

Merchant Business Solutions

Terms and Conditions.



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Introduction

You wish to be able to accept Cards from your customers or clients in payment for goods and/or services which you supply to them.

This booklet sets out the standard terms and conditions applying to the acceptance of Cards under the various types of merchant facilities provided by us.

If we approve an application from you for one or more of our merchant facilities, we will set up a Merchant Identification Number (MID) for you and send you an offer letter which will include a schedule of the fees and charges payable (the "Letter"). Included with the Letter will be:

- this booklet;
- the Merchant Operating Guide;
- the booklet "Protecting against Credit Card Fraud"; and
- the booklet "Payment Card Industry Data Security Standards".

(The abovementioned documents are collectively referred to in this booklet as the "Booklets".)

This booklet without the Letter is not an offer by us to you of a merchant facility. If you accept our offer in the manner described below, the Booklets and the Letter will comprise your legally binding Merchant Service Agreement Contract with us ("MSA Contract").

Please note, we have a number of merchant facility products. Some of these products require you to enter into an MSA Contract. If we agree to provide you with one or more of these products, your legally binding contract will consist of the MSA Contract and the other documents which we notify you will govern your use of that product(s) (such as, but not limited to, a Product Module).

You may accept our offer in any of the following ways:

1. For an electronic facility:
 - (a) by commencing to process Transactions through the Merchant Facility; or
 - (b) by taking delivery, either of any Equipment enabling the processing of Transactions under the Merchant Facility, or of any materials to be used by you during the currency of the Merchant Facility.
2. For an eCommerce facility:
 - (a) by commencing to process Transactions through the Merchant Facility; or
 - (b) by promoting and/or preparing a website where you will display your business goods or services for the purpose of obtaining payment by eCommerce Transactions; or
 - (c) If you are an eCommerce Merchant using a third party supplied facility, by contacting our Merchant Helpdesk to obtain a MID and Merchant Category Code.
3. For a facility using a manual imprinter only:
 - (a) by commencing to process Transactions through the Merchant Facility; or
 - (b) by taking delivery, of any Equipment enabling the processing of Transactions under the Merchant Facility, or of any materials to be used by you during the currency of the Merchant Facility.
 - (c) If you do not wish to accept our offer of a Merchant Facility, you must immediately contact us to withdraw your application whereupon we shall cancel your MID. Even if you have not done any of the things set out in (1), (2) or (3), you will be deemed to have accepted our offer if you have not contacted us to withdraw your application within fourteen (14) Business Days after the date the Letter.

You must not substantially change your line of business, or the types of goods or services that you supply to your customers or clients, without first notifying us and receiving our written consent.

If we approve a subsequent application from you for another type of merchant facility in connection with the subject business, the terms and conditions set out in this booklet will also apply as soon as you accept (as defined above) our offer of the new Merchant Facility.

Definitions

2.1 In this booklet unless the contrary intention appears:

Account	means the account nominated by you for acceptance of credit and debit entries under this Agreement (including settlement, Chargeback or billing purposes) and for related purposes;
Accredited Gateway Provider/Data Processor	means a gateway provider/data processor who has formal recognition of compliance with security standards and technical requirements from Westpac, and has been recommended by Merchant Business Solutions;
ADC	(being an Account Data Compromise) means any event whereby Westpac or you (or any of your officers or employees), or any Service Provider facilitating the storage, transmission or processing of Card payments for or on your behalf, suspect or have confirmation of unauthorised access to Cardholder Data;
Agreement	means the Booklets, the Letter, the Application for New Merchant Facility/ Upgrade, and any Manuals we provide to you;
Authorisation	means the response to you requesting our approval for a Card to be used for a particular Transaction, whether through operation of the Terminal or by telephone if there is a service interruption, see clause 4.3;
Business Day	means any day (other than a Saturday, Sunday or public holiday) between the hours of 9:00am and 5:00pm on which banks are open for business in the place specified in the details of the Letter where we are situated;

Card	<p>means:</p> <ul style="list-style-type: none"> (a) a valid payment card issued by a member or affiliate of MasterCard® on which the MasterCard marks appear; (b) a valid payment card issued by a member or affiliate of Visa on which the Visa marks appear; (c) a valid payment card issued by a member or affiliate of American Express® on which the American Express marks appear; (d) a valid payment card issued by a member or affiliate of UnionPay on which the UnionPay marks appear; (e) a Charge Card; (f) a valid payment card capable of acceptance under eftpos issued by a local bank or financial institution; (g) any other valid payment card that is issued under any loyalty program; or (h) any other valid payment card which we request you and you agree to honour, and includes a Virtual Card;
Card Scheme	means the MasterCard, Visa, UnionPay, and JCB card schemes, or any other card scheme provider that the Bank is a member of or participates in;
Cardholder	means a person to whom a Card has been issued;
Cardholder Data	means the account information of a Cardholder;
Cardlink	means Cardlink Services Limited ABN 60 003 311 644;
Cash Out	means a service where a Card Transaction is used by the Cardholder to obtain cash;
Chargeback	means a debit entry to your Account processed by us, and is the reversal of a credit previously made to your Account, in circumstances described in clause 6;

Charge Card	means a Card issued under any one of the following Card Schemes: American Express, Diners Club, Discover or JCB;
Confidential Information	includes but is not limited to Cardholder information including information you become aware of as a consequence of your Merchant Facility, information and material concerning the training methods, systems and manuals of the Bank and any other information we deem to be confidential information of Westpac;
Credit Card Transaction	<p>means a Transaction where the details of a credit Card have been presented and the Transaction is processed using either:</p> <ul style="list-style-type: none"> (a) a paper Credit Card sales voucher; (b) an electronic terminal without a PINpad; or (c) an electronic terminal with a PINpad and selecting the "Credit" button on the PINpad; or (d) any bank approved electronic device or internet based interface. <p>In this booklet, this definition applies even where the ultimate destination of a Card Transaction may be a deposit account;</p>
Data Breach	means any event whereby your business, or any Service Provider facilitating the transmission, storage or acceptance of your Credit Card payments, suspects or has knowledge of unauthorised access to confidential Card payment details;
Debit Card Transaction	means a Transaction performed using a Card where a cheque or savings account is selected using either a PINpad or an EFTPOS paper sales voucher;
Dynamic Currency Conversion	(DCC) means a facility which enables some Cardholders who have Cards issued by a non-Australian financial institution to elect to pay for goods or services in Australian dollars or their local currency at the time of the purchase. DCC is not available to all merchants and/or facility types, and is only available in a number of selected non-Australian currencies;
eCommerce Merchant	means a merchant who conducts the sale of goods or services electronically over the Internet, and who has been authorised by us to accept Credit Card Transactions over the Internet using an approved Payment Gateway;

eCommerce Merchant Facility	means any method and/or device utilised by you, or by any Service Provider/s on your behalf, and used to engage in the acceptance, transmission or storage of Credit card payment details. This definition includes but is not limited to all software, hardware, databases, digital image and physical records used and/or maintained by you or your Service Provider(s);
eCommerce Transaction	means a Transaction between you and a Cardholder where the Cardholder sends their payment Card data to you over the Internet, regardless of how the data is transmitted from you to us;
EFTPOS	means the Electronic Funds Transfer at Point of Sale system;
Electronically	means: <ul style="list-style-type: none"> • electronic communication to your nominated electronic address; or • making particulars of changes available at our website www.westpac.com.fj or www.westpac.com.pg (as applicable) and notifying you by electronic communication to your nominated electronic address;
Equipment	includes any Terminal, manual imprinter, sales vouchers, power cords, car adapters, docking cradles, the user and technical manuals and any other materials or items supplied by us from time to time or supplied by a third party and approved by us for use as Equipment;
GST	means any goods and services tax, or any tax applying in a similar way;
GST Law	means any Law imposing or relating to the imposition or administration of GST in the country in which your business operates;
JCB	means Japanese Credit Bureau;
Law	includes any law, statute, regulation, ordinance, proclamation, by-law, statutory instrument or order, Rules or codes of conduct issued by regulatory bodies;
Manual	includes the Merchant Operating Guide and any other practical operating instructions we or the Terminal Supplier provide;
MasterCard	means MasterCard International Incorporated;

Merchant Facility	means the facility made available to you to enable you to accept payments using Cards;
MID	means merchant identification number;
Multi-Currency Acquiring (MCA) Facility	means a merchant facility which we have approved to acquire Card Transactions in other currencies including the local currency of the country in which your business operates;
Multi Merchant	means one of a number of merchants who have individual merchant agreements with Westpac and transact their business through one shared Terminal;
Multi Merchant facility	provides a means whereby one of a number of merchants may process Transactions for their individual businesses through one shared Terminal;
PAN	means the Primary Account Number or Cardholder account number commonly located on the front of a Card;
Payment Gateway	provides a secure method for authorising Transactions over the Internet through a system accredited by Westpac;
PA-QSA	means Payment Application Qualified Security Assessor;
PCI PTS	means Payment Card Industry PIN Transaction Security;
PCIDSS	means Payment Card Industry Data Security Standards. This refers to the data security standards mandated by Visa and MasterCard to facilitate protection of Cardholder payment data from unauthorised access, which is applicable to any merchant who stores or transmits Card data regardless of that storage or transmittal device;
PCISSC	means the Payment Card Industry Security Standards Council, being a not-for-profit organisation responsible for the development of the PCIDSS, the PCI PTS and the PCI PA-DSS standards;
person	includes a company or corporation;
PIN	means personal identification number;
PINpad	means the device designed as part of, or for attachment to, a Terminal and which contains an alpha/number function keyboard by which the user nominates an account and enters a personal identification number;

