

Terms and conditions

Recitals

- A You are in the business of selling Products to Customers.
- B We are in the business of providing invoicing and payment options to suppliers and Customers.
- C The parties enter into this Agreement to record our agreement in relation to the provision of the Services by Marmalade to You.

Agreement

1 This Agreement

- 1.1 By signing this Agreement, by hand or electronically, or by using the Services, You agree to be bound by its terms. If You do not accept the terms of this Agreement, You must not use the Service.
- 1.2 We have no obligation to supply our Services, until You have completed:
 - (i) the AML Documentation; and
 - (ii) the Direct Debit Request,(collectively, the **Required Documentation**), and we have Verified the Required Documentation.
- 1.3 You agree to provide all information and do all other things reasonably required by us in order to enable us to Verify the Required Documentation promptly.
- 1.4 We may amend this Agreement by giving You no less than 30 days' written notice prior to the effective date of the proposed change. If You do not want to continue receiving the Services as a result of any such change You may terminate this Agreement in accordance with clause 12.4. You will be deemed to have accepted any change notified to You on the earlier of:
 - (a) Your written acceptance of the change; or
 - (b) the effective date of the change (provided this Agreement has not been terminated before the effective date of the change).

2 Marmalade Services

- 2.1 The Services include:
 - (a) the functionality to issue, process, accept payment for and manage Permitted Invoices as provided by the Marmalade Platform; and
 - (b) the cashing-in, invoice management, and debt-collection services,
- 2.2 as set out in Schedule A. The Services enable You to obtain invoicing and payment options when providing Products to Customers.
- 2.3 You agree to use Marmalade as Your exclusive provider of digital payment services such as those set out in clause 2.1. You will not, without the prior written consent of Marmalade, obtain services similar to the Services from any other provider during the Term.
- 2.4 You can manage which payment options are used in relation to all Your Permitted Invoice, and the Services You choose to use on the Marmalade Platform as set out in the Details Form, or otherwise through the Marmalade Platform from time to time. In addition to the default "Pay Now" option, which permits the Customer at any time to

make a Marmalade Payment for all or part of outstanding amounts under a Permitted Invoice, and which must always be an available option for Your Customers, You may elect (either in the Details Form, on the Marmalade Platform or otherwise) that Permitted Invoices may also be paid by Your Customers using one or both of the following payment alternatives:

- (a) "Payment Extension", which permits Customers to schedule payment of the Permitted Invoice within the Extension Period of the Due Date, and to make a Marmalade Payment on or before that scheduled time; and
- (b) "Payment by Instalment" which permits Customers to divide the amount outstanding on the invoice into instalment payments, to be paid at scheduled intervals over a specified period as from the date upon which the Payment by Instalment option is triggered by a Customer, and to make Marmalade Payments on or before those scheduled times. For the avoidance of doubt, the Marmalade Platform may permit a Customer which selects the Payment by Instalment option to schedule (and make) payments in relation to a Permitted Invoice both after the Due Date and after the Extension Period of the Due Date.

2.5 Your Customers can then access the payment options which You have made available to them in relation to a Permitted Invoice through the Marmalade Platform.

2.6 Our policy in respect of the collection, use, storage and disclosure of personal information is set out in our Privacy Policy.

3 Your Obligations

- 3.1 You agree to comply with any reasonable direction given by us in respect of the use and integration of the Marmalade Platform. You agree to implement the Marmalade Platform in accordance with the materials that Marmalade has provided to You.
- 3.2 You must continue to allow Customers to make Customer Purchases as permitted under this Agreement and to send Permitted Invoices to Customers for those purchases through the Marmalade Platform as long as this Agreement remains on foot, except: (i) during any period of suspension imposed by us in accordance with the terms of this Agreement; or (ii) as otherwise agreed by us in writing, acting reasonably.
- 3.3 You must not provide Customers with any information about Marmalade, the Marmalade Platform or our Services that is false, misleading or inaccurate. Without limiting this clause 3.3, You must not make any warranty, representation or statement to any Customer relating to Marmalade, the Marmalade Platform or our Services, other than those:
 - (a) included on our website or the Marmalade Platform; or
 - (b) included in materials provided to You by Marmalade for this purpose,

as these may be updated from time to time, or as otherwise expressly permitted by Marmalade in writing.

3.4 You agree to comply with our directions in relation to marketing initiatives such as conducting marketing campaigns, issuing Promotional Materials and participating in trade events. These directions include any

reasonable directions given by Marmalade to remove Promotional Materials from display, or to change the manner in which they are displayed. Any such materials may be provided by or on behalf of Marmalade.

- 3.5 Without limiting clause 3.4, You must:
- (a) if requested by Marmalade, provide Customers with a description of the Marmalade Platform in such terms as may be otherwise provided or approved by us in writing;
 - (b) present Marmalade branding on Your Website as may be provided or approved by us in writing from time to time;
 - (c) comply with any reasonable directions we give about how any description of the Marmalade Platform is to be displayed;
 - (d) promptly (and certainly no later than 5 Business Days) comply with any reasonable direction we give You to modify, replace or remove any description of the Marmalade Platform; and
 - (e) not provide any description of the Marmalade Platform which does not comply with this clause 3.5, or has not otherwise been approved by us in writing.
- 3.6 You must co-operate with us to promptly resolve all disputes with Customers (including where necessary, taking any action reasonably directed by us).
- 3.7 You must comply with all Relevant Laws when using the Marmalade Platform and in fulfilling Your obligations under this Agreement in relation to each Customer Purchase, each Permitted Invoice and in relation to the Products. You must assist us to comply with our obligations under any Relevant Laws as reasonably directed by us. We may suspend our performance of the Services to You, if we reasonably believe that Your use of the Marmalade Platform, making a payment, or processing a Customer Purchase in connection with this Agreement may breach any Relevant Law.
- 3.8 You must not provide us with any information that is false, inaccurate or misleading.
- 3.9 You must not use any technology (device, software or hardware) to damage, intercept or interfere with the Marmalade Platform, any of our Services, or any software or technology that we use to provide the Services.
- 3.10 If a Customer refuses to pay a Permitted Invoice on the basis that Products have not been Delivered, we may ask You to provide us with proof of Delivery. If we make such a request, You must:
- (a) for Products that are goods: notify us via email of the shipping carrier name, tracking number and confirmation that the Products were Delivered to the address specified by the Customer; and
 - (b) for Products that are services: provide proof of supply of the services.
- 3.11 You are responsible for ensuring that appropriate insurance policies are in place for Your Delivery of Products to Customers. Marmalade is not responsible for any damage caused to Products that are goods during Delivery, or any loss or damage caused in connection with the supply of Products that are services.

