



# **Client Service Agreement**

Terms and Conditions

Version 1.8 AU

# EZIDEBIT GENERAL TERMS AND CONDITIONS

## 1. ENGAGEMENT AND TERM

- 1.1 You appoint Ezidebit to provide the Services on the terms and conditions of this Agreement.
- 1.2 This Agreement commences on the date the Application Form is submitted to You and You are notified that the Application Form is acceptable to Ezidebit and continues until the Agreement is terminated in accordance with this Agreement.

## 2. SERVICES

- 2.1 Ezidebit agrees to provide or procure the provision of the Services to You during the Term in accordance with the terms and conditions of this Agreement.
- 2.2 You acknowledge that Ezidebit is not obliged to provide or procure the provision of any services to You other than the Services.
- 2.3 After the date of this Agreement, additional services may be offered by Ezidebit to You and if You purchase any such Services, unless You are notified otherwise, the terms and conditions applying to those services will also form part of this Agreement and those additional services will be 'Services' for the purpose of this Agreement.
- 2.4 For the purpose of You using the Services, Ezidebit will provide to You (as applicable):
  - 2.4.1 access to the Ezidebit Online Service provided by Ezidebit in connection with the Services; and
  - 2.4.2 API User Guides to help you build and maintain integration with Ezidebit's software.
- 2.5 You acknowledge that where your annual Card Transaction volume exceeds the thresholds stipulated per relevant Card Scheme, the Acquirer will enter this Agreement as an additional party in respect of Card Transactions. For the avoidance of doubt, Ezidebit will continue to perform the Services on behalf of the Acquirer and the rights and obligations of each party will not change.
- 2.6 You agree that Ezidebit's provision of the Services does not require Ezidebit to perform services that extend to the recovery of payments which have been declined, dishonoured, or otherwise encompass activities usually conducted as part of debt collection.
- 2.7 You acknowledge that you have read a copy of Ezidebit's Combined Financial Services Guide and Product Disclosure Statement, as applicable

to the Services (found at: [ezidebit.com/-/media/ezidebit/files/ezidebit-combined-pds-and-fsg.pdf](https://ezidebit.com/-/media/ezidebit/files/ezidebit-combined-pds-and-fsg.pdf) >).

### 3. YOUR OBLIGATIONS

- 3.1 Without limiting any other provisions of this Agreement, in respect of Your receipt of the Services You agree:
- 3.1.1 to act in accordance with all reasonable directions given by Ezidebit from time to time in respect of Your receipt of the Services and Your use of the resources provided by Ezidebit under this Agreement;
  - 3.1.2 that You are responsible for administering and managing access to Ezidebit Online and in keeping Your logon details secure and confidential;
  - 3.1.3 that You are responsible for ensuring that a Transaction is approved before providing a Customer with goods and/or services;
  - 3.1.4 that You are solely responsible for all goods and services offered by You to the Customer and for satisfying yourself as to the commercial viability of any Transaction with the Customer;
  - 3.1.5 that You are responsible for responding to all Customer inquiries (including cancellations and order changes) within a reasonable time and will provide the following information to Your Customers:
    - 3.1.5.1 Your contact information (including Your trading name and trading address);
    - 3.1.5.2 a description of all goods and services offered by You;
    - 3.1.5.3 customer service policies and/or trading terms and conditions, including but not limited to usual delivery timeframes and Your refund policy; and
    - 3.1.5.4 a receipt or record of transaction containing Your name (most recognisable to the Customer), amount, date, Customer's name and receipt number.

- 3.1.6 not to require or allow any Customer to tell You their PIN or display a Card number either online or on the Transaction receipt;
  - 3.1.7 to use reasonable care to detect forged or unauthorized signatures or the unauthorized use or forgery of a Card;
  - 3.1.8 not to split a Transaction into two or more transactions on the same bank account or Card to avoid breaching the agreed Transaction Limit (if applicable);
  - 3.1.9 to notify Ezidebit immediately if You suspect or have reasonable knowledge or belief that a Customer has acted fraudulently;
  - 3.1.10 to notify Ezidebit with prompt written notice of any changes in Your legal name, trading name or address;
  - 3.1.11 to not process or encourage any Transactions through the Services that relate to, or are in connection with, the sale of goods or services that are illegal (including the violation of export controls, obscenity laws or gambling laws);
  - 3.1.12 to act in compliance with all Laws, Card Scheme Rules and the Australian Payment Network Rules (available at: <http://www.apca.com.au/>);
  - 3.1.13 To provide Ezidebit with all necessary information relevant to You, the Services and Your Customers to enable Ezidebit to perform the Services, its obligations under this Agreement and to satisfy its obligations at Law, under the Card Schemes' Rules and under the Australian Payment Network Rules; and
  - 3.1.14 to comply with the 'Payment Card Industry Data Security Standard' ("**PCI DSS**") for any transactions involving Cards and any other data security standard we advise to You from time to time. The EFTPOS User Guide contains specific information in relation to PCI DSS for EFTPOS Transactions and EFPTOS terminals.
- 3.2 Ezidebit may in its discretion at any time impose a Transaction Limit on Your Transactions and will notify You of any such amount. You must not instruct Ezidebit to conduct a Transaction above this amount without Ezidebit's prior consent. Any Transaction which is attempted in breach of this clause may be approved, declined or refunded to the relevant Customer at Ezidebit's discretion.
- 3.3 If You use the Services in connection with an Integrated Solution You must not request or permit the provider of the Integrated Solution to make changes to the Ezidebit Data without the prior written consent of Ezidebit or the Customer(s) to which the Ezidebit Data relates.

## 4. SERVICE FEES, INVOICING AND PAYMENT

- 4.1 In consideration of Ezidebit providing the Services, You must pay Ezidebit the Service Fees.
- 4.2 In addition to the Service Fees You must also pay Ezidebit the following amounts:
  - 4.2.1 amounts payable to a Customer for a refund for a Transaction;
  - 4.2.2 Chargebacks and any moneys paid by Ezidebit to You for Transactions where Ezidebit is investigating the validity of the Transaction or a suspected Chargeback;
  - 4.2.3 all stamp duties, taxes and other government charges in relation to the Services or this Agreement;
  - 4.2.4 overpayments or credit amounts made by Ezidebit to You due to errors or omissions;
  - 4.2.5 any amounts found to be due to Ezidebit during an audit by Ezidebit;
  - 4.2.6 all fines, penalties or costs imposed on Ezidebit under the Rules (or incurred by Ezidebit including the cost of forensic investigations required by the Card Schemes) because of Your conduct in relation to the Services where your conduct results in an unacceptable rate of Chargebacks either under clause 12.12 or under Rules or Law or because you fail to comply with PCI DSS;
  - 4.2.7 reasonable enforcement expenses under this Agreement; and
  - 4.2.8 all other amounts You owe Ezidebit under this Agreement.
- 4.3 On each settlement date, Ezidebit will provide You with a tax invoice for the Services provided and Service Fees paid or payable by You for the relevant invoiced period.
- 4.4 You agree and irrevocably authorise Ezidebit to deduct any invoiced Service Fees and other amounts payable by You under this Agreement from the funds collected by Ezidebit on Your behalf or directly from your Billing Bank Account. The administration of this authority is conducted through the Bulk Electronic Clearing System (BECS) by Ezidebit (Debit User 342190).
- 4.5 Any amount that is due and payable to Ezidebit under this Agreement but which cannot be recovered under clause 4.4 is debt payable within seven (7) days of demand. Should You fail to pay any amount You owe Ezidebit under this Agreement, within seven (7) days of a demand being made, Ezidebit may commence collections or enforcement action against You and report Your default to a credit reporting agency.

- 4.6 You agree that Ezidebit has the right to change the Service Fees by giving You written notice of the changes within thirty (30) days of the commencement of the Further Term ("**Service Fee Change Notice**"). If You do not agree with the changes to the Service Fees set out in the Service Fee Change Notice, You may terminate this Agreement by giving written notice to Ezidebit on or at any time prior to the date that is thirty (30) days after the date of the Service Fee Change Notice.

## 5. DIRECT DEBITS

- 5.1 If, and only if, the Services include the processing of Direct Debits, this clause 5 applies to this Agreement.

