

**AGGREGATOR**  
**MASTER MERCHANT BUSINESS SOLUTIONS CARD ACCEPTANCE**  
**(MSA)**

BETWEEN

**WESTPAC BANKING CORPORATION LIMITED ABN 33 007 457 141 (Westpac)**

AND

**QPAY PTY LTD ABN 85115833808 (the Aggregator)**

**Westpac Postal address:**

*Merchant Business Solutions  
GPO Box 18  
Sydney NSW 2001  
Facsimile Machine:  
(02) 9876 9791*

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## 1.0 Recital

1.1 The Aggregator would like to provide the Sub-Merchant(s) it nominates to Westpac with the ability to process the Sub-Merchant's customers Card payments via the Internet or via other non-face-to-face transactions approved by Westpac.

1.2 Westpac agrees to provide the Aggregator with a Merchant Facility to enable the nominated Sub-Merchant(s) to accept Card payments via the Internet or via other non-face-to-face transactions approved by Westpac on the terms and conditions set out in this Document.

## 2.0 Definitions

2.1 In this booklet unless the contrary intention appears:

1. **"Accredited Gateway Provider/Data Processor"** means a Gateway Provider/Data Processor who has formal recognition of compliance with Security Standards and Technical Requirements from Westpac, and can be identified through appearing on the listing at [www.westpac.com.au](http://www.westpac.com.au)
2. **"Aggregator"** means the entity identified as the Aggregator on the cover page of this document.
3. **"Aggregator Account"** means the account nominated by the Aggregator and approved by Westpac for acceptance of credit and debit entries under the Agreement and for related purposes
4. **"Agreement"** means this Document, the Letter of Approval issued by Westpac, the Application for New Merchant Facility/Upgrade, the Your Guide to Merchant Fees and Charges booklet and any brochures we provide to the Aggregator and a Sub-Merchant;
5. **"Authorised Officer"** means:
  - (a) in respect of Westpac means any person whose title includes the word 'manager', 'counsel' or 'head' or any authorised attorney; and
  - (b) in respect of the Aggregator means any person from time to time nominated as an Authorised Officer of the Aggregator by a notice to Westpac accompanied by certified copies of signatures of all new persons so appointed.
6. **"Card"** means:
  - (a) a valid financial transaction card issued by a member or affiliate of MasterCard on which the MasterCard marks appear;
  - (b) a valid financial transaction card issued by a member or affiliate of Visa on which the Visa marks appear;
  - (c) a valid financial transaction card capable of acceptance under EFTPOS issued by an Australian bank or financial institution;
  - (d) any other valid financial transaction card that is issued under any loyalty program; or
  - (e) any other financial transaction card which we request the Aggregator or a Sub-Merchant agree to honour;
7. **"Card Scheme"** means the MasterCard International Incorporated and Visa Inc Services Association card schemes or any other card scheme provider that the Bank is a member of or participates in.
8. **"Cardholder"** means a person to whom a Card has been issued;
9. **"Chargeback"** means a debit entry to the Aggregator Account or Sub-Merchant Account processed by us, and is the reversal of a credit previously made to the Aggregator Account or Sub-Merchant Account respectively, in circumstances described in clause 9.3;
10. **"Confidential Information"** means information that is by its nature confidential, or is designated as confidential, and includes but is not limited to all statements, contracts or agreements, specifications, drawings, reports documents, technology, know-how and information (regardless of form and specifically including any electronic data irrespective of how it is held or stored) relating to the business of each party and disclosed to each other at any time either in contemplation of or otherwise in connection with this Agreement and either before or after the date of this document. Reference to Confidential Information includes a reference to any part of the Confidential Information.
11. **"Customer Transaction"** means a transaction from the Sub-Merchant's customer's or client's

- processed via the Merchant Facility;
12. **"Data Storage Provider"** means any service provider that provides card payment storage facilities for the Aggregator or the Sub-Merchant.
  13. **"Debit Card Transaction"** means a transaction performed using a Card where a cheque or savings account is selected using either a PINpad or an EFTPOS paper sales voucher;
  14. **"Dynamic Currency Conversion" (DCC)** means a facility which enables some Cardholders who have Cards issued by a non-Australian financial institution to elect to pay for goods or services in Australian dollars or their local currency at the time of the purchase. DCC is only available in a number of selected non-Australian currencies;
  15. **"eCommerce Merchant"** means a merchant who conducts the sale of goods or services electronically over the Internet, and who has been authorised by us to accept Credit Card Transactions over the Internet using an approved Payment Gateway;
  16. **"eCommerce Merchant Facility"** means any method and/or device utilised by the Westpac merchant, or by any service provider/s on behalf of the Westpac merchant, and used to engage in the acceptance, transmission or storage of credit card payment details. This definition includes but is not limited to all software, hardware, databases, digital image and physical records used and/or maintained by the Westpac merchant and/or the Westpac merchant's service provider/s.
  17. **"eCommerce Transaction"** means a transaction between the Sub-Merchant and a Cardholder where the Cardholder sends their payment card data to the Sub-Merchant over the Internet, regardless of how the data is transmitted from the Aggregator or the Sub-Merchant to us;
  18. **"EFTPOS"** means the Electronic Funds Transfer at Point of Sale system;
  19. **"Fee Schedule"** means the fees and charges payable by the Aggregator to Westpac set out in Appendix "C" which may be varied from time to time by Westpac.
  20. **GST and GST Law** have the meanings given to those terms in *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.
  21. **"Interactive Voice Response" (IVR)** means the automated call answering system that is Westpac branded.
  22. **"MasterCard"** means MasterCard International Incorporated;
  23. **"MCC"** (Merchant Category Code) means the business/industry type code advised to the Bank by the Card Schemes (Visa and MasterCard). The appropriate code is assigned to the Aggregator by Westpac.
  24. **"Merchant Facility"** means the facility made available to the Aggregator for the benefit of a Sub-Merchant to enable the Sub-Merchant to accept payments using Cards.
  25. **"MID"** (Merchant Identification) means the unique identifier for a Westpac merchant facility.
  26. **"Payment Gateway"** provides a secure method for authorising card transactions over the Internet through a system accredited by Westpac
  27. **"PCI"** means Payment Card Industry
  28. **"PCIDSS"** means Payment Card Industry Data Security Standards. This refers to the data security standards mandated by Visa and MasterCard to facilitate protection of cardholder payment data from unauthorised access, which is applicable to any merchant who stores or transmits card data regardless of that storage or transmittal device. The bank will advise the Aggregator on the level of security required for a Sub-Merchant which is based on the volume of transactions that Sub-Merchant process.
  29. **"person"** includes a company or corporation;
  30. **"Quasi-Cash Merchant"** is a merchant who carries out a Quasi-Cash Transaction;
  31. **"Quasi-Cash Transaction"** means a transaction between the Sub-Merchant and a Cardholder where the Sub-Merchant sells items that are directly convertible to cash. Examples include (but are not limited to) money orders, traveller's cheques, precious metals and foreign currency;
  32. **"Qvalent"** means Qvalent Pty Ltd a wholly owned subsidiary of Westpac that provides gateway and other software services to Westpac and any other Service Provider that Westpac appoints at its sole discretion to replace Qvalent;
  33. **"Recurring Transaction"** means the Cardholder's written authority for the Sub-Merchant or the Aggregator to make regular drawings on their card.
  34. **"Root Passwords"** means any password that comes from the distributor of any Software or Hardware the Sub-Merchant's business utilises in the acceptance of eCommerce transactions
  35. **"Rules"** means the card scheme rules set by MasterCard and Visa from time to time;
  36. **"Secure Socket Layer (SSL)"** means the encryption protocol developed by NetScape that enables sensitive information such as credit card details to be passed securely between computers.
  37. **"Service Provider"** means the provider of any software or hardware that the merchant operates to assist with the acceptance of card payment details.
  38. **"Shopping Cart"** means any software system supplied and used by the Sub-Merchant's

business for the purpose of registering customer details, creating orders, providing merchant reporting or other merchant value added information, and generally links into an online payment page the merchant utilises to accept card payment details.

39. **"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,
  - (c) unless the merchant facility is provided for use in connection with a business that does not meet the elements in (a) or (b) above;
40. **"Sub-Merchant"** means an organisation that the Aggregator nominates to Westpac to use a Merchant Facility in accordance with this document.
41. **"Sub-Merchant Account"** means the account nominated by the Sub-Merchant and approved by Westpac for acceptance of credit and debit entries under the Agreement and for related purposes.
42. **"Visa"** means Visa Inc;
43. **"we", "us", "Westpac", "Bank"** means Westpac Banking Corporation ABN 33 007 457 141;
44. **"Web Application"** Means the software that the Aggregator or a Sub-Merchant's business utilises to advertise the sale of goods and/or services over the Internet
45. **"Web Hosting Provider"** means the provider of any software or hardware that the merchant operates to assist with the acceptance of card payment details.
46. **"you"**, means the Aggregator or, unless the context suggests otherwise, a Sub-Merchant

2.2 This Agreement contains all of the terms and conditions applying to the Aggregator's Merchant Facility(ies) provided for the benefit of a Sub-Merchant. In this document, words denoting the singular shall include the plural and vice versa. References to clauses are references to clauses in this document.

### 3.0 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to a clause is a reference to a clause in this document;
- (c) the singular includes the plural and the converse;
- (d) a gender includes all genders;
- (e) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of the foregoing;
- (f) a reference to a party to this Agreement includes the party's successors and permitted substitutes or assigns;
- (g) a reference to this Agreement is to the agreement as amended, notated, supplemented or replaced from time to time;
- (h) a reference to conduct includes, without limitation, an omission, statement or undertaking whether or not in writing;
- (i) a reference to "writing" includes any means of reproducing words in a tangible and permanently visible form and, where the parties agree specifically to the giving of notices and communication by facsimile transmission, by facsimile transmission;
- (j) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) mentioning anything after include, includes or including does not limit what else might be included;
- (l) reference to any time is Sydney time; and
- (m) a reference to a Schedule is to a schedule to these Terms.

