

Mobile PayWay

Terms and conditions

Effective: 8 November 2018

By completing and submitting the online Application, you accept the following terms and conditions (as amended from time to time) which apply to your Mobile PayWay facility.

Mobile PayWay Terms and Conditions

1. Definitions and interpretation	4
2. Payments.....	8
3. Processing Transactions	9
4. Surcharging.....	11
5. Sale Refunds	12
6. Invalid Transactions	12
7. Your Account.....	14
8. Records	16
9. Creditworthiness of the Cardholder	17
10. Proprietary and other rights	17
11. Equipment.....	18
12. Variations to this Agreement	20
13. Notices	20
14. Undertakings, Warranties and Indemnities	21
15. Limitation of Liability	22
16. Fraud Prevention	23
17. Code of Banking Practice	24
18. Financial Crimes Monitoring and Anti-Money Laundering	25
19. Termination.....	26
20. Suspension	28
21. Privacy Law	28
22. Changes	30
23. GST	30
24. Personal Property Securities Act	30
25. Assignment	32
26. Governing Law	32
27. What to do if you have a problem or dispute	33
Schedule 1: Direct Debit Service Terms	34
Schedule 2: Fees and charges	36
Schedule 3: Operating guide	37
Schedule 4: Protecting your business against credit card fraud.....	40

1. Definitions and interpretation

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

“Account” means any St.George business account nominated by you for the purposes of this Agreement (for and including settlement, Chargeback or billing purposes);

“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;

“Agreement” means this Agreement, including the Schedules, as amended from time to time, the Application and the Application approval letter;

“Application” means the online application for Mobile PayWay completed by you and submitted to us online;

“Authorisation” means the response to you authorising a Card to be used for a particular Transaction, as described more fully in Schedule 4;

“Business Day” means any day between the hours of 9:00am and 5:00pm on which banks are open for business in New South Wales;

“Card” means:

- (a) a valid payment card issued by a member or affiliate of Mastercard® on which the Mastercard marks appear;
- (b) a valid payment card issued by a member or affiliate of Visa on which the Visa marks appear;
- (c) a valid payment card capable of acceptance under the eftpos mark issued by an Australian bank or financial institution; or
- (d) any other valid payment card issued by another entity which we request you honour and you agree to honour;

“Card Reader” means the hardware supplied by us used in conjunction with your iPhone¹, iPad, iPod or Android™ mobile digital devices to accept Card payments and the software that is installed on that hardware, and includes any replacement hardware. “Software” includes the Mobile PayWay App, any operating system, application software and the card reader management software, and any updates issued from time to time;

1. Requires iPhone 4S or later using iOS 7. iPhone, iPad and iPod are all trademarks of Apple Inc., registered in the U.S. and other countries. Android is a trademark of Google Inc

“Card Scheme” means the Mastercard®, Visa, American Express, Discover, JCB and EPAL card schemes and any other similar schemes provided that we are a member of, or participate in, that scheme;

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

“Cardholder Data” means the account information of a Cardholder;

“Chargeback” means a debit entry to your Account processed by us, which is the reversal of a credit previously settled to you, as a result of an invalid Transaction (as described in clause 6 and Schedules 3 and 4);

“Credit Card Transaction” means a Transaction performed using a Card where the credit account is selected using the Card Reader. This definition applies even where the ultimate destination of a Credit Card Transaction may be a deposit account;

“Cut-Off Time” means 6pm on any day, or such other time or times on any day as notified by us to you from time to time;

“Debit Card Transaction” means a Transaction performed using a Card where a cheque or savings account is selected using the Card Reader;

“GST” has the meaning given by the GST Law;

“GST Law” has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist for any reason, means any Act or regulation imposing or relating to the imposition or administration of a goods and services tax in Australia;

“eftpos” means Electronic Funds Transfer at Point of Sale system;

“eftpos Trade Mark” means all registrations for eftpos logo that are owned by EPAL or any other trademark developed or acquired by EPAL that are contained in the Operating Guide appearing at Schedule 3;

“Electronically” means electronic communication to your nominated electronic address or making particulars of changes available at the PayWay Website;

“EPAL” means eftpos Payment Australia Limited;

“EPAL Scheme Rules” means the EPAL Scheme Rules published by EPAL on its website from time to time;

“Equipment” includes any Card Reader, power cords, adapters, docking cradles, any user and technical manuals, and any other materials or items supplied by us from time to time;

“Facility Limit” means the total value of payments you are authorised to accept in any month using Mobile PayWay. This amount is available through the Mobile PayWay App. We may change your Facility Limit at any time by giving notice to you;

“Intellectual Property” means all patents, patent applications, Trade Marks, designs, copyright, know-how, trade secrets, eligible layout rights, domain names, internet addresses, rights in confidential information, and all other intellectual property rights whether registered or unregistered and rights to apply for any of the same;

“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;

“Mastercard” means Mastercard International Incorporated;

“Mobile PayWay” means the Mobile PayWay facility made available to you by us to enable you to accept payments using Cards by processing Transactions through the Mobile PayWay App;

“Mobile PayWay App” means the application that can be downloaded through the iTunes website <http://www.apple.com/au/itunes/> or through <http://play.google.com/store/apps> through which Transactions can be processed via the Card Reader in accordance with the terms of this Agreement;

“PAN” means the Primary Account Number or Cardholder account number commonly located on the front of a Card;

“PA-QSA” means Payment Application Qualified Security Assessor;

“PayWay Portal” means the PayWay portal you sign into through the PayWay Website;

“PayWay Website” means the internet website, www.payway.stgeorge.com.au;

“PCI PA-DSS” means Payment Card Industry Payment Application Data Security Standards, developed and updated by the PCISSC from time to time, and applying to software vendors and other vendors developing payment applications that store, process or transmit card data, as part of an authorisation or settlement process, where these payment applications are sold, distributed, or licensed to third parties;

“PCI PTS” means Payment Card Industry PIN Transaction Security;

“PCIDSS” means Payment Card Industry Data Security Standards which are developed and updated by the PCISSC from time to time, with the aim of facilitating protection of cardholder payment data from unauthorised access, and which are applicable to any person who stores, processes or transmits card data;

“PCISSC” means the Payment Card Industry Security Standards Council, being a not-for-profit organisation responsible for the development of the PCIDSS, the PCI PTS and the PCI PA-DSS standards;

“PIN” means personal identification number;

“PPSA” means the *Personal Property Securities Act 2009* (Cth);

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

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

“Security Interest” includes any security interest under the PPSA, and any mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement or other security interest or encumbrance;

“Sensitive Authentication Data” includes any full magnetic stripe, PIN verification or code otherwise known as CAV, CVC, CVC2, CVV, CVV2, PVV, PIN and PIN Block data but excludes the information listed in clause 3.13;

“Small Business” means a business having less than 100 full time (or equivalent) employees if the business is or includes the manufacture of goods, or, in any other case, less than 20 full time (or equivalent) employees;

“St.George”, “we”, “us” or “our” means St.George Bank – a division of Westpac Banking Corporation ABN 33 007 457 141;

“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 Debit Card Transaction, a Credit Card Transaction and a Sale Refund as defined in clause 5.1;

“Visa” means Visa Inc.;

“Westpac Group” means Westpac Banking Corporation and any Related Body Corporate;

“You” or “your” means the person named in the Application. Where there is more than one person named in the Application:

- (a) it includes any one or more of you; and
- (b) each of you is severally, and jointly with each other of you, liable under this Agreement. This liability will continue even where one or more of you is not liable or is no longer liable.

1.2 For the purposes of this Agreement:

- (a) 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;

- (b) the singular includes the plural and vice-versa;
- (c) the failure by any party to exercise any right under this Agreement does not mean that party has waived that right;
- (d) 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;
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) 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
- (g) 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).

