

# Banking Agreement Australia

**Company Name**  
**Website**  
**Address**

EZYPAY PTY LTD  
<https://www.ezypay.com>  
Stone & Chalk

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**Phone**  
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This agreement applies to all users of the Ezypay payment service who have been approved to accept Visa, Mastercard, AMEX or bank transactions. This agreement is made between (1) You, (2) Ezypay Pty Ltd (Ezypay) and (3) Ezypay's Banking Provider(s).

## 1. Definitions

1.1. Unless the contrary intention appears, the following words have these meanings in this Agreement:

**AMEX** is American Express Australia Limited, an Ezypay Banking Provider

**Banking Day** means a day on which banks are open for general banking business in Australia except for Saturdays, Sundays, and National Public Holidays in Australia.

**Banking Provider** means the institution providing the card processing or direct debit service to Ezypay.

**Card Schemes** means, unless otherwise agreed by the parties, Visa, MasterCard, and AMEX.

**Card Scheme Rules** means the rules and regulations which regulate participants in the Card Schemes.

**Cardholder** means the Person in whose name the Card has been issued.

**Chargeback** is the reversal of a sales transaction.

**Card** means a card that has been designated by the issuer as a Visa or MasterCard card or a card issued by any other card scheme which you have agreed to accept, and we have agreed to process.

**Data Breach** means any occurrence which results in the unauthorised access by a third party to confidential data relating to card transactions stored by your business or any entity engaged by you to provide storage or transmission services in respect of that data.

**Data Security Standards** means the Payment Card Industry Data Security Standards ("PCIDSS") mandated by the Card Schemes for the protection of Cardholder details and transaction information, and any additional or replacement standards of which You are advised from time to time.

**Day** means a calendar day and consists of all days in the month, including weekends and public holidays.

**Direct Debit** means the process of debiting the customers nominated account via Direct Debit or PayTo payment methods.

**Merchant Agreement** means the agreement you must sign with Ezypay outlining your obligations with respect to using Ezypay's service.

**Payment Service** means the service provided by Ezypay Pty Ltd.

**PayTo** is a mandate-based bank transaction to collect monies from a bank account.

**Person** includes an individual, firm, body corporate, unincorporated body or association, partnership, joint venture and any government agency or authority.

**Personal Information** refers to information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received by You from any source as a consequence of the performance of the rights and obligations under this Agreement.

**PIN** means the personal identification number allocated by a card issuer or bank, or personally selected by the account holder.

**Privacy Law** means all legislation and principles relating to the collection, use, disclosure, storage and granting of access rights to Personal Information.

**Related Company** has the meaning given to it in the Corporations Act 2001 (Cth).

**Relevant Law** means any:

(a) statute, ordinance, code, or other law including regulations and other instruments under them that are relevant to the obligations and rights of this Agreement; and

(b) any code of practice, guidelines or standards issued by relevant regulators or industry bodies, including any card scheme rules relevant to this Agreement.

**Sub-Merchant** means a company, sole trader or other entity conducting a business which is domiciled in Australia that has agreed to the Ezypay Terms and Conditions, and submits Card, PayTo and Direct Debit transactions under Ezypay's Payment Services

**Surcharge** means any fee charged by a merchant to a cardholder that is added to a transaction for the acceptance of a card.

**Transaction Receipt** means a document used to evidence a transaction.

**We, Us** and **Our** means Ezypay.

**You** and **Your** means the Person to whom the Payment Service is provided by Us.

## 2. Approval to use payment services

### 2.1. You acknowledge that:

2.1.1 Card Acquiring, and direct debit services are provided to Ezypay by Ezypay's Banking Providers.

2.1.2 the operation of this Agreement is conditional on Ezypay approving an application to provide the Payment Services to You; and

2.1.3 We may disclose information about Your merchant history, a data breach, and relevant Personal Information:

2.1.3.1 to any Card Scheme, and card fraud detection agencies, information about You for any purpose related to the operation of those schemes, information about termination of payment services and reason(s) for termination of merchant solutions; and

2.1.3.2 to Ezypay's Banking providers

2.1.3.3 where the law requires or permits us to do so.