### Collection and Payment of Customer Fees

- 5.2 Ezidebit will attempt to collect Customer Fees through the conduct of Direct Debits, subject to:
- 5.2.1 You providing Ezidebit instructions to conduct each Direct Debit in accordance with clause 5.3; and
  - 5.2.2 each relevant Customer having completed a valid Direct Debit Request form.
- 5.3 On or before the Debit Date, You must either via Ezidebit Online or through Your Integrated Solution:
- 5.3.1 instruct Ezidebit to conduct each Direct Debit which You require on the relevant Debit Date. This instruction must include the account, Card and other relevant details of any Customers in relation to whom a Direct Debit is to be conducted as set out in the relevant Direct Debit Request. For this purpose, Ezidebit Online or Your Integrated Solution may be used to issue automatic, recurring instructions to Ezidebit;
  - 5.3.2 provide Ezidebit with the new account or Card details (such amendment to be recorded by You in an amendment form nominated by Ezidebit and completed and signed by the Customer and held by You) if a Customer requires that the account or card details for the conduct of a Direct Debit be amended to be different from that previously advised to Ezidebit; and
  - 5.3.3 instruct Ezidebit of the relevant change or cancellation, where You have previously notified Ezidebit of a Direct Debit to be conducted on a specified Debit Date, and You require a change or cancellation of that Direct Debit.
- 5.4 Customer Fees collected by Direct Debit may only be collected from Australian bank accounts, building societies, credit unions and Cards unless otherwise notified by Ezidebit.

- 5.5 Funds collected in connection with Direct Debits will be held by Ezidebit in a designated account operated by Ezidebit until Clearance of those funds occurs. Any interest accruing on the funds whilst in the designated account will be retained by Ezidebit.
- 5.6 Subject to the terms of this Agreement, following Clearance, Customer Fees collected in connection with Direct Debits will electronically be transferred to Your Settlement Bank Account and a detailed transaction listing will be made available which shows all the individual Customer Fees to which the settlement relates.
- 5.7 Unsuccessful Direct Debits will not be re-attempted unless You advise Ezidebit otherwise.

### **Direct Debit Requests**

- 5.8 Ezidebit will provide You with a template Direct Debit Request and You must not amend the Direct Debit Request without Ezidebit's prior consent.
- 5.9 Direct Debit Requests must contain such information as is notified to You by Ezidebit from time to time and must not include information which Ezidebit has informed You cannot be included in a Direct Debit Request.
- 5.10 You acknowledge and agree that:
- 5.10.1 the Direct Debit Requests provided to You by Your Customers are able to be used only by Ezidebit and in relation to the amounts owed to You;
  - 5.10.2 no other person (including a direct debit company or institution) has the right, permission or authorisation to conduct Debit Transactions from Customers by reference to the Direct Debit Request; and
  - 5.10.3 any Transaction conducted by a person other than Ezidebit or for the benefit of a person other than You in reliance on a Direct Debit Request without Ezidebit's prior authorisation will constitute a material breach of this Agreement and not a valid Transaction for the purposes of this Agreement.
- 5.11 You must store all Direct Debit Requests (whether in printed or electronic format) in a safe and secure place for seven (7) years from the date of the last Transaction in relation to that Direct Debit Request or until delivered to Ezidebit, whichever is sooner.
- 5.12 Ezidebit may at any time request the original or a copy of any Direct Debit Request, in which case You must provide such Direct Debit Request to Ezidebit within 24 hours of the request. If You fail to provide a Direct Debit Request to Ezidebit in accordance with this clause 5.12, Ezidebit may exercise its rights under clause 11 and may additionally refund to Customers any Customer Fees collected. Such refunds may relate to all Customer Fees,

not only Customer Fees for those Customers in respect of which You failed to provide documentation to Ezidebit.

- 5.13 A Direct Debit Request of a Customer will be considered inactive and may be cancelled at the discretion of Ezidebit if the payment frequency under the Direct Debit Request is weekly, fortnightly, four (4) weekly or monthly and there has been no debit conducted on the account for a period of six (6) months or more.

## **6. REAL TIME TRANSACTIONS**

- 6.1 If and only if the Services include Real Time Transaction processing, this clause 6 applies to the Agreement.

### **Collection and Payment of Customer Fees**

- 6.2 You may instruct Ezidebit to conduct a Real Time Transaction through either:

- 6.2.1 Your use of Ezidebit Online, or Your Integrated Solution;
- 6.2.2 directing Your Customers to connect to Ezidebit's Real Time Payment System and enter their Card details in the Real Time Payment System for the purpose of making payment to You.

- 6.3 You may only issue an instruction to Ezidebit to attempt a Real Time Transaction where that Transaction is an Authorised Transaction. If Your Customer challenges a Transaction on the basis that it was not an authorised Transaction, clause 12 will apply.

- 6.4 If You initiate a Real Time Transaction using one of the methods listed in clause 6.2, You will promptly receive a response as to whether the Real Time Transaction has been successful or has failed.

- 6.5 Funds collected in connection with Real Time Transactions will be held by Ezidebit in a designated account operated by Ezidebit until Clearance of those funds occurs. Any interest accruing on the funds whilst in the designated account will be to the credit of Ezidebit.

- 6.6 Subject to the terms of this Agreement, following Clearance, Customer Fees in connection with Real Time Transactions will be electronically transferred to Your Settlement Bank Account, and a detailed transaction listing will be made available to You which shows all the individual Customer Fees to which the settlement relates.

## **7. EFTPOS**

- 7.1 If and only if the Services include EFTPOS Transaction processing, this clause 7 applies to this Agreement.

### **Eftpos User Guide**

- 7.2 You must comply with the EFTPOS User Guide at all times in relation to Your use of the EFTPOS Services.

### **Collection and Payment of Customer Fees**

- 7.3 You may instruct Ezidebit to attempt to conduct an EFTPOS Transaction through the use of Your EFTPOS Terminal in accordance with this clause 7.
- 7.4 Subject to the terms of this Agreement, Customer Fees in connection with EFTPOS Transactions will be electronically transferred to Your Settlement Bank Account (which under normal conditions occurs within two (2) Business Days of an EFTPOS Transaction being processed), and a detailed transaction listing will be made available which shows all the individual Customer Fees to which the settlement relates.
- 7.5 Funds collected in connection with EFTPOS Transactions will, pending settlement in accordance with clause 7.4, be held by Ezidebit in a designated account operated by Ezidebit. Any interest accruing on the funds whilst in the designated account will be to the credit of Ezidebit.

### **Supported Card Schemes**

- 7.6 The EFTPOS Terminal will (subject to the terms of this Agreement) enable You to accept valid Card Transactions in respect of Cards issued by the following Card Schemes: Mastercard, Visa, AMEX and EFTPOS.
- 7.7 You may request that Ezidebit program Your EFTPOS Terminal to accept Transactions from a Card issued under a Card Scheme in addition to those in clause 7.6 in which You participate (such request to include Your merchant ID number for that Card Scheme) (**Other Card Scheme**). Ezidebit will consider any such request, and if approved (at the sole discretion of Ezidebit):
- 7.7.1 Ezidebit's only obligation to You in relation to any such Transaction for Other Card Schemes is to transmit the particulars of the Transaction to the person, body corporate or association conducting the Other Card Scheme under which the Card was issued; and
- 7.7.2 Ezidebit makes no representations, gives no assurances and has no obligations whatsoever in relation to the performance of any agreement or arrangement between You and any person, body corporate or association conducting the Other Card Scheme, or settling the funds in relation to those Cards to You.

### **Processing Card Transactions**

- 7.8 In relation to EFTPOS Transactions, You must:
- 7.8.1 only issue an instruction to Ezidebit to attempt to conduct an EFTPOS Transaction where that Transaction is an Authorised

Transaction. If Your Customer challenges a Transaction on the basis that it was not an authorised Transaction, clause 12 will apply;

- 7.8.2 use reasonable care to detect forged or unauthorised signatures or the unauthorised use of a Card; and
- 7.8.3 not process a Card Transaction through the EFTPOS Terminal without the presentation of a Card. This does not include processing a Card Transaction through the EFTPOS Terminal by manually keying the details into the EFTPOS Terminal.

