

QuickSuper Referral

Terms and Conditions.

Effective date: 9 November 2023



Accessibility support.

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Visit westpac.com.au/web-accessibility for further information on our accessible products and services for people with disability.

Important information

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Terms and conditions of QuickSuper

Background:

- A. QuickSuper is an online service designed to facilitate payments (usually superannuation contributions) from Participating Employers to Superannuation Funds for the benefit of Employees.
- B. You (the Participating Employer) are a customer of a Superannuation Fund (the Sponsoring Fund) which has an arrangement with Westpac Banking Corporation (Westpac) regarding the utilisation of QuickSuper for the processing of superannuation contributions by Participating Employers.
- C. The Participating Employer wishes to participate in the QuickSuper program by engaging Westpac to process payments through QuickSuper, on the basis that the Sponsoring Fund will pay Westpac's fees and charges applicable to the Participating Employer's use of QuickSuper pursuant to these terms and conditions, unless the Sponsoring Fund at any time requires the Participating Employer to pay Westpac's transaction fee for outbound Choice Contributions.
- D. Subject to acceptance of these terms and conditions by the Participating Employer, and in consideration of the Participating Employer's compliance with these terms and conditions, Westpac has agreed to process payments on behalf of the Participating Employer subject to these terms and conditions.
- E. To become entitled to use QuickSuper the Participating Employer must accept these terms and conditions and complete the online registration process on the QuickSuper website.

1. Definitions and interpretations

1.1 Definitions.

ABN means a valid Australian Business Number issued by the Australian Business Register operated by the Australian Taxation Office.

Administrator means the person or persons authorised by the Participating Employer to act in the role of administrator for QuickSuper on behalf of the Participating Employer. The Administrator(s) may be authorised to, among other things:

- (a) identify, add, amend and delete Users; and
- (b) reset passwords, lock and unlock Users

Agreement means the agreement between Westpac and the Participating Employer formed in accordance with and constituted by these terms and conditions.

AML Requirements means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and corresponding regulations and rules together with all guidance notes, rulings and other publications issued from time to time by the Australian Transaction Reports and Analysis Centre ("Austrac") and any AML/CTF program adopted from time to time by Westpac in accordance with these.

AusPayNet means Australian Payments Network Limited ABN 12 055 136 519.

Banking Day means any day on which banks are open for business of the nature required by this Agreement in the relevant place.

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

BECS Procedures means the published procedures of BECS administered by AusPayNet as amended from time to time.

Beneficiary means the recipient of payments made under these terms and conditions and includes Superannuation Funds receiving superannuation contribution payments on behalf of Members, as directed by Participating Employers.

BPAY means the electronic payments service promoted by BPAY Pty Limited ABN 69 079 137 518.

Change in External Costs means the introduction of or an increase in Westpac's external costs directly relevant to a fee or charge under this agreement. Westpac's external costs include (for example) interest rates, external service provider's costs and industry scheme provider costs.

Change in Law means the introduction of, or a change in, any law, official directive, code of conduct, guideline, ruling or request or a change in its interpretation or application. If it does not have the force of law, it must be one with which responsible banks or financial institutions would comply. Without limitation, it includes any of these circumstances which relates to capital adequacy, special deposit, liquidity, reserve, prime assets, prudential requirements, interchange fees, customer identification, transaction reporting, anti-money laundering or counter terrorism requirements, any goods and services tax or similar tax (but only to the extent it directly affects anything used in relation to the services under this agreement), or any other tax (except a tax on overall net income).

Choice Contributions are those superannuation contributions made to a Superannuation Fund other than the Sponsoring Fund.

Confidential Information means 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 Agreement. Reference to Confidential Information includes a reference to any parts of the Confidential Information.

Consequential Loss means loss or damage arising from a breach of contract, tort (including negligence), under statute or any other basis in law or equity including, but without limitation, the following:

- (a) loss of profits, revenue or production;
- (b) any superannuation guarantee charges or taxes payable by the Participating Employer (including in respect of or connection with late payment);
- (c) loss or denial of opportunity or loss of access to markets;
- (d) loss of goodwill;
- (e) loss of business reputation, future reputation or publicity;
- (f) damage to credit rating;
- (g) loss of use; and
- (h) indirect, remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the time of execution of the contract.

Credit Item means a credit of money that is directed to an account via BECS.

Cut-off Time means such time or times on any Banking Day as notified by Westpac to the Participating Employer in writing from time to time, before which Payment Files are accepted. At the date these terms and conditions were accepted, the Cut-off Time is 4:00 p.m.

Default Contributions are those superannuation contributions made to the Sponsoring Fund.

Documentation means the documents made available to the Participating Employer which provide the Participating Employer with all information reasonably necessary to determine how to use QuickSuper. As at the date these terms and conditions are accepted, this is the Documentation entitled "QuickSuper User Guide".

EFT means electronic funds transfer from the Intermediary Account of the Participating Employer to Westpac via the Participating Employer's online banking facility.

Employee means an employee registered by a Participating Employer within QuickSuper and who is recognised by a Superannuation Fund as one of its Members.

