



**WESTPAC NEW ZEALAND LIMITED**

**(Name of Designer/Developer)**

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# **COLLABORATION AGREEMENT**

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**THIS AGREEMENT** is entered into on this                    day of                    2013

**BY**

**WESTPAC NEW ZEALAND LIMITED**, incorporated in New Zealand under the Companies Act 1993 with company number 1763882 and having its registered office at Westpac on Takutai Square, 16 Takutai Square, Auckland 1010 ("**Westpac**");

and

[INSERT] ("**Project Winner**"),

each a "**Party**", and collectively referred to as the "**Parties**".

## **INTRODUCTION**

- A. Westpac ran the "Westpac App Challenge" competition for the creation of an outstanding mobile phone software application for use in the banking industry. The Project Winner was selected by Westpac to participate in the "Collaboration Phase" of the Westpac App Challenge.
- B. The Parties now wish to work in collaboration on the development of the mobile phone software application submitted by the Project Winner as part of the Westpac App Challenge ("**BankApp**").
- C. The Parties enter into this Agreement in order to establish and clarify their rights and obligations in relation to the development of the BankApp.

## **AGREEMENT**

### **1. DEFINITIONS**

- 1.1. The following words have the specified meanings when used in this Agreement:

"**Agreement**" means this agreement, including any modifications made to it from time to time and any other agreements referred to herein (including the Terms and Conditions and Terms of Use).

"**Confidential Information**" means any information:

- (a) regarding the business or affairs (including financial position, internal management, policies, strategies, know-how, data, inventions, systems, processes and methodologies) of either Party;
- (b) regarding clients, customers, shareholders or auditors of, or other persons doing business with, Westpac;
- (c) regarding the terms and conditions of the commercial arrangements between the Parties relating to the Project;
- (d) which is by its nature confidential;
- (e) which is designated as confidential by either Party;
- (f) which the receiving Party knows, or ought to know, is confidential to the other Party; or
- (g) which either Party shall at law or in equity keep confidential,

and includes, for the avoidance of doubt, the fact the commercial arrangements between the Parties relating to the Project are taking place.

**“Intellectual Property Rights”** means all industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semi conductor or circuit layout rights, trade, business, domain or company names, moral rights, know how or other proprietary rights (whether or not any of these are registered and including any application for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world. **“Intellectual Property”** has a corresponding meaning.

**“Project”** means the Westpac App Challenge run by Westpac and entered into by the Project Winner.

**“Terms and Conditions”** means the terms and conditions of the Project (published at [www.westpac.co.nz/appchallenge](http://www.westpac.co.nz/appchallenge)) agreed to by the Project Winner.

**“Terms of Use”** means the terms of use for the Project website (published at <http://www.westpac.co.nz/terms-of-use>).

## 2. CONSTRUCTION

2.1. In the construction of this Agreement, unless the context requires otherwise:

- (a) headings appear as a matter of convenience and do not affect the construction of this Agreement; and
- (b) a reference to a party to this Agreement or any other document includes that party’s personal representatives/successors and permitted assigns.

## 3. ACKNOWLEDGMENT

3.1. The Parties acknowledge that:

- (a) the Terms and Conditions and Terms of Use remain in effect for the duration of, and form part of, this Agreement;
- (b) any breach of the Terms and Conditions or the Terms of Use will be considered a material breach of this Agreement and may result in:
  - (i) termination of this Agreement under clause 9.1; and
  - (ii) cessation of the Project Winner’s continued involvement in the Project.

3.2. To the extent there is any conflict, inconsistency or ambiguity between any of these terms and conditions (**“Collaboration Ts&Cs”**), and any provisions of the Terms and Conditions and/or the Terms of Use, the relevant provision of the Collaboration Ts&Cs shall prevail to the extent of such conflict, inconsistency or ambiguity.

## 4. UNDERTAKINGS

4.1. The Parties undertake to work collaboratively toward the goal of developing the BankApp so that it is able to be used by Westpac in a production environment.

4.2. If, prior to the completion of the BankApp, the Project Winner withdraws from the Project or becomes unable to complete his or her respective portion of the BankApp, Westpac may complete the BankApp.

4.3. The Project Winner understands that his or her involvement in the Project and the development if the BankApp may reflect on Westpac, and that he or she must not:

- (a) represent that he or she is Westpac’s agent or otherwise affiliated with Westpac; and

- (b) bring Westpac into disrepute or make any disparaging comments about Westpac in relation to the Project or BankApp.
- 4.4. The Project Winner will notify Westpac of any actual or potential conflict of interest in relation to his or her participation in the further development and commercialisation of the BankApp as soon as practicable after such conflict has come to the Project Winner's attention. If any such actual or potential conflict of interest arises, Westpac may, without restricting any of its other rights under this Agreement:
- (a) exclude the Project Winner from further participation in the BankApp;
  - (b) enter into discussions with the Project Winner to seek to resolve the conflict of interest; or
  - (c) take any other action Westpac considers appropriate.
- 4.5. The Project Winner acknowledges that Westpac is under no obligation to pay to the Project Winner any amount under or in connection with this Agreement (except to the extent expressly specified in the Terms and Conditions in relation to the Cash Amount (as defined in the Terms and Conditions)).

