 36.2, grant us a non-exclusive, royalty free, revocable licence to use the Intellectual Property Rights for the purpose of printing it on the PayWay Payment Card.

### **37. PayWay Match**

Set out in this clause are the additional terms and conditions that apply to PayWay Match.

- 37.1 We will allocate Virtual Accounts to you for the purpose of receiving direct credit Payments from Payers. You acknowledge that a Virtual Account is not an account held with Westpac and is only to allow Payers to make direct credit Payments and to identify the relevant customer when reconciling reports provided to you by us.
- 37.2 A Payer may make a direct credit Payment to you through PayWay Match by using the Virtual Account you have assigned for their use. You acknowledge that Payments using a Virtual Account can only be made through the BECS by the Payer using internet banking or other arrangement provided by their financial institution.
- 37.3 You acknowledge that the Payer's financial institution may set restrictions or criteria, including a cut-off time for submitting a direct credit request, that affect the processing of a direct credit entry and that we have no control over these factors. Payments will only be processed by us when received by us.
- 37.4 You must ensure that any Payer assigned a Virtual Account by you acknowledges and agrees that the Virtual Account:
- 37.4.1 is only a reference number used to identify the Payer and is not a bank account of any sort; and
  - 37.4.2 is only to be used to make direct credit payments to you and is not to be used in any other manner or for any other purpose, for example establishing direct debits.
- 37.5 At the end of each Business Day, we will calculate the total aggregate value of all Payments received by us through the BECS, using a Virtual Account and settle this amount, less any amount you have instructed us to return to a Payer, to your Account on the following Business Day.
- 37.6 We may reject a direct credit received using a Virtual Account where:
- 37.6.1 you no longer hold the PayWay Match Product;
  - 37.6.2 you have closed the relevant Virtual Account;
  - 37.6.3 you have not paid any fee or charge that is currently due to us under this Agreement;
  - 37.6.4 you do not, or cease to, hold an Account; or
  - 37.6.5 we believe that the direct credit was initiated fraudulently or in error, or that by accepting the direct credit we may incur a loss or damage of any nature, including reputational.
- We have no liability to you for rejecting a direct credit.

## For more information



1300 725 710



[westpac.com.au](https://www.westpac.com.au)



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**200 years**  
proudly supporting Australia