



## WireBarley Terms and Conditions

### 1. Definitions

“Account” means the online WireBarley account which must be opened with Us before availing of the Transaction Service, whether accessed via the Website.

“Anti-Money Laundering Policy” means the policy set out *inter alia* Our compliance with the regulations, legislation, codes, guidelines and any other regulatory directions of any jurisdiction which govern anti-money laundering and countering the financing of terrorism.

“Beneficiary” means the intended Beneficiary of the Payment Transaction who will either be notified to Us.

“WireBarley Reference Number” means the reference number specific to Your Payment Transaction which We will give You, which will enable both You and Us to identify the Payment Transaction.

“Business Day” means any day We are open for business for the purposes of executing Payment Transactions, excludes Saturday and Sunday, and may exclude national holidays or legal holidays in countries impacted by the Payment Transaction.

“Confidential Information” means all information in whatever form or method of disclosure, that is disclosed by one party to the other party, whether or not marked as confidential, to the extent a reasonable person would consider such information as confidential.

“Contract” means the agreement formed between You and Us regarding a Payment Transaction which is subject to these Terms and Conditions.

“Effective Date” means 03 August 2020.

“Final Transfer” means the transfer of funds by WireBarley into the account of the Beneficiary.

“Funding Account” means the account in which You nominate to fund the Payment to the WireBarley Nominated Account.

“Intellectual Property Rights” or “IPR” means all intellectual property rights, including patents, supplementary protection certificates, petty patents, utility models, trademarks, database rights, rights in designs, copyrights (including rights in computer software) and topography rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) and all rights and forms of protection of a similar nature

or having equivalent or similar effect to any of these which may subsist anywhere in the world, in each case for their full term, and together with any renewals or extensions.

“Payment” means the transfer of funds from Your Funding Account to the WireBarley Nominated Account following the formation of the Contract in respect of the Payment Transaction.

“Order” means the request from You to Us to undertake a Payment Transaction.

“(Payment) Transaction” refers to the agreement for Us to effect a funds transfer on Your behalf whether at a live exchange rate, a pre-agreed exchange rate or without a foreign exchange element.

“Schedule(s)” refer to the additional documents which supplement these Terms and Conditions, and where stated form part of the Agreement between You and WireBarley, all of which are accessible on the Website.

“WireBarley”, “We”, “Us” or “Our” mean WireBarley Pty Ltd trading as WireBarley under which We may from time to time do business as, whether such name is registered or unregistered. Our Registered Office is Suite 603, Level 6, 11 The Boulevarde, Strathfield, NSW, 2135, Australia. We are registered as an independent remittance dealer (IRD) on the Remittance Sector Register pursuant to section 75C(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and Our ABN is 60 615 413 799. Further details of Our regulatory status can be found on the Website.

“WireBarley Nominated Account” means Our bank account to which Your Payment is required to be made.

“Users” means You or the individual(s) (or company) which You have notified to Us and who are permitted by You to place the Order.

“Website” means [biz.wirebarley.com](http://biz.wirebarley.com).

“You”, “Your” means the legal or natural person in whose name these Terms and Conditions are entered with Us, and includes where the context so permits, Your Users and authorised agents.

## **2. Introduction & Basic Description of Service**

### **2.1. These Terms and Conditions, with effect from the Effective Date:**

2.1.1 govern the opening, use and closure of the Transaction Service and all accounts, services, programs, information and products related to the Transaction Service that You may use or access from time to time;

- 2.1.2. require You to confirm that You have read, accepted and understand You are legally bound by said Terms and Conditions on each occasion where You ask Us to perform, and We agree to perform, a foreign exchange transaction on Your behalf following an Order from You;
- 2.1.3. may only be entered by You where You have the corporate power and / or legal capacity (meaning in the case of a natural person, being over 18 years of age) to enter a legally binding agreement and to perform Your obligations hereunder;
- 2.1.4. operate together with the Schedules and any other instruments in writing, including agreements in writing which amend the Schedules, to constitute the legal relationship between You and Us (collectively the “**Agreement**”);
- 2.1.5. are available for download in PDF or Word Format;
- 2.1.6. may also be emailed or posted to You free of charge on request; and
- 2.1.7. shall be made available by Us in the English language only.

### **3. Modification**

3.1. We may modify these Terms and Conditions at any time for any reason including to meet legal or any other requirements, without any prior notice and:

- 3.1.1. We will insert a notice on the Website highlighting that the Terms and Conditions have been modified and it is Your obligation to ensure You have read and understood the applicable Terms and Conditions before entering a Contract with Us;
- 3.1.2. any such modification will apply with immediate effect to any new Contract entered between You and Us, and Your continued use of or access to the Transaction Service and/or the Website shall be deemed as Your acceptance of the modified Terms and Conditions.
- 3.1.3. If, prior to entering a Payment Transaction, You do not agree with the modified Terms and Conditions, You are free not to continue with the Payment Transaction and to desist from further use of the Transaction Service without any further liability to You. This will not affect any obligations You owe to Us, or Our rights with regard to any existing Contracts.

