

AGREEMENT FOR TERMS AND CONDITIONS OF ENGAGEMENT FOR THE PROVISION OF DEBT COLLECTION SERVICES

1. RECITALS

- (a) From time to time the Client is owed money by one or more Debtors on which the Client has or may have difficulty collecting payment.
- (b) The Client seeks the assistance of REPAID! Collections to recover Debts owed to the Client.
- (c) REPAID! Collections conducts business as a debt collection agency.
- (d) The Guarantor, so as to encourage REPAID! Collections to enter into an agreement with the Client, unconditionally agrees to guarantee the performance of the Client's obligations of this agreement.
- (e) The parties agree that REPAID! Collections will provide debt collection services to the Client, and wish to record their agreement as to the terms and conditions upon which such services will be provided as set out below.
- (f) This agreement, referred to hereafter as "these Terms and Conditions", is dated on the day shown in the execution clause on page 8.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

- (a) **Administration Fee** means the fee payable by the Client to REPAID! Collections on the Client providing REPAID! Collections with an Authority to Act. The Administration Fee is recorded in the Authority to Act.
- (b) **Authority to Act** means any written or verbal authority from the Client engaging REPAID! Collections to act as agent for the Client in the collection of Debts owed to the Client which are particularised on the Schedule of Accounts for Collection. All Authorities to Act provided by the Client are accepted by REPAID! Collections subject to these Terms and Conditions.
- (c) **Business Day** means any day except a gazetted public holiday throughout Victoria or a Saturday or Sunday.
- (d) **Client** means the party as set out in Schedule 1 to this agreement.
- (e) **Commission** means the commission payable by the Client to REPAID! Collections upon successful collection of a Debt, calculated by reference to the Gross Sum Recovered and the amount of commission that is payable in accordance with the Commission Schedule.
- (f) **Commission Schedule** means the schedule of commission amounts and rates that are applied to calculate the amount of Commission payable upon collection of a Debt pursuant to these Terms and Conditions. The Commission Schedule is recorded on the Authority to Act or the Schedule of Accounts for Collection or other written communication between REPAID! Collections and the Client.
- (g) **Debt** means any individual debt listed on the Schedule of Accounts for Collection. **Debtor** has a corresponding meaning.
- (h) **Engagement** means an Authority to Act and these Terms and Conditions taken together.
- (i) **Gross Sum Recovered** means, in relation to any particular Debt, the gross dollar value of any amount/s recovered or collected (either by REPAID! Collections or by or on behalf of the Client) if the amount is recovered in money, or the fair market value of the recovery if the recovery is made in goods and/or services in lieu of money (or a combination of both), save that where the Client has settled or compromised the Debt for an amount which has not been agreed to in writing by REPAID! Collections, and where in the opinion of REPAID! Collections the

amount of the settlement or compromise is considered to be uncommercial, then the value attributable to the Gross Sum Recovered shall be the fair market (estimated recoverable) value of the Debt as estimated and determined by REPAID! Collections in its sole and unfettered discretion based on its experience and expertise.

- (j) **Grantor** has the meaning as defined in section 10 of the PPSA.
- (k) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (GST Act or any replacement or any other relevant legislation and regulations).
- (l) **Guarantor** means the person or persons stated in Schedule 2 to this agreement.
- (m) **Personal Information** means:
 - i. 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; or
 - ii. information or a document that relates to the affairs or personal particulars of another person (such as a company or a business), which is received or learnt from any source as a consequence of or in the performance of this agreement.
- (n) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- (o) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (p) **REPAID! Collections** means Business Credit Solutions Pty Ltd trading as REPAID! Collections ABN 96 167 865 045 of Level 6, 20 Queen Street, Melbourne Vic 3000 or such other address as may apply from time to time.
- (q) **Security Agreement** has the meaning as defined in the PPSA.
- (r) **Security Interest** has the meaning as defined in the PPSA.
- (s) **Schedule of Accounts for Collection** means the schedule of Debts owed to the Client by a Debtor or Debtors which is provided by the Client in writing in any form, with the Authority to Act.

