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# **Westpac FlexEquip Online Terms and Conditions**

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**FlexEquip**

# Application of Terms and Conditions

- A** These Terms and Conditions govern the access and use of the Westpac FlexEquip Online self-service online application (**FlexEquip Online**) by each FlexEquip customer (**Customer**) that registers to use FlexEquip Online and each Authorised Person who accesses or uses FlexEquip Online.
- B** FlexEquip Online is a web-based application giving users an interface to initiate and submit service requests regarding FlexEquip.
- C** By registering to use FlexEquip Online you agree that the Customer and each Authorised Person will comply with:
  - (i) these terms and conditions;
  - (ii) the FlexEquip Agreement; and
  - (iii) any security arrangements entered into by the Customer in respect of their FlexEquip facility.
- D** For copies of these terms and conditions, please contact your relationship manager.

## 1. Authorised Persons

Customers must appoint one or more Authorised Persons to use FlexEquip Online. Access to FlexEquip Online is restricted to Authorised Persons only. Unauthorised users may be subject to criminal or civil prosecution. You must advise us if any Authorised Person is no longer authorised to access FlexEquip Online.

The Customer must ensure that each Authorised Person reads these terms and conditions and the FlexEquip Agreement carefully before accessing and using FlexEquip Online.

The Customer warrants that each Authorised Person has all corporate authorisations and consents necessary from the Customer for any action undertaken through FlexEquip Online. The Customer will remain responsible to us for all acts and omissions of an Authorised Person through FlexEquip Online. The Customer agrees not to take any action against Westpac for any loss it may suffer as a result of any action or inaction Westpac may take in reliance on the actions or inactions of an Authorised Person or through FlexEquip Online.

There are two different types of Authorised Persons and each have different levels of authority to act on behalf of the Customer through FlexEquip Online. The relevant authority levels are:

### Administrators

The Customer must appoint at least one Administrator to act on behalf of the Customer. An Administrator may (a) view secured assets in the Asset Pool and (b) send requests to Westpac to add or remove secured assets from the Asset Pool.

### Viewers

A Viewer may only view secured assets. Viewers cannot create and submit service requests.

### Adding or removing Authorised Persons

Requests to register an Authorised Person for FlexEquip Online must be made to us in writing using the prescribed form. Requests to remove an Authorised Person may be made in writing although we may, in our discretion, also rely on verbal instructions from the Customer to remove an Authorised Person.

## 2. Security of FlexEquip Online

To log-in to FlexEquip Online each Authorised Person will be required to enter (a) the email address registered for that Authorised Person by the Customer when the Customer registers the Authorised Person to use FlexEquip Online; and (b) a password selected by the Authorised Person when he or she registers to use FlexEquip Online.

Once an Authorised Person has set their password, he or she must memorise this to access FlexEquip Online. Use of the same registered email address and/or password by more than one person is not permitted.

The Customer must ensure that it and each Authorised Person:

- takes responsibility for, and takes steps to reasonably safeguard, passwords;
- does NOT leave a FlexEquip Online session unattended while logged in;
- does NOT allow anyone to obtain, observe or overhear their password or other banking security details, including any other Authorised Person, other employees, family or those in apparent authority such as management, the Police or Westpac staff;
- does NOT write down, record or store their password details anywhere in written or electronic form; and
- chooses a password that is unique and/or is not the same as or similar to passwords used for any other services (including any non-banking services), equipment or cards.

Each Authorised Person is responsible for the security of their password. If you or any Authorised Person believes for any reason that a password could be known or accessible by someone else, or if you or an Authorised Person discover any unauthorised use of FlexEquip Online, you must call the Customer's Relationship Manager and the Authorised Person must change their password.

## 3. Instructions

We may, but shall have no obligation to, take actions in reliance on any requests or instructions submitted to us through FlexEquip Online. We may in our absolute discretion decline to rely on such requests or instructions or to take the actions requested.

To the maximum extent permitted by law you will indemnify Westpac New Zealand against any action taken by it on instructions it reasonably believes were genuine.

The Customer will maintain appropriate internal controls so as to ensure that unauthorised, forged or fraudulent instructions or forms are not given to us and will advise us immediately if the Customer becomes aware of any irregularities uncovered.

To the maximum extent permitted by law, neither Westpac nor any of its related companies (as that term is defined in the Companies Act 1993) will be liable to the Customer or any other party for any losses suffered by the Customer or any other party in acting on such instructions or if such forms or instructions are unauthorised, forged or fraudulently given and Westpac could not reasonably have detected that from the forms or instructions received.

## 4. Suspension or Cancellation

### Customer's right to suspend or cancel FlexEquip Online access

The Customer can suspend or cancel FlexEquip Online access for its organisation by notifying Westpac in writing.

If the Customer has suspended or cancelled FlexEquip Online access, all access by Authorised Persons will also be suspended or cancelled. The Customer will remain responsible for any service requests made via FlexEquip Online until the time of cancellation or suspension.