Prepaid Sale	means the merchant receives payment from a Cardholder before the merchant has provided goods or services to the Cardholder;
Primary Merchant	means the merchant of a Multi Merchant facility who agrees to take full responsibility for the physical Terminal in accordance with section 3 of this booklet;
Quasi-Cash Merchant	is a merchant who carries out a Quasi-Cash Transaction;
Quasi-Cash Transaction	means a Transaction between you and a Cardholder where you sell items that are directly convertible to cash. Examples include (but are not limited to) money orders, traveller's cheques, precious metals and foreign currency;
Recurring Transaction	means when you make regular drawings on a Cardholder's Card with the Cardholder's written authority;
Related Members	has the meaning of 'related body corporate as that term is defined in the Australian Corporations Act 2001 (Cth);
Rules	means the Card Scheme rules set by MasterCard, Visa, JCB and any other Card Scheme provider that the Bank is a member of or participates in from time to time;
Secure Socket Layer (SSL)	means the encryption technology used on a server that encrypts important data such as credit Card numbers and other information when it is being stored or passed from one computer to another;
Sensitive Authentication Data	includes any full magnetic stripe, PIN verification or code otherwise known as CAV, CVC, CVC2, CVV, CVV2, PVV, PIN and PIN Block data and excludes the information listed in clause 4.13;
Service Provider	means the provider of any software or hardware that you utilise to assist with the acceptance of Card payment details;
Shopping Cart Vendor System	means the data processing system comprising the hardware, software and telecommunication network utilised by shopping cart vendor to provide services including any third party systems connected to a shopping cart vendor's hardware, software and telecommunications network;

Small Business	means a business having: (a) less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods, or (b) in any other case, less than 20 full time (or equivalent) people, unless the merchant facility is provided for use in connection with a business that does not meet the elements in (a) or (b) above;
Software	includes the operating system, application software and the terminal management software, and any updates issued from time to time;
Subsequent Merchant	means a merchant who is a member of a Multi Merchant facility and transacts business through a shared Terminal for which the Primary Merchant has full responsibility for the physical Terminal;
Terminal	means the EFTPOS hardware, its peripherals, the user and technical manuals provided by us and/or the Terminal Supplier and the software that is installed on that EFTPOS hardware, and includes any replacement hardware. "Software" includes the operating system, application software and the terminal management software, and any updates issued from time to time;
Terminal Access Services	means access to Westpac's Card Transaction network; services that facilitate Card Transactions, including the provision of the installation, maintenance, repair, training and other services, and the provision of a Terminal (including the right to use the software) of the type and configuration ordered by you; all as provided by us and/or the Terminal Supplier;
Terminal Supplier	means a person whom we may procure to offer to supply Terminal Access Services to you, and whose offer you accept;

Trade Mark	means any logo, symbol, trade mark, trade name, service mark, brand name, domain name, company or trading name, trading get up and similar right, whether registered or unregistered, belonging to us or any Related Members;
Transaction	includes a Debit Card Transaction and Credit Card Transaction as well as Sale Refunds as defined in clause 5;
UnionPay	means China UnionPay Co. Ltd;
Virtual Card	means a Card Scheme payment instrument validly issued under the authority of a Card Scheme, such as a 'virtual card' having a validly issued Card number with associated expiry date with no physical card issued, or a device using 'near field communication' or similar technology under the authorisation of a Card Scheme to emulate a validly issued payment card;
Visa	means Visa Inc.;
Westpac, we, us,	means Westpac Banking Corporation ABN 33 007 457 141. Westpac branch are located in Fiji and Westpac Bank – PNG - Limited;
Website	means an interface or portal published by a merchant to facilitate an eCommerce Transaction which includes but is not limited to a web page, web portal or smart phone application;
Web Application	means the software that your business utilises to advertise the sale of goods and/or services over the Internet;
Web Hosting Provider	means the provider of any software or hardware that you enter into an agreement with in order to enable you to promote a business via the internet;
Westpac Group	means Westpac and its Related Members;

you

means the owners of the business to whom the letter is addressed. If there is more than one, it includes any one or more of you. Where there is more than one of you, each of you is individually liable under the Agreement. This liability will continue, as regards the others, even where one or more of you is not liable or is no longer liable.

For the purposes of this Agreement:

- (a) Transaction information is presented by the completion and delivery of a voucher recording the Transaction or by any other form we approve;
- (b) a sale includes the supply of goods or the supply of services or both;
- (c) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates;
- (d) the singular includes the plural and vice-versa;
- (e) the failure by either party to exercise any right under this Agreement does not mean that party has waived that right;
- (f) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
- (g) reference to a document (including this Agreement) is to that document as varied, novated ratified or replaced from time to time;
- (h) a reference to clauses are reference to this booklet; and
- (i) a reference in this Agreement to any Law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision (however described).

3. Equipment

- 3.1 You must at your expense, prepare (and keep prepared) at your premises a site which meets our specifications for the installation of Terminals as outlined in the Merchant Operating Guide (such as a power supply, telephone line or internet connectivity as applicable) for the use of your Equipment in accordance with the Manuals and any technical documentation from the manufacturer or supplier of the Equipment.
- 3.2 You will allow (and where applicable ensure you have the right to permit) at all times our representatives to enter your premises and access the Equipment to install, move, maintain, repair, replace or remove the Equipment or to ensure that you are complying with the Agreement, during business hours or at any other reasonable time. We may do this even if it disrupts your business activities, provided we are acting for a reasonable purpose.
- 3.3 Upon initial installation of a Terminal we will provide training either face-to-face, online or via the phone, on the use of the Terminal to the individual(s) you designate. These people must be available at the time of installation. You are responsible, at your cost, to train all employees, contractors or agents who access the Terminal. You must not permit any untrained or unauthorised persons to operate or otherwise use the Terminal.
- 3.4 If a Terminal malfunctions, or for any reason is not able to process Transactions, you should report it immediately to us. We will not be responsible for any effect this may have on your business activities. We will endeavour to remedy the problem and may arrange for the Terminal to be repaired or replaced at our discretion. You must not carry out a Transaction using a malfunctioning Terminal. It is your responsibility to ensure that other means are available at short notice to enable you to continue to process Transactions. This may include identifying to your customers the location of the closest automatic teller machine.
- 3.5 If you use Terminals supplied by someone other than us, you must:
 - (a) only use Terminals which we have approved as technically compatible with the systems, Equipment and software used by us for the purposes of our Card Transaction facilities, and in using any such Terminals you will comply with any conditions as to its use which we specify in our approval. We may charge you a reasonable fee for testing and assessing the suitability of Terminals supplied by persons other than us;
 - (b) pay all costs and expenses relating to the installation of those Terminals;

- (c) pay all costs and expenses where development is required by us to support the Terminals, where we agree to undertake this work;
- (d) pay all costs and expenses relating to the maintenance of compliance for the Terminals;
- (e) inform us prior to your dispossession of any of the Terminals;
- (f) comply with the terms of any agreement in relation to the Terminals; and
- (g) upgrade the Terminals in the event of an industry or security standard change. We will provide notice where this is required.

3.6 We may supply you with Equipment, Manuals, Card decals and promotional material on agreed terms and conditions from time to time. You agree to display prominently at each of your premises all signs, advertising and promotional material we supply to you. You must not use any advertising or promotional material in relation to the Cards, except as authorised by us. For the duration of the Agreement you must:

- (a) use and operate the Equipment with reasonable care only in accordance with the user and technical manuals and any other instructions provided to you by us and allow only your fully trained staff to operate the Equipment;
- (b) allow only us or our representatives to maintain, replace (including any upgrades performed by us from time to time) or remove the Equipment;
- (c) allow us to upgrade the Equipment as required including when industry or security standards change. If you use a Terminal provided by someone else you must upgrade it when we tell you;
- (d) keep the Equipment secure and under your control, and (unless it is a mobile Terminal) at the premises at which it was installed (or at such other location as is agreed by us);
- (e) insure the Equipment against theft, loss, damage, vandalism, fire, flood, earthquake, misuse or neglect, for its full replacement value;
- (f) take proper care of the Equipment. You are responsible for any costs incurred in the replacement or repair of the Equipment due to theft, loss or damage (fair wear and tear excepted);

- (g) not process a Card Transaction without presentation of a Card, unless we have given you authority to accept mail and telephone orders from Cardholders or you are an eCommerce Merchant;
 - (h) not process a Transaction by manually keying details into the Terminal unless previously agreed by us;
 - (i) use reasonable care to detect forged or unauthorised signatures or the unauthorised use of a Card;
 - (j) immediately alert us and your Service Provider, if the Equipment has been damaged, stolen or mislaid or if you suspect that the Equipment has been tampered with;
 - (k) not modify the Equipment in any way.
- 3.7 You acknowledge and agree that title in the Equipment, Manuals, Card decals and promotional material we provide you remains with us or our suppliers at all times, and is not transferred to you. You must not sell, assign or encumber them, nor provide them to any third party. You must not remove any plates, stickers or markers which are used to identify the Equipment and/or the owner of the Equipment. We may, without your consent, give a third party any form of interest in, or security over, the Equipment or all or part of your agreement with us.
- 3.8 We may at any time replace any Equipment with new Equipment. If we replace any Equipment we will notify you promptly of any additional amounts payable by you to us. When requested, you must discontinue use of any Equipment that has been replaced. You must also follow our reasonable directions regarding the return or disposal of any Equipment which has been replaced.
- 3.9 The Terminal is supplied strictly to enable you to process Card Transactions under the Agreement, and any other kinds of Transactions which may subsequently be regulated by the Agreement.
- 3.10 Your rights in the Equipment do not extend beyond a non-transferrable non-exclusive licence to use the Equipment solely for your lawful Transactions in the jurisdiction in which your business operates.
- 3.11 You must perform settlement on your Terminal(s) at least once in every 24 hour period.