2.2 Interpretation

In the interpretation of these Terms and Conditions, unless the context or subject matter otherwise requires:

- i. the singular includes the plural and vice versa.
- ii. headings are for convenience only and do not affect the interpretation of these Terms and Conditions.
- iii. a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- iv. the masculine gender includes the feminine and vice versa.
- v. a reference to an Act is a reference to that Act as may be amended from time to time and includes all regulations issued under that Act as may be amended from time to time;
- vi. a reference to a document or agreement includes all amendments to that document or agreement.
- vii. if a party consists of more than one (1) person, these Terms and Conditions binds each of them severally and any two (2) or more of them jointly and severally;

- viii. an obligation, representation or warranty in favour of more than one (1) person is for the benefit of them severally and jointly; and
- ix. time is of the essence in respect of all of the Client's obligations to REPAID! Collections.

3. TERMS OF ENGAGEMENT

- (a) The Client warrants that the officer or employee of the Client who signs the Authority to Act has full power and authority to bind the Client in respect of each Engagement.
- (b) When the Client provides an Authority to Act or otherwise instructs REPAID! Collections in writing, or verbally, to collect debts on its behalf, the Client engages REPAID! Collections as its agent to pursue recovery of the Debts owed to the Client which are listed on the Schedule of Accounts for Collection or which are advised verbally. REPAID! Collections is authorised to take such action as it deems reasonably necessary to collect the Debts. This may include REPAID! Collections advising the Client that it instruct and retain, at the Client's expense, legal practitioners, process servers and other professionals as are considered reasonably necessary to collect the Debts. REPAID! Collections may nominate preferred legal practitioners, process servers and other professionals. Should the Client decide to instruct and retain legal practitioners, process servers and other professionals, the Client agrees that it will be required to enter into a separate agreement with the legal practitioners, process servers and other professionals and that any and all costs of this nature will not be incurred by REPAID! Collections and that REPAID! Collections will not be liable for any such associated costs in any respect whatsoever. If REPAID! Collections considers it reasonably necessary for the Client to instruct and retain legal practitioners, process servers and other professionals to collect the Debts and the Client fails, refuses or neglects to do so, REPAID! Collections may, at its sole discretion, terminate the Engagement immediately.
- (c) These Terms and Conditions shall remain current for two (2) years from the date of execution. On each anniversary of the date of execution, the term shall be automatically renewed for further terms of two (2) years thereafter unless either party gives written notice of termination to the other not more than 90 days and not less than 60 days prior to the expiry date.
- (d) In any communication between the Client and a Debtor after execution of the relevant Authority to Act, the Client agrees to notify the Debtor that the respective Debt owed by that Debtor has been referred to REPAID! Collections for recovery and that payment must be made direct to REPAID! Collections.
- (e) Where any Debtor attempts to negotiate a payment plan or resolution or settlement of the Debt claim direct with the Client after the execution of the relevant Authority to Act, the Client agrees to refer the Debtor to REPAID! Collections for such negotiations, and not to enter into negotiations directly with the Debtor.
- (f) Debts are deemed collected (and Commission becomes payable, in full) if any of the following circumstances occur:
 - i. A Debt, or any part of it, is collected by REPAID! Collections or any person appointed by REPAID! Collections pursuant to the relevant Engagement; or
 - ii. At any time after the Client has instructed REPAID! Collections to collect any Debt, including for a period of up to 120 days following the termination of an Engagement:

- A. The Debt, or part of it, is recovered or paid by the Debtor, or anyone else on the Debtor's behalf, to or for the Client's benefit (even if the collection occurs on the same day as the relevant Authority to Act is executed);
 - B. The Debt or the account to which it relates is settled or compromised by the Client in any way; and/or
 - C. The Client accepts goods and/or services and/or any form of consideration whatsoever, in return for full or partial settlement of the Debt, including but not limited to the return of any goods whatsoever whether or not the original supply of such goods gave rise to the Debt.
- (g) The Client agrees to advise REPAID! Collections as soon as practicable of any payments made direct to the Client or of the happening of any of the circumstances listed in clause 3(f)ii.A, B or C above and agrees that Commission, in full, and any other charges payable or owed to REPAID! Collections may be deducted from any Client monies held by REPAID! Collections on the Client's behalf.
 - (h) The Client authorises and directs REPAID! Collections to pay into its trust account all monies collected by REPAID! Collections on its behalf from or on behalf of Debtors.
 - (i) REPAID! Collections will remit the net balance of monies from collected Debts after deduction of Commission, in full, and any other fees or charges payable by the Client or REPAID! Collections within 7 days of receipt of cleared funds, together with a tax invoice and trust statement setting out full details of monies collected, and fees, charges and Commission deducted.
 - (j) The Client agrees to pay REPAID! Collections the Administration Fee on all Engagements.
 - (k) The Client agrees to pay REPAID! Collections Commission in relation to all Debts (or part thereof) collected either directly by REPAID! Collections or by the Client under one or more of the methods listed at clause 3(f)ii.A, B or C above.
 - (l) Commission (plus GST thereon) will be charged by REPAID! Collections upon collection of a Debt, or any part thereof, and will be deducted from the Gross Sum Recovered or any other Client monies held by REPAID! Collections before payment of the balance is remitted to the Client.
 - (m) If REPAID! Collections holds insufficient Client monies (or no Client monies) in its trust account at the time Commission and/or any other fees and charges payable by the Client become payable, the Client agrees to pay all such amounts due, less the balance of any Client monies held, to REPAID! Collections immediately on presentation of invoice by REPAID! Collections.
 - (n) Upon default of clause 3(m), the Client agrees to pay interest on any overdue amounts, at the penalty interest rate under the *Penalty Interest Act 1983* (Vic) plus two (2) percent, compounding daily until any and all overdue amounts are paid in full.
 - (o) Should REPAID! Collections, at its sole discretion, issue recovery proceedings against the Client in relation to unpaid Commission, fees, expenses and/or interest, the Client agrees to pay all legal costs and disbursements incurred by REPAID! Collections in the recovery of such overdue amounts on a full indemnity basis.

4. PROVISION OF CREDIT

The Client acknowledges that for as long as there are any unpaid monies owing to REPAID! Collections by the Client,

REPAID! Collections has provided credit to the Client in respect of that outstanding debt. The Client agrees that the credit to be provided to it by REPAID! Collections is to be applied wholly or predominantly for business or investment purposes (or for both purposes).

5. RETENTION OF TITLE

- (a) Whilst the Client remains indebted to REPAID! Collections at any time during any particular Engagement, REPAID! Collections will retain the legal and equitable title in any goods or property recovered by REPAID! Collections on the Client's behalf. The Client acknowledges that pursuant to this clause, REPAID! Collections has the right and may at its sole discretion register a general security interest on the Personal Property Securities Register in respect of such goods or property, and may retain possession of the said goods or property until all monies owed to REPAID! Collections are paid in full. The Client agrees that REPAID! Collections will not be liable for any loss or damage suffered whatsoever as a result of it retaining goods or property as noted in this clause.
- (b) If the Client remains indebted to REPAID! Collections for a period exceeding 30 days from the date of invoice, REPAID! Collections shall be entitled to sell any goods or property of the Client in its possession, and the net proceeds of such sale may be applied to reduce the Client's indebtedness to REPAID! Collections until the debt is extinguished, and any surplus then remaining shall then be returned to the Client.
- (c) The Client must pay all the costs and expenses of REPAID! Collections incurred in the exercise of its rights under this clause 5.