### **4. Description of the Transaction Service and Account Opening Process**

4.1. We provide money remittance services with a foreign exchange element.

4.2. You must complete an application to open an Account with Us, provide all required documentation and information to Us, and confirm compliance with Our Anti-Money Laundering Policy (as detailed in Clause 4.3). In addition to requesting documentation and information from You, We will complete additional checks to verify Your identity, these additional checks include but are not limited to, credit reference checks, sanctions check, news checks and checks of other available information sources. By applying to use the Transaction Service You consent to Us using any additional checks We deem appropriate. All such checks will be conducted in accordance with Our Privacy Policy. Until these processes have been

completed to Our satisfaction, (collectively the “Account Opening Process”), You will be unable to request to effect a Payment Transaction.

4.3. Our Anti Money Laundering Policy, as may be modified by Us from time to time, forms a core part of the Account Opening Process. We are entitled to inter-alia verify Your identity or the identity of the Users. We reserve the right to refuse to accept an Order until We are satisfied as to the matters on which We have sought clarification and verification. You undertake that You will observe all applicable laws and regulations, including Anti-Money Laundering, Countering the Financing of Terrorism and Exchange Control laws and regulations, in relation to any request by Us and will use all reasonable endeavours to assist Us to do likewise. In particular, You warrant that the information given by You is accurate and that the Payment will not constitute a breach of any Anti-Money Laundering and Exchange Control Laws and regulations.

4.4. Some legal or regulatory authorities may require additional documents and information regarding You, Users or particular Payment Transactions. You agree to supply all such documents and information, which any legal or regulatory authority may require.

4.5. Upon completion of Our Account Opening Process You shall have an Account in operation with Us, however until You take the steps set out at Clauses 5 and 6 to conclude a Payment Transaction, neither party shall have any financial obligations towards the other party, nor are the parties under any legal obligation to conclude Payment Transactions.

## **5. Placing an Order**

5.1. To conclude a Payment Transaction, You must first place an Order by:

5.1.1. using the means set out at Clause 5.2 to request Us to:

5.1.1.1. purchase a specified amount of foreign currency for You; or

5.1.1.2. pay funds to a Beneficiary in Your local currency; and

5.1.2. providing Us with:

5.1.2.1. Your nominated Funding Account, including names, numbers and particulars of the account holders;

5.1.2.2. the amount to be transferred and the currency in which the Payment Transaction is to be effected;

5.1.2.3. full Beneficiary details where We do not already have these on the Account, though in certain circumstances this can be provided after the Order is placed;

5.1.2.4. the purpose for making the Payment Transaction;

5.1.2.5. such other information or documentation that We may require, including but not limited to specific requirements in some jurisdictions (such as those required for currency control reasons).

5.2. The means by which You may place an Order are by providing the information set out at Clause 5.1 and contacting Us by logging into Your Account.

5.3. You are solely responsible for ensuring that all details You provide at Clause 5.1 are correct. We will do everything We reasonably can to rectify any errors, inaccuracies or omissions in Your Order once you make us so aware, but this may lead to a delay or failure in processing Your Order. We will not be liable for any loss, damage, cost or expense suffered by You or any party as a result of any such errors, inaccuracies or omissions in Your placement of an Order.

5.4. We may act on an Order from, or purporting to be from, You or the Users, until We have received prior written notice to the contrary and a reasonable opportunity to act on such notice. Any reference to the means by which We may receive an Order from You or Users includes, but shall not be limited to those means set out at 5.2.

## **6. Concluding a Payment Transaction**

6.1. Your Order constitutes an invitation from You for Us to negotiate a Payment Transaction with You. Our response to Your Order (by the means set out at Clause 6.2) represents a legal offer from Us for You to enter a Payment Transaction subject to certain conditions set out in the offer. This offer must be accepted by You, following which the Contract is formed subject to these Terms and Conditions.

6.2. This Contract can be concluded by following the means of placing an Order set out at Clause 5.2, though We reserve Our right to engage with You by whatever means We deem most appropriate in concluding the Contract. In each instance, Your acceptance, by whatever means, serves as Your acceptance these Terms and Conditions as governing the offer made by WireBarley to enter the Contract for a Payment Transaction.

### **6.3. Non-negotiation of Orders:**

6.3.1. We reserve the right to request further documents and information before entering negotiations with You in respect of an Order;

6.3.2. Payment Transactions are subject to a minimum and maximum transaction value determined by Us, and We may decline to negotiate an Order which falls outside of these value points, notwithstanding that prior Orders of equivalent value were not declined; and

6.3.2. We may notify You of Our refusal to negotiate an Order without giving any reason. We will have no liability to You as a result of doing so.

