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# NAB Direct Debit

## Terms and Conditions

Effective October 2023

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# Conditions

## 1. Sponsorship

We agree to:

- (a) sponsor you as a debit user in BECS on the terms and conditions set out in this agreement; and
- (b) accept and act upon debit payment instructions received from you to debit the accounts of your Customers held with financial institutions which are participating members of BECS.

## 2. Extent of obligations

You must comply with all the conditions, accountabilities and responsibilities which apply to you in:

- (a) the Regulations and Procedures;
- (b) the Letters of Offer and Formal Credit Limit Letter of Offer signed by you;
- (c) this agreement;
- (d) any DDR and DDR Service Agreement you enter into with a Customer;
- (e) the File Format; and
- (f) the User Manual.

## 3. Your obligations establishing direct debits

3.1 Before attempting to use this facility to debit the account of any Customer of yours, you must:

- (a) obtain from that Customer a valid DDR; and
- (b) provide to the Customer a DDR Service Agreement.

The DDR, the DDR Service Agreement and any other information that you give to customers in relation to payments via Direct Debit must be in a form approved by us.

3.2 Where, notwithstanding clause 3.1(b), for any reason any Customer has not received a DDR Service Agreement, you agree to apply for the benefit of that Customer the procedures and policies set out in the DDR Service Agreement and at the relevant time and upon enquiry from such Customer agree to make available descriptive information on such procedures and policies.

3.3 Where you wish to obtain DDRs from your Customers electronically or by telephone, you must:

- (a) submit for our review and approval the format, content, medium and procedures proposed for obtaining DDRs electronically or by telephone;
- (b) comply with any conditions reasonably specified by us including relating to storage of data, having regard to the Procedures and to the risks involved;
- (c) comply with the AusPayNet Guidelines for Establishing DDRs Electronically or by Telephone to the extent to which such guidelines are applicable; and
- (d) only obtain DDRs established by telephone, using a procedure approved by us acting reasonably and following a script approved by us acting reasonably (in each case having regard to the Regulations and Procedures and any relevant law or guidelines).

3.4 Unless you have our written approval to do otherwise, you may only obtain DDRs in the manner specified in the product description of the Letter of Offer.

3.5 By sending your first debit payment instruction you warrant to us that you hold a DDR from the payer customer who has received a DDR Service Agreement from you and you have made all necessary inquiries and sought all necessary advice and confirm that the DDR is valid and binding.

## 4. Direct debit instructions and dealings with Customers

4.1 You must:

- (a) issue debit payment instructions strictly in accordance with the arrangements made between you and a Customer and ensure that such instructions do not exceed the conditions (if any) specified in the DDR provided to the Customer;
- (b) comply with your obligations to a Customer under the DDR Service Agreement;
- (c) act promptly in accordance with any instructions given by a Customer (either directly or through the Customer's financial institution to us) to:
  - (i) cancel or suspend a DDR;
  - (ii) stop or defer individual debit payment instructions from time to time;
  - (iii) vary a DDR in accordance with a verified Switch of Financial Institution and Account Details; or
  - (iv) vary a DDR in accordance with a Notice of Redirection of a Direct Entry item;
- (d) in relation to any debit item which we advise you has been returned (i.e. not successfully processed) due to an invalid BSB or account or an incorrect account number or for the reason that the Customer is deceased:
  - (i) cease to submit debit payment instructions using those BSB and account details; and
  - (ii) take such action as is reasonably necessary, such as confirming details with the Customer, to ensure the continuing accuracy of the relevant DDR;
- (e) inform a Customer of any change in the terms of the debit arrangements made between you and a Customer at least thirty (30) days before the change is to be implemented;
- (f) not make any representation in connection with any goods or services which may bind us;
- (g) ensure that your correct User Identification Number appears on each DDR and all correspondence from you to a Customer regarding DDRs;
- (h) ensure that you have a correct trace record for each (electronic) debit payment instruction<sup>1</sup>. If we are not the financial institution specified in the trace record, then you must have obtained the consent in writing of that institution to be so specified; and
- (i) promptly verify (by signature comparison or other means) a Switch of Financial Institution and Account Details prior to processing and, if there is any doubt as to the Customer's authorisation, you must contact the Customer to verify.