### Westpac's right to suspend or cancel access to FlexEquip Online

Westpac may stop, suspend or alter access to FlexEquip Online at any time without notice for any reasonable grounds including, without limitation:

- if the Customer's FlexEquip facility is closed;
- if Westpac decides in its sole discretion to stop providing FlexEquip or FlexEquip Online;
- to protect against any threats to the security of our services or to FlexEquip Online;
- where, in our reasonable opinion, the Customer or any Authorised Person has misused any FlexEquip Online service or otherwise breached any of these terms and conditions or any other terms and conditions from time to time applicable to FlexEquip Online; or
- a reasonable period of inactivity (determined at the sole discretion of Westpac) on the Customer's FlexEquip Online facility.

If Westpac stops, suspends or alters access to FlexEquip Online for any reason, then Westpac may refuse to reinstate access until Westpac is satisfied that any issues that caused Westpac to stop, suspend or alter the services have been remedied or no longer exist. This may include seeking assurances from the Customer that any offending software has been removed or that a specific item of equipment will no longer be used to access FlexEquip Online.

## 5. Assistance

If any assistance regarding FlexEquip Online is required, please contact your relationship manager.

## 6. Charges

Westpac may from time to time charge for the use of FlexEquip Online. Any introduction or change to a charge for FlexEquip Online will only be effective on Westpac giving 30 days' notice. Any standard fees and charges that apply to service requests made under the terms and conditions of FlexEquip will also apply to any service requests made through FlexEquip Online. For details of the charges that will apply, Customers can speak to their relationship manager.

## 7. Device security

The Customer is responsible for using a device to access FlexEquip Online that is compatible with the FlexEquip Online service and ensuring that such device has up-to-date software and security updates and anti-virus software.

The Customer is responsible for remedying any trojans, key logging software, viruses, spyware or other forms of malicious software that it or any Authorised Person knows are on any computer before using that computer to access FlexEquip Online.

If the Customer or an Authorised Person connects to FlexEquip Online via a Wi-Fi network, Westpac recommends that a trusted network is used. Westpac may restrict access to FlexEquip Online to devices or networks that are trusted by Westpac.

## 8. No Warranties

While Westpac will endeavor to minimise any service outages, service outages may occur from time to time. If an outage occurs, please contact your relationship manager.

To the fullest extent permitted by law, Westpac excludes all warranties, representations and guarantees in relation to the use of, or access to, FlexEquip Online.

Westpac will not be liable for any special, incidental, consequential loss or damages or any loss of goodwill, data, profits or any exemplary or punitive damages suffered or incurred by a Customer or an Authorised Person arising from the Customer's or an Authorised Person's use of, or access to, FlexEquip Online.

While Westpac will take reasonable steps to ensure that FlexEquip Online is free of defects, viruses or malicious code, Westpac does not guarantee that the use of, or access to, FlexEquip Online will be free of such defects, viruses or malicious code.

## 9. FlexEquip Online is Westpac's property

The copyright in FlexEquip Online is owned by Westpac New Zealand Limited and/or its licensors. Westpac is a trademark of Westpac Banking Corporation (ABN 33 007 457 141).

Neither the Customer nor any Authorised Person may display or distribute the content of FlexEquip Online to any other person, or in such a way that they will be accessible to any other person (including reproduction in any form on the Internet), without Westpac's consent.

Any unauthorised reproduction, use or modification by the Customer or any Authorised Person of any proprietary information contained in FlexEquip Online, or any part of such information, may result in legal action being taken.

## 10. General

If any part of these terms and conditions is held to be unenforceable, that will not affect the enforceability of the remaining parts of these terms and conditions.

A waiver by Westpac of any provision of these terms and conditions shall be effective only if given in writing, and then it shall be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by Westpac in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right by Westpac shall not preclude further exercises of that power or right or the exercise of any other power or right.

Westpac may amend these terms and conditions at any time by giving the Customer or an Administrator at least 14 days' notice of the change by giving notice in accordance with Westpac's General Terms and Conditions.

These terms and conditions are governed by New Zealand law. The Customer and Westpac submit to the exclusive jurisdiction of the Courts of New Zealand.

## 11. Definitions

Unless specifically stated otherwise or the context otherwise requires, the following definitions apply to the use of the terms used in these terms and conditions:

**Administrator** – means any person that has been appointed to be an administrator of the Customer’s FlexEquip Online facility.

**Asset Pool** – shall have the meaning given to it in the Facility Agreement.

**Authorised Person** – means each Administrator and Viewer.

**Business Day** – means every day except Saturday, Sunday, and national public holidays.

**Customer** or **you** – shall have the meaning given to “Customer” in clause A. above, and **your** shall have a corresponding meaning.

**FlexEquip Agreement** – means the FlexEquip Agreement between us and you (and any replacement or successor agreement).

**FlexEquip Online** – shall have the meaning given to “Customer” in clause A above.

**Viewer** – means any person that has been appointed to be a viewer of the Customer’s FlexEquip Online facility

**Westpac, we, us or our** – means Westpac New Zealand Limited, a company incorporated in New Zealand with NZ Business Number 9429034324622.

In these terms and conditions, unless the context otherwise requires, the singular includes the plural and vice versa.