2. Payments

Accepting Payments

2.1 You acknowledge and agree that:

- 2.1.1 a Transaction may be processed by you at any time, but will only be processed by us at the end of the day on which it is received in accordance with clause 2.2, and if it is not received by us prior to the Cut-Off Time, it will be processed at the end of the next day;
- 2.1.2 subject to clause 6, each time a Transaction is processed by you, we will:
 - (a) obtain "real time, on-line Authorisation" for the Transaction;
 - (b) execute the Transaction by debiting the Cardholder's account; and
 - (c) accumulate all Cardholder directions received prior to the Cut-Off Time;
- 2.1.3 the Cardholder has a right to nominate any email address for the purpose of receiving a Transaction receipt. If an address is provided for Mobile PayWay, it should not be stored separately by you unless done so in accordance with all applicable Privacy Laws as defined in clause

21; and

- 2.1.4 you will advise the Cardholder to retain the receipt as proof that the Transaction was effected.

Settlement for Payments

- 2.2 At the end of each day, we will calculate the total value of all Transactions received by us on your behalf prior to the Cut-Off Time on that day and credit the total value (less any Sales Refunds) to your Account.
- 2.3 You acknowledge and agree that a Transaction received by us after the Cut-Off Time will be processed by us and included in the Transaction information on the following day.
- 2.4 You can view up to the last 220 Transactions you processed on the PayWay Website.

3. Processing Transactions

- 3.1 You must only use Mobile PayWay to process Transactions in Australia.
- 3.2 You will accept all valid Cards and process all Transactions in accordance with all applicable Laws, any obligations in this Agreement and any direction of St.George.
- 3.3 You must process all Transactions in Australian dollars.
- 3.4 You must not exceed your Facility Limit.
- 3.5 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 Transactions. We recommend that you contact your provider to confirm the details of your plan and discuss any potential charges with them.
- 3.6 You must clearly, prominently and unequivocally inform the Cardholder 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 Cardholder that you are responsible for the Transaction, including the goods or services acquired by use of the Card, as well as for related customer service, dispute resolution and performance of the terms and conditions of the agreement between you and the Cardholder.
- 3.7 You are responsible for ensuring that a Transaction is approved before providing a Cardholder 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 by which payment was or is effected is declined.

- 3.8 You must only process Transactions in circumstances where you have, or you will, supply goods or services to a Cardholder and the Cardholder presents the Card as the means of payment for the goods or services.
- 3.9 You must not split a Transaction into two or more Transactions on the same Card to avoid having to obtain an Authorisation. You will not be in breach of this clause by splitting a Transaction when the Cardholder bills a portion of the Transaction to a Card and pays the remaining balance by cash.
- 3.10 You must not undertake any Transaction:
- 3.10.1 representing a refinance or transfer of an existing Cardholder's financial obligation to you (whether or not you consider that the obligation is not collectable); or
 - 3.10.2 as an alternative way of accepting payment following the dishonour of a Cardholder's personal cheque.
- 3.11 If required by Law, we will issue to you monthly statements. Statements will take the form of tax invoices.
- 3.12 Under no circumstances should you request or allow any Cardholder to disclose their PIN, password or other code or information that can be used to access a Cardholder's account, for you to retain. You should only retain a Card if we ask you to do so or as otherwise provided in this Agreement. Without limiting your other obligations in this clause 3, you will not disclose, give (other than to us or unless required by Law), buy, sell or exchange a Cardholder's name or Card details to any person.
- 3.13 Subject to clause 3.14, you may only store the following Cardholder Data if there is a genuine business need to do so:
- 3.13.1 PANs which have been rendered unreadable in compliance with the PCIDSS;
 - 3.13.2 Cardholder name; and
 - 3.13.3 Card expiry date.

If the genuine business need no longer exists, the relevant Cardholder Data must be deleted and/or destroyed in accordance with the PCIDSS. You must store the Cardholder Data securely such that the information cannot be compromised.

- 3.14 Under no circumstances will you store Sensitive Authentication Data after obtaining an Authorisation. All Cardholder Data elements not listed in clause 3.13 are considered to be Sensitive Authentication Data.
- 3.15 Under no circumstances should you request or use Card details provided via email for payment in respect of the provision of goods or services. If Card details are provided to you by email, you must immediately and securely destroy those details.

- 3.16 You must not process or encourage Transactions that relate to, or are in connection with, the sale of goods or services that are:
 - 3.16.1 in contravention of any applicable Laws (including but not limited to the violation of export controls, obscenity laws or gambling laws); or
 - 3.16.2 illegal, obscene, vulgar, offensive, dangerous or, in our opinion, otherwise inappropriate.
- 3.17 You must comply with any industry codes of conduct specifically regulating or prohibiting the retention by you of PINs, passwords or other codes or information that can be used to access a Cardholder's account.
- 3.18 You agree that if a Debit Card Transaction using a valid Card capable of acceptance under eftpos is declined by the issuing Australian bank or financial institution, then we will be unable to recover the value of the Debit Card Transaction for you and we will have no liability to you or any third party in respect of that Debit Card Transaction.
- 3.19 We may notify you if you have excessive Chargebacks and/or fraudulent Transactions in any particular category or if a particular category is at risk of exceeding the threshold. You must take immediate action to rectify the situation. Failure to resolve the cause of the problem in accordance with our instructions may result in Chargebacks or non-compliance Card Scheme fines which may be passed on to you.

4. Surcharging

- 4.1 You agree to:
 - 4.1.1 charge Cardholders a price for goods and services comparable to the price you charge for cash for those goods and services; and
 - 4.1.2 honour a Card tendered by a Cardholder for the payment of goods or services via Mobile PayWay, to be supplied by you to the Cardholder, in accordance with this Agreement.
- 4.2 If you charge a fee for Transactions ("**Surcharge**"), you must clearly disclose that Surcharge to the Cardholder before processing the Transaction.
- 4.3 You must limit the cost of any Surcharge charged by you to the reasonable cost of accepting the Transaction.
- 4.4 Before a Transaction is completed, you must allow the Transaction to be cancelled, without the Cardholder incurring any cost, after advising the Cardholder of the total Transaction amount.

- 4.5 You acknowledge that Card issuers may from time to time change the classification of a Card (i.e. standard or premium) and, as a result, when applying a Surcharge rate to a Cardholder, it cannot be guaranteed that the classification of the Card on which you have based the Surcharge will be the same as the classification on which you are charged your merchant service fee in relation to the same Transaction.
- 4.6 You will pay any fines associated with your noncompliance with Card Scheme surcharging rules.

5. Sale Refunds

- 5.1 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 5.2, you agree to give credit to Cardholders in respect of any refunds for goods or services or disputed amounts (as applicable) by means of a sales refund Transaction ("**Sale Refunds**") rather than in cash or by cheque.
- 5.2 You can only process a Sales Refund:
 - 5.2.1 via the Card Reader for payments processed by you using Mobile PayWay;
 - 5.2.2 to a Card where there was an initial valid Transaction on that Card; and
 - 5.2.3 in a face-to-face transaction where the Card is presented at the time of the Sales Refund.
- 5.3 We are not be responsible for any unauthorised Sale Refunds processed through your Card Reader and the Mobile PayWay App, even if those Sale Refunds may cause your Account to be debited by the amount of the Transaction.