### **6.4. Cancellation of Payment Transactions:**

6.4.1. In the event of Your having formed a Contract with Us in error, You are advised to contact Us immediately, requesting the Contract to be cancelled. Any loss arising on such cancellation will be charged to You and payable by You, and there may be additional cancellation fees attaching to Your request. 5.1.2.1. 5.1.2.1.

### **6.5. Non-execution or Delays in Payment Transactions:**

6.5.1. Notwithstanding the formation of a Contract, We hereby reserve a contractual right to delay or not to complete the execution of the Payment Transaction in instances where:

6.5.1.1. abnormal and unforeseeable circumstances beyond Our control or prohibit or limit Us executing the Payment Transaction;

- 6.5.1.2. legal obligations covered by applicable laws and regulations make the execution of the Payment Transaction a potentially illegal or non-compliant action;
- 6.5.1.3. Our Anti-Money Laundering Policy requires so, or where any requirement under our Anti-Money Laundering Policy cannot be met to Our satisfaction;
- 6.5.1.4. due to the automation of the Transaction Service, errors in quoted rates may have occurred leading to the provision to You of erroneous rates at the time of placing the Order; or
- 6.5.1.5. errors, inaccuracies or omissions in Your Order may mean that a Payment Transaction cannot be completed (meaning Our making the Final Transfer) as scheduled.

6.5.2. We shall endeavour to inform You as soon as possible in the event of non-execution of the Payment Transaction as set out in Clause 6.5.1 and in any event no later than the next Business Day, together with the reason for the failure unless We are prevented (in our sole discretion) from disclosing same to You. We shall endeavour to complete the Payment Transaction if the impediment preventing execution can be removed, or where applicable, when the errors, inaccuracies or omissions are corrected.

6.5.3. Where the provisions of Clause 6.5.1 lead to the non-completion of or a delay in execution of a Payment Transaction, any commitments provided by Us as to the timing of making the Final Transfer may be adversely impacted, and therefore We accept no liability for the non-completion of, or a delay to completing, a Payment Transaction.

## 6.6. Effecting the Payment:

6.6.1. Under these Terms and Conditions which govern the Contract, You are legally obliged to complete the Payment of the agreed amount with the transaction within 2 Business Days of the date on which the Contract is entered (the "**Settlement Date**"). Accordingly, this Contract is suitable only if You are able to deliver, on or before the Settlement Date, the Payment in the currency/funds You have agreed to buy from Us.

6.6.2. Delivery of the Payment shall be by use of one of the two methods set out at Clause 7. Under no circumstances shall We accept a Payment by any other means, even if We have previously permitted such alternative means of making a Payment.

6.6.3. A failure by You to make the Payment in full and by the Settlement Date is a breach of the Contract, in which event We will close out the Contact at its then prevailing market rates and any loss or costs incurred by Us as a result of Your contractual breach shall be recoverable in full from You on demand by Us, including additional cancellation fees attaching to Your request as negotiated. Late or incomplete settlement shall incur default interest on the total amount due, at a compound rate of 5% per annum, calculated daily and payable to Us on the date payment is made.

## 6.7. Processing the Final Transfer:

6.7.1. The time at which We receive the Payment in cleared funds in the Nominated Account determines the time at which We can process the Payment Transaction. Same Day Processing is possible in respect of certain currency transfers and dependent on applicable time zones, however We undertake that We shall process the Payment Transaction and make the Final Transfer no later than the next Business Day following the receipt of the Payment in cleared funds.

6.7.2. The amount credited by way of Final Transfer to the Beneficiary will be net of fees, charges, commissions and any interest due.

6.8. A confirmation of the Final Transfer (the “**Payment Confirmation**”) will be issued to Your nominated email address. If You do not receive a Payment Confirmation within 24 hours of the date on which the Payment is made or within 4 Business Days from the date of the Contract was entered, You are obliged to contact Us. The Payment Confirmation will detail (where applicable):

- 6.8.1. the Booking Reference, which enables You to identify the Payment Transaction, which shall also be provided to the Beneficiary unless You expressly request Us not to make such disclosure. By hereby permitting such disclosure, You agree to hold Us harmless for any damage or loss suffered by You resulting from enquiries from the Beneficiary or any holder of the Booking Reference. We represent and warrant that We will exercise ordinary care in releasing this information.
- 6.8.2. the date on which the Payment Transaction was effected;
- 6.8.3. the value date of the Payment Transaction;
- 6.8.4. a breakdown of the fees and charges payable by You;
- 6.8.5. the exchange rate used and the amount of the Final Transfer after the currency conversion; and
- 6.8.6. additional and further information as may be requested by You subject to an additional charge.

