

[XXXXX] Terms and Conditions

1 Definitions and interpretation

In these Terms and Conditions, unless the context requires otherwise:

- 1.1. Access means obtaining access to the Software and/or Service.
- 1.2. Account Information means the information that [XXXXXX] may collect from the User or the User's Nominated Institution in connection with the provision of the Service, including:
 - i. available details of deposits, and credit and mortgage accounts with the User's Nominated Institution /s in the User's name (either alone or jointly), including account names and any nicknames applied, account and BSB numbers, account balances, available balances, credit limits;
 - ii. available details of any benefits, grants or subsidies provided to a User (either alone or jointly) by the Department of Human Services ("**Payment**") as these are shown on a User's account statement accessible through MyGov, including a User's:
 - a) Customer Reference Number (or "CRN")
 - b) name, address and date of birth;
 - c) marital status;
 - d) number of dependents;
 - e) Payment types and amounts, last date a Payment was made and the date a User received a Payment
 - iii. up to 366 days of account statements and/or transactions as held by a User's Nominated Institution .
- 1.3. Agreement means an agreement between the User and [XXXXXX] formed in accordance with clause 2, incorporating the Terms and Conditions.
- 1.4. Data means the User's history of all his/her interactions created by his/her use of the Software and/or Service including any data entered by the User, Account Information and any other data retrieved from the User's Nominated Institution.
- 1.5. [XXXXXX] means [XXXXXX PTY LTD].
- 1.6. Intellectual Property Rights means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not), brand name, service mark, trade name, eligible layout right, or any other proprietary right, any right to registration of such rights, or any similar rights protected by statute, wherever existing in the world, including all renewals, extensions and revivals of whether created before, on or after the date the User Accesses or uses the Software and/or Service.
- 1.7. Marks means all trade marks, service marks, logos or other words or symbols identifying the Service or the Software.
- 1.8. MyGov means the Federal Department of Human Services online portal accessible at <https://my.gov.au> where a User can provide [XXXXXX] with access to its Account Information.
- 1.9. Nominated Institution means the institution nominated by the User from which [XXXXXX] will, as the User's agent, collect Account Information to be provided to the User's Provider, and which may be:
 - i. A financial institution;
 - ii. The Federal Department of Human Services; or
 - iii. Any other institution nominated by the User.
- 1.10. Personal Information has the meaning given to it in the Privacy Act 1988.
- 1.11. Provider means the User's provider to whom the User wishes to provide verification of Account Information.
- 1.12. Service means the MOGOPLUS application service offered to the User, either (i) by downloading and utilising the Software, or (ii) through the MOGOPLUS website, as further described in clause 3.
- 1.13. Software means the software called MOGOPLUS™. References in the Terms and Conditions to the Software apply only to a User who Accesses or uses the Service by downloading and utilising the Software.
- 1.14. Terms and Conditions means these MOGOPLUS Terms and Conditions and any additional terms and conditions displayed to a User prior to or upon downloading, installing or opening the Software (where offered) or using the Service.
- 1.15. User means an individual who Accesses or uses the Software or Service. The words "includes" or "including" are not words of limitation.
- 1.16. References to any statute, regulation, code or other law or a provision of any of them include any amendment or replacement of it.

- 1.17. Headings are for convenience only and do not affect interpretation.
- 1.18. Where a clause contains a number of sub-clauses then, unless expressly stated otherwise, each sub-clause is an independent requirement or obligation.

2. About the Terms and Conditions

2.1 The Terms and Conditions apply to the Access and use of the Service and Software. Only authorised Users who have been provided with a URL link by [XXXXXX] to the MOGOPLUS website or for installation of the Software may Access and use the Service and (where offered) Software. By Accessing or using the Service or Software, the User agrees to the Terms and Conditions.

3. The Service

3.1 In order to Access and use the Service and (where offered) Software, a User must: (a) have an active internet connection and device that complies with the minimum hardware and software specifications; (b) (where offered) use the MOGOPLUS link offered by [XXXXXX]; (c) read and accept the Terms and Conditions; and (d) sign in or log in information as required by the User's Nominated Institution to which a connection is established.

3.2 The Service makes a secure connection between the User's device and the website of the User's Nominated Institution, and enables the User to sign in or log in with the Nominated Institution . [XXXXXX] cannot see the User's sign in or log in information, which is encrypted using SSL and may only be decrypted by the Nominated Institution. Upon successful sign in/log in, available Account Information is collected (where the Software is utilised) by the User's device, or otherwise by [XXXXXX], which is then displayed to the User for selection of the accounts in respect of which Account Information will be disclosed. Once the User makes his/her selection, Account Information for the selected accounts will be (where the Software is utilised) transferred to [XXXXXX], and in all cases disclosed to the User's Provider.

