

# PayStay Terms of Use

By using the PayStay product or service, you agree to these terms of use

## Recitals

- A. PayStay is a payment collection service that facilitates payment of Parking Fees. Where Parking Operators have commissioned this information to be available, PayStay includes the Parking Locator feature which provides information about the availability of parking at nominated Parking Facilities.
- B. PayStay is provided via the PayStay website (<https://www.paystay.com.au>), and the PayStay App.
- C. If you are not using the PayStay Guest feature, you are required to register for use of PayStay via the PayStay website <https://www.paystay.com.au>, the PayStay App or the PayStay Call Centre. You do not need to register for PayStay if you only use PayStay Guest.
- D. You can maintain your PayStay Account via the PayStay website or the PayStay App.
- E. Orikan Group Pty Ltd (ACN620 056 715) of Level 6, 30 Convention Centre Place, South Wharf, Victoria 3006 ("Orikan") owns the PayStay brand, PayStay logo and the exclusive license to operate the PayStay technology in Australia and New Zealand.

## Terms and Conditions

### 1. Licence

#### 1.1 License Rights

- (a) Orikan grants to you and you accept, a non-transferable and non-exclusive non sub-licensable right to use, PayStay subject to the these terms and conditions:
- (b) Unless you are using PayStay Guest, you have registered to use PayStay and maintain a current PayStay Account;
- (c) You acknowledge and agree to use PayStay in accordance with all of the terms of this agreement
- (d) You acknowledge that Orikan may change the PayStay features or functionality from time to time, including by publishing appropriate user documentation on the PayStay website in relation to such modifications and in the case of changes to fees, in the Fees Guide; and
- (e) You acknowledge and agree your right to use PayStay may be revoked by termination of this agreement as specified by clause 8.

#### 1.2 Restrictions of Use

You will not and will not allow any third party to:

- (a) use PayStay for any purpose other than to facilitate the payment of Parking Fees;
- (b) attempt to translate, reverse engineer, decompile, disassemble or attempt to reconstruct or discover any source code or underlying ideas or algorithms of PayStay by any means
- (c) provide, rent, lease, sub-license, transfer or grant any of your rights of use in PayStay, (in full or in part) to any third party except as permitted elsewhere in this agreement;
- (d) remove or alter any product identification, copyright, trademark or other proprietary notices, labels or marks on or in PayStay;
- (e) modify, incorporate into or with other software, or create a derivative work of any part of PayStay other than as expressly permitted by Orikan in writing; or

- (f) except as expressly permitted by Orikan, transmit or use PayStay over a network of interconnected computers and associated devices.

### 1.3 Title

Title to and ownership of PayStay, the Documentation, the PayStay brand and logo, all modifications (and all copies and portions) thereof, and all applicable rights to patents, copyrights, trademarks, trade secrets and other intellectual property embodied in PayStay and the Documentation, and modifications and derivative works thereof, is permanently and irrevocably vested in Orikan and its suppliers and shall remain with Orikan and its suppliers. This includes:

- (a) the right to modify, enhance or reengineer portions of PayStay in subsequent releases of the product or service;
- (b) the right to resell copies of or licence PayStay to other parties;
- (c) right to sell the intellectual property to a third party; and
- (d) the right to alter the PayStay features and functionality, from time to time.

- 1.4 Other than to the extent of the Licence granted hereunder, no licence, right or interest in any PayStay or any other of Orikan's trademarks, service marks or trade names is granted to you under this Agreement.

## 2. Registration

- 2.1 You can use PayStay either by signing up for a PayStay Account or by using PayStay Guest.

- 2.2 If you choose to sign up for a PayStay Account, you are required to register to use PayStay via the PayStay App, the PayStay website (<http://www.paystay.com.au>) or the PayStay Call Centre.

- 2.3 In registering for the use of PayStay you are required to provide the information requested by the Account Application Form including:

- (a) your contact details (including your full name);
- (b) a username and password to be associated with your PayStay Account (the "Account ID Information");
- (c) the details of your preferred method of payment;
- (d) your nominated Top Up amount;
- (e) your Low-Balance Threshold;
- (f) at least one vehicle registration number and a mobile number to be associated with that vehicle registration number ("Vehicle ID Information"); and
- (g) any further account information which may be required to protect the security of your PayStay Account.