Fee Schedule means the schedule of fees set out in Schedule 1 to this document.

File means an electronic file prepared by the Participating Employer for the purposes of this Agreement.

Goods and Services Tax (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.

Hours of Operation for the Westpac Support Centre are the hours between 8.30am and 5.30pm Monday to Friday Sydney time on all days except national Australian holidays which (at the date of this Agreement) are New Year's Day, Australia Day, ANZAC Day, Good Friday, Easter Monday, Christmas Day and Boxing Day.

Intellectual Property Rights means all industrial and intellectual property rights of any kind including but not limited to copyright, trade mark, design, patent, semi-conductor, or circuit layout rights, trade, business or company names or other proprietary rights including moral rights, or any rights prior to registration of such rights whether created before or after the date these terms and conditions are accepted by the Participating Employer.

Intermediary Account means the intermediary account of the Participating Employer.

Ledger FI means the financial institution which maintains the account to which Credit Items are to be applied.

Member means a person that is recognised by a Superannuation Fund as one of its members.

Minimum Requirements means the software requirements set out from time to time in the terms and conditions of the QuickSuper website, which are accessible in the footer section of the QuickSuper website via a hyperlink which reads “Terms and Conditions of this website”.

Nominated Account means the agreed account of the Participating Employer which Westpac will debit for fees, charges, taxes and expenses payable by the Participating Employer under this Agreement.

Participating Employer means you, being a registered business within QuickSuper who wishes to make contributions on behalf of Employees to their Superannuation Funds, and includes third parties acting on behalf of multiple Participating Employers.

Payment File means a File containing information with respect to superannuation contributions on behalf of Employees.

Payment Instruction has the meaning given to that expression in clause 2.6 (a) of this Agreement.

Payment Report means a report created when the Participating Employer enters contribution amounts online. It lists Employees and individual contribution amounts. It is intended for the Participating Employer to retain the report for its own records.

Privacy Law means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth), any State or Territory privacy legislation and any other present or future law or regulation of the Commonwealth of Australia or any State or Territory which relates to the privacy, confidentiality or use of any information about individuals and with which the Participating Employer or Westpac must comply.

QuickSuper means an online superannuation contribution service offered by Westpac which is designed to facilitate the remittance of regular superannuation contributions by the Participating Employer on behalf of Employees.

Sponsoring Fund means a Superannuation Fund which has an arrangement with Westpac regarding the utilisation of QuickSuper by the Participating Employer by which the Sponsoring Fund agrees to pay Westpac’s fees and charges applicable to the Participating Employer’s use of QuickSuper in relation to both Choice Contributions and Default Contributions unless the Sponsoring Fund elects to pay Westpac’s fees and charges in relation to Default Contributions only, leaving the Participating Employer to pay Westpac’s fees and charges in relation to Choice Contributions.

Superannuation Fund means the recipient of superannuation contributions by Participating Employers on behalf of Employees pursuant to this Agreement.

Tax Invoice has the meaning given by the GST Law.

User means a person nominated by the Administrator(s) to access QuickSuper for the purpose of either viewing, entering or authorising Payment Instructions.

Verifying Officer has the meaning given to this term in clause 24.2(a).

1.2 Interpretation.

- (a) All headings in this Agreement have been inserted for the purpose of ease of reference only. They do not affect the meaning or interpretation of it.
- (b) In this Agreement unless the contrary intention appears:
 - (i) a reference to this Agreement includes any variation or replacements;
 - (ii) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
 - (iii) the singular includes the plural and vice versa;
 - (iv) a reference to any one gender includes the other gender (as the case may require);
 - (v) a reference to a person includes a firm, a body corporate, an unincorporated association or an authority;
 - (vi) a reference to a person includes a reference to the person’s employees, agents, administrators, successors, legal personal representatives, and permitted assigns;

- (vii) an Agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them or any one or more of them jointly and severally;
- (viii) a reference to a party means a person who is named as a party to, and is bound to observe the provisions of this Agreement;
- (ix) a reference to “notice in writing” includes a notice published on the QuickSuper website; and
- (x) a reference to any time is Sydney time.

2. The service

2.1 Description.

QuickSuper is an online contribution service designed to facilitate superannuation payments from Participating Employers to Superannuation Funds, on behalf of their Employees.

QuickSuper gives the Participating Employer access to a web self-service environment which provides for:

- (a) registration and maintenance of Participating Employer, Employee and Superannuation Fund details;
- (b) (subject to clause 2.6(d) of this Agreement) processing of payments via EFT or (where made available by the Superannuation Fund) BPAY;
- (c) settlement of payments to Superannuation Funds;
- (d) return of unapplied payments to Participating Employers,
- (e) importing Payment Files;
- (f) searching for Employee and Superannuation Funds details; and
- (g) searching and tracking the status of payments made under a Payment File.

2.2 Registration.

The Participating Employer acknowledges that:

- (a) Westpac requires the Participating Employer to register its details on line with Westpac via web self-service;
- (b) before it can send a Payment File to Westpac it must register the Employee details with the relevant Superannuation Fund;
- (c) it is responsible for updating and maintaining the Participating Employer, Employee and Superannuation Fund details via online web self-service; and
- (d) by agreeing to these terms and conditions the Participating Employer is entering into a contract with Westpac as the provider of QuickSuper.