## **Equipment**

- 7.9 Within a reasonable time following the approval of Your application for EFTPOS Services, Ezidebit will arrange for an EFTPOS Terminal to be provided to You by its third party supplier. Unless agreed otherwise, the EFTPOS Terminal must be installed by You in accordance with the EFTPOS User Guide. The initial delivery of the EFTPOS Terminal will include initial stocks of receipt rolls (which can be re-ordered by contacting Ezidebit).
- 7.10 This Agreement does not transfer ownership of the EFTPOS Terminal to You and You must not, without Ezidebit's prior written consent, transfer, mortgage, charge, assign or otherwise encumber the EFTPOS Terminal.
- 7.11 The EFTPOS Terminal must be:
  - 7.11.1 installed, configured and used strictly in accordance with the EFTPOS User Guide instructions provided by Ezidebit from time to time;
  - 7.11.2 used only to process Card Transactions for You in accordance with this Agreement, and not for any other purpose;
  - 7.11.3 stored securely and under Your control so as to not permit damage, theft, unauthorized use or access; and
  - 7.11.4 not be taken outside of Australia at any time or away from the premises where it is installed, or such other location agreed by Ezidebit, unless it is a mobile EFTPOS Terminal.
- 7.12 You must allow our representatives to enter Your premises and access the EFTPOS Terminal during Business Hours or at any other reasonable time to install, move, maintain, repair, replace or remove the EFTPOS Terminal including upon termination of the EFTPOS Service.
- 7.13 Unless expressly identified in this Agreement, You are responsible for all services required to enable the EFTPOS Terminal to operate, including electricity, internet connections and integrated software costs. You must also insure the EFTPOS Terminal against theft, loss, damage, vandalism, fire, flood, earthquake, misuse or neglect for its full replacement value.

- 7.14 To process a refund using the EFTPOS Terminal, You must set a refund password in the terminal. The refund password must be used prior to each refund transaction and must only be known to authorised staff. You are responsible for protecting this password against unauthorised use. Ensure that your refund password is changed regularly to prevent unauthorised use.
- 7.15 You must immediately inform Ezidebit if the EFTPOS Terminal malfunctions, or for any reason is not able to process Transactions, or has been damaged, stolen or mislaid, or if you suspect that the EFTPOS Terminal has been tampered with. If this occurs, Ezidebit will determine the cause of the error or issue, and to the extent caused by Ezidebit or its suppliers, Ezidebit will take reasonable steps to remedy the problem as soon as practical (including where relevant by arranging for the EFTPOS Terminal to be repaired or replaced). To the extent the error or issue has been caused by someone other than Ezidebit or its suppliers, Ezidebit may (but is not obliged to) arrange for the EFTPOS Terminal to be repaired or replaced at Your cost.
- 7.16 In addition to the provisions of clause 18, upon termination of this Agreement or the provision or receipt of EFTPOS Services, You must:
- 7.16.1 immediately cease using the EFTPOS Terminal;
  - 7.16.2 return the EFTPOS Terminal to Ezidebit at Your cost within 14 days, unless Ezidebit agrees to collect the EFTPOS Terminal (in which case You must pay the collection costs, except if You terminate the Agreement pursuant to clause 17.4). If You fail to return the EFTPOS Terminal, or allow us to collect the EFTPOS Terminal, You must pay to Ezidebit within 7 days of Ezidebit's demand the replacement cost of that EFTPOS Terminal; and
  - 7.16.3 unless waived by Ezidebit, or unless You terminate the Agreement pursuant to clause 17.4 or after more than 24 months has elapsed since the approval of Your application for EFTPOS Services, pay to Ezidebit an equipment cancellation fee of \$200.

## **8. PHONE PAY**

- 8.1 If, and only if, the Services include PhonePay, this clause 8 applies to this Agreement.
- 8.2 You may instruct Ezidebit to attempt to conduct a PhonePay Transaction through Ezidebit's PhonePay service.
- 8.3 You may only issue an instruction to Ezidebit to attempt to conduct a PhonePay Transaction where that Transaction is an Authorised Transaction. If Your Customer challenges a Transaction on the basis that it was not an Authorised Transaction, clause 12 will apply.

- 8.4 If a Customer initiates a PhonePay Transaction, You will promptly receive a response as to whether the PhonePay Transaction has been successful or failed.

### **Collection and Payment of Customer Fees**

- 8.5 Funds collected in connection with PhonePay Transactions will be held by Ezidebit in a designated account operated by Ezidebit until Clearance of those funds occurs. Any interest accruing on the funds whilst in the designated account will be retained by Ezidebit.
- 8.6 Subject to the terms of this Agreement, promptly following Clearance, Customer Fees in connection with PhonePay Transactions will be electronically transferred to Your Settlement Bank Account, supported by a detailed transaction listing from Ezidebit listing all the individual Customer Fees to which the settlement relates.

## **9. BPAY**

- 9.1 If, and only if, the Services include BPAY, this clause 9 applies to this Agreement.

### **Collection and Payment of Customer Fees**

- 9.2 You may instruct Ezidebit to attempt to conduct a BPAY Transaction in accordance with the terms of Schedule 1 to this Agreement. Those terms will apply to all BPAY Transactions conducted by You.
- 9.3 Funds collected in connection with BPAY Transactions will be held by Ezidebit in a designated account operated by Ezidebit until Clearance of those funds occurs. Any interest accruing on the funds whilst in the designated account will be retained by Ezidebit.
- 9.4 Subject to the terms of this Agreement, upon receipt by Ezidebit, Customer Fees in connection with BPAY Transactions will be electronically transferred to Your Settlement Bank Account (which under normal conditions occurs within one (1) Business Day of the transaction being processed), supported by a detailed transaction listing from Ezidebit listing all the individual Customer Fees to which the settlement relates

## **10. SURCHARGING**

- 10.1 If You use the Services to charge Your Customer(s) a fee for a Card Transaction which is additional to the price of Your goods or service (or other fee) (a "**Surcharge**"), You must not charge Your Customer a fee or charge (including a Surcharge) that is a prohibited fee or charge under any Law. This includes ensuring that the Surcharge does not exceed Your 'cost of acceptance' for the Card Scheme to which that Card belongs.
- 10.2 Ezidebit will make available reports in relation to Your 'cost of acceptance' for Card Transactions processed by Ezidebit. You must consider that

information in conjunction with information you receive from any other entity that provided you with Card processing services to determine Your individual 'cost of acceptance'.

- 10.3 You must inform Ezidebit of any amount You wish to Surcharge using the Services, and You (and not Ezidebit) are solely responsible for, and You hold harmless and indemnify Ezidebit against, any liability, losses, costs, expenses and Claims arising in connection with such a Surcharge exceeding Your 'cost of acceptance' or being alleged to exceed Your 'cost of acceptance'.
- 10.4 Further information in relation to calculating Your 'cost of acceptance' can be found on the website of the Reserve Bank of Australia.

## **11. REFUNDS**

- 11.1 Unless expressly stated otherwise in this Agreement, You are responsible for determining when Customer Fees are refunded.
- 11.2 Unless otherwise stated in this Agreement, Ezidebit will only process a refund initiated by You when Customer Fees at least equivalent to the refund amount plus any related Service Fees are held by Ezidebit at the date that the refund is to be made. When a refund occurs, the refunded amount, along with any Service Fees in connection with that refund, will be set-off from amounts transferred to your Settlement Bank Account.
- 11.3 You must only process refunds to an account or Card where there was an initial valid Transaction on that account or Card. You must not refund cash under any circumstances nor refund to a different account or Card.
- 11.4 Notwithstanding clause 11.2, unless otherwise specifically agreed, Ezidebit is under no obligation (whether under this Agreement or otherwise) to transfer funds to a Customer as a refund.

