

# BillzyCash – Terms and Conditions

## Background

- A. The Member issues invoices from time to time to its Customers for services rendered and goods sold.
- B. Billzy has agreed, at the request of the Member to enter into this agreement and purchase Accepted Invoices from the Member from time to time to assist the Member in managing its accounts receivables (Billzy Cash Facility).
- C. Billzy and the Member have agreed to enter into this agreement to set out the terms and conditions of the Billzy Cash Facility.

## Agreed terms

### 1 Definitions and interpretation

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#### 1.1 Definitions

Terms used in the Billzy Member Rules have same meaning in this document unless otherwise defined. In this document:

**Acceptance Fee** means the fee payable by the Member to Billzy upon acceptance of the Customer Invoice under clause 3.3 being **\$50** (or such other rate as from time to time advised in writing by Billzy to the Member) of the Invoice Amount of the Accepted Invoice.

**Accepted Invoice** means a Customer Invoice that Billzy has agreed to purchase from the Member pursuant to clause 2.1(d).

**Billzy Cash Facility** or **Facility** means the Billzy Cash Facility provided by Billzy to the Member pursuant to the terms of this agreement as described in Paragraph B of the Bankground.

**Billzy Member Rules** means the Billzy member rules (as amended from time to time) governing the Members participation in the Billzy Community and use of the Billzy platform and web portal.

**Business Day** means a day on which banks are open for business in Brisbane, other than a Saturday, Sunday or public holiday in Brisbane.

**Claim** includes any claim, action, suit, course of action, proceeding, cost or expense (including any reasonable legal, equitable, statutory costs or expenses), demand, verdict or judgement, whether arising at common law, in equity, or under the provisions of any statute, award, order, determination, agreement or otherwise.

**Customer** means any person (other than a Related Entity) the Member provides services to or sells good to in the course of the Member's business. The Customer must be a member of the Billzy Community.

**Customer Invoice** means an invoice rendered by the Member to a Customer for services provided by the Member for the benefit of a Customer or for goods sold by the Member to the Customer which must include:

- (a) a description of the services rendered or goods provided by the Member to the Customer;
- (b) the amount charged to the Customer by the Member including GST;
- (c) the date the services were provided to the Customer by the Member; and
- (d) such other information as from time to time notified by Billzy to the Member.

**Customer Limit** means the total value of invoices Billzy has notified the Member from time to time it is willing to have as Accepted Invoices in respect of a specified Customer.

**Controls** has the meaning given to controls in section 9 of the Corporations Act and **Controlled** has a corresponding meaning.

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

**Default Fee Rate** means the rate of 30% per annum (or such other rate from time to time notified by Billzy to the Member upon 30 days written notice).

**Directors** means the directors of the Member, the partners of Member or the sole trader of the Member as the case may be.

**Encumbrance** means any:

- (a) security interest (including within the meaning of that term as used in the *Personal Property Securities Act*);
- (b) right of set-off, assignment of income, garnishee order or monetary claim;
- (c) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (d) right that a person (other than the registered proprietor) has to remove something from land (known as a profit a prendre), easement, public right of way or restrictive or positive covenant or lease, licence to use or occupy;
- (e) equity, interest or writ of execution;
- (f) third party right or interest arising as a consequence of enforcement of a judgment;
- (g) security deposit;
- (h) option; or
- (i) other agreement, notice or arrangement having a similar effect as those items set out in paragraphs (a) to (h) above, or any agreement to create any of them or allow them to exist.

**Event of Default** means any of the events, omissions or occurrences specified in Clause 8.1

**Facility Fee** means the fee in payable by the Member in respect of each Accepted Invoice calculated in accordance with clause 3.5.

**Facility Fee Rate** means the rate of 5% per month (or such other rate from time to time notified by Billzy to the Member upon 30 days written notice).

**Member Limit** means the total value of invoices Billzy has notified the Member from time to time it is willing to have as Accepted Invoices under the Facility.

