

Client Service Agreement

Date: 27/12/2019

This Agreement is an agreement between Payleadr Pty Ltd ACN 615 881 162 (**we, us**) and you (being the entity requesting our Services as set out in the Application Form) and sets out the terms upon which we will provide the Services to you.

1. Agreement

By submitting an Application Form with us, you agree to be bound by this Agreement.

The Application Form is incorporated into this Agreement. However in the event of any inconsistency between the Application Form and this Agreement, the Application Form will prevail to the extent of the inconsistency.

2. Interpretation and definitions

In this Agreement unless the contrary intention appears:

- a) The singular includes the plural and vice versa.
- b) A reference to this Agreement includes a reference to any variation, replacement or novation of it.
- c) A reference to a party is to a party to this Agreement and a reference to a party includes the party's employees, officers, agents, consultants, executors, administrators, successors and permitted assigns and substitutes.
- d) A reference to a person includes a reference to a corporation, an association, joint venture, an unincorporated body, partnership or other entity.
- e) Where a party comprises more than one person, an agreement, undertaking, representation or warranty of that party binds each person comprising that party jointly and severally.
- f) If the day on which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day.
- g) **Application Form** means the application form you lodge with us (whether in paper form or electronically) to acquire the Services.
- h) **Zai** means Zai Australia Pty. Ltd. ACN 637 632 645 trading as Zai Australia.
- i) **Authorised User** means any person you have authorised to access and use the Platform on your behalf.
- j) **BECS Procedures** means the Procedures for Bulk Electronic Clearing System Framework (CS2) or any other relevant or replacement procedures which are published by the Australian Payments Network Limited from time to time.
- k) **Business Day** means any day other than a Saturday, Sunday or public holiday in the State of New South Wales.
- l) **Card Scheme** means MasterCard, Visa, American Express, Diners Club, EPAL and any other card scheme accepted by Australian authorised-deposit taking institutions;
- m) **Claim** includes any claim, notice, demand, action, proceeding, litigation, investigation, audit, judgment, Loss however arising, whether based in contract, tort or statute and whether involving a third party or party to this Agreement.
- n) **Consequential Loss** includes economic loss, loss of business opportunity, loss of profits and loss or damages resulting from wasted management time.
- o) **Clients** means clients that you provide goods and services to in exchange for such amounts which are payable by those clients to you under a Payment Plan.
- p) **Customer Agreement** means the customer agreement entered into between us and the Client under which the Client authorises us to debit its nominated account or card for amounts owing by the Client under that agreement.
- q) **Customer Fees** means amounts collected from, or refunded to, Clients pursuant to Payment Instructions.
- r) **DDR** means a direct debit request template provided by us (whether in paper or electronic form).
- s) **End User Agreement** means the end user agreement described in clause 9 that you enter into with Assembly.
- t) **GST** means any tax imposed on the supply of goods or services which is imposed or assessed under GST Law.
- u) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- v) **Insolvent** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act 2001* (Cth)) or analogous person appointed to any of its property, or being unable to pay debts as and when they fall due or entering into a compromise or arrangement with its members or creditors or any other analogous event.
- w) **Loss** means any damage, loss, cost, charge, expense or liability however arising (including contractual, tortious, legal, equitable loss or loss pursuant to statute). To avoid doubt, this definition is different to the definition of Losses in clause 13(d).
- x) **Payment Instructions** means, in relation to a Payment Plan, payments processed in accordance

with the terms of the Payment Plan or otherwise in accordance the instructions you submit on the Platform. This includes direct debit payments, varying, suspending, cancelling or refunding payments under a Payment Plan.

