BondsOnline eTransactions System

Terms and conditions

1. Definitions

For the purposes of these Terms and Conditions, unless the contrary intention appears:

a. **Acts** means the *Residential Tenancies Act 1987* and/or the *Residential Parks (Long-stay Tenants) Act 2006*.

b. **Authorised Access** means access by the User or its Employee to the System using an Employee account, where the User is aware of and authorises that Level of access to the System.

c. **Bond Administrator** has the same meaning as defined in the Acts and includes an officer of the Department appointed as an authorised agent under the Acts.

d. **Business day** means a day other than a Saturday or a Sunday and does not include a day that is appointed or declared a public holiday in Western Australia.

e. **Data** means the available information contained in the System from time to time.

f. **Department** means the Department established under the *Public Sector Management Act 1994* responsible for administering the Acts (currently the Department of Energy, Mines, Industry Regulation and Safety).

g. **Downtime** means any period during which the System is inoperative or unavailable or unsuitable in whole or in part for access or use by either or both the User and the State, and includes any period when the System is inoperative or unavailable or unsuitable due to failure of the System for any reason; or maintenance, whether scheduled or unscheduled, of the System.

h. **Employee** means any officer, employee, agent, consultant, contractor or sub-contractor of the User.

i. **Employee account** means the username and On-Line Password that gives Employees Authorised Access to the System.

j. **Employee Account Administrator** means an authorised representative nominated by the User who is responsible for the creation, modification or termination of the Employee accounts.

k. **Event of Default** is defined at clause 9 of these T&Cs.

l. **Hacking** means any unauthorised or illegal access to or use of the System by any means whatsoever.

m. **Intellectual Property** means all intellectual property rights, including without limitation patents, copyright, rights in circuit layouts, registered designs, trademarks and the right to have confidential information kept confidential.

n. **Level of access** is defined at clause 4.1 of these T&Cs.

o. **State** means the Bond Administrator.

p. **System** means the operating and applications systems, programs and databases in the form of a computerised information retrieval system which relates to security bonds, as defined by the Acts, held by the Bond Administrator.

q. **Third Party** means any third party to whom the User supplies Data obtained from the System.

r. **T&Cs** means these Terms and Conditions, including the Direct Debit Request Service Agreement at Annexure A.

s. **Unauthorised Access** means access by any person to the System using an On-Line Password, where the User is unaware of, or does not authorise, that access.

t. **Use** means to make inquiries, view and obtain reports, lodge, vary and dispose of security bonds in accordance with the Acts.

u. **User** means a person who has been granted access by the State to use the System.

2. Interpretation

a. In these T&Cs, unless the contrary intention appears:

b. The word "person" includes a natural person, firm, a body corporate, incorporated association, unincorporated association or an authority.

c. The singular includes the plural and vice versa and words of one gender include all other genders.

d. A reference to any Act includes any Act amending, replacing, or consolidating the Act.

e. A reference to a person includes a reference to the person's successors, substitutes (including, without limitation, persons taking by novation), assigns, executors and administrators.

f. An agreement, representation or warranty on the part of two or more persons binds them jointly and severally and an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.

g. A reference to any thing is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.

h. Nothing in these T&Cs may be construed to make either party a partner, agent, employee or joint venture of the other.

3. System Access

a. The State will provide the User with Authorised Access in the manner set out in these T&Cs upon the receipt of:

   i. a signed User Account and Direct Debit Authorisation Form which provides direct debit details and, where applicable, nominates an Employee Account Administrator; and

   ii. where the User is an individual landlord, a copy of one signed photograph identification document and information about addresses for up to three properties a bond is intended to be lodged for.

b. The State may monitor the User's (including its Employees) Use of the System and reserves the right to suspend or withdraw the User's access to the System or an Employee account at any time and for any reason, including where the State becomes aware of any misuse or Unauthorised Access of the System by the User (including its Employees or other persons).