- 2.4 If you use PayStay Guest, you must provide the following information so that we can provide the service to you:

- (a) at least one vehicle registration number.
- (b) a mobile number to be associated with that vehicle registration number; and
- (c) the Zone Number (enter or confirm) where you are parking.
- (d) If you wish for a tax invoice to be sent to you, you will be required to provide an email address.

- 2.5 You acknowledge that when you use PayStay Guest only specific transaction information will be retained (e.g. zone number, transaction date, start and end date/time, vehicle registration, fee information). No personal or credit card information

will be retained by the PayStay service and as such you will not be able to obtain any aggregated and historical information on an account basis.

### 3. **Security Terms**

- 3.1 You are not permitted to disclose your Account ID Information to any third party and in doing so (to the fullest extent permitted by law), you relieve Orikan of any liability it may have in respect of any breach or misuse of your confidential information by the third party with whom you shared your Account ID Information (including any liability for any activity on your PayStay Account).
- 3.2 You are entirely responsible for all use and activity (including any payments for Parking Events) that occur on your PayStay Account with the use of your Account ID Information, via the PayStay App, PayStay website or PayStay Call Centre.
- 3.3 You acknowledge that in nominating any Vehicle ID Information to be associated with your PayStay Account that you agree that the applicable fees will be automatically deducted from your PayStay Account by any party who initiates a Parking Event via:
  - (a) the PayStay App from any mobile number that you have associated with your PayStay Account; or
  - (b) the PayStay website or PayStay Call Centre by any party providing your Account ID Information; for any vehicle registration numbers that you have associated with your PayStay Account.
- 3.4 You accept full responsibility for maintaining the currency of any Vehicle ID Information that is associated with your PayStay Account at any particular time - modifying, deleting or adding such information as you determine.
- 3.5 You agree to notify Orikan immediately of any unauthorised use of your Account ID Information immediately upon becoming aware of such use.

### 4. **Payment Terms**

#### 4.1 Method of Payment

- (a) You agree to provide a valid credit card to be associated with your PayStay Account at all times as the "Method of Payment" for maintaining a positive money balance in your PayStay Account at any time.
- (b) You warrant that you are authorised to provide the credit card information that you provide.

#### 4.2 Top Up Amount

- (a) You agree that when you register for the use of PayStay, an initial Top Up Amount will be automatically deducted with the use of the credit card information you associate with your PayStay Account. This deduction will occur either at registration (when registering with the PayStay website or PayStay Call Centre) or on first use of the PayStay service via the PayStay App.
- (b) You agree that the initial Top Up Amount will be maintained in your PayStay Account as an opening balance to be applied for the payment of Parking Fees associated with any Parking Events that are initiated with your PayStay Account.
- (c) You agree that thereafter this amount will be deducted with the Method of Payment to maintain a positive monetary balance in your PayStay Account.

#### 4.3 Low Balance Threshold

- (a) You agree that when the balance on your PayStay Account reduces to the Low Balance Threshold that Orikan is authorized to automatically deduct the Top Up Amount that you have nominated on your PayStay Account using the credit card information that you have associated with your PayStay Account.
- (b) You agree that if there are insufficient funds in your account to deduct the Parking Fee for any Parking Event that is initiated with your PayStay Account, that Orikan is

authorized to automatically deduct the Parking Fee and the Top Up Amount that you have nominated on your PayStay Account using the Method of Payment that you have associated with your PayStay Account.

- (c) You agree to increase this Low Balance Threshold from time to time if requested by Orikan, due to increases in Parking Fees or any other applicable fees relevant to your PayStay Account.

## 5. **Your PayStay Account**

- 5.1 Your PayStay Account will remain current whilst there is a positive balance of money recorded in your PayStay Account, and whilst the credit card information you have provided remains valid and current and provided you have actively used your account within the previous 24 months.

### 5.2 Dormant PayStay Accounts

- (a) Orikan may deem your PayStay Account to be inactive when there has been no activity on your PayStay Account for a continuous period of at least 24 months.
- (b) At that point, Orikan will make an attempt to contact you via email or other means as it may deem appropriate. You may request a refund of any unused monetary balance in your PayStay Account (net of valid and applicable fees not yet deducted). Orikan will refund such amount via the Method of Payment associated with your PayStay Account, within thirty (30 days).
- (c) If Orikan is unable to contact you after making reasonable efforts to do so, after a further period of no less than 3 months any remaining funds will be lodged with the State Revenue Office Victoria (less any applicable administration fees for doing so) if so required by law (or otherwise forfeited and retained by PayStay), and your PayStay Account will be closed. In such event, your PayStay Account will not be able to be used for the payment of Parking Fees or any other services offered by PayStay.