Obligations in respect of returns and refunds

- 3.12 Your policies and agreements (including Your refund policy) with a Customer must comply with Relevant Laws and You must consider any Customer's request for Return in good faith and in accordance with your policies and the Relevant Law. You will be responsible

for processing any Returns in accordance with your policies. You acknowledge and warrant that if a Customer rejects or returns the Product in accordance with the terms of the Purchase Contract or has any other dispute with You under the Purchase Contract or at law, You have the sole responsibility to deal with any disputes between You and the Customer, and we have no obligation to be involved in any dispute between You and the Customer. You will keep us informed of any such disputes in a timely manner. If you provide a Refund to a Customer, then such refund is solely a matter as between You and the Customer and you are fully responsible for such Refund, unless:

- (a) Marmalade has received payment in relation to the Permitted Invoice from the Customer, in which case Marmalade will remit such payment to You in accordance with clause 1.4 of Schedule A, Section A; or
 - (b) some or all of the Receivables under that Permitted Invoice have been assigned to Marmalade pursuant to a Cash-in Request, in which case You will repay to Marmalade any portion of the Purchase Price which has not yet been repaid to Marmalade by the Customer.
- 3.13 If there is a dispute between You and a Customer in relation to a Permitted Invoice, and some or all of the Receivables under that Permitted Invoice have been assigned to Marmalade pursuant to a Cash-in Request, then:
- (a) You will inform Marmalade of such dispute as soon as reasonably practicable;
 - (b) You will use all reasonable endeavours to resolve such dispute; and
 - (c) if such dispute is not resolved within 14 days, then You will repay to Marmalade any portion of the Purchase Price which has not yet been repaid to Marmalade by the Customer and Marmalade will assign back to you any right and interest it has in relation to such Receivables.
- 3.14 You agree and acknowledge that:
- (a) You or the Customer are responsible for maintaining, servicing and repairing the Product pursuant to the terms of the Purchase Contract;
 - (b) Marmalade has no responsibilities or obligations:
 - (i) to maintain, service or repair the Product; or
 - (ii) for the performance, design or safety of the Product or for any injury, loss or damage suffered by any person from the use or misuse of the Product at any time, and You indemnify us against any legal costs or liability incurred as a consequence of any claim by any person that is so liable.
- 3.15 For the avoidance of doubt, in the event of a Return or Refund, our Fees will still be payable for the Permitted Invoice to which the Return or Refund relates.

4 Fees and payments

- 4.1 You will pay all Fees incurred in relation to Your use of the Marmalade Platform, as set out on the Marmalade Platform from time to time.
- 4.2 We will provide at least 14 days' notice on the Marmalade Platform, of any material increase in any of the Fees. If You do not agree with any such increase, You may, by notice in writing to Marmalade at any time within the 60

day period after the increase takes effect, terminate this Agreement.

- 4.3 Marmalade will make a direct debit in respect of our Transaction Processing Fees on the frequency and basis set out on the Marmalade Platform from time to time, as permitted pursuant to the Direct Debit Request.
- 4.4 All payments made under this Agreement must be made in Australian dollars, into the account specified by Marmalade from time to time by notice in writing to You.
- 4.5 You acknowledge and agree that Marmalade may enter into arrangements with third party partners and service providers, pursuant to which Marmalade may pay certain amounts, including a share of the Fees, to such third parties. In your case, this will include Xero as your accounting software and services provider.

5 GST AND WITHHOLDING TAX

GST

- 5.1 Any words capitalised in clause 5 and not already defined in clause 15 have the meaning given to those words in GST Act.
- 5.2 Unless expressly stated otherwise, any consideration paid or payable under this Agreement is exclusive of GST and must be increased on account of any GST under this Clause 5.
- 5.3 If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Taxable Supply is payable:
- (a) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Taxable Supply, in addition to and in the same manner as the consideration otherwise payable under this Agreement for that Taxable Supply; and
 - (b) the GST Act Supplier must give the Recipient a Tax Invoice for the Taxable Supply.
- 5.4 For clarity, the GST payable under clause 5.2 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.
- 5.5 If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 5.6 Where a Supply made under or in connection with this Agreement is a Progressive or Periodic Supply, clause 5.2 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

Withholding tax

- 5.7 All sums payable by You under or in connection with this Agreement are to be made or provided free and clear of any deduction or withholding, unless required by applicable laws.
- 5.8 If deduction or withholding is required by applicable laws, You must pay an additional amount as is necessary to ensure that after the deduction or withholding, Marmalade receives an amount equal to the sum otherwise required to be paid.

6 Confidentiality

Obligations of confidence

- 6.1 Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any Confidential Information of the other party provided to or obtained by that party.

Exclusions

- 6.2 The obligations of confidence in clause 6.1 do not apply to Confidential Information that is:
- (a) required to be disclosed by a Relevant Law, or under compulsion of law by a court or government agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
 - (i) discloses the minimum amount of Confidential Information required to satisfy the Relevant Law or rules; and
 - (ii) before disclosing any information, gives a reasonable amount of written notice to the other party and takes reasonable steps (whether required by the other party or not) to maintain such Confidential Information in confidence; and
 - (b) reasonably necessary for the purposes of any legal or arbitral proceedings involving the first party or any of its related bodies corporate.