4.2 You acknowledge that if incorrect information in any DDR we rely on results in any claim, liability, expense or loss being incurred by another financial institution we are liable to that financial institution under the Procedures. As you are solely liable for the accuracy of the DDR you agree to indemnify us for our liability to that financial institution except to the extent of our fraud, negligence or misconduct.

4.3 You must notify us within sixty (60) days of:

- (a) any significant changes in arrangements for issuing of debit payment instructions including any changes relating to the amount of or frequency of debit payments; and
- (b) any proposed changes to your name, mergers and changes of a like kind.

In this notification period we will consider the proposed change and determine at our discretion (such discretion to be exercised reasonably and in accordance with our legitimate business interests and prudential and regulatory obligations) whether or not we will continue our sponsorship and advise you accordingly.

4.4 You must not take any steps in connection with the transfer of your User Identification Number to any other person or company without first notifying us and seeking our consent. We will not withhold our consent to such transfer if:

- (a) the transferee makes an application to us to become sponsored as a debit user under the debit User Identification Number being transferred;
- (b) the application is approved and all relevant documents signed;
- (c) we are satisfied with arrangements made to protect us from liability we may incur or have incurred arising out of this agreement or your use or misuse of the debit User Identification Number.

**1. IMPORTANT NOTE:** the Queensland Office of Fair Trading has stated it considers that under the *Agents Financial Administration Act 2014* (Qld) (the **Act**), it is an offence to apply a Direct Debit return (ie withdraw funds) from a trust account covered by the Act. On that basis, you should not use such account for trace account purposes and under clause 10.1 below you indemnify us for any "claims" (as defined below) relating to such offences.

Subject to the above we will notify AusPayNet of the change in identity of the debit user using the allocated debit User Identification Number. Issue of that notice will terminate this agreement and the Formal Limit facility except in relation to any liability you incur prior to the date of termination.

- 4.5 Files must be in a Valid File Format as advised by us to you. Payment instructions will be validated on the criteria outlined in the File specifications and your file delivery channel user guide. We are not able to alter debit payment instructions that you provide and it is therefore your responsibility that instructions in your File are correct.
- 4.6 All Files must be delivered to us by the cut off times advised by your file delivery channel.
- 4.7 You may request a File to be recalled prior to processing. You may be charged the File recall fee for this service as set out in Business Banking Fees – A guide to fees and charges. In some circumstances it may not be possible for us to comply with your request to recall a File from processing, in which case we will notify you of our inability to comply as soon as practicable after we become aware of such circumstances.

## **5. Claims**

- 5.1 You must appoint a DDR Claims Contact and notify us of how we may contact them. If the details of the DDR Claims Contact change at any time you must notify us as soon as practicable.
- 5.2 You must promptly and in good faith investigate and deal with any query, claim or complaint relating to alleged incorrect or wrongful debits received from us and provide such assistance as is reasonably required by us so we may deal with and respond to such queries, claims or complaints within two (2) banking days by either:
  - (a) accepting the claim and paying the disputed amount either to us or in the manner we reasonably direct you to pay it; or
  - (b) disputing the claim and providing us with full particulars of your reasons for disputing the claim including evidence of your authority to debit.

If, in our reasonable opinion, you do not satisfactorily respond to a claim received from us within two (2) banking days then you agree that an amount equal to the amount allegedly incorrectly or wrongfully debited may be debited by us to your Trace Record Account and that this amount will be credited by us to the Customer's account with the Customer's financial institution.

- 5.3 You must promptly investigate and deal in good faith with any query, claim or complaint relating to alleged incorrect or wrongful debits received from a Customer and advise the Customer in writing of your conclusion as set out in the DDR Service Agreement.
- 5.4 You agree that any claim for all debits made on an account, based on an allegation that the DDR was invalid, will be dealt with solely on that basis without involving the Bank in any argument arising out of any contractual arrangements between you and the Customer.

## **6. Settlement**

- (a) Unless we otherwise agree, you must maintain at least one account with us which can be used for the purpose of this agreement.
- (b) You acknowledge that NAB may in its discretion give priority to drawings under clause 9.1 over any cheques or other mandate or authority drawn or given now or in the future and that Files lodged for processing via the file delivery channel are deemed to be fully authorised.
- (c) We are not obliged to process debit payment instructions in a File where there are insufficient funds against your Formal Limit.