- 5.3 You accept full responsibility for ensuring that your PayStay Account is current.

- 5.4 You authorize the use of your PayStay Account for the payment of Parking Fees, PayStay Reminder Service Fees, Account Administration Fees, Service Fee and Credit Card Transaction Charges as may be applicable at any time with the use of PayStay, and is set out in the [PayStay Fees Guide](#).

- 5.5 You may close your PayStay Account at any time by contacting the PayStay Call Centre. In such event any positive balance of money remaining in your PayStay Account will be refunded to you (net of valid and applicable fees not yet deducted), via the Method of Payment associated with your PayStay Account, within thirty (30 days) of you closing the account.

- 5.6 Orikan may make available, on the PayStay website, an online transaction statement detailing each individual transaction on your PayStay Account for the previous 30 days (or for such other period as Orikan may determine from time to time).

- 5.7 You agree that you are not entitled to interest on any monetary amounts held by Orikan on your behalf, in respect of any positive balance on your PayStay Account at any time.

- 5.8 You agree to update your PayStay Account to reflect any changes in your vehicle details, name, address or registered office details immediately upon the occurrence of such a change.

- 5.9 You shall be exclusively responsible for the management, and control of your PayStay Account, including but not limited to your failure to:

- (a) maintain the confidentiality of your Account ID Information;
- (b) maintain the Vehicle ID Information associated with your PayStay Account;
- (c) maintain the validity of your Method of Payment;
- (d) ensure that your PayStay Account is current; or

- (e) ensure that you follow the instructions for the correct and proper use of the PayStay App, PayStay website or otherwise use the PayStay service that are published or otherwise notified by Orikan from time to time.
- 5.10 You must not modify or use PayStay in a manner which is illegal or interferes with the reasonable enjoyment or use of PayStay and related services by any other party.
- 6. **Fees**

You agree that Orikan is entitled to deduct from your PayStay Account (or from your nominated credit card if using PayStay Guest) the fees set out in this clause 6 and the Fees Guide. To the extent Orikan introduces a new fee, or a current fee is increased (except the Parking Fee), then Orikan will provide you with at least 7 days notice of the new or increased fee.
- 6.1 PayStay Reminder and Driving Reminder Service Fees (below version 4.6 of the PayStay App)

When using PayStay you are able to nominate that you wish to receive warning of the impending expiry of a Parking Event via the PayStay Reminder Service or PayStay Driving Reminder Service. You agree that such notification will be charged for and automatically deducted from your PayStay Account in accordance with the rates and terms set out in the PayStay Fees Guide.
- 6.2 PayStay Reminder Services Fees (version 4.6 and above of the PayStay App)

When using PayStay you are able to nominate that you wish to receive warnings of the scheduled expiry of a Parking Event via the PayStay Reminder Service or PayStay Driving Reminder Service. You agree that PayStay may charge you for the SMS notifications associated with the PayStay Reminder Service, which PayStay will automatically deduct from your PayStay Account in accordance with the rates and terms set out in the PayStay Fees Guide. Orikan will not charge you for push notification reminders received via the PayStay App.
- 6.3 Account Administration Fees

You acknowledge that an Account Administration Fee may apply and be automatically deducted from your PayStay Account in accordance with the rates and terms set out in the PayStay Fees Guide.
- 6.4 Service Fee

You acknowledge that a Service Fee for each Parking Event may apply and be automatically deducted from your PayStay Account (or from your nominated credit card if using PayStay Guest) in accordance with the rates and terms set out in the PayStay Fees Guide.
- 6.5 Credit Card Transaction Charges

You acknowledge that a Credit Card Transaction Charge may apply for any credit card transaction associated with your PayStay Account and will be automatically deducted from your PayStay Account in accordance with the rates and terms set out in the PayStay Fees Guide.
- 6.6 Parking Fees
  - (a) Orikan acts as a collection agent on behalf of the operators of Parking Facilities (the "Parking Operators") which you elect to use for the Parking Fees applicable for any parking service provided by those operators.
  - (b) Where the Parking Operator provides parking on a time-used basis, PayStay allows you to register the start of a Parking Event (register the start parking time) register the completion of the Parking Event (register the end of the parking time). It is your obligation to correctly initiate and terminate the parking session.
  - (c) By initiating a Parking Event with the use of the PayStay App or through the PayStay website, you immediately authorize Orikan to deduct from your PayStay Account any

Parking Fees associated with that Parking Event.