Restriction on disclosure

- 6.3 Each party may use and disclose Confidential Information of the other party only:
- (a) with the prior written consent of the other party; or
 - (b) to that party's directors, agents, professional advisors, employees, contractors and permitted sub-contractors solely for the exercise of rights or the performance of obligations under this Agreement, provided such person has agreed to keep the information confidential.
- 6.4 Without limitation to clause 6.3, You acknowledge and agree that Marmalade may, from time to time, share information (including Confidential Information) with its third party partners and service providers in relation to Your, and Your Customers', use of the Marmalade Platform. In your case, this will include Xero as your accounting software and services provider.
- 6.5 Each party must take steps no less rigorous than those which it takes in respect of its own information to prevent any unauthorised use, disclosure or loss of, or unauthorised access or damage to, the Confidential Information of the other party under its possession or control.

Injunctive relief

- 6.6 Each party acknowledges that:
- (a) the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information of that party, and that monetary damages would be an insufficient remedy; and
 - (b) in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of, and to compel specific performance of clause 7.

7 Disputes

7.1 We will use reasonable endeavours to:

- (a) Acknowledge receipt of all complaints by You within 2 Business Days.
- (b) Resolve all complaints by You as quickly as practicable and, in any event, within 15 Business Days.

This may not be possible in all circumstances.

7.2 If You wish to raise a dispute or submit a complaint to us, You must contact us using the details listed in the Details Form, or any alternative contact details we provide to You for this purpose from time to time. Such disputes must be raised with us as soon as is practicable and not later than 7 (seven) days after You become aware of the grounds for dispute.

7.3 We may request additional documentation from You to assist us in resolving any complaints or disputes (including Customer complaints and disputes), and You must provide all reasonable assistance to us to facilitate us in resolving any complaints or disputes (including Customer complaints and disputes).

7.4 Where we cannot resolve a dispute with You within 15 Business Days, we will notify You of the reason for the delay as well as an indication of whether we believe that:

- (a) we are able to resolve the dispute and, if so, an indication of the further time that we estimate this will take; or
- (b) we will not be able to resolve the dispute, in which case you may pursue your rights under Relevant Law with respect to the dispute.

8 Warranties

Acknowledgment

8.1 You acknowledge that Marmalade has entered into this Agreement in reliance on the representations and warranties in this Agreement.

Your representations and warranties

8.2 You warrant and represent to us that:

- (a) any assignment of the Receivables to us under this Agreement is valid and binding on You and is enforceable against You and all other third parties;
- (b) You have not done and will not do anything to prevent any amounts owing to us in connection with a Receivable from being valid and enforceable against the relevant Customer;
- (c) You control the content of Your Website(s) or any other medium through which you make representations in relation to goods and services offered by You; and
- (d) all information You provide to us in connection with this Agreement, is complete, current and correct.

8.3 In addition, You make the following representation and warranties to us in relation to each Customer Purchase:

- (a) You do not know of or have any reason to suspect any fraud or suspicious activity relating to the Customer Purchase, and neither You nor Your employees or agents have concealed or otherwise failed to disclose to us any information of which You or Your employees or agents have become aware is contrary to any of the statements made in the Purchase Contract or in any other information or documentation provided by You to us, or

otherwise engaged in any fraudulent conduct in connection with the Customer Purchase;

- (b) the Customer Purchase represents a bona fide sale of the Products by You in the ordinary course of Your business, the information You provide lists all Products involved in the Customer Purchase, and only Products sold by You are the subject of the Customer Purchase;
- (c) You have Delivered or have arranged for Delivery of, all the Products involved in the Customer Purchase;
- (d) the Products, at the time they were Delivered to the Customer, were fit for any particular purpose which the Customer made known to You or Your agents or employees;
- (e) in relation to Products that are goods:
 - (i) the Customer has, or will have, title to the Products listed and clear of all encumbrances, liens and claims;
 - (ii) the Products, at the time they were Delivered to the Customer, were of merchantable and acceptable quality; and
 - (iii) the Products match any sample or demonstration model shown to the Customer; and
- (f) in relation to Products that are services:
 - (i) the Products have been, or will be, provided with due care and skill; and
 - (ii) the Products will be Delivered within the agreed time frame, or within a reasonable time frame if no time has been agreed for provision of the Products; and
- (g) You have not sought or obtained, and will not seek or obtain, any special arrangement or condition from, nor discriminated in any way against, the Customer with respect to the terms of the Customer Purchase.

Repeating warranties

8.4 The representations made and warranties given in this document are regarded as repeated each day during the Term with respect to the facts and circumstances then subsisting.

9 Limitation of liability

9.1 The limitations on Marmalade's liability contained in this Agreement are made to the extent permitted by law, and subject to certain legislation, including consumer protection legislation, which may imply warranties or conditions into this Agreement, or otherwise impose obligations on us, which cannot be excluded, restricted or modified, except to a limited extent (**Non-Excludable Rights**). For the avoidance of doubt, nothing in this Agreement is intended to limit our liability or impose liability on You in a manner which would be considered unfair under the relevant consumer protection laws.

9.2 Subject to clause 9.1 above, and to the extent that the relevant laws permit us to do so, Marmalade limits its liability in connection with the Non-Excludable Rights (including its liability for breach of any implied condition or warranty) to, at our option:

- (a) in the case of any services we supply:
 - (i) the re-supply of the relevant services; or

- (ii) the payment of the cost of having the relevant services supplied again; and
 - (b) in the case of any goods we supply:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
- 9.3 To the full extent permitted by law, and subject to clauses 9.1 and 9.2:
- (a) Marmalade will not be liable for any loss or damage which You may incur as a result of the Marmalade Platform or our Services being unavailable;
 - (b) Marmalade's liability for all claims no matter how arising, whether in contract, tort (including negligence), or otherwise, will not exceed \$5,000. For the avoidance of doubt, this does not limit Marmalade's obligations to pay You any Settlement Amount due to You under the Agreement;
 - (c) Marmalade and its related bodies corporate, or any third party providing services on behalf of Marmalade, will not be liable to You for any Consequential Loss; and
 - (d) Marmalade will not be liable for any loss or damage which You may incur as a result of fraudulent, malicious or accidental use of your account which occurred due to any unauthorised use or disclosure of log-in details or password information, or any other improper or inadequate security practice and standards on Your part.
- 9.4 To the extent permitted by law, a party's liability to the other party under or in connection with this Agreement is reduced to the extent, if any, to which the other party's acts or omissions cause or contribute to its own loss or damage.
- 9.5 The parties must take all reasonable steps to mitigate any loss incurred by them under this Agreement.