- y) **Payment Plan** means the terms and conditions on which you will enter into regular direct debit payments with the Client in exchange for the provision of goods or services.
- z) **Payment Processing Services** has the same meaning as in the End User Agreement.
- aa) **Platform** means our online payments platform which is further described in clause 4(c).
- bb) **RBA Standard** means Standard No.3 of 2016 made by the Reserve Bank of Australia pursuant to the *Payment Systems (Regulation) Act 1998* (Cth).
- cc) **Settlement Account** means the bank account which you have nominated in your Application Form or which you subsequently update in the Platform as the bank account from which we will credit amounts owing by us to you and from which we are entitled to debit amounts owing by you to us in accordance with this Agreement.
- dd) **Services** means the direct debit and other payment and collection services and software (which includes the Platform) that we provide to you as expressed in the Application Form and as otherwise varied in accordance with the terms of this Agreement.
- ee) **Service Fees** means the fees and charges we charge you to provide the Services and facilitate the Payment Instructions as set out in the Application Form or as otherwise varied by us in accordance with the terms of this Agreement. To avoid doubt, this does not include fees and charges which are charged by Zai.
- ff) **Term** means the period beginning on the date we notify you that we have accepted the Application Form and ending on the date this Agreement is terminated.

3. Application Form

- a) We will only provide the Services to you if we have accepted your Application Form. We may request and you must provide us with additional information or documentation that relates to the Application Form or End User Agreement.
- b) Application Forms are accepted or rejected by us at our absolute discretion. We will not be obliged to provide you with any reasons if we reject your Application Form.

4. Services

- a) You agree to appoint us to exclusively provide the Services to you during the Term on the terms set out in this Agreement. The Services are interdependent with the Payment Processing Services which will be provided to you by Zai on the terms set out in the End User Agreement. That means we may not be able to provide some or all of the Services while the Payment Processing Services are unavailable or in circumstances where the provision of the Services

would cause us to be in breach of our agreement with Zai.

- b) We will provide you with a paper-based and electronic template DDR and user manuals that relate to the Services. We may also provide you with marketing materials in relation to the Services and you agree to distribute and publish those in accordance with our reasonable directions. You must not otherwise market the Services without our prior written consent.
- c) The Services will be available through the Platform which facilitates the Services to you and your Clients. The level of functionality and features available on the Platform, and which will be provided to you, will depend on the Services you have agreed to acquire. However at a minimum, the Platform will allow you to initiate, amend, suspend or cancel Payment Plans, arrange for Clients to agree to Payment Plans and electronically agree to DDRs and will act as the facility from which you will provide us with Payment Instructions. The Platform may contain other features which you may be entitled to use as part of the Services. We may modify or delete such features and may include additional features on the Platform at any time at our absolute discretion. You must always use the Platform in accordance with our user manual or as we otherwise prescribe in writing from time to time.
- d) Authorised Users will be provided with separate access to the Platform. Authorised Users must keep their log-in and password details confidential and not provide them to anyone. They can change their password on the Platform at any time. Authorised Users are taken to act on your behalf when using the Platform which means that they will bind you to anything they do on the Platform, including in relation to Payment Plans and Payment Instructions they submit on the Platform. You will be solely responsible and liable for the acts and omissions of your Authorised Users as well as for any unauthorised use of the Platform.
- e) Clients can access the Platform to populate their payment and identity information and electronically agree to Payment Plans and DDRs. Clients can use the Platform to view, cancel or amend (to the extent they are permitted) their Payment Plan.

5. Payment Plans

- a) We will not arrange for Zai to process any Payment Instructions under a Payment Plan until:
 - i. you have formulated a Payment Plan and the Client has agreed to the Payment Plan on the Platform or as otherwise permitted by us. Payment Plans can only relate to the provision of goods or services provided by you and can only be denominated in Australian dollars;
 - ii. the Client has electronically agreed to or manually signed the Customer Agreement and DDR which reflects the terms of the agreed Payment Plan. The Client can only nominate an account with an authorised deposit-taking institution (ADI) or a credit card or debit card issued by an ADI as the account or card from which debits under the DDR will be made;