- (d) You accept full responsibility for registering the commencement and completion of your Parking Event accurately by using the PayStay App or the PayStay website and agree that in the event that you do NOT actively register the completion of a Parking Event, that the maximum Parking Fee applicable will be deducted from your PayStay Account. You also acknowledge that additional fees as are consistent with the Parking Operator's terms of use of the Parking Facility may also apply and be deducted from your PayStay Account.
- (e) You acknowledge that Parking Fees are determined by the relevant Parking Operator and that it is your responsibility to inform yourself as to the rates and conditions for the applicability of those Parking Fees.
- (f) You expressly indemnify Orikan against taking any action or from making any other claims against Orikan in respect of the amount of Parking Fees deducted from your account that are consistent with any Parking Fee rates and conditions that are advised to Orikan by the Parking Operator for the PayStay service.
- (g) You acknowledge that Parking Fees can be increased by the relevant Parking Operator at any time and that any such increases will become immediately binding on any user of their Parking Facility and will be automatically applied by Orikan in the PayStay service when notified to Orikan by the Parking Operator.
- (h) Any short application of payment for Parking Fees by the PayStay application from your PayStay Account does not relieve you of your responsibility to fulfill complete payment of the Parking Fees when notified to do so by Orikan or the Parking Operator.
- (i) You acknowledge that PayStay is only one of several payment options available to you for the payment of Parking Fees applicable to your use of any Parking Facility and you expressly indemnify Orikan against taking any action or from making any other claims against Orikan in respect of the availability of the use of your PayStay Account for the payment of Parking Fees.
- (j) You agree that you are entirely responsible for maintaining your PayStay Account as current.
- (k) Once a payment for Parking Fees is deducted from your PayStay Account, that payment shall be the same in law as the payment of such Parking Fees by you directly to the Parking Operator. Your debt to the Parking Operator in respect of such Parking Fees is extinguished because Orikan acts as a collection agent on behalf of the Parking Operator.
- (l) You accept full responsibility for using the Parking Facility in accordance with the Parking Operator's terms of use, applicable By-Laws and other legislation and acknowledge that the payment of Parking Fees from your PayStay Account does not relieve you of any obligation for penalties, fines or other infringements which you incur during your use of any Parking Facility in contravention with the relevant Parking Operator's terms of use.

## **7. Parking Legally**

- 7.1 You acknowledge that it is your responsibility to comply with the Parking Operator's rules for the use of its Parking Facilities.
- 7.2 You acknowledge that from time to time the information on the PayStay App regarding the hours of availability or restriction may vary from that information displayed by the Parking Operator's signage and in such instances acknowledge and agree that the information provided by the Parking Operator's signage takes precedence.

## **8. Termination**

- 8.1 This agreement between yourself and Orikan in respects of the use of PayStay may be terminated by Orikan immediately upon:
  - (a) Any misuse by you of the PayStay App, PayStay website or the PayStay service in anyway.