**Insolvency Event** means:

- (a) In relation to an entity
  - (i) a receiver, receiver and manager, administrator, provisional liquidator, trustee or similar official is appointed in respect of the entity or in respect of any of the assets or undertaking of the entity;
  - (ii) the entity suspends payment of its debts generally;
  - (iii) the entity is or becomes unable to pay its debts as and when they become due or is otherwise insolvent within the meaning of the Corporations Act;
  - (iv) the entity enters into or resolves to enter into any arrangement or compromise with its creditors or any class of them; or
  - (v) an application or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator, to the entity or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction that has the prior consent of all Shareholders; and
- (b) in relation to an individual, the individual is:
  - (i) an 'insolvent under administration' for the purposes of the Corporations Act;
  - (ii) subject to a debt agreement under part IX of the Bankruptcy Act 1966 (Cth);
  - (iii) otherwise the subject of any order or arrangement made or entered into under any law of Australia or of any of its States or Territories relating to insolvency; or
  - (iv) unable to pay its debts when they fall due.

**Invoice Amount** means the amount owing by the Customer under a Customer Invoice or an Accepted Invoice;

**Invoice Documents** means in respect of each Accepted Invoice:

- (a) all invoices;
- (b) all credit notes, delivery dockets, purchase orders, supply contracts, time sheets or like documentation;
- (c) all offer letters and purchases, agreements and other instruments relating to the Accepted Invoice (including any bills of exchange and promissory notes, present and future);
- (d) all Encumbrances held by the Member in respect of the Accepted Invoices and any agreement entered into by the Member in relation to the priority or sharing of any such Encumbrance;

- (e) each insurance policy, title document and other document relating to the property which is the subject of any Encumbrance and which is held the Member; and
- (f) all other records in any form.

**Nominated Account** means the Member's nominated merchant bank account (as from time to time advised by the Member to Billzy.)

**Notification Date** means the date Billzy notifies the Member that Billzy has accepted a Customer Invoice for purchase pursuant to clause 2.1(d).

**Outstanding Amount** means the total amount owing to Billzy in respect of an Accepted Invoice (including any unpaid Invoice Amount, Facility Fee and other costs and charges but excluding the balance of any Retention Fund held by Billzy).

**Payment Date** means the date upon which Billzy receives:

- (a) full payment of the Invoice Amount in respect of an Accepted Invoice from a Customer; or
- (b) full payment the Recourse Amount in respect of a Recourse Invoice.

**Purchase Date** means the next Business Day after the Notification Date or such later date upon which Billzy purchases the Accepted Invoice from the Member pursuant to clause 2.2(b).

**Purchase Price** means the Invoice Amount of the Accepted Invoice.

**Put Option** has the meaning set out in clause 5.1

**Put Option Notice** has the meaning given by clause 5.2.

**Retention Fund** means the amount equal to 20% of the Invoice Amount held by Billzy pending payment of the Invoice Amount by the Customer pursuant to clause 3.5.

**Recourse Amount** means the Outstanding Amount of the Recourse Invoice less the balance of the Retention Fund in respect of the Recourse Invoice (if any) payable by the Member to Billzy pursuant to clause 5.3 after exercise of a Put Option.

**Recourse Invoice** means an Accepted Invoice with respect to which a Recourse Event has occurred and the Member is required to purchase from Billzy under the Put Option.

**Recourse Event** means, in respect of a particular Accepted Invoice:

- (a) the Customer fails to pay the Accepted Invoice within the Recourse Period;
- (b) the Member advises Billzy that the Accepted Invoice is unlikely to be paid within the Recourse Period;
- (c) the Member issues a credit note or adjustment in respect of the Accepted Invoice;
- (d) the Customer disputes the validity or enforceability of the Accepted Invoice;
- (e) the Customer claims damages for an alleged breach of, or purports or attempts to rescind, the contract giving rise to the Accepted Invoice;