- iii. you have collected or the Client has provided through the Platform, the Client's payment and identity details and any other information we may otherwise require in a form satisfactory to us; and
 - iv. you have submitted the Payment Plan on the Platform.
- b) You will be solely responsible for Payment Instructions submitted on the Platform, including any amendment or variation to Payment Instructions. We will not be obliged to inquire as to the accuracy or validity of any Payment Instructions or as to the identity or authority of any person who submits Payment Instructions on the Platform.
 - c) Zai will collect and remit (as the case may be) Customer Fees in accordance with the Payment Instructions and will deposit Customer Fees which have cleared in its account (less the Service Fees payable by you to us and fees and other amounts payable by you to Zai) directly to your Settlement Account. We will provide you with a list of Customer Fees collected or refunded and it will be your responsibility to reconcile the Customer Fees actually received against Customer Fees that you should have received.
 - d) You authorise us to:
 - i. issue overdue payment notices to Clients in relation to any Customer Fees owing; and
 - ii. disclose to a credit reporting body details of any Customer Fees owing from Clients where these amounts are overdue by more than 60 days and the overdue payment relates to an amount of \$150 or more,

as we deem appropriate and you acknowledge and agree that you will not issue such notices to Clients or make such disclosures to a credit reporting body without our prior written consent.
 - e) You may instruct us to engage a debt collection agency to seek to recover Customer Fees owing from Clients. Other than providing us with instructions to engage the agency, we will have complete discretion and control in providing instructions to the agency on the course of action to take with respect to any debt owing. We may, in our absolute discretion, cease the debt collection agency's engagement at any time if we do not consider that there are reasonable prospects of recovering the Customer Fees from the Client. Subject to clause 13, the Client will be responsible for reimbursing us for any Loss we incur in engaging the debt collection agency for this purpose.
 - f) Payment chargebacks, reversals and disputes which are initiated by a Card Scheme will be addressed by Zai in accordance with the End User Agreement. Without limiting its rights under the End User Agreement, Zai has the right to withhold and apply funds it has collected against payments it has made under a valid chargeback, reversal or dispute.
- g) If a Payment Plan is cancelled, you must notify us of this cancellation at least 1 Business Day before Payment Instructions will be processed to ensure that another Payment Instruction is not processed under that Payment Plan. If the Payment Plan is created or amended, the date on which the first Payment Instruction is to be processed must be at least 1 Business Day after you have notified us of the creation or variation to the Payment Plan.
 - h) Your Payment Plan should contain terms which are consistent with the BECS Procedures and which provide for the circumstances in which the Payment Plan can be varied, suspended or cancelled and how each of those circumstances will affect the provision of goods and services that are provided under the Payment Plan. If the Client provides you with instructions that are in accordance with the terms of the Payment Plan or otherwise consistent with the BECS Procedures, you must promptly comply with those instructions.
 - i) The Client may agree to the DDR electronically on the Platform or by signing a paper copy. You must securely store a copy of each signed paper-based DDR while the relevant Payment Plan is current and for a period of 7 years after the Payment Plan ceases. You must promptly provide us with a copy of any signed DDR we request.
 - j) Each DDR which is electronically agreed or manually signed by the Clients remains our property at all times and cannot without our prior written consent be used by any other person to facilitate direct debits on behalf of Clients.
- 6. Service Fees**
- a) We will charge you the Service Fees for providing the Services. The Service Fees will arise and be payable at the time any Payment Instruction to which the Service Fee relates is facilitated or effected (or attempted to be facilitated or effected) by us. Payment Instructions which are rejected or unable to be facilitated will also attract Service Fees. You acknowledge that Zai will pay us the Service Fees owing by you on your behalf in accordance with clause 5(c). Service Fees paid to us are not refundable.
 - b) You authorise us to deduct and set-off the Service Fees payable by you and any other amounts you owe us under this Agreement from any amounts we owe to you under this Agreement. If the Service Fees to be paid to us under clause 5(c) are less than the amounts you owe us (after we have set-off amounts you owe to us against amounts we owe to you under this Agreement):
 - i. we may suspend the Services until you no longer owe us such amounts; or
 - ii. you authorise us to debit the Settlement Account for an amount equivalent to the balance of the amounts owing by you.
 - c) You agree that any payment you make to us under this Agreement will be without set-off or counterclaim and without deduction with respect of taxes (unless prohibited by law).