## **12. TRANSACTION DISPUTES AND DISHONOURS AND CHARGEBACKS**

- 12.1 You acknowledge and agree that Ezidebit reporting to You that a Transaction is approved or successful (howsoever described) confirms only that the Customer has funds available to meet the amount of the Transaction, and (if relevant) that the Card has not been reported lost or stolen. It does not protect You from the possibility of subsequent Transaction Disputes or Chargebacks.
- 12.2 To reduce the incidence of Transaction Disputes, Claims, Dishonours and Chargebacks and to comply with applicable Card Scheme rules, Ezidebit may include all or part of Your business/trading name in the Debit transaction description on Your Customers' account statements. You hereby consent and authorise Ezidebit to establish, obtain and identify any credit card merchant, Direct Debit or BPAY Biller facility by name/code which includes all or part of Your business/trading name.

## **Responsibility for addressing Customer queries**

- 12.3 In the event that one of Your Customers raises a Transaction Dispute or has a Dishonour or makes a Chargeback:
- 12.3.1 You acknowledge and agree that it is Your responsibility to deal with such a query and You will take all reasonable steps to ensure that the Customer is made aware that the query is to be directed to You and not Ezidebit;
  - 12.3.2 You consent and agree that should a Customer first contact Ezidebit, Ezidebit will, as permitted by law, direct the Customer to contact You or Your nominated representative, directly on the nominated email or contact points as advised by You; and
  - 12.3.3 You acknowledge and agree that Ezidebit is not obliged to participate in the discussion, negotiation or compromise of a Transaction Dispute or Chargeback between You and a Customer.

## **Substantiating Transactions**

- 12.4 In the event that Ezidebit receives a request for documentation from the Customer's issuing financial institution requesting the merchant to substantiate a Transaction, Ezidebit will provide notice to You by email. However, You acknowledge that Ezidebit may, in certain circumstances in accordance with applicable Law, not notify You of a Claim made by a Customer.
- 12.5 In the event that Ezidebit receives a Claim in relation to a Direct Debit, Ezidebit will, in the first instance, supply to the claimant's financial institution all documents as permitted and requested to be supplied according to the BECS Regulations and Procedures.
- 12.6 Ezidebit may from time to time request and You agree that You will supply all documents, billing accounts, contracts and all source documents that may be required by Ezidebit in connection with a Transaction Dispute, Chargeback or Dishonour.
- 12.7 You acknowledge and agree that Ezidebit will provide information received from You in accordance with clause 12.6 to the relevant Customer's financial institution. However, whether the Customer's financial institution accepts that documentation as sufficient for the purposes of substantiating a Transaction is:

- 12.7.1 not a matter within Ezidebit's control;
- 12.7.2 not a matter in relation to which Ezidebit has any liability to You; and
- 12.7.3 a decision binding on Ezidebit and You.

### **Where a Chargeback occurs**

12.8 You acknowledge and agree that Chargebacks may occur:

- 12.8.1 if You fail to provide sufficient material to substantiate a within the timeframe specified by Ezidebit in clause 13.3 or Your Customer's financial institution does not accept that material as sufficient to substantiate a Transaction or the Transaction is otherwise found to be either invalid, fraudulent, not appropriately authorised or not for You; or
- 12.8.2 in circumstances prescribed by the Rules or by Law, without the opportunity being provided to Ezidebit or You to substantiate a Transaction,

and that Ezidebit is required to comply with the Rules of the Card Schemes and Australian Payments Clearing Network and process a Chargeback in those circumstances.

12.9 If a Chargeback occurs You must pay to Ezidebit all Service Fees related to the Transaction, Transaction Dispute and Chargeback (as relevant) and amounts owing or paid by Ezidebit in respect of such Chargeback. You agree that Ezidebit may deduct amounts owing from Your Billing Bank Account or offset them against the funds in Your Settlement Bank Account at any time within the 12-month period after the original Transaction.

### **Where a Chargeback is reversed**

12.10 If a Customer's financial institution notifies Ezidebit that a Chargeback is to be reversed (either based upon information provided by You or otherwise), once funds are received by Ezidebit, the amount of the Chargeback previously processed will be electronically transferred promptly to Your Settlement Bank Account by Ezidebit. Ezidebit may also in its sole discretion refund to You any Service Fees associated with the Chargeback.

### **Managing the risk of Transaction Disputes and Chargebacks**

12.11 Ezidebit may refuse to accept or process any Transaction or series of Transactions (or may require an indemnity from You prior to accepting or processing any Transaction or series of Transactions) where Ezidebit suspects or has reasonable grounds to believe that the relevant Transaction or series of Transactions will or will be reasonably likely to result in a Chargeback.

- 12.12 You must ensure that Chargebacks do not exceed 0.5% of the total Transactions in any calendar month. Where Chargebacks exceed 0.5% of the total Transactions in any calendar month, Ezidebit will notify You and You must, within thirty (30) days of the date of that notice, reduce the level of Chargebacks. If You fail to reduce the level of Chargebacks to the levels required under this clause prior to the expiry of this thirty (30) day period, Ezidebit has the right to suspend the Services in accordance with clause 13.

### **13. SUSPENSION OF SERVICES**

- 13.1 Ezidebit may suspend any or all of the Services (including suspending Your account and the processing or remitting of any payments to You or Your Settlement Bank Account) if:
- 13.1.1 You request that Ezidebit suspend the Services (or any part of the Services);
  - 13.1.2 You request that Ezidebit makes changes to Your account (provided that such suspension will only be for the period during which those changes are being implemented by Ezidebit);
  - 13.1.3 Ezidebit is required to do so in accordance with Law or Rules;
  - 13.1.4 You materially breach the terms of this Agreement, and if applicable, fail to remedy the breach in a period specified by Ezidebit;
  - 13.1.5 a Termination Event occurs;
  - 13.1.6 the level of Chargebacks or Claims has not been rectified in accordance with clause 12.12;
  - 13.1.7 Ezidebit suspects or believes that You or a third party have acted in an unlawful, fraudulent, unconscionable or improper manner in utilising the Services;
  - 13.1.8 There is a dispute as to Your ownership, the identity of Your director(s), partner(s) or trustee(s), or the identity of the person(s) entitled to payment of Customer Fees in connection with this Agreement; or
  - 13.1.9 it is otherwise reasonable for Ezidebit to do so in the circumstances.
- 13.2 Ezidebit may impose a suspension under clause 13.1.1 immediately and without notice. Ezidebit will make best efforts to inform You of the suspension as soon as reasonably practicable (verbally or in writing).
- 13.3 You must as soon as reasonably practicable (but in any event, no less than seven (7) days after being requested) provide Ezidebit with any information that it requests to evaluate whether the relevant circumstances in clause 13.1 giving rise to suspension are resolved or no longer apply.

- 13.4 Subject to any other provisions of this Agreement, where You have demonstrated to Ezidebit's reasonable satisfaction that the matters giving rise to a suspension have been rectified, Ezidebit will reactivate the provision of the Services. The reactivation may be subject to such conditions as Ezidebit may prescribe (including, where the suspension was imposed in respect of excessive Transaction Disputes or Chargebacks, You providing a holding deposit for future Transaction Disputes or Chargebacks). If You are not satisfied with the conditions imposed by Ezidebit, You may exercise Your rights under clause 17.
- 13.5 If Ezidebit imposes a suspension under this clause 13 and is not satisfied with information provided by You in support of reinstatement of the Services, Ezidebit may return to Your Customers any Customer Fees which have not been remitted to You, in which case You will have no further right or Claim against Ezidebit for not transferring the Customer Fees to You.
- 13.6 The imposition of a suspension of any or all of the Services under this clause 13 or refund of any Transaction will not relieve You of Your liability to pay the Services Fees or any amount payable under this Agreement to Ezidebit. Nothing in this clause 13 will prevent Ezidebit from exercising its rights under clause 4 in respect of any Customer Fees withheld under this clause 13.
- 13.7 You hereby expressly release and indemnify Ezidebit against any Claim that arises or may arise against Ezidebit, where Ezidebit acts in accordance with this clause 13.