### 4.0 Nomination of Sub-Merchant

4.1 The Aggregator must make a separate written application to Westpac for each Sub-Merchant that it would like to gain the benefit of a Merchant Facility.

4.2 Each such application must contain information required by Westpac. The Aggregator agrees that Westpac may require information in addition to information collected in the original application and agrees

to provide such information to Westpac within a reasonable time period, but no later than forty-eight (48) hours after receiving a request for such information by Westpac.

4.3 The Aggregator and Sub-Merchant acknowledges and agrees that Westpac has sole responsibility for, and sole discretion to, approve an application. The Aggregator must not state, represent or take any action that a reasonable person would regard as implying that the Aggregator has authority to approve an application.

4.4 Prior to disclosing to Westpac an application or any information about a Sub-Merchant, or information about an individual, the Aggregator must:

- (a) obtain the Sub-merchant's and that individual's consent to disclose that information to Westpac.; and
- (b) perform checks on that Sub-Merchant and individual to ensure that the Sub-Merchant is able to satisfy their obligations and responsibilities as set out in the Agreement. For the avoidance of doubt, if the Aggregator submits an application to Westpac, the Aggregator warrants and represents to Westpac that the Sub-Merchant, the subject of the application, is able to satisfy the Sub-Merchant's obligations and responsibilities as set out in the Agreement.

4.5 Prior to nominating a Sub-Merchant to Westpac, the Aggregator must give that Sub-Merchant the following documents:

- (a) the document entitled "Merchant Business Solutions Your guide to the Payment Card Industry Data Security Standards" (PCIDSS);
- (b) the document entitled "Protecting Business Against Credit Card Fraud";
- (c) the document entitled "Westpac Sub-Merchant Terms and Conditions"; and
- (d) other brochures or practical operating instructions relating to the operation of the Merchant Facility which we provide to the Aggregator from time to time.

The Aggregator warrants and represents that each Sub-Merchant that it nominates to Westpac agrees to, and is capable of, complying with, and shall comply with, the contents of the documents identified in clause 4.5(a), (b), (c), and (d) during, and, where applicable, after the term of the agreement between Westpac and that Sub-Merchant.

4.6 The Aggregator acknowledges and agrees that Westpac shall assess each Sub-Merchant individually and that if Westpac approves an application for a particular Sub-Merchant it does not mean, warrant or represent that Westpac shall approve an application for a subsequent Sub-Merchant.

4.7 The Aggregator acknowledges and agrees the assessment and approval of a Sub-Merchant, by Westpac, does not provide any warranty, either expressed or implied, as to the credit worthiness or financial standing of that Sub-Merchant and any credit or other information obtained by Westpac during its assessment process or during and after the term of an agreement between Westpac and the Sub-Merchant, remains confidential to Westpac and shall not be shared with the Aggregator.

4.8. If Westpac approves an application, Westpac shall send the Aggregator a letter notifying the Aggregator of that approval ("**Letter of Approval**"). The Aggregator acknowledges and agrees that it is the Aggregator's responsibility to notify the Sub-Merchant whether the Sub-Merchant's application is approved or declined.

## **5.0 Commencement of this Agreement and Provision of Merchant Facility to Sub-Merchant**

5.1 This document shall become legally binding between Westpac and the Aggregator from the date of execution by Westpac. For the avoidance of doubt, this document shall not be legally binding on Westpac if it is only executed by the Aggregator, and not executed by Westpac.

5.2 The Aggregator acknowledges and agrees that this document without a Letter of Approval in relation to a Sub-Merchant does NOT constitute an offer by Westpac to provide a Merchant Facility for the benefit of that Sub-Merchant.

5.3. The Aggregator acknowledges and agrees that a Sub-Merchant will be deemed to accept our offer to

provide that Sub-Merchant with access to one or more of our Merchant Facilities, as soon as that Sub-Merchant commences to process transactions through the Merchant Facility.

5.4 In the event of any inconsistency between this document and any other document that comprise the Agreement with the Aggregator, this document shall prevail.

## **6.0 Prohibited Changes to Aggregator & Sub-Merchant without Consent**

6.1 The Aggregator must not, and warrants and represents and is responsible for ensuring that the Sub-Merchant shall not, change:

- (a) the ownership of the Aggregator or Sub-Merchant; or
- (b) the principal business activities of the Aggregator or the Sub-Merchant; or
- (c) the types of goods or services that the Aggregator or the Sub-Merchant supply to their customers or clients;

without first notifying us in writing of that change and receiving written consent from us for that change.

## **7.0 Processing Transactions**

7.1 The Aggregator agrees, and warrants and represents and is responsible for ensuring the Sub-Merchant agrees, to Westpac automatically processing transactions pursuant to this document in accordance with the business rules set out in Appendix "B".

7.2. The Aggregator agrees and warrants and represents and is responsible for ensuring the Sub-Merchant agrees, that Westpac shall not be required to act on any request to change the business rules set out in Appendix "B" unless Westpac receives a written agreement by both the Aggregator and the Sub-Merchant for such a change and that Westpac shall not be liable or responsible for any cost or other loss arising out of, or in connection with, any delays in making such changes.

7.3 The Aggregator agrees and warrants and represents and is responsible for ensuring the Sub-Merchant agrees, to Westpac using Qvalent to automatically process transactions in accordance with clause 7.1, 7.2 and Appendix "B".

7.4. The Aggregator agrees and warrants and represents and is responsible for ensuring the Sub-Merchant agrees, that the Aggregator and the Sub-Merchant must only use technology, software and hardware and other equipment that is compatible with Qvalent and which does not override or interfere with the automatic processing of transactions by Qvalent as set out in clauses 7.1, 7.2 and Appendix "B".

7.5. The Aggregator agrees and warrants and represents and is responsible for ensuring the Sub-Merchant agrees, that only Westpac is authorised to replace Qvalent with another Service Provider to automatically process transactions in accordance with this clause 7.1, 7.2 and Appendix "B".

7.6. The Aggregator must, and warrants and represents and is responsible for ensuring that the Sub-Merchant

- accepts all valid Cards and process all transactions in accordance with this document and any other practical operating instructions we provide to the Aggregator.
- processes all transactions in Australian dollars;
- obtains prior authorisation for any sale using a credit Card. An authorisation only confirms that the Cardholder has sufficient funds available to cover the purchase, and that the card has not been reported lost or stolen. It does not protect the Aggregator or the Sub-Merchant from subsequent chargebacks which may be effected by us in circumstances described in clause 9.3;
- verifies the identity of the Cardholder, and ensures any Cardholder authorisation is not forged, obtained by fraud or deception, unauthorised or that the transaction is not otherwise invalid (refer to clause 9).



7.7 The Aggregator shall not, and warrants and represents and is responsible for ensuring that the Sub-Merchant shall not, undertake any transaction:

- (a) representing refinancing or transfer of an existing Cardholder's financial obligation to the Aggregator or the Sub-Merchant (whether or not the Aggregator or the Sub-Merchant consider that the obligation is uncollectible); or
- (b) as an alternate way of accepting payment due to the dishonour of a Cardholder's personal cheque.

7.8 We will forward to the Aggregator monthly statements, where required by law, showing the amount of all transactions processed during the previous month by the Sub-Merchant(s). Statements will take the form of Tax Invoices.

7.9 The Aggregator must not, and warrants and represents and is responsible for ensuring that the Sub-Merchant does not, under any circumstances, request that the cardholder provide the Aggregator or the Sub-Merchant with the cardholder's card and/or pin number for the Aggregator and/or the Sub-Merchant to retain.

7.10 The Aggregator agrees that it and the Sub-Merchant may only retain the customer's card if our operator asks the Aggregator or the Sub-Merchant to do so.

7.11 The Aggregator or Sub-Merchant may, and warrants and represents and is responsible for ensuring that the Sub-Merchant may, only store the following information:

- cardholder name in an encrypted format; and
- extended service code (used for Smart Card processing).

Under no circumstances must the Aggregator or the Sub-Merchant, and the Aggregator warrants and represents and is responsible for ensuring that the Sub-Merchant must not, store the CCV2 number.

7.12 Under no circumstances should the Aggregator or Sub-Merchant, and the Aggregator warrants and represents and is responsible for ensuring that the Sub-Merchant does not, request that a customer provide Credit Card details via email for payment of the provision of goods and/or services. Should such details be provided to the Aggregator or the Sub-Merchant, the Aggregator and the Sub-Merchant must not, and the Aggregator warrants and represents and is responsible for ensuring that the Sub-Merchant does not, use this information to provide goods and/or services, and must immediately securely destroy these details.

7.13 The Aggregator and the Aggregator warrants and represents and is responsible for ensuring that the Sub-Merchant, and any service provider who participates in the storage of card payment details on behalf of the Aggregator or the Sub-Merchant, must fully comply with the PCIDSS. We will advise the Aggregator and the Aggregator must advise the Sub-Merchant on the volume of transactions processed.

## 8.0 Sales Refund Transactions

8.1 The Aggregator agrees to accept all liability and take sole responsibility, and, for the avoidance of doubt, not to delegate or apportion liability or responsibility to the Sub-Merchant or Westpac, for:

- (a) resolving disputes, complaints or enquiries in accordance with the Card Scheme rules with Cardholders who use the Merchant Facility; and
- (b) invalid transactions (including, but not limited to, chargebacks) in connection with the Merchant Facility.

For the avoidance of doubt, the Aggregator acknowledges and agrees that Westpac shall not be involved with resolving a dispute (including a chargeback) in relation to a customer or client of the Sub-Merchant or the Aggregator.

8.2 The Aggregator and Sub-Merchant must and the Aggregator warrants and represents and is responsible for ensuring that the Sub-Merchant establishes a fair policy for exchange or return of merchandise and give credit upon each return, not in cash, but by means of a sales refund transaction. The Aggregator and Sub-Merchant must, and the Aggregator warrants and represents and is responsible for ensuring that the Sub-Merchant, only processes refunds where there was an initial valid transaction on that card, and only process the refund on the same card as used in the initial transaction.