- (b) Any misuse of your PayStay Account by yourself or any third party including any fraudulent activity; or
  - (c) Any breach by you of any of clauses 1, 2, 3, 4, 5 or 6.
  - (d) If after 14 days of your PayStay Account being suspended under clause 5.2, a valid Method of Payment has not been provided by you: or
  - (e) You become bankrupt or are otherwise unable to pay your debts in full as they fall due; or
  - (f) If Orikan's license to operate the PayStay technology is terminated or Orikan otherwise determines it will cease to provide the PayStay service.
- 8.2 This agreement between yourself and Orikan in respects of the use of PayStay may be terminated by you having provided 7 days' notice to Orikan via the PayStay website, PayStay App or PayStay Call Centre that you wish to close your PayStay Account.
- 8.3 Any positive monetary amount that remains in your PayStay Account at termination, will be refunded to you (net of valid and applicable fees not yet deducted), via either
- (a) the Method of Payment associated with your PayStay Account; or
  - (b) in the event that the Method of Payment is not current or valid, by such other method as determined by Orikan;
- within thirty (30 days) of termination.
- 8.4 Clauses 1, 13, 15 and 16 survive termination of this agreement.
- 8.5 Termination or cancellation of this agreement for any reason, does not affect to any other rights or remedies available to either you or Orikan which arose at or before the end of the termination of the agreement.
9. **PayStay Reminder Service**
- 9.1 The PayStay Reminder Service is available to you when using the PayStay App. It provides reminder notifications via SMS and through the PayStay App that your parking session is scheduled to expire. It is your responsibility to ensure that you have paid for sufficient parking time in the Parking Facility and comply with the parking restrictions and regulations of that Parking Facility.
- 9.2 If you elect to use the PayStay Reminder Service, the PayStay App will remind you that your parking session will be expiring with 30 minutes notice (via push notification), 10 minutes' notice (via SMS) and upon expiry of your parking session (via push notification) and driving reminder (via push notification).
- 9.3 If you elect to use the PayStay Reminder Service, you will be charged at the rates set out in the PayStay Fees Guide.
10. **PayStay Driving Reminder Service**
- 10.1 If you have activated a parking session within the PayStay App and you elect to use the PayStay Driving Reminder service, the PayStay Driving Reminder Service will provide a reminder notification to you via the PayStay App if your PayStay Device starts moving at a speed greater than 30km/hour. Upon receipt of such notification, you will be able to end your current parking session if you wish to by clicking on the relevant button in the PayStay App. If your PayStay Device stops moving and subsequently moves again at a speed greater than 30km/hour, another reminder will be sent to you via the PayStay App.
- 10.2 If you elect to use the PayStay Driving Reminder Service:
- (a) the PayStay App will remind you that you have an active parking session if the PayStay Device is moving at a speed of greater than 30km/hour.
- 10.3 The PayStay Driving Reminder Service is an optional service that is available to you when using the PayStay App provided that your device contains an appropriate

GPS/motion sensor.

- 10.4 You acknowledge and agree that as a result of the technology used to deliver the PayStay Driving Reminder Service, the reminder notification may not be delivered to your PayStay Device, including as set out in clause 12 and in the following circumstances:
- (a) PayStay Device sensors not working - the PayStay Driving Reminder Service depends on PayStay receiving various callbacks from the sensors in your PayStay Device as changes in motion are detected by the PayStay Device's operating system's framework which if not working correctly is outside of Orikan's control.
  - (b) PayStay Device platform (android/iOS) and Manufacturer – functionality of the PayStay Driving Reminder Service and level of accuracy may differ between platforms (android/iOS) and different device manufacturers.
  - (c) PayStay Device framework optimisation functionality of the PayStay Driving Reminder Service may be impacted by certain settings on some devices (e.g. 'extreme battery saving mode'); and
  - (d) PayStay Device network – some versions of android and iOS operating systems may depend on the device network connectivity to determine if you are in motion.

In any such circumstances, Orikan excludes any liability that may arise in relation to the failure of a reminder notification to be delivered to your PayStay Device.

- 10.5 It is your responsibility to ensure that you have paid for sufficient parking time in the Parking Facility and comply with the parking restrictions and regulations of that Parking Facility.

## 11. **IMPORTANT - Notifications**

- 11.1 Upon downloading the PayStay App, "Notifications" for the PayStay App are automatically enabled in your smartphone settings. You acknowledge that if you subsequently disable "Notifications" for the PayStay App in your smartphone settings, the PayStay Reminder Service and the PayStay Driving Reminder Service will NOT work even if you have selected it as an option in the PayStay App (and you will still be charged for use of the PayStay Reminder Service and/or the PayStay Driving Reminder Service where you have switched it on).
- 11.2 If your smartphone is an Apple iPhone, where "Notifications" have been disabled for the PayStay App, the reminder will be sent via an SMS message instead and you will still be charged the same fee for the PayStay Reminder Service. This function is not available for android phones.
- 11.3 If you do not wish to use the PayStay Reminder Service or the PayStay Driver Reminder Service, you must switch off the PayStay Reminder Service and/or the PayStay Driver Reminder Service from within the PayStay App, to confirm that you will not be charged for the PayStay Reminder Service.
- 11.4 Orikan reserves the right to charge for any notification that is not received. PayStay will not charge where notifications are not received due to a PayStay fault or error.
- 11.5 Your telecommunications provider may charge you for transmission of, or receipt of, SMS services. These fees are in addition to the PayStay Reminder Service fees.
- 11.6 SMS Receipts/Reminders:
- 11.7 If the SMS message cannot be delivered to your phone, it is queued by the cellular service for later retry. When it is retried, how often and for how long, all depend on the cellular service i.e. Your mobile network. So, even if you lose signal only for a few seconds, that could cause a text message to be undeliverable and queued and not delivered until some unspecified time in the future. Therefore, it remains your responsibility to ensure your vehicle is legally parked in the Parking Facility. If you are in doubt, you may call the PayStay Call Centre to confirm that a valid parking session is active for your vehicle.