- (f) the Customer refuses to accept, or returns, all or any of the goods or services the subject of the contract giving rise to the Accepted Invoice,
- (g) the Customer makes or attempts to make or raise a counterclaim, set-off, cross-action or defence to the Accepted Invoice or the related debt,
- (h) the Member, or the Customer alleges that the Member has committed a breach of any term of the contract giving rise to the Accepted Invoice;
- (i) for any reason whatsoever the Accepted Invoice is not valid, genuine and fully enforceable for the Invoice Amount;
- (j) the value of the Accepted Invoice materially decreases; or
- (k) an Insolvency Event occurs in relation to the Customer,

and a **Recourse Event** occurs in relation to all Accepted Invoices if:

- (l) the Member breaches any warranty given under clause 6; or
- (m) an Event of Default has occurred.

**Recourse Period** means, in relation to an Accepted Invoice, the period of 90 days from the end of the calendar month in which the Accepted Invoice is raised by the Member to the Customer.

## 1.2 Interpretation

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other genders;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (h) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;

- (j) a reference to 'month' means calendar month;
- (k) this document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to '\$' or 'dollar' is to Australian currency;
- (n) a reference to time is to Brisbane time (unless otherwise agreed in writing);
- (o) 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; and
- (p) if a party to this document consists of more than one person, or a term is used in this document to refer to more than one party:
  - (i) an obligation of those persons is joint and several; and
  - (ii) a right of those persons is held by each of them severally.

## **2 Billzy Cash Facility**

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### **2.1 Issue and sale of Customer Invoices**

- (a) The Member may issue Customers with Customer Invoices via the Billzy web portal.
- (b) Billzy will from time to time advise the Member of the terms upon which Billzy may purchase eligible Customer Invoices from the Member including but not limited to the Purchase Price, Retention Fund, Acceptance Fee and Facility Fee Rate.
- (c) The Member may make an offer to sell to Billzy an eligible Customer Invoice at the Purchase Price.
- (d) Billzy may accept or reject the Member's offer to sell the Customer Invoice at its sole discretion and will notify the Member of its decision within two Business Days.
- (e) If Billzy notifies the Member under clause 2.1(d) that it accepts the offer to purchase a Customer Invoice then the Customer Invoice will become an Accepted Invoice.

### **2.2 Purchase Date**

- (a) The Member agrees to sell and Billzy agrees to purchase an Accepted Invoice for the Invoice Amount on the next Business Day after the Notification Date subject to clause 2.2(b).
- (b) If the Invoice Amount is not owing by the Customer (or the Customer's liability to make payment in respect of the Accepted Invoice is contingent or conditional) on the Notification Date then the Member agrees to sell and Billzy agrees to purchase an Accepted Invoice on the next Business Day after the Accepted Invoice becomes owing and unconditional.

## **2.3 Limits**

- (a) Billzy may from time to time advise the Member of its Member Limit (if any) being the maximum aggregate amount of Accepted Invoices purchased from the Member.
- (b) Billzy may from time to time advise the Member of its Customer Limit for a particular Customer (if any) being the maximum aggregate amount of Accepted Invoices purchased from the Member in respect of the particular Customer.
- (c) The Member must not offer to sell a Customer Invoice to Billzy if acceptance of the offer would cause the Member to exceed the Member Limit or the Customer Limit in respect of the relevant Customer.

## **3 Payment Arrangements under Billzy Cash Facility**

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### **3.1 Assignment of Accepted Invoice**

On the Purchase Date, the Member assigns all its rights, title and interest in the Accepted Invoice (including but not limited to the right to receive payment of the Accepted Invoice) and related Invoice Documents to Billzy.

### **3.2 Payment of Purchase Price**

In consideration of the Member assigning the Accepted Invoice to Billzy pursuant to clause 3.1, Billzy will pay the Purchase Price (less the relevant Retention Fund and Acceptance Fee) to the Member's Nominated Account.

### **3.3 Acceptance Fee**

- (a) The Acceptance Fee is payable by the Member to Billzy on the Purchase Date.
- (b) Billzy is authorised to deduct the Acceptance Fee from the Purchase Price.