## **7. Storage and access**

- 7.1 You must safely and securely retain:
  - (a) all authorised DDRs, Switch of Financial Institution and Account Details, Notices of Redirection of a Direct Entry Item and instructions from customers to cancel or suspend a DDR, as provided to you on or after the DDR Implementation Date; and
  - (b) all authorised Amendments as provided to and from you in relation to all unsigned DDRs; and
  - (c) all electronic versions of or tape or digitally recorded evidence of the documents in (a) or (b) above;

for a period of not less than seven (7) years from the date the last debit was made under the relevant DDR and produce upon request by us or the relevant financial institution for verification of your authority to debit.

7.2 You must:

- (a) allow us to examine your books of account or records in respect of your debit payment instructions upon reasonable request; and
- (b) allow our employees, contractors or agents to enter your premises at reasonable times and with reasonable notice during normal business hours for any purpose relating to your debit payment instructions

## **8. AusPayNet Direct Debit Logo**

You may include your logo and the AusPayNet Direct Debit Logo on a DDR or other related material approved by us for the purposes of, and in accordance with, this agreement and the Procedures. Where you do so, you:

- (a) must only use the AusPayNet Direct Debit Logo in accordance with the Style Guide;
- (b) acknowledge and agree (for our benefit and that of AusPayNet) that:
  - (i) your entitlement to use the AusPayNet Direct Debit Logo and any related material approved by us is contingent on your continuing to act (and comply with all your obligations) as a debit user in BECS; and
  - (ii) as soon as practicable, you will discontinue your use of the AusPayNet Direct Debit Logo if you cease to be a debit user in BECS, or you fail to comply with your obligations as a debit user in BECS, or we discontinue our sponsorship of you as a participant in BECS; and
  - (iii) if you continue to use the logo that such continued use amounts to an infringement of the rights in that mark.

## **9. Costs, fees and other payments**

9.1 You authorise us to withdraw from any account you have with us, as reasonably determined by us in accordance with our legitimate business interests and prudential and regulatory obligations, including the account maintained under clause 6, without notice:

- (a) all fees, charges and costs in connection with the services the subject matter of this agreement;
- (b) all amounts arising from any return, query, claim or dispute;
- (c) all stamp duties and other government charges levied on or in connection with any DDR, DDR Service Agreement, your accounts with us and this agreement;
- (d) if GST has application to any supply made under or in connection with this agreement, in addition to any amount or consideration expressed as payable elsewhere in this agreement, an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by you for the relevant supply by the prevailing GST rate. Any amount on account of GST under this clause shall be calculated without any deduction or set off of any other amount;
- (e) any amounts found to be due to us during an audit or check by us; and
- (f) all other amounts you owe us under this agreement.

9.2 You must pay on demand from us any balance which remains unpaid because there are not enough funds in your account to pay the amounts due under clause 9(a) above within the time specified in the notice or if no period is specified by no later than 3 banking days after receiving the demand from us.

9.3 Fees and charges may be reviewed by us and you will be notified of any changes before they are implemented under clause 12. If any variation made has an adverse impact on you, you may terminate this agreement. You will need to pay all outstanding fees and charges to do this.

## **10. Indemnity**

10.1 You must indemnify us and keep us indemnified against all claims, liabilities, expenses and losses suffered and incurred by us ("claims") arising out of or in connection with this agreement or our sponsorship of you as a debit user in BECS including but not limited to claims arising as a result of:

- (a) the debiting of any account mistakenly included in a DDR which is not an account owned by the Customer who gave you the DDR;