2.1.4 Our Banking Provider is bound by Card Scheme Rules and all correspondence and discussions between Card Schemes and our Banking Providers are confidential as between Banking Providers and the Card Schemes.

### 2.2 You represent and warrant that:

2.2.1 any information You provide to Ezypay in connection with an application for Ezypay to provide the Services is complete, accurate and not misleading or deceptive; and

2.2.2 You have complied with Your obligations under Privacy Law; and

- 2.2.3 You are able to satisfy Your obligations and responsibilities under this Agreement; and
- 2.2.4 You are a valid registered Australian business and domiciled in Australia (in accordance with scheme location rules).
- 2.3 **You acknowledge and agree:**
  - 2.3.1 that Ezypay and Banking Providers are authorised to obtain from third parties financial and credit information relating to You in connection with our decision to approve Your application and in respect of our continuing evaluation of Your financial and credit worthiness; and
  - 2.3.2 that any information collected by Ezypay may be disclosed by Us to our Banking Providers.

### 3 Your obligations

#### 3.1 You:

- 3.1.1 must immediately notify Ezypay of any change to Your financial position which may affect Your ability to perform Your obligations under this Agreement; and
- 3.1.2 must provide Ezypay with prior written notice of any change in your place of business and not carry-on business in a place which has not been approved by Ezypay and must not move Your place of business without our prior written consent; and
- 3.1.3 must not change Your business name or ownership of Your business without giving Ezypay prior notice and not substantially change the type of goods and services You sell without our prior written consent; and
- 3.1.4 only submit a sales transaction where You are the supplier of the goods and/or services; and
- 3.1.5 not submit transactions on behalf of a third party, act as a payment's facilitator, or a payment service provider; and
- 3.1.6 must provide Ezypay and our Banking Providers with all information and assistance reasonably required to perform their obligations and to deal with any queries in relation to the Payment Service, including a copy of this Agreement; and
- 3.1.7 must comply with all applicable Scheme Rules, as amended from time to time; and
- 3.1.8 that the Card Schemes are the sole and exclusive owner of any Card Scheme branding; and
- 3.1.9 not to contest the ownership of the Card Scheme branding for any reason; and
- 3.1.10 the Card Schemes may at any time, immediately and without advance notice, prohibit You from using any form of Card Scheme Branding any reason; and
- 3.1.11 Card Schemes have the right to enforce any provision of the Scheme Rules and to prohibit You and/or Ezypay from engaging in any conduct the Card Scheme deems could injure or could create a risk of injury to the Card Schemes, including injury to reputation, or that could adversely affect the integrity of the Interchange System, the Card Schemes Confidential Information or both; and
- 3.1.12 You will not take any action that could interfere with or prevent the exercise of this right by a Card Scheme; and
- 3.1.13 must provide Ezypay and our Banking Providers with all information and assistance reasonably required to perform their obligations and to deal with any queries in relation to the Payment Service; and

- 3.1.14 must comply with all applicable Card Scheme Rules and Relevant Laws and contractual requirements in accepting card payments and performing Your obligations under this Agreement; and
- 3.1.15 will observe and implement the fraud prevention procedures set out in the manuals, guides or directions provided to You, unless otherwise mutually agreed to by the parties.
- 3.1.16 must comply with all applicable laws, rules and regulations relating to the conduct of your business.
- 3.2 **For payment services specific to AMEX, you:**
  - 3.2.1 authorise to submit transactions to and receive payment from AMEX; and
  - 3.2.2 agree to accept AMEX cards in accordance with the terms of your Merchant agreement and this agreement; and
  - 3.2.3 must display AMEX Marks and give equal representation with any signage, decals or other identification when promoting payment methods and remove them should your Merchant Agreement be terminated; and
  - 3.2.4 must comply with AMEX's third-party beneficiary rights, but not obligations that will fully provide Amex with the ability to enforce the terms of your Merchant Agreement against you as necessary to protect the AMEX brand: and
  - 3.2.5 must abide by any limitations on AMEX's liability as set out in this agreement and the Payment Aggregator Card Acceptance Agreement between Ezypay and AMEX.