- d) You acknowledge that we may disclose to a credit reporting body details of any amounts owing by you under this Agreement.
- e) Payleadr can unilaterally vary the service fees at any time by providing you with written notice of the change at least thirty (30) days in advance of the effective date of the service fee increase. If you object to the change you may terminate your agreement at any time before the effective date of the service fee increase

7. Suspension

- a) We may suspend the Services in our absolute discretion if:
 - i. we are required to do so by any applicable law or Card Scheme rules;
 - ii. we reasonably consider that you have breached the terms of this Agreement;
 - iii. we reasonably suspect that you have acted in an unlawful, fraudulent or improper manner in using the Services;
 - iv. we reasonably consider that the level of Transaction Funds Reversals (as defined in the End User Agreement) is excessive;
 - v. we are entitled to in accordance with clause 5(b);
 - vi. we otherwise consider it is reasonable to do so in the circumstances.
- b) We will notify you if we suspend your use of the Services. While the Services are suspended, Payment Instructions will not be processed but you will continue to have access to the Platform.
- c) If you demonstrate that the matters giving rise to the suspension have been rectified, we may reactivate the Services at our absolute discretion.

8. Your obligations

In addition to any other obligation you owe to us under this Agreement, you must at all times during the Term:

- a) ensure that each Payment Plan has a corresponding DDR that has been electronically agreed or manually signed by the relevant Client;
- b) ensure that each Payment Plan and the Clients' personal and payment information relating to the Payment Plan remain confidential at all times and are not used, disclosed or otherwise made available to any person other than disclosure to us or through the Platform (which will then be disclosed to Zai for the purposes of carrying out the Payment Processing Services);
- c) comply with all laws which relate to the Services, including ensuring that any surcharge fees are prominently disclosed to Clients and do not exceed the 'average cost of acceptance' rules specified in the RBA Standard. You will be provided with regular reports in relation to your 'average cost of

acceptance' for Payment Instructions that have been processed using our Services;

- d) comply with all Card Scheme rules and BECS Procedures to the extent they apply to you;
- e) comply with the End User Agreement;
- f) comply with any procedures or guidelines that we publish or otherwise notify to you from time to time in relation to the Services;
- g) solely handle and deal with any inquiries made by Clients about their Payment Plan or any Payment Instructions made under their Payment Plan;
- h) not split any Payment Instructions into two or more Payment Instructions to avoid breaching any monetary limit that we impose on Payment Instructions;
- i) provide us with information we reasonably require about you, your business and your Clients to enable us to provide the Services;
- j) procure that your Authorised Users comply with the terms of this Agreement;
- k) immediately update any of your details on the Platform if they are no longer current;
- l) immediately notify us if you intend to cease operating as a going concern, you intend to merge with another person or you (or other members of your entity) intend to sell all or a substantial portion of your assets or the shares in your business;
- m) immediately notify us if you have, or suspect you have, breached the terms of this Agreement; and
- n) immediately notify us if you suspect that you (including your employees and Authorised Users) or a Client has acted fraudulently.

9. Zai

We have arranged for Zai Payments Platform Pty Ltd (Zai) to collect your funds due to you from the selling of your goods and services via on our [marketplace / platform]. By using our [marketplace / platform] and accepting the funds collected on your behalf by Zai, you agree to the terms of the End User Agreement with Zai. A copy of the End User Agreement can be obtained [here](#).