10 Indemnity

- 10.1 You indemnify and hold harmless us and our related bodies corporate and their respective officers, directors, employees and agents from and against all claims, actions, losses, offsets, liabilities, damages, judgments, amounts paid in settlement, costs and expenses (including reasonable legal fees and disbursements and collection fees) resulting from or arising in connection with:
- (a) any breach of this Agreement by You;
 - (b) the enforcement of our rights in connection with any alleged or actual breach of the Agreement by You;
 - (c) any breach of the Purchase Contract by You or the enforcement of the Customer's rights in connection with any alleged or actual breach of the Purchase Contract by You;
 - (d) any amounts relating to a Receivable or Permitted Invoice which are unable to be substantiated due to Your inaccurate accounting or record keeping practices;

- (e) any dispute between You and a Customer about any Product or Permitted Invoice;
- (f) any claim by a third party against the Customer or us in connection with any Product;
- (g) personal injury or death of any person (including any of Your employees) in connection with the supply or use of the Product;
- (h) any fraudulent, malicious, unlawful, or corruptive use of the Marmalade Platform by You;
- (i) damage to property in connection with the supply or use of the Product; or
- (j) any act or omission by You and your officers, employees or agents.

- 10.2 This indemnity is a continuing obligation, independent of Your other obligations under this Agreement and continues after this Agreement ends. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity under this Agreement.
- 10.3 To the extent that the indemnity in clause 10.1 is in favour of a person other than Marmalade, we contract as trustee of the rights under the indemnity.
- 10.4 We indemnify You from and against, all loss or damage (including legal costs) incurred or suffered by You however caused in connection with any breach of this Agreement by us.

11 Intellectual Property

- 11.1 Except as expressly provided in this Agreement, neither party will acquire any rights in respect of the Intellectual Property of the other. Neither party may use the Intellectual Property of the other party in any way except:
- (a) with the prior written approval of the other (such approval not to be unreasonably withheld), and in accordance with the terms of any such approval; or
 - (b) as specifically authorised in this Agreement (including this clause 11).
- 11.2 We grant You a non-exclusive, non-transferable, revocable and royalty free licence to use and reproduce the Marmalade Trade Marks solely in connection with Your performance of Your obligations under this Agreement, and as permitted under this Agreement or any other written directions we may give You, including any use guidelines that we may notify to You from time to time
- 11.3 You must submit each proposed application or use of Marmalade Intellectual Property to us for written approval prior to use, except to the extent that such use is expressly permitted under this Agreement or otherwise expressly agreed in writing by Marmalade. For the avoidance of doubt, you may use content provided by us which incorporates Marmalade Intellectual Property (including any approved description of the Marmalade Platform provided by us and any Promotional Materials) without our consent, provided You use such content solely for the purposes of this Agreement, and in accordance with this Agreement.
- 11.4 You must immediately discontinue the use or display of any Marmalade Intellectual Property, or change the manner in which the Marmalade Intellectual Property is used or displayed whenever we reasonably request that You do so. Without limiting this clause 11.4, if this Agreement is amended to remove Your right to offer the Marmalade Platform, You must immediately discontinue the use or display of any Marmalade Intellectual Property associated with the discontinued right, and must return

any associated (i) Promotional Materials or (ii) other content or materials incorporating Marmalade Intellectual Property, to Marmalade, unless otherwise agreed in writing by Marmalade.

- 11.5 Except as expressly provided in this Agreement, You may not do any of the acts and will not have any of the powers referred to in section 26 of the *Trade Marks Act 1995* (Cth).
- 11.6 You permit Marmalade to use Your name, logo and details of Your Website in any of Marmalade's marketing materials, including via posts on social media (including but not limited to Facebook, Twitter, LinkedIn and Instagram), and in directory listings of suppliers that enable their Customers to use the Marmalade Platform. You also agree that we may use one image from Your Website in our directory listings of suppliers that enable their Customers to use the Marmalade Platform. You agree to obtain on our behalf any third party consents or licences required to enable us to use such image as contemplated by this Agreement, without attribution, and without charge to us. If You notify us that You would like Your name, logo and/or details of your Website removed from this marketing material, or would prefer us to use a different image in our listings, we will do so as soon as reasonably possible.

12 Term, termination, and suspension

Term

- 12.1 This Agreement commences on the Commencement Date and continues unless terminated in accordance with clauses 12.2, 12.3 or 12.4 (**Term**).

Termination for cause

- 12.2 If:
- (a) a party commits a breach of this Agreement, and;
 - (i) such breach is incapable of remedy; or
 - (ii) the other party has failed to remedy such breach within 14 days of the date of a written notice issued to it by the first party requiring rectification of the breach;
 - (b) a party engages in any fraudulent activity or conduct;
 - (c) Marmalade ceases providing the Services;
 - (d) a party is unable to perform its obligations as a result of a force majeure event, and such event continues for a period of 30 days; or
 - (e) an Insolvency Event occurs in relation to a party,
- then the other party may terminate this Agreement by written notice to that party in which case this Agreement will terminate on the date specified in that written notice or, if no date is specified, immediately.