8.3 Subject to clauses 8.4 to 8.5, the Aggregator or the Sub-Merchant may process sales refund transactions by transferring the amount of the refund from the Aggregator Account or Sub-Merchant Account to a Card account. The Aggregator and Sub-Merchant shall not and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant shall not process any refund to a Card account unless the original transaction between the Aggregator or the Sub-Merchant and that Cardholder was paid for by the Cardholder using the same relevant Card.

8.4 The Aggregator agrees and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant agrees that we shall not be responsible for any unauthorised sales refund transactions processed through the Merchant Facility, even if those transactions may cause the Aggregator Account or the Sub-Merchant Account to be debited by the amount of the transaction(s).

8.5 For mail, telephone and internet orders and standing authority transactions, the Aggregator and Sub-Merchant must, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant establish a fair policy for the handling of orders disputed by Cardholders and for the handling of disputed amounts of standing authority transactions. The Aggregator and Sub-Merchant must and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant, also establishes a fair policy for refunds for each return of merchandise or for each order not authorised by the Cardholder.

## 9.0 Invalid Transactions

9.1 A transaction is invalid if:

- (a) the transaction it records is illegal;
- (b) the transaction is split into two or more transactions on the same Card to avoid having to obtain an authorisation (each transaction will be invalid);
- (c) the signature on the voucher or any other Cardholder authorisation on the voucher is forged, obtained by fraud or deception, unauthorised or otherwise invalid;
- (d) the particulars on the voucher are not identical with the particulars on the Cardholder's copy;
- (e) the Card relating to the transaction is not current at the time of the transaction;
- (f) the voucher is incomplete or illegible; or
- (g) the Aggregator or Sub-Merchant does not observe the Agreement in relation to the transaction. For the avoidance of doubt, the transaction is invalid even if the Aggregator used their best endeavours to ensure the Sub-Merchant observed the Agreement but the Sub-Merchant, nevertheless does not observe the Agreement in relation to that transaction.

9.2 A telephone, internet or mail order transaction is also invalid if the transaction is not authorised by the Cardholder, or in the case of a standing authority, the authority has expired or was cancelled prior to the transaction. The Aggregator and Sub-Merchant acknowledge and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant acknowledges and agrees that authorisations obtained provide no guarantee that the person providing the Card details is the Cardholder.

9.3 The Aggregator and Sub-Merchant acknowledge and agree and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant acknowledges and agrees that we may refuse to accept, or may charge back, any transaction if:

- (a) the transaction is invalid;
- (b) the Cardholder claims the transaction is invalid or disputes liability for any reason;
- (c) the Cardholder asserts a claim for set-off or a counterclaim. Chargebacks may be processed to the Aggregator Account up to 12 months after the date of the original transaction.

## 10.0 The Aggregator Account and Sub-Merchant Account

10.1 The Aggregator Account must be maintained at Westpac. Westpac shall record debit and credit entries to reflect transactions processed in accordance with this document, where applicable, to the Aggregator Account. The Aggregator must notify us immediately if the Aggregator Account details (such as, but not limited to, signatories to the Aggregator Account) change.

10.2 Each Sub-Merchant must maintain a Sub-Merchant Account at Westpac. Westpac shall record debit and credit entries to reflect transactions processed in accordance with this document, where applicable, to the Sub-Merchant Account. The Aggregator must notify us immediately if the Sub-Merchant Account details (such as, but not limited to, signatories to the Sub-Merchant Account) change.

10.3 We may debit the Aggregator Account with the following:

- (a) all service charges, fees and other charges set by us and which are notified to the Aggregator from time to time. Information on current standard fees and charges is available on request;
- (b) all government charges and taxes including GST that apply;
- (c) the full amount of all sales refund transactions the Aggregator or the Sub-Merchant process, less any charges we have already debited to the Aggregator Account relating to the transaction;
- (d) any over credits we have made in respect of transactions due to errors or omissions;
- (e) the value of transactions which are invalid;
- (f) any fees, fines or penalties that we are required to pay to Card Scheme(s) pursuant to the Card Scheme rules as a direct or indirect result of the Aggregator or the Sub-Merchant's failure to observe obligations under the Agreement including any procedures set out in this document and any other practical operating instructions we provide to the Aggregator.
- (g) any other money the Aggregator or the Sub-Merchant owes us under this Agreement.

If we debit the Aggregator Account where there are insufficient funds in it, then the payment may be reversed and the Aggregator shall be regarded as not having made the payment. If the Aggregator asks us to cancel a request to arrange direct debit payments we shall do so promptly. However the Aggregator must establish a direct debit request with an alternate Westpac account. We shall promptly process any complaint by the Aggregator that a direct debit was unauthorised or otherwise irregular.

10.4 The Aggregator must pay on demand the amount of any debt the Aggregator or the Sub-Merchant owes us under this Agreement which remains unpaid. For the avoidance of doubt, the Aggregator agrees to be solely responsible for any debts owed to us by a Sub-Merchant and we may seek repayment of any such debts directly from the Aggregator without seeking recovery of that debt directly from the Sub-Merchant. Without limiting clause 27 of this document, should the Aggregator or the Sub-Merchant fail to pay any debt which the Aggregator or the Sub-Merchant owe us by the date we set as the due date for that debt, this will be deemed a default of the Aggregator and we may commence enforcement action and report the Aggregator's default to a credit reporting agency, in accordance with any notice period required by law, which may affect the Aggregator's credit rating and the Aggregator may have difficulty obtaining finance in the future.

10.5 We may also debit or credit the Aggregator Account with the amount of any deficiencies or charges we establish are payable following an audit or check of the Aggregator Account or Sub-Merchant Account.

10.6 If we have concerns:

- (a) about the Aggregator or a Sub-Merchant's solvency;
  - (b) that the Aggregator or the Sub-Merchant are involved in a disproportionately high number of chargebacks or invalid transactions; or
  - (c) about the Aggregator or Sub-Merchant or the Aggregator or the Sub-Merchant's business;
- we may withhold release of the funds in the Aggregator Account until we no longer have those concerns.

10.7 We may appropriate money the Aggregator or the Sub-Merchant holds in the Aggregator Account or the Sub-Merchant Account, or any other account with us, held in the Aggregator or the Sub-Merchant's name(s), towards any and all amounts the Aggregator or the Sub-Merchant owe us under the Agreement. If we do this, the balance of the Aggregator Account will reduce by the amount used for this purpose. We shall notify the Aggregator promptly after exercising our right to appropriate money in the Aggregator Account and the Aggregator must ensure the Sub-Merchant is made aware of this appropriation.

## **11.0 Fees, Costs, Taxes & Expenses**

11.1 The Aggregator shall pay the fees and charges set out in the Fee Schedule.

11.2 Unless otherwise stated in the Fee Schedule, Westpac may at any time review the fees and charges

payable under this Agreement. If Westpac wishes to vary the fees it will notify the Aggregator in accordance with this document.

11.3 The Aggregator must pay:

- (a) all stamp, transaction and other similar duties, taxes and charges in relation to this Agreement or any document related to this Agreement to which it is a party. The Aggregator must also pay any fines and penalties unless they result from a failure by Westpac to lodge a document for stamping in sufficient time, having received from the Aggregator the amount of stamp duty in good time;
- (b) all costs and expenses incurred by Westpac in enforcing its rights under this Agreement;
- (c) Goods and Services Tax.

11.4 Unless stated differently in the Fee Schedule, the amounts payable to Westpac under this document do include any goods and services tax or similar tax by whatever name called ("GST").

11.5 To the extent that anything done or to be done under or in connection with this Agreement by Westpac 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 include the additional amount on account of GST. Such amount will have been calculated by multiplying the value of the non-taxed amount payable or to be provided by the Aggregator for the relevant taxable supply by the prevailing GST rate. Any additional amount paid or payable on account of GST shall be calculated and shall be payable by the Aggregator without any deduction or set-off of any amount payable by Westpac to the Aggregator.

11.6 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 Westpac to the Commissioner of Taxation on that supply differs for any reason from the amount of GST recovered from the Aggregator the amount of GST recovered or recoverable from the Aggregator shall be adjusted by Westpac repaying to the Aggregator the amount of the overpayment or by the Aggregator paying to Westpac the amount of the underpayment, as the case may be.

11.7 The Aggregator authorises Westpac to debit the Aggregator Account each month, or more frequently at Westpac's discretion, for any amounts payable by the Aggregator under this document.

## **12 Responsibility for Goods and Services & Web-site(s)**

12.1 The Aggregator shall be responsible for all goods and services, including, but not limited to, the supply of those goods or services to the Aggregator's or Sub-Merchant's customers, where payment for those goods or services is made via the Merchant Facility.

12.2 The Aggregator shall be responsible for all materials used or displayed at the Aggregator's and Sub-Merchant's website, and all acts or omissions that occur at those websites. Westpac shall not be responsible or liable for any delay that might occur in the processing of payments where the Merchant Facility is not available for any reason.

12.3 The Aggregator must, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant must, display the following on the Aggregator and Sub-Merchant website:

- (a) a prominent statement that the Aggregator is responsible for the delivery of the goods or services, and the handling of disputes, complaints and enquiries;
- (b) contact information, including the Aggregator and Sub-Merchant trading name, Australian Business Number, address, telephone number, fax number, e-mail address and the Aggregator and Sub-Merchant's country of domicile;
- (c) a complete description of all goods and services the Aggregator and the Sub-Merchant offer on the Sub-Merchant's web site;
- (d) a clear explanation of shipping practices and delivery policy;
- (e) transaction currency;
- (f) total costs of the goods or services offered including all appropriate shipping/ handling charges and taxes. Where the total cost of the transaction cannot be ascertained in advance the Aggregator must and the Aggregator must ensure the Sub-Merchant, include a statement to that effect and provide a description of the method that will be used to calculate it;

- (g) images of Card types accepted for payment that we supply to the Aggregator or the Sub-Merchant or used by the Sub-Merchant to accept payments via the Merchant Facility;
- (h) customer service policies, including usual delivery timeframes, and the process if the Aggregator or the Sub-Merchant cannot fill the order for any reason. The Aggregator must or the Aggregator must ensure the Sub-Merchant, advise the Sub-Merchant's customers within two business days if goods are not available:
  - (i) export restrictions (if known);
  - (j) refund/return policy;
  - (k) consumer data policy;
  - (l) security capabilities and policy for transmission of payment Card details;
  - (m) if the Aggregator or the Sub-Merchant provides a currency converter, a disclaimer that the converter provides an approximation of the currency only.

