

# Single Touch Payroll Referring Fund Terms and Conditions

Effective date: : 9 November 2023



**Accessibility support.**

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# TERMS AND CONDITIONS OF SINGLE TOUCH PAYROLL BACKGROUND

- A. Single Touch Payroll (*STP*) is an online service which allows:
- (a) Employers; and
  - (b) Bureaus on behalf of their Employer clients.
- to report Employees' payroll information (such as salaries and wages, PAYG withholding and superannuation information) to the ATO.
- B. You (the *Employer* or *Bureau* as the case may be) are a client of a superannuation fund (the *Referring Fund*) which has an arrangement with Westpac Banking Corporation (*Westpac*) regarding the utilisation of STP by Employers or Bureaus.
- C. You wish to engage Westpac to facilitate reporting of Employee payroll information to the ATO using STP.
- D. Subject to your acceptance of these terms and conditions, and in consideration of your compliance with these terms and conditions, Westpac has agreed to process payroll information files on your behalf subject to these terms and conditions.
- E. To become entitled to use STP you must:
- (a) accept these terms and conditions;
  - (b) accept the terms and conditions for QuickSuper on the QuickSuper Portal;
  - (c) complete the online registration process on the QuickSuper Portal for both QuickSuper and STP; and
  - (d) complete a Direct Debit Request and accept the terms and conditions of Westpac's DDR Service Agreement (available on the QuickSuper Portal).

## 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 you have authorised to act in the role of administrator for STP on your behalf. The Administrator(s) may be authorised to, among other things:

- (i) identify, add, amend and delete Users; and
- (ii) reset passwords, lock and unlock Users.

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

**APNL** means the Australian Payments Network Limited ABN 12 055 136 519.

**ATO** means the Australian Taxation Office.

**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 APNL 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 APNL as amended from time to time.

**Bureau** means registered business acting on behalf of multiple third party Employers.

**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) postal charges, 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).

**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 fines, penalties, charges or taxes payable by the Employer (including in respect of or connection with late lodgement of Files with the ATO);
- (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.

**DDR Service Agreement** means the service agreement available on the QuickSuper Portal which explains what your rights and obligations are when setting up a DDR arrangement with Westpac, and detailing what Westpac's obligations are to you.

**Digital Service Provider** means anyone who develops or provides digital services that assist the Australian community (including business) to meet their tax and superannuation obligations and may include:

- (a) an entity that is required to submit STP reports to the ATO;
- (b) an entity that processes payroll on behalf of employers; and
- (c) an entity that is registered with the Tax Practitioners Board to provide tax practitioner services who sends STP reports to the ATO.

**Direct Debit** means a debit payment that is directed to an account via BECS.

**Direct Debit Request (DDR)** means the authority and request given by you to and in favour of Westpac available on the QuickSuper Portal satisfying the requirements of the BECS Procedures and in the form required by Westpac pursuant to which Westpac will debit amounts to the Nominated Account.

**Documentation** means the documents made available to you, including any user guides, which provide you with all information reasonably necessary to determine how to use STP.

**Employee** means an employee registered by you within STP in respect of whom you report payroll information to the ATO.

**Employer** means a registered business within STP who wishes to report Employees' payroll information (such as salaries and wages, PAYG withholding and superannuation information) to the ATO, and includes Employers lodging Files on behalf of a Related Body Corporate.

**File** means an electronic file prepared by you 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.

**iLink** means system allows Westpac to accept instructions and receive data from you using straight through electronic communication between your systems and Westpac's systems to facilitate the provision by Westpac of transactional banking services. iLink services include the provision of reports and data to you and the processing of SMS messages from you to third parties.

**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 you accept these terms and conditions.

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

**Nominated Account** means the agreed account of yours located in Australia which Westpac will debit for the purposes of these terms and conditions.

**PAYG** means pay as you go withholding amounts collected by Employers in respect of Employees’ income tax obligations.

**QuickSuper** means a service offered by Westpac designed to facilitate the electronic remittance of superannuation rollover and contribution payments from Employers to superannuation funds for the benefit of members of the superannuation fund (usually employees of the contributor).