2.3 Amendments to QuickSuper Terms and Conditions.

- (a) Westpac may change the terms and conditions that apply to QuickSuper at any time in response to changes in the way that we provide QuickSuper, changes in regulation or where otherwise necessary to protect our legitimate interests, and will notify the Participating Employer of any changes in writing, which will be presented to you when you next attempt to access QuickSuper via web self-service, or by advertisement in a newspaper. Westpac can also publish changes on the QuickSuper website.
- (b) Advance notice may not be given in some instances, for example, where a change is necessitated by an immediate need to restore or maintain the security of Westpac’s systems, or where the Participating Employer cannot reasonably be contacted. Westpac can also give a shorter notice period (or no notice) if it is reasonable for us to manage a material and immediate risk.
- (c) Unless Westpac has given the Participating Employer instructions otherwise regarding the notice period and form of notices to be provided, the Participating Employer agrees that Westpac may notify the Participating Employer of changes as follows:
 - (i) new fee or increase to a fee – 30 days in advance;
 - (ii) the introduction or change to a government charge – in advance of the change or reasonably promptly after a government, government agency or representative body notifies us

unless the change has already been published by a government, government agency or representative body; and

- (iii) any other change to a term or condition or any material change to a matter required by law to be in these terms and conditions – as soon as reasonably possible (which may be before or after the change) or, if Westpac believes the change is unfavourable to the Participating Employer, Westpac will give the Participating Employer notice at least 30 days in advance.
- (d) Where the Participating Employer does not wish to be subject to such changes as described at clauses 2.3(c)(i) and 2.3(c)(iii), the Participating Employer may terminate this Agreement, without penalty, in accordance with clause 12.1.

2.4 Format of Files or Online Web Screens.

- (a) The Participating Employer agrees that each File will be in a format and contain such information as advised by Westpac to the Participating Employer from time to time or as agreed from time to time between Westpac and the Participating Employer.
- (b) Westpac may make reasonable changes to the format or content requirements with respect to Files by giving the Participating Employer 30 days' notice together with details of changes to the File format or content requirements.

2.5 Online Web Screens and Other Approved Interfaces.

The Participating Employer agrees to use the standard online web screens or other approved interfaces (such as the Westpac Integrated Banking Service) as provided by Westpac from time to time. Westpac may, acting reasonably, change these interfaces, or change the information required to be provided from the customer through these interfaces by giving the Participating Employer reasonable notice.

2.6 Payment Instructions.

- (a) The Participating Employer agrees to provide Westpac with the information required pursuant to the QuickSuper online contribution service as follows:
 - (i) import Files using online web self-service; or
 - (ii) enter payment information via web self-service at which time a Payment Report will be generated,each a “Payment Instruction” and together the “Payment Instructions”.
- (b) The Participating Employer will make payment via EFT or (where made available by the Superannuation Fund) BPAY, using the Participating Employer’s online banking facility.
- (c) Upon receipt of a Payment Instruction from the Participating Employer prior to the Cut-off Time, Westpac will:
 - (i) batch the Payment Instruction;
 - (ii) provide to the Participating Employer an electronic “confirmation of receipt” message;
 - (iii) calculate the total bulk value required to be processed for the Participating Employer, if any;
 - (iv) in the case of Payment Instructions made via EFT or (where made available by the Superannuation Fund) BPAY, attempt to match the payment to the information contained in a Payment File and, if a match is found, mark the payment as received so that the outgoing payments to the Superannuation Funds can be scheduled; and
 - (v) subject to clause 3, in respect of each Superannuation Fund process a Credit Item for the total amount of the payment for that Superannuation Fund with an electronic remittance advice of such payment.
- (d) The Participating Employer acknowledges and agrees that, in the case of Payment Instructions made via EFT or (where made available by the Superannuation Fund) BPAY, where Westpac is unable to match the payment to the information contained in a Payment File, Westpac will return the payment to the payer.
- (e) The Participating Employer acknowledges and agrees that Westpac may only process a Payment Instruction if it is received prior to the Cut-off Time each Banking Day (Payment Instructions

received after the Cut-Off Time will be processed on the next Banking Day), and Westpac will not be responsible for ensuring that:

- (i) the Participating Employer has sent Payment Instructions on any given Banking Day; or
- (ii) all relevant payments are contained in each Payment Instruction; or
- (iii) payments are received via EFT or (where made available by the Superannuation Fund) BPAY.

2.7 Validity of Payment Instructions.

The Participating Employer acknowledges that:

- (a) it is solely responsible for the accuracy and correctness of the information provided in Payment Instructions and that Westpac will not be responsible for verifying the correctness or validity of the information;
- (b) Westpac is authorised to act on all Payment Instructions as being undertaken with the authority of the Participating Employer without being required to verify that authority in any case;
- (c) neither Westpac nor the Fund is required to check the accuracy of any Payment Instruction;
- (d) it is responsible for updating changes in Employees' data or information relating to Beneficiaries, adding new Employees or making any other changes (including, but without limitation, transferring Employees' data from one Superannuation Fund to another) as required before sending Payment Instructions; and
- (e) it must appoint an Administrator or Administrators whose responsibilities will include the creation and maintenance (including access levels) of Users who will be authorised by the Administrator(s) to, among other things, provide Payment Instructions.