## **5. INTELLECTUAL PROPERTY**

- 5.1. Subject to clause 5.5, the Project Winner will retain all Intellectual Property Rights in the BankApp. No rights over the BankApp are granted to Westpac other than as set out in clause 5.2.
- 5.2. The Project Winner grants Westpac an exclusive, royalty-free, irrevocable, transferable and perpetual licence to use, modify, develop and otherwise deal with all Intellectual Property in the BankApp (whether developed before or after the execution of this Agreement) in New Zealand and Australia in any way at Westpac's absolute discretion. The Project Winner will not make any claim of any kind in relation to Westpac exercising its rights under this clause 5.2.
- 5.3. The Project Winner will not, at any time, use, disclose or deal with any Intellectual Property Rights in the BankApp in relation to any party other than Westpac, without first obtaining Westpac's written consent.
- 5.4. The Project Winner is not restricted from using ideas, concepts, techniques and know-how used or developed in the course of performing his or her obligations under this Agreement.
- 5.5. Any trade mark created by either party (or both parties, acting collaboratively) in respect of the BankApp will be solely owned by Westpac, and the Project Winner will:
- (a) take no action in breach of this undertaking; and
  - (b) provide any assistance required by Westpac in registering the trade mark in New Zealand.

## **6. WARRANTIES AND REPRESENTATIONS**

- 6.1. The Project Winner warrants that:
- (a) the BankApp is free from software viruses and defects;
  - (b) he or she has the full right and entitlement to grant the licence under clause 5.2;
  - (c) the BankApp does not and its use will not infringe or make unauthorised use of the rights (including Intellectual Property Rights) of any person.

6.2. The Project Winner indemnifies Westpac against all costs, losses and liabilities arising from any breach of clause 6.1.

## **7. CONFIDENTIALITY AND PUBLICITY**

7.1. The Project Winner will not, without Westpac's consent, during the continuance of this Agreement or thereafter, reveal to any person, any Confidential Information which may come or has come to the Project Winner's knowledge during the course of this Agreement.

7.2. The Project Winner will keep confidential all Confidential Information, and use it solely for the purpose of performing his or her obligations under this Agreement

7.3. The Project Winner will:

- (a) at all times safeguard Westpac's Confidential Information against unauthorised use or disclosure;
- (b) not make, or assist or permit any person to make, any use, disclosure or reproduction of Westpac's Confidential Information, except as expressly permitted by Westpac;
- (c) co-operate with Westpac in any action which Westpac may take to protect the confidentiality of its Confidential Information under this Agreement; and
- (d) return any Confidential Information in his or her possession to Westpac immediately upon:
  - (i) termination of this Agreement; or
  - (ii) request by Westpac.

7.4. The Project Winner agrees that he or she will not discuss or disclose any details of this Agreement or the BankApp with any other person, unless Westpac gives its prior written approval.

7.5. Westpac may publicly disclose the fact that the Project Winner is involved in the BankApp, and the Project Winner will take part in reasonable promotional activities in relation to the Project and the BankApp.

## **8. ACCESS TO WESTPAC PREMISES**

8.1. If the Project Winner is given access to any Westpac premises or systems, he or she will comply with all:

- (a) occupational safety and health procedures;
- (b) information security policies;
- (c) all other rules, policies and procedures issued by Westpac from time to time in relation to the Project Winner's performance of his or her obligations under this Agreement,

as advised to the Project Winner from time to time.

8.2. The Project Winner will advise Westpac of:

- (a) all hazards or the intention to bring hazardous materials on to Westpac premises; and
- (b) any accident or incident which harms or could harm any person in a Westpac workplace.

- 8.3. Westpac will provide the following advice to the Project Winner:
- (a) emergency procedures to be followed in the event of an emergency;
  - (b) safety rules and procedures; and
  - (c) hazards present at relevant Westpac premises which Westpac has identified.

## **9. TERMINATION**

- 9.1. This Agreement may be terminated by Westpac immediately, without the necessity for giving prior written notice, if the Project Winner:
- (a) commits any act of serious misconduct;
  - (b) breaches the confidentiality obligations set out in this Agreement;
  - (c) breaches the health and safety obligations set out in this Agreement;
  - (d) acts in breach of any other provision of this Agreement in a way which Westpac considers to be prejudicial to its business or reputation, or the welfare or interests of its staff or customers; or
  - (e) engages in conduct, either within or outside the scope of this Agreement which Westpac considers is materially prejudicial to its business or reputation, or the welfare or interests of its staff or customers.
- 9.2. If this Agreement is terminated pursuant to clause 9.1 then, without prejudice to any rights Westpac may have against the Project Winner in respect thereof, Westpac may:
- (a) be regarded as discharged from any further obligations under this Agreement; and
  - (b) pursue any additional or alternative remedies provided by this Agreement or by law.

## **10. GENERAL**

- 10.1. The Parties agree that this Agreement will continue in full force and effect for impetuity.
- 10.2. Clauses 4.3, 5, 6, 7 and 10 will survive expiry or termination of this Agreement.
- 10.3. Any provision of this Agreement that is prohibited or unenforceable will be ineffective to the extent of the prohibition or unenforceability. This will not, however, invalidate the remaining provisions of this Agreement.
- 10.4. The Project Winner is in all respects an independent contractor and not a partner, employee or agent of Westpac, and is not entitled to take any action to legally bind Westpac. The Project Winner is solely liable for its debts, losses, expenses and taxation on his or her income.
- 10.5. No delay, failure or forbearance by one Party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement will operate as a waiver. No waiver of any breach of any provision of this Agreement will be effective unless that waiver is in writing and signed by the Party making the waiver. No waiver of any breach will be, or be deemed to be, a waiver of any other or subsequent breach.
- 10.6. This Agreement is governed by the laws of New Zealand and the courts of New Zealand shall have non-exclusive jurisdiction.

**EXECUTION**

**SIGNED** for and behalf of **Westpac New Zealand Limited** by its attorney:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

**in the presence of :**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED** by [insert full name]:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_