**QuickSuper Portal** means the portal which provides an interface for authorised users to interact with QuickSuper services and STP services, the link to which is [quicksuper.westpac.com.au](http://quicksuper.westpac.com.au) or as otherwise advised to you by Westpac in writing from time to time.

**Referring Fund** means the superannuation fund which has referred the Employer or Bureau to Westpac for the purpose of utilising STP under this agreement.

**Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Single Touch Payroll** or **STP** means an online reporting service offered by Westpac which is designed to facilitate the reporting of payroll and superannuation information to the ATO by you in respect of Employees in accordance with Australian government requirements.

**STP File** means a File created by Westpac in the format and containing information required by the ATO with respect to payroll information provided by you in respect of Employees.

**STP Instruction** has the meaning given to that expression in clause 2.8 (a) of this Agreement.

**STP Message** means a File created by Westpac (upon receiving an STP Instruction from you) which is compliant with the message standards mandated by the ATO.

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

**you** means the Employer or the Bureau as the case may be and **your** has a corresponding meaning.

## 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 Portal;
  - (x) a reference to any time is Sydney time.

## **2. The service.**

### **2.1 Description.**

- (a) STP is an online service which allows Employers and Bureaus to report Employees' payroll information (such as salaries and wages, PAYG withholding and superannuation information) to the ATO.
- (b) STP gives you access to a web self-service environment which provides for:
  - (i) registration and maintenance of Employer, Employee and (where applicable) Bureau details;
  - (ii) validation of STP data based on specifications made available to you by Westpac;
  - (iii) creation of a compliant STP Message for delivery to the ATO;
  - (iv) an indication of message status based upon information available to Westpac; and
  - (v) provision to you of responses to each message received from the ATO.

### **2.2 Access.**

Subject to this Agreement, Westpac will provide you with access to the STP services.

### **2.3 Registration.**

You acknowledge that:

- (a) Westpac requires you to register your details online with Westpac via web self-service;
- (b) You are responsible for updating and maintaining the Employer, Employee and (where applicable) Bureau details via online web self-service; and
- (c) by agreeing to these terms and conditions you are entering into a contract with Westpac as the provider of STP.

### **2.4 Amendments to STP Terms and Conditions.**

- (a) Westpac may change the terms and conditions that apply to STP at any time in response to changes in the way that we provide STP services, changes in regulation or where otherwise necessary to protect our legitimate interests, and will notify you of any changes by notice which will be presented to you when you next attempt to access the QuickSuper Portal.
- (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 you cannot reasonably be contacted.
- (c) Unless Westpac has given you instructions otherwise regarding the notice period and form of notices to be provided, you agree that Westpac may notify you of changes as follows:
  - (i) new fee or variation of a fee – 30 days in advance;
  - (ii) the introduction or change to a government charge – in advance of the change or as soon as practicable afterwards unless the change has already been published by a government, government agency or representative body;
  - (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 – in advance of the effective date of the change.
- (d) Where you do not wish to be subject to such changes as described at clauses 2.4(c)(i) and 2.4(c)(iii), you may terminate this Agreement, without penalty, in accordance with clause 12.1.

### **2.5 Format of Files or Online Web Screens.**

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

### **2.6 Online Web Screens.**

You agree to use the standard online web screens as provided by Westpac. Westpac may, acting reasonably, change the information required from you to be included in the web screens by giving you reasonable notice.

## 2.7 Connecting with Westpac.

You may access STP services via the QuickSuper Portal or via iLink system (provided that you have entered into a separate agreement with Westpac for iLink system).

## 2.8 STP Instructions.

- (a) When using the STP service you agree to import Files using online web self-service (each an “STP Instruction” and together the “STP Instructions”).
- (b) Upon receipt of an STP Instruction from you Westpac will:
  - (i) perform limited validation of the data contained in the File submitted by you in accordance with the Documentation;
  - (ii) prepare an STP Message which will be queued for delivery to the ATO;
  - (iii) poll the ATO for a response to the STP Message; and
  - (iv) upon receipt of a response from the ATO, provide that response to you.
- (c) You acknowledge and agree that Westpac will not be responsible for ensuring that:
  - (i) You have sent STP Instructions on any given Banking Day; or
  - (ii) all required payroll and other information is contained in each STP Instruction; or
  - (iii) payroll and other information contained in each STP Instruction is accurate.