### **3.4 Retention Fund**

- (a) On the Purchase Date, Billzy will deduct and retain the Retention Fund from the Purchase Price.
- (b) The Retention Fund (less the Facility Fee and any other deductions pursuant to the terms of this agreement) will be paid to the Member upon receipt of:
  - (i) the Invoice Amount from the Customer in full and final payment of the Accepted Invoice; or
  - (ii) the Recourse Amount from the Member in full and final payment of all moneys owed by the Member to Billzy in respect of the Recourse Invoice.
- (c) Billzy may debit to the balance of the Retention Fund all fees, costs and charges payable by the Member to Billzy pursuant to this agreement.

### **3.5 Facility Fee**

- (a) The Facility Fee calculated in accordance with this Clause 3.5 is payable by the Member in respect of each Accepted Invoice.

- (b) If a Recourse Event has not occurred, the amount of the Facility Fee is calculated as follows:
  - (i) multiplying the Outstanding Amount by the Facility Fee Rate;
  - (ii) dividing that amount by 365; and
  - (iii) multiplying the result by the actual number of days elapsed for which the Outstanding Amount has been outstanding (being the period between the Settlement Date and the Payment Date).
- (c) If a Recourse Event has occurred, the Default Fee Rate shall be used to determine the Facility Fee payable in respect of the Outstanding Amount between the date of the Recourse Event and the Payment Date.
- (d) The Facility Fee is payable by the Member upon demand.
- (e) Billzy may deduct the Facility Fee from the balance of the Retention Fund.

## **4 Dealing with Invoices**

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### **4.1 Copy of Invoice**

The Member must, at Billzy's request, provide Billzy with:

- (a) a copy of each Customer Invoice or Accepted Invoice;
- (b) copies of any Invoice Documents including credit notes or other adjustments relating to an Accepted Invoice; and
- (c) any other information about, or documents relating to, the Customer Invoices or Accepted Invoices.

### **4.2 Verification of Invoices and debts**

The Member consents to Billzy making any enquiries that Billzy reasonably considers appropriate in connection with the Accepted Invoices. Billzy must make those enquiries on the Member's behalf or on an undisclosed basis if, at the time of making those enquiries, Billzy has not given notice to the Customer of the assignment of the Accepted Invoices.

### **4.3 Member as agent**

- (a) In relation to each Accepted Invoice, until Billzy gives notice to the contrary, Billzy appoints the Member as its agent to:
  - (i) collect all payments in respect of the Accepted Invoice; and
  - (ii) take all such action as Billzy reasonably requires to enforce payment of the Accepted Invoice and compliance with all obligations in connection with the Invoice Documents at the Member's expense.
- (b) Despite the Member's appointment as agent, if an Event of Default has occurred Billzy may do the things set out in this clause itself.

- (c) Billzy are entitled to the benefit of all payments collected by the Member in respect of the Accepted Invoices.

#### **4.4 Termination of agency**

- (a) Billzy may at any time, acting reasonably, terminate the agency established under clause 4.3 on giving the Member notice effective immediately of such termination in respect of any or all of the Accepted Invoices.
- (b) Where a notice of termination is given Billzy may, in relation to those Accepted Invoices, collect the payments, and give notice of the assignment of those purchased debts to the relevant Customers.

#### **4.5 Documents and notice**

On and from the Purchase Date:

- (a) the Member appoints Billzy as their agent for the purpose of providing notice to the Customer of the purchase of the Accepted Invoice (at such time as determined by Billzy in its sole discretion).
- (b) the Member ceases to have any rights with respect to the Accepted Invoices and Invoice Documents. The Invoice Documents are and remain the property of Billzy. The Invoice Documents in the possession of the Member are retained in a custodial capacity only;

#### **4.6 Equitable Assignment of Invoices and debts**

The parties confirm and agree their intention that each sale and purchase of Accepted Invoices under this agreement is intended to take effect as a true sale by way of equitable assignment of title (which may be perfected by notice to the relevant persons), and not by way of charge or mortgage.