3.3 [XXXXXX] provides the Service for the purposes authorised by the User under clause 8.1(a), on behalf of and as agent of the User.

4 User Obligations

4.1 The User must:

(a) only use the Service and the Software in accordance with this Agreement, any instructions, directions or policies provided or made available by [XXXXXX] from time to time, and any applicable laws and regulations;

(b) in the event the User holds any joint account with a Nominated Institution, the User must notify any joint account holder that (i) [XXXXXX] collects and discloses to the User's Provider the information described in clause 8.1(a) for the purpose of providing the Service, and (ii) [XXXXXX]'s Privacy Policy is available at [www.\[XXXXXX \].com.au/privacy](http://www.[XXXXXX].com.au/privacy);

(b) not allow any other person to Access or use the Service or the Software, and not resell, lease, reproduce, distribute, disclose or allow use of the Service or Software in any format, through any timesharing service, network or by other means, to any third party;

(c) comply with any agreement with, or applicable terms and conditions of, the User's Nominated Institution ;

(d) use reasonable efforts to ensure that no unauthorized use or access to the Service or Software occurs and reasonably cooperate with and assist [XXXXXX] in preventing and identifying any unauthorised use of, or access to, the Service or Software;

(e) notify [XXXXXX] in the event the User becomes aware of any unauthorized use or access to the Service or Software;

(f) not interfere with or disrupt the Service or Software or attempt to gain unauthorised access to the Service or Software or any related systems and/or data; and

(g) not use the Service or Software for the purpose of identity fraud or circumventing or overcoming in any way user or customer authentication or security of any website, account, host or network. Without limitation the User must not access any data not intended for the User; log into any website or account the User is not expressly authorised to access; log into or nominate any account that is not the User's account; engage in or attempt password cracking, or probing the security of websites or networks.

5 Licence and Service Terms

Grant of Licence

5.1 [XXXXXX] grants the User a limited, non-exclusive, non-transferable, revocable licence to Access and use the Service and Software solely for the User's personal use for the purpose set out in, and in accordance with, this Agreement.

Licence Exclusions

5.2 The User must not:

(a) modify, pledge, sub-license, lease, rent, loan, assign, or create derivative works based on, the Service or Software or any component thereof, including their user interfaces; or

(b) copy, adapt, translate, distribute, publish, communicate to the public, or create any adaptation or translation of, or derivative based on, the Service or Software or any component thereof, unless expressly permitted by this Agreement or the law;

(c) reverse engineer, de-compile, disassemble or extract any element of and/or otherwise access, examine, share or discover any source code, object code, algorithms, methods or techniques embodied in the Service or Software;

(d) remove, alter or obscure, any disclaimer or notice, or any restricted right legend, trademark, copyright or other ownership right legend appearing in the Service or Software, on a screen or any print out from the Service or Software.

5.3 The User acknowledges and agrees that:

(a) the Service and Software are provided on a shared service basis to the User and other users from a common code base and [XXXXXX] may from time to time, without prior notification or consent of the User:

(i) change, add or delete the functions, features, performance or other characteristics of the Service and Software to enhance or vary its features and functionality, and if such change, addition or deletion is made, the Service description and specifications of the Software shall be amended accordingly;

(ii) correct errors and/or patch the Service or Software; and

(iii) amend the Service or Software description and technical specifications.

(b) [XXXXXX] is not, subject to clause 6.2, responsible or liable for:

(i) the Account Information, its accuracy, completeness, currency or relevance. [XXXXXX] has no control over and does not in providing the Service review, check or correct the Account Information, which is made available by the User's Nominated Institution;

(ii) the User's internet connection or hardware or software required to Access and use the Service or Software;

(iii) any failures or interruptions in the provision or operation of communications networks or the internet or third party websites used or accessed in connection with the Access or use of the Service or the Software;

(iv) any failures, interruptions or delays in the Service or the Software providing information or performing operations requested;

(v) any use of the Service or Software by a person to whom the User has given or allowed access to the Service or Software; or

(vi) any use of the User's sign in or log in information by a person other than the User.

(c) [XXXXXX] may suspend or terminate the User's use of the Service and/or Software at any time if [XXXXXX] believes the User's use of the Service or Software is interfering with or disrupting the Service; its systems or facilities or those of any third parties; or any other services provided by [XXXXXX] to any of its customers.

6 Warranties

6.1 Except as expressly provided by this Agreement and subject to clause 6.2, to the extent permitted by law, [XXXXXX] excludes all guarantees, warranties, conditions (whether statutory or implied by statute, general law, custom or otherwise) or representations and, in particular, excludes any guarantee, warranty, condition or representation that the Service or the operation of the Software will be uninterrupted or error free, free of virus' or other malicious or harmful code, or that the Service or Software will be fit for a particular purpose or

suitable for the User's requirements. The User acknowledges that the nature of computer software, hardware and technology is such that the Service and the operation of the Software will not be uninterrupted or error free and the User has relied on its own judgement in determining whether the Service and Software is suitable for the purposes for which it intends to use the Service and Software.