6.9. Upon You becoming aware of any unauthorised or incorrectly executed Payment Transaction, You must notify Us without delay. Where We establish that the Payment Transaction was erroneously effected by Us, We shall refund to You, the amount of the erroneous Payment Transaction plus any charges thereon.

6.10. You irrevocably agree that We may retain any Payments transmitted to Us pursuant to these Terms and Conditions if We learn that there is a suspicion that You may have breached any laws or regulations, or if We are required to do so by any legal or regulatory authorities. Such retained Payments shall not bear interest against Us.

## **7. Funding the WireBarley Nominated Account**

### **7.1. By Transfer or Electronic Funds Transfer:**

7.1.1. The default mechanism by which You are expected to make the Payment is by payment of a wire transfer or electronic funds transfer in the currency agreed via POLi ([www.polipayments.com](http://www.polipayments.com)).

7.1.2. We will provide You with the requisite details of the WireBarley Nominated Account at the time at which the Contract is agreed, and it is Your obligation to ensure You use the correct WireBarley Nominated Account.

7.2. Other than by availing of the means set out at Clauses 7.1, no other means is available for funding the WireBarley Nominated Account. Specifically, We do not accept cash, cheques or any equivalent. Any attempts by You to make the Payment by any such prohibited means shall be invalid under the Contract, causing a delay and potentially a breach of the Contract.

7.3. Unless otherwise agreed with You, We do not have nor do We request, any access to the Funding Account and shall not unilaterally debit funds from Your Funding Account. You must initiate the Payment to the WireBarley Nominated Account.

7.4. We reserve the right to reject funding from sources that We may reasonably believe or suspect may breach the laws and regulations of any jurisdiction, or that would meet the standards in Our Anti-Money Laundering Policy.

7.5. You agree and acknowledge that We may refuse to accept or return any payment of money from a third party or from any account of a third party, and that WireBarley does not accept liability or responsibility for any loss, cost or expense incurred or suffered by You in connection with such non-acceptance or return, including because You are subsequently in default of your obligations to Us.

7.6. WireBarley is not responsible for any fees or charges that may be imposed by the financial institutions associated with the payment facilities You nominate.

## **8. Charges, Interest and Exchange rates**

8.1. The foreign exchange conversion rate shown during the Service is the rate applicable for currency conversion transactions done on that particular day and time.

8.2. The exchange rates specified during the Service may fluctuate from time to time in accordance with fluctuations in international exchange rate markets.

8.3. The exchange rates specified during the Service may fluctuate from time to time in accordance with fluctuations in international exchange rate markets.

8.4. When you initiate a transaction, we agree to transfer the Transaction Amount to the Beneficiary at the rate specified during the Service at that time.

8.5. The total amount (the Transaction Amount, Service Fee and other applicable fees and charges) that you will be required to pay and the relevant exchange rate will be displayed clearly on the website before you are asked to confirm your Transaction and proceeding with the Transaction at this point is entirely optional.

8.6. This exchange rate will apply even where there is a delay in processing your transaction. When you pay for a transaction in one currency and the Beneficiary is paid in another currency, there will be a difference between the exchange rate at which we buy foreign currency and the exchange rate provided to you.

8.7. If you submit a transaction that results in WireBarley becoming liable for fees or charges, such as chargeback or other fees, you agree to reimburse us for all such fees.

8.8. WireBarley is not responsible for any charges applied by the Beneficiary's bank resulting from the receipt of funds into the Beneficiary's bank account.

8.9. WireBarley will have no responsibility for any fees or charges you may incur by the use of a particular Payment Instrument to fund a transaction. These may include but are not limited to unauthorised overdraft fees imposed by banks if there are insufficient funds in your bank account or “cash advance” fees and additional interest which may be imposed by credit card providers if they treat use of the Service as a cash transaction rather than a purchase transaction.

8.10. You will not be entitled to any interest for the period during which the funds to be remitted are with the Bank, or pending remittance or are in the course of remittance, or for any other period. WireBarley may, at any time and at our sole discretion, limit the amount to be transferred, either on a per transaction basis or on an aggregated basis.

8.11. On certain occasions intermediary bank fees may be applicable. In such cases WireBarley may refuse to cover the fees. WireBarley is not liable for covering fees imposed by the bank of the Beneficiary.

## **9. Communications, Users Access and Security**

### **9.1. Communications:**

9.1.1. All communications between You (and where the context so permits, Your User) and Us shall be by email or telephone. In addition, You have the option of communicating with Us through the Website via live chat, however no Orders may be placed by using live chat.