- 12.3 In addition, we may terminate this Agreement immediately (or from such other date as we may nominate) by giving You written notice of termination if:
- (a) we reasonably believe that Your Purchase Contracts do not reflect the original basis of our contracted agreement (including, without limitation, where You change Your policies in any way that affects the ability of any Customer to Return any Products in the manner intended under this Agreement);
 - (b) we reasonably believe that You have breached any of the warranties in clauses 8.2 and 8.3 on a repeated or material basis; or

- (c) You engage in, or deal with Customers which engage in, any of the prohibited businesses or activities in clause 13, or any other illegal or inappropriate activity in connection with Your use of Marmalade Platform, as determined by us in our sole discretion.

Termination for convenience

- 12.4 Either party may terminate this Agreement for any reason by giving at least 30 days' prior written notice to the other party.

Consequences of termination

- 12.5 On termination of this Agreement accrued rights or remedies of a party are not affected.
- 12.6 Termination of this Agreement does not affect any right or obligation which arose under this Agreement before such termination or which arises in respect of any Goods that are Returned after such termination, and is without prejudice to the parties' other rights and remedies. For the avoidance of doubt, termination of this Agreement will not affect clauses 6 to 11 (inclusive) and any other clause of this Agreement which is expressly or by implication intended to come into force or survive termination.
- 12.7 Upon termination of this Agreement for any reason:

- (a) each party must promptly return to the other any Confidential Information or property of the other in the first party's possession or control;
- (b) all rights and licences granted under this Agreement will terminate immediately, except as expressly provided in this Agreement, and You must immediately cease using all Marmalade Intellectual Property, including by removing all references to Marmalade from Your Website.

Suspension

- 12.8 In addition to our rights in this Agreement, we may suspend Your access to the Services immediately (or from such other date as we may nominate) by giving You written notice if:
- (a) You have breached, or we reasonably suspect that You have breached, any provision of this Agreement;
 - (b) You undergo a change of ownership or control and we are unable to Verify your new ownership; or
 - (c) we reasonably consider your behaviour to be suspicious.
- 12.9 This suspension will remain in place until:
- (a) in relation to clause 12.8(a), You have rectified the breach to our reasonable satisfaction or You have proven, to our reasonable satisfaction, that You did not breach the Agreement;
 - (b) in relation to clause 12.8(b), we are able to Verify Your new ownership;
 - (c) in relation to clause 12.8(c), You have, to our reasonable satisfaction, provided an explanation for any suspicious behaviour; or
 - (d) this Agreement is terminated in accordance with clauses 12.2 to 12.4 inclusive.
- 12.10 Without limiting Your other obligations under the Agreement, while any suspension is on foot, You must promptly comply with all reasonable directions that we give regarding Your advertisement and offer of the Marmalade Platform and Services, including Your use of Marmalade Intellectual Property.

13 Prohibited businesses and activities

- 13.1 You agree that you will not use the Marmalade Platform in connection with Customers who operate in or in relation to any of the following businesses and activities:
- (a) **Illegal Activities.** The sale of any good or service that violates any applicable law or regulation;
 - (b) **Adult Content and Services.** Pornography (in all media types such as Internet, phone, and printed materials) of any nature;
 - (c) **Drugs.** The sale of illegal pharmaceuticals, illegal drugs, or drug paraphernalia, and legal substances that provide effects similar to illegal drugs;
 - (d) **Pseudo pharmaceuticals.** The sale or promotion of Pharmaceuticals and other products that make health claims which have not been approved or verified by an applicable local and/or national regulatory body;
 - (e) **Counterfeit Goods.** The sale or marketing of any counterfeit good;
 - (f) **Gambling Businesses.** Online gambling, lotteries (including sale of lottery tickets), games of chance (including sweepstakes and raffles), sports forecasting, or odds-making activities;
 - (g) **Money Making (“Get Rich”) Businesses.** Including information guides, warranty fees, mortgage reduction services, multi-level marketing, network marketing, investment opportunities, and any product or service where a prize is guaranteed, marketing media is unavailable, premiums/incentives are offered, promises of future guaranteed results are made, or any rebate or reward program; and
 - (h) **Tobacco Products.** Any activity violating applicable laws or industry regulations regarding the sale of tobacco products.
- 13.2 Marmalade may modify the above list of prohibited businesses and activities at any time.

14 General

- 14.1 The laws of Queensland govern this Agreement and each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- 14.2 Each party bears its own costs in relation to the preparation and signing of this Agreement.
- 14.3 Where Marmalade may exercise any right or discretion or make any decision under this Agreement, Marmalade may do so in its absolute discretion, conditionally or unconditionally, and without being required to give reasons or act reasonably.
- 14.4 You must not assign, in whole or in part, or novate Your rights and obligations under this Agreement without the prior written consent of Marmalade.
- 14.5 We may transfer or assign this Agreement, and any right under this Agreement, to a third party, and we will notify You in advance of such a transfer or assignment.
- 14.6 Unless expressly stated otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- 14.7 If a clause or part of a clause of this Agreement is found to be invalid or unenforceable that clause or part of a clause may be severed from this Agreement and the remaining clauses of this Agreement continue in force.

- 14.8 This Agreement supersedes all previous agreements about its subject matter. This Agreement embodies the entire agreement between the parties.
- 14.9 A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- 14.10 This Agreement may be signed in any number of counterparts. All counterparts together make one instrument.

15 Definitions and interpretation

Definitions

- 15.1 In this Agreement:

AML Documentation means the information (including personal information) and documentation which we are required to obtain from You and Verify under the AML/CTF Act, which will be provided to You or made available on our website.

AML/CTF Act means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Business Day means a day on which Banks are open for general banking business in Brisbane, Queensland, excluding Saturdays, Sundays and public holidays.

Cash-in Fees means the fees payable in relation to a Cash-in Request as set out in Section B of Schedule A, calculated as set out on the Marmalade Platform from time to time.

Cash-in Request is a request that is submitted by You through the Marmalade Platform that identifies the Permitted Invoices in respect of which You wish to assign Receivables to Marmalade under the terms of this Agreement.

Commencement Date means the commencement date specified in the Details Form.