6.2 [XXXXXX] does not exclude, or limit its liability under, any statutory or implied guarantee, warranty, condition or representation which it is prohibited by law to exclude, or limit its liability under, (including the Competition and Consumer Act 2010 and corresponding State and Territory legislation).

6.3 The User warrants that:

(a) he or she will not breach any applicable laws, regulations or codes, including in any jurisdiction in which he or she may Access or use the Service or Software;

(b) he or she will not infringe [XXXXXX]'s Intellectual Property Rights or those of any third party; and

(c) to the extent that the Data contains Personal Information of any third party, he or she has obtained the necessary consents or provided the necessary notifications in order to enable access to, collection and transfer of the Data by [XXXXXX], its officers, agents and contractors, as contemplated under this Agreement in accordance with the Privacy Act 1988.

7 Intellectual Property Rights Ownership and Assignment

7.1 All Intellectual Property Rights including adaptations, translations and derivative works in the Service or Software or other material provided under this Agreement and/or created by [XXXXXX] and/or its licensees or any other person, are the exclusive property of [XXXXXX] and/or its licensees, and as between the parties vest in or are transferred to [XXXXXX] and/or its licensees immediately upon creation, as the case may be.

Reserved Rights

7.2 Except for the rights expressly granted by [XXXXXX] to the User under this Agreement: (a) [XXXXXX] and its licensors retain and reserve all right, title and interest in and to the Service and Software and other materials provided under this Agreement and all Intellectual Property Rights in them; (b) no right, title or ownership interest in or to the Service or Software or other materials provided under this Agreement whether by implication, estoppel or otherwise, is granted, assigned or transferred to the User under or in connection with this Agreement.

7.3 The User does not acquire any right to, or interest in, any of the Marks. The User must not at any time or in any way indicate its ownership of or any right in the Marks and must not contest the right of [XXXXXX] to the use of any of the Marks.

7.4 The User must not remove, alter or obscure any Mark, nor attach any additional trade marks, logos, get up or proprietary or restricted use legend, on the Software or on any other materials provided under this Agreement.

7.5 The User acknowledges and agrees that monetary damages alone would not be an adequate remedy for the unauthorised disclosure, use or copying of the Service or the Software or other materials provided under this Agreement. Accordingly, if there is any unauthorised disclosure, use or copying of any Intellectual Property Rights in any of the Service or Software or other materials provided under this Agreement, the User agrees that [XXXXXX] will have the right to seek injunctive or other equitable relief.

8 Privacy and Personal Information

8.1 The User acknowledges and agrees that [XXXXXX] may:

(a) for the purposes of providing the Service and [XXXXXX]'s income and affordability verification services to the User's Provider:

(i) collect from the User's Provider and hold the User's Personal Information, including name and email address, details of the User's Nominated Institution, accounts and account numbers, and disclose such information (if necessary to provide the above mentioned services) to the User's Nominated Institution; and

(ii) collect from the User or the User's Nominated Institution, hold and disclose to the User's Provider, Account Information; and

(iii) disclose the User's information overseas in circumstances where the User's Provider receives the User's Account Information overseas.

(b) compile, use and disclose to its customers, partners, related and affiliated companies, and other third parties, de-identified, aggregated Account Information and/or User statistics in order to provide information about [XXXXXX]'s services and for other lawful purposes including but not limited to research, modelling, profiling and marketing . [XXXXXX] will not use or disclose any information about any identified individual under this clause 8.1(b).

8.2 For information about privacy and how [XXXXXX] manages Personal Information, please see [XXXXXX]'s Privacy Policy.

9 Liability

9.1 When [XXXXXX] collects and provides information to the User's Provider, or otherwise under this Agreement, [XXXXXX] relies on information provided to it by others. The User acknowledges that [XXXXXX] does not independently check the information collected by it.

9.2 To the extent permitted by law and subject to clause 6.2, [XXXXXX] is not liable to the User (or any party claiming through the User), whether in contract (including under an indemnity), tort (including negligence), under statute, in equity or otherwise for any:

(a) loss of profits, opportunity, revenue, data, goodwill, business or anticipated savings, pure economic loss, loss of value of equipment, loss of data or expectation loss; or

(b) any direct, indirect, consequential, special, punitive or exemplary loss or damage;

resulting from or arising in connection with the Services, the use of the Software, the information collected or provided, or this Agreement, even if such loss or damage was reasonably foreseeable, arose naturally or was in the contemplation of the parties.