- (b) the debiting of the account of any Customer held at a financial institution and the payment to you of any sum or sums of money the debiting of which was not at the time authorised by a DDR or to which you were not then legally entitled;
  - (c) the making of any payment not in accordance with the terms of a DDR;
  - (d) the failure to make payment in accordance with the terms of a DDR;
  - (e) the form, content, method of recording of any DDR being found to be inaccurate or invalid at law or under BECS; or
  - (f) a DDR being unsigned where given.
- 10.2 You shall not be liable under this clause 10 with respect to a claim to the extent that the claim was caused or contributed to by our negligence or any of our employees or agents in processing your debit payment instructions.
- 10.3 You shall be liable pursuant to this indemnity for the actions of any agent, consultant, subcontractor or employee appointed or engaged by you whether acting within or outside the bounds of any contract or instruction.
- 10.4 You authorise us to admit, compromise or reject any claims we reasonably consider appropriate without reference to or authority from you and shall not dispute the quantum of any payment made as a result of any admission.
- 10.5
- (a) Each indemnity is a continuing indemnity, and is separate and independent from any other obligations and survives termination of this agreement.
  - (b) It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.
  - (c) You will not be liable under each indemnity given by you in this clause to the extent that the amount of any claims is attributable to our fraud, negligence or misconduct or to that of our officers, employees, contractors or agents.

## 11. Our obligations

We will:

- (a) comply with our obligations to you in our capacity as your sponsor in BECS;
- (b) accept and act upon your debit payment instructions given in accordance with this agreement and the User Manual;
- (c) pass on your grounds for disputing a claim provided they are not unreasonable or likely to cause us to breach the Regulations or Procedures.

## 12. Variation and waiver

- (a) We may vary this agreement or the terms on which we are prepared to sponsor you in BECS at any time by giving you notice in writing. The variation begins on the date of the notice or a later date specified on the notice. If any variation made has an adverse impact on you, you may terminate this agreement. You will need to pay all outstanding fees and charges to do this. If we think a change will have an adverse impact on you, we will usually give 30 days' notice of the change, but can give less notice or no notice if this is in accordance with law and industry codes. For example, this may happen if it is reasonable for us to give shorter notice, to manage an immediate and material risk. Any new or changed government charges can be notified reasonably promptly after the government notifies us - but we may not have to tell you about them if the government publicises the change.
- (b) You or we may only waive a right created by this agreement by giving the other notice in writing.
- (c) You agree that, subject to this clause, written notices, certificates, consents, variations and approvals and other communications in connection with this agreement from us may be given electronically:
  - (i) by electronic mail to your nominated electronic address; or
  - (ii) by being made available at a website.

Unless you so request, we are not required to give you communications in other ways.

- (d) Where communications are made available using a website, we will provide you with the ability to readily retrieve the information (e.g. by providing a link to our website).
- (e) You may change your nominated electronic address or withdraw your agreement to receive notices by electronic mail by giving us notice at any time.

- (f) You may request a paper copy of a communication given electronically within 6 months of the electronic copy being received or made available.
- (g) At any time during the term of this agreement you may advise us that you no longer wish to receive electronic communications from us.
- (h) For the purpose of this clause and clause 18, a notice or communication does not include day to day communications made for the operation of Direct Debit.

## **13. Termination**

### 13.1

- (a) Either you or we may end this agreement in conjunction with the Formal Limit facility by giving the other sixty (60) days' notice in writing. The notice does not have to state a reason.
- (b) The termination of this agreement does not affect any of your or our rights and obligations which arose before it ended.
- (c) Notwithstanding clause 13.1(a) above, we may end this agreement immediately or with a shorter period of notice if:
  - (i) you default in performing any of your material obligations under this agreement;
  - (ii) you default under any other agreement between us and you and we are entitled to terminate that agreement; or
  - (iii) in our reasonable opinion there has been a material adverse change in your circumstances which could reasonably be expected to have a material and adverse effect on your ability to meet your obligations under this agreement; or
  - (iv) your Formal Limit expires and is cancelled at review; or
  - (v) if it is otherwise reasonable for us to do so, to manage an immediate and material risk (including without limitation a regulatory risk or sanction).

13.2 Upon termination of this agreement, you may request that your User Identification Number be transferred to a new sponsoring financial institution. You agree that upon termination, whether or not we are requested to, in approving such transfer of the User Identification Number we can impose any conditions that we consider reasonable to protect ourselves against exposure to any claims arising during the time that we were your sponsor in BECS (such exposure continues beyond termination of this agreement), including:

- (a) requiring you to provide or to continue to provide us with security (including continuation of the Formal Limit) for a period beyond the termination date not exceeding 12 months; and
- (b) requiring you to authorise us to debit any account held by you with the sponsor for the amount of any claims.