12.4 The Aggregator must, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant, makes provision for payment and delivery of goods or services as specified at the Aggregator or the Sub-Merchant's website. Payment pages provided will be accredited by us or a Westpac accredited provider and must adhere to our security requirements.

12.5 The eCommerce Transaction forwarded to us must be identified with the appropriate Card Scheme eCommerce indicator. We shall supply the Aggregator with details of these requirements on request and the Aggregator is solely responsible for informing the Sub-Merchant of these details.

12.6 The Aggregator must, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant, respond promptly to all customer inquiries, including cancellations and order changes.

12.7 The Aggregator must, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant, provide a completed copy of the transaction receipt to the Cardholder at the time the purchased goods are delivered or services performed, and advise Cardholder to retain the receipt as proof that payment has been made. The transaction receipt may be delivered in either of the following formats:

- (a) electronic (e.g. email or fax); or
- (b) paper (e.g. hand-written).

12.8 A transaction receipt must contain the following information:

- (a) the Aggregator name most recognisable to the Cardholder, such as: Aggregator "doing business as" name as used on the Sub-Merchant's website;
- (b) merchant "universal resource locator" (URL) if possible;
- (c) transaction type (purchase or credit);
- (d) transaction amount, indicated in transaction currency;
- (e) transaction date;
- (f) unique transaction identification number;
- (g) purchaser's name;
- (h) authorisation code;
- (i) description of goods and services;
- (j) return/ refund policy, if restricted;
- (k) cancellation policies.

12.9 The Aggregator must, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant must not return the Cardholder's number to the Cardholder either online or on the transaction receipt.

12.10 The Aggregator must, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant must:

- (a) not substantially change the Aggregator or the Sub-Merchant's goods or services or other material aspects of the Aggregator or Sub-Merchant's website from the time it was accepted by us without our written agreement;
- (b) keep all information on the website true, accurate, current and complete;
- (c) not change the Aggregator or the Sub-Merchant's domain name without first obtaining our written consent to the change of name;
- (d) not significantly alter, or add to, the type of goods or services being sold on the Aggregator or the Sub-Merchant's website without our written consent;
- (e) not do anything that constitutes or encourages a violation of any applicable law or regulation in

- Australia or an overseas jurisdiction, including but not limited to the sale of illegal goods or the violation of export controls, obscenity laws or gambling laws;
- (f) not offer for sale goods or services, or use or display materials, that are illegal, obscene, vulgar, offensive, dangerous, or are otherwise inappropriate;
- (g) not generate a significant number of complaints for failing to be reasonably accessible to customers, fulfil customer orders in a timely manner or adequately deal with customers' warranty or service requirements;
- (h) Fulfil customers order in a timely manner or adequately deal with customers' warranty or service requirements.

12.11. The Aggregator is responsible for, and warrants and represents and is responsible for ensuring the Sub-Merchant is responsible for:

- (a) ensuring that the connection between the Aggregator and the Sub-Merchant's website and us is operational. We do not warrant that the provision of the services will be continuous, uninterrupted or without errors;
- (b) ensuring that the Aggregator and the Sub-Merchant's web site is secure and that Cardholder information is encrypted during the exchange of Cardholder information between the Aggregator or the Sub-Merchant's web site and the Payment Gateway. The level of encryption is to be to our satisfaction as detailed in our document entitled "Web Site Requirements";
- (c) ensuring that any service provider the Aggregator or the Sub-Merchant engage to participate in the payment process is to be the Westpac Nominated Gateway Provider/Data Processor;
- (d) ensuring that the Aggregator's and the Sub-Merchant's business, and any Service Provider who participates in the transmission, acceptance or storage of card payment details for the Aggregator's or the Sub-Merchant's business, fully complies with the PCIDSS standard.

12.12 When approved for an eCommerce Merchant facility the Aggregator must ensure that any transactions received from Cardholders relating to the internet business for which it was approved, must be processed using the approved eCommerce Merchant facility.

12.13 If the Sub-Merchant is approved as a Westpac Sub-Merchant the Aggregator must willingly, upon request and at pre-determined intervals, supply Westpac with full details of the Aggregator's or the Sub-Merchant's Web Hosting Provider, Shopping Cart Vendor System, Secure Socket Layer (SSL) provider and expiration date of SSL certificate. The Aggregator must also disclose details of all service providers the Aggregator or the Sub-Merchant engage with to enable the acceptance of credit card payments and their compliance with PCIDSS. The Aggregator must also ensure that any service providers the Aggregator or the Sub-Merchant engage to participate in the payment process has installed a Secure Socket Layer (SSL) which meets Westpac requirements and that it is renewed prior to its date of expiration.

12.14 The Aggregator must, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant, comply with the Data Breach Procedures detailed below in this clause immediately upon suspecting or knowing there is a breach of confidential cardholder payment details, whether or not the breach has occurred through the Aggregator's or the Sub-Merchant's Service Provider. The Aggregator must, and the Aggregator warrants and represents and is responsible for ensuring, the Sub-Merchant:

- (a) identify the cause of the event and immediately notify Westpac;
- (b) isolate or unplug any affected systems from all networks involved in the Services;
- (c) cease installing or making any changes to software related to the Services;
- (d) tighten security controls pertaining to all networks relating to the Services;
- (e) implement and follow a disaster recovery plan as required by an Accredited Gateway Provider/Data Processor;
- (f) maintain a rigorous audit trail of all actions taken to isolate and rectify the event;
- (g) commence calculating the gross potential exposure that may arise from such event and notify Westpac in writing of the results of such calculations as soon as possible, but within a 24 hour period of the Data Breach.

12.15 The Aggregator agrees, and the Aggregator warrants and represents and is responsible for ensuring, the Sub-Merchant agrees, that any software or hardware the Aggregator or the Sub-Merchant purchase, create or otherwise utilise for the purpose of selling goods or services online does not retain its original password before employing it for the acceptance of Card payments. The Aggregator agrees and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant agrees that all passwords are changed on a regular basis.

## 13.0 Hotel/Motel Transactions

### 13.1 Hotel/Motel Reservation Guarantee

13.1.1 This section only applies where the Aggregator or the Sub-Merchant have been authorised to accept Credit Card transactions to guarantee hotel/motel reservations.

13.1.2 MasterCard and Visa have each arranged for their members a program that permits their Cardholders to guarantee reservations of hotel or motel accommodation by telephone.

13.1.3 The Aggregator agrees to and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant agrees to:

- (a) handle the reservations in accordance with the Card Scheme rules;
- (b) honour these reservations in all circumstances; and
- (c) cancel the reservation and, where necessary, issue a refund to the Cardholder if the Cardholder cancels the reservation. The Aggregator must and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant:
  - i. accept all cancellations prior to the specified time;
  - ii. not require cancellation notification more than 72 hours prior to scheduled arrival date;
  - iii. if the Cardholder makes the reservation within 72 hours prior to the scheduled arrival date, ensure that the cancellation deadline is no earlier than 6.00pm merchant outlet time on the arrival date or date guaranteed;
  - iv. if the Aggregator or the Sub-Merchant require that a Cardholder cancel before 6.00pm merchant outlet time on the date guaranteed, a written copy of the cancellation policy, including the date and time that cancellation privileges expire, must be provided to the Cardholder;
  - v. if the Cardholder has not claimed or cancelled the hotel reservation service accommodations by the specified time, the Aggregator must and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant hold the rooms available according to the reservation until check-out time the following day. The Aggregator may and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant may then complete a transaction receipt that must contain the following:
    - Amount of one night's lodging plus applicable tax
    - Cardholder's name, account number in an truncated format, and expiration date
    - The words "No Show" on the signature line of the transaction receipt.

13.1.4 The Aggregator shall and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant shall have the guaranteed room available for the arrival of the Cardholder. If for any reason the Aggregator or the Sub-Merchant is unable to provide the room, the Aggregator shall and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant shall provide at no charge a comparable room for one night at some other establishment and a three minute local or long distance telephone call. The Aggregator shall not and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant shall not have to hold accommodation available for subsequent nights if the Cardholder has failed to appear for their reservation guarantee by checkout time following the first night of the guaranteed reservation.

13.1.5 If there is a dispute, the Aggregator and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant shall accept a chargeback where the Cardholder claims he/she cancelled the guaranteed reservation.

### 13.2 Advance Accommodation Deposit

13.2.1 This section only applies where the Aggregator or the Sub-Merchant have been authorised to accept Credit Card Transactions for advance accommodation deposits.

13.2.2 MasterCard and Visa have each arranged for their members a program that permits their Cardholders to make deposits in advance towards accommodation reservations by using their MasterCard card or Visa card.

13.2.3 The Aggregator agrees and the Aggregator warrants and represents and is responsible for

ensuring the Sub-Merchant agrees to:

- (a) handle the reservations in accordance with the Card Scheme rules;
- (b) honour these reservations in all circumstances; and
- (c) cancel the reservation and issue a refund to the Cardholder if the Cardholder cancels the reservation in accordance with the Card Scheme rules.

13.2.4 If there is a dispute, the Aggregator and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant shall accept a chargeback where the Cardholder claims he/she cancelled the reservation.

### 13.3 Express Checkout

13.3.1 This section only applies where the Aggregator or the Sub-Merchant have been authorised to accept Credit Card Transactions to permit express check out from hotels or motels.

13.3.2 MasterCard and Visa have each arranged for their members a program that permits their Cardholders to check out of the Aggregator or Sub-Merchant's establishment at the end of their stay without conducting the usual "checkout" process in person.