4. Processing Transactions

- 4.1 You will accept all valid Cards and process all Transactions in accordance with all applicable Laws, this Agreement, the Manuals and any direction of Westpac in carrying out activities related to your Merchant Facility. You will only use Equipment and materials we supply or have approved.
- 4.2 All Transactions are to be processed in the local currency of the country in which your business operates except where you have been approved for a Multi-Currency Acquiring (MCA) facility.
- 4.3 You must obtain prior Authorisation when using a manual Card imprinter for all telephone, facsimile or off-line Transactions. An Authorisation only confirms that the Cardholder has sufficient funds available to cover the purchase, and that the Card has not been reported lost or stolen. It does not protect you from subsequent Chargebacks which may be effected by us in circumstances described in clause 6.
- 4.4 You are responsible for verifying the identity of the Cardholder, and ensuring that the signature or any other Cardholder Authorisation on the voucher is not forged, obtained by fraud or deception, unauthorised or that the Transaction is not otherwise invalid (refer to clause 6).
- 4.5 At all points of Cardholder contact, you must prominently and unequivocally inform the Cardholder of your identity so that the Cardholder can readily distinguish you from any supplier of goods or services to you or other third parties. You must also provide notice to the Cardholder that you are responsible for the Transaction, including the goods or services acquired by use of the Card, as well as for related customer service, dispute resolution and performance of the terms and conditions of the Transaction.
- 4.6 You must only process Transactions and present vouchers to us in circumstances where you have actually supplied the goods and/or services to a Cardholder for which the Card was used for payment, unless we have specifically agreed that you may process pre-payment Transactions and the Cardholder has expressly authorised the Transaction being processed earlier.
- 4.7 You are responsible for ensuring that a Transaction is approved or declined before providing a Cardholder with goods and/or services. We take no responsibility and will not provide compensation where goods or services (including Cash Out Transactions, where permitted) are provided for declined Transactions.
- 4.8 You must not split a Transaction into two or more Transactions on the same Card. You will not be considered to be avoiding having to obtain an Authorisation by splitting a Transaction in the following instances:

- (a) when the Cardholder bills a portion of the Transaction to a Card and pays the remaining balance by cash or cheque only; or
- (b) when the goods or services will be delivered or performed after the Transaction date, and one voucher represents a deposit, and the second voucher represents payment of the remaining balance and the second voucher is conditional upon the delivery or performance of the goods or services.

4.9 You will not undertake any Transaction:

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

4.10 We need not supply you with a manual Card imprinter and where a manual Card imprinter has been supplied, you must promptly return it when we ask. Where a manual Card imprinter has been provided to you, you must not use the manual Card imprinter at the same time as a Terminal. You can only use the manual Card imprinter if the Terminal is not capable of normal operation and the Terminal malfunction has been reported to either Global Transactional Solutions Team or if the Terminal has been issued by a third party, the issuer of your Terminal. In the case of third party supplied Terminals, the Terminal malfunction should be reported to your third party supplier. For each Transaction processed manually by the imprinter, you must obtain all necessary Authorisations as instructed by us. You must present all Card Transaction information to us within 3 Business Days of the Transaction. We may charge the Transaction back to you if there is any delay in providing this information.

4.11 Your business account statements will reflect the total settlement amount of all transactions processed during the business account statement cycle including the Merchant Service Fee applied.

4.12 Under no circumstances should you request or allow any Cardholder to disclose their personal identification number (PIN), password or other code or information that can be used to access a customer's account, for you to retain. You should only retain the customer's Card if our operator asks you to do so. Without limiting your other obligations in this clause 4.12, you will not disclose, give to us (unless required by law), buy, sell or exchange a Cardholder's name or Card details to any person.

4.13 Subject to clause 4.14, you may only store the following Cardholder Data, and in each case only if there is a genuine business need to do so:

- PANs which have been rendered unreadable in compliance with PCIDSS
- Cardholder name
- Card expiry date
- extended service code (used for Smart Card processing)

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

4.14 Under no circumstances will you store Sensitive Authentication Data after obtaining an Authorisation. All Cardholder Data elements not listed in clause 4.13 are considered Sensitive Authentication Data and are not to be stored under any circumstances after Authorisation.

4.15 Under no circumstances should you request that a customer provide Credit Card details via email for payment of the provision of goods and/or services. Should such details be provided to you, you must not use them for any purpose and must immediately securely destroy these details.

4.16 You must not process or encourage Transactions through the Merchant Facility that relate to, or are in connection with, the sale of goods or services that are in contravention of the laws of Australia, the laws of your jurisdiction or the laws of the Cardholder's jurisdiction (including but not limited to the violation of export controls, obscenity laws or gambling laws). You must not offer for sale goods or services, or use or display materials, that are illegal, obscene, vulgar, offensive, dangerous or are otherwise inappropriate. You are required to comply with any industry code of conduct specifically regulating or prohibiting the retention by you of Cardholder's personal identification numbers, passwords or other codes or information that can be used to access a Cardholder's account.

4.17 We will not be responsible or liable for any delay that might occur in the processing of payments or any lost Transactions that might occur where the Merchant Facility is not available for any reason. This includes instances where Cash Out Transactions are not available.

4.18 We are not liable for any loss which you may suffer resulting from our failure to credit an Account due to technical or administrative difficulties relating to the banking system used for the transfer of funds. This also includes instances where your Merchant Facility is unable to settle for any reason.

- 4.19 You acknowledge that Cardlink is engaged by us to provide Authorisation services and the relationship between us and Cardlink is not an employment or fiduciary relationship. Only Credit Card Transactions can be authorised by Cardlink. Prior to obtaining an Authorisation, you must convert the Transaction amount into Australian dollars.
- 4.20 We may notify you if you have excessive Chargebacks and/or fraudulent Transactions in any particular category or if a particular category is at risk of exceeding the threshold. You must take immediate action to rectify the situation. Failure to resolve the cause of the problem, in accordance with our instructions may result in Chargebacks or non-compliance Card Scheme fines which may be passed on to you.
- 4.21 If we determine that your conduct in processing Transactions may cause loss to you or Westpac, we may require you to replace any Card imprinter with a Westpac Terminal and/or withdraw or impose further conditions on any Authorisation we have given for Card-notpresent Transactions. You must comply with any such condition.
- 4.22 You are required to obtain and hold Cardholder Authorisation for all Recurring Transactions and ensure the nominated Card is within current validity at all times.
- 4.23 We may authorise you in writing to offer Cash Out Transactions on any conditions we specify. You must not offer Cash Out Transactions unless we have authorised you to do so, however you need not offer them if we have given that Authorisation.
- 4.24 If we have authorised you to offer Cash Out Transactions on Debit Cards only, then unless we agree otherwise in writing:
- (a) you must offer them only in the currency of the country in which your business operates;
 - (b) you must offer them only in the case of a Transaction where the Cardholder and Card are present;
 - (c) you may not offer them in relation to a Credit Card Transaction;
 - (d) you must process Cash Out Transactions only using the Cash Out menu or facility on your Equipment;
 - (e) you must provide the whole of the Cash Out Transaction amount to the Cardholder in legal tender (that is, valid banknotes and coins), and must not withhold any of the value of the Cash Out Transaction.