Confidential Information of a party means the existence of and the terms of this Agreement and any information of whatever form and nature:

- (a) relating to the business and affairs of that party;
- (b) relating to the customers, clients, employees, sub contractors or other persons doing business with that party;
- (c) which is by its nature confidential;
- (d) which is designated as confidential by that party; or
- (e) which the other party knows or ought to know, is confidential,

and all trade secrets, knowhow, financial information and other commercially valuable information of that party. But Confidential Information does not include information which:

- (a) at the time of the first disclosure to a party, was already in the lawful possession of the party;
- (b) is in or comes into the public domain otherwise than by disclosure in breach of this Agreement; or
- (c) becomes available to a party legitimately from any other third party source that is legally entitled to that information.

Consequential Loss means any loss, damage or costs incurred that are indirect or consequential, whether they

arise directly or indirectly from the relevant act or omission; loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings; payment of liquidated sums or damages under any other agreement; and/or loss or denial of opportunity.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer means Your customer, being the purchaser of one or more Products.

Customer Purchase means a purchase of Products from You for which a Permitted Invoice has been sent to a Customer.

Delivered means:

- (a) in the case of Products that are goods, delivered; and
 - (b) in the case of Products that are services, supplied,
- and **Delivery** and **Deliver** have corresponding meanings.

Direct Debit Request means the direct debit request and associated documentation which authorises us to withdraw monies from Your Supplier Nominated Account to be debited in accordance with its terms and with this Agreement.

Due Date means the original date by which payment must be made as specified on the Permitted Invoice.

Extension Period means a period of time (as facilitated through the Marmalade Platform) by which the Due Date of a Permitted Invoice may be extended.

Fees means Cash-in Fees, the Transaction Processing Fees and any another fees specified on the Marmalade Platform from time to time.

GST means the goods and services tax as defined in the GST Law, or any other like tax imposed in Australia.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*, *A New Tax System (Goods and Services Administration) Act 1999*, *A New Tax System (Goods and Services Tax Transition) Act 1999*, *Taxation Administration Act 1953* and any regulations made pursuant to any of these Acts, or if any one of these Acts does not exist for any reason, any act imposing or relating to a GST and any regulation made pursuant to any such Act.

GST Act Supplier means the entity making the Supply for the purposes of GST Law.

Insolvency Event means any of the following events:

- (a) a controller (as defined in the Corporations Act) is appointed to the party, or over any of the property of the party;
- (b) a party enters into, or any step is taken that could result in the party entering into, provisional liquidation, liquidation or administration (as defined in section 9 Corporations Act);
- (c) the party commits an act of bankruptcy under section 40 Bankruptcy Act;
- (d) the party becomes an insolvent under administration (as defined in section 9 Corporations Act) or takes steps that could result in the party becoming so;

- (e) the party is unable to pay its debts when they become due and payable;
- (f) the party ceases to carry on business;
- (g) the party makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that the party is insolvent;
- (h) the party makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that a director of the party is seeking to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B Corporations Act; or
- (i) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

Any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by the other party beforehand and in compliance with those terms is excluded from this definition.

Intellectual Property means rights in relation to Trade Marks, domain names, business names, goodwill and reputation, designs, patents, copyright, processes, methods, inventions, product formulations and all other rights or forms of protection having an equivalent or similar nature or effect whether within or outside Australia, whether registered or unregistered and including all rights of action, powers and benefits of the foregoing.

Marmalade Payment means the payment by a Customer to Marmalade in relation to a Permitted Invoice, using the functionality available on and through the Marmalade Platform.

Marmalade Platform means Marmalade's electronic invoicing and payment system which allows participating suppliers to obtain Services and through which Customers may have the ability to pay for Customer Purchases.

Pay Now has the meaning given in clause 2.4.

Payment Extension has the meaning given in clause 2.4(a).

Payment by Instalment has the meaning given in clause 2.4(b).

Permitted Invoice means an invoice:

- (a) which is payable by a Customer; and
- (b) which under the related Purchase Contract is subject to a credit term specified by You as set out on the Marmalade Platform;
- (c) which is denominated in Australian Dollars;
- (d) which is freely capable of being dealt with by You as contemplated by this Agreement;
- (e) with terms as otherwise agreed or amended by the parties to this Agreement from time to time, in consultation with the other party, acting reasonably; and
- (f) which is free of any security interests.

Privacy Policy means our privacy policy as made available via our website and the Marmalade Platform, as amended from time to time.

Product means the goods, equipment, and/or services supplied by the Supplier to a Customer pursuant to a

Purchase Contract.

Promotional Materials means electronic banners and logos, notices, press releases, and any other marketing, advertising and promotional materials relating to Marmalade and provided by us to You from time to time.

Purchase Contract means a contract (in whatever form, including an oral or other non-written agreement) between You and a Customer in relation to the purchase of Products by that Customer, including any terms and conditions of that purchase, for which you have issued an invoice.

Purchase Date means the Business Day on which the Cash-In Request is submitted by You on the Marmalade Platform.

Purchase Price means the purchase price for a Receivable, calculated by reference to the Remaining Balance of that Receivable as at its Purchase Date.

Receivable means:

- (a) the right and interest to payment of the Settlement Amount or a portion of the Settlement Amount owing by a Customer to You as shown in a Permitted Invoice, payable within the timeframe set out in the Permitted Invoice or within the amended timeframes scheduled or to be scheduled by a Customer in accordance with the payment alternatives on offer to Customers by You in relation to that Permitted Invoice; and
- (b) includes all Your rights in respect of that amount and all related indemnified amounts, interest and damages (if any) under the relevant Purchase Contract.

Refund means a partial or whole refund of the price paid by a Customer for any Products purchased under a Purchase Contract and/or of any related Shipping Costs.

Relevant Law means any law, regulation, code, ordinance, rule or other legislative instrument, or any guideline issued by any regulator or statutory authority or any relevant industry codes including, without limitation, the *Competition and Consumer Act 2010* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the *Privacy Act 1988* (Cth).