2.8 Cancellation of Payment Instructions.

Given QuickSuper is a web self-service which operates under the direction of the Participating Employer, Westpac will, and is only required to, use reasonable endeavours to cancel a Payment Instruction if Westpac has not already executed that Payment Instruction. Westpac will provide notice to the Participating Employer where it has not been able to cancel a Payment Instruction.

2.9 Delays.

The Participating Employer acknowledges that Westpac will process Payment Instructions received prior to the Cut-off Time each Banking Day but Westpac will not be responsible for delays that may occur in processing payments or transmitting data Files to the Beneficiaries where:

- (a) there is a public or bank holiday on the day the Participating Employer sends the Payment Instructions to Westpac;
- (b) Payment Instructions are received either on a day which is not a Banking Day or after the Cut-off Time on a Banking Day;
- (c) the Payment Instructions contain errors; or
- (d) (in the case of a Payment) an EFT or (where made available by the Superannuation Fund) BPAY, the payment is not received by Westpac, not received on time or, where received by Westpac is required to be returned by Westpac.

2.10 Errors.

If a File imported by the Participating Employer contains technical errors that prevent Westpac from accessing or processing the File, Westpac will reject the File and will notify the Participating Employer for 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 Participating Employer the amount of GST recovered or recoverable from the Participating Employer shall be adjusted by Westpac repaying to the Participating Employer the amount of the overpayment or by the Participating Employer paying to Westpac the amount of the underpayment, as the case may be.

3. Payment of fees, charges, taxes and expenses

The Participating Employer authorises Westpac to debit the Participating Employer's Nominated Account for any amounts payable by the Participating Employer under this Agreement. Each month Westpac will provide a billing statement to the Participating Employer itemising all fees, charges, taxes and expenses.

4. Westpac Obligations

Westpac agrees to provide:

- (a) the Documentation necessary to enable the Participating Employer to use QuickSuper (the "Documentation").
- (b) maintenance, application and technical support during the Hours of Operation.
- (c) notice of any enhancement or modification to QuickSuper and all program material necessary for the Participating Employer to use the enhancement or modification.

Westpac further agrees, subject to clause 11, to comply with the Privacy Law in relation to personal information provided to it.

5. Participating Employer Obligations

5.1 Positive Obligations.

- (a) The Participating Employer must:
 - (i) take reasonable steps to ensure that only those persons nominated by it who have been registered as Users by the Participating Employer have access to QuickSuper;
 - (ii) take reasonable steps to ensure that it and all persons authorised by it to access QuickSuper keep all access codes secret and secure;
 - (iii) take reasonable steps to ensure that anyone who has access to QuickSuper is first made aware of the rights of Westpac and of the terms and conditions which apply to such access;
 - (iv) take reasonable steps to ensure that all administrative details relating to the Participating Employer, in particular with regard to the Nominated Account and Intermediary Account, are kept up to date on QuickSuper via the web self-service;
 - (v) notify the Westpac Support Centre promptly (and in any event within 2 Banking Days of discovery) of any defect, error or malfunction in QuickSuper which materially adversely affects the Participating Employer's use of QuickSuper, maintain reasonable backups of Files imported to QuickSuper and re-import any File to QuickSuper if reasonably requested to do so by Westpac; and
 - (vi) access and use QuickSuper in strict accordance with the operating instructions contained in the Documentation and solely for the performance of the specific business functions designated in the Documentation.
- (b) The Participating Employer acknowledges and agrees that its use of QuickSuper and its activities on QuickSuper are logged by QuickSuper and Westpac may inspect those logs from time to time.

5.2 Negative Obligations.

The Participating Employer must not:

- (a) perform or allow any third party to perform maintenance or repair work, alterations or modifications of any nature whatsoever to QuickSuper or Documentation, without the express prior written consent of Westpac;
- (b) attempt to change any Westpac hosted screens as part of the QuickSuper offering;

- (c) decompile, disassemble, reverse engineer, modify, enhance or alter the whole or part of QuickSuper, except as the Participating Employer is legally authorised to do by the *Copyright Act 1968* (Cth) and then only to the extent allowed by that Act;
- (d) copy QuickSuper or Documentation or allow anyone else to do so except as and to the extent which is reasonably necessary for the Participating Employer's own backup purposes; or
- (e) remove, deface or obscure any identification or copyright notices on QuickSuper.