5. Sales Refund Transactions

- 5.1 You must establish a fair policy for the exchange or return of goods and for the re-performance of services, and for the handling of refunds and disputed amounts, which complies with all applicable Laws including the Consumer Law of your jurisdiction. Subject to clauses 5.2 and 5.3, you agree to give credit to Cardholders in respect of any refunds for goods and services or disputed amounts (as applicable) by means of a sales refund Transaction (Sale Refunds) as set out in the Manuals and not in cash or by cheque.
- 5.2 Subject to clauses 5.3 to 5.6, you may process Sale Refunds by transferring the amount of the refund from your Account to a Card account. Sale Refunds may only be processed to a Card where there was an initial valid Transaction on that Card. A Sale Refund must not be provided to a different Card, in cash or by cheque. If your Terminal allows Sale Refunds, the Sale Refund should be refunded to the Cardholder through your Terminal. The provisions in clauses 5.3 to 5.6 inclusive do not apply where the Terminal has been supplied by somebody other than Westpac. You should refer to the agreement with whoever supplies the Terminal to you for their requirements (if any).
- 5.3 In order to utilise Sale Refunds via a Terminal:
- (a) you must initiate a password; or
 - (b) for some products, we will provide you with a password which you must change immediately on receipt by telephoning Merchant Business Solutions.

You may not process a Sales Refund using a Terminal unless you enter the password prior to each Transaction.

Depending on your business type and requirements, we will approve a suitable refund limit to be enabled on the Terminal to process and refund Transactions.

- 5.4 Where we have issued you with a password, we will not be responsible for any unauthorised Sales Refund processed through your Terminal using the password we have issued.
- 5.5 You will control and be responsible for access to the Terminal Sales Refund password. You should change your password if for any reason you think it has become known to persons other than those who you have authorised to complete Sale Refunds.
- 5.6 We are not responsible for any unauthorised Sales Refund processed through your Terminal, even if those Sale Refunds may cause your Account to be debited by the amount of the Transactions.
- 5.7 If we do not supply electronic Terminals to you we will not be responsible for any unauthorised Sales Refunds processed through your Terminal.

5.8 For mail, telephone and Internet order and standing authority Transactions, you will establish a fair policy for the handling of orders disputed by Cardholders and for the handling of disputed amounts of standing or recurring authority Transactions. You will also establish a fair policy for refunds for each return of merchandise or for each order not authorised by the Cardholder.

6. Invalid Transactions

6.1 A Transaction is invalid if:

- (a) the underlying supply of goods and/or services is illegal or you do not have a valid regulatory licence or Authorisation to process that supply;
- (b) it was processed by you after your Merchant Facility or the Agreement was terminated in accordance with clause 23 or whilst it was suspended in accordance with clause 28;
- (c) the Transaction is split into two or more Transactions on the same Card or over two or more Cards to avoid having to obtain an Authorisation for the total amount of the sale (each Transaction will be invalid);
- (d) the signature on the voucher or any other Cardholder Authorisation on the voucher is forged, obtained by fraud or deception, unauthorised or otherwise invalid;
- (e) the particulars on the voucher are not identical with the particulars on the Cardholder's copy;
- (f) the Card relating to the Transaction is not current at the time of the Transaction;
- (g) the voucher presented to us is incomplete or illegible; or
- (h) the Card was used without the Cardholder's authority;
- (i) the Transaction did not originate from an act between you and the Cardholder;
- (j) you have not retained your copy of the receipt or voucher signed by the Cardholder for 18 months from the date of the Transaction or you do not produce to us the tally roll receipt or voucher within five Business Days of a request by us for production of that receipt;
- (k) it is a Credit Card Transaction and:
 - (i) it is not for the supply of goods or service to a genuine customer; or
 - (ii) it relates to a transfer of funds, not supply of goods or services;

- (l) it was submitted as a Transaction authorised by us, where an Authorisation was never obtained from or given by us; or
- (m) it is a Sales Refund and:
 - (i) no corresponding sales Transaction exists for the Card on which the Sales Refund is made or purported to be made;
 - (ii) it represents the payment of wages/salary;
 - (iii) it represents the transfer of funds; or
 - (iv) insufficient funds are available in the Account to cover the refund amount;
- (n) you fail to comply with all messages displayed on the Terminal in relation to the Transaction;
- (o) where the Transaction is not processed by a Terminal:
 - (i) the voucher used is incomplete or illegible;
 - (ii) you imprinted a voucher for the Transaction contrary to a prior message displayed on a Terminal in relation to the Cardholder or the Transaction; or
 - (iii) the voucher does not bear the Card imprint;
- (p) you are unable to demonstrate the validity of the Transaction to our satisfaction;
- (q) you do not otherwise comply with your obligations under the Agreement in relation to the Transaction; or
- (r) you do not respond to voucher requests or other supporting information required by us within the timeframes specified by the applicable Rules.

6.2 A telephone, Internet or mail order Transaction is also invalid if the Transaction is not authorised by the Cardholder, or in the case of a standing authority, the authority has expired or was cancelled prior to the Transaction. You acknowledge that Authorisations obtained provide no guarantee that the person providing the Card details is the Cardholder.

6.3 We may refuse to accept, or may Chargeback, any Transaction if:

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

6.4 You undertake to abide by industry best practices to minimise fraud and chargebacks as set out in the Manuals from time to time.

7. Your Account

7.1 You must maintain a Westpac account and advise us of the details of that Account. We will credit your Account with the amount of the Transactions processed. You will notify us immediately if your Account details change.

7.2 You authorise us, from time to time, to debit your Account in respect of:

- (a) all service charges, fees and other charges set by us and which are notified to you from time to time. Information on current standard fees and charges is available on request;
- (b) all government charges and taxes including GST, VAT or other relevant tax, that apply;
- (c) the full amount of all Sales Refunds you process, less any charges we have already debited to your Account relating to the Transaction;
- (d) any overpayments or credits we have made in respect of Transactions due to errors or omissions;
- (e) the value of Transactions which are invalid;
- (f) any fees, fines or penalties that we are required to pay to any Card Scheme pursuant to the Rules as a direct or indirect result of your failure to observe your obligations under the Agreement including any procedures set out in the Manuals;
- (g) any Chargeback;
- (h) any moneys paid by us to you for Card Transactions where we are investigating the validity of the Transaction or a suspected Chargeback;
- (i) a Card Transaction not being a valid Transaction or being charged back to us;
- (j) our maintenance of the facilities we supply you under the Agreement;
- (k) any deficiency in a payment made by you following an audit or a check by us of your Merchant Facility or Account;
- (l) all penalties and costs incurred by us as a result of an ADC or your non-compliance to the PCIDSS (including your Service Providers) including but not limited to the cost of all forensic investigations as required by us or the Card Schemes;

- (m) any other money you owe us under this Agreement;
- (n) reasonable enforcement expenses under this Agreement, including any amount reasonably incurred by the use of our staff and facilities, in the event of a breach of this Agreement;

If we debit the Account and the Account contains insufficient funds, then the payment may be reversed and you will be regarded as not having made the payment in which case you must make the payment to us as soon as possible upon notification by us to you that payment is required, although such notification does not prevent us from attempting the debit again under this clause. It is your responsibility to pay any overdraft or other associated fees arising from this

- 7.3 You will pay on demand the amount of any debt you owe us under this Agreement which remains unpaid. Should you fail to pay any debt which you owe us we may commence enforcement action and report your default to a credit-reporting agency, which may affect your credit rating and your ability to obtain finance in the future. We may also set-off any amount due for payment by you to us against any amount due for payment by us to you.
- 7.4 We can also debit or credit your Account with the amount of any deficiencies or charges we establish are payable following an audit or check of your Account.
- 7.5 (a) If:
- (i) we have concerns about your solvency;
 - (ii) you are involved in a disproportionately high number of Chargebacks or invalid Transactions as determined by us in our sole discretion; or
 - (iii) we have commenced but not yet concluded reasonable investigations into any claimed Chargebacks or into the validity of any Transactions processed by you; or
 - (iv) we have concerns about you or your business;
- we may withhold release of the funds in the Account or withhold or suspend payment of any money that would otherwise be owing to you under the Agreement until further notice.
- We may also establish an Account in your name for the purpose of retaining funds for processing Transactions or Chargebacks.
- (b) We may appropriate money you hold in your Account, or any other related account with us, towards any and all amounts you owe us under the Agreement. If we do this, the balance of your Account will reduce by the amount

used for this purpose. We will notify you promptly after exercising our right to appropriate money in your Account.

- 7.6 You are responsible for reconciling your sales and settlements for all Transactions. If you have any concerns, you must contact us within 7 days from the date of the Transaction and request that it be reviewed by us. Any disputes raised after this time will not be reprocessed or otherwise reviewed by us.
- 7.7 You must reconcile the statements that we send you under the Agreement to ensure that payments to and from your Account have occurred in accordance with the Agreement. It is your obligation to check the accuracy of the statements. If you fail to notify us within 3 months of an incorrect fee being processed, and thus an incorrect amount was debited from your Account or a payment should have been made to you, then you will have no claim against us and the Account with us will be deemed settled. This includes but is not limited to Terminal rental fees, minimum merchant service fees, termination fees and Transaction fees.