## 2.9 Validity of STP Instructions.

You acknowledge that:

- (a) you are solely responsible for the accuracy and correctness of the payroll and other information provided in STP 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 STP Instructions as being undertaken with your authority without being required to verify that authority in any case;
- (c) Westpac is not required to check the accuracy of any STP Instructions;
- (d) you are responsible for updating changes in Employees’ data or information, adding new Employees or making any other changes as required before sending STP Instructions;
- (e) you 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 STP Instructions.

## 2.10 Cancellation of STP Instructions.

Given STP services is a web self-service which operates under your direction, Westpac will, and is only required to, use reasonable endeavours to cancel an STP Instruction if Westpac has not already executed that STP Instruction. Westpac will provide notice to you where it has not been able to cancel an STP Instruction.

## 2.11 Delays.

You acknowledge that Westpac will not be responsible for delays that may occur in transmitting data Files to the ATO where:

- (a) there is a public or bank holiday on the day you send the STP Instructions to Westpac;
- (b) STP Instructions are received either on a day which is not a Banking Day;
- (c) the STP Instructions contain errors; or
- (d) the ATO’s systems are unable to receive Files.

## 2.12 Errors.

- (a) If a File you import contains technical errors that prevent Westpac from accessing or processing the File, Westpac will reject the File and will notify you within a reasonable period of time that the File has been rejected.
- (b) You will correct any errors contained in the File and re-import the File to Westpac for processing.
- (c) Westpac will have no obligation to process a File that contains technical errors preventing Westpac from accessing or processing the File.



- (d) In the case of information entered online via web self-serve an error message will be displayed in real time for non-supply of information in mandatory fields.

## 2.13 Backup of Files.

QuickSuper does not retain Employee data for future retrieval. You must maintain reasonable backups of Files imported to QuickSuper and must re-import any File to QuickSuper if reasonably requested to do so by Westpac.

## 3. Fees, Charges, Taxes and Expenses.

### 3.1 Fees and charges payable.

You will pay the fees for STP set out in the fee schedule on the QuickSuper Portal or in the fee schedule as provided to you upon request.

### 3.2 Variation of fees and charges.

- (a) (**variable pricing**) Where Westpac has not agreed to hold the fees and charges payable by you under this Agreement fixed for any period of time, Westpac may at any time review the fees and charges payable under this Agreement or introduce a new fee or charge to reflect changes in the costs incurred by Westpac in providing STP services. Westpac may do this by giving written notice of the new or varied fee or charge, which will be presented to you when you next attempt to access the QuickSuper Portal, at least 30 days prior to the day on which the new or varied fee or charge takes effect. The reasons why Westpac may change the variable price include (but are not limited to) changes to the cost or risk of providing services to the Employer.
- (b) (**fixed pricing**) Where Westpac has agreed to hold the fees and charges payable by you under this Agreement fixed for a period of time (the **Term**), subject to paragraph (c) of this clause 3.2 the fees and charges payable by you under this Agreement may not be varied by Westpac for the Term. At the conclusion of the Term, Westpac may review the fees and charges payable under this Agreement or introduce a new fee or charge to reflect changes in the costs incurred by Westpac in providing STP services. Westpac may do this by giving written notice of the new or varied fee or charge, which will be presented to you when you next attempt to access the QuickSuper Portal, at least 30 days prior to the day on which the new or varied fee or charge takes effect.
- (c) Notwithstanding paragraph (b) of this clause 3.2, where Westpac determines (acting reasonably) that or a Change in External Costs, which is outside of Westpac's control has the effect of increasing Westpac's costs of providing the services under this Agreement, then Westpac may vary the fees and charges payable under this Agreement upon 30 days written notice (setting out the nature of the increase and the fees and charges affected), which will be presented to you when you next attempt to access the QuickSuper Portal. A variation will be effective from the date specified in the notice.