- 11.8 You acknowledge that SMS messages are not always guaranteed to be delivered and that Orikan cannot be held responsible for their successful delivery unless it is shown that the SMS failed to be delivered due to a fault with the PayStay App or the PayStay Website. (SMS messaging is a “store and forward” technology that depends on various cellular carriers and their networks. As such, individual messages are not guaranteed to arrive at their destinations and can also be delayed).

**12. The Parking Locator Feature**

- 12.1 The Parking Locator feature is available for Parking Facilities where the Parking Operator of that Parking Facility has commissioned its use. (IMPORTANT: This feature is available for select locations only).

- 12.2 You acknowledge that the information provided by the Parking Locator may be delayed by up to five (5) minutes or longer dependent on factors that may include (but are not limited to):

- (a) the availability of telecommunication networks;
- (b) speed and congestion of telecommunication networks; and
- (c) the device which you are using to operate the PayStay App.

- 12.3 You agree that when using the PayStay Parking Locator, you will operate your mobile device or any other device on which the PayStay App is used by you, in accordance with any relevant laws (including road regulations).

**13. Indemnities**

- 13.1 You indemnify Orikan against all claims, damages, costs, expenses, loss or liability directly or indirectly arising from or in connection with:

- (a) Your own breach of these terms;
- (b) the breach of these terms by anyone using your PayStay Account with valid Account ID Information or valid Vehicle ID Information;
- (c) the use or misuse of PayStay by Yourself; or
- (d) the use or misuse of PayStay by any person using PayStay Account with valid Account ID Information or valid Vehicle ID Information;
- (e) Your or any other person's use of PayStay (or any device used by you to operate PayStay) in an illegal manner; and
- (f) the accuracy of the parking restriction information that is provided via the PayStay App.

- 13.2 You indemnify Orikan against all damages, cost, expenses, loss, or liability which may be claimed by you or any party arising from or in connection with the use or misuse of any Method of Payment associated with your PayStay Account including fraudulent use thereof.

- 13.3 You acknowledge and agree that Orikan has no liability to you in respect of the availability of any Parking Facility or the availability of information for the Parking Locator feature.

- 13.4 In the event that the PayStay service is not available to you at any time, you acknowledge and agree that Orikan has no liability to you in respect of the availability of payment alternatives other than PayStay.

- 13.5 Your liability in respect of this clause 14 is reduced to the extent that it can be shown that Orikan has contributed to such loss, damage or liability.

**14. PayStay Customer Service**

- 14.1 You may contact Orikan in respect of any aspect of the PayStay service:

- (a) By phone – 1300 322 111
- (b) By email – [customerservice@paystay.com.au](mailto:customerservice@paystay.com.au)

(c) By mail – P. O Box 837, North Melbourne, VIC 3051

- 14.2 You may clarify or notify any disputed payment deduction by either of the methods in clause 14.1 and Orikan will correct the error on your PayStay Account or otherwise provide a response to you at the address associated with your PayStay Account within 60 days.

**15. Use of your Personal Information**

- 15.1 Except where required to do so by law, and unless otherwise advised by yourself in writing, Orikan agrees to use and disclose the personal information provided by you only for the purposes described in the PayStay Privacy Policy published on the PayStay website. Please inform yourself of the uses of your personal information as set out in the [PayStay Privacy Policy](#).

- 15.2 Orikan undertakes to protect any personal information that you provide in accordance with the Privacy Act (Cth) 1988.