6. Invalid Transactions

- 6.1 A Transaction is invalid if:
 - 6.1.1 it is illegal or you do not have a valid regulatory licence or authorisation to process the Transaction;
 - 6.1.2 it was processed by you after this Agreement was terminated in accordance with clause 19, or whilst your Mobile PayWay facility was suspended in accordance with clause 20;
 - 6.1.3 the Transaction is split into two or more Transactions on the same Card or over two or more Cards to avoid having to obtain an Authorisation

for the total amount of the sale (in which case, each Transaction will be invalid);

- 6.1.4 the Card relating to the Transaction is not valid at the time of the Transaction;
 - 6.1.5 the Card was used without the Cardholder's authority;
 - 6.1.6 the Transaction did not originate from a business transaction between you and the Cardholder;
 - 6.1.7 you do not retain your copy of the receipt relating to the Transaction for 18 months from the date of the Transaction;
 - 6.1.8 it is a Credit Card Transaction and:
 - (a) it is not for the supply of goods or services to a genuine customer; or
 - (b) it relates to a transfer of funds, not a supply of goods or services;
 - 6.1.9 it was submitted as a Transaction authorised by us, where an Authorisation was never obtained from or given by us;
 - 6.1.10 it is a Sales Refund and:
 - (a) no corresponding sales Transaction exists for the Card on which the Sales Refund is made or purported to be made;
 - (b) it represents the payment of wages/salary;
 - (c) it represents the transfer of funds; or
 - (d) insufficient funds are available in the Account to cover the refund amount;
 - 6.1.11 you fail to comply with all messages displayed on the Mobile PayWay App in relation to the Transaction;
 - 6.1.12 you are unable to demonstrate the validity of the Transaction to our satisfaction; or
 - 6.1.13 you do not otherwise comply with your obligations under this Agreement in relation to the Transaction.
- 6.2 We may refuse to accept, or may Chargeback, any Transaction if:
- 6.2.1 the Transaction is invalid or we consider it to be invalid within the meaning of clause 6.1;
 - 6.2.2 the Cardholder claims the Transaction is invalid or disputes liability for any reason; or

6.2.3 the Cardholder asserts a claim for set-off or a counterclaim.

You acknowledge that Chargebacks may be processed to your Account up to 18 months after the date of the original Transaction.

6.3 You undertake to abide by industry best practices to minimise fraud and Chargebacks as set out in Schedules 3 and 4 from time to time.

7. Your Account

7.1 You authorise us to debit your Account in respect of:

- 7.1.1 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 Schedule 2;
- 7.1.2 all government charges, duties and taxes (including GST) that apply in relation to this Agreement;
- 7.1.3 the full amount of all Sales Refunds you process, less any charges we have already debited to your Account relating to the relevant Transaction;
- 7.1.4 any overpayments or credits we have made in respect of Transactions due to errors or omissions;
- 7.1.5 the value of Transactions which are invalid within the meaning of clause 6;
- 7.1.6 any Chargeback;
- 7.1.7 any moneys paid by us to you for Transactions where we are investigating the validity of the Transaction or a suspected Chargeback;
- 7.1.8 any fees, fines or penalties that we are required to pay to the entities responsible for Card Schemes pursuant to the Rules as a direct or indirect result of your failure to observe your obligations under this Agreement;
- 7.1.9 a Transaction being an invalid Transaction within the meaning of clause 6 or being charged back to us;
- 7.1.10 any deficiency in a payment made by you following an audit or a check by us of your Mobile PayWay facility or Account;
- 7.1.11 all penalties and costs incurred by us as a result of an ADC or your non-compliance to the PCIDSS including but not limited to the cost of all forensic investigations as required by us or the Card Schemes;

- 7.1.12 any other money you owe us under this Agreement; and
 - 7.1.13 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.
- 7.2 If we debit the Account in accordance with clause 7.1 and the Account contains insufficient funds, then the payment may be reversed and you will be regarded as not having made the payment, in which case you must make the payment to us as soon as possible upon notification by us to you that the payment is required.
- 7.3 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.
- 7.4 Without limiting clause 7.1, 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.
- 7.5 If:
- 7.5.1 we have concerns about your solvency;
 - 7.5.2 you are involved in a high number of Chargebacks or invalid Transactions as determined by us in our sole discretion;
 - 7.5.3 we have commenced but not yet concluded reasonable investigations into any claimed Chargebacks or into the validity of any Transactions processed by you; or
 - 7.5.4 we have concerns about you or your business,
- we may:
- 7.5.5 withhold release of funds in the Account, or withhold or suspend payment of any money that would otherwise be owing to you under this Agreement, until further notice; and/or
 - 7.5.6 establish an account in your name for the purpose of retaining funds for processing Transactions or Chargebacks.
- 7.6 We may appropriate money you hold in your Account, or any other related account you hold with us, towards any and all amounts you owe us under this Agreement. If we do this, the balance of your Account or any related account, as applicable, will be reduced by a corresponding amount. We will notify

you promptly after exercising our right to appropriate money in your Account or any related account in accordance with this clause.

- 7.7 You are responsible for reconciling your sales and settlements for all Transactions. If you have any concerns, you must contact us within 7 days from the date of the Transaction and request that it be reviewed by us. Subject to clause 15, any disputes raised after this time will not be reprocessed or otherwise reviewed by us.
- 7.8 You must reconcile the statements that we send you under this Agreement to ensure that payments to and from your Account have occurred in accordance with this Agreement. It is your obligation to check the accuracy of the statements. If you fail to notify us within 3 months of any claimed error in this respect, then subject to clause 15, you will have no claim against us and the Account with us will be deemed settled.

8. Records

- 8.1 You must:
- 8.1.1 maintain and retain in your possession (while complying with all applicable security requirements) your books of account and records (including all Transaction information) relating to each Transaction for at least 18 months after the Transaction;
 - 8.1.2 permit us to inspect and examine the books of account and records referred to in clause 8.1.1;
 - 8.1.3 not disclose, give (other than to us or unless required by Law), buy, sell or exchange a Cardholder's name, Cardholder Data or any other Card details to any person (including mailing lists, tapes, computer data or any other media or data obtained by reason of a Transaction);
 - 8.1.4 keep all Card numbers, Cardholder and Transaction information, including Cardholder Data, in a secure manner, in compliance with the PCIDSS, to prevent access by or disclosure to anyone other than your authorised personnel or agent responsible for processing Transactions. If any such information must be discarded, you must destroy it in a manner which makes the information unreadable and in compliance with the PCIDSS; and
 - 8.1.5 provide us with all clear and legible documentation relating to a Transaction when requested. Otherwise we may Chargeback the Transaction to your Account.

9. Creditworthiness of the Cardholder

9.1 You acknowledge that:

9.1.1 we do not guarantee any Cardholder's creditworthiness or their identity; and

9.1.2 you waive any right you may have against us by reason of any inference that may be drawn from the fact that a Cardholder has been issued with a Card, an Authorisation has been issued or a Transaction has been processed by us.

10. Proprietary and other rights

10.1 We retain exclusive ownership of all copyright and other Intellectual Property rights embodied in or related to Mobile PayWay. Despite anything to the contrary in this Agreement, title to Mobile PayWay will at no time pass to you or any other third party and will at all times remain with us.

10.2 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, Mobile PayWay or the Equipment.

10.3 You agree:

10.3.1 to obtain our prior written consent before using any Trade Mark (which consent may be granted or withheld by us in our sole discretion);

10.3.2 to comply with any Trade Mark use guidelines or directions provided by us to you from time to time; and

10.3.3 not to take any action which will adversely affect the value attached to the Trade Marks, our Intellectual Property rights, or our business.

10.4 You will not divulge or otherwise allow to be divulged to any person for your own benefit (except as permitted herein) or for the benefit of any third party any information relating to Mobile PayWay or our business which is not in the public domain or which otherwise constitutes confidential information.

10.5 We grant you a revocable non-exclusive non-transferable sub-licence to use the eftpos Trade Marks in connection with the operation and promotion of eftpos Transactions, eftpos Cards, (as those words are defined in the EPAL Scheme Rules) and accounts and/or other services associated with them subject to your compliance with the terms of this Agreement and the Operating Guide appearing at Schedule 3.

10.6 You acknowledge that EPAL is the owner of the eftpos Trade Marks and that your right to use the eftpos Trade Marks does not confer any proprietary or

other interest in the eftpos Trade Marks during or after the termination of this Agreement.

- 10.7 You agree to comply with the eftpos Trade Mark requirements as contained in the Operating Guide appearing at Schedule 3 and not to use the eftpos Trade Marks in a manner that is inconsistent with or detracts from any branding, the eftpos Trade Mark requirements or marketing messages of EPAL.
- 10.8 This sub-licence to use the eftpos Trade Marks:
- 10.8.1 will be revoked immediately on termination of this Agreement; or
 - 10.8.2 may be revoked immediately upon written notice by us,
- upon which you agree to immediately cease using the eftpos Trade Marks and destroy all materials and paraphernalia that include the eftpos Trade Marks.
- 10.9 You indemnify us for claims and demands made against or suffered or incurred by us arising directly or indirectly out of your use of EPAL's branding and/or eftpos Trade Marks where such use is in breach of the EPAL Scheme Rules.