10. Warranties

- a) You represent and warrant to us that:
 - i. you are a duly incorporated company or registered business and conduct your operations as a business in Australia;
 - ii. all information and representations that you have provided to us in connection with this Agreement are true, accurate and not misleading, at the time they are given or made;

- iii. you will not use the Services in connection with any unlawful, fraudulent or improper activity;
 - iv. as between you and the Client, you are legally entitled to receive the Customer Fees arising under the relevant Payment Plan;
 - v. each Payment Instruction is provided pursuant to an ongoing and current Payment Plan;
 - vi. you are not Insolvent;
 - vii. the person who executed the Application Form has unconditional authority to bind you to this Agreement;
 - viii. you have the capacity and authority to enter into and be bound by the terms of this Agreement; and
 - ix. your entry into or performance of your obligations under this Agreement will not infringe any applicable laws or agreements to which you are a party.
- b) You repeat the warranties in clause 10(a) each day during the Term.
 - c) We do not give any express warranty in relation to the Services, including that they will be suitable, of merchantable quality or fit for any particular purpose.
 - d) We do not give any implied warranties, except for those implied under law which cannot be excluded by contract.
 - e) We do not warrant or guarantee continuous, uninterrupted or secure access of the Services. The Services may be interrupted by various factors many of which may be outside our control. We will use our reasonable endeavours to notify you of any planned outage undertaken by us or Zai. The Services are interdependent with the Payment Processing Services provided by Zai, which means that any unavailability or interruption with Assembly's Payment Processing Services may have a corresponding effect on our Services.

11. Termination

- a) Each party may terminate this Agreement upon providing at least 30 Business Days' notice to the other party.
- b) If:
 - i. we reasonably consider that you have engaged in fraud,
 - ii. we reasonably consider that you have breached any term of this Agreement and have not rectified that breach to our reasonable satisfaction within 10 Business Days after receiving notice from us;
 - iii. we reasonably consider that you have breached the End User Agreement;
 - iv. we reasonably consider that you are, or about to become, Insolvent; or

- v. the End User Agreement is terminated, then we may immediately terminate this Agreement by providing you with notice.
- c) Termination of this Agreement does not affect any obligations incurred on or prior to the date of termination.
- d) We will continue to provide you with access to the Platform for 30 Business Days (or such other longer period we agree to in writing) after this Agreement is terminated to allow you to extract information and data related to each Payment Plan from the Platform. We are not obliged to assist you to extract this information and data and, subject to any applicable law or Card Scheme rules, will not be required to retain it following the expiry of the period set out in this clause 11(d).
- e) Clauses 6, 8, 11, 12, 13 and 14 are continuing obligations and will survive the termination of this Agreement.

12. Intellectual Property Rights

- a) All rights, title and interest in the Services are owned by us.
- b) During the Term, we grant you a revocable, non-exclusive, non-transferable licence to use the Services. You grant us with a non-exclusive, irrevocable and sub-licensable right to use any information you submit on the Platform for the purposes of performing the Services, which includes sharing that information with Zai. Other than as set out in this clause, the Agreement does not transfer any rights between you and us.
- c) You may not alter, reproduce, adapt, distribute, display, publish, reverse engineer, decompile, disassemble or otherwise attempt to copy or reproduce the Services.
- d) We may modify or update software or other infrastructure supporting the Services and, if that modification or update requires you to update software, systems or take any other action, we will provide you with notice which sets out reasonable particulars of the actions we require you to undertake and the timeframe (which must be reasonable in the context of the actions requested) in which you must undertake such actions. You must comply with such notice.

13. Liability and indemnity

- a) To the maximum extent permitted by law, our liability to you in relation to any Claim you may have against us in connection with this Agreement and the Services is excluded. If our liability cannot be excluded by law, and to the extent we are entitled to do so by law, we limit our liability in respect of such Claim to, at our option, the re-supply of the relevant services (which are subject of the Claim) or payment of the cost of having those services supplied again.
- b) In the event clause 13(a) is not enforceable, we will not be liable to you in any circumstance for any Consequential Losses you suffer or are otherwise entitled to in relation to any Claim you may have against us under or in connection with this Agreement.