9.3 To the extent permitted by law and subject to clause 6.2, [XXXXXX]'s liability under any guarantee, condition, warranty or representation which cannot be excluded (including under the Competition and Consumer Act 2010 (Cth) and corresponding State and Territory legislation) is limited at [XXXXXX]'s option to the following:

(a) in the case of services, the supply of the services again; or the payment of the cost of having services supplied again; and

(b) in the case of goods, the replacement of the goods or supply of equivalent goods; the repair of the goods; or the payment of the cost of replacement, resupply or repair.

10 Indemnity

10.1 The User agrees to indemnify [XXXXXX] against all liability, damage, loss, cost, fees (including reasonable legal fees) and expenses arising out of or in connection with:

(a) breach of any warranties given by the User under this Agreement; or

(b) any unauthorized use of the Service and the Software resulting from any breach of this Agreement by the User.

11 Force Majeure

11.1 Neither party will be liable for any failure or delay in performing any of its obligations under this Agreement if such delay is caused by circumstances beyond the reasonable control of the affected party (including any act of God, terrorism, fire, flood, strike, lock-out or other form of industrial action or software, hardware, telecommunications or other computer or network failure).

12. Termination

12.1 [XXXXXX] may terminate the Service and this Agreement at any time without prior notice. Upon termination of this Agreement for any reason the User's licence under clause 5.1 ceases.

13 General

Assignment and subcontracting

13.1 This Agreement is personal to the User and the User may not assign or otherwise deal with it.

13.2 [XXXXXX] may assign this Agreement or subcontract the performance of its obligations under this Agreement.

Variation

13.3 [XXXXXX] may vary the Terms and Conditions from time to time by publication of the Terms and Conditions as varied on the [XXXXXX] website. Any such variation shall be effective from the time of publication.

Notices

13.4 All notices must be legible and in English and addressed to [XXXXXX] at the address or e-mail address set out in this Agreement, and to the User at the address or email address provided by the User or by the User's Provider, or in either case at any other address or e-mail address that a party may notify to the other party in writing from time to time.

Invalid or unenforceable provisions

13.5 If a provision of this Agreement is invalid or unenforceable in a jurisdiction, it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability and that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

No waiver

13.6 No delay or failure to exercise a right under this Agreement prevents the exercise of that or any other right on that or any other occasion.

Entire Agreement

13.7 This Agreement records the entire agreement between the parties in relation to its subject matter. This Agreement supersedes all previous negotiations, understandings or agreements in relation to the subject matter.

Relationship of Parties

13.8 Subject to the limited agency in clause 3.3, the parties do not intend to create by this Agreement any form of partnership, employment, agency or trust relationship and neither party has, and neither party will represent that it has, the authority to act for, or incur any obligation on behalf of, the other party.

Applicable Law

13.9 This Agreement is governed by the laws of New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of New South Wales and waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

If the User has any questions about the rights and restrictions above, please contact [XXXXXX] here: [https://www.\[XXXXXX \].com](https://www.[XXXXXX].com).

[XXXXXX] PRIVACY COLLECTION NOTICE

Thank you for using MOGOPLUS, provided by [XXXXXX]. The MOGOPLUS tool makes a secure connection to your nominated institution and you will be asked to login to your online account. Your login credentials are not seen by anyone other than the institution to which you are logging into. It will take a minute or two and you will be kept informed.

[XXXXXX] collects your personal information:

- (1) from your provider to whom you have made an application and would like to provide verification of account information (**Provider**), including
 - a. name and email address; and
 - b. details of your institution from which you wish to obtain account information (**Nominated Institution**) including account number(s) and reference numbers.

- (2) from your Nominated Institution including details of:
 - a. account and BSB numbers, balances; deposits; available balances; credit limits; credit and mortgage account(s) in your name (alone or jointly) where available; and up to 366 days of statements and/or transactions; and
 - b. any benefits, grants and/or subsidies, provided to you (alone or jointly) including the dates these were paid and received, your marital status, number of dependents, and any other information that would typically be listed on your account statement from the Nominated Institution, for a period of up to 366 days.

[XXXXXX] discloses this information listed above in (2) to you Provider as your agent.

Technical navigation information required to diagnose data collection issues may also be utilised by [XXXXXX] in case of problems. This information will be purged immediately after the problems (if any) have been fixed by [XXXXXX]. In the event you hold any joint account with your nominated financial institution, you must notify any joint account holder of the contents of this notice.

[XXXXXX] collects your personal information for the purpose of providing your financial information to your Provider for verification and processing of your application. If [XXXXXX] does not collect your personal information, it will not be able to provide the MOGOPLUS service. [XXXXXX] may disclose your information overseas in circumstances where your Provider receives the information overseas. [XXXXXX]'s privacy policy contains information about how you may access and seek correction of your personal information held by [XXXXXX], or make a privacy complaint, and how [XXXXXX] will deal with such a complaint.