11. Equipment

- 11.1 Notwithstanding any disruption or potential disruption to your business, you will allow (and, where applicable, will ensure you have the right to permit) at all times our representatives to enter your premises and access the Equipment to maintain, repair, replace or remove the Equipment or to ensure that you are complying with this Agreement, during business hours or at any other reasonable time.
- 11.2 If a Card Reader malfunctions, or for any reason is not able to process Transactions, you must report it immediately to us and must comply with paragraph 2 of the Operating Guide appearing at Schedule 3. We will endeavour to remedy the problem and may arrange for the Card Reader to be repaired or replaced at our discretion. You must not carry out a Transaction using a malfunctioning Card Reader. It is your responsibility to ensure that other means are available at short notice to enable you to continue to process your business transactions.
- 11.3 For the duration of this Agreement, you must:
- 11.3.1 use and operate the Equipment with reasonable care only in accordance with any user and technical manuals or other instructions provided to you by us, including the Operating Guide appearing at Schedule 3;
 - 11.3.2 allow only us or our representatives to maintain, replace (including any upgrades performed by us from time to time) or remove the Equipment;

- 11.3.3 allow us to upgrade the Equipment as required, including when industry or security standards change;
 - 11.3.4 keep the Equipment secure and under your control at all times;
 - 11.3.5 insure the Equipment against theft, loss and damage, for its full replacement value;
 - 11.3.6 take proper care of the Equipment. You are responsible for any costs incurred in the replacement or repair of the Equipment due to theft, loss or damage (fair wear and tear excepted);
 - 11.3.7 only process a Transaction upon presentation of a Card by using the Card Reader;
 - 11.3.8 use reasonable care to detect the unauthorised use of a Card;
 - 11.3.9 immediately alert us if you suspect that the Equipment has been tampered with; and
 - 11.3.10 not modify the Equipment in any way.
- 11.4 You acknowledge and agree that:
- 11.4.1 title in the Equipment remains with us at all times and is not transferred to you. You must not sell, assign or encumber the Equipment, nor provide it to any third party. You must not remove any plates, stickers or markers which are used to identify the Equipment and/or the owner of the Equipment. We may, without your consent, give a third party any form of interest in, or security over, the Equipment or all or part of the Agreement;
 - 11.4.2 we may at any time replace any Equipment with new Equipment. If we replace any Equipment we will notify you promptly of any additional amounts payable by you to us;
 - 11.4.3 the Card Reader is supplied strictly to enable you to process Transactions under this Agreement; and
 - 11.4.4 we grant you a non-transferable non-exclusive licence to use the Equipment solely to enable the processing of your lawful Transactions in Australia in accordance with this Agreement.

12. Variations to this Agreement

12.1 We may vary this Agreement at any time and will notify you of any changes as set out in the table below. Use of Mobile PayWay after notification of any such changes 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 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, Electronically or through an advertisement in a major newspaper.

12.2 Notwithstanding anything else in this clause 12, 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.

13. Notices

13.1 We may provide you notices in writing, including in your statement of account, by facsimile, newspaper, advertisement or Electronically depending on the nature of the notice.

13.2 You authorise us to provide any notices or information required to be given under this Agreement Electronically.

13.3 Where we provide information Electronically, 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 or Mobile PayWay App are up-to-date at all times.

13.4 Subject to clause 19.2, you may give us a notice under this Agreement:

13.4.1 by telephone, using the telephone number specified in clause 27; or

13.4.2 by posting it in a prepaid envelope to the address specified in clause 27.

14. Undertakings, Warranties and Indemnities

14.1 You undertake to us:

14.1.1 to comply at all times with your obligations set out in this Agreement;

14.1.2 to execute any directions and authorities we require to give effect to any of your obligations under this Agreement; and

14.1.3 not to enter into any agreement similar to this Agreement with any other financial institution while this Agreement is in operation.

14.2 You must not make any warranty or representation whatsoever in relation to any of your goods or services which may bind, or by which you purport to bind, us.

14.3 You warrant that you will use Mobile PayWay in strict accordance with this Agreement including the Operating Guide included at Schedule 3 to this Agreement, solely for the performance of the specific business functions specified by you in the Application.

14.4 You acknowledge that by processing a Transaction, you warrant to us that:

14.4.1 all particulars relating to the Transaction are true and correct;

14.4.2 the Transaction is valid; and

14.4.3 the sale is not subject to any dispute, set-off or counterclaim.

14.5 You indemnify and keep us indemnified against, and must pay us on demand against, all claims, actions, suits, losses, defaults, liabilities, expenses, costs (including legal costs) and damages we may incur or suffer arising out of or in connection with:

14.5.1 your failure to comply with any of your obligations under this Agreement, whether caused by you or any of your officers, employees, servants, agents or contractors;

14.5.2 any failure to pay any charges or fees payable by you under this Agreement;

14.5.3 any dispute between you and a Cardholder;

14.5.4 any error, negligence or fraud relating to a Transaction by you, your officers, employees, servants, agents or contractors;

14.5.5 any damage to, or loss of, a Card Reader due to your, or your officers', employees', servants', agents' or contractors', neglect or misuse; or

14.5.6 any fees, fines or penalties (including but not limited to Card Scheme fines) that we are required to pay as a direct or indirect result of your

failure to observe any of the procedures, requirements or obligations required to be complied with by you under this Agreement.

- 14.6 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.
- 14.7 Any payments made by you pursuant to an indemnity given under this clause 14 must be automatically increased by the amount of any GST liability incurred by us in respect of those payments.

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 any Transaction or Equipment, 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 replacement or the repair of the Equipment.
- 15.4 Subject to this clause 15, 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 Transactions, or any lost Transactions that might occur, if Mobile PayWay is not available for any reason;
 - 15.4.4 any disruption caused by:
 - (a) a malfunction of Mobile PayWay, the Mobile PayWay App or a Card Reader; or
 - (b) any period when Mobile PayWay is unavailable, or you are waiting for a replacement Card Reader or a repair to be carried out on your Card Reader;

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. This includes instances where your Mobile PayWay facility is unable to settle for any reason.

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.

16. Fraud Prevention

PCIDSS and PCI PA-DSS Compliance

16.1 You must ensure you and your business are compliant with the PCIDSS at all times.

16.2 Your merchant classification according to the PCIDSS will be determined by us in our sole discretion.

16.3 All costs in relation to complying with this clause 16 will be borne by you.

16.4 If you use any 'off the shelf' software that stores, processes or transmits Cardholder Data during Authorisation or settlement, you must ensure that it has been certified by a PA-QSA as being compliant with the PCI PA-DSS.

PCIDSS Validation

16.5 If we determine that you are a Level 1, 2 or 3 merchant under the PCIDSS, you must, on our request, validate your compliance with the PCIDSS on an ongoing basis. Validation of compliance with the PCIDSS must be completed within 3 months of our request to you.

ADC Events

16.6 You must comply with the ADC procedures set out in this clause 16 and the Schedules immediately upon becoming aware that an actual or suspected ADC has occurred.

16.7 If there is an actual or suspected ADC, or if there has been any actual or suspected Card Reader manipulation:

16.7.1 you must give us and our agents full access to your systems and databases to facilitate a forensic analysis to ascertain:

(a) what Cardholder Data has been compromised;

(b) what weaknesses in your system permitted the ADC or Card Reader manipulation to occur; and

(c) whether Cardholder Data was created, deleted, altered, copied or manipulated in any manner;

16.7.2 you must pay all costs in connection with our analysis, investigation and resolution of the ADC or any Card Reader manipulation. You agree that we may pass any penalties levied by the Card Schemes on to you and that we reserve the right to pass on to you any charges that relate to the investigation of an ADC; and

16.7.3 in order to continue processing Transactions, you must validate to our satisfaction that you are fully compliant with the PCIDSS as a Level 1 Merchant within 3 months of the ADC or the event(s) giving rise to the Card Reader manipulation. All costs incurred by you as a result of your compliance with this clause will be borne by you.