13.3.3 The Aggregator agrees to, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant agrees to handle the express checkout transactions as outlined in the Card Scheme rules. The Aggregator shall, and the Aggregator warrants and represents and is responsible for ensuring the Subsidiary shall, retain and make available to us the itemised hotel/motel bill. All disputes shall be resolved in accordance with the rules of MasterCard or Visa, as appropriate.

## 14.0 Trustees

14.1 This clause applies where the Aggregator or the Sub-Merchant is the trustee of a trust.

14.2 The Aggregator confirm the following, and where the Sub-Merchant is the trustee of a trust, the Aggregator confirms, warrants and represents the following in relation to that trust:

- (a) the trust is validly formed. Any relevant trust document is valid and complies with the law;
- (b) any copy of the trust document the Aggregator or the Sub-Merchant has given us is a true and complete copy and discloses everything about the trust;
- (c) the Aggregator, and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant, are properly appointed as sole trustee of the trust;
- (d) the Aggregator, and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant have always fully complied with the terms of the trust, and the Aggregator's or, where applicable, the Sub-Merchant's duties and powers and no one has said that the Aggregator or the Sub-Merchant have not done so;
- (e) the Aggregator, and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant have a full right of indemnity from the trust assets in respect of the Agreement;
- (f) the Aggregator have properly signed the application form under the terms of the trust and in accordance with the Aggregator's, and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant's duties and powers as trustee, or if there is any doubt and all beneficiaries have full legal capacity, the Aggregator and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant have obtained their consent;
- (g) the Agreement and the transactions entered into under it are for proper trust purposes;
- (h) the Aggregator and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant have done everything required under the trust document to enter into the Agreement and the transactions it contemplates;
- (i) none of the trust assets have been resettled or set aside;
- (j) the trust has not terminated nor has any event for the vesting of the assets occurred.

14.3 The Aggregator promises the following:

- (a) the Aggregator and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant will comply with the terms of the trust and the Aggregator duties as trustee of the trust;
- (b) the Aggregator and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant will use all equipment and carry out all transactions in accordance with the Agreement exclusively for proper trust purposes;



- (c) the Aggregator and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant will not do anything which may result in the loss of the Aggregator's and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant's right of indemnity from the trust assets or the termination of the trust;
- (d) the Aggregator and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant will remain sole trustee of the trust (with anyone else who signs the application form as trustee);
- (e) if, despite the above, the Aggregator and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant, are replaced or joined as trustee, the Aggregator will make sure the new trustee becomes bound to our satisfaction by the Agreement or a document and arrangement of identical effect;
- (f) the Aggregator and where the Sub-Merchant is the trustee of a trust, the Sub-Merchant will 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.

## 15.0 Records

15.1 The Aggregator must and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant:

- (a) permit us to inspect and examine the Aggregator's or the Sub-Merchant's books of account and records relating to any Card transactions;
- (b) maintain all sales and refund transaction information and vouchers for at least 12 months after the date of the transaction;
- (c) not sell, purchase, provide or exchange a Cardholder's name or Card number information in the form of imprinted sales vouchers, carbon copies of imprinted sales vouchers, mailing lists, tapes, computer data or any other media obtained by reason of a Card transaction. This clause shall not prohibit the Aggregator or the Sub-Merchant from providing Card number information to the Aggregator's or the Sub-Merchant's agent solely to allow the Aggregator or the Sub-Merchant's agent to process Card transactions to us on the Aggregator's or the Sub-Merchant's behalf;
- (d) keep all systems and media containing a Card number, Cardholder or transaction information in a secure manner to prevent access by, or disclosure to, anyone other than the Aggregator's or the Sub-Merchant's authorised personnel or agent processing Card transactions. If the item needs to be discarded, the Aggregator or the Sub-Merchant shall destroy it in a manner which makes the information unreadable;
- (e) provide us with all clear and legible documentation relating to a transaction when requested and within 14 days of our request or the due date specified in our request, whichever is the earlier. Otherwise we may treat the transaction as invalid and process a chargeback to the Account.
- (f) Agrees to Westpac monitoring transactions processed via the Merchant Facility

## 16.0 Creditworthiness of the Cardholder

The Aggregator must not infer, and the Aggregator warrants and represents and is responsible for ensuring that the Sub-Merchant must not infer, from the fact that a Cardholder has been issued with a Card or that a transaction has been processed that we guarantee the Cardholder's creditworthiness or the correct identity of the Cardholder.

## 17.0 Variations

We may change the terms and conditions that apply to the Agreement at any time and will notify you of any changes.

The Aggregator agrees and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant agrees that we may notify you of changes as set out in the table below. Use of the Merchant Facility after notification of changes to the terms and conditions will constitute acceptance of those changes.

Type of Change	Time Frame	Method of Notification
New fee or change (other than a government charge)	30 days in advance	In writing or electronically
A new or varied government charge that directly or indirectly affects the Aggregator or the Sub-Merchant	In advance of the change, or as soon as practical afterwards, unless the change has been publicised by a government or representative body	In writing, electronically or through an advertisement in a major newspaper.
Any other term or condition (including a variation of fees and charges)	In advance of the date of the change	In writing, electronically or through an advertisement in a major newspaper.

Advance notices 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.

By "electronically", we mean:

- electronic communication to your nominated electronic address; or
- making particulars of changes available at our website [www.westpac.com.au](http://www.westpac.com.au)

## 18.0 Notices

All notices, requests, demands, consents, approvals agreements, or other communication by a party to this Agreement:

- must be in writing;
- must be signed by an Authorised Officer of the sender;
- must be delivered by hand, prepaid post, or facsimile to the address or facsimile number of the recipient shown on the signature page of this Agreement or to any other address or number notified to the sender by the recipient; and

will be deemed to be duly given or made:

- in the case of delivery in person, when delivered;
- in the case of delivery by post, two Banking Days after the date of posting;
- in the case of facsimile transmission or a telex, on receipt by the sender of a transmission control report or answerback code of the recipient at the end of transmission;

but if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4 p.m. (local time), it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in that place.

## 19.0 Other Warranties and Indemnities

19.1 The Aggregator must and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant must not make any warranty or representation whatsoever in relation to any of the Aggregator's or Sub-Merchant's goods or services which may bind us.

19.2 The processing of any transaction by the Aggregator or the Sub-Merchant, or the Aggregator or Sub-Merchant's presentation to us of any voucher shall constitute warranty by the Aggregator to us that:

- all particulars are true;
- the transaction and any voucher is valid; and
- the sale is not subject to any dispute, set-off or counterclaim.

19.3 The Aggregator shall and, the Aggregator warrants and represents and is responsible for ensuring Sub-Merchant shall, indemnify us on demand against all losses, expenses, costs (including legal costs on a full indemnity basis), liability and damages we may suffer arising directly or indirectly as a result of:

- (a) the Aggregator's failure to observe the Aggregator's obligations under the Agreement including any procedures set out in this document and any other practical operating instructions we provide to the Aggregator.
  - (b) the Sub-Merchant's failure to do something that this Agreement contemplated that the Sub-Merchant must or should do, or as a result of the Sub-Merchant doing something that this Agreement contemplated that the Sub-Merchant must not, or should not do, including as set out in this document and any other practical operating instructions we provide to the Aggregator and irrespective of whether the Aggregator took steps to ensure the Sub-Merchant complied with the Agreement;
  - (c) any dispute between the Aggregator or the Sub-Merchant and a Cardholder;
  - (d) any error, negligence, misrepresentation or fraud on the part of the Aggregator or the Sub-Merchant or their servants, agents, employees or contractors;
  - (e) the performance by Westpac of any duty or obligation under this Agreement;
  - (f) any fees, fines or penalties that the Bank is required to pay pursuant to the rules, by-laws or regulations of any Card Scheme that the Bank is a member of or participates in, as a direct or indirect result of the Aggregator or the Sub-Merchant's failure to observe any of the procedures, requirements or obligations required to be complied with under any Card Scheme;
- provided that the loss or liability is not caused by any fraud, negligence or wilful default on the part of Westpac, its employees, agents and sub-contractors. For the purpose of this clause Westpac shall not be taken to have been negligent if it has acted as required or contemplated by this Agreement or at the express request or direction of the Aggregator or Sub-Merchant.

19.4 With the exception of any terms, conditions, rights or warranties that are implied by law in this Agreement and may not legally be excluded, we give no warranty or representation in respect of any transaction or hardware or software and all other terms, conditions or warranties whether expressed or implied are expressly excluded.

19.5 The Aggregator acknowledges and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant acknowledges that our liability for breach of any condition, right or warranty that cannot be excluded from this Agreement by law is limited to the replacement or the repair of the hardware or software, or the re-performance of the repair or the transaction.

19.6 Any payments made by the Aggregator or the Sub-Merchant under this clause shall be automatically increased by the amount of any goods and services tax liability incurred by us in respect of those payments.

19.7 If the Aggregator or the Sub-Merchant has suffered a Data Breach:

- (a) The Aggregator must give and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant must give Westpac and its agents full access to the Aggregator and the Sub-Merchant's systems and databases to facilitate a forensic analysis to ascertain:
  - i. What card data has been compromised;
  - ii. What weaknesses in the system permitted the unauthorised access to the data base; and
  - iii. Whether card data was created, deleted, altered, copied or manipulated in any manner;
- (b) If the Aggregator or the Sub-Merchant uses the services of any external Service Provider, the Aggregator and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant gives Westpac and its agents full access to necessary outsourced components such as data bases, web hosting systems, etc;
- (c) All costs of the forensic analysis must be paid by the Aggregator;
- (d) In order to continue processing card transactions, the Aggregator must and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant must undergo a full Payment Card Industry Data Security Standard ("PCIDSS") accreditation. All costs of this accreditation exercise must be paid by the Aggregator.

19.8 Westpac shall notify the Aggregator if the Aggregator's or the Sub-Merchant's chargebacks in any particular category has, or is in threat of, exceeding the threshold. The Aggregator must take and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant take, immediate action to rectify the excessive chargebacks. Failure to resolve the cause of the problem will result in non-compliance Card Scheme fines which shall be payable by the Aggregator.