## 14. REPRESENTATIONS AND WARRANTIES

- 14.1 By entering into this Agreement, You represent and warrant to Ezidebit (both as at the date of this Agreement and on an on-going basis throughout the Term) that:
- 14.1.1 You are a duly incorporated company or registered business and conduct Your operations as a business;
  - 14.1.2 You have the capacity and authority to enter into this Agreement;
  - 14.1.3 Your Customers have provided all of the necessary authorities and approvals to enable You to authorise Ezidebit to collect fees and payments on Your behalf;
  - 14.1.4 all information provided by You to Ezidebit in connection with this Agreement is complete, accurate and not misleading;
  - 14.1.5 there is no Insolvency Event existing in respect of You; and
  - 14.1.6 neither You, nor any of Your owners, principals, partners, proprietors or affiliates is a government official, other than disclosed in writing to Ezidebit. Government officials include any officer, employee or representative of any Government Agency or

political party, any candidate for public office, any royal or ruling family member or any agent or representative of any of those persons.

- 14.1.7 You will comply with all relevant anti-bribery and anti-corruption laws, whether local or international, and will inform Ezidebit of any suspected or potential violation of such a law.
- 14.2 Ezidebit represents and warrants to You (both as at the date of this Agreement and on an on-going basis throughout the Term) that:
  - 14.2.1 it is a duly incorporated company or registered business and conducts its operations as a business;
  - 14.2.2 it has the capacity and authority to enter into this Agreement;
  - 14.2.3 there is no Insolvency Event existing in respect of Ezidebit;
  - 14.2.4 it will perform the Services in accordance with this Agreement;
  - 14.2.5 it will perform the Services in accordance with all applicable Laws; and
  - 14.2.6 it is PCI DSS compliant at the commencement date of this Agreement and will continue to be PCI DSS compliant for the Term.
- 14.3 Both Parties acknowledge that each Party will rely on the information provided by the other Party in connection with this Agreement, and each Party is not required to verify (nor will it have any liability in respect of) matters referred to in any direction given by the other Party.

## **15. CONFIDENTIALITY AND NON-DISCLOSURE**

- 15.1 Each Party must keep confidential the Confidential Information.
- 15.2 A Party must only use Confidential Information for the purpose of this Agreement and must not disclose or permit the disclosure of such Confidential Information to any other person. If a Party becomes aware of a breach of this obligation, that Party will immediately notify the other Parties.
- 15.3 This Agreement does not prohibit the disclosure of Confidential Information by a Party in the following circumstances:

- 15.3.1 the other Party has consented in writing to the disclosure of the relevant Confidential Information;
- 15.3.2 the disclosure is specifically contemplated and permitted by this Agreement;
- 15.3.3 at the time of the first disclosure to the party receiving the Confidential Information (the **“Receiving Party”**), the Receiving Party can prove the Confidential Information was already in the lawful possession of the Receiving Party and was not at the time of such disclosure the subject of any confidentiality obligation;
- 15.3.4 the Confidential Information is or becomes generally available to the public otherwise than by disclosure in breach of this Agreement;
- 15.3.5 the Confidential Information becomes available to the Receiving Party from a third person legally entitled to possess the information and who provided it to the Receiving Party otherwise than by breach of this Agreement or a breach of an obligation of confidence owed to the party who disclosed the information (the **“Disclosing Party”**);
- 15.3.6 the disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this document and the Party disclosing the Confidential Information ensures that the relevant employee, subcontractor, agent or representative complies with the terms of this clause;
- 15.3.7 the disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this document and the Party disclosing the Confidential Information ensures that the professional adviser complies with the terms of this clause;
- 15.3.8 the disclosure is required by a court or governmental or administrative authority or by applicable law or regulation;
- 15.3.9 the disclosure is to any person involved in an equity-based transaction with Ezidebit or a related party of Ezidebit and their financiers or proposed financiers, legal advisers, accountants or auditors, financial advisers or other professional advisers;
- 15.3.10 the disclosure is of the AOC to the Receiving Party’s acquiring bank; or
- 15.3.11 the disclosure is required to be made by virtue of the law or regulations that govern a relevant stock exchange on which the Party's shares (or that of its holding company) are listed, in which case the Receiving Party must:

- 15.3.11.1 immediately, to the extent practicable, notify the Disclosing Party in writing of the requirement and consult with the Disclosing Party as to the form of the disclosure;
- 15.3.11.2 use reasonable endeavours to assist and permit the Disclosing Party to oppose or restrict disclosure; and
- 15.3.11.3 if disclosure cannot be avoided, only disclose the Confidential Information to the minimum extent required by Law or listing rules of the relevant stock exchange in order to preserve the strictest confidentiality of the Confidential Information.

## 16. PRIVACY

- 16.1 Each Party acknowledges that it has obligations under the *Privacy Act 1988* (Cth) ("**Privacy Act**") to ensure that its collection, use, disclosure and storage of Personal Information (as that term is defined in the Privacy Act) complies with the Australian Privacy Principles and agrees to comply with the Privacy Act and the Australian Privacy Principles. Ezidebit also must comply with Ezidebit's Privacy Policy (which can be found at: <http://www.ezidebit.com/au/privacy-policy/>) in respect of any Personal Information collected in connection with this Agreement.
- 16.2 You must inform Customers that You will be providing their Personal Information collected for the purpose of this Agreement to Ezidebit and that such Personal Information will be collected, held, used and disclosed to Ezidebit in accordance with Ezidebit's privacy policy (which can be found at: <http://www.ezidebit.com/au/privacy-policy/>).

## 17. TERMINATION

- 17.1 Either party may terminate this Agreement or any Service under it at any time for any reason upon thirty (30) days prior written notice.
- 17.2 Ezidebit may at any time, including during a period of suspension under clause 13, terminate this Agreement or any Service under it:
  - 17.2.1 immediately by written notice if a Termination Event occurs; or
  - 17.2.2 immediately without notice if, in the opinion of Ezidebit, You have utilised or have attempted to utilise the Services in any unlawful, fraudulent, unconscionable or improper manner.
- 17.3 You agree to notify Ezidebit immediately upon becoming aware of any of the matters that arise or are likely to give rise to a Termination Event.
- 17.4 You may terminate this Agreement with immediate effect:

- 17.4.1 if an Insolvency Event occurs in respect of Ezidebit;
  - 17.4.2 if Ezidebit is in material breach of an obligation under this Agreement and the breach continues for more than twenty (20) days after Ezidebit receives written notice of the relevant breach from You;
  - 17.4.3 if Ezidebit fails to provide the Services for a continuous period of fourteen (14) days (not including for this purpose any period of a suspension of Services imposed by Ezidebit under clause 13); or
  - 17.4.4 if Ezidebit makes a variation under clause 4.6.
- 17.5 In the event that the Agreement is terminated, subject to clause 18, Ezidebit will cease to provide any Services to You from the date of termination. In the event that one or more of the Services under the Agreement is terminated, Ezidebit will cease to provide any terminated Services to You from the date of termination.
- 17.6 The termination of this Agreement does not affect any right of a party that arose or accrued on or prior to the date of termination (including any rights a Party may have against the other Party in the event of any breach of this Agreement by the other Party).
- 17.7 The obligations on the Parties under clauses 4, 11-20 (inclusive), 22, 26 and 28 survive the termination of this Agreement. This includes Ezidebit's right to chargeback Transactions and Ezidebit's right to recover accrued fees, charges and costs. You acknowledge that Chargebacks may be processed up to 18 months after the date of the original transaction.

## **18. EVENTS FOLLOWING TERMINATION**

### **Transfer of Customer Information**

- 18.1 Following termination, You may request that Ezidebit assist You for a reasonable period of time in transferring Customer information (including Direct Debit Requests) from Ezidebit's systems to Your replacement service provider. Any assistance provided by Ezidebit will be subject to:
- 18.1.1 applicable law, internal policies and the rules of any Card Scheme;
  - 18.1.2 clause 18.2;
  - 18.1.3 Ezidebit's right to charge You Ezidebit's standard fixed fee for the conduct of that transfer, and You must pay this fee for the services provided; and
  - 18.1.4 Ezidebit's right to impose conditions on the transfer.
- 18.2 Ezidebit will not be under any obligation to provide the assistance requested under clause 18.1 in circumstances where:

- 18.2.1 the transfer of Customer information may expose Ezidebit to liability, Claim or loss; or
- 18.2.2 You or any third party have access to Customer information that would enable You to transfer Customer information to a replacement service provider.