16.8 You agree:

16.8.1 that we may report all ADC events to Card Schemes and their members and may be required to report ADC events to law enforcement agencies and/or Australian regulators. You grant an irrevocable and enduring consent to us to disclose details of any such ADC (including information about you and your customers) to any such agencies and regulators; and

16.8.2 irrevocably to confer upon us the enduring right to contact any service providers that enable you to acquire Credit Card Transactions for the purposes of determining the extent of any actual or suspected ADC, assessing remedies for that ADC and assessing your level of compliance with the PCIDSS.

17. Code of Banking Practice

17.1 This clause 17 applies to you if you are an individual or a Small Business.

17.2 You acknowledge that the relevant descriptive information referred to in clauses 15.1 and 15.2 of the Code of Banking Practice is set out in our account terms and conditions booklets. You acknowledge that these booklets contain information regarding:

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 (which in relation to this Mobile PayWay facility means you should carefully read this Agreement before submitting your Application).

17.3 You acknowledge that each relevant provision of the Code of Banking Practice will apply to your Mobile PayWay facility from the date we adopt that provision.

18. Financial Crimes Monitoring and Anti-Money Laundering

18.1 You acknowledge that:

18.1.1 Transactions may be delayed, blocked, frozen or refused where we have reasonable grounds to believe that they breach Australian Law (or the Laws of any other country). Where Transactions are delayed, blocked, frozen or refused, we and our accredited processors are not liable for any loss suffered by you or your business (including consequential and indirect loss) whatsoever as a result;

18.1.2 we may from time to time require additional information from you to assist us in order to meet our anti-money laundering and counter-financing of terrorism obligations. This information may include "personal information" as defined in the *Privacy Act 1988* (Cth). If we request such information, you must provide us with the information as soon as possible and no later than within 24 hours of such a request;

18.1.3 where legally obliged to do so, we may disclose the information gathered under this Agreement, including clause 18.1.2, to regulatory and/or law enforcement agencies, other banks, other members of the Westpac Group, service providers who do things on our behalf, or to other third parties; and

18.1.4 (where we have reasonable grounds to believe that a suspicious matter has arisen in relation to Mobile PayWay, we are obliged to complete and render a report to the Federal Government (AUSTRAC). A suspicious matter includes any Transaction that we believe may be of relevance to the investigation or prosecution of any breach or attempted breach of an Australian Law (including Laws related to money laundering, tax evasion, financing of terrorism or the proceeds of crime).

18.2 You provide us with the following undertakings:

18.2.1 you will not initiate, engage in, or effect a Transaction that may be in breach of Australian Law (or the Laws of any other country); and

18.2.2 the underlying goods or services for which payment is accepted by you using Mobile PayWay do not breach any Australian Law (or the Law of any other country).

18.3 You indemnify and keep us indemnified against all claims, actions, suits, losses, defaults, liabilities, expenses, costs (including legal costs) and damages we may incur or suffer arising out of or in connection with any breach by you or your officers, employees, servants, agents or contractors of the undertakings described in clause 18.2.

19. Termination

19.1 This Agreement commences when your Application is approved by us and will continue until it is terminated in accordance with this clause 19. Upon termination of this Agreement:

19.1.1 your Mobile PayWay facility is also terminated and you must no longer use the facility;

19.1.2 you must cease to use, and must delete, the Mobile PayWay App immediately; and

19.1.3 you must immediately return all Equipment to us. Fees and charges will continue to be incurred by you until the Equipment is returned to us. You authorise us to enter the premises where the Equipment is kept and take possession of the Equipment without notice to you if the Equipment is not returned to us immediately in accordance with this clause 19.1.3.

19.2 You may terminate this Agreement by providing us with 7 days' written notice. Unless such notice is provided, your Agreement (including fees and charges) will continue to apply notwithstanding that you may have discontinued your use of Mobile PayWay and/or returned the Equipment to us.

19.3 It is your obligation to reconcile your Account after termination of this Agreement and notify us of any discrepancies.

19.4 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 the monthly applicable charges.

19.5 We may terminate this Agreement at any time and for any reason, including but not limited to the following:

19.5.1 we consider your ratio of Chargebacks to sales, whether by number or dollar value of Chargebacks, to be excessive;

- 19.5.2 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;
 - 19.5.3 we have concerns about your solvency, or the solvency of your business;
 - 19.5.4 we have concerns about your ability to meet or repay the amounts of any Chargebacks that have been received, or that are likely to be received in the future conduct of your business;
 - 19.5.5 you have a significant adverse credit event recorded against you;
 - 19.5.6 we have reasonable grounds to suspect that you have fraudulently processed Transactions, or have knowingly allowed fraudulent Transactions to be processed through Mobile PayWay;
 - 19.5.7 you are not compliant with the PCIDSS;
 - 19.5.8 you have suffered an ADC; or
 - 19.5.9 the ownership or control of your business, or your ability to meet liabilities as and when they fall due, changes.
- 19.6 We will endeavour to give you verbal or written notice before we terminate this Agreement. If we are unsuccessful in contacting you, we may proceed to terminate this Agreement and we will give you subsequent written confirmation that this Agreement has been terminated.
- 19.7 Without limiting clause 19.5, we may terminate this Agreement on the basis that you have not processed Transactions through Mobile PayWay for a period of six (6) months. Under these circumstances, we will notify you, in writing, of our intention to terminate this Agreement and will allow you a period of 14 days from the date of our notification in which to contact us in respect of the proposed termination. After expiry of the 14 day period, we may terminate this Agreement without further notice to you.
- 19.8 Termination of this Agreement by us will be effective immediately and we are not obliged to accept any Transactions you process after this Agreement is terminated.
- 19.9 Termination of this Agreement does not affect any liabilities or obligations of either party incurred prior to termination. Clauses 14, 15, 18, 19, 21, 22 and 26 survive termination of this Agreement, as well as any other clauses which, by their nature, survive termination.
- 19.10 You acknowledge that a "combined terminated merchant file" is a list containing the business name and the names and identification of principals of merchants that have been terminated by acquiring financial

institutions. You consent to us providing information about you and any persons named in your Application to Mastercard®, Visa or any other entity responsible for a Card Scheme for addition to the combined terminated merchant file if this Agreement is terminated by us for any reason (this may include sending information overseas). You acknowledge that this information will be available to any member of the Card Scheme(s) and may be used to assess subsequent applications for merchant facilities. You indemnify us and keep us indemnified against all claims, actions, suits, losses, defaults, expenses, costs (including legal costs), damages and liabilities resulting from the inclusion of you or your principals on this file.

20. Suspension

- 20.1 We may suspend your Mobile PayWay facility without notice to you if we:
- 20.1.1 consider that we could suffer a loss as a result of your Mobile PayWay facility continuing to operate;
 - 20.1.2 think we could be subject to fraud if we continue to supply the Mobile PayWay facility;
 - 20.1.3 become aware of an event listed in clause 19.5; or
 - 20.1.4 are unable to contact you to discuss a matter relating to your use of Mobile PayWay.
- 20.2 We will inform you as soon as practicable after we suspend your Mobile PayWay facility under this clause.
- 20.3 Whilst Mobile PayWay is suspended, you must not submit Transactions for processing and we will not process any Transactions you do submit.

21. Privacy Law

- 21.1 You agree to comply with:
- 21.1.1 any privacy laws by which you are bound, including the *Privacy Act 1988* (Cth); and
 - 21.1.2 any other privacy requirement notified by us to you, ("**Privacy Laws**").
- 21.2 You acknowledge that you do not rely on any information or representation supplied by us to you as advice regarding compliance with the Privacy Laws.
- 21.3 You warrant that you are aware of the Privacy Laws which apply to you in respect of this Agreement, and also warrant that, after the enquiry, you are not aware of having breached any of those Privacy Laws.