3.1 The System

a. will not be available to the User and its Employees for access during Downtime.

b. is dependent on an Internet Protocol connection. The User will need to make its own arrangements with an Internet Service Provider for connections to the Internet. The State takes no responsibility whatsoever for the performance or reliability of the connection chosen by the User.

c. is available via most computer or mobile devices that is able to run an Internet Browser that is JavaScript enabled. The performance of the computing hardware and software is the responsibility of the User.

d. operates best with an Internet Browser that is equal to or better than Internet Explorer v11 or Google Chrome.

3.2 The User

a. may only access and Use the System where the User is a party to the bond or is a duly authorised representative of the owner who is authorised to:

   i. lodge, vary or apply for the disposal of the security bond;

   ii. undertake searches of the Data held in the System related to the User;

   iii. print extracts of information related to security bonds; and

   iv. obtain reports relating to that User's use of the System.

b. must ensure that all security bond money is paid to the Bond Administrator as soon as practical, or in any event within 14 days after receipt of the person's bond in accordance with Schedule 1 clause 5A(1) of the *Residential Tenancies Act 1987* or section 22(1)(a) of the *Residential Parks (Long-stay Tenants) Act 2006*. Security bond money is only considered paid to the Bond Administrator once the direct debit payment has been approved.

c. including its Employees, must not disclose an On-Line Password to any other person, business or entity.

d. must ensure security of access to the System and warrants that it will install and maintain anti-virus software and take all reasonable steps to prevent Unauthorised Access including, but not limited to, Hacking.

e. must, at all times, take all reasonable steps to ensure that it's Employees are complying with these T&Cs.

f. must comply with all laws that apply in relation to the privacy or confidentiality of Data that it holds or can access.

g. must immediately notify the Department if the User becomes aware of Unauthorised Access including, but not limited to, Hacking.

h. must not alter Data extracted from the System in any material way that may reasonably mislead and must clearly indicate to any Third Party the date on which Data is obtained from the System.

i. must comply with any direction issued by the State in respect of the manner in which the System is to be accessed or used.

j. may provide representatives by giving written notice to the State.
The notice must specify that a person is to be considered an authorised representative for the purposes of these T&Cs.

k. does not own any Intellectual Property in the System.

4. Employee accounts

4.1 Level of access

An Employee may be granted;

a. read only access (view records and create paper forms);

b. submitter access (completion and submission of forms);

c. approver access (approving payments), or

d. both submitter access and approver access.

4.2 Creation & Modification

a. The State will create a new Employee account for the nominated Employee Account Administrator within three (3) business days of a notice, which specifies the Level of access to be granted to the Employee Account Administrator and the Employee Account Administrator's email address being received by the State from an authorised representative of the User.

b. A notice to request that an Employee account for the Employee Account Administrator be modified will be actioned by the State as soon as practicable after receiving notice from an authorised representative of the User.

c. The Employee Account Administrator is responsible for the creation and modification of all other Employee accounts.

4.3 Termination

a. It is the responsibility of the User to provide a notice to the State to terminate an Employee account for the Employee Account Administrator and the State agrees that that notice will be actioned by the State within two (2) business days of receiving notice.

b. If an Employee, other than an authorised representative of the User, provides notice to the State that an Employee account should be terminated the State will terminate the Employee account and will immediately notify an authorised representative of the User.

c. It is the responsibility of the User and the Employee Account Administrator to terminate any Employee account immediately if the employee no longer requires access to the system to complete their duties, if the employee is no longer employed by the User, or where the user has reason to believe the employee is acting irresponsibly or fraudulently in their use of the system.