**16. Limited Warranty, Liability and Disclaimer**

- 16.1 Orikan makes no representation to you about the availability of the PayStay service.
- 16.2 There may be scheduled outages of the PayStay website from time to time that will be notified on the website in advance.
- 16.3 To the maximum extent permitted by law, Orikan excludes all warranties and representations including any implied warranties and representations not expressly written herein, and in particular Orikan does NOT warrant that:
- (a) The PayStay App or the PayStay website is error free;
  - (b) use of PayStay will be uninterrupted or will not result in loss of data;
  - (c) The PayStay App or the PayStay website will function correctly on your particular equipment (pc, smartphone or otherwise);
  - (d) PayStay is fit for any purpose other than is advised in the PayStay Documentation.
- 16.4 To the maximum extent permitted by law, Orikan is not liable (whether in contract, tort, under statute or otherwise) for any loss including consequential loss or loss of profit, damage or expense that you or any other person incurs arising directly or indirectly from your use of the PayStay App, the PayStay website or otherwise the PayStay service or anything else in connection with this agreement.
- 16.5 This agreement does not affect any rights, liabilities and responsibilities arising at law, unless otherwise provided under this agreement.
- 16.6 In the event of a breach by Orikan of a condition, warranty or right under this agreement, to the maximum extent permitted by law, Orikan's liability for such breach shall be limited to:
- (a) The replacement of the goods or the supply of equivalent goods;
  - (b) Payment of the cost of replacing the goods or acquiring equivalent goods;
  - (c) Reimbursement of any fees deducted in error; or
  - (d) Refund of the fees paid for services,
- as determined by Orikan in its absolute discretion.

**17. General**

**17.1 Construction**

No provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision.

**17.2 Assignment of Agreement**

- (a) You shall not assign or otherwise transfer your rights under this Agreement. Any attempt to make such an assignment without Orikan's consent shall be void and result in immediate termination of this Agreement without notice.
- (b) Orikan is entitled to assign or otherwise transfer its rights and obligations hereunder at its own absolute discretion.

#### 17.3 Non-waiver

Orikan and you agree that no failure to exercise, and no delay in exercising, any right, power, or privilege hereunder, on the part of either party shall operate as a waiver of any right, power, or privilege. Orikan and you further agree that no single or partial exercise of any right, power, or privilege hereunder shall preclude its further exercise. The rights and remedies herein are cumulative with and not exclusive of any rights or remedies provided by law.

#### 17.4 Severability

If any part of this Agreement is adjudged by any court of competent jurisdiction to be invalid, void or illegal, that judgment shall not affect or nullify the remainder of this Agreement, and the effect shall be confined to sever the part immediately involved in the matter adjudged.

#### 17.5 Variation

PayStay may vary the terms and conditions of this Agreement at any time by giving you notice in accordance with clause 17.7.

#### 17.6 Governing Law

The laws of Victoria govern this Agreement, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.

#### 17.7 Notices

Notices (which includes any written communications or statements may be):

- (a) Notified to you via the PayStay App;
- (b) Sent to the address provided by you on your PayStay Account;
- (c) Sent by email to the email address provided by you on your PayStay Account;
- (d) Sent by an SMS message to the mobile number you notified on your PayStay Account;  
or
- (e) Given to you by any other way which the law permits

Notices to PayStay (which includes any written communications or statements may be):

- (f) Sent to Level 6, 30 Convention Centre Place, South Wharf, VIC, 3000;
- (g) Sent by email to [do.not.reply@paystay.com.au](mailto:do.not.reply@paystay.com.au);

#### 17.8 Entire Agreement

You acknowledge and agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and that it supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement and supersedes any previous licence or subscription agreements between you and Orikan in relation to PayStay.

### 18. Definitions and Interpretations

#### 18.1 Definitions

- (a) **"Account ID Information"** means the username and password that you provide on registration for the use of PayStay.
- (b) **"Account Application Form"** means the aggregate of the data collection screens that you complete upon registration for the use of PayStay.