Remaining Balance means, in relation to a Receivable at any time, an amount in Australian Dollars equal to the unpaid or undischarged face amount of that Receivable as at the Purchase Date.

Return means the return of any Products to You by a Customer in connection with a Customer Purchase (and other than a return of Products by the Customer for the purposes of an exchange, the grant of store credit, or for repair) initiated by the Customer.

Services means our provision of invoicing and payments services specified in clause 2.1.

Settlement Amount means, in respect of each Customer Purchase, the relevant price to be paid by the Customer for any Product, plus any shipping costs, subject to any

adjustments for Discounts.

Supplier means the entity specified in the Details Form.

Supplier Nominated Account means the account specified in the Details Form.

Term means the term contemplated by clause 12.1.

Trade Marks means signs, trade marks, service marks, brand names, rights in get up or trade dress, logos, slogans, stylizations, devices and similar rights, whether registered or unregistered and whether within or outside Australia.

Transaction Processing Fees means the fees payable in relation to Marmalade's invoice management services as set out in Section A of Schedule A, calculated as set out on the Marmalade Platform from time to time.

Website means any electronic sales facility (including any website, social media account, and mobile or tablet sites or applications) operated by You.

Verification means:

- (a) with respect to the AML Documentation, verification of that documentation by or on behalf of Marmalade in accordance with the requirements of the AML/CTF Act; and
- (b) with respect to the Direct Debit Request, verification that the details provided in that form are complete and sufficient to enable Marmalade to process direct debit transactions in accordance with this Agreement,

and **Verify** and **Verified** have corresponding meanings.

You (or Your) means the Supplier.

Interpretation

15.2 In this Agreement:

- (a) Schedules to this Agreement form part of the Agreement;
- (b) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (c) this Agreement is not to be interpreted against the interests of a party merely because that party proposed this Agreement or some provision in it or because that party relies on a provision of this Agreement to protect itself;
- (d) a reference to a document or agreement (including a reference to this Agreement) is to that document or agreement as amended, novated, supplemented, varied or replaced; and
- (e) a reference to a party is a reference to the Supplier or Marmalade, and a reference to the parties is a reference to both the Supplier and Marmalade.

Schedule A - Marmalade Services

Section A - Management of Permitted Invoices and Debt Collection

1 Invoice management

- 1.1 Marmalade will manage invoices sent to Your Customer on Your behalf, where such invoices are Permitted Invoices and You utilise the Marmalade Platform in relation to such Permitted Invoices.
- 1.2 Marmalade's invoice management services will be based on the functionality and services available on and through the Marmalade Platform from time to time.
- 1.3 When we process a Marmalade Payment in respect of a Permitted Invoice, any money received by Marmalade is held on your behalf and will be paid to your Supplier Nominated Account subject to the terms of this Agreement.
- 1.4 Marmalade will pay You the amount received on Your behalf in respect of a Permitted Invoice, subject to Marmalade's right to offset against such amounts any amount payable by You to Marmalade under this Agreement.

2 Debt collection

- 2.1 The Marmalade Platform enables You to undertake automated debt collection activities as made available on the Marmalade Platform.
- 2.2 Each of the above debt collection activities is carried out by You, through the Marmalade Platform.
- 2.3 For the avoidance of doubt:
 - (a) where a Receivable has not been assigned to Marmalade pursuant to the Services set out in

Section B of this Schedule A, the above debt collection activities are carried out by You through the Marmalade Platform, as legal owner of the Receivable.

- 2.4 Where a Receivable subject to a Cash-in Request has transferred to Marmalade, Marmalade may undertake debt collection activities on its own behalf. Unless otherwise agreed in writing by the parties, unless a Receivable has transferred to Marmalade pursuant to a Cash-in Request, the above debt collection activities will not include:
 - (a) face-to-face meetings with Customers to demand payment;
 - (b) accelerating a loan to any Customer and requiring payment of the full outstanding loan balance;
 - (c) negotiation or entering into any voluntary surrender agreement with a Customer;
 - (d) entering, and/or recovering inventory from, the Customer's premises;
 - (e) appointing a receiver and/or seeking to commence action to repossess inventory on the Customer's premises; or
 - (f) commencing any court action to recover the outstanding debt and secured inventory (including any service of documents or other process relating to such court action).

Section B - Cashing-in of Permitted Invoices by You

1 Use of Marmalade Platform

- 1.1 You must use the Marmalade Platform if You wish to make a Cash-in Request.
- 1.2 Marmalade may, at its absolute discretion, allow certain Permitted Invoices to be made available on the Marmalade Platform for Cash-in Request from time to time. For those Permitted Invoices which are made available on the Marmalade Platform for Cash-in Request, Marmalade will specify the maximum amount of the Receivables which may be the subject of the Cash-in Request, which may be some or all of the total amounts outstanding in relation to the Permitted Invoice.
- 1.3 The parties may communicate by alternative means as advised by Marmalade if the Marmalade Platform is unavailable for use.

2 Cash-in Request

- 2.1 You may deliver a Cash-in Request to Marmalade in respect of Permitted Invoices via the Marmalade Platform.
- 2.2 A Cash-in Request is only effective if it complies with the requirements of this Agreement and any other requirements set out on the Marmalade Platform or reasonably required by Marmalade.
- 2.3 You must identify the Permitted Invoices in relation to which you wish to assign the Receivables, by selecting those Permitted Invoices through the Marmalade Platform, and confirming you wish to proceed with the Cash-in Request through the method provided in the Marmalade Platform.
- 2.4 A Cash-in Request is an offer by You to assign to Marmalade the Receivables in respect of the Permitted Invoices identified in the request. A Cash-in Request is irrevocable after confirming the request in the Marmalade Platform and cannot be amended or revised without Marmalade's written consent.
- 2.5 You must provide any documents requested by Marmalade that relate to the identified Permitted Invoices or a Cash-in Request through the Marmalade Platform or as otherwise specified by Marmalade in its request.