5. Direct Debit Authorisation

a. The State may deduct monies from the User's bank account(s), unless the User provides notice to the Department of the termination of that authority or the addition of a new authority from time to time, for the purposes of a transaction being initiated in the System by the User.

b. The State may also deposit monies into the User's bank account(s), unless the User provides notice to the Department of the termination of that authority or the addition of a new authority from time to time, for the purpose of complying with an Order for Disposal of Security Bond issued by the Magistrates Court or if the User omits to provide valid bank account details on a Joint application for disposal of security bond form.

c. Where the User is a licensed real estate agent, the User acknowledges that only the User's trust account(s) can be used for the purposes of the System and it must continue to meet its obligations under the *Real Estate and Business Agents Act 1978* and associated Regulations in respect of trust moneys.

d. The User and the State are bound by the terms of the Direct Debit Request (DDR) Service Agreement which outlines the obligations of both the State and the User under a direct debit arrangement for the BondsOnline system. The terms of the DDR Service Agreement are outlined at Annexure A to these T&Cs.

6. Downtime

a. The State will take all reasonable steps to ensure that the System will be available at all times, other than Downtime.

b. The State does not warrant System availability; and the User releases the State from any and all liability as a result of System unavailability. The State will, whenever it is reasonably practicable to do so, provide notice in advance of scheduled System maintenance but only when the State reasonably believes Downtime will be one (1) hour or more.

c. Security bonds must be lodged with the Bond Administrator within the period required by the Acts, even in the event of Downtime. If Downtime is expected to continue for a significant period, the Bond Administrator will notify the User in accordance with clause 6(b) and advise the User if lodgement of a paper form is acceptable as an alternative to lodgement via BondsOnline.

7. Modification of System

The State may at any time modify the whole or any part of, or add functionality to, the System, the Data or any equipment, hardware, software or other thing forming part of or in connection with the System or may turn off any functionality of the System as it sees fit to protect the interests of the State.

8. Term and termination

a. The Term commences on the date that access is granted to the System and continues until it is terminated by the State or the User after giving 21 days written notice to the other party.

b. The State may terminate the Term with immediate effect if an Event of Default occurs, by giving notice to the User. The State may exercise its right under this clause while reserving its right at law and in equity in connection with the Event of Default.

9. Event of Default

An Event of Default occurs if:

a. in the reasonable opinion of the State, the User has done, or omitted to do something that is prejudicial to the good reputation or objects of the State; or

b. the User breaches any provision or obligation of these T&Cs which is not remedied within seven (7) days of the State providing written notice of the breach;

10. Exclusion of warranties

a. The State does not warrant that the System will perform in any particular manner.

b. The User agrees that except as otherwise provided by these T&Cs or any law, all terms, conditions and warranties implied by custom, general law or written law are excluded.

c. When a written law implies any term, condition or warranty in respect of the supply of goods or services ("Prescribed Term") and that written law prohibits the limitation, modification or exclusion of the Prescribed Term, the Prescribed Term will be deemed to be included in these T&Cs. However, the liability of the State for breach of the Prescribed Term will, to the extent permitted by the written law, be limited at the option of the State to:

   i. supplying the service again;

   ii. the payment of the cost of having the service supplied again;

   iii. repair or replacement of the goods, or the supply of equivalent goods;

   iv. the payment of the cost of repairing or replacing the goods or of acquiring equivalent goods.

11. Exclusion of liabilities

a. The User acknowledges that it accesses the System at its own risk and at its own cost and that the State will not be liable in negligence or howsoever to the User in respect of any loss, cost, or damage (including consequential loss or damage), however arising, which may be suffered or incurred or which may arise directly or indirectly in respect of the System, the User's access to the System, or the Agreement including, without limitation, loss or damage in connection with Downtime or problems associated with any System malfunction or Unauthorised Access, included but not limited to, Hacking.

b. The user agrees to indemnify the State from and against all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal costs and expenses) reasonably incurred or suffered by the State as a direct or indirect consequence of:

   i. a breach of these Terms and Conditions by the User; or

   ii. any wilful, unlawful or negligent act or omission by the User in connection with the User's or its Employees' Use of the System.

c. The State expressly disclaims all liability in negligence or howsoever for, to the maximum extent permitted by law, any and all loss or damage arising from any error, omission, or defect, in any extract produced from the System, Data or the information contained therein, arising from Use by the User or an Employee.