**Direct Debit Processing**

- 3.3 For payment services specific to DDR (Direct Debit Request) from a Customer we will:
  - 3.3.1 apply a maximum debit amount per transaction to each DDR.
  - 3.3.2 review the maximum debit amount from time to time.
  - 3.3.3 assess any requests to increase the maximum debit amount and either accept or reject any requested increases at our discretion, acting reasonably. Ezypay will provide written notice of the outcome to the Merchant; and;
  - 3.3.4 provide any information you provide to us to the Banking Provider if it is requested from us by the Banking Provider
- 3.4 **For online DDR forms you:**
  - 3.4.1 must ensure that each of your relevant staff are enrolled on our online system and have a unique username and password; and
  - 3.4.2 must accurately identify all Customers before submitting an Online DDR for that Customer by using a method of identification accepted under our Identity and Access Policy.
  - 3.4.3 and you use an Online DDR to establish a new Customer and have chosen to obtain the Customer's signature on the DDR, if requested, you must provide us and the Customer with a copy of the signed DDR within two (2) working days.
- 3.5 **You must not:**
  - 3.5.1 use online DDRs for Customers for whom you do not have an ongoing relationship.

- 3.5.2 use Online DDRs for services which have a significant opportunity for fraud; or
- 3.5.3 allow your staff to disclose their unique username and password to any other person.
- 3.6 If we suspect fraud by any person in connection with an Online DDR we may cease or halt any Direct Debit or reject any Online DDR which we suspect may be related to the suspected fraud.
- 3.7 You acknowledge that:
  - 3.7.1 any DDRs made to us or under APCA User ID No. 064323 are not transferable to any other party; and
  - 3.7.2 DDR forms, whether in hard copy or electronic format, made to us and/or under our APCA User ID number will always remain Ezypay property

**PayTo Processing**

- 3.8 When we receive a PayTo request we will:
  - 3.8.1 receive the initial request that a Customer has selected PayTo as their Payment Method;
  - 3.8.2 validate the details submitted and create the PayTo agreement;
  - 3.8.3 send the Customer a notification via their Banking App to open, review and accept the PayTo Agreement; and
  - 3.8.4 notify you of the Customers' acceptance of the PayTo Agreement

**PayTo Agreement Management**

- 3.9 If you use PayTo:
  - 3.9.1 you must accurately identify all Customers before submitting a PayTo Agreement Request for that Customer using a method of identification accepted under our Identity and Access Policy
  - 3.9.2 you must also refer your Customers to their Banking Provider for further details on how that institution manages PayTo.
- 3.10 Ezypay, where required may:
  - 3.10.1 amend a PayTo Agreement to make requested changes to the parameters.
  - 3.10.2 cancel a PayTo Agreement
  - 3.10.3 transfer a PayTo Agreement when requested to another bank account or a different banking institution; or
  - 3.10.4 suspend a PayTo Agreement.
- 3.11 Exclusions of warranty, If we process a Direct Debit or PayTo transaction, we are not warranting that:
  - 3.11.1 The transaction is valid;
  - 3.11.2 The identity of the Customer is correct; or
  - 3.11.3 The Customer is creditworthy

**Data Security Standards**

- 3.12 This clause applies to you if collect payment data directly from a cardholder or store any cardholder data. In addition to the other provisions of this agreement, you acknowledge and agree:
- 3.12.1 you must protect stored cardholder data, regardless of the method used to store such data. Data storage also includes physical storage and security of cardholder data. Storage should be kept to the minimum required for business, legal, and/or regulatory purposes; and
  - 3.12.2 you must not store the personal identification number (PIN) or sensitive authentication data after authorization (even if encrypted); and
  - 3.12.3 if Ezipay or our Banking Providers advise you that you must comply with the Payment Card Industry Data Security Standards, you must, at your own expense, successfully complete the protocols for PCI-DSS within the time frame stipulated by Ezipay or the Card Schemes. You acknowledge and agree that if you fail to do so:
    - 3.12.3.1 Ezipay may terminate the merchant services; and
    - 3.12.3.2 You are liable for any fine imposed upon our Banking Providers or Ezipay by the Card Schemes as a result of your failure to comply; and
  - 3.12.4 If you have suffered a Data Breach:
    - 3.12.4.1 You must advise Ezipay as soon as you become aware of the data breach; and
    - 3.12.4.2 you must give Ezipay and our Banking Providers and its agents full access to your systems and databases to facilitate a forensic analysis to ascertain the extent of the breach.