6. Participating Employer responsibilities

The Participating Employer agrees and acknowledges that it is responsible for:

- (a) providing and maintaining suitable equipment, operating system software and network infrastructure to access QuickSuper including any variation made to QuickSuper from time to time. The minimum Participating Employer software required to access QuickSuper from time to time appear in the Minimum Requirements. The Participating Employer acknowledges that if Westpac varies QuickSuper, the resultant version may be the only one able to be used from the notified date and QuickSuper may not function satisfactorily unless any updates and new versions provided by Westpac are installed or adopted promptly by the Participating Employer, all Westpac directions are complied with and upgrades are made to relevant software used in conjunction with QuickSuper that appear in the Minimum Requirements;
- (b) providing its own internet connectivity and sufficient bandwidth to and from the Participating Employer's location to enable access to QuickSuper as it may be amended from time to time. Minimum connectivity and bandwidth requirements appear in the Minimum Requirements. As access to QuickSuper is dependent on connection to the internet, Westpac does not warrant or represent that access to QuickSuper will be error free or uninterrupted;
- (c) maintaining reasonable backups of Files imported to Westpac and re-import any File to Westpac if reasonably requested to do so by Westpac. Westpac is not responsible for losses or liability which is directly caused by the Participating Employer's failure to maintain appropriate security and backups of Files;
- (d) maintaining the confidentiality of all information it receives when using QuickSuper and for complying, in all respects, with the Privacy Law. Information will not be disclosed unless the disclosure complies with the Privacy Law; and
- (e) addressing and resolving all service and support issues associated with software and hardware provided by third parties used by it to access QuickSuper including connectivity issues, internet browser functionality and back office functionality. The Participating Employer must ensure that its personnel are aware of the appropriate contact numbers for obtaining support for software.

7. Suspension and Termination of Access

7.1 Westpac's right to suspend/terminate access.

- (a) Without limiting clause 12 of this Agreement, Westpac may, at any time and wherever possible with reasonable notice to the Participating Employer, suspend and/or terminate the Participating Employer's access to QuickSuper or its use of QuickSuper on the following grounds:
 - (i) Westpac reasonably considers that the Participating Employer has breached any of its material obligations under this Agreement and the breach is either not capable of being remedied or the Participating Employer has not remedied the breach within 14 days of being notified of same by Westpac;
 - (ii) Westpac has reasonable grounds to suspect that the Participating Employer has fraudulently processed transactions or activities, or has knowingly allowed fraudulent transactions or activities to be processed through the Participating Employer's QuickSuper facility;
 - (iii) it is necessary for Westpac to carry out urgent repairs to QuickSuper or Westpac's network;
 - (iv) Westpac is required to do so by an order, instruction or request of any Government Agency or emergency service or pursuant to the terms or rules of any payment scheme relating to a payment method available through QuickSuper;

- (v) Westpac reasonably believes that the Participating Employer's connection to QuickSuper will or may cause technical incapacity to QuickSuper and that such incapacity would or may continue unless access or use is suspended or terminated;
 - (vi) there is a planned outage or unplanned outage, including but not limited to, a force majeure event;
 - (vii) the Sponsoring Fund or, where applicable, the Participating Employer, ceases to pay Westpac for the QuickSuper services; or
 - (viii) the Participating Employer is an inactive user of the QuickSuper facility for two consecutive years.
- (b) Westpac will use all reasonable endeavours to act promptly to restore access when it is reasonably satisfied that the cause of a suspension has been removed.

7.2 The Sponsoring Fund's right to instruct Westpac to suspend/terminate access.

The Participating Employer acknowledges that the Sponsoring Fund may, at any time without notice or liability to the Participating Employer, instruct Westpac to suspend and/or terminate the Participating Employer's access to QuickSuper or its use of QuickSuper for any reason including, without limitation, because the Participating Employer no longer meets the Sponsoring Fund's eligibility criteria for QuickSuper.

8. Intellectual property

8.1 Existing material.

Nothing in this Agreement is intended to transfer title to any party's Intellectual Property Rights in respect of material, information, know how, skills, methodologies or tools existing at the date these terms and conditions are accepted.

8.2 New material.

Ownership of all Intellectual Property Rights whether arising directly or indirectly out of the performance of the obligations under this Agreement or as a result of any modifications or changes to any technology relating to QuickSuper will from the time of its creation vest in Westpac, excluding the programs written by the Participating Employer to create Files.

9. Promotion and advertising

9.1 Advertising and promotional material.

The Participating Employer may not use any advertising material advising or promoting the availability of the QuickSuper facility if such material:

- (a) has not previously been submitted to Westpac for its approval; or
- (b) has been submitted for approval and has not been duly approved by Westpac.

Westpac's approval of the Participating Employer's advertising material advising or promoting the availability of the QuickSuper facility must not be unreasonably withheld or delayed.

9.2 Westpac Banking Corporation logo.

The Participating Employer expressly undertakes and agrees, prior to final production, of any publicity material or any other publication containing any description of or any reference whatsoever to Westpac:

- (a) to obtain Westpac's written approval in respect of any use of Westpac's logo or trademark;
- (b) To obtain Westpac's written approval in respect of any use of Westpac's name or otherwise refer to Westpac in connection with the QuickSuper product.

Westpac's approval with regard to clauses 9.2(a) or 9.2(b) must not be unreasonably withheld or delayed.