12. Notices

a. A notice or other communication in connection with these T&Cs must be in writing, may be given by a duly authorised representative of the User and must be emailed to bondsonline@dmirs.wa.gov.au.

b. A notice or other communication takes effect from the time it is received, unless a later time is specified in the notice or communication. For the purposes of this clause a letter sent by post is taken to be received on the third Business Day after posting and a communication sent by email is taken to be received on the next Business Day.

13. Compliance with laws

Nothing in these T&Cs will in any way waive or diminish the User's obligations to comply with the Acts or any other applicable laws.

14. Directions and instructions

The User will comply with any direction or instruction of the State from time to time.

15. Variation

The State may at any time review and vary these T&Cs and such variations shall be effective immediately upon posting them on the website www.demirs.wa.gov.au/bondsonline.

16. Information

Information may be subject to the *State Records Act 2000* and the *Freedom of Information Act 1992* and may be prepopulated on Magistrate Court Application Forms for parties applying to the Magistrates Court in accordance with Schedule 1 clause 8(1) of the *Residential Tenancies Act 1987*, or disclosed in response to Parliamentary questions, Ministerial inquiries and inquiries conducted by or on behalf of the Auditor General of Western Australia, and if technical integration between the System and other software exists, the State may collect information from that software provider and may provide any information necessary for the purposes of that integration.

Annexure A -

BondsOnline DDR Service Agreement

This is the Direct Debit Request (DDR) Service Agreement with the **Bond Administrator (Department of Energy, Mines, Industry Regulation and Safety) APCA ID 067 469** for the BondsOnline system.

It explains what a User's obligations are when undertaking a direct debit arrangement with us. It also details what our obligations are to a User as the direct debit provider.

This agreement is available at www.demirs.wa.gov.au/bondsonline for future reference. It forms part of the terms and conditions of your Direct Debit Request (DDR) and should be read in conjunction with the BondsOnline Terms and Conditions and 'BondsOnline User Account and Direct Debit Request Authorisation' form.

Definitions used in this DDR Agreement	All definitions provided in clause 1 of the BondsOnline Terms and Conditions, in addition to the following: **account** means a transaction account held at your financial institution from which we are authorised to arrange for funds to be debited. **debit day** means the day we process the payment that has been authorised by you to us . **debit payment** means a specific transaction where a debit is made. **Direct Debit Request** means the Direct Debit Request between us and you as authorised by the BondsOnline User Account and Direct Debit Request Authorisation form. **DDR Agreement** means the BondsOnline Direct Debit Request Service Agreement between you and us. **us** or **we** means the Bond Administrator, (the Debit User) you have authorised by completing a Direct Debit Request. **Department** means the Department established under the *Public Sector Management Act 1994* responsible for administering the Acts (currently the Department of Energy, Mines, Industry Regulation and Safety). **you** or **your** means the User who has signed or authorised by other means the Direct Debit Request. **your financial institution** means the financial institution nominated by you on the DDR at which the account as defined and maintained in the BondsOnline Terms and Conditions.

1. Debiting your account	1.1 By signing a Direct Debit Request or by providing us with a valid instruction, you have authorised us to arrange for funds to be debited from your account. You should refer to the Agreement (which includes the Direct Debit Request) and this DDR Agreement for the terms of the arrangement between us and you. **1.2 We will only arrange for funds to be debited from your account as authorised in this Direct Debit Request for a security bond transaction submitted electronically through BondsOnline.** 1.3 If the debit day falls on a day that is not a Business day, we may direct your financial institution to debit your account on the following Business day. If you are unsure about which day your account has or will be debited you should ask your financial institution. **1.4 The debit day is the day on which a User or the Employee approves the payment in the System. If a payment is approved prior to 2 pm (Western Standard Time) the debit will occur on the same day, otherwise the direct debit will occur on the next business day.**
2. Amendments by us	2.1 We may vary any details of this DDR Agreement or a Direct Debit Request at any time by giving you at least thirty (30) days written notice. 2.2 Amendments or variations, initiated by the Department will take effect not less than 14 days after the publication date.
3. Amendments by you	3.1 You may stop or defer a debit payment, or terminate (cancel) this DDR Service Agreement at any time by providing us with at least **14 days** notification by emailing us at bondsonline@dmirs.wa.gov.au. 3.2 You may change* or dispute a debit by contacting us or through your own financial institution, which is required to act promptly on your instructions. *Note: in relation to the above reference to 'change', your financial institution may change your debit payment only to the extent of advising us of your new account details.