19.9 Payment Card Industry Data Security Standards ("PCIDSS") accreditation program

- (a) the Aggregator and the Sub-Merchant are required to complete the PCIDSS accreditation program within 3 months of Westpac providing a Sub-Merchant with access to a Merchant Facility, or within

3 months of our notification to the Aggregator the Sub-Merchant to complete the PCIDSS accreditation program. The Aggregator, and the Sub-Merchant are required to meet the Level 1 PCIDSS and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant meet the Level 1 PCIDSS;

- (b) non-completion of the PCIDSS accreditation program will place the Aggregator's facility provided for the benefit of the Sub-Merchant in the non-compliant status. This non-compliant status will attract non-compliance fines from the Card Scheme which will be passed on to the Aggregator;
- (c) in the event that the Aggregator's or the Sub-Merchant's organisation suffers a card data compromise incident, and the Aggregator or the Sub-Merchant have not complied with the PCIDSS accreditation program, the Card schemes will levy penalties which the Aggregator agrees to pay;
- (d) all costs in relation to completion of the PCIDSS accreditation program shall be borne by the Aggregator.

19.10 Consent to share information:

- (a) Westpac is obliged to report all Data Breach events to Card Schemes, law enforcement agencies and/or Australian regulators. The Aggregator, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant, understand this obligation and the Aggregator and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant, grant irrevocable and enduring consent for Westpac to release details of any such Data Breach to the aforementioned bodies. For the avoidance of doubt, the Aggregator must ensure that prior to using the Merchant Facility, the Sub-Merchant understands this obligation;
- (b) the Aggregator, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant, confers upon Westpac the enduring right to contact any Service Providers that enable the Aggregator or the Sub-Merchant to acquire credit card transactions. This clause is limited to the purpose of determining the extent of a Data Breach, assessing remedies for that Data Breach and assessing the Aggregator or the Sub-Merchant's level of compliance with PCIDSS.

19.11 The Aggregator represents and warrants as follows:

- (a) **(Status):** It is a corporation validly existing under the laws of the place of its incorporation and it has entered into this Agreement in its own right and not as a trustee of any trust or as agent on behalf of any other entity.
- (b) **(Power):** It has all the necessary power to enter into and perform its obligations under this Agreement, to carry out the transactions contemplated by this Agreement and to carry on its business as now conducted or contemplated.
- (c) **(Authorisations):** All necessary resolutions have been duly passed and all consents, approvals and other procedural matters, as required by its constitution and the Corporations Act, 2001 (Cth), in relation to the execution, delivery or performance by it and the validity and enforceability of this Agreement and the transactions contemplated by this Agreement have been obtained or effected.

**(Transactions permitted):** In executing and in giving effect to this Agreement it has not contravened and will not contravene or violate in any respect a provision of a law or a judgement, ruling, order, decree, guideline or directive issued by any Government Agency; any legislative requirement nor any provision of its constitution, or any deed, agreement or other document to which it is a party.

## 20.0 Undertakings

20.1 The Aggregator undertakes as follows:

- (a) **(Authorisations)** It will ensure that all authorisations required for:
  - (i) the execution, delivery and performance of this Agreement and the transactions contemplated; the validity and enforceability of this Agreement; and
  - (ii) the carrying out by it of its business as now conducted or contemplated;are obtained and promptly renewed and maintained in full force and effect;

(b) (Information) It will provide promptly to Westpac any information concerning its financial position or any other information that Westpac may reasonably request from time to time.

## 21.0 Limitation of Liability to Direct Loss

No party is entitled to special, indirect or consequential loss or damage, including loss of profits, income, goodwill, loss of or corruption to data and loss of opportunities, no matter how it is caused.

## 22.0 Independent Obligation

22.1 Each obligation under this Agreement:

- (a) is a separate, independent and continuing obligation payable on demand;
- (b) has effect despite any time, waiver or indulgence granted; and
- (c) survives termination or discharge of this Agreement or any of the Merchant Facility(s) made available under it.

## 23.0 Code of Banking Practice

23.1 This clause applies to the Aggregator or the Sub-Merchant if the Aggregator or the Sub-Merchant is an individual or a Small Business, respectively, at the date, Westpac executes this document or the Sub-Merchant enters into an Agreement

23.2 The relevant descriptive information referred to in clauses 13.1 and 13.2 of the Code of Banking Practice is set out in our account terms and conditions booklets. These booklets contain information regarding:

- our account opening procedures;
- our obligations regarding the confidentiality of your information;
- complaint handling procedures;
- general descriptive information regarding bank cheques;
- a recommendation that the you inform us promptly if you are in financial difficulty; and
- a recommendation that the Aggregator and the Sub-Merchant carefully read the terms and conditions applying to the relevant banking service (which in relation to this facility means the Aggregator and the Sub-Merchant should carefully read this Agreement before accepting it).

Copies of these booklets are available on request.

Each relevant provision of the Code of Banking Practice will apply to the Merchant Facility from the date we adopt that provision.

## 24.0 Financial Crimes Monitoring & Anti-Money Laundering

24.1 In order for Westpac to meet its regulatory and compliance obligations for anti-money laundering and counter financing of terrorism, we will be increasing the levels of control and monitoring we perform.

24.2 The Aggregator agrees, and the Aggregator warrants and represents and is responsible for ensuring that the Sub-Merchant is aware of and agrees that:

- (a) transactions may be delayed, blocked, frozen or refused where we have reasonable grounds to believe that they breach Australian law or the law or sanctions of any other country. Where transactions are delayed, blocked, frozen or refused, Westpac and it's accredited processors are not liable for any loss your business suffers (including consequential loss);
- (b) we may from time to time require information from the Aggregator or the Sub-Merchant about the

Aggregator, Sub-Merchant, a person who is employed by, contracted to, an agent of, or otherwise associated with, the Aggregator or Sub-Merchant or a Cardholder in order to meet our anti-money laundering and counter financing of terrorism obligations. This information may include "personal information" as defined by the Privacy Act 1988. If we ask for such information, the Aggregator agrees to provide us the information requested or the Aggregator must ensure the Sub-Merchant provides us the information requested immediately, or, at least within 24 hours of such a request;

- (c) where legally obliged to do so, we may disclose the information gathered 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;
- (d) where we have reasonable grounds to believe that a suspicious matter has arisen in relation to the Merchant Facility, we are obliged to complete and render a report to the Federal Government (AUSTRAC). A suspicious matter includes any transaction that the Bank believes 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);
- (e) they will not initiate or conduct a transaction that may be in contravention of Australian law or the law of any other country.

24.3 We may be required to identify a person who is employed by, contracted to, an agent of, or otherwise associated with, the Aggregator or the Sub-Merchant prior to entering into this Agreement and during the term of this Agreement to meet our anti-money laundering and counter financing of terrorism obligations. The Aggregator agrees to, and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant agrees to, provide us with any assistance we request of the Aggregator or the Sub-Merchant to assist us perform such identification checks.

## 25.0 Assignment

25.1 This Agreement shall be binding upon the parties, their executors, administrators, successors and assigns. Where the Aggregator consists of any two or more persons, the Aggregator's obligations shall be joint and several.

25.2 The Aggregator and the Sub-Merchant must not assign this Agreement to any other person without our written consent. We may transfer our interest in this document, or give another person an interest or security in this Agreement without getting the Aggregator's or the Sub-Merchant's consent.

## 26.0 Termination

### 26.1 Termination with notice

The Aggregator may at any time terminate this Agreement by giving 90 days prior notice to Westpac in writing (in the case where the termination is less than 3 years from the date this document is executed by Westpac) or 30 days prior notice to Westpac in writing (if the termination occurs more than 3 years from the date this document was executed by Westpac). If the Merchant Facility(s) is terminated, Westpac may charge a fee on that termination in accordance with the Fee Schedule.

### 26.2 Termination without notice

We may terminate this Agreement at any time and for any reason. The grounds on which we may do so include, but are not limited to, the following:

- (a) the other party commits a material breach of its obligations under this Agreement or a representation and warranty made by that party in this Agreement proves to be untrue in a material respect and that party fails to remedy such breach or make the representation true within the time specified in a written notice requiring such breach or such representation to be remedied;
- (b) we consider the Aggregator or the Sub-Merchant's ratio of chargebacks to sales, whether by number or dollar value of chargebacks, to be excessive;
- (c) the Aggregator or the Sub-Merchant has substantially changed the Aggregator's or Sub-Merchant's line of business, or the types of goods or services that the Aggregator or the Sub-

Merchant supply to their customers or clients without first notifying us and receiving our written consent;

- (d) the other party ceases to carry on business generally;
- (e) the other party makes a general assignment for the benefit of its creditors;
- (f) we have concerns about the Aggregator or the Sub-Merchant's solvency, or the solvency of the Aggregator's or the Sub-Merchant's business;
- (g) the other party, Aggregator or the Sub-Merchant's, becomes insolvent, or is subject to any form of insolvency administration, or a resolution is passed or an order is made for the winding up of the other party; or
- (h) the other party commits an event of default or potential event of default as specified in any Product used under this agreement (listed in the Fee Schedule);
- (i) a change occurs in the business, assets or financial condition of the other party which in the reasonable opinion of the party giving the notice may have a material adverse effect on the other party's ability to observe its obligations under this Agreement;
- (j) we have concerns about the Aggregator's or the Sub-Merchant's 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 the Aggregator's or the Sub-Merchant's business;
- (k) the Aggregator or the Sub-Merchant has a significant adverse credit event recorded against it;
- (l) we have reasonable grounds to suspect that the Aggregator or the Sub-Merchant has fraudulently processed transactions, or have knowingly allowed fraudulent transactions to be processed through the Aggregator's or the Sub-Merchant's merchant facility; or
- (m) data breach – this is an event whereby your business or any service provider who facilitates the transmission, storage or acceptance of your credit card payments suspects or has knowledge of unauthorised access to confidential card payment details.