8. Hotel/Motel Reservation Guarantee and Advance Accommodation Deposit

- 8.1 This clause 8 only applies where you have been authorised to accept Credit Card Transactions to guarantee hotel/motel reservations or advance accommodation deposits.
- 8.2 MasterCard and Visa have each arranged for their members a program that permits their Cardholders to guarantee reservations of hotel or motel accommodation by telephone and make deposits in advance towards accommodation reservations by using their MasterCard or Visa.
- 8.3 You agree to:
- (a) handle the reservations in accordance with the Rules;
 - (b) honour these reservations in all circumstances; and
 - (c) cancel the reservation and, where necessary, issue a Sales Refund to the Cardholder if the Cardholder cancels the reservation.
- 8.4 If there is a dispute, you agree to accept a Chargeback where the Cardholder claims he/she cancelled the guaranteed reservation.
- 8.5 The following applies where you have been authorised to accept Credit Card Transactions to guarantee hotel/ motel reservations only:
- (a) You agree to provide a confirmation code and (if applicable) a cancellation code, and advise the Cardholder to retain these in the case of a dispute;

(b) You must:

- (i) accept all cancellations prior to the specified time;
- (ii) not require cancellation notification more than 72 hours prior to the scheduled arrival date;
- (iii) if the Cardholder makes the reservation within 72 hours prior to the scheduled arrival date, ensure that the cancellation deadline is no earlier than 6.00pm merchant outlet time on the arrival date or date guaranteed;
- (iv) if you require that a Cardholder cancel before 6.00pm merchant outlet time on the date guaranteed, mail or email the cancellation policy, including the date and time that cancellation privileges expire, to the Cardholder;
- (v) if the Cardholder has not claimed or cancelled the hotel reservation service accommodations by the specified time, you must hold the rooms available according to the reservation until check-out time the following day. You may then complete a Transaction receipt that must contain the following:

Amount of one night's lodging plus applicable tax;

- Cardholder's name, account number and expiration date; and
- The words "No Show" on the signature line of the Transaction receipt.

8.6 You agree to have the guaranteed room available for the arrival of the Cardholder. If for any reason you are unable to provide the room, you must provide at no charge a comparable room for one night at some other establishment and a three minute local or long distance telephone call. You are not required to hold accommodation available for subsequent nights if the Cardholder has failed to appear for their reservation guarantee by checkout time following the first night of the guaranteed reservation.

9. Express Checkout

9.1 This clause 9 only applies where you have been authorised to accept Credit Card Transactions to permit express check out from hotels or motels.

9.2 The Card Schemes have each arranged for their members a program that permits their Cardholders to check out of your establishment at the end of their stay without conducting the usual "checkout" process in person.

- 9.3 You agree to handle the express checkout Transactions as outlined in the Rules. You must retain and make available to us the itemised hotel/motel bill. All disputes will be resolved in accordance with the Rules of the Card Schemes as appropriate.

10. Vehicle and Equipment Rental Transactions

This clause 10 only applies to merchants that provide rental for vehicles and other equipment including but not limited to cars, boats, tractors, trucks, ride-on mowers and planes.

- 10.1 Vehicle and equipment rental merchants may not include charges in the rental Transaction that represent any of the following:

- (a) the vehicle/equipment insurance deductible amount; or
- (b) an amount to cover:
 - (i) potential or actual damages when the Cardholder waives insurance coverage at the time of the rental;
 - (ii) additional costs which includes but is not limited to, parking tickets, traffic violations or vehicle/equipment repairs.

- 10.2 A charge for loss, theft or damage must be processed as a separate Transaction from the underlying rental Transaction. The Cardholder must authorise the charge after being informed of the loss, theft or damage.

- 10.3 A charge for additional costs must be processed as a separate Transaction from the underlying rental Transaction. For additional costs relating to parking tickets or traffic violations you must support the charge with documentation from the appropriate authority including the license number of the rental vehicle, date, time, and location of the violation, statute violated, and amount of the penalty.

- 10.4 For additional costs relating to vehicle/equipment repairs you must provide the Cardholder with written confirmation of the damage upon return of the vehicle/equipment, or for vehicles/equipment returned using an express drop off facility a written confirmation receipt must be sent within 5 Business Days. You must provide a reasonable estimate of the cost of repairs and obtain agreement from the Cardholder prior to processing the Transaction. We recommend that the Transaction be Card present and that you verify the identity of the Cardholder to minimise the likelihood of Chargebacks. The Transaction receipt must include a statement indicating that the estimated amount charged for repairs will be adjusted upon completion of the repairs and submission of the invoice for such repairs.

The final amount of the Transaction relating to the repairs may not exceed the Merchant's estimated amount by more than 15 percent. If the actual cost of repairs is less than the estimated amount, you must credit the difference to the Cardholder by processing a refund Transaction to the same Card account within 30 days

11. eCommerce Merchants

- 11.1 This clause 11 applies to eCommerce Merchants conducting eCommerce Transactions. To the extent that there is any inconsistency between this clause and the other provisions of the Agreement, this clause will apply.
- 11.2 You agree to be responsible for all goods and services offered at your Website, all materials used or displayed at the Website, and all acts or omissions that occur at the Website or in connection with your Website.
- 11.3 The URL of your Website must be substantially similar to your trading name and your Website must be designed in such a way that a reasonable Cardholder is able to readily identify it as your Website without any confusion.
- 11.4 You will display the following on your Website:
- (a) contact information, including your trading name, business or company incorporation number, trading address, telephone number, fax number, e-mail address and your country of domicile;
 - (b) a complete description of all goods and services you offer on your Website;
 - (c) a clear explanation of shipping practices and delivery policy;
 - (d) Transaction currency;
 - (e) total costs of the goods or services offered including all appropriate shipping/ handling charges and taxes. Where the total cost of the Transaction cannot be ascertained in advance you must include a statement to that effect and provide a description of the method that will be used to calculate it;
 - (f) wherever you present payment options, display images of Card Scheme logos that we supply to you;
 - (g) customer service policies, including usual delivery timeframes, and the process if you cannot fill the order for any reason. You must advise your customers within two Business Days if goods are not available;
 - (h) export restrictions (if known);

- (i) refund/return policy;
- (j) consumer data policy;
- (k) privacy policy;
- (l) security capabilities and policy for transmission of payment Card details;
- (m) if you provide a currency converter, a disclaimer providing advice to Cardholders that the converter provides an approximation of the currency only.

You must on request by us provide us with reasonable access to view, monitor and audit the pages of your Website.

- 11.5 You will make provision for payment and delivery of goods or services as specified at your Website. Payment pages provided will be accredited by us or a Westpac Accredited Gateway Provider/Data Processor, and must adhere to our security requirements. Each merchant domain must utilise separate payment pages.
- 11.6 If you use a Payment Gateway solution other than a Westpac hosted solution:
- (a) we are not responsible for the functioning of the Payment Gateway;
 - (b) you will observe the conditions of any agreement in relation to the Payment Gateway;
 - (c) you must use a Westpac 'Accredited' Gateway Provider/Data Processor. Failure to do so will result in termination of your Merchant Facility.
- 11.7 The eCommerce Transaction forwarded to us must be identified with the appropriate Card Scheme eCommerce indicator. We will supply you with details of these requirements on request.
- 11.8 You will respond promptly to all customer inquiries, including cancellations and order changes.
- 11.9 You must provide a completed copy of the Transaction receipt to the Cardholder at the time the purchased goods are delivered or services performed, and advise Cardholder to retain the receipt as proof that payment has been made. You may deliver the Transaction receipt in either of the following formats:
- (a) electronic (e.g. email or fax); or
 - (b) paper (e.g. hand-written).
- 11.10 A Transaction receipt must contain the following information:
- (a) the merchant name most recognisable to the Cardholder, such as:

- (i) merchant “doing business as” name as used on your Website;
- (ii) merchant “universal resource locator” (URL) if possible;
- (b) Transaction type (purchase or credit);
- (c) Transaction amount, indicated in Transaction currency;
- (d) Transaction date;
- (e) unique Transaction identification number;
- (f) purchaser’s/Cardholder’s name;
- (g) Authorisation code;
- (h) description of goods and services;
- (i) return refund policy, if restricted;
- (j) cancellation policies.

11.11 You must not return the Cardholder’s number to the Cardholder either online or on the Transaction receipt.

11.12 You must:

- (a) not substantially change your goods or services or other material aspects of your Website from the time it was accepted by us;
- (b) keep all information on the Website true, accurate, current and complete;
- (c) not change your domain name without first obtaining our consent to the change of name;
- (d) not significantly alter, or add to, the type of goods or services being sold on your Website without first notifying us;
- (e) not do anything that constitutes or encourages a violation of any applicable law or regulation in Australia, the laws in your jurisdiction or the laws of the Cardholder’s jurisdiction, including but not limited to the sale of illegal goods or services or the violation of export controls, obscenity laws or gambling laws;
- (f) not offer for sale goods or services, or use or display materials, that are illegal, obscene, vulgar, offensive, dangerous, or are otherwise inappropriate;
- (g) not generate a significant number of complaints for failing to be reasonably accessible to customers;
- (h) fulfil customer orders in a timely manner or adequately deal with customers’ warranty or service requirements.