### 3.3 Costs taxes and expenses.

Where payable by Westpac, you must pay any stamp, transaction and other similar duties and charges in relation to this Agreement and any document related to this Agreement to which you are a party, as well as Westpac's costs in collecting payment of any amount due to Westpac under this Agreement.

### 3.4 Goods and Services Tax.

- (a) Unless stated differently in the fee schedule appearing on the QS Portal, the amounts payable to Westpac under this Agreement do not include any goods and services tax or similar tax by whatever name called ("GST").
- (b) 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 increase to include an additional amount on account of GST, such amount will be calculated by multiplying the value of the amount payable or to be provided by you for the relevant taxable supply by the prevailing GST rate. Any additional amount paid or payable on account of GST shall be calculated and shall be payable by you without any deduction or set-off of any amount payable by Westpac to you.
- (c) 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 you the amount of GST recovered or recoverable from you shall be adjusted by Westpac repaying to you the amount of the overpayment or by you paying to Westpac the amount of the underpayment, as the case may be.

### **3.5 Payment of fees, charges, taxes and expenses.**

- (a) You authorise Westpac to debit the Nominated Account each month for any amounts payable by you under this Agreement. Each month Westpac is to provide a billing statement itemising all fees, charges, taxes and expenses; and
- (b) where there are insufficient funds available in the Nominated Account to meet the fees and charges payable by you under this Agreement, Westpac will debit the Nominated Account for those fees and charges 7 days after the first attempt. If there continue to be insufficient funds available in the Nominated Account on the second attempt, Westpac may suspend your access to STP until you have paid the outstanding fees and charges in full.

### **3.6 Authority to Debit Nominated Account, Direct Debit Request.**

You acknowledge that:

- (a) Westpac requires an authority to debit the Nominated Account. The form of the authority required is the DDR or such other form of authority as Westpac may approve. Before being able to use STP you must complete a DDR and accept the terms and conditions of Westpac's DDR Service Agreement (available on the QuickSuper Portal) or otherwise have satisfied the conditions required by Westpac. By accepting the terms and conditions in Westpac's DDR Service Agreement you also give permission to Westpac to debit the Nominated Account as per the authority required for DDR arrangements;
- (b) the Nominated Account must be with a financial institution located in Australia; and
- (c) where a Direct Debit to your Nominated Account fails for any reason, any fees and charges arising from such failure will be included in the amount deducted from your Nominated Account in the following month and such amount will be included in the billing statement for the following month.

## **4. Westpac Obligations.**

Westpac agrees to provide:

- (a) the Documentation necessary to enable you to carry out the preparations to obtain access to QuickSuper (the "Documentation").
- (b) maintenance, application and technical support during the Hours of Operation.
- (c) notice of any enhancement or modification to QuickSuper or STP and all program material necessary for you to use the enhancement or modification.

Westpac further agrees, subject to clause 11, to comply with the Privacy Act and Australian Privacy Principles in relation to personal information provided to it.

## **5. Your Obligations.**

### **5.1 Positive Obligations.**

- (a) You must:
  - (i) take reasonable steps to ensure that only those persons nominated by you who have been registered as User by you have access to STP;
  - (ii) take reasonable steps to ensure that you and all persons authorised by you to access STP keep all access codes secret and secure;
  - (iii) take reasonable steps to ensure that anyone who has access to STP 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 your administrative details, in particular with regard to the Nominated Account, are kept up to date on the QuickSuper Portal 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 STP which materially adversely affects your use of STP, maintain reasonable backups of Files imported to QuickSuper and re-import any File to QuickSuper if reasonably requested to do so by Westpac;
  - (vi) use STP 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; and
  - (vii) ensure that:
    - (A) your XML payload has been developed in accordance with ATO specifications;

- (B) your payroll solution contains the authorisations and declarations required by the ATO; and
  - (C) you meet your obligations in relation to its certification as a Digital Service Provider.
- (b) You acknowledge and agree that your use of STP and your activities on STP are logged by QuickSuper and Westpac may inspect those logs from time to time.
  - (c) You acknowledge that you are responsible to ensure the accuracy and appropriateness of the information reported by you using STP and that Westpac takes no responsibility in the event that there are errors in the payroll information reported using STP.