## **14. Disclaimer**

We expressly disclaim all conditions and warranties, express or implied, in respect of the subject matter of this agreement including any condition or warranty of merchantability or fitness for a particular purpose. If any condition or warranty is implied into this agreement pursuant to any legislation (including without limitation the Competition and Consumer Act 2010) and the legislation avoids or prohibits provisions in an agreement excluding or modifying the application of, exercise of, or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this agreement provided that our liability for breach of the condition or warranty shall, if the legislation so permits, be limited, at our discretion to:

- (a) the re-supply of any services under this agreement; or
- (b) the cost of re-supplying any services under this agreement; and otherwise shall be limited to the maximum extent permitted by law.

Our liability to you will not be limited in this way if it is not fair or reasonable for us to rely on the limitation set out in this clause.

## **15. Trustee**

15.1 If you enter into this agreement as a trustee of a trust or responsible entity of a scheme you warrant to us that:

- (a) you are empowered to execute this agreement and to do all things required by this agreement;
- (b) no amendments have been made to the trust deed, the approved deed or to your constitution (if you are a company) except as disclosed to us before executing this agreement;



- (c) you are the current and sole trustee of the trust or responsible entity of the scheme;
  - (d) there are no restrictions on your right to be indemnified out of the assets of the trust or scheme and if we ask, you agree to exercise that right;
  - (e) you are not in breach of trust in any way which may affect your right of indemnity from the relevant trust fund; and
  - (f) the trust or scheme is able to meet its debts as they fall due.
- 15.2 If you enter into this agreement as a superannuation entity or life company acting in respect of a statutory fund, you have made all necessary inquiries and sought all necessary advice and confirm to us that:
- (a) the entry into and performance of your obligations under this agreement does not contravene any Australian law applicable to statutory funds;
  - (b) you are in compliance with all capital and prudential rules and all government and industry guidelines; and
  - (c) for life companies only, the assets of the statutory fund may be applied against your obligations under this agreement.

## **16. Our consent and discretion**

- (a) We may give our consent for the purposes of this agreement conditionally or unconditionally or withhold it at our discretion unless this agreement expressly indicates differently, but such consent will not be unreasonably withheld.
- (b) Where this agreement confers on us a right or discretion, we will exercise that right or discretion in a way that is fair and reasonable and in accordance with our business needs. This includes when we make changes to this agreement. We can take a range of things into account when exercising our rights and discretions. These can include:
  - (i) The Regulations and Procedures;
  - (ii) our legal obligations, industry codes and any other payment scheme rules and the expectations of our regulators;
  - (iii) protecting our customers, staff, our systems and the personal information we hold;
  - (iv) how our products and services are intended to be used (and you have used them);
  - (v) our public statements, including those relating to protecting vulnerable persons, the environment or sustainability;
  - (vi) community expectations and any adverse impact on NAB's reputation;
  - (vii) whether NAB needs to take any action to protect your or us or any other person who send or receives direct debit payments; and
  - (viii) risk management, including sanctions risk management.

## **17. Your and our rights**

- (a) You must not assign or charge your rights under this agreement;
- (b) We may enter into this agreement as principal or agent. We may also transfer our interest in this agreement or give another person an interest in or form of security over it in a manner that is consistent with our legitimate business interests or prudential or regulatory obligations. We may not give you notice where we reasonably believe the assignment causes no detriment to you;
- (c) If you or we do not insist upon or enforce a right arising from a breach of this agreement, that does not mean that you or we have given up or waived that right or any other right arising from that breach or any later breach, unless you or we have already expressly waived that right in writing.

## **18. Notices**

- (a) A notice must be in writing.
- (b) A notice must be:
  - (i) given personally to the addressee (which, in our case, includes one of our officers at the address last advised);
  - (ii) left at the address last advised; or
  - (iii) sent by prepaid post to the address last advised;

- (iv) sent by facsimile to the facsimile number last advised; or
- (v) sent electronically to the email address last advised in accordance with clause 12.
- (c) Until further notice is given, the address last advised shall be the address specified on the Letter of Offer.
- (d) If a notice is sent by post, it is taken to be received on the seventh banking day after posting.
- (e) If a notice is by facsimile, it is taken to be received on production of a transmission report by the transmitting machine which indicates that the whole facsimile was sent.
- (f) A notice takes effect from the time it is delivered unless a later time is specified in it.
- (g) Any legal process or notice of legal process (for example, a summons) may be served on you or us by delivering or leaving it at your or our last advised address or by any other method of service permitted by law.