**Your duties to Cardholders**

- 3.13 Subject to the other provisions of this Agreement, You:
- 3.13.1 must accept any valid and acceptable Card in a transaction; and
  - 3.13.2 must perform all obligations (including supplying all goods and/or services) to the cardholder in connection with the sale; and
  - 3.13.3 must only send Ezipay a sales transaction when you have committed to provide the good sand services to the customer; and
  - 3.13.4 must not accept a Card in a credit card transaction for the purpose of giving a Card holder cash; and
  - 3.13.5 must not exchange any information or document relating to a Cardholder's account number, or Card number, or a transaction, to any Person other than:
    - 3.13.5.1 Ezipay;
    - 3.13.5.2 Our Banking Providers; and
    - 3.13.5.3 the card issuer; or
    - 3.13.5.4 as required by law; and
  - 3.13.6 if You collect or store Cardholder information, You must comply with any Data Security Standards notified to You; and

- 3.13.7 must destroy any document that is no longer required to be retained by applicable law or card scheme rules, in a manner which makes the information unreadable; and
- 3.13.8 must take reasonable steps to ensure that the information and documents mentioned in (e) are protected from misuse and loss and from unauthorised access, modification, or disclosure; and
- 3.13.9 must not make any representation in connection with any goods or services which may bind Ezypay, our Banking Providers or any Card Scheme; and
- 3.13.10 must not indicate or imply that we, our Banking Providers, or any Card Scheme endorse any goods or services or refer to a nominated Card in stating eligibility for goods, services, or any membership; and
- 3.13.11 must not accept a Card or a transaction which is of a type You have been previously advised is not acceptable; and
- 3.13.12 must provide notice to any Cardholder with whom You enter into a transaction that You are responsible for that transaction, including for any goods or services provided, any payment transaction, related service enquiries, dispute resolution, and performance of the terms and conditions of the transaction; and
- 3.13.13 must not unfairly distinguish between issuers of a Card when accepting a transaction; and
- 3.13.14 You must not transfer or attempt to transfer financial liability under this Agreement by asking or requiring a Cardholder to waive his or her dispute rights.

**Recurring transactions**

- 3.14 You may only process a transaction as a recurring transaction if:
  - 3.14.1 you have obtained cardholder permission (either electronically or in hardcopy) to periodically charge for a recurring service; and
  - 3.14.2 you retain this permission for the duration of the recurring services and make it available to us on request; and
  - 3.14.3 you provide a simple and accessible online cancellation procedure if the card holder request for the goods or services was initially accepted online.

**Indemnity**

- 3.15 You agree to indemnify and hold Ezypay and our Banking Providers harmless from and against any fines imposed by a Card Scheme because of your conduct in relation to the merchant services, including any fines imposed as a result of an unacceptable rate of chargebacks or claims.

## 4 Website requirements

- 4.1 Your website must display up to date information on your business details, goods and services provided and any other information required for the purpose of complying with card scheme rules. Unless You are otherwise notified in writing, You must, before You accept any electronic commerce transaction over the Internet, establish and maintain at Your own expense a web site that complies with the requirements of clause 4.2.
- 4.2 The web site must clearly display the following information:
  - 4.2.1 Your business name (and Australian Business Number as applicable); and
  - 4.2.2 the address of Your approved place of business; and



- 4.2.3 Your business contact details, including telephone numbers and an email address; and a complete description of the goods and services available for purchase on Your web site with the price advertised in Australian dollars or, if we have agreed that you can process transactions in another currency, that currency; and
- 4.2.4 details of Your return and refund policy, including how a transaction can be cancelled by a Cardholder; and
- 4.2.5 details of Your delivery times for goods and services. Delivery times are to be appropriate for the type of business carried on by You. If the delivery is to be delayed, the Cardholder must be notified of the delay and an option provided to them to obtain a refund; and
- 4.2.6 details of any Australian export restrictions (if applicable); and
- 4.2.7 details of Your privacy policy and how You intend to deal with, or share, Personal Information obtained from and about the Cardholder; and
- 4.2.8 a description of the measures You have to maintain the security of:
  - 4.2.9 Cardholders' account data; and
  - 4.2.9.1 any other information which, by notice, we or our Banking partner require You to display from time to time; and
- 4.3 any other information required for the purpose of complying with card scheme rules.
- 4.4 You must provide us reasonable access to view, monitor and audit the pages of Your web site.