9.1.2. Telephone calls (which for this purpose includes calls on fixed landlines, Skype calls or mobile lines) with You are typically recorded to protect both Your and Our own interests in the event of a dispute and You consent to such recordings being made. For technical reasons it is not always possible for Us to record all telephone calls. The telephone recordings will, where available and once a transcript is furnished to You following prior request, be accepted as evidence of the instructions or communications recorded, and may be used as evidence in any dispute, action, proceedings involving the use by You of the Transaction Service. The absence of a telephone call recording shall not be deemed as detrimental in any such dispute, and in such circumstances, We are entitled to rely on an undisputed Booking Confirmation.

### **9.2. User Set Up and Monitoring:**

9.2.1. Before getting access to the Transaction Service, You shall notify Us of the Users that You require to be set up on the Transaction Service, unless You are a Sole Trader or personal customer, in which case it is understood that the only User of the Transaction Service shall be You, unless You place a request to the contrary.

9.2.2. All Users must be approved and registered by Us before using the Transaction Service. Access to the Transaction Service shall be restricted to approved Users and We reserve the right at any time to refuse the appointment or continuation of a User without reason.

9.2.3. You are required to notify Us immediately if there are any changes to the list of Users.

9.2.4. You shall ensure each User is trustworthy, has the legal authority to access the Transaction System, and will adhere to the WireBarley Security Policy. The selection of a User is at Your own risk and We are under no obligation to conduct checks on Your Users or oversee a User’s activity on the Account.

9.2.5. By accepting these Terms and Conditions You are confirming that each User You appoint shall have all necessary authority to use the Account and the Transaction Service.

9.2.6. Until You have provided notice to Us to the contrary, We may continue to assume that all Users have authority to use the Account and the Transaction Service and execute legal binding transactions with Us.

9.2.7. You hereby indemnify and agree to hold Us harmless in respect of any loss incurred by a User entering into a Contract or other transaction contemplated under this Agreement.

9.2.8. You will take reasonable steps to ensure that each User complies in full with this Agreement

### 9.3. Access and Passwords:

9.3.1. Upon opening an Account or adding a User, You / the User shall be required to select a username and a password. The password must comply with the Security Guidelines.

9.3.2. Upon logging into the Account by providing the username and the corresponding password, access will be granted to You and We will not be required to take any further steps to verify that the person accessing the Account is Your User.

9.3.3. Each User's registration is for that User only. Users are prohibited from sharing their username and password with any other person, and to do so shall be treated as a material breach of these Terms and Conditions by You.

9.3.4. If You forget Your password, You must contact Us and, upon satisfactory completion of verification procedures, We shall issue You with a new password via email.

### 9.4. Safeguards and Corrective Measures

9.4.1. You represent and warrant that You and the Users shall adhere to the Security Guidelines.

9.4.2. A failure to adhere to these Security Guidelines may lead to a loss to You or to Us, and You confirm that You accept all responsibility for any such loss, and indemnify Us for any loss We may incur as a result of You not following the Security Guidelines.

9.4.3. The Security Guidelines represent reasonable security measures in Our opinion, but are not intended as an exhaustive list of steps that You must undertake to ensure online security.

## 10. Service Level

10.1. We make no representations herein as to the effectiveness of the Transaction Service.

## 11. Representation and Warranties

11.1. The Transaction Service is made available as is, and except for any express representations and warranties made in these Terms and Conditions, to the maximum extent permitted by law, neither the Transaction Service or the Website is made available with any condition, warranty or representation from Us as to suitability or accessibility, either expressed or implied. This includes, without limitation, the conditions implied by law of satisfactory quality, fitness for

purpose and the use of reasonable care and skill which, but for this legal notice, might have effect in relation to the Transaction Service or the Website.

11.2. You accept and acknowledge that We do not provide any financial, taxation or investment advice, including without limitation, on the merits of the Payment Transaction and its likely implications. You must make a decision to enter into a Payment Transaction based solely on Your own judgment or with having availed of prior independent financial advice. It is for You to evaluate whether the Payment Transaction is appropriate in terms of Your experience, financial objectives, and circumstances.

11.3. While We endeavour to ensure that the information on the Website regarding the Transaction Service is correct, We do not warrant the accuracy and completeness of the material on the Website regarding the Transaction Service including the real-time tradable rates, which may not be reflective of the current price of the currency. We may make changes to Our Website, including regarding the Transaction Service, at any time without notice. The material on Our Website regarding the Transaction Service may be out of date, and We make no commitment to update such material.

11.4. We reserve Our right to rely on 3rd party banking partners in certain jurisdictions who may operate the WireBarley Nominated Account, either in Our name or in the name of the banking partner. We make all reasonable efforts to ensure that when You make the Payment, these funds are held in a secure account segregated from Our own funds, however this protection may not be available to Us in every jurisdiction.