- 21.4 You agree that we may obtain from and disclose information to any person who issues a Card or Card Scheme for any purpose relating to the operation of Mobile PayWay that we deem necessary. Our rights under this clause continue after this Agreement is terminated.
- 21.5 You authorise us to obtain from any Card Scheme information (“your history”) relating to facilities you obtained or are obtaining from other suppliers.
- 21.6 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:
- 21.6.1 to assess and process your Application;
 - 21.6.2 to administer and manage the Mobile PayWay facility we supply to you under this Agreement; and
 - 21.6.3 to facilitate our internal business operations, including fulfilling any legal requirements and systems maintenance and testing.
- 21.7 You acknowledge and agree that we may disclose information about you that we collect from your Application, your history or conduct of the Mobile PayWay facility we supply you under this Agreement, in the following circumstances:
- 21.7.1 to our external service providers (some of which may be located overseas) that provide services for the purposes only of our business, on a confidential basis (for example, without limitation, mailing houses);
 - 21.7.2 to any person who is a Card issuer, Card Scheme operator or otherwise involved in any Card Scheme, for any purpose relating to the operation of those Card Schemes (for example Visa, Mastercard®, EPAL and card fraud detection agencies). You acknowledge that this information may include information about terminating this Agreement and the reasons for that termination. You also acknowledge that another service provider may use this information (amongst other things) to determine whether or not to make facilities available to you;
 - 21.7.3 to persons who you inform us supply services related to your Mobile PayWay facility (including but not limited to American Express); and
 - 21.7.4 if you consent or where the Law requires or permits us to do so.
- 21.8 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:
- 21.8.1 assess your total relationship and product holding with the Westpac Group, analyse products and customer needs and develop new products; and

21.8.2 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.

22. Changes

- 22.1 You must notify us in accordance with clause 13.4 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 22 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 22.
- 22.2 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.
- 22.3 Without limiting clause 22.1, 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 Mobile PayWay facility with us if they wish to continue using our merchant services.

23. GST

- 23.1 We may increase the amount ("original amount") of any fee or other consideration payable by you under this Agreement which has not been specified to include GST by an additional amount so that the total amount payable by you is equal to the original amount plus the amount of any GST liability payable by us on the total amount.
- 23.2 You must pay at any time and in any manner requested by us any amount which we decide to be necessary to reimburse us for any direct or indirect increase resulting from any GST in the cost to us of:
- 23.2.1 making, maintaining or administering;
 - 23.2.2 any action relating to any property connected with; or
 - 23.2.3 carrying on any business connected with the supply of, your Mobile PayWay facility or property under this Agreement.

24. Personal Property Securities Act

- 24.1 If we determine that this Agreement (or a Transaction in connection with it) is, contains or creates a Security Interest for the purposes of the PPSA, you agree

to do anything (such as obtaining consents, signing and producing documents, arranging for documents to be completed and signed, and supplying information) which we ask and consider necessary to:

- 24.1.1 perfect any such Security Interest or otherwise to provide more effective security over the Equipment or any other personal property over which we have a Security Interest;
- 24.1.2 ensure that a Security Interest created under or connected with this Agreement is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
- 24.1.3 enable us to apply for any registration, or give any notification, in connection with any Security Interest created under or connected with this Agreement so that the Security Interest has the priority we require;
- 24.1.4 enable us to exercise our rights in connection with any Equipment or any other personal property over which we have a Security Interest;
- 24.1.5 bind you and any other person intended to be bound under this Agreement; and
- 24.1.6 demonstrate your compliance with this Agreement.

24.2 You agree:

- 24.2.1 that we may complete any document on your behalf relating to this Agreement for the purposes of this clause 24;
- 24.2.2 that we may, at your expense, apply for any registration, or give any notification, in connection with any Security Interest created under or connected with this Agreement and for whatever class of collateral we think fit. You consent to any registration or notification by us, and agree not to make an *amendment demand*;
- 24.2.3 not to register a *financing change statement* in respect of a Security Interest created under or connected with this Agreement without our prior written consent;
- 24.2.4 not to register, or permit to be registered, a *financing statement* or a *financing change statement* in relation to any Equipment in favour of a third party without our prior written consent;
- 24.2.5 that we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA, or any other provision of the PPSA notified to you by us after the date of this Agreement;
- 24.2.6 that you may not exercise any rights under sections 142 and 143 (reinstatement of security) of the PPSA;

24.2.7 that neither we nor any receiver (or receiver and manager) appointed by us need give any notice required under the PPSA (including a notice of a *verification statement*); and

24.2.8 that you will not disclose or permit any party to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7)(b) or (e) of the PPSA applies.

24.3 In this clause, terms in italics have the meaning given to them in the PPSA.

25. Assignment

25.1 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.

25.2 You may not assign your rights under this Agreement to any other person without our written consent. We may assign our rights or novate our obligations under this Agreement without obtaining your consent. We may also transfer our interest in this Agreement, or give another person an interest or security in this Agreement, 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 25.

26. Governing Law

26.1 This Agreement shall be governed by and interpreted in accordance with the laws of New South Wales, Australia.

27. What to do if you have a problem or dispute

27.1 Any complaints or notices by you in respect of this Agreement may be notified to us 7 days a week from anywhere in Australia by:

Telephone: 1800 804 728

E-mail: Go to our website, www.stgeorge.com.au and click on 'Contact Us'

Mail: Locked Bag 1, Kogarah NSW 1486

27.2 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. Their contact details are:

Australian Financial Complaints Authority:

Online: www.afca.org.au

Email: info@afca.org.au

Phone: 1800 931 678

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

Schedule 1: Direct Debit Service Terms

1. Our commitment to you

- 1.1 We will give you at least 14 days' notice in writing of any changes to the terms of the drawing arrangements.
- 1.2 We will keep information relating to your nominated account confidential, except where required for the purposes of conducting direct debits or where we disclose your information to our sponsor in the payments system in connection with a claim relating to an alleged or wrongful debit.
- 1.3 Statements are issued at the end of each calendar month by us. Statements will take the form of tax invoices in line with legislative requirements and will set out the due date for payment of any amounts due in respect of the account. Where the due date is not a Business Day, we will draw from your nominated account on the next Business Day. If you are uncertain as to when a direct debit will be processed to your account, we can provide you with further details.

2. Your commitment to us

- 2.1 You agree to:
 - 2.1.1 ensure your nominated account can accept direct debits. Direct debiting through Mobile PayWay may not be available on all accounts;
 - 2.1.2 ensure that there are sufficient clear funds available in the nominated account to meet each drawing on the due date to permit payment of the items to be debited under the Direct Debit Request ("**DDR**");
 - 2.1.3 check account details before completing the DDR;
 - 2.1.4 advise us immediately if the nominated account is transferred or closed, or your account details change;
 - 2.1.5 arrange a suitable payment method if we cancel the drawing arrangements; and
 - 2.1.6 ensure that all authorised signatories nominated on the account to be debited, sign the DDR.

3. You may change the Direct Debit Payment arrangements

- 3.1 You may alter, defer, stop or cancel the drawing arrangements by providing us with instructions subject to the terms and conditions of:
 - 3.1.1 your nominated account; and

- 3.1.2 this Agreement.
- 3.2 Such instructions must be received by us at least 7 Business Days before the draw date for any of the following:
 - 3.2.1 stopping an individual drawing;
 - 3.2.2 deferring a drawing;
 - 3.2.3 suspending future drawings;
 - 3.2.4 altering the DDR schedule; or
 - 3.2.5 cancelling the drawings completely.
- 3.3 Instructions from you to alter, defer, stop or cancel the drawing details must be received by us in written form. All requests to stop a debit or cancel a DDR may be directed to us.