11.13 You are responsible for:

- (a) ensuring that the connection between your Website and us is operational. We do not warrant that the provision of the services will be continuous, uninterrupted or without errors;
- (b) ensuring that your Website is secure and that Cardholder information is encrypted during the exchange of Cardholder information between your Website and your Payment Gateway. The level of encryption is to be to our satisfaction as detailed in our document entitled "Web Site Requirements";
- (c) ensuring that any Service Provider you engage to participate in the payment process is to be a Westpac Accredited Gateway Provider/Data Processor (details of accredited providers are available on request from Merchant Business Solutions) Payment pages will be accredited by us or a Westpac Accredited Gateway Provider/Data Processor and must adhere to our security requirements;

11.14 When approved for an eCommerce Merchant Facility, any Transactions received from Cardholders relating to the internet business for which it was approved must be processed using your approved eCommerce Merchant Facility.

11.15 If you are approved as a Westpac merchant you must willingly, upon request supply us with full details of your Service Providers, including but not limited to Web Hosting Provider, Shopping Cart Vendor System, SSL provider and expiration date of SSL certificate. You must also disclose details of all service providers you engage with to enable the acceptance of credit card payments and their compliance with PCIDSS.

11.16 You must present all eCommerce Transactions to us with an eCommerce indicator using Accredited Gateway Provider.

11.17 You must comply with the Data Breach procedures detailed below immediately upon suspected or known breaches of confidential Cardholder payment details, whether or not the breach has occurred through your Service Provider or otherwise. You must:

- (a) Identify the cause of the event and immediately notify Westpac;
- (b) Isolate or unplug any affected systems from all affected networks;
- (c) Cease installing or making any changes to software ;
- (d) Tighten security controls pertaining to all affecting networks;

- (e) Implement and follow a disaster recovery plan as required by an Accredited Gateway Provider/ Data Processor;
- (f) Maintain a rigorous audit trail of all actions taken to isolate and rectify the event;
- (g) Commence calculating the gross potential exposure that may arise from such event and notify Westpac in writing of the results of such calculations as soon as possible, but in any event within a 24 hour period of the Data Breach.

11.18 You must ensure that any software or hardware you purchase, create or otherwise utilise for the purpose of selling goods and/or services online does not retain its original password before employing it for the acceptance of Credit Cards. You must also ensure that all system and/or software passwords are changed on a regular basis.

12. Quasi-Cash Transactions

12.1 This clause 12 applies to Quasi-Cash Merchants conducting Quasi-Cash Transactions. To the extent that there is any inconsistency between this clause and the other provisions of the Agreement, this clause will apply.

12.2 You must identify the Cardholder as follows:

- (a) where the Card does not bear a photograph of the Cardholder, you must sight positive identification of the Cardholder, and indicate the type of identification sighted, including any serial number, on the Transaction receipt; or
- (b) where the Card bears a photograph of the Cardholder, you must note on the Transaction receipt that you verified the Cardholder's identity by the photograph on the Card.

12.3 You must verify the following:

- (a) the signature on the Card matches the signature on the Transaction receipt and, where clause 12.2(a) applies, on the identification presented; and
- (b) where clause 12.2(b) applies, the Cardholder resembles the person depicted in any photograph intended to be used as identification on the Card.

12.4 You must do the following before completing the Transaction:

- (a) compare the first four digits of the embossed Card account number to the first four digits printed below the Card account number; and
- (b) record the printed first four digits on the front of the Transaction receipt.

12.5 You must clearly disclose to the Cardholder any commission you charge for accepting a Quasi-Cash Transaction and include in the total Transaction amount, before completing the Transaction.

13. Trustees

13.1 This clause 13 applies where you enter into this Agreement in the capacity as trustee of a trust.

13.2 You confirm that each of the following statements is correct:

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

13.3 You promise the following:

- (a) you will comply with the terms of the trust and your duties as trustee of the trust;
- (b) you will use all equipment and carry out all Transactions in accordance with the Agreement exclusively for proper trust purposes;

- (c) you will not do anything which may result in the loss of your right of indemnity from the trust assets or the termination of the trust;
- (d) you will remain sole trustee of the trust (and if more than one person has signed the application form as trustee, each of you will remain as trustees of the trust and you will collectively continue as all of the trustee of the trust);
- (e) if, despite the above, you are replaced or joined as trustee, you will make sure the new trustee becomes bound to our satisfaction by the Agreement or a document and arrangement of identical effect;
- (f) you will not re-settle, set aside or distribute any of the assets of the trust without our consent unless compelled to do so by the current terms of the trust document.

14. Records

14.1 You must:

- (a) maintain and retain in your possession (while complying with all applicable security requirements) your books of account and records (including all Transaction information, vouchers and tally rolls and other information this Agreement requires you to retain) relating to a Transaction for at least 12 months after the Transaction;
- (b) permit us to inspect and examine your books of account and records relating to any Card Transactions;
- (c) not disclose, give (other than to us or unless required by law), buy, sell or exchange a Cardholder's name or Card details to any person (including in the form of imprinted sales vouchers, carbon copies of imprinted sales vouchers, mailing lists, tapes, computer data or any other media obtained by reason of a Card Transaction). This clause does not prohibit you from providing Card number information to your agent solely to allow your agent to process Card Transactions to us on your behalf;
- (d) keep all systems and media containing a Card number, Cardholder or Transaction information in a secure manner to prevent access by or disclosure to anyone other than your authorised personnel or agent processing Card Transactions. If the item needs to be discarded, you must destroy it in a manner which makes the information unreadable;
- (e) provide us with all clear and legible documentation relating to a Transaction when requested and within 14 days of our request or the due date specified in our request, whichever is the earlier. Otherwise we may Chargeback the Transaction to your Account; and

- (f) provide us with all financial information in relation to your business, including but not limited to, annual balance sheets and trading results, end of quarter results and 12 month cash flow projections, in a form acceptable to us, when requested. You must also keep reasonable records about your compliance with this Agreement, including records about when you implemented a variation that we notify under clause 16, your PCIDSS compliance, and the staff training that is required under clause 3.3. You must retain these records for at least 6 years, and provide us with reasonable access to the records when we ask. Your obligations under this clause 14 survive termination of this Agreement for any reason.

15. Creditworthiness of the Cardholder

15.1 You acknowledge that we do not guarantee any Cardholder's credit worthiness or their identity. You waive any right you may have against us by reason of any inference from the fact that a Cardholder has been issued with a Card or that a Transaction has been processed.

16. Variations

We may vary this Agreement at any time and will notify you of any changes as set out in the table below. Use of your Merchant Facility after notification of changes to the terms and conditions will constitute acceptance of those changes.

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

From time to time we may vary or supplement any Manuals, guides or procedures manuals that we provide to you, including

by specifying new procedure documents or Manuals (in this clause 16 described as **'Changes'**). We may notify you of a Change Electronically. If we specify a date on which a Change commences, you must comply with the varied or supplemented Manuals, guides or procedures from the commencement of business on that date. You must comply with any other Change promptly.

Notwithstanding anything else in this clause 16, advance notice of a Change or variation may not be given in some circumstances, for example, when a Change is necessitated by an immediate need to restore or maintain the security of our systems or where you cannot be reasonably located.

17. Notices

- 17.1 We will be flexible about how notices are given to you. They might be provided in writing including by statement of account, by facsimile or by newspaper advertisement or Electronically depending on the nature of the notice.
- 17.2 You can give us a notice by posting it in a prepaid envelope to the address in this booklet or by transmitting by facsimile to the number in this booklet or by any other method we specify. We reserve the right to seek confirmation from you before acting upon any facsimile or other communication received, although you agree that we have no obligation to do so
- 17.3 You agree that at all times during the term of this Agreement you will maintain a valid email address able to receive messages with a file size up to 8 megabytes including attachments and capability to download files from www.westpac.com.fj or www.westpac.com.pg. You must give us at least 4 Business Days' notice if the email address will be changed for any reason.
- 17.4 It is your responsibility to make sure that this email address will be checked at least once every day that you are open for business, because you will be taken to know about any email that is delivered to the email address under clause 17.5.
- 17.5 Messages sent to you by email will be taken to be delivered at the later to occur of:
- (a) 6 hours after they are sent if that occurs before 5.00pm on a Business Day or
 - (b) 10:00am on the next Business Day unless you reasonably believe the email to be fraudulent.

If an email we send you directs you to access information on an external website, that information is taken to be received by you at the same time as the email is received

18. Warranties and Indemnities

- 18.1 You must not make any warranty or representation whatsoever in relation to any of your goods or services which may create the impression that we are in any way bound by the warranty or representation.
- 18.2 You acknowledge that by processing a Transaction, or presenting to us a voucher (or audit log), you warrant to us that:
- (a) all particulars relating to the Transaction are true and correct;
 - (b) the Transaction and any voucher (or audit log) is valid; and
 - (c) the sale is not subject to any dispute, setoff or counterclaim.
- 18.3 You indemnify and keep us indemnified against, and must pay us on demand against all claims, actions, suits, losses, default, liabilities, expenses, costs (including legal costs) and damages that we may incur or suffer arising out of or in connection with:
- (a) your failure to comply with any of your obligations under the Agreement (including under a Manual or guide we provide to you), whether caused by you or any of your officers, employees, servants, agents or contractors, including any procedures set out in the Manuals;
 - (b) any failure to pay any charges or fees payable by you under the Agreement;
 - (c) any fees, fines or penalties (including but not limited to Card Scheme fines) that we are required to pay as a direct or indirect result of your failure to observe your obligations under the Agreement including any procedures, requirements of obligations set out in the Manuals;
 - (d) any dispute between you and a Cardholder;
 - (e) any error, negligence or fraud relating to a Transaction by you, your servants, agents, employees or contractors;
 - (f) any damage to, or loss of the Terminals due to neglect or misuse by you, or any of your officers, employees', servants, agents or contractors;
 - (g) any liability arising from a Prepaid Sale and/or Chargeback;
- 18.4 With the exception of any guarantees, conditions, rights or warranties that are implied by law in this Agreement and may not legally be excluded, we give no warranty or representation in respect of any Transaction or Terminals and all other terms, conditions or warranties whether expressed or implied are expressly excluded.