## 5.2 Negative Obligations.

You must not:

- (a) perform or allow any third party to perform maintenance or repair work, alterations or modifications of any nature whatsoever to STP or Documentation, without the express prior written consent of Westpac;
- (b) attempt to change any Westpac hosted screens as part of the STP offering;
- (c) decompile, disassemble, reverse engineer, modify, enhance or alter the whole or part of STP, except as you are legally authorised to do by the *Copyright Act 1968* (Cth) and then only to the extent allowed by that Act;
- (d) copy STP or Documentation or allow anyone else to do so except as and to the extent which is reasonably necessary for your own backup purposes; or
- (e) remove, deface or obscure any identification or copyright notices on the QuickSuper Portal.

## 6. Your responsibilities.

You agree and acknowledge that you are responsible for:

- (a) providing and maintaining suitable equipment, operating system software and network infrastructure to access the QuickSuper Portal and STP including any variation made to STP from time to time. The minimum software required to access QuickSuper from time to time appears in the Minimum Requirements. You acknowledge that if Westpac varies STP, the resultant version may be the only one able to be used from the notified date and STP may not function satisfactorily unless any updates and new versions provided by Westpac are installed or adopted promptly by you, all Westpac directions are complied with and upgrades are made to relevant software used in conjunction with STP that appear in the Minimum Requirements;
- (b) providing your own internet connectivity and sufficient bandwidth to and from your location to enable access to STP as it may be amended from time to time. Minimum connectivity and bandwidth requirements appear in the Minimum Requirements. As access to STP is dependent on connection to the internet, Westpac does not warrant or represent that access to STP will be error free or uninterrupted;
- (c) maintaining reasonable backups of Files imported to QuickSuper and re-import any File to QuickSuper if reasonably requested to do so by Westpac. Westpac is not responsible for losses or liability which is directly caused by the Employer's failure to maintain appropriate security and backups of Files;
- (d) maintaining the confidentiality of all information you receive when using STP and for complying, in all respects, with the *Privacy Act 1988* (Cth). Information should not be disclosed unless the disclosure complies with the *Privacy Act 1988* (Cth); and
- (e) addressing and resolving all service and support issues associated with software and hardware provided by third parties used by you to access STP including connectivity issues, internet browser functionality and back office functionality. You must ensure that your personnel are aware of the appropriate contact numbers for obtaining support for software.

You agree that if you utilise any other means of accessing STP you are responsible for providing and maintaining all hardware, software and other equipment necessary for transmission or receipt of communications to and from STP.

## 7. Suspension and Termination of Access.

### 7.1 Westpac's right to suspend/terminate access.

- (a) Without limiting clauses 3.5(b) or clause 12 of this Agreement, Westpac may, at any time and wherever possible with reasonable notice to you, suspend and/or terminate your access to STP on the following grounds:
  - (i) Westpac reasonably considers that you have breached any of your material obligations under this

Agreement and the breach is either not capable of being remedied or you have not remedied the breach within 14 days of being notified of same by Westpac;

- (ii) Westpac has reasonable concerns about your solvency or the solvency of your business;
  - (ii) Westpac has reasonable grounds to suspect that you have fraudulently processed transactions or activities, or have knowingly allowed fraudulent transactions or activities to be processed through your STP facility;
  - (iii) it is necessary for Westpac to carry out urgent repairs to STP, the QuickSuper Portal or Westpac's network;
  - (iv) Westpac is required to do so by an order, instruction or request of any Government Agency (including the ATO) or emergency service;
  - (v) Westpac reasonably believes that your connection to STP will or may cause technical incapacity to STP 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; or
  - (vii) you fail to pay Westpac for the STP services within 7 days.
- (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 Referring Fund's right to suspend/terminate access.**

You acknowledge that the Referring Fund may, at any time without notice or liability to the you, instruct Westpac to suspend and/or terminate your access to STP or your use of STP for any reason including, without limitation, because you no longer meet Referring Fund's eligibility criteria for STP.