## 5 Card acceptance requirements

- 5.1 You must:
  - 5.1.1 use reasonable care to detect forged or unauthorised signatures or the unauthorised use or forgery of a Card; and
  - 5.1.2 notify Ezypay if You become aware of or suspect fraud on the part of a Cardholder; and
  - 5.1.3 not deliberately reduce the value of any one transaction by:
    - 5.1.3.1 splitting a transaction into two or more transactions; or
    - 5.1.3.2 allowing a Cardholder to purchase items separately; and
  - 5.1.4 establish a fair policy for dealing with refunds and disputes about transactions and include information about that policy on Transaction Receipts as required by Ezypay; and
  - 5.1.5 only submit a transaction as a refund to a Cardholder if it is a genuine refund of a previous sale transaction. The refund must be processed to the same card that was used in the original sales transaction and be for the original sale amount; and
  - 5.1.6 not process a refund transaction as a way of transferring funds between Your accounts; and
  - 5.1.7 not ask a Cardholder to reveal their PIN or any other secret identifier; and
  - 5.1.8 contact Ezypay for instructions if the identification of a Cardholder or the validity of the Card is uncertain; and
  - 5.1.9 not knowingly submit for processing any transaction that is illegal or that You should have known is illegal.

- 5.2 For remote transactions, you must:
  - 5.2.1 take reasonable steps to verify the identity of the Person You are dealing with, in order to confirm that they are the genuine Cardholder; and
  - 5.2.2 record reasonable identification details of the Person You are dealing with, as well as the commencement and expiry dates of the Card.

## 6 Surcharging

### **Amount of surcharge**

- 6.1 Where you elect to charge a cardholder a surcharge in respect of a transaction you must comply with applicable ACCC and RBA regulation and standards.
- 6.2 You must not impose a surcharge in excess of the reasonable cost of card acceptance.
- 6.3 You must clearly disclose to the cardholder before the transaction is completed any surcharge that you will charge before completing the transaction.
- 6.4 You must not represent or otherwise imply that the surcharge is levied by a card scheme or by us or any financial institution.
- 6.5 For AMEX transactions:
  - 6.5.1 you must warmly welcome AMEX cardholders, meaning that you either do not surcharge AMEX cardholders, or if you do, you apply a surcharge that is not more than the surcharge you apply to any other credit cards; and
  - 6.5.2 you must not impose a surcharge that exceeds your customer's reasonable costs of accepting the Card; and
  - 6.5.3 you must satisfy the requirement to notify customers prior to their purchase decision that you are charging such a fee or surcharge.
  - 6.5.4 you must not discourage AMEX cardholders from using their cards

## 7 Transaction receipt

- 7.1 Unless we have agreed that we will provide the transaction receipt to the cardholder, You must give the Cardholder a copy of the Transaction Receipt for each transaction, but You must not charge a fee for doing so.
- 7.2 You must provide Ezypay with the Transaction Receipt and any other required evidence of the transaction within seven (7) days if You are asked by Ezypay to provide it.
- 7.3 If You wish to change Your Internet or email address, or telephone number appearing on the Transaction Receipt, You must notify Ezypay in writing at least fifteen (15) Banking Days prior to the change taking effect.
- 7.4 If You are notified that You must prepare the Transaction Receipt, You must ensure the information contained in the Transaction Receipt:
  - 7.4.1 is identical with the information on any other copy; and
  - 7.4.2 legibly includes the information notified to You.