#### **4.7 Subsequent Payment**

If the Member receives any payment from the Customer of the Accepted Invoice, then the Member agrees to notify Billzy and remit the payment (without deduction) to Billzy within 2 Business Days.

## **5 Put Option**

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### **5.1 Grant of Put Option**

In consideration of Billzy purchasing the Accepted Invoice and Billzy paying the Member the Purchase Price, the Member irrevocably grants to Billzy an option to require the Member to purchase an Accepted Invoice from Billzy upon the occurrence of a Recourse Event on the terms set out in this agreement.

### **5.2 Notice**

Billzy may exercise the Put Option by giving written notice to the Member:

- (a) stating that a Recourse Event has occurred;
- (b) providing details of the identity of the relevant Customer;

- (c) providing details of the relevant Customer Invoice;
- (d) providing details of the Outstanding Amount; and
- (e) stating that Billzy is exercising its Put Option granted in clause 5.1 with respect to the relevant Accepted Invoice.

Upon the giving of the Put Notice to the Member the Accepted Invoice becomes a Recourse Invoice.

### **5.3 Recourse Amount**

- (a) Upon exercise of the Put Option, the Member must pay the Recourse Amount in respect of the Recourse Invoice to Billzy (in cleared funds) within 2 Business Days.
- (b) Upon Billzy receiving (in cleared funds) the Recourse Amount:
  - (i) Billzy will notify (as soon as reasonably practicable) the Member that it has received cleared funds and that the Recourse Invoice is assigned to the Member; and
  - (ii) Billzy will forward any documentation reasonably required by the Member to enforce its rights as assignee of the relevant Recourse Invoice.
- (c) The Member acknowledges and agrees that Billzy has no obligation to notify the relevant Customer of the purchase of the relevant Recourse Invoice made pursuant to its Put Option.
- (d) The Member agrees to notify the Customer that it has purchased the relevant Recourse Invoice as soon as practicable after Billzy provides notice under clause 5.3(b).
- (e) The Member acknowledges that it has the right to recover the Outstanding Amount from the Customer under the Customer Invoice.

## **6 Warranties**

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The Member warrants at all times during the term of the Facility as follows:

- (a) the contents of all materials submitted by the Member to Billzy prior to entering into this agreement about the Member and Customers including the financial statements of the Member showing the financial position of the Member were and remain true and correct and do not contain any misrepresentations or omissions;
- (b) that there has not been a material change in the assets, liabilities, turnover, earnings, financial condition, trading position or affairs of the Member since the Member submitted materials to Billzy and that the Member will immediately notify Billzy of a material adverse change in this regard;
- (c) the Invoice Amount for each Customer Invoice has been properly and legally rendered to the Customer by the Member;
- (d) the Member has not created or allowed any Encumbrance to exist over or affect any Customer Invoice (other than an encumbrance granted to Billzy);
- (e) the Member is lawfully entitled to sell and assign each Customer Invoice to Billzy;

- (f) the Invoice Documents constitute all material terms and conditions of the Customer Invoice and related debt and are valid and binding and enforceable in accordance with their terms and comply with all legal statutory or other requirements for their validity and enforceability;
- (g) all registration requirements relating to the Customer Invoice have been or will be satisfied;
- (h) except as otherwise agreed by Billzy, the Customer Invoices are not disputed by the Customer or in default or materially overdue;
- (i) the Member has issued the Customer Invoice to the Customer and the Customer is obliged to pay the Member within an agreed period of time not exceeding the Recourse Period;
- (j) no Customer is a related entity to the Member;
- (k) the Customer or any other person is not disputing, challenging or in any way indicating an intention not to pay the Customer Invoice or any part of the Customer Invoice and the Customer is not renowned for bad payment history;
- (l) that the Member will not revoke its authority for Billzy to direct debit the Member's Nominated Account and that there are sufficient funds in the Member's Nominated Account to meet its debts and liabilities including its potential liability under the Put Option;
- (m) the Directors have appropriate authority to enter into this agreement;
- (n) no Insolvency Event has occurred with respect to the Member or the Customer under an Accepted Invoice.