4. Your obligations	4.1 It is your responsibility to ensure that there are sufficient clear funds available in your account to allow a debit payment to be made in accordance with the Direct Debit Request. 4.2 If there are insufficient clear funds in your account to meet a debit payment: a) The payment will be marked as dishonoured in the System. Notification will be sent via email to you or the Employee advising of the dishonoured payment and the reason, as supplied by our Financial Institution. b) The notification will act as a first and final notice. Failure to resolve the dishonoured payment within 7 days will result in the bond being cancelled and a new lodgement will be required in order to re-lodge the bond. Cancelled bonds will be referred to the Property Industries Branch for further action as per the Act. c) You may be charged a fee and/or interest by your financial institution. d) Bonds Administration does not apply any fees relating to failed direct debit payments. You must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in your account within 7 days so that we can process the debit payment. If, after that timeframe, the funds are still not available, the debit payment is considered cancelled. 4.3 You should check your account statement to verify that the amounts debited from your account are correct.

5. Disputes	5.1 If you believe there has been an error in debiting your account, you should notify us directly on **1300 853 829** and confirm that notification in writing to us as soon as possible so that we can resolve your query. Alternatively, you can take it up directly with your financial institution. 5.2 If we conclude as a result of our investigations that your account has been incorrectly debited we will respond to your query by arranging for your financial institution to adjust your account (including interest and charges) accordingly. We will also notify you in writing of the amount by which your account has been adjusted. 5.3 If we conclude, as a result of our investigations, that your account has not been incorrectly debited, we will respond to your query by providing you with reasons and any evidence for this finding in writing.
6. Accounts	You should check: a) with your financial institution, whether direct debiting is available from your account as direct debiting is not available on all accounts offered by financial institutions; b) your account details which you have provided to us are correct by checking them against a recent account statement; and c) with your financial institution, before completing the Direct Debit Request, if you have any queries about how to complete the Direct Debit Request.
7. Confidentiality	7.1 We will keep any information (including your account details) in your Direct Debit Request confidential. We will make reasonable efforts to keep any such information that we have about you secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information. 7.2 We will only disclose information that we have about you: a) to the extent specifically required by law; or b) for the purposes of the Agreement or this DDR Agreement (including disclosing information in connection with any query or claim at the request of a financial institution with respect to an incorrect or wrongful debit).

8. Notice	8.1 If you wish to notify us in writing about anything relating to this DDR Agreement, you should email **BondsOnline Support** at bondsonline@dmirs.wa.gov.au. 8.2 We may send notices either electronically to your email address or by ordinary post to the address you have given us. 8.3 Any notice will be deemed to have been received on the third Business day after posting or on the next business day after emailing.

Department of Energy, Mines, Industry Regulation and Safety

www.demirs.wa.gov.au

Regional Offices:

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid West	(08) 9920 9800
North West	(08) 9185 0900
South West	(08) 9722 2888

Consumer Protection Division

Gordon Stephenson House
Level 2/140 William Street
Perth Western Australia 6000

Locked Bag 100, East Perth WA 6892

Call: 1300 30 40 54
Email: consumer@dmirs.wa.gov.au
www.consumerprotection.wa.gov.au

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This publication is available in other formats on request.

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