### **26.3 Notice of Termination**

(a) We will endeavour to give the Aggregator verbal or written notice before we terminate this Agreement. The Aggregator must notify the Sub-Merchant within 24 hours of receiving such a notice. If we are unsuccessful in contacting the Aggregator, we may choose to continue to terminate the facility. However, we will give the Aggregator subsequent written confirmation that the facility has been terminated at its last known address. The Aggregator must notify the Sub-Merchant within 24 hours of receiving such a notice.

(b) Termination will be effective immediately. However we are not obliged to accept any transactions the Aggregator or the Sub-Merchant process after the Agreement is terminated.

### **26.4 Consequences of Termination**

(a) On termination of this Agreement the Aggregator must immediately cease to use the Merchant Facility provided under this Agreement and do anything that is required to terminate its obligations under this Agreement.

(b) Termination of this Agreement for any reason shall not relieve either party of any obligations incurred prior to the date of termination and will not prejudice, extinguish or otherwise affect any rights of either party against the other which:

- (i) accrued prior to the time of termination; or
- (ii) otherwise relate to or may arise at any future time that would otherwise be a breach of this Agreement if the Agreement had not been terminated.

(c) Unused stationery and promotional material remain the property of the Bank. On termination the Aggregator must immediately returns all material provided to the Aggregator or the Sub-Merchant

(d) A combined terminated merchant file is a file containing the merchant name, trading name and address, names and identifications of principals, owners, managers and key employees of merchants, account details, listing reason and Uniform Resource Locator (URL) of Internet merchants terminated for poor card acceptance practices. The Aggregator must, and the Aggregator must ensure that the Sub-Merchant consent to us providing this information for addition to the file if this Agreement is terminated. The Aggregator shall indemnify us against all claims, actions, suits, losses, defaults, damages and liabilities resulting from including the Aggregator or the Sub-Merchant or the Aggregator's or the Sub-Merchant's principals on this file. Any payments made by the Aggregator or the Sub-Merchant under this clause shall be automatically increased by the amount of any goods and services tax liability incurred by us in respect of those payments.

(e) We may charge the Aggregator a termination fee in accordance with the Fee Schedule.

## 27.0 Default and Acceleration of Debt

27.1 Under this Agreement the Aggregator is solely responsible for the actions and omissions of the Sub-Merchant. The Aggregator agrees where this Agreement contemplates that a Sub-Merchant must or should, do something, or must or should not do something, it is the sole responsibility of the Aggregator to ensure that something is respectively done or not done by the Sub-Merchant.

27.2 It is a default of this agreement by the Aggregator if the Sub-Merchant:

- (a) does something this Agreement contemplates must or should not have been done; or
- (b) does not do something this Agreement contemplates must or should have been done.

27.3 For the avoidance of doubt, it is not an excuse or defence to a claim that a breach occurred under clause 27.2 of this Agreement that the Aggregator took steps to ensure the Sub-Merchant:

- (a) does something this Agreement contemplates must or should have been done; or
- (b) does not do something this Agreement contemplates must or should not have been done.

27.4 In addition to clauses 27.1 – 27.3 of this Agreement, it is a default under this Agreement if:

- (a) the whole of any amount due by the Aggregator or the Sub-Merchant to us is not paid by the date that we inform the Aggregator it is due;
- (b) the Aggregator or the Sub-Merchant gives us incorrect or misleading or deceptive information;
- (c) the Aggregator or the Sub-Merchant commit an act of bankruptcy or enter any assignment, arrangement or composition with any creditors;
- (d) the Aggregator or the Sub-Merchant is a corporation and:
  - i. an administrator, receiver, receiver and manager, liquidator or similar officer is appointed to the Aggregator or Sub-Merchant; or
  - ii. an order is made for the Aggregator's or the Sub-Merchant's administration, winding up or dissolution or steps are taken towards this (for example, a resolution is passed, or an application is made to a court).

27.5 Without limiting any other provisions under this Agreement (including the right to terminate the Agreement), in the event of default, we may require the Aggregator to pay immediately all amounts due from the Aggregator and the Sub-Merchant under the Agreement that would not otherwise have been immediately payable.

## 28.0 Dispute resolution

28.1 The parties undertake to use all reasonable efforts in good faith to resolve any dispute, which arises between them in connection with this Agreement.

28.2 A party may give the other a notice of dispute in connection with this Agreement. Any dispute must be referred:

- (a) initially to the Transactional Manager in the case of Westpac and Manager Finance, in the case of the Aggregator, who will endeavour to resolve the dispute within 5 Banking Days of the giving of the notice; and
- (b) if the dispute is not resolved within the time specified in sub-clause 28.2 (a) above, to the Relationship Manager in the case of Westpac and Director Corporate Service in the case of the Aggregator, will endeavour to resolve the dispute within a further 10 Banking Days or such other period as is agreed by the parties.

28.3 If the dispute is not resolved within the time specified, the parties can then take whatever action they deem necessary to resolve that dispute.

28.4 The operation of this clause does not detract from either party's obligation to continue to comply with this Agreement.



## **29.0 Promotion and Advertising**

29.1 The Aggregator must not and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant must not, use any advertising or promotional or other material advising or promoting the availability of the Merchant Facility(s) if such material: has not previously been approved in writing by Westpac.

29.2 The Aggregator agrees and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant agrees, to obtain Westpac's written approval, prior to production and publication of any advertising, documents or other material containing any description of or any reference whatsoever to Westpac by name or otherwise or reproducing Westpac's logo or trade mark.

29.3 Westpac and its related bodies corporate would like to be able to contact the Aggregator and the Sub-Merchant, or send the Aggregator or the Sub-Merchant information, regarding other products and services. If the Aggregator or the Sub-Merchant does not wish to receive this information, the Aggregator must:

- (a) call us on 1300 301 425.
- (b) write to us at GPO Box 3433, Sydney, NSW, 2001.
- (c) call in at any Westpac branch.

## **30.0 Confidentiality**

30.1 Subject to this clause the parties will treat as confidential and will not disclose any Confidential Information which comes into their possession pursuant to, or as a result of, any aspect of this Agreement.

30.2 The obligation of confidentiality will not apply to any Confidential Information where the Confidential Information:

- (a) is disclosed with the consent of the party who supplied the Confidential Information;
- (b) is or comes lawfully into the public domain;
- (c) is required to be disclosed pursuant to any legislation or legal process; or
- (d) is required to be disclosed to the employees, legal or financial advisers, auditors, or to any other party for the purpose of giving effect to this Agreement.

30.3 This clause 30 continues after the termination of this Agreement.

## **31.0 Intellectual Property**

31.1 Nothing in this Agreement is intended to transfer title to either party's intellectual property rights in respect of material, information, know-how, skills, methodologies or tools existing at the date of this Agreement.

31.2 All intellectual property rights in any material created under this Agreement shall, from the time of its creation, vest in the party creating the material.

## **32.0 Sub Merchants**

32.1 The Aggregator acknowledges and agrees that all Sub-Merchant(s) must be Westpac approved businesses.

32.1 MasterCard and Visa identify various business types which MasterCard and Visa segment into "MCC's". Each MCC will require a separate Merchant Facility (MID) to be established. Westpac shall advise the appropriate MCC for each Sub-Merchant as part of the assessment and approval process.

32.2 It will be the Aggregator's responsibility to ensure their Sub-Merchant(s) do not change their fundamental line of business. This is to ensure the Aggregator continues to trade under the assigned MCC code.

32.3 The Aggregator agrees and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant agrees to the Bank's right to audit, review and inspect all Sub-Merchants on a regular basis. The Aggregator agrees and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant agrees that Westpac shall take immediate steps to either limit or halt the use of the Merchant Facility(s) if the Agreement is not complied with by the Aggregator or the Sub-Merchant and that non-compliance is not rectified within a reasonable time frame (no longer than one month).

32.4 If the Sub-Merchant changes their business from the agreed industry code, the Aggregator must notify the Bank of this change within seven (7) days of the change. The Aggregator agrees and the Aggregator warrants and represents and is responsible for ensuring the Sub-Merchant agrees that the Bank reserves the right to re-assess any Sub-Merchant who has a change in business type or business structure.

32.5 If a Sub-Merchant for whom the Aggregator collects funds ceases to operate, is declared bankrupt or is subject to other similar circumstances, it will be the Aggregator's sole responsibility to negotiate with the appointed administrator or receiver and refund any money to the appointed administrator or receiver.

### **33.0 Authorised Officers**

The Aggregator irrevocably authorises Westpac to rely on a certificate by any person purporting to be its director or secretary as to the identity and signatures of its Authorised Officers. The Aggregator warrants that those persons have been authorised to give notices and communications under or in connection with this Agreement.

### **34.0 Change of Address**

The Aggregator must notify us promptly of any changes in the Aggregator's or the Sub-Merchant's name or the Aggregator's or the Sub-Merchant's address. The Aggregator may do this by writing to us at the address in this document or by transmitting by facsimile to the number in this document. The Aggregator must continue to notify us of any changes for a period of 12 months after this Agreement is terminated for any reason. We will not be responsible for any errors or losses where we have not received adequate prior notice.

### **35.0 Jurisdiction**

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

### **36.0 Waivers**

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 must be in writing.

### 37.0 Severability of Provisions

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be read down or severed in that jurisdiction to the extent of the prohibition or unenforceability. Such action does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

### 38.0 Relationship

38.1 Westpac's relationship with the Aggregator is that of independent contractor, and nothing in this Agreement will be taken as constituting either party, a servant or agent, or employee of the other party.

38.2 The Aggregator and Westpac acknowledge that, except to the extent otherwise expressly provided in this Agreement:

- (a) they are not, for the purpose of this Agreement, the legal representative, agent, joint venturer or partner of the other party for any purpose; and
- (b) it, any of its directors, employees or agents, has no right or authority to assume or create any obligations of any kind, or to make any representations or warranties, whether express or implied, on behalf of the other party or to bind the other party in any respect.