## 19. Governing law

This agreement is governed by the laws in force in the Australian State or Territory where your principal place of business is located. If your principal place of business is not located in Australia, this agreement is governed by the laws of Victoria. Any court cases involving this agreement can be held in the courts of any State or Territory of Australia. You and we submit to the non-exclusive jurisdiction of those courts.

If the laws of the State or Territory where you are resident (or if you are not an individual, where your business is located) include mandatory protections that are available to you (including because you are a small business or an individual or this is a small business contract under the Australian Consumer Law or the Australian Securities and Investments Commission Act 2001), then this clause does not operate to exclude those protections.

## 20. Banking code of practice

We have adopted the Banking code of practice and relevant provisions of the Code apply to the services provided under this agreement, if you are an individual or small business referred to in the Code. You can request from NAB a copy of the Code and general descriptive information concerning NAB's banking services including;

- (a) information on standard fees and charges relating to the NAB Direct Debit service;
- (b) our obligations regarding the confidentiality of your information;
- (c) complaint handling procedures; and
- (d) the advisability of you reading these NAB Direct Debit terms and conditions.

## 21. Confidentiality

You must not communicate the terms of this agreement, the Letter of Offer and any other information we provide to you in confidence to any other person, except where by compelled by law, without our consent.

## 22. Meaning of words

22.1

**AusPayNet** means the Australian Payments Network Limited ABN 12 055 136 519. The AusPayNet guidelines, Regulations and the Procedures can be downloaded on its website; [www.auspaynet.com.au](http://www.auspaynet.com.au)

**AusPayNet Direct Debit Logo** means the logo approved by AusPayNet in connection with BECS.

**banking day** means a day on which we are open for general banking business in the place where you normally conduct your general banking business.

**BECS** means the Bulk Electronic Clearing System being the systems and procedures contained in the Regulations and Procedures.

**Customer** means your direct debit customer.

**DDR** means Direct Debit Request an authority and request from a Customer to you to debit amounts to a specified account of that Customer in a form agreed to by us whether in writing or recorded by some other means and whether or not signed by the Customer.

**DDR Claims Contact** means a person, department or area you have nominated for us to contact if we have received a query, claim or other complaint relating to alleged incorrect or wrongful debits.

**DDR Implementation Date** means the date in which the DDR is to take effect.

**DDR Service Agreement** means a binding agreement between you and a Customer given for the benefit of that Customer which sets out the basis on which you will provide Direct Debit services to that customer through BECS in a form approved by us in writing.

**File** means your Direct Debit File which contains Direct Debit payment instructions.

**File Format** means the BECS File Format as advised by us to you.

**Formal Credit Limit Letter of Offer** means the letter to be signed as a condition of us sponsoring you into BECS.

**Formal Limit** means the limit specified in the Formal Limit Letter of Offer and Formal Credit Limit Facility refers to the facility created by that letter.

**GST** means a goods and services tax or any similar tax imposed in Australia.

**Letter of Offer** means the letter of offer signed by, or on behalf of, you and us concerning our offer to sponsor you in BECS.

**notice** means a notice, request, consent and other communication in connection with this agreement.

**person** includes a firm, body corporate, unincorporated association, or authority. It also includes their successors and assigns.

**Procedures** mean the BECS procedures published by AusPayNet from time to time (see definition of AusPayNet).

**Regulations** mean the BECS regulations published by AusPayNet from time to time (see definition of AusPayNet).

**Style Guide** means the style guide published by AusPayNet from time to time.

**Trace Record Account** means the BSB number and account number through which we can trace the debit payment instructions to their source.

**User Identification Number** means the user identification number referred to in the Procedures.

**User Manual** means the current direct entry user manual provided by us to you.

**Valid File** means a File that complies with the agreed File Format received by the cut off time and within the value of your Formal Limit

**we** and **us** means National Australia Bank Limited and its successors and assigns.

**you** means the person or persons named as “Debit User” in the Details. If there are more than one, you means each of them separately and every two or more of them jointly.

**You** includes your successors or assigns.

22.2 The words “including” or “inclusive” when introducing an example do not limit the meaning of the words to which the example refers.