## 8 Invalid or unacceptable transactions

8.1 A transaction is not valid if:

8.1.1 the transaction is illegal as per applicable laws; or

8.1.2 You have not complied with Your obligations in clause 3; or

8.1.3 the transaction is before or after any validity period indicated on the relevant Card; or

8.1.4 You have been told not to accept the Card; or

8.1.5 the transaction is not authorised by the Cardholder; or

8.1.6 another person has provided or is to provide the goods or services the subject of the transaction to a Cardholder; or

8.1.7 You did not actually supply the goods or services to a genuine Cardholder as required by the terms of the transaction, or have indicated your intention not to do so; or

8.1.8 the transaction did not relate to the actual sale of goods or services to a genuine Cardholder; or

8.1.9 this Agreement was terminated before the date of the transaction; or

8.1.10 it occurs during a period in which Your rights under this Agreement were suspended under or after this Agreement was terminated; or

8.1.11 You cannot give a Transaction Receipt as required by clause 7 provided for herein; or

8.1.12 for any other reason, the Cardholder is entitled under the Card Scheme Rules to a chargeback of the transaction.

8.2 A transaction for a sale or refund is not acceptable if:

8.2.1 the Cardholder disputes liability for the transaction for any reason or makes a claim for set-off or a counterclaim; or

8.2.2 it is of a class which Ezypay decide, in their discretion, is not acceptable.

8.3 You acknowledge and agree that Ezypay may:

8.3.1 refuse to accept a transaction if it is invalid or unacceptable, or may charge it back to you if it has already been processed, even if we have given you an authorisation; and

8.3.2 reverse a sales transaction as a chargeback, and debit your account for the amount of the chargeback, for any of the reasons in clauses 8.1 and 8.2 and any other reason we notify you of from time to time; and

8.3.3 without limiting the above, delay, block, freeze or refuse to accept any transaction where Ezypay has reasonable grounds to believe that the transaction breaches Australian law or sanctions or the laws or sanctions of any other country.

## 9 Settlement of transactions

9.1 Our Banking Providers will provide settlement to Ezypay for the gross amount of all funds received from the card schemes in respect of transactions processed under this agreement, less any chargebacks or refunds.

9.2 Ezypay is responsible for disbursing to you, in accordance with your funding, reserve and payment arrangements with Ezypay, any settlement amounts received from our Banking Providers in respect of transactions processed under this agreement.

9.3 You agree to direct any queries regarding settlement to Ezypay.

## 10 Use of card scheme logos and trademarks

10.1 You acknowledge and agree that:

10.1.1 the card scheme logos, names, and holograms (“the Marks”) are owned solely and exclusively by the relevant card scheme; and

10.1.2 you will not contest the ownership of the Marks for any reason; and

10.1.3 the card schemes may at any time, immediately and without notice, prohibit you from using any of the Marks for any reason; and

10.1.4 you may only use advertising and promotional material for the cards, or which show a card scheme mark in the manner Ezypay approves, unless you have received authorization from the card schemes through other means.

## 11 Representations and warranties by you

11.1 You represent and warrant that:

11.1.1 by entering into this Agreement, You are not currently and will not be in breach of any Relevant Law or any obligation owed to any Person; and

11.1.2 where applicable, You are duly authorised to enter into this Agreement and the obligations under this Agreement are valid, binding, and enforceable in accordance with its terms; and

11.1.3 if You are an incorporated body, You validly exist under the laws of Your place of incorporation and have the power and authority to carry on Your business as that business is now being conducted and using any name under which that business is being conducted; and

## 12 No warranties by us

Neither Ezypay nor our Banking Providers make any warranties in respect of any of the services provided under this agreement. To the maximum extent permitted by law, any and all implied warranties and guarantees are excluded. In respect of any warranty or guarantee which is unable to be excluded under any relevant law, our liability in respect of a breach of that warranty or guarantee is limited to the re-supply of the goods or services or the payment of the cost of having the goods or services supplied again.

## 13 Exclusion of liability

To the maximum extent permitted by applicable law we are not liable to you or to any person for any act or omission (including negligence) of ours that results in any direct or indirect loss (including loss of profits), damage, injury or inconvenience you suffer because of any service failure, including any unavailability of the service, any delays, or any errors. Under no circumstances will we be liable to you for any lost sales, revenue or profit or loss of custom due to any service failure which results in you being unable to promptly accept payments from your customers.