10. Indemnity

10.1 Indemnity.

The Participating Employer agrees to indemnify and hold Westpac and its employees and agents harmless against any and all losses, reasonable expenses, actions, proceedings, suits, claims or demands including all reasonable legal and other related fees or charges which Westpac may suffer or incur or for which Westpac may become liable as a result of or in connection with:

- (a) any negligence, misrepresentation, omission, fraud, breach or non-compliance on the part of the Participating Employer, its employees or agents with respect to the performance of the Participating Employer's obligations under this Agreement;
- (b) Westpac having relied upon a direction or notice of the type contemplated by this Agreement given to it by the Participating Employer in circumstances where it was reasonable for Westpac to do so;
- (c) the proper performance by Westpac of any duty or obligation under this Agreement; or
- (d) the failure by the Participating Employer to comply with any provision of this Agreement,

and also against reasonable costs and expenses which Westpac may properly incur in consequence of any such claim, demand, action, suit or proceeding, provided always that the loss, expense, action, proceeding, suit, claim or demand is not caused by or result from any fraud, wilful misconduct or negligence on the part of Westpac or any of its employees, agents or subcontractors.

10.2 Independent obligation.

Each obligation under this clause:

- (a) is a separate, independent and continuing obligation payable on demand; and
- (b) survives termination or discharge of this Agreement or the QuickSuper Facility made available under it.

10.3 No liability for Consequential Loss.

Under no circumstances will either party be liable to the other or any third party for any Consequential Loss in connection with its obligations under this Agreement.

11. Confidentiality

11.1 Obligation of Confidentiality.

Subject to this clause, the parties will keep confidential, and will not disclose, display, discuss or provide any Confidential Information that comes into their possession as a result of any aspect of this Agreement.

11.2 No Obligation of Confidentiality.

The obligation of confidentiality in clause 11.1 will not apply to any Confidential Information where:

- (a) Westpac discloses information about the Participating Employer's use of QuickSuper under this Agreement to the Sponsoring Fund. The Participating Employer agrees that Westpac is entitled to disclose any information in its possession about the Participating Employer's use of QuickSuper pursuant to these terms and conditions to the Sponsoring Fund and agrees that if the Sponsoring Fund uses or misuses Confidential Information of the Participating Employer provided by Westpac to the Sponsoring Fund (including any details about payments made by the Participating Employer and any personal information of the Participating Employer's Employees that the Sponsoring Fund may access), then it has no claim against Westpac;
- (b) it comes lawfully into the public domain;
- (c) it is known to either party prior to the commencement of negotiations for this Agreement;
- (d) it is required to be disclosed pursuant to any legislation or legal process;
- (e) it is required to be disclosed to an Employee, a Superannuation Fund or both but only to the extent that the information is required for the purpose of giving effect to the transactions as contemplated by this Agreement; or
- (f) if it is required to be disclosed to Westpac's officers, employees, legal or financial advisers, auditors or to any other person in Australia or overseas (including any subcontractor of Westpac appointed under clause 26) for the purposes of giving effect to this Agreement or assisting in the performance of Westpac's functions and activities.

11.3 Continuation.

This clause continues after the termination of the arrangements embodied in this Agreement.

12. Termination

12.1 Termination with notice.

Either party may terminate this Agreement by providing 30 days' written notice to the other party.

12.2 Termination without notice (general).

Without prejudice to any other rights either party may have under this Agreement or at law, and except to the extent otherwise limited by operation of any law, a party shall have the right to terminate this Agreement forthwith by giving notice thereof to the other party if:

- (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 14 days of being notified of same by Westpac;
- (b) 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 an effect on the other party's ability to observe its obligations under this Agreement;
- (c) the other party ceases to carry on business generally;
- (d) the other party makes a general assignment for the benefit of its creditors; or
- (e) the other party 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.

12.3 Effect of any Termination.

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:

- (a) accrued prior to the time of termination;
- (b) otherwise relate to or may arise at any future time from any breach of this Agreement which occurred prior to the time of the termination; and
- (c) the right of Westpac to recover from the Participating Employer moneys owing to it under or in connection with this Agreement.

12.4 Consequences of Termination.

On termination of this Agreement the Participating Employer must:

- (a) cease to use QuickSuper, the QuickSuper trademark and name;
- (b) immediately advise all the Beneficiaries that remittance of payments from the Participating Employer through QuickSuper is no longer possible; and
- (c) return to Westpac all Confidential Information relating to QuickSuper in the Participating Employer's possession or control.

13. Notices

13.1 Form.

Unless otherwise specified in this Agreement, all notices and other communication given or made under this Agreement:

- (a) must be in writing;
- (b) must be delivered by hand, prepaid post, or facsimile or email to the street or email address or facsimile number of the recipient notified to the sender by the recipient and will be deemed to be duly given or made:
 - (i) in the case of delivery in person, when delivered to an agreed address;
 - (ii) in the case of delivery by post, when delivered to an agreed address;
 - (iii) if transmitted by facsimile, on the day of transmission, but only on production of an "error free" transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; or
 - (iv) in the case of an email sent to an agreed address, on receipt by the sender of a notice or advice confirming receipt by the owner of that address (other than a system generated notice); and
- (c) if delivery or receipt is on a day which is:
 - (i) in the case of delivery or receipt by Westpac, a day which is not a Banking Day;
 - (ii) in the case of delivery or receipt by the Participating Employer, a day on which business of the type conducted by the Participating Employer is generally not carried on at its agreed address; or later than 4 p.m. (Sydney time), then it will be taken to have been duly given or made at the commencement of business on the next Banking Day or day on which such business is generally carried on by the Participating Employer in that place, as applicable.