11.5. You warrant that in the case of an individual or more than one individual, You are of full age and capacity, and in the case of a firm or corporation, You warrant that it is duly constituted and incorporated and possesses the requisite power to agree to this Agreement and all Contracts made or to be made, and in any case, this Agreement and such Contracts do and will constitute legally binding and enforceable obligations of the User.

11.6. You represent and warrant to WireBarley that:

11.6.1. this Agreement and Your use of the Transaction Service does not violate any law applicable to You, and You will not use the Transaction Service for any purpose contrary to applicable laws.

11.6.2. all information You provide to WireBarley is true, correct and complete, and You will notify Us of any changes to such information. Neither that information nor Your conduct or the conduct of anyone acting on Your behalf in relation to the Transaction Service, was or is misleading, by omission or otherwise and You will make ongoing disclosure to WireBarley of any matters that may affect the operation of this Agreement.

11.6.3. You acknowledge that WireBarley will rely on Your representations and warranties in providing the Transaction Service.

## **12. Intellectual Property and Limited License**

12.1. WireBarley (and where applicable its affiliates, suppliers or licensors) are the sole and exclusive owner(s) of all IPR which forms directly or indirectly (1) the Transaction Service, (2) the Website, or (3) the Account, and any other IPR arising from Your use of the Transaction Service or other ancillary services. This Agreement does not grant You title to or any ownership rights or interest, but only a right of limited use as expressly set forth in this Clause 13.

12.2. You are hereby granted a non-assignable, non-exclusive and limited licence to print and download extracts of IPR from the Website regarding Transaction Service for Your own use on condition that:

- 12.2.1. You are only to use the contents as authorised by Us;
- 12.2.2. no documents or related graphics are modified in any way;
- 12.2.3. no graphics are used separately from the corresponding text;
- 12.2.4. Our copyright and trademark notices appear in all copies;
- 12.2.5. You acknowledge that the names, images and logos identifying Us, Our products and services, are proprietary marks belonging to Us; and
- 12.2.6. no part may be reproduced or stored in any other website or included in any public or private electronic retrieval system or service without Our prior written permission.

12.3. You acknowledge and agree that all content on the Website, the Account or otherwise accessible on the Transaction Service is protected by copyright, trademark, patents and other proprietary rights and laws.

12.4. Any unauthorised use or any breach of this Clause 13 will result in immediate termination of the Agreement whereby You must, on request from Us, immediately destroy any downloaded or printed extracts from the Transaction Service or Website. This license is conditional on Your continued compliance with these Terms and Conditions and any rights not expressly granted herein are reserved.

12.5. Derivative use of the Transaction Service is strictly prohibited, including any use of data mining, robots or similar data gathering, reverse engineering and extraction tools irrespective of whether there is an intent to damage or impair the Transaction Service, and any such activities shall be deemed a material breach of these Terms and Conditions.

12.6. On termination of this Agreement, the licence herein granted ceases with immediate effect.

### **13. Liability and Indemnity**

13.1. We, any other party (whether or not involved in creating, producing, maintaining or delivering Transaction Service, the Website or the Portal), and any of Our officers, directors, employees, shareholders or agents of any of them, exclude all liability and responsibility for any type of incidental, punitive, special, indirect or consequential damages arising from or connected in any way to, the Transaction Service, the Website or the Portal, that may result to You or a third party. This includes, without limitation, any indirect, punitive or consequential loss or damages, or any loss of income, profits, goodwill, data, contracts, business interruption, loss of use, loss or damage due to viruses, or other loss or damages, even if advised of the possibility of

such damages, whether arising under any theory of contract, tort (including negligence), strict liability or otherwise.

13.2. Nothing in these Terms and Conditions will exclude or limit Our liability for:

13.2.1. Death or personal injury;

13.2.2. Fraud;

13.2.3. Misrepresentation as to a fundamental matter; or

13.2.4. Any liability which cannot be excluded or limited under applicable law.

13.3. If Your use of material on the Transaction Service results in the need for servicing, repair or correction of equipment, software or data, You assume all costs thereof.

13.4. We are entitled to assume that all Payment Transactions entered using usernames and passwords of You or the Users are authorised by You. We shall not be liable in any way for any direct, indirect or consequential loss suffered by You as a result of any Payment Transactions entered using these usernames and passwords.

13.5. We shall not be liable for any:

13.5.1. suspension, withdrawal or termination of Your access to the Transaction Service; or

13.5.2. interruptions to the Transaction Service.

13.6. Our liability to You is limited to the lesser of (i) the amount paid by You hereunder during the three (3) month period immediately preceding the date the loss or damage first occurs, or (ii) AUD 8,250. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages so, to the extent not allowed by law, some of the above limitations may not apply.