## 14 Termination and suspension

- 14.1 Our Banking Providers or Ezypay may suspend or terminate this Agreement or suspend then terminate this Agreement or any part of it at any time if:
- 14.1.1 You are in breach of Your obligations under or arising out of this Agreement; or
  - 14.1.2 if in Ezypay's reasonable opinion, the processing of Your transactions exposes Ezypay or its Banking Providers to an unacceptable level of risk; or
  - 14.1.3 You are or have engaged in conduct which exposes Ezypay or its Banking Providers to potential fines or penalties imposed under Relevant Law; or
  - 14.1.4 Your business or Equipment is or has been targeted by a person engaged in fraudulent or dishonest activity whether with or without Your knowledge; or
  - 14.1.5 You or any service provider (other than Ezypay or its Banking Providers) that you use in connection with your merchant services has suffered a data breach
  - 14.1.6 a direction is made by a card scheme or under Relevant Law that the Payment Service be suspended or terminated; or
  - 14.1.7 you have experienced an adverse change in financial circumstances; or
  - 14.1.8 we have concerns about your solvency or if you come insolvent or are subject to any form of insolvency administration or a resolution is passed, or an order is made for winding up; or
  - 14.1.9 you have a significant adverse credit event recorded against you.
- 14.2 This Agreement will terminate automatically and immediately if:
- 14.2.1 Ezypay's registration as a member service provider or independent sales organisation with any card scheme is cancelled; or
  - 14.2.2 Ezypay's agreement with its Banking Providers for the provision of merchant services is terminated for any reason; or
  - 14.2.3 any other agreement that you have with Ezypay in respect of Ezypay's payment processing services is terminated for any reason.
- 14.3 You authorise our Banking Providers to disclose to any Card Scheme advice of termination of this Agreement and the reasons for the termination. You acknowledge that the information concerning termination of this Agreement then becomes available to any member of the Card Schemes. This information, available to any member of the Card Schemes, may be used in assessing subsequent applications for merchant facilities.
- 14.4 This clause 14 survives termination of this Agreement.

## 15 Assignment

You may not assign or charge Your rights under this Agreement without our prior written consent.

## 16 Australian domicile requirements

You acknowledge that we may only provide services to you under this Agreement where you:

- (a) have a permanent establishment in Australia through which transactions are completed

- (b) are registered to do business in Australia
- (c) have a local address in Australia for correspondence and acceptance of judicial process, other than a post-office box or mail-forwarding address; and
- (d) pay taxes in Australia (where required) in relation to the sales activity; and
- (e) satisfy any other domesticity requirements imposed by card schemes from time to time

In addition to any other right to terminate or suspend the services, we may immediately cease to accept transactions under this Agreement where you fail to satisfy the above requirements.

## 17 Governing law

This agreement is governed by the laws of the state of New South Wales (NSW). Each party submits to the jurisdiction of the courts of that State of NSW and any courts of appeal from them.

## 18 Amendment

We may vary this agreement on 30 days' written notice to you.

## 19 Notices

- 19.1 You acknowledge that Ezypay may deliver notices to You in any of the ways listed in clause 19.2.
- 19.2 A notice must be in writing and is taken to be received:
  - 19.2.1 if delivered personally, at the time of delivery
  - 19.2.2 if sent by pre-paid post, on the third day after the posting
  - 19.2.3 if sent by facsimile transmission, on the date the transmitting machine records transmission of the complete document
  - 19.2.4 when the party sending the notice is Ezypay, if sent by email, at the time when the email enters Your information system.
- 19.3 The address, or email address to be used for notices is the last address, or email address advised by a party. You must inform Ezypay immediately of any change of Your address, or email address.

## 20 Miscellaneous

- 20.1 Where there is inconsistency between the obligations contained in the Banking Agreement Terms (this Agreement) and the Principal Terms & Conditions, the Principal Terms & Conditions will prevail.
- 20.2 In the event of any inconsistency between any provision of the Banking Agreement Terms (this Agreement) and the Scheme Rules, the Scheme Rules will govern.