13.2 Change of address.

Either party may change its address for the purpose of this Agreement by giving notice of that change to the other party in accordance with the provisions of this clause.

14. Representations and warranties

14.1 Representations and warranties by Participating Employer.

Westpac is not required to provide the Participating Employer with access to QuickSuper unless:

- (a) The Participating Employer is a corporation, organisation or other entity validly existing under the laws of the place of its incorporation, registration or creation 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) The Participating Employer 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) All necessary resolutions have been duly passed and all consents, approvals and other procedural matters, as required by the Participating Employer's constitution and the Corporations Act, in relation to the execution, delivery or performance by the Participating Employer and the validity and enforceability of this Agreement and the transactions contemplated by this Agreement have been obtained or effected.
- (d) The persons accepting this Agreement on behalf of the Participating Employer have been properly authorised and empowered to do so.
- (e) In accepting and in giving effect to this Agreement, the Participating Employer has not knowingly contravened and will not knowingly 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.
- (f) This Agreement is a valid and binding obligation of the Participating Employer enforceable in accordance with its terms, subject to any necessary stamping and registration.
- (g) No resolution has been passed and no petition has been presented or order made for its winding up or liquidation or administration.

14.2 Undertakings.

The Participating Employer undertakes as follows:

- (a) It will ensure that all authorisations required for:
 - (i) the execution, delivery and performance of this Agreement and the transactions contemplated including the content of each File and/or Payment File;
 - (ii) the validity and enforceability of this Agreement; and
 - (iii) 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) It will comply with its obligations under all applicable laws, including without limitation the *Corporations Act 2001* (Cth), with respect to the matters for which the Participating Employer has engaged Westpac to provide services under this Agreement.

14.3 Reliance on representations, warranties and undertakings.

- (a) The Participating Employer acknowledges that each representation and warranty made by the Participating Employer is ongoing while the Agreement is in place, and the Participating Employer should notify Westpac as soon as practicable if any of the representation and warranties cease to be true.
- (b) All representations and warranties survive the execution and delivery of this Agreement

15. Force majeure

Neither party will be liable to the other for any loss or damage, nor be in default under the terms of this Agreement, for failure 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 including, without limitation, strikes, demonstrations, lockouts, labour disputes, acts of God, acts of nature, acts of governments or their agencies, fire, flood, storm, riots, power shortages or power failure; sudden or unexpected system failure or disruption by war, sabotage or inability to obtain sufficient labour, raw material, fuel or utilities.

16. Assignment

Neither party may assign or otherwise deal with any part of its rights or obligations under this Agreement without the prior written consent of the other which shall not be unreasonably withheld.

17. Severability

- (a) If any provision of this Agreement is void, unenforceable or illegal for any reason the remainder of this Agreement shall remain otherwise in full force and effect apart from such a provision which shall be deemed deleted. This will not affect the validity or enforceability of that provision in any other jurisdiction.
- (b) This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

18. Waiver

- (a) The waiver by a party of a breach of any provision of this Agreement shall not be construed as a waiver of any succeeding breach of the provision nor as a waiver of the provision itself.
- (b) The failure of a party, at any time, to require performance by the other party of any provision hereof shall not affect the party's right to require such performance at any time thereafter.
- (c) 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.
- (d) Waivers must be in writing.

19. Change in Law

Westpac reserves the right to further vary any of the terms of this Agreement that are necessary to reflect or comply with a Change in Law.

20. Relationship

- (a) Westpac's relationship with the Participating Employer 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.
- (b) The Participating Employer and Westpac acknowledge that, except to the extent otherwise expressly provided in this Agreement:
 - (i) 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
 - (ii) 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.

21. Governing law

This Agreement is governed by the laws in force in New South Wales and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that State.

22. The Banking Code of Practice

- (a) Westpac has adopted the Banking Code of Practice (“Banking Code”). The Banking Code sets out the standards of practice and service for Australian banks to follow when dealing with certain customers.
- (b) If Westpac provides the Participating Employer with a ‘banking service’ and the Participating Employer is an ‘individual’ or a ‘small business’ (each term as defined in the Banking Code), the relevant provisions of the Banking Code will apply in addition to, and prevail to the extent of any inconsistency with, these terms and conditions.
- (c) The Participating Employer can obtain a copy of the Banking Code from Westpac’s website, Westpac’s Transactional Banking Client Managers or any of Westpac’s branches. The Participating Employer can contract Westpac if it would like to discuss whether or not the Banking Code will apply to it..
- (d) Westpac recommends that its customers:
 - (i) inform Westpac promptly if they are in financial difficulty; and
 - (ii) carefully read the terms and conditions applying to each banking service including these QuickSuper terms and conditions.