### **Fees and release of funds**

- 18.3 Within a reasonable time period following the termination or expiry of this Agreement, Ezidebit will:
  - 18.3.1 deduct all outstanding Service Fees or other amounts owed by You to Ezidebit from the funds held by Ezidebit on Your behalf in the Settlement Bank Account or from Your nominated external bank account; and
  - 18.3.2 pay to You the balance of the funds held by Ezidebit on Your behalf.
- 18.4 Where this Agreement is terminated and Ezidebit reasonably believes that Transaction Disputes or Chargebacks are likely to occur after the date of termination, Ezidebit may withhold Customer Fees due to You, and not pay those Customer Fees to You, for a period of up to six (6) months following termination for an amount up to Ezidebit's estimated risk of Transaction Disputes or Chargebacks. During this period, Ezidebit may exercise its rights under clause 4.4 in relation to any such funds. Any interest earned on the funds during such withholding will be to the credit of Ezidebit.

## **19. INDEMNITY**

- 19.1 You release, indemnify and hold Ezidebit harmless from and against all liability, losses, costs, expenses and Claims by any person (including any Customer) sustained, incurred or arising out of or in connection with this Agreement in respect of or connected to:
  - 19.1.1 any dispute between You and a Customer;
  - 19.1.2 Your material breach of this Agreement, including but not limited to:
    - 19.1.2.1 Your non-payment of any amounts payable to Ezidebit under this Agreement;
    - 19.1.2.2 the misuse of any Services by You;

- 19.1.3 the use of any Services by You in a manner not expressly permitted by this Agreement or otherwise illegally, fraudulently, negligently or in error;
  - 19.1.4 Your or Your Customer's failure to provide full and correct information to Ezidebit;
  - 19.1.5 for Transactions including incorrect information relating to bank account, Card, payment date or amount;
  - 19.1.6 any damage to, or loss of EFTPOS Terminals arising from Your negligence or misuse;
  - 19.1.7 any misuse, loss, damage, destruction or theft of the Direct Debit Request in Your possession, regardless of how such an event occurs; and
  - 19.1.8 any liability arising from a Transaction Dispute or Chargeback,  
  
except to the extent that such liability, losses, costs, expenses or Claims are due to the breach of this Agreement by Ezidebit or the fraud of Ezidebit.
- 19.2 Ezidebit will release, indemnify and hold You harmless from and against all Claims by any person (including any Customer) sustained, incurred or arising out of or in connection with this Agreement or its role as a collector of Direct Debits, including (without limitation) Claims in respect of or connected to:
- 19.2.1 failure by Ezidebit to comply with any material obligation to You under or in connection with this agreement;
  - 19.2.2 failure to comply with PCI DSS standards; and
  - 19.2.3 any fraud or gross negligence of Ezidebit,
- except to the extent that such Claims are caused or contributed to by You.

## 20. LIABILITY

- 20.1 You acknowledge and agree that in entering into this Agreement, You are not relying on any representations, statement or warranty made by Ezidebit or any of its officers, employees or agents, other than those contained in this Agreement. All statutory conditions or warranties that would otherwise be implied into this Agreement under applicable law, are excluded to the fullest extent permitted by law.
- 20.2 Ezidebit shall have no liability to You in respect of any failure, cessation or error of any Service or any of its operations or processes due to or as a consequence of:

- 20.2.1 any accident, neglect or misuse by You;
  - 20.2.2 any failure of any computer system whether it be Your system, the computer systems in which Ezidebit places the software to operate the Services, or the computer hardware of other related computer systems and servers that host the Ezidebit website, or other related websites (whether hosted, owned or controlled by Ezidebit or a third party); or
  - 20.2.3 any act, omission, event or non-event which is beyond Ezidebit's reasonable control, including without limitation acts of God, riots, war, acts of terrorism, ionising radiation, earthquake, fire, flood, cyclone, lightning, industrial action, pandemics or epidemics, or failure in Ezidebit's supply chain.
- 20.3 If You request that Ezidebit process Transactions under this Agreement which relate to a business from which You have purchased shares or assets, with the result that transactions previously conducted by Ezidebit in respect of the former business or its owners ("**Previous Entity**") are now conducted for You, You acknowledge and agree that You are responsible for and accept all liability for Transaction Disputes and Chargebacks for Transactions processed by Ezidebit for the Previous Entity for a period of 12 months.
- 20.4 Notwithstanding any other provision of this Agreement, the maximum liability of Ezidebit to You (whether under this Agreement, any applicable law, in tort (including negligence) or otherwise) in connection with this Agreement (including in respect of an implied warranty or condition that cannot be excluded under applicable law) is limited:
- 20.4.1 where the liability of Ezidebit relates to a default in the provision of the Services and:
    - 20.4.1.1 the re-performance of the relevant Services is a suitable remedy, to Ezidebit, at Ezidebit's sole discretion:
      - (a) repairing or replacing the EFTPOS Terminal or re-supplying the relevant Service; or
      - (b) the cost of a third party repairing or replacing the EFTPOS terminal or supplying the Service again;
    - 20.4.1.2 where the re-performance of the relevant Services is not a suitable remedy, the amount of the Service Fees collected by Ezidebit in respect of the relevant Service;
  - 20.4.2 where the liability of Ezidebit does not relate to a default in the provision of the Services, the liability of Ezidebit is limited to the aggregate amount of Service Fees paid to You by Ezidebit under this Agreement in the twelve (12) month period immediately preceding the event which gave rise to the liability (to be

calculated on a pro-rata basis if 12 months have not yet passed). Subject to Ezidebit's withholding and set-off rights, this limit does not apply to Ezidebit's liability if it fails to pay funds received payable to You in breach of this Agreement.

20.5 No party will have any liability to the other in connection with this Agreement for any loss of business or profits, or in connection with any indirect or consequential loss or any punitive or aggravated damages, arising out of any matter or circumstance giving rise to any Claim or other matter arising under this Agreement.

20.6 Nothing in this clause 20 limits a Party's liability for fraud.

## 21. GST

21.1 Terms used in this clause that are not otherwise defined in this Agreement have the meanings given to them in the GST Law.

21.2 All consideration provided under this Agreement is exclusive of GST, unless it is expressed to be GST-inclusive. Where a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this Agreement, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply. The additional amount must be paid by the Recipient at the later of:

21.2.1 the date when any consideration for the taxable supply is first paid or provided; and

21.2.2 the date when the Supplier issues a tax invoice to the Recipient.

21.3 If an adjustment event varies the amount of GST payable by the Supplier in respect of a supply under this Agreement, the Supplier will adjust the amount payable by the Recipient to take account of the adjustment event. Any payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient within ten (10) Business Days of the Supplier becoming aware of the adjustment event. Any payment under this clause is deemed to be an increase or decrease (as appropriate) of the additional amount payable under clause 21.1. The Supplier will issue an adjustment note to the Recipient within ten (10) Business Days of becoming aware of the adjustment event.

21.4 If the GST payable in relation to a supply is less than the amount that the Recipient has paid the Supplier under clause 21.1, the Supplier is only obligated to pay a refund of GST to the Recipient to the extent the Supplier receives a refund of that GST from the Commissioner. For the avoidance of doubt, this clause 21.4 does not apply in relation to adjustment events.

21.5 Clauses 21.1, 21.3 and 21.4 do not apply in relation to a particular supply where either of the following apply:

- 21.5.1 the consideration for the supply is expressed to be GST-inclusive; or
- 21.5.2 the GST is payable on the supply by the Recipient.

### **Other GST matters**

21.6 Subject to an express provision in this Agreement to the contrary, any payment, amount, reimbursement or indemnity required to be made to a party ("**the Payee**") under this Agreement that is calculated by reference to a cost, expense, liability or other amount paid or payable by the Payee to a third party ("**Expense**") will be calculated by reference to that Expense inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Expense. The Payee is assumed to be entitled to a full input tax credit on an Expense unless it demonstrates otherwise before the date the payment, amount, reimbursement or indemnity is required to be made.