3 Receivable representations and warranties

- 3.1 You represent and warrant that:
 - (a) You are the sole legal owner of all Receivables in respect of the Permitted Invoices identified in a Cash-in Request, free from encumbrance;
 - (b) the assignment of the Receivable to Marmalade in accordance with this Agreement does not constitute a breach of the terms of the Permitted Invoice or a default by You, and that all consents required in relation to the assignment of the Receivable have been obtained;
 - (c) You have not done and will not do anything to prevent any amounts owing to us in connection with any Permitted Invoices identified in a Cash-in from being valid and enforceable against the relevant Customer;
 - (d) there has been no amendment to the Purchase Contract in respect of the Receivable, except with the prior written consent of Marmalade; and

- (e) You have not caused such Receivable to be subject to any right of rescission, set-off, counterclaim or similar defence.

- 3.2 If You become aware that any representation or warranty given under this clause in respect of the assigned Receivable is or becomes incorrect, You must give Marmalade written notice (providing all relevant details of the breach) within 2 Business Days of becoming aware of such breach.

4 Cash-in Acceptance

- 4.1 A Cash-in Fee will be payable in relation to each Permitted Invoice which is the subject of a Cash-in Request.
- 4.2 Marmalade may accept a Cash-in Request by paying the aggregate Purchase Price for some or all of the Receivables in respect of the Permitted Invoices specified in that Cash-in Request, up to the maximum amount nominated in relation to that Permitted Invoice on the Marmalade Platform, into your Supplier Nominated Account on the Purchase Date.
- 4.3 A Cash-in Fee will be payable by You in respect of each Cash-in Request which is accepted by Marmalade (either in whole or in part), which will be payable by way of either:
 - (a) set off against the Purchase Price; or
 - (b) direct debit as permitted by the Direct Debit Request.
- 4.4 When Marmalade accepts a Cash-in Request and pays the net amount set out in clauses 4.2 of this Section B of Schedule A:
 - (a) the beneficial rights and interests in those Receivables in respect of the Permitted Invoices identified are irrevocably and absolutely assigned by You to Marmalade, without encumbrance; and
 - (b) without limiting (a), Marmalade is entitled to Your entire beneficial right and interest in those Receivables and all incidental rights in respect of those Receivables, including the right to receive all money otherwise payable to You in respect of, or as a consequence of, the relevant Permitted Invoice.
- 4.5 You acknowledge that the Receivables assigned to Marmalade are payable within the timeframe set out in the Permitted Invoice or within the amended timeframes scheduled or to be scheduled by a Customer in accordance with the payment alternatives on offer to Customers by You.
- 4.6 If You do not provide the delivery information required by Marmalade pursuant to clause 3.10 of the Terms and Conditions, or otherwise demonstrate to our reasonable satisfaction that the Products have been Delivered to the Customer within 2 Business Days of our request, then:
 - (a) You must refund to us any Settlement Amount we have paid You, and reimburse us any chargeback fees we may incur, in connection with the relevant Permitted Invoice;
 - (b) we will refund to the Customer any amounts paid by the Customer to us in connection with the Permitted Invoice;
 - (c) our right and interest in respect of, or in connection with, the Receivables relating to the Products will

be re-assigned to You upon our receipt of the Settlement Amount from You; and

- (d) we will have no further liability to You in connection with the Permitted Invoice.

- 4.7 The Parties agree that any payments from Customers that Marmalade processes in respect of the Receivables are to be retained by Marmalade in right of its beneficial interest held in those Receivables.

5 Rejection of Cash-in Request

- 5.1 Marmalade may, at its discretion, not allow a Cash-in Request, including if:
 - (a) the form and contents of the Cash-in Request are not satisfactory to Marmalade;
 - (b) a representation or warranty made or taken to be made by You is, in the reasonable opinion of Marmalade, incorrect or misleading in any material respect;
 - (c) You are in breach of any of Your obligations under this Agreement; or
 - (d) an Insolvency Event has occurred in relation to You or the Customer to which the Receivable relates.

6 Further rights

- 6.1 Marmalade may, at or after the time it has been assigned the Receivables, take any step to perfect or protect Marmalade's right, title and interest in such Receivables, (including without limitation, executing any assignment instrument or other document and performing any act, matter or thing, giving notice to any Customer of the assignment by You to Marmalade of the Receivables and/or that they should make all payments in respect of the relevant invoice to the account or in the manner specified to them by Marmalade, and/or giving notice of Marmalade's interest in and title to any Receivables to the relevant Customer or any other interested person).

- 6.2 You irrevocably and for valuable consideration appoint Marmalade as Your agent to do anything Marmalade reasonably ask You to do (such as signing documents, including notices to Customers or other interest persons) to assist Marmalade to exercise its rights, powers and remedies under this clause.

- 6.3 Marmalade may at its absolute discretion, at or after the time it has been assigned the Receivables, directly engage with the Customer in relation to Permitted Invoices without requiring Your consultation or consent.

- 6.4 If any Customer defaults on a payment in relation to a Receivable which has been assigned to Marmalade pursuant to a Cash-in Request, and You continue to trade with such Customer, then Marmalade may retain any amount which remains owing to it in respect of the Receivables the subject of the Cash-in Request and withhold such amounts against any amounts otherwise payable to You by Marmalade including amounts payable pursuant to clause 1.4 of Schedule A, Section A, until the Customer rectifies the default in payment in relation to the Receivables the subject of the Cash-in Request.

7 Money you collect

- 7.1 If You receive or recover money in respect of, or on account of, a Receivable that was assigned to Marmalade:
 - (a) you will promptly notify us of the details of that money received or recovered; and
 - (b) that money is received (and then held) by You on behalf of Marmalade.
- 7.2 Unless otherwise requested by Marmalade, You do not need to segregate the collections of money received on behalf of Marmalade in respect of a Receivable that was assigned to Marmalade.
- 7.3 All interest on the money received on behalf of Marmalade in respect of Receivable that was assigned to Marmalade accrues from time to time for the benefit of Marmalade and must be paid to Marmalade in accordance with Marmalade's direction.