- c) To the maximum extent permitted by law, you agree to indemnify us and pay us on demand for any Loss we incur or suffer as a result of:
 - i. your breach of the terms of this Agreement;
 - ii. your fraud, wilful misconduct or negligence;
 - iii. your failure to pay amounts owing or due to Zai in accordance with the End User Agreement;
 - iv. a Client failing to promptly reimburse us in accordance with clause 5(d);
 - v. any Claim we receive from a Client in relation to any Payment Plan, Payment Instructions (including where Payment Instructions are invalidly initiated or amended by you), the provision or goods or services provided under the Payment Plan or the Client's use of the Services; ; and
 - vi. any Claim we receive from Zai that relates to, or arises from, your use of the Payment Processing Services or your breach of the End User Agreement.

ci) In no event will Zai be liable to you for any actions, claims, demands, losses, liabilities, damages, recoveries, settlements and/or costs (including attorney, accountants, and expert witness fees and costs), known or unknown, contingent or otherwise (collectively, "Losses"), of any kind whatsoever, arising out or relating to your use of, or inability to use, the Payment Processing Services, regardless of the legal theory under which such Losses are sought. IN THE EVENT THE FOREGOING IS NOT ENFORCEABLE FOR ANY REASON, THEN ASSEMBLY'S MAXIMUM AGGREGATE LIABILITY ARISING FROM OR RELATING TO ANY CLAIM (OR SERIES OF RELATED CLAIMS) BY YOU ARISING FROM OR RELATING TO THE PAYMENT PROCESSING SERVICES WILL NOT EXCEED THE AGGREGATE PURCHASE PRICE PAID OR PAYABLE FOR THE GOODS, ASSETS OR SERVICES WHICH ARE THE SUBJECT OF THE TRANSACTION(S) GIVING RISE TO THE PAYMENT CLAIM.

14. Taxes

- a) You agree to pay, or reimburse us if we pay on your behalf, any taxes, duties or other levies which are imposed on or otherwise payable in relation to the Services or Customer Fees.
- b) Unless otherwise specifically stated, sums payable or consideration provided under this Agreement will be expressed as being exclusive of any applicable amount of GST.
- c) Where a party (supplier) makes a taxable supply to a person (recipient) under on in connection with this Agreement and GST is imposed on that supply, the supplier will be entitled to:
 - i. increase the consideration otherwise payable by the recipient for that supply under this Agreement by the amount of that GST; and

- ii. otherwise recover from the recipient the amount of that GST.

- d) The supplier must issue a tax invoice to the recipient no later than 5 Business Days after payment to the supplier of the GST inclusive consideration for that supply.
- e) Words or expressions defined in the GST Act has the same meaning in this clause 14 unless otherwise defined in this Agreement.

15. Miscellaneous

- a) You agree to keep secret and confidential the terms of this Agreement and the Application Form and the terms upon which we provide the Services to you.
- a) This Agreement is governed by the laws in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts in that jurisdiction.
- b) We can unilaterally vary this Agreement at any time by providing you with notice of the variation. The variation may come into effect immediately or at a later date specified in the notice. By accessing or continuing to access the Services after we have provided you with notice and after the date the variations take effect, you will be taken to have accepted this Agreement as varied.
- c) You cannot assign your rights under this Agreement without our prior written consent. We can assign our rights under this Agreement by providing you with notice.
- d) If anything in this Agreement is unenforceable, illegal or void then it is severed from this Agreement and the rest of the Agreement remains in full force.
- e) You and we are independent contractors and this Agreement does not create or imply any partnership, agency or joint venture.
- f) A provision of this Agreement can only be waived if signed by the party to be bound by the waiver. Any failure by a party to enforce any provision of this Agreement will not be deemed to be a waiver of that party's ability to enforce the same provision of this Agreement at a future date.
- g) You agree that we may provide you with any notice in relation to this Agreement or Services electronically, which includes by us emailing you or posting a communication on the Platform. You will be deemed to have received the notice at the same time that we post or send the communication. You may provide us with notice in relation to this Agreement or the Services by emailing us at support@payleadr.com.