4. Other information

- 4.1 You acknowledge that:
 - 4.1.1 some details of the terms of the debit arrangements, including to whom payment is made and what payments are made, are set out at the start of the DDR;
 - 4.1.2 we reserve the right to cancel the drawing arrangements if three consecutive drawings are dishonoured, and to arrange with you an alternative payment method. Please refer to the terms and conditions for your nominated account to see whether dishonour fees apply. We will not charge any additional dishonour fees; and
 - 4.1.3 if you have a dispute you may contact our Customer Relations Unit on 1800 804 728. If you have a claim in relation to a dispute.

Schedule 2: Fees and charges

The following fees, inclusive of GST, will apply to your Mobile PayWay facility. These fees will be shown as GST exclusive amounts on your monthly statements:

1. Additional Card Reader Fee

If you require additional Card Readers, an additional Card Reader fee of \$100.00 will apply per Card Reader. This fee is subject to change. We will advise you of such change at the time you request additional Card Readers.

2. Chargeback Fee

A Chargeback Fee of \$33.00 will apply for every Chargeback processed by us in accordance with this Agreement.

You acknowledge that there are significant costs incurred by us to resolve Chargebacks, which are only partially recovered by a Chargeback Fee.

3. Equipment not returned/damaged

When merchant facilities are closed and Equipment such as Card Readers are not returned to us or where during the course of normal business they are damaged, charges of up to \$50.00 could apply. Card Readers remain our property. To request Card Reader returns, call the Help Desk on 1300 650 977.

4. Excessive Chargeback Fee

Applied per Chargeback (excessive Chargeback merchants only).

We reserve the right to apply an excessive Chargeback fee where it is deemed that excessive Chargebacks have been incurred over a given period of time. If you are to be charged this fee you will be notified in writing one month prior to any fee being charged. This fee applies in addition to the Chargeback Fee referred to above.

The above fees are in addition to the transaction fees detailed in your Application approval letter.

Schedule 3: Operating guide

1. Information for the use of Card Readers

1.1 Card Reader information

You and your staff must never ask a Cardholder to reveal their PIN.

Ensure that when your customer keys in their PIN, they can do so without risk of other people seeing them enter it.

1.2 Processing Transactions

You acknowledge that although the Mobile PayWay solution initiates and displays Authorisations for most Transactions, there are a number of matters that you must observe when processing Transactions:

a Cardholder should not enter their PIN into the Card Reader until the Transaction amount is displayed on the mobile digital device screen via the Mobile PayWay App;

always compare the embossed Card number on the face of the Card with the number printed on the signature panel. Note that the number on the signature panel may be abbreviated to show only the last four digits of the Card number, plus the CVV number. If these numbers do not match, retain the Card and telephone the Authorisation Centre on 1300 301 831;

always compare the first 4 digits of the embossed Card number on the face of the Card with the 4 digits printed on the Card, just below the embossed Card number. If these numbers do not match, retain the Card and telephone the Authorisation Centre on 1300 301 831;

where a Cardholder exhibits suspicious behaviours when making a Transaction, telephone the Authorisation Centre on 1300 301 831; and

when one of our operators asks you to retain a Card, always ensure your personal safety first. Do not comply with the request if you or anyone else is placed at risk.

1.3 Card Reader faults and problems

If your Card Reader cannot be used due to a system fault or other problem, in the first instance refer to the online User Guide at www.stgeorge.com.au/mobilepayway.

2. General merchant information

2.1 Merchant Statements

Merchant statements will include the following information:

- Deposit details;
- Merchant Service Fees charged;
- GST; and

Any fees, errors or adjustments processed during the month. Adjustments and errors may include returns and corrections made to your merchant summaries.

2.2 Authorisations

You acknowledge that an Authorisation only confirms that the Cardholder has funds available to cover the purchase, and the Card has not been reported lost or stolen. An Authorisation does not eliminate the possibility of subsequent Chargebacks in respect of the relevant Transaction. All other checks are your responsibility.

2.3 Chargebacks

Chargebacks are defined in clause 1.1 of this Agreement and may be carried out by us in a number of circumstances in accordance with this Agreement, including when a Cardholder disputes a Transaction or where a Transaction is invalid.

The most common reasons for Chargebacks are:

- A Cardholder claims that the Transaction is invalid or disputes liability for any reason, including on the basis that the Cardholder did not make the Transaction (frequently an indication of fraud);
- You alter the amount of the sale without the Cardholder's authority;
- Goods are returned, for example, on the basis that they are not as described, or are faulty or defective;
- Goods or services are not received;
- You fail to process a credit voucher for returned goods/goods or services that were not provided;
- You split a sale to avoid having to seek Authorisation (a Chargeback will occur for each Transaction);
- You exceed the merchant floor limit without obtaining Authorisation;
- You accept a Card prior to its validity date; and
- You process a sale using an expired Card or an invalid Card.

We may Chargeback any Transaction to your Account in accordance with this Agreement, including in respect of Transactions which are invalid, or which the Cardholder claims are invalid or disputes for any reason. **This means you will lose**

the full sale proceeds and you will need to resolve the matter directly with your customer.

If you receive notification of a Chargeback or a retrieval request, you must reply promptly within the timeframes we have specified in that request. A brief letter providing details of the Transaction should be sent, together with:

- sales receipt; and
- any other supporting documentation.

If you receive a Chargeback notification and you have already issued a credit for that Transaction, you must post copies of the credit refund documentation to us in accordance with the Notices clause in this Agreement (clause 13).

You acknowledge it is important that you reply to a notification of a Chargeback within the time specified in the notification. If you fail to reply or are late in responding, the amount of the relevant 'disputed' Transaction may be debited to your Account.

2.4 Cards left on premises

If a customer leaves a Card on your premises which is not claimed within a reasonable period, you must cut it in half horizontally through the Card number and hand it into your nearest St.George branch.

If the Card is claimed within that time, do not return the Card until you have established the Cardholder's identity. If you are unsure for any reason, do not return the Card and dispose of it as specified above.

2.5 Card faults

If you are presented with a faulty Card which does not register through your Card Reader, you must advise the Cardholder to contact their issuer and must then seek an alternative means of payment.

2.6 Damaged Cards

If you are unable to capture Card details electronically, you must seek an alternative means of payment.

Schedule 4: Protecting your business against credit card fraud

Protect your business

Merchants face various risks when accepting credit card transactions. One of the greatest risks to merchants is that of fraudulent transactions. If you are not careful, fraud can cost your business significant amounts of money.

Certain types of merchants – based on the type of goods sold – are more prone to fraudulent transactions than others. Merchants should understand their likelihood of being targeted by fraud.

It is essential for merchants to have a sound understanding of credit card fraud, how it can be detected, and how it can be prevented.

HINT: Always adhere to the terms of this Agreement and to the Card Scheme Rules.

Authorisation

It is essential that you understand the term 'Authorisation' – what it means, and what it does not mean.

What Authorisation *does* mean:

- The customer's account number is valid;
- The Card has not been reported lost or stolen (although it may in fact be lost, stolen or compromised [card details improperly obtained or copied] and the Card owner is unaware); and
- There are sufficient funds available to cover the Transaction.

What Authorisation *does not* mean:

- An Authorisation does **not** confirm that the person providing the Card number is the legitimate Cardholder. The risk remains that the person providing the Card number has either stolen or improperly obtained the Card; and
- There is also the risk that the purchaser has compromised (improperly obtained) the Card number, without being in possession of the Card.

Although it is important to obtain an Authorisation for each Transaction it does not protect you from the risk of fraud or from a subsequent Chargeback in respect of the Transaction. Risk of fraud remains even though Authorisation has been obtained.

HINT: Authorisation will not guarantee payment if the Transaction is not made by the rightful Cardholder.

Chargebacks

As a merchant, you face the prospect of receiving Chargebacks. Chargebacks are described in detail in Schedule 3.

A Chargeback can occur for a number of reasons, including where the legitimate Cardholder did not make the Transaction (frequently an indication of fraud). Other common reasons for Chargebacks are identified in Schedule 3.

Chargebacks can generally be made up to a maximum of 12 months from the Transaction date, or from the date the goods or services should have been provided, where delivery was expected subsequent to payment.

HINT: Minimise the risk of Chargebacks by becoming aware of how and why they occur.