## **22. DISPUTES**

- 22.1 If any dispute or disagreement arises between the Parties in connection with this Agreement, the Party with the dispute will provide written notice to the other Party setting out all relevant details and background information in relation to the dispute.
- 22.2 If the dispute cannot be resolved within ten (10) Business Days of the receipt of the notice under clause 22.1, the dispute shall be referred to a senior officer of each Party, who will endeavour to resolve the dispute.
- 22.3 If the dispute has been referred to a senior officer of each Party and the dispute is not resolved within a further twenty (20) Business Day period, either Party may refer the dispute for mediation by an independent mediator, selected by agreement between the Parties. If the parties cannot agree as to the identity of the mediator within ten (10) Business Days of referral under this clause 22.3, then the mediator will be a person nominated by the Queensland Law Society.
- 22.4 A party may not commence court proceedings in relation to a dispute until it has exhausted the process in this clause 22 or if earlier, the dispute is not settled within twenty (20) Business Days of referral of the dispute to mediation, except for proceedings seeking injunctive or other interlocutory relief.

## **23. NOTICES**

- 23.1 All notices or other communication under this Agreement must be in writing and sent to the Party's respective address.
- 23.2 Communication is taken to be received by the recipient of the communication:

- 23.2.1 in the case of correspondence by post - on the fifth (twelfth, if sent outside the country in which it is posted) Business Day after the date of posting; or
  - 23.2.2 in the case of a facsimile or electronic mail - on production of a successful transmission report by the machine from which the facsimile or electronic mail was sent.
- 23.3 If time of dispatch or deemed receipt of a notice is not on a Business Day, or is after 5.00 pm, it will be taken to have been dispatched or received (as applicable) at the commencement of the next Business Day.

## 24. PPSA

- 24.1 You acknowledge that this Agreement may create a Security Interest (as defined in the *Personal Property Security Act 2009* (Cth) ("**PPSA**")) to Ezidebit and to that extent You acknowledge that this Agreement constitutes a Security Agreement for the purposes of the PPSA.
- 24.2 You acknowledge that Ezidebit may perfect its Security Interest by lodging a Financing Statement (as defined in the PPSA) on the Personal Property Securities Register established under the PPSA. You will do anything reasonably required by Ezidebit to enable Ezidebit to register its Security Interest, with the priority Ezidebit requires, and to maintain the registration.
- 24.3 Ezidebit does not need to give You any notice under the PPSA (including a notice of a Verification Statement, as defined in the PPSA) unless the notice is required by the PPSA and that requirement cannot be excluded.
- 24.4 The Parties agree that neither Party will disclose to an "interested person" (as defined in section 275(9) of the PPSA) or any other person, any information of the kind described in section 275(1) of the PPSA, unless required by section 275(7) of the PPSA; and not to authorise the disclosure of any information of a kind referred to in section 275(1) of the PPSA, without the prior written consent of Ezidebit.

## 25. CHANGE OF CONTROL AND CHANGE OF OWNERSHIP

- 25.1 You must not assign, novate or transfer any of Your rights or obligations under this Agreement without the prior written consent of Ezidebit (such consent not to be unreasonably withheld or delayed).
- 25.2 Ezidebit may assign its rights or transfer its rights and obligations under this Agreement at any time to a member of the Ezidebit Group or to any purchaser of the business or assets, or a substantial part of the business or assets, to which this Agreement related, by notice to You. You must execute all documents as Ezidebit may reasonably request to give effect to any such assignment or novation.

## 26. AMERICAN EXPRESS TERMS

- 26.1 If and only if You are accepting Amex Cards, this clause 26 applies to You.
- 26.2 You must inform Your Customers that Ezidebit will be providing their Personal Information, transaction data and other information to American Express Australia Ltd ABN 92 108 952 085 and its affiliates, agents, subcontractors and employees ("**Amex**") in the course of delivering the Services. Amex may use this to deliver the Services, operate and promote their network, perform analytics and create reports, and for any other lawful business purpose. Amex will collect, hold and use the Personal Information and transaction data in accordance with Amex's privacy policy (available at: <https://www.americanexpress.com/au/about-us/disclosures/privacy-statement/>).
- 26.3 Your website must not contain defamatory, profane, pornographic or obscene material or any information that causes or may cause harm to Amex or the Amex brand.
- 26.4 Your refund policies for purchases using the Amex Card must be at least as favourable as Your refund policies for purchases on any other branded Card and the refund policy must be disclosed to Your Customers at the time of purchase in accordance with applicable law.
- 26.5 You confer upon Amex third-party beneficiary rights, but not obligations, to this Agreement and any subsequent addendums between You and Ezidebit. You acknowledge that Amex has the express right to enforce the terms of the Agreement and any subsequent addendums against You as necessary to protect the Amex brand.
- 26.6 You acknowledge that Amex is not liable to You for:
- 26.6.1 any malfunction, unavailability or failure of, or delay in processing through, any devices or equipment operated by Amex or others which is beyond the reasonable control of Amex; and
  - 26.6.2 any indirect, consequential, indirect, special, speculative, punitive, or exemplary damages of any kind (whether based in contract, tort (including negligence) strict liability, fraud or otherwise, or statutes, regulations, or any other source of law) howsoever arising out of or in connection with this Agreement.

## 27. GENERAL

- 27.1 Each Party must pay its own costs and expenses in relation to preparing, negotiating, executing and completing this document and any document related to this document.
- 27.2 This Agreement and the documents referred to in it contain the whole agreement between the Parties relating to the transactions contemplated

by this document and supersede all previous agreements between the Parties relating to its subject matter.

- 27.3 This document is properly executed if each Party executes either this document or an identical document. In the latter case, this document takes effect when the separately executed documents are exchanged between the Parties.
- 27.4 This document is governed by the law of Queensland. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.
- 27.5 Each Party's rights under each provision of this Agreement are cumulative and without prejudice to the Party's other rights under another provision of this Agreement or otherwise in Law.
- 27.6 Nothing contained or implied in this document will create or constitute, or be deemed to create or constitute, a partnership between the Parties. A Party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other Parties to any obligation.
- 27.7 Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.
- 27.8 You acknowledge that Ezidebit will continuously monitor your processing history and account to identify potential financial risk. We reserve the right to implement measures to reduce any financial risk to an acceptable level. We will discuss these measures in advance of implementation to your account.
- 27.9 No variation of this document will be of any force or effect unless it is in writing, signed by all of the Parties to this document.

## 28. DEFINITIONS

28.1 In this Agreement the following definitions apply:

**Acquirer** means, in respect of each product/service, either Global Payments Australia 1 Pty Ltd, or any other provider of payment system participation services that We use to provide You with the ability to acquire payment transactions from your Customers;

**Agreement** means this agreement;

**API User Guides** means Application Program Interface;

**Application Form** means the Ezidebit Client Service Agreement executed by You and delivered to Ezidebit;

**Authorised Transaction** means a Card Transaction which meets the requirements for authorisation of the Card Scheme that issued the Card;

**BECS Regulations and Procedures** means the Bulk Electronic Clearing System issued by the Australian Payments Clearing Association Ltd as far as they apply to the Services provided by Ezidebit;

**Billing Bank Account** means Your bank account for the processing of Service Fees that apply to your account with Ezidebit, as notified by You to Ezidebit by written notice;

**BPAY** means the electronic payments service promoted by BPAY Pty Limited ABN 69 079 137 518 and any other enhancement of or addition introduced by that entity from time to time;

**Business**, also referred to as “You” or “Your”, means you, the client, as outlined in this Agreement;

**Business Day** means *a day that is not a Saturday, a Sunday or a public holiday or bank holiday when banks are open in Melbourne, Sydney and Brisbane;*

**Card** means a debit, charge, credit or financial transaction card, issued by an Australian bank or financial institution or any other financial transaction card or virtual card of any nature that is capable of being processed by the Services; this depends on the Service selected by You;

**Card Scheme** means MasterCard, Visa, American Express, Diners Club, EPAL and includes card fraud detection agencies and any other card scheme that an Australian bank or financial institution participates in;

**Change of Control** means:

- (a) a change in the beneficial ownership of at least 50% of Your shares;
- (b) a change in the Control of You; or
- (c) the sale or disposal by You of all or a substantial part of Your business, where the part of the business sold or disposed of utilises the Services,

provided that paragraphs (a) and (b) will not apply to the extent that the shares in You or any holding company of You are listed on a stock exchange;