13.7. You indemnify, defend and hold Us harmless against any and all costs, liabilities, losses, and expenses (including but not limited to reasonable legal fees) suffered by Us, which may result from (i) Your or a User's misuse of the Transaction Service, (ii) Your or a User's breach of the Agreement, or (iii) any failure by You or a User to comply with the law.

## **14. Confidentiality**

14.1. Neither party shall use Confidential Information of the other party for any purpose other than for the purpose of providing or using the Transaction Service or as otherwise expressly permitted herein.

14.2. Confidential Information shall not include, however, any information which (i) was publicly known prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party in violation of these Terms and Conditions; (iii) is already in the lawful possession of the receiving party at the time of disclosure by the disclosing party as shown by the content of the receiving party's files and records prior to the time of disclosure; (iv) is obtained by the receiving party from a third party

without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by the receiving party's documents or other competent evidence in the receiving party's possession.

14.3. Each party shall exercise reasonable care not to disclose, and to prevent its employees and agents from disclosing, any Confidential Information of the other party.

14.4. If a party is compelled to disclose Confidential Information under the authority of a court or governmental agency, the compelled party shall promptly notify the other party unless the compelled Party is legally prevented from doing so or deems that doing so would be in breach of the compelled Party's policies, procedures or codes. The other party shall, where afforded prior notice, have the opportunity to object to the compelled disclosure prior to production of such information.

14.5. At the request of the disclosing party, the receiving party shall return all of the disclosing party's Confidential Information to the disclosing party or certify the same has been destroyed. Nothing in this clause shall require the return or destruction of any documents and materials containing or based on the Confidential Information that is required to be retained by applicable law, or to satisfy the requirements of a regulatory authority to which the receiving party is subject.

## **15. Term, Termination and Cancellation of Access**

15.1. On completing the Account Opening Process You shall have access to the Transaction Service until such time as such access is terminated as set out in this Clause 15.

15.2. You may cancel Your access to the Transaction Service at any time by giving Us written notice. You will remain responsible for any Payment Transactions made on Your Account until access to Your Account is actually disabled.

15.3. We may terminate, suspend or withdraw Your access to the Transaction Service at any time without prior notice if:

15.3.1. We suspect that You have breached these Terms and Conditions, including but not limited to Clauses 13 or 15, or have acted fraudulently.

15.3.2. Subject always to Our such termination being permitted under the applicable law, We learn or have reason to believe;

15.3.2.1. of Your death, bankruptcy or lack of legal capacity;

15.3.2.2. a liquidator or receiver has been appointed in respect of the Your assets; or

15.3.2.3. You have committed an act of bankruptcy or that a bankruptcy petition has been presented against You.

15.3.3. We otherwise deem such termination, suspension or withdrawal appropriate, in Our sole discretion.

15.4. Payment Transactions, including but not limited to Future Dated Payments, in respect of which Contracts have been concluded and which are scheduled to be made after Your access to the Transaction Service is terminated or suspended will not be impacted by the termination, unless We explicitly notify You otherwise at the time of termination.

15.5. The respective obligations of parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding IPR, Confidential Information, limitation of liability and indemnification, shall survive the termination, suspension, withdrawal or cancellation of the Transaction Service.

## **16. Market Information**

16.1. We make available market information services generated internally containing, but not limited to financial market data, rates, news, charts or data. Market information provided by Us, whether made available on the Website, in email format or over the telephone is not intended as financial advice

16.2. We do not guarantee the accuracy, timeliness, completeness or correct sequencing of the market information. We reserve the right to discontinue offering market information at any time without notice, and for the avoidance of doubt, any market information provided to You is not an element of the Transaction Service and should not be regarded as bearing any relation to Your decisions to use the Transaction Service.

## **17. Redress and Complaints Procedure**

17.1. Where an official complaint from You in relation to the Transaction Service is received by Us, We will record the nature of the complaint and issue an acknowledgement email to You by the end of the next Business Day. The acknowledgement will provide You with the contact name who is responsible for dealing with Your complaint. The official complaint must be made by email to [au@biz.wirebarley.com](mailto:au@biz.wirebarley.com), with details such as Your account number, the payment order(s) and the nature of Your complaint.

17.2. We will conduct a thorough investigation to resolve Your complaint within 3 to 5 Business Days. In instances where more time is required, a written update on the progress of the investigation will be provided to You at intervals of not more than 20 Business Days.

17.3. We will try to resolve Your complaint within 45 Days of having received the complaint and We will issue a resolution letter detailing the outcome of the investigation. This letter will include, if applicable, an explanation of the terms of any offer that We are prepared to make in settlement of Your complaint.

17.4. If Your complaint cannot be resolved within 45 Days, We will write to You notifying You of the anticipated timeframe for the conclusion of the investigation.