Verification of purchaser

At all times, the onus is on you to verify that the purchaser is the genuine Cardholder.

We recommend that merchants accepting credit card payment in a face to face environment take steps to verify the purchaser, especially for large purchases.

If you sell goods or services to a purchaser who is not the genuine Cardholder, you may be liable for the Chargeback.

We emphasise that Authorisation does not constitute verification of the purchaser's identity – the Transaction may be fraudulent even though Authorisation is obtained.

HINT: Remember that the onus is on you to verify that the purchaser is the genuine Cardholder.

Types of goods fraudsters' target

Due to their high value and ability to be re-sold, the following types of goods are frequently targeted by fraudsters:

- Electrical goods;
- Household appliances;
- Jewellery;
- Computers;
- Furniture; and
- Goods which are easily disposed of for cash.

If you are selling any of these types of goods, we urge you to be extremely careful before delivering/shipping goods. In particular, you should take all possible steps to confirm that the purchaser is the genuine Cardholder.

HINT: Fraudsters often target high value goods which are easily re-saleable.

Detecting suspicious orders

Although less risky than selling in a 'card not present' environment, face-to-face transactions still pose risks to merchants. The indicators below are useful to detect potentially suspicious purchases:

- Orders for the types of goods detailed in the "Types of goods fraudsters' target" section above;
- Unusually large orders;
- Customers who purchase multiple numbers of the same item without regard to size, colour, style or price. Merchants should ask themselves whether it is likely that an individual would purchase a large number of a particular item;
- Customers who do not negotiate on price where it is customary to do so. The possibility exists that the person is not concerned about the price because they have no intention of paying for the goods;
- Customers purchasing large or bulky items, but refusing home delivery despite its inclusion in the price. It may be that the customer does not want the merchant to know their address due to the purchase being fraudulent;
- Customers offering more than one credit card in connection with a single purchase;
- Customers who make repeated purchases in a short period of time;
- Customers who pull their credit card out of a pocket rather than a wallet;
- Customers who appear anxious, nervous or impatient;
- Customers who try to distract you at the time of processing the transaction, especially where the transaction is large;
- Where a large purchase is made on a newly valid credit card. The reason is that credit cards are sometimes stolen while being sent from the bank to the rightful Cardholder.

HINT: If your customer behaves in a suspicious manner, this may be an indication of fraud.

Protecting yourself from Funds Transfer Fraud

What is it?

Funds Transfer Fraud, sometimes referred to as 'Nigerian Fraud', continues to be a widespread issue for merchants. It involves the use of stolen credit card information and attempts to obtain funds via money transfers.

How does it work?

The ultimate aim of Funds Transfer Fraud is to trick you into providing funds to fraudsters, or an unfamiliar third party (which is often working for, or has been set up by, the fraudsters), through another form of payment such as a different credit card, cash, cheque or other electronic money transfer. This may be in the form of a refund or request to organise shipping with a specific courier that doesn't actually exist.

What should you do?

- Use your instincts: if the sale seems too good to be true, then it often is;
- Only process refunds to the Card used in the original Transaction;
- Refrain from sending funds by electronic funds transfer in this context;
- Review potential Transactions that carry an increased fraud risk, including overseas orders from West Africa and Eastern Europe;
- Be wary of 'hard luck scenarios', often these scams seek to take advantage of your goodwill.

You are reminded of your obligations with respect to Sale Refunds contained in clause 5 of this Agreement.

HINT: Never process a refund Transaction to a different Card, in cash, by cheque or by electronic money transfer.

Reducing fraud

Merchants are frequently targeted by fraudsters who process fraudulent transactions and subsequently request that refunds be paid by other means such as a wire or telegraphic transfer.

These fraudsters approach a merchant (often in the hospitality industry to book accommodation or purchase services) and provide fraudulent credit cards. The booking or service is then cancelled and the merchant is asked to make a refund to another account (often via a money transfer solution).

In some instances the merchant is offered an "incentive" to comply with this request, such as a specific amount of money or a percentage of the total value of the transaction.

Invariably the initial transaction is fraudulent and is charged back by the cardholder, and as the merchant has already remitted the funds they have to accept the Chargeback as a loss.

You are reminded of your obligations with respect to Sale Refunds contained in clause 5 of this Agreement.

HINT: By always processing refunds only to the Card on which the initial sale was made, you will protect yourself against this type of fraud.

Protect your business against “card present” fraud

Apart from being alert to potentially suspicious transactions, merchants’ main defence against fraud in “card present” situations is to carefully inspect the card to ensure it is genuine.

The following security checks should also be performed:

- Closely inspect the card. Check that the “valid from” and “valid through” dates include the current date;
- Check that the card has the appropriate security measures;
- Check that the first four digits of the embossed account number match the four digits printed immediately above or below the embossed number;
- When tilting the card, the hologram on Visa and Mastercard® credit cards should move and/or change colour;
- Where possible, always swipe the card through your Card Reader;
- On the signature panel on the back of the card, check that the words “Visa” and “Mastercard” appear repeatedly at a 45 degree angle;
- Check that the abbreviated credit card number on the sales receipt matches the corresponding digits on the card. If the digits don’t match, this is a clear indication the card is counterfeit; and
- Closely inspect both the front and back of the card to determine whether any part of the card appears to have been altered or tampered with.

HINT: Never process a refund Transaction to a different Card, in cash, by cheque or by electronic money transfer.

Other risks merchants face

Laundering of sales (3rd party processing)

The term “laundering”, in a merchant context, refers to a number of situations, including where a business with a valid merchant facility accepts transactions on behalf of another business. Disreputable individuals sometimes approach legitimate merchants to process their credit card transactions, generally paying the merchant a percentage of the amount processed.

Such conduct would constitute a serious breach of this Agreement, and it is also an extremely dangerous practice which exposes a merchant’s business to significant risk of loss. Merchants engaging in laundering/processing transactions on behalf of another business are liable for all Chargebacks arising from these transactions. In many cases, the individual approaching the merchant to process their transactions is unable to obtain a merchant facility of their own, possibly due to previous improper merchant practices. Consequently, the chance of fraudulent transactions being processed is extremely high.

You must not process any Transactions on behalf of someone else or in connection with a Transaction that did not involve you directly selling goods or services to a customer.

HINT: Laundering, in a merchant context, is an extremely dangerous practice which may lead to significant loss.

Fraudulent refund transactions

A common type of fraud involves employees issuing credits (refunds) to their own account. To avoid detection, they may create a large debit transaction on a fraudulent card and an offsetting credit on their own card. In this type of situation, it is likely to take weeks or months before the fraud is detected. To guard against this type of fraud, we recommend that you closely monitor all credits, and check that all credits and corresponding debits relate to the same card number. Particular attention should be paid to large credits.

Another way you can protect yourself from this type of fraud is by regularly changing your Mobile PayWay App log in details and password, especially after an employee has ceased employment with your business.

HINT: Ensure your password is changed regularly to prevent unauthorised use.

Secure your customers' data

At St.George, we are committed to providing our merchants with every assistance to help protect their business, and their customers, from the growing threat posed by high-tech criminals. This is undoubtedly one of the biggest challenges faced by business today.

If you are a merchant who has access to, or stores credit card details in any format, or if you use a service provider who does, it is your responsibility to ensure that your customers' payment details remain secure.

It is important that you understand the measures which need to be taken to ensure the security of highly sensitive personal financial information.

St.George is dedicated to assisting you to make it as easy, convenient and secure as possible for you to do so.

HINT: Be aware of the importance of data security and your responsibility to ensure that your customer's data remains secure.

This page has been left blank intentionally

For further information



Ask at any branch.



Call us on 13 33 30, 8.00am to 8.00pm
Monday to Friday (Sydney time).



Visit stgeorge.com.au



Mastercard is a registered trademark, and the circles design is a trademark of Mastercard International Incorporated.

St. George Bank – A Division of Westpac Banking Corporation ABN 33 007 457 141 AFSL and Australian credit licence 233714.

STGW2661_1118