- (c) **"Agreement"** shall mean the terms and conditions described herein as well as any attachments, schedules and appendices and all future addenda, if any and includes the Recitals.
- (d) **"Orikan"** means Orikan Group Pty Ltd (ACN 620 056 715) of Level 6, 30 Convention Centre Place, South Wharf, VIC, 3000.
- (e) **"Documentation"** means any printed and electronic document or documentation (if any) provided to you in connection with PayStay by Orikan, including but not limited to this Agreement, instructional and operational manuals covering the use of PayStay, any other quotations for the provision of additional or optional components of PayStay or including licensing, support services or other services used in conjunction with PayStay.
- (f) **"Intellectual Property Rights"** means a proprietary or personal right arising from intellectual activity in the business, industrial, scientific or artistic fields. It includes a copyright, trademark, design, patent, semi-conductor or circuit layout rights, trade, trade and service mark rights, business or Company Names, trade secrets, confidential or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Agreement and whether existing in Australia or otherwise.
- (g) **"Licence"** means the license to use PayStay within the terms and conditions of this Agreement.
- (h) **"Low Balance Threshold"** means that amount that you nominate at registration as being the value of the monetary balance of your PayStay Account that triggers an automatic payment to the value of your Top Up Amount using your nominated Method of Payment.
- (i) **"Method of Payment"** means the valid and current credit card details that you associate with your PayStay Account for the purposes of providing the initial and subsequent Top Up Amounts to your PayStay Account.
- (j) **"Parking Event"** means the period of use of a Parking Operator's Parking Facility for a specified period of time (as determined by the arrival and departure times of any vehicle).
- (k) **"Parking Facility"** means that area be it a parking bay, street or other area specified for parking that is provided and operated for the purposes of providing parking services.
- (l) **"Parking Locator"** means that feature in the PayStay App which provides information about the availability of parking in specified locations. This feature is only available where a Parking Operator has commissioned the information to be available for its Parking Facilities.
- (m) **"Parking Operator"** means any entity (be it private corporation or government instrumentality) that operates a Parking Facility and is a customer of Orikan's PayStay parking payment collection service.
- (n) **"Payment Terms"** means those terms as detailed by clause 4 of this Agreement.
- (o) **"PayStay"** means the payment collection service provided by Orikan via the PayStay website, the PayStay App or the PayStay Call Centre for the collection of Parking Fees and includes PayStay Guest.
- (p) **"PayStay Account"** means the account details you have registered with Orikan via the PayStay App, PayStay website or PayStay Call Centre for use of the PayStay service and all the associated transactions or other activity that is recorded using your Account ID Information.
- (q) **"PayStay App"** means the smartphone application provided by Orikan for the facilitation of the PayStay service.
- (r) **"PayStay Call Centre"** means the call centre service that has been established by Orikan to support the PayStay service and facilitate customer service in relation for the PayStay service.
- (s) **"PayStay Device"** means a smartphone or other device on which the PayStay App is

installed.

- (t) **“PayStay Driving Reminder Service”** means the service that is provided within the PayStay App and is described in clause 10 of this Agreement.
- (u) **“PayStay Fees Guide”** means that document that details the various fees associated with use of the PayStay service and is published and updated on the [PayStay website](#) from time to time.
- (v) **“PayStay Guest”** means an online version of PayStay, available to users who do not have a PayStay Account, which is accessible by scanning a QR code or via a virtual meter (where available).
- (w) **“PayStay Privacy Policy”** means the PayStay policy governing the collection and use of personal information via the PayStay service and which is published on the PayStay website. (This policy may be updated from time to time).
- (x) **“PayStay Reminder Service”** means that service that is provided within the PayStay App and is described at clause 9 of this Agreement.
- (y) **“PayStay website”** means the website that has been established to facilitate the PayStay service through online registration and transactions and is located at <http://www.paystay.com.au>.
- (z) **“Restrictions of Use”** means those terms as detailed by clause 1.2 of this Agreement.
- (aa) **“Security Terms”** means those terms as detailed by clause 3 of this Agreement.
- (bb) **“SMS”** means the Secure Message Service used by telecommunication operators that permits text or other messages to be communicated to any mobile phone service.
- (cc) **“Top Up Amount”** means that amount that you nominate at registration as being the dollar amount that will be automatically paid to your PayStay Account using your nominated Method of Payment (i) upon registration, (ii) upon first use of the PayStay App or (iii) when the balance of your PayStay account reduces to at least your Low Balance Threshold.
- (dd) **“Vehicle ID Information”** means any vehicle registration number and associated mobile number that is recorded on your PayStay account.

## 18.2 Interpretations

In and for the purposes of interpretation of this Agreement, unless inconsistent with the sub-context or subject matter:

- (a) Reference to time unless otherwise specified shall be reference to Australian Eastern Standard Time (AEST).
- (b) Reference to monetary amounts shall be reference to such amounts expressed in Australian Dollars (AUD).
- (c) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.
- (d) The headings in this Agreement are for the purpose of more convenient reference only and shall not form part of this Agreement or affect its construction or interpretation.
- (e) The Recitals shall be adopted as and shall form part of this Agreement.
- (f) Except as otherwise expressed or provided, where under or pursuant to this Agreement or anything done hereunder the day on or by which any act, matter or thing needs to be done falls on a day other than a business day, such act, matter or thing shall be done on the immediately succeeding business day.
- (g) The obligations and liabilities imposed, and the rights and benefits conferred on the parties in this Agreement will be binding upon and in favour of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.

- (h) Despite anything contained in this Agreement, the obligations contained in Clauses 1, 13, 15 and 16 are continuing obligations and will not cease on the completion, expiry or termination of this Agreement or any other discharge of this Agreement.