17.5. If at any time, You are unsatisfied with the handling of Your complaint or We cannot resolve the complaint within the 45 Days timeframe, You can file a complaint with the Australian Financial Complaints Authority (AFCA). AFCA may be contacted online at [www.afca.org.au](http://www.afca.org.au), by email ([info@afca.org.au](mailto:info@afca.org.au)), by phone (1800 931 678 (free call)) or by mail GPO Box 3, Melbourne VIC 3001.

## **18. General Terms**

18.1. The Agreement and any disputes or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by and construed in accordance to the laws of New South Wales, and each party hereto irrevocably submits to the exclusive jurisdiction of the courts of New South Wales. This is the case regardless of whether You reside or transact business with Us elsewhere in the world.

18.2. Without limiting the foregoing, You acknowledge and understand that laws regarding foreign exchange contracts vary throughout the world, and it is Your obligation alone to ensure that You fully comply with any law, regulation or directive, relevant to Your country of residency with regards to the use of the Transaction Service. For avoidance of doubt, the ability to access to the Transaction Service does not necessarily mean that the Transaction Service, and/or Your activities through it, are legal under the laws, regulations or directives relevant to Your state or country of residence.

18.3. This Agreement expresses the complete and final understanding of the parties with respect to the Transaction Service and the subject matter hereof, and supersedes all prior communications between the parties, whether written or oral with respect to the subject matter hereof.

18.4. Throughout this Agreement, whenever required by context, the use of the singular number shall be construed to include the plural, and the use of the plural the singular, and the use of any gender shall include all genders.

18.5. Either party shall be excused from any delay or failure in performance hereunder, other than the payment of money, caused by or due to any cause beyond its reasonable control, including, but not limited to acts of God, earthquake, flood, third party labour disputes, utility curtailments, power failures, explosions, civil disturbances, vandalism, riots, war, governmental actions, and acts or omissions of third parties.

18.6. The Contract entered by You pursuant to a Payment Transaction shall not be transferable, negotiable or assignable by You, and any attempt to do so is void. Subject to the foregoing, this Contract will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns, and is for the sole benefit of the parties, and nothing herein will be construed as giving any rights to any person not a party to the Contract.

18.7. We shall be entitled to sub-contract any or all of Our obligations or assign or sub-license any or all of Our rights under the Agreement. We shall remain responsible for obligations which are performed by the sub-contractors and for the acts or omissions of the sub-contractors as if they were the acts or omissions of WireBarley.

18.8. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18.9. The provisions of this Agreement, and the rights and remedies of the parties under this Agreement, are cumulative and are without prejudice and in addition to any rights or remedies a party may have whether arising under common law, equity, statute, custom or otherwise. No exercise by a party of any one right or remedy under this Agreement, or under common law, equity, statute, custom or otherwise, will (save to the extent, if any, provided expressly in this Agreement, or by common law, equity, statute or custom) operate so as to hinder or prevent the exercise by it of any other such right or remedy.

18.10. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 19.10 shall not affect the validity and enforceability of the rest of this Agreement.

18.11. Without prejudice to any other rights or remedies that both parties may have, both parties acknowledge and agree that damages alone may not be an adequate remedy for any breach of this Agreement by the other party. Accordingly, either party shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this Agreement by the other party.

18.12. Your use of the Portal, the Website Site and the Transaction Service is subject to the Our Privacy Policy. By accessing or using the Portal, the Website and the Transaction Service, You understand and agree that We may collect and retain personal or other information about You, the Users and the device You use to access the Portal, the Website and the Transaction Service.

18.13. No one other than a party to this Agreement shall have any right to enforce any of these Terms and Conditions.

18.14. The parties will have the status of independent contractors, and nothing herein will be deemed to place the parties in any other relationship, including employer-employee, principal-agent, partners or joint ventures.

18.15. In addition to other remedies available to WireBarley, if You fail to pay any amount then due under this Agreement, WireBarley may set-off such amount against any amount payable by

WireBarley to You. You must not set-off any amounts You owe to WireBarley, any amounts WireBarley owes to You. WireBarley is entitled to set-off against any amounts due to it by You, any amounts received by WireBarley from or on Your behalf including but not limited to moneys received as deposits. WireBarley may determine the application of any amounts which are to be set-off at its own discretion.

18.16. Unless specified to the contrary herein, notices to be given to WireBarley under the Agreement shall not be effective unless in writing and hand-delivered (e.g. via courier) or mailed by registered or certified mail to WireBarley Pty Ltd trading as WireBarley at the registered office set out herein.

18.17. These Terms and Conditions together with all Schedules, appendices, exhibits and attachments hereto constitute the sole and complete agreement between the parties with regard to its subject matter, and supersedes all proposals, understandings, representations, prior agreements or communications relating to the subject matter of the Agreement.