**Chargeback** means a challenge to a payment by a Customer, a banking institution, or a third party from either a bank account or card transaction which results in a temporary or permanent debit or a reversal of Customer Fees from Your Settlement Bank Account;

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed

or unascertained, actual or contingent whether at Law, in equity, under statute or otherwise;

**Clearance** means the time period that Ezidebit, in accordance with the BECS Regulations and Procedures and rules of the Card Schemes will deem Customer Fees to have cleared. For specificity, EFTPOS and BPAY funds are considered cleared when they are received by Ezidebit. The usual clearance period for Direct Debit, Real Time Transactions and Phonepay is within two (2) Business Days, unless there are circumstances as set out in statutory, legal or regulatory provisions requiring otherwise or Ezidebit agrees to a shorter period;

**Confidential Information** means (i) the terms of this Agreement, the contents of all negotiations leading to its preparation and any other information relating to another Party or its business that it obtains as a result of this document or anything done under it; and (ii) Global Payments or its affiliates' Attestation of Compliance under any standard promulgated by the Payment Card Industry Security Standards Council (**PCI-SSC**) and any similarly functioning audit report/attestation (cumulatively **AOC**);

**Control** has the meaning set out in the *Corporations Act 2001* (Cth);

**Customer** means Your Customers that have a payment liability to You;

**Customer Fees** means payments and any fees and interest payable (or where context requires, paid) by a Customer to You;

**Customer Terms** means the terms and conditions that Your Customers must accept and agree to prior to making a payment to You by utilising the Services (if required by Ezidebit);

**Debit Date** means the date on which Customers' accounts are to be debited through a Direct Debit;

**Direct Debit** means a debit from a Customer's Card, nominated bank account or digital wallet;

**Direct Debit Request** means the written, verbal or electronic request (including a direct debit service agreement) between Ezidebit, on Your behalf, and the Customer, authorising Ezidebit to undertake a Direct Debit, including an EDDR;

**Dishonour** means there are insufficient available funds in the Customer's account to make the scheduled payment;

**EDDR** means a paperless Direct Debit Request that is produced, displayed and authorized via electronic means. These requests can be managed by Your system or by Ezidebit's systems;

**EFTPOS** means electronic funds transfer at point of sale;

**EFTPOS Service** means the process where, on instructions transmitted through an EFTPOS Terminal, a Cardholder's bank account is debited or credited (as the case may be):

- a) in relation to goods or services supplied or cash made available by You to the Cardholder; or
- b) with the amount of any refund in respect of goods or services supplied by You to the Cardholder;

**EFTPOS Terminal** means the electronic terminal or terminals (including any attachment to them) provided to you under the EFTPOS T&Cs and through which instructions may be given for the transfer of funds using the EFT Services; and

**EFTPOS User Guide** means any document provided to You, or which You are directed to electronically access, in relation to the use of the EFTPOS Services, as varied from time to time.

**Ezidebit**, also referred to as "We", means Ezi Management Pty Ltd (ABN 47 110 689 711, AFSL No. 315388), the provider of the Services described in this Agreement and Ezidebit Pty Ltd (ABN 67 096 902 813, Authorised Representative No.320082), who will provide the Services on behalf of Ezi Management Pty Ltd, as Ezi Management Pty Ltd's Authorised Representative;

**Ezidebit Data** means the account or Card information and Transaction data;

**Ezidebit Group** means Ezidebit, its Related Bodies Corporate, and all bodies corporate trusts, unincorporated joint ventures and other business associations in which Ezidebit or a Related Body Corporate of Ezidebit holds directly or indirectly at least a 50% share or a 50% participation interest and a reference to an Ezidebit Group member shall be construed accordingly;

**Ezidebit Online means the online portal available at [www.ezionline.ezidebit.com.au/login](http://www.ezionline.ezidebit.com.au/login);**

**Government Agency** means any government, semi government, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency or entity;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Initial Term** means the period of two (2) years commencing from the date of the Agreement;

**Integrated Solution** means that You access the Services through or in connection with software, an application or software as a service provided by a third party which is approved by Ezidebit;

**Insolvency Event** in relation to a person means anything that reasonably indicates that there is a significant risk that that person is or will become unable to pay its debts as they fall due. This includes any of the following where it has not been revoked, rescinded declared invalid or stayed within five (5) Business Days of occurring:

- (a) a meeting of the person's creditors being called or held;
- (b) a step being taken to make the person bankrupt;
- (c) an application is presented or an order is made for the sequestration of the person's estate;
- (d) a step being taken to wind the person up;
- (e) a step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to the person or any of its assets or such an appointment taking place;
- (f) the person entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors; or
- (g) the person ceases or threatens to cease to carry on its main business;

**Law** means legislation, including regulations, by-laws and other subordinate legislation; common law and equity; and rules, requirements, guidelines, standards, policies and codes of any Government Agency;

**Party** means You or Ezidebit and Parties shall mean both You and Ezidebit;

**Phonepay** means Ezidebit's interactive voice response integrated phone payment service, which enables You to accept payments from Customers by Card over the telephone;

**Real Time Payment System** means the Ezidebit system for taking payments from a Card and return success or failure information at the time of transaction and the associated merchant facilities and products;

**Real Time Transaction** means a Transaction through the Real Time Payment System;

**Related Body Corporate** has the meaning set out in the *Corporations Act 2001* (Cth);

**Rules** means rules of the Card Schemes and Australian Payments Network (available at: < <https://www.auspaynet.com.au/resources#rules-regs>>);

**Self-Serve Direct Debits** means either:

- (a) a manual direct debit system adopted by You with Ezidebit's consent (including arranging for Customers to complete Direct Debit Requests and the performance of all data entry via the online Service provided by

Ezidebit on the terms and conditions described on the Ezidebit website); or

- (b) software implemented by You which incorporates electronic access to the Services;

**Service Fees** means the fees set out in the Application Form and any other fees specified as payable under this Agreement, and any update to those fees made by Ezidebit in accordance with this Agreement;

**Services** means the services listed in the Application Form and **Service** means any one of them;

**Settlement Bank Account** means Your bank account for the settlement of funds which You have nominated by written notice to Ezidebit for the settlement of funds;

**Term** means the Initial Term and any Further Term(s);

**Termination Event** means the occurrence of any of the following:

- (a) a Change of Control occurs in respect of You without the prior written consent of Ezidebit;
- (b) an Insolvency Event occurs to You;
- (c) a warranty made by You in this Agreement is misleading or inaccurate in any material respect;
- (d) a breach by You of any other obligation under this Agreement that continues for more than twenty (20) Business Days after You receive written notice of the breach from Ezidebit; or
- (e) the matter giving rise to a suspension of the Services by Ezidebit under clause 4.5 is not rectified to the reasonable satisfaction of Ezidebit within five (5) Business Days of the suspension of the Services;
- (f) any breach by You or any laws, rules and regulations including rules and regulations of the Card Schemes; or
- (g) Ezidebit's sponsoring bank requests the termination of the Agreement.

**Transaction** means a debit to a bank account, Card or a digital wallet;

**Transaction Dispute** means a dispute by a Customer or the banking institution that a Transaction is an invalid or fraudulent Transaction or a dispute arising for any other reason, including Your failure to provide the services or goods to the Customer; and

**Transaction Limit** means the dollar value limit that we will allow You to debit one Customer in a single day.

**You or Your** means you, the client, as described in the Application Form.

## 29. INTERPRETATION

- 29.1 Headings and bold type are for convenience only and do not affect the interpretation of this Agreement.
- 29.2 The singular includes the plural and the plural includes the singular.
- 29.3 Words of any gender include all genders.
- 29.4 Other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning.
- 29.5 An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- 29.6 A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Agreement.
- 29.7 A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- 29.8 A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- 29.9 A reference to a party to a document includes that party's successors and permitted assignees.
- 29.10 Where You are two or more persons, your obligations under this Agreement are joint and several.
- 29.11 No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this Agreement.
- 29.12 A reference to Australian dollars, dollars, A\$ or \$ is a reference to Australian currency.

Specifying anything in this Agreement after the terms 'include', 'including', 'includes', 'for example', 'such as' or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.