### 39.0 Force Majeure

The parties will not be liable for any loss or damage (whether direct or indirect) nor be in default under this Agreement for failure or delay to observe or perform any provision of this Agreement, for any reason or cause of whatever nature which could not, with reasonable diligence, be controlled or prevented by the parties including, without limitation, acts of God, acts of nature, acts of governments or their agencies, fire, flood, storm, riots, power shortages or power failures, strikes, lockouts, labour disputes, sudden and unexpected system failure or disruption by war, sabotage or inability to obtain sufficient labour, raw materials, fuel or utilities.

This clause does not apply in relation to the Aggregator's obligation to pay Westpac under the Agreement.

### Execution Clause:

Each Attorney executing the document states that he/she has no notice of the revocation or suspension of his/her power of attorney:

Signed for Westpac Banking Corporation ABN 33 007 457 141

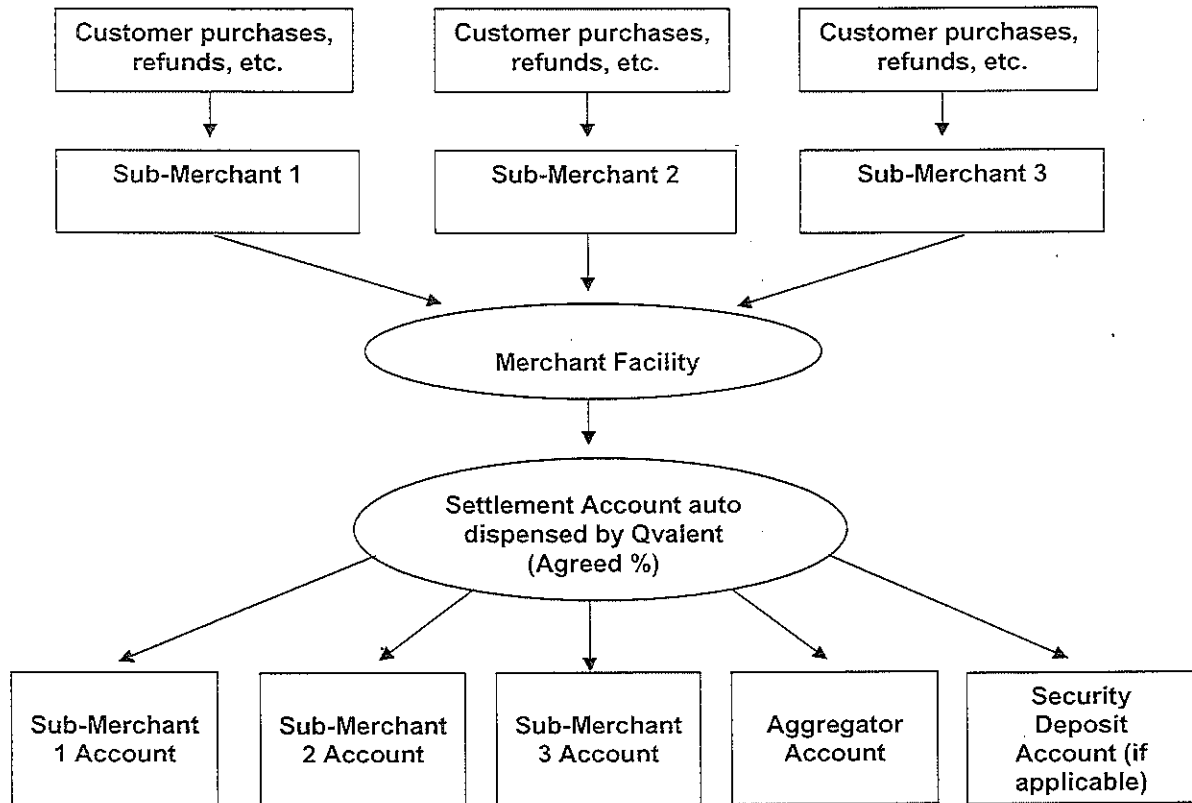
Sign Here		Sign Here	
Title	Two Horse Attorney	Title	TWO HORSE
Name	Stephen Jones	Name	ANDREW STAPLETON
Date	29/1/09	Date	29/1/09.

Signed for Qpay P... ADM 85 115 833 808

Sign Here		Sign Here	
Title	DIRECTOR	Title	Company Secretary
Name	Peter C.M. Hall	Name	ROSEMARY SHANT
Date	15/1/09	Date	14/1/09

## APPENDIX 'A' – Business Rules

### Automatic Processing of Transactions



#### Assessment & Approval:

An Aggregator is required to establish a separate Merchant Facility for each type of business they intend to aggregate for, e.g. if the aggregator wishes to sign up gyms, schools and child care centres, three Merchant Facilities will be required, each with its own Merchant Category Code (MCC). Each of those Merchant Facilities will be governed by this document.

Proposed agreements between the Aggregator and the Sub-Merchant must be reviewed by Westpac and this may include seeking independent legal advice if necessary.

The Aggregator will refer all new Sub-Merchants to Westpac for prior approval. Westpac may perform credit checks through a credit reporting agency on all Sub-Merchants in addition to Card Scheme checks. Westpac retains the right to decline any new Sub-Merchant, any change in the ownership of a Sub-Merchant, or any change in the principal business activities of a Sub-Merchant.

#### Number of Sub-Merchants

More than one Sub-Merchant may use the Merchant Facility but **ALL** Sub-Merchants must be approved by Westpac in accordance with this document.

#### Automatic Processing of Customer Transactions

If a Sub-Merchant is approved by Westpac, the Aggregator will notify Westpac by way of signed agreement how the value of Customer Transactions in relation to that Sub-Merchant shall be apportioned between the:

- (a) Sub-Merchant Account;
- (b) Aggregator Account;
- (c) Security Deposit Account (if applicable).

The aggregate value of "(a)", "(b)" and "(c)" shall equal 100% of the value of the Customer Transaction. ("Agreed Apportionment")

Westpac will automatically process funds to each of the Sub-Merchant Account(s), Aggregator Account and, if applicable, the Security Deposit Account in accordance with the Agreed Apportionment.

#### **Security**

Westpac, at its sole discretion, may require, the Aggregator to provide security to Westpac to reduce the potential harm to Westpac due to fraud or the provision of credit. This security may take the form of the Aggregator

- (a) maintaining a set amount of funds with Westpac in a Security Deposit Account;
  - (b) providing a director's guarantee(s) in favour of Westpac; or
  - (c) providing a mortgage over property in favour of Westpac;
- (or a combination of all or any of the above)

The Aggregator agrees that Westpac may notify the Aggregator before or during the term of this document if a form of Security is required by Westpac ("**Security Notice**"). The Aggregator agrees to do everything as soon as practicable, and at the Aggregator's own expense, to give effect to the Security Notice upon receipt of such notice (this includes, but is not limited to, the Aggregator or the Sub-Merchant(s), preparing, executing or stamping any required document to give effect to the Security Notice).

#### **Sub-Merchant Agreement**

The Aggregator acknowledges and agrees that the Aggregator shall enter into a separate agreement or arrangement with each Sub-Merchant in connection with that Sub-Merchant using the Merchant Facility ("**Sub-Merchant Arrangement**"). The Aggregator acknowledges and agrees that the Westpac shall **NOT** be a party to the Sub-Merchant Arrangement. The Aggregator agrees that the Sub-Merchant Arrangement shall be consistent with and give effect to this document. In the event that the operation of a Sub-Merchant Arrangement would result in, or results in, a breach of this document or would be, or is, inconsistent with the operation of this document, the Aggregator agrees, at its own expense, to immediately amend or change that Sub-Merchant Arrangement so that it is not in breach or inconsistent with the operation of this document.

#### **Audit of Agreed Apportionment**

The Aggregator acknowledges and agrees that Westpac may, from time to time, and without notice to the Aggregator or Sub-Merchant(s), review or check that funds are being processed in accordance with this document. This includes performing audits on disbursement records obtained directly from Qvalent or other internal Westpac processing systems.

#### **Documentation Requirements - Aggregator:**

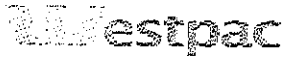
- Completed and signed the Application Form and this document;
- Settlement account details, which must be in the same name as the Merchant Facility and confirmed by confirmation of Westpac records;
- Statement of position – directors or owners;
- Company trading reports – at least the last 12 months;
- Credit Reference Report; and
- Web site must meet Westpac site requirements.

#### **Documentation Requirements – Sub-Merchant:**

- Completed and signed Sub-Merchant Agreement;
  - Settlement account details, which must be in the same name as the Merchant Facility and confirmed by confirmation of Westpac records;
  - Statement of position – directors or owners;
  - Company trading reports – at least the last 12 months;
  - Credit Reference Report; and
- Web site must meet Westpac site requirements



## Appendix 'B' – Fee Schedule



### Fee Schedule

(GST Comment)

Our current fees and charges are outlined below. (Valid 14 days comment)

\*The Bank reserves the right to vary fees in accordance with the Merchant Terms and Conditions

Product Name: QUICKSTREAM

Fee Type	Amount	Details
<b>General</b>		
Establishment Fee	\$0.00	Once only per establishment of new or additional facility
Sub Merchant fee	\$220.00	Each sub merchant approved application
Chargeback Fee	\$33.00	Per chargeback
Participation Fee	\$0.00	Per month per facility
Interchange Fees	Interchange fees will be charged	
<b>Term Contract</b>		
Term of contract	3 years	
Cancellation Fee	\$550.00	If Closed Prior to Expiry Date
	\$104.50	If Closed after Expiry Date
<b>Credit Cards</b>		
<b>Merchant Service Fee</b>		
MasterCard %	0.660%	Per \$ volume
Visa %	0.660%	Per \$ volume
Sales Transaction Fee	\$0.00	Per transaction
Refund Transaction Fee	\$0.00	Per transaction
Minimum Merchant Service Fee	\$22.00	Per month. This fee will not be applied if the Service Fee charged on the net/gross credit card turnover exceeds this minimum amount.
Net or Gross	Net	Service Fee charged on the net/gross credit card turnover
<b>Authorisations</b>		
Voice authorisations	\$0.00	Per item
Voice Decline	\$0.00	Per item
IVR Authorisation	\$0.00	Per item
IVR Decline	\$0.00	Per item