A breach under this clause 6 will enable Billzy to automatically exercise its Put Option with respect to all Accepted Invoices. The Member must immediately inform Billzy if at any time anything happens which prevents the Member from truthfully repeating the representations and warranties contained in this clause 6 on each Purchase Date.

## **7 Indemnities**

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In consideration of Billzy entering into this agreement, to the maximum extent permitted by law, the Member unconditionally indemnifies Billzy against all loss (including loss resulting from not recovering the amount owing under an Accepted Invoice) and liabilities which Billzy may incur or suffer and all Claims which may be brought or made against it or them by a party to this agreement or third party:

- (a) as a result of any breach of this agreement including a breach of warranty with respect to this agreement;
- (b) as a result of any obligations with respect to the Customer being unenforceable; and
- (c) as a result of any act or omission of Billzy, its officers, employees, agents or subcontractors in connection with this agreement;
- (d) in circumstances where the Outstanding Amount (or part thereof) under a respective Accepted Invoice cannot be recovered for any reason (including as a result of the unenforceability or Claims regarding the unenforceability of the Put Option); and
- (e) any negligent, fraudulent, reckless, wilfully wrongful, unlawful or other wrongful act or omission of Billzy, its officers, employees, agents or subcontractors in connection with this agreement.

## 8 Default & Termination

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### 8.1 Events of Default

Each of the following events is an Event of Default:

- (a) **Payment Default.** If:
  - (i) Billzy has attempted and failed to deduct (in accordance with a direct debit authority between Billzy and the Member) from the Member an amount owing to Billzy under this agreement; or
  - (ii) the Member fails to make payment of any money owing under this agreement within 2 Business Days of demand being made by Billzy; or
- (b) **Other Default.** If the Member fails to perform or observe any of the covenants or provisions of this agreement on the part of the Member to be performed or observed and (if capable of remedy) such default continues for more than 10 Business Days (or such longer period as Billzy in its absolute discretion permits) after notice from Billzy requiring the Member to remedy the default, unless the non-performance or non-observance has been waived or excused by Billzy in writing; or
- (c) **Winding Up.** If an application for the winding up or bankruptcy of the Member is presented and the Member (as the case may be) cannot within 14 days reasonably satisfy Billzy that the application is frivolous or vexatious; or
- (d) **Insolvency Event.** An Insolvency Event occurs with respect to the Member; or
- (e) **Customer Winding Up.** If an application for the winding up or bankruptcy of the Customer is presented and Customer (as the case may be) cannot within 14 days reasonably satisfy Billzy that the application is frivolous or vexatious; or
- (f) **Customer Insolvency Event.** An Insolvency Event occurs with respect to Customer.

### 8.2 Suspension of Invoice Purchasing Facility.

Billzy will not be required to purchase a Customer Invoice and the Billzy Cash Facility may be suspended if:

- (a) the Member has reached the Member Limit; or
- (b) the Member is in default of this agreement.

### 8.3 Consequences of Default & Termination

- (a) If any of the events described in clause 8.1 occurs, this agreement may be immediately terminated by Billzy without further notice to the Member.
- (b) If this Deed is terminated:
  - (i) Billzy will not purchase any further Customer Invoices; and
  - (ii) any amounts owing to Billzy and not then paid and all amounts payable under this agreement and unpaid shall, at the option of Billzy, become due and payable (**Default Amount**), notwithstanding any delay in exercising, or previous waiver of the right to exercise, that option by Billzy.

- (c) Interest shall accrue on the Default Amount at the Default Fee Rate and will be calculated each day on the Default Amount until repaid in full by the Member.
- (d) If any of the events described in 8.1(e) and 8.1(f) occurs, Billzy' Put Option becomes immediately exercisable.
- (e) Billzy may recover any collection costs incurred as a result of an Event of Default.