18.5 Any payments made by you under this clause shall be automatically increased by the amount of any goods and services tax liability incurred by us in respect of those payments.

19. Fraud Prevention

19.1 PCIDSS and PCI PA-DSS Compliance

- (a) You must ensure your business and any Service Provider acting on your behalf is compliant to the PCIDSS and (to the extent applicable) PCI PA-DSS at all times. You must advise us in writing of all Service Providers you utilise in connection with your Merchant Facility.
- (b) Your merchant classification according to the PCIDSS will be determined at the discretion of Westpac.
- (c) All costs in relation to complying with this clause 19 will be borne by you.
- (d) In the event that your business suffers or is suspected to have suffered an ADC, we may pass any penalties levied by the Card Schemes on to you and reserve the right to pass on any charges that relate to the investigation of an ADC.

19.2 PCIDSS Validation

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

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

For more information on the PCIDSS refer to the 'Payment Card Industry Data Security Standards' brochure provided with your confirmation letter.

19.4 You must ensure that any software or hardware you purchase, create or otherwise utilise for the purpose of selling goods or services does not retain its original password before employing it for the acceptance of Transactions. You must also ensure that all system and/or software passwords are changed on a regular basis. You must ensure that digital devices (such as computers) that allow a choice of 'administrator' and limited user system privileges are not used with 'administrator' system privileges except during system maintenance that requires 'administrator' system privileges.

19.5 Account Data Compromise (ADC) Events

You must comply with the ADC procedures set out in this clause 19 and detailed in the booklet "Payment Card Industry Data Security Standards" that we provide to you, immediately upon becoming aware that an actual or suspected ADC or breach of confidential Cardholder Data has occurred, whether through your Service Provider or otherwise.

If there is an actual or suspected ADC or if there has been any actual or suspected Terminal manipulation:

- (a) You must give us and our agents full access to your systems and databases to facilitate a forensic analysis to ascertain:
 - (i) what Cardholder Data has been compromised;
 - (ii) what weaknesses in the system permitted the ADC or Terminal manipulation; and
 - (iii) whether Cardholder Data was created, deleted, altered, copied or manipulated in any manner.
- (b) If you use the services of an external Service Provider, you must ensure that Westpac and its agents are given full access to necessary outsourced components such as databases, web hosting systems, etc.
- (c) You must pay all costs in connection with our analysis, investigation and resolution of the ADC or Terminal manipulation, and must also pay any fines imposed by a Card Scheme.
- (d) In order to continue processing Transactions, you will validate to our satisfaction that you are fully compliant with the PCIDSS as a Level 1 Merchant within 3 months of the ADC or the event(s) giving rise to the Terminal manipulation. All costs incurred by you as a result of your compliance with this clause 19 will be borne by you.

19.6 You agree:

- (a) that we may report all ADC events to Card Schemes and their members and may be required to report ADC events to law enforcement agencies and/or Australian regulators. You grant an irrevocable and enduring consent to us to disclose details of any such ADC (including information about you and your customers) to any such persons, agencies or regulators.
- (b) to irrevocably confer upon us the enduring right to contact any Service Providers that enable you to acquire Credit Card Transactions, Debit Card Transactions for the purposes of determining the extent of any actual or suspected ADC, assessing remedies for that ADC and assessing your level of compliance with the PCIDSS.

20. Code of Banking Practice

- 20.1 This clause applies to you if there is a relevant Code of Banking Practice or equivalent code or law in the country in which your business operates that applies to you at the date we issue the Letter to you.
- 20.2 Each relevant provision of any existing Code of Banking Practice or equivalent code or law will apply to your Merchant Facility from the date we adopt that provision.

21. Financial Crimes Monitoring and Anti-Money Laundering

- 21.1 In order for Westpac to meet its regulatory and compliance obligations for anti-money laundering and counter financing of terrorism, we will be increasing the levels of control and monitoring we perform.
- 21.2 You should be aware that:
- (a) Transactions may be delayed, blocked, frozen or refused where we have reasonable grounds to believe that they breach Australian law or sanctions, the laws or sanctions of the country in which your business operates (or the laws or sanctions in any other country). Where Transactions are delayed, blocked, frozen or refused Westpac and its accredited processors are not liable for any loss your business suffers (including consequential loss) whatsoever as a result;
 - (b) we may from time to time require additional information from you to assist us in order to meet our anti-money laundering and counter financing of terrorism obligations. This information may include "personal information" as defined by any privacy legislation in your jurisdiction. If we request such information you must provide us with the information immediately, or at least within 24 hours of such a request.
 - (c) where legally obliged to do so, we may disclose the information gathered to regulatory and/or law enforcement agencies, other Banks, other members of the Westpac Group, service providers who do things on our behalf or to other third parties.
 - (d) where we have reasonable grounds to believe that a suspicious matter has arisen in relation to the Merchant Facility, we are obliged to complete and render a report to the relevant regulatory authority in your jurisdiction. A suspicious matter includes any Transaction that the Bank believes may be of relevance to the investigation or prosecution of any breach or attempted breach of a law of your jurisdiction (including laws related to money laundering, tax evasion, financing of terrorism or the proceeds of crime);

- 21.3 You provide Westpac the following undertakings and indemnify Westpac against any potential losses arising from any breach by you of such undertakings:
- (a) you will not initiate, engage in, or effect a Transaction that may be in breach of the law or sanctions of the country in which your business operates, Australian law or sanctions, or the law or sanctions of any other country; and
 - (b) the underlying activity/product for which the Service is being provided does not breach any law or sanctions of the country in which your business operates, Australian law or sanctions, or the law or sanctions of any other country.
- 21.4 You must not initiate, engage in or effect a Transaction that may be in breach of Australian law, or the law of any other country.

22. Assignment

- 22.1 This Agreement will be binding upon the parties, their executors, administrators, successors and assigns. Where you consist of any two or more persons, your obligations shall be joint and several.
- 22.2 You may not assign this Agreement to any other person without our written consent. We may assign our rights or novate our rights and obligations under the Agreement. We may also transfer our interest in the Agreement, or give another person an interest or security in the Agreement without getting your consent. You appoint us and any person authorised by us to be your attorney to sign any document or do anything necessary to give effect to the assignment, novation or transfer contemplated in this clause 22.2.

23. Termination

- 23.1 The Agreement commences when you accept our offer in accordance with clause 1 and will continue until such time as it is terminated in accordance with this clause 23.
- 23.2 You may terminate this Agreement or use of an underlying Merchant Facility by providing us with 7 days written notice to the address in this booklet. Unless such notice is provided, your Agreement (including fees and charges) will continue to apply, notwithstanding that you may have returned Equipment to us or securely discontinued its use.
- 23.3 It is your obligation to reconcile your Account after termination of this Agreement and notify us of any discrepancies.
- 23.4 If for any reason there are discrepancies in your Account then our maximum aggregate liability to you for reimbursement will be limited to three months' worth of the monthly applicable charges.

- 23.5 We may terminate the Agreement or use of an underlying Merchant Facility at any time and for any reason, including, but not limited to the following:
- (a) Merchant Facility does not comply with the Rules;
 - (b) we consider your ratio of Chargebacks to sales, whether by number or dollar value of Chargebacks, to be unusual or excessive;
 - (c) you have substantially changed your line of business, or the types of goods or services that you supply to your customers or clients without first notifying us and receiving consent;
 - (d) we have concerns about your solvency, or the solvency of your business;
 - (e) we have concerns about your ability to meet or repay the amounts of any Chargebacks that have been received, or that are likely to be received in the future conduct of your business;
 - (f) you have a significant adverse credit event recorded against you;
 - (g) we have reasonable grounds to suspect that you have fraudulently processed Transactions, or have knowingly allowed fraudulent Transactions to be processed through your Merchant Facility;
 - (h) you or any of your Services Providers are not compliant with the PCIDSS or (to the extent applicable), PCI PADSS;
 - (i) you or any Service Provider that you use has suffered an ADC.
- 23.6 We will endeavour to give you verbal or written notice before we terminate the Agreement or a Merchant Facility. If we are unsuccessful in contacting you, we can choose to continue to terminate the Agreement or Merchant Facility. However, we will give you subsequent written confirmation that the Merchant Facility has been terminated.
- 23.7 We may terminate the Agreement on the grounds that you have not processed Transactions through your Merchant Facility for a period of six (6) months. Under these circumstances we will advise you, in writing, of our intention to terminate and will allow you a period of 14 days from the date of our letter in which to contact us. After that time, we may terminate the Agreement or Merchant Facility without further notice.
- 23.8 Termination will be effective immediately and we are not obliged to accept any Transactions you process after the Agreement or Merchant Facility is terminated.