## **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 STP will from the time of its creation vest in or be assigned to Westpac, excluding the programs written by you to create the Files.

## **9. Promotion and advertising.**

### **9.1 Advertising and promotional material.**

You may not use any advertising material advising or promoting the availability of the STP 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 your advertising material advising or promoting the availability of the STP facility must not be unreasonably withheld or delayed.

### **9.2 Westpac Banking Corporation logo.**

You expressly undertake and agree, 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 STP facility.

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.

You agree 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 your part, or on the part of your employees or agents with respect to the performance of your obligations under this Agreement;
- (b) Westpac having relied upon a direction or notice of the type contemplated by this Agreement given to it by you 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;
- (d) your failure to comply with any provision of this Agreement; or
- (e) Westpac initiating debits in reliance on incorrect account information provided by you, 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 error, 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 STP 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) it comes lawfully into the public domain;
- (b) it is known to either party prior to the commencement of negotiations for this Agreement;
- (c) it is required to be disclosed pursuant to any legislation or legal process;
- (d) it is required to be disclosed to an Employee, the ATO 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;
- (e) Westpac discloses information about your use of STP under this Agreement to the Referring Fund. You agree that Westpac is entitled to disclose any information in its possession about your use of STP pursuant to these terms and conditions to the Referring Fund and agree that if the Referring Fund uses or misuses your Confidential Information provided by Westpac to the Referring Fund (including any details about any personal information of Employees that the Referring Fund may access), then it has no claim against Westpac; or
- (f) 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 23) for the purposes of giving effect to these terms and conditions 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.

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;
- (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 you moneys owing to it under or in connection with this Agreement.

### 12.4 Consequences of Termination.

On termination of this Agreement you must:

- (a) cease to use STP; and
- (b) return to Westpac all Confidential Information relating to STP in your 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;
  - (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);

- (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; or
  - (ii) in the case of delivery or receipt by you, a day on which business of the type conducted by you is generally not carried on at its agreed address; or
  - (iii) later than 4:00pm (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 you 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 Employer.**

Westpac is not required to provide you with access to STP unless:

- (a) You are a corporation, organisation or other entity validly existing under the laws of the place of your incorporation, registration or creation and you have entered into this Agreement in your own right and not as a trustee of any trust or as agent on behalf of any other entity.
- (b) You have all the necessary power to enter into and perform your obligations under this Agreement, to carry out the transactions contemplated by this Agreement and to carry on your 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 your constitution and the Corporations Act, in relation to the execution, delivery or performance by you 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 your behalf have been properly authorised and empowered to do so.
- (e) In accepting and in giving effect to this Agreement you have 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 your constitution, or any deed, Agreement or other document to which you are a party.
- (f) This Agreement is your valid and binding obligation 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 your winding up or liquidation or administration.

### **14.2 Undertakings.**

You undertake as follows:

- (a) you 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;
  - (ii) the validity and enforceability of this Agreement; and
  - (iii) the carrying out by you of your business as now conducted or contemplated are obtained and promptly renewed and maintained in full force and effect.
- (b) you will comply with your obligations under all applicable laws, including without limitation the *Corporations Act 2001* (Cth), with respect to the matters for which you have engaged Westpac to provide services under this Agreement.

### **14.3 Reliance on representations, warranties and undertakings.**

- (a) You acknowledge that each representation and warranty made by you is ongoing while the Agreement is in place, and you 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 you 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) You and Westpac each 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. 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](https://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.

## **22. 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](https://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.

## **23. External service providers.**

Whilst 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](https://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.

## **24. 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.



*Westpac acknowledges the traditional owners as the custodians of this land, recognising their connection to land, waters and community. We pay our respect to Australia's First Peoples, and to their Elders, past and present.*

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