#### **8.4 Remedies**

The rights and remedies under this agreement are cumulative and not exclusive of any rights or remedies provided by law.

### **9 PPSA**

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#### **9.1 Grant of Security Interest**

- (a) The Member charges all of its collateral (being the Member's present and after-acquired property with respect to property the Member has at any time a sufficient right, interest or power to grant a security interest) to Billzy to secure payments of any amounts owing by the Member to Billzy following the exercise of the Put Option.
- (b) The Member may in the ordinary course of its usual business, dispose of or deal with the circulating assets and is licensed by Billzy to do so.
- (c) Upon the occurrence of an Event of Default the licence conferring on the Member to deal with its circulating assets pursuant to clause 9.1(b) is withdrawn and the security interest automatically and immediately becomes fixed over the circulating assets.
- (d) Terms referred to in this clause will have the same meaning given to them in the *Personal Properties Securities Act 2009* (Cth) (**PPSA**).
- (e) The Member acknowledges that if Billzy determines that it

#### **9.2 PPSA further assurance**

- (a) The Member acknowledge that this agreement is a "security agreement" as that term is defined in the PPSA and agree that Billzy may register register its interests under this agreement on the Personal Property Security Register.
- (b) The Member must do anything Billzy reasonably asks the Member to do:
  - (i) to ensure each security interest granted under this agreement is perfected; and
  - (ii) to enable Billzy to register this agreement and each security interest constituted by it with the priority that Billzy requires, and to maintain that registration.

## **10 Combining accounts, set-off**

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### **10.1 Combining accounts**

If the Member has two or more accounts with Billzy (including Retention Funds), Billzy may consolidate those accounts at any time and without notice to the Member.

### **10.2 Set-off**

Billzy may set-off or apply against or in reduction or discharge of any part of the Outstanding Amount:

- (a) any sum standing to the credit of any account of the Member with Billzy (including any Retention Fund held in respect of any Accepted Invoice purchased from the Member); or
- (b) any debt or liability Billzy owes to the Member on any account or owing in any way.

### **10.3 Preservation of Billzy's rights**

Billzy's rights and powers under this clause exist, are enforceable and able to be exercised regardless of:

- (a) the currencies in which accounts, sums, debts or liabilities are denominated;
- (b) the maturity or otherwise of any debt, liability or account;
- (c) the actual, contingent, prospective, primary, collateral, several, joint, or joint and several nature of any of the debts or liabilities;
- (d) any agreement to give notice in respect of any debt, liability or account; and
- (e) any course of dealing between Billzy and the Member or any other person.

### **10.4 Claims**

- (a) The Member must not claim or purport to exercise any right of set-off or other right or relief at law or in equity which might reduce or discharge the Outstanding Amount.
- (b) The Member must not bring proceedings to prevent Billzy from exercising any Billzy's rights, powers or remedies under or referred to in this agreement, unless the Outstanding Amount:
  - (i) is first paid in full; or
  - (ii) is paid into court, if the amount of the Outstanding Amount is disputed.

## **11 Power of attorney**

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### **11.1 Appointment of attorney**

- (a) For valuable consideration, the Member irrevocably appoints Billzy and each of the directors, secretary and solicitors of Billzy jointly and severally to be the Member's attorney. Any attorney appointed under this clause may in the Member's name (or in Billzy's or the attorney's name) and on the Member's behalf:

- (i) do any act or thing which in Billzy's or that attorney's opinion:
    - (A) is necessary to give effect to any right, power or remedy conferred on Billzy; or
    - (B) it is necessary that the Member do,  
  
under this agreement;
  - (ii) sign or enter into or both sign and enter into all assurances, documents, agreements, and instruments which in Billzy's or that attorney's opinion is necessary for the Member to sign or enter into under this agreement; and
  - (iii) generally use the Member's name in the exercise of all or any of the powers conferred on Billzy under this agreement, statute, the general law or otherwise.
- (b) The Member ratifies and confirms all things that Billzy or any other attorney appointed under this clause may lawfully do or cause to be done under this power of attorney.