23. Anti-Money Laundering and Counter-Terrorism Financing

23.1 Acknowledgments.

- (a) The Participating Employer acknowledges that Westpac has obligations under the AML Requirements to, amongst other things, ensure that it:
 - (i) does not provide certain products to any person unless that person has been identified in accordance with the AML Requirements;
 - (ii) does not open or conduct any transaction on an account unless the person on whose instructions it acts (whether those instructions are written or electronic and signed or unsigned) has been identified in accordance with the AML Requirements; and
 - (iii) monitors certain types of transactions and reports certain types of activity.
- (b) The Participating Employer also acknowledges that:
 - (i) transactions may be delayed, blocked, frozen or refused where Westpac has reasonable grounds to believe that they breach AML Requirements or other Australian law or sanctions;
 - (ii) Westpac may from time to time require additional information from the Participating Employer to assist in or to ensure its compliance with AML Requirements. The Participating Employer will promptly provide any information requested for and relevant to this purpose; and
 - (iii) where Westpac considers it is obliged to do so under AML Requirements, it will disclose information to regulatory and/or law enforcement agencies, banks, service providers or to other third parties and may be prohibited from advising the Participating Employer that such disclosure has been made.

23.2 Undertaking.

The Participating Employer acknowledges that;

- (a) each person that is given authority to provide Payment Instructions to Westpac in relation to the QuickSuper service may need to be identified in accordance with the AML Requirements by Westpac or by an officer, employee, agent or contractor of the Participating Employer approved by Westpac as a Verifying Officer in relation to QuickSuper transactions (“Verifying Officer”) or by other means acceptable to Westpac. This applies whether such instructions are to be given electronically or in writing or otherwise and whether they are to be signed or not; and
- (b) only people identified in accordance with paragraph (a) are to provide instructions of the type referred to in that paragraph on behalf of the Participating Employer.

24. Privacy Obligations

This clause applies if personal information (including of any staff or authorised users of the Service) is provided to Westpac by or on behalf of the Client or collected directly by Westpac in relation to any Service (Services PI). With respect to Services PI, in addition to complying with its own obligations under the Privacy Act, the Client must:

- a) take reasonable steps to notify (or, if requested, assist Westpac to notify) each individual whose personal information may be collected by or provided to Westpac that Westpac will collect, use and disclose Services PI in accordance with the Westpac Privacy Statement, which can be found at westpac.com.au/privacy/privacy-statement or obtained by contacting your Relationship Manager or Westpac representative;
- b) with respect to any incident or data breach involving Services PI:
 - (i) immediately notify Westpac in writing to your Relationship Manager; or
 - (ii) provide such assistance as Westpac may reasonably request, or comply with any reasonable direction Westpac may give, regarding notification or resolution of any incident or data breach (however arising).

To the extent that it applies, the Client must comply with the *Privacy Act 1988* (Cth) in relation to any personal information it provides to Westpac in connection with this Agreement, and if the Client engages in activities in a jurisdiction other than Australia, it must comply also with the applicable privacy laws in that jurisdiction.

25. Privacy Statement

(for individuals whose personal information may be collected – in this clause referred to as “you”)

All personal information and credit-related information (if applicable) we collect about you is collected, used and disclosed by us in accordance with our Privacy Statement which is available at westpac.com.au/privacy/privacy-statement or by calling us through your relationship manager or Westpac representative. You do not have to provide us with any personal information or credit information (if applicable) but, if you don't, we may not be able to process an application or a request for a product or service.

Where individuals engage with us in relation to products and services for our business, corporate or institutional customers (for example, as representative, administrator, director, corporate officer, signatory, beneficiary or shareholder of one of our customers) our Privacy Statement will be relevant to those individuals where we collect and handle their personal information. For example, where we collect their personal information to verify their identity or collect their signature as a signatory on a corporate account.

26. External service providers

While Westpac will remain responsible for the performance of its obligations, we may subcontract any of our rights and obligations to another person in Australia or overseas.

Westpac may disclose or share any information you provide to us with any such person. With respect to any personal information, details of the countries where the overseas recipients are likely to be located is contained in the Westpac Privacy Statement which is available at westpac.com.au/privacy/privacy-statement (as updated from time to time).

Any disclosure by Westpac of confidential information to another person is subject to clause 11.

Schedule 1

Fee Schedule.

Fee Description	Item Type	Charge Cycle	Price (including GST)
QuickSuper Monthly	QSMONFEE	Monthly	\$0.00
QuickSuper Establishment	QSESTFEE	Once only	\$0.00
QuickSuper Fund Return	QSRETURN	Per fund return	\$0.00
QuickSuper Trace Request	QSTRACE	Per trace	\$0.00
QuickSuper Contribution (EFT)	QSTFEFT	Per transaction	\$0.00
QuickSuper Choice Contribution Service Fee*	QSCCSFEE	Per transaction	\$0.165

*Where a Sponsoring Fund has elected not to pay Westpac for the Participating Employer's outbound Choice Contributions, the Participating Employer is responsible for paying Westpac for the transaction fees relating to those contributions. If the Participating Employer does not pay these fees, the Participating Employer's contributions will not be processed.

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