- 23.9 You warrant to cease to use the Terminal Access Services immediately if this Agreement is terminated, we will be entitled to terminate the availability of the Terminal Access Services to you if that occurs.
- 23.10 For clarity, termination of a Merchant Facility or the Agreement does not affect any obligations incurred prior to termination. Clauses 5, 6, 7, 14, 18, 23, 25, 27 and 29 survive termination.
- 23.11 On termination of the Merchant Facility or the Agreement you will immediately return all relevant Equipment. Fees and charges will continue to be incurred by you until the Equipment is returned to us. You authorise us to enter the premises where the Equipment is kept and take possession of the Equipment without notice to you in the event the Equipment is not returned to us immediately in accordance with this clause 23.11.
- 23.12 You acknowledge that a "combined terminated merchant file" is a list containing the business name and the names and identification of principals of merchants that have been terminated by acquiring financial institutions. You consent to us providing information about you and any persons named in your application for a Merchant Facility to MasterCard, Visa or any other Card Scheme for addition to the file if the Agreement is terminated (this may include sending information overseas). You acknowledge that this information will be available to any member of the Card Scheme(s) and may be used to assess subsequent applications for Merchant Facilities. You indemnify us against all claims, actions, suits, losses, defaults, damages and liabilities resulting from the inclusion of you or your principals on this file.
- 23.13 Without prejudice to any right or remedy of ours, we are entitled to charge you a termination fee for termination of the Agreement, at our discretion. You must promptly pay any such termination fee after we notify you of it.

24. Notifying us of changes

- 24.1 You must notify us within 14 days of any changes in your company, trading name or address. You can do this by writing to us at the address in this booklet or by transmitting by facsimile to the number in this booklet. You must continue to notify us of any changes for a period of 12 months after the Agreement is terminated for any reason. We will not be responsible for any errors or losses where we have not received adequate prior notice. (Your obligation to notify a changed email address is under clause 17.3.)
- 24.2 You must not substantially change your line of business, or the types of goods or services that you supply to your customers or clients, without first notifying us and receiving our written consent.

In addition, you must notify us immediately if the ownership or control of your business (including any delegation by way of power of attorney) or your ability to meet liabilities as and when they fall due changes. The new owner will need to apply for a new Merchant Facility with us if they wish to continue using our merchant services.

25. Privacy Law

25.1 You agree to comply with:

- (a) any privacy laws by which you are bound; and
- (b) any other privacy requirement notified by us to you.

25.2 You acknowledge that you do not rely on any information or representation supplied by us to you as advice regarding compliance with the privacy laws.

25.3 You warrant that you are aware of the privacy laws which apply to you in respect of this Agreement, and also warrant that, after the enquiry, you are not aware of having breached any of those privacy laws.

25.4 You agree that we may obtain from and disclose information to any person who issues a Card or Card Scheme for any purpose relating to the operation of your Merchant Facility that we deem necessary. Our rights under this clause continue after the Agreement is terminated.

25.5 You authorise us to obtain from any Card Scheme information ("your history") relating to facilities you obtained or are obtaining from other suppliers.

25.6 You acknowledge and agree that we may disclose information about you that we collect from your application, your history or conduct of the facilities we supply you under the Agreement, in the following circumstances:

- (a) to our external service providers (some of which may be located overseas) that provide services for the purposes only of our business and providing your Merchant facility(ies), on a confidential basis (for example, without limitation, mailing houses);
- (b) to any person who is a card issuer, Card Scheme operator or otherwise involved in any Card Scheme, for any purpose relating to the operation of those schemes (for example Visa, MasterCard, UnionPay and Card fraud detection agencies). This information may include information about terminating a Merchant Facility and the reasons for that termination. Another service provider may use this information (amongst other things) to determine whether or not to make facilities available to the Merchant;

- (c) to persons who you inform us supply services related to your Merchant Facility (including but not limited to Ingenico, Hypercom, VeriFone, Global Blue, American Express or Diners Club).

26. Third parties

- 26.1 You will not present to us any sales vouchers accepted on behalf of any third party without our prior approval.
- 26.2 We may pay a fee or commission to a third party who introduces you to us.

27. GST

- 27.1 We may increase the amount (“original amount”) of any fee or other consideration payable by you under the Agreement which has not been specified to include GST by an additional amount so that the total amount payable by you is equal to the original amount plus the amount of any GST liability payable by us on the total amount.
- 27.2 You must pay at any time and in any manner requested by us any amount which we decide to be necessary to reimburse us for any direct or indirect increase resulting from any GST in the cost to us of:
 - (i) making, maintaining or administering;
 - (ii) any action relating to any property connected with; or
 - (iii) carrying on any business connected with the supply of any facilities or property under the Agreement or any facilities provided under the Agreement.

28. Suspension

- 28.1 We may suspend the facilities we supply to you under the Agreement without notice to you if we:
 - (i) consider that we could suffer a loss as a result of your Merchant Facility continuing to operate;
 - (ii) think we could be subject to fraud if we continue to supply the facilities;
 - (iii) become aware of an event listed in clause 23.5;
 - (iv) are unable to contact you to discuss a matter relating to the use of your Merchant Facility.

We will inform you as soon as practicable after we suspend your facilities under this clause.

- 28.2 Whilst the facilities are suspended, you will not submit Card Transactions for processing and we will not process any Card Transactions you submit.

29. Our liability is limited

You acknowledge that our liability for breach of any condition, right or warranty that cannot be excluded from the Agreement by law is limited at our discretion to the replacement or the repair of the Terminals, or the re-performance of the Terminal Access Service. To the extent permitted by Law and notwithstanding that we or any of our officers, employees, 50 contractors or agents may be aware of the likelihood of such loss or damage, we will not be liable whether in contract, tort (including negligence) or otherwise to you or persons claiming through you for:

- (a) special, consequential or indirect or incidental loss or damage of any kind (including exemplary or punitive damages);
- (b) loss of business, profits or income whether actual or anticipated;
- (c) any disruption caused by:
 - a malfunction of a Merchant Facility; or
 - any period when the Merchant Facility is unavailable or you are waiting for a replacement Terminal;
- (d) any delay by us in crediting your Account.
- (e) our failure to credit your Account due to technical or administrative difficulties relating to the banking system used for the transfer of funds; or
- (f) termination of the Terminal Access Services for any reason.

This clause 29 applies notwithstanding that we or any of our employees, contractors or agents are aware of the likelihood of such loss or damage.

30. Use of Trade Marks

30.1 You agree:

- (a) to obtain our prior written consent before using any Trade Mark (which consent may be granted or withheld by us in our sole discretion);
- (b) to comply with any Trade mark use guidelines or direction provided by us to you from time to time;
- (c) not to take any action which will adversely affect the value of the goodwill attached to the Trade Marks and/or our business.

31. Governing law

31.1 The Agreement will be governed by and interpreted in accordance with the laws of the country in which your business operates.

32. Marketing

32.1 Westpac and its related bodies corporate would like to be able to contact you, or send you information, regarding other products and services. If you do not wish to receive this information please:

- (a) call us on the telephone number located inside the front cover of this booklet,
- (b) write to us at the address located inside the front cover of this booklet,
- (c) call in at any Westpac branch.

You do not need to do this if you have already told us you do not wish to receive information of this sort.

33. Confidentiality

33.1 You agree that you will:

- (a) use or reproduce Confidential Information only for purposes under this Agreement;
- (b) take all reasonable steps to maintain the confidentiality of the Confidential Information and to secure Confidential Information against theft, loss, unauthorised use, modification, disclosure or other misuse;
- (c) not disclose the Confidential Information to any person except where there is consent from the party of which the Confidential Information relates to, or where you are compelled by law;
- (d) immediately notify us in the event that you become aware of any unauthorised access to, use, modification, disclosure or other act in relation to any Confidential Information which is not permitted;
- (e) deliver to the disclosing party or party of which the Confidential Information relates to all documents and other materials in your possession or under your power or control which contain or refer to any Confidential Information of the disclosing party or party of which the Confidential Information relates to on the earlier of:
 - (i) demand by the disclosing party or party of which the Confidential Information relates to; or
 - (ii) the time the documents and other materials are no longer required for the purposes of this Agreement.

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

34.1 We aim to resolve your complaint at your first point of contact with us. So please raise your complaint with any of the people handling your banking. You can contact us 24 hours a day, 7 days a week from anywhere in Fiji and Papua New Guinea, by:

Fiji

Telephone: (679) 3217 000 or 132032

E-mail: westpacfiji@westpac.com.au

Fax: (679) 3300718

Mail: PO Box 238 Suva, Fiji

Papua New Guinea

Telephone: (675) 322 0888

E-mail: PNGCallCentre@westpac.com.au

Fax: (675) 322 0604

Mail: PO Box 706

Port Moresby, National Capital District
Papua New Guinea

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