### **11.2 Attorney's powers**

Any attorney (including Billzy) appointed under clause 11.1 may:

- (a) delegate its powers (including the power to delegate) to any person for any period;
- (b) revoke any delegation; and
- (c) exercise or concur in exercising any power, right or remedy despite the attorney or any director or shareholder of the attorney (being a corporation) having a direct or personal interest in the mode or result of the exercise of that power, right or remedy.

### **11.3 Irrevocable attorney**

The power of attorney created under this clause is irrevocable and is granted to secure the performance by the Member of the Member's obligations under this document to which the Member is a party.

## **12 Expenses**

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The Member must pay Billzy, its agents, contractors and employees, on demand, all costs, Claims, fees and expenses, including legal expenses, on a full indemnity basis, in connection with Billzy exercising its Put Option and otherwise in connection with the enforcement of this agreement.

## **13 Notices And Other Communications**

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- (a) A notice, demand, consent, approval or communication under this agreement (Notice) must be:
  - (i) in writing, in English and signed by a person duly authorised by the sender;
  - (ii) hand delivered or sent by pre-paid express post, facsimile or email to the recipient's address for Notices as notified from time to time.

- (b) A Notice given in accordance with clause 13(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (i) if hand delivered, on delivery;
  - (ii) if sent by pre-paid express post, three Business Days after the date of posting (or seven business days after the date of posting to or from a place outside Australia); or
  - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within eight business hours after the transmission, the recipient informs the sender that it has not received the entire notice;
  - (iv) if sent by email, when received by the recipient's electronic information system, pursuant to section 24(1) of the Electronic Transactions (Queensland) Act 2001
  - (v) if the delivery, receipt or transmission is not on a business day or is after 5:00pm on a business day, the notice is taken to be received at 9:00am on the next business day.

## **14 Miscellaneous**

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### **14.1 Notice of Disclosure**

The Member authorises Billzy, at any time and in its sole discretion to make the enquiries of a credit reporting agency in relation to the Member and any officers of the Member.

### **14.2 AML/CTF**

The Member will cooperate with and consents to Billzy carrying out investigations as required by the *Anti-Money Laundering and Counter-Terrorism Act 2006* (Cth) and Billzy reserves the right to reject a Member and not provide the service contemplated by this Deed in its sole discretion once Billzy has carried out its investigations under the *Anti-Money Laundering and Counter-Terrorism Act 2006* (Cth).

### **14.3 No Waiver**

- (a) A single or partial exercise, waiver, delay or indulgence of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right and will not prejudice or restrict the rights of that party.
- (b) Any waiver or consent must be in writing and signed by a person duly authorised to be effective.

### **12.5. Governing Law**

This agreement is governed by and construed in accordance with the laws of Queensland.

### **14.4 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those court, with respect to any proceedings which may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 14.4(a).

#### **14.5 Severability**

If anything in this Deed is or is determined to be unenforceable, illegal, voidable or void in a jurisdiction then that provision of the Deed is to be read down, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Deed or affecting the validity or enforceability of that provision in any other jurisdiction.

#### **14.6 Entire Agreement**

This agreement constitutes the entire agreement between the parties relative to this agreement and supersedes all prior understandings, agreements or representations.

#### **14.7 Assignment**

- (a) The Member must not assign any interest in this agreement without the prior written consent of Billzy.
- (b) Billzy may assign any interest in this Deed without the consent of the Member.

#### **14.8 Further Assurance**

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this Deed and any transactions contemplated by it.

#### **14.9 Counterparts**

This agreement may be executed in any number of counterparts, each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of this agreement may deliver it to, or exchange it with, another party by:

- (a) faxing; or
- (b) emailing a pdf copy of, the executed counterpart to that other party; or
- (c) any other form of electronic exchange contemplated by the parties.