6. CANCELLATION OF TERMS OF CREDIT

- (a) REPAID! Collections may at sole discretion, withdraw the provision of any credit at any time after the Client is in default of these Terms and Conditions even if the default relates to another Engagement.
- (b) Upon cancellation of the provision of credit (with or without notice) all monies owed by the Client to REPAID! Collections are immediately due and payable.

7. INDEMNITY

The Client agrees to indemnify REPAID! Collections and keep REPAID! Collections indemnified against any claim arising out of its acts and dealings as the Client's agent in respect of collecting Debts or enforcing its rights under any Engagement, including legal fees on a full indemnity basis.

8. SUPPLY OF INFORMATION BY CLIENT

- (a) The Client warrants that all information and supporting documentation supplied to REPAID! Collections which evidences that the Debt is due and payable to the Client is true and correct and free from any false or misleading particulars.
- (b) The Client warrants that all information supplied to REPAID! Collections relating to a Debtor which is a natural person complies with relevant privacy laws and APP's.
- (c) The Client indemnifies REPAID! Collections on a full indemnity basis against all losses, outgoings, costs and expenses incurred by REPAID! Collections arising out of or as a consequence of the Client's breach of clauses 8(a) and/or 8(b).
- (d) The Client agrees to provide such additional information or documentation regarding a Debt as may be reasonably required by REPAID! Collections to support the collection process and/or assist in the resolution of disputes with Debtors, as soon as

practicable after a request is made by REPAID! Collections for such information or documentation.

9. TERMINATION

- (a) REPAID! Collections may terminate any or all Engagements or cease collection action in respect of any particular Debt at any time should it form the view that further recovery action is unlikely to be successful. If termination occurs pursuant to this clause, Commission is not payable by the Client, but any fees or charges previously agreed to by the Client which remain unpaid, will be immediately payable without the necessity of REPAID! Collections issuing a demand.
- (b) Where REPAID! Collections terminates an Engagement in accordance with clause 3(b), then REPAID! Collections may at its discretion, charge Commission to the Client at up to 100% of the amount which would have been payable had the face value of the Debt been collected by REPAID! Collections.
- (c) Where:
 - i. the Client withdraws authority for REPAID! Collections to act on its behalf in relation to a particular Debt;
 - ii. the said Debt remains unpaid; and
 - iii. in the opinion of REPAID! Collections, there are reasonable grounds to believe that the Debt or part thereof was likely to have been recoverable with further collection effort by REPAID! Collections;
 then REPAID! Collections may at its discretion, charge Commission to the Client at up to 100% of the amount which would have been payable had the face value of the Debt been collected by REPAID! Collections.

10. CORPORATIONS

- (a) If the Client is a corporation, each of its directors who executed these Terms and Conditions:
 - i. warrant that all of the Client's directors have agreed to these Terms and Conditions; and
 - ii. are a Guarantor and personally guarantee the due and punctual performance of the Client's obligations under this and any other Engagement entered into during the currency of these Terms and Conditions; and
 - iii. Agree that for the purposes of the PPSA, these Terms and Conditions constitute a Security Agreement and that they grant a Security Interest over any asset they may have or in the future may have in respect of any monies owing to the payment of the amount owing to REPAID! Collections.
- (b) The Client agrees to notify REPAID! Collections of any alteration to its shareholding, corporate structure, control, directorship or constitution within three (3) Business Days or as soon as practicable, whichever is the earlier, after such changes occur.
- (c) The personal liability of a director of the Client under an Engagement is not discharged until such time as all monies owed by the Client to REPAID! Collections are paid in full notwithstanding that the director may have resigned from their office as director of the Client company.

11. TRUSTEE CAPACITY

- (a) If the Client is the trustee of a trust (whether disclosed to REPAID! Collections or not) and the Debts are owed to the Client in its capacity as trustee, the Client and its directors (if applicable) agree/s that the Client:
 - i. enters into all Engagements in both its capacity as trustee and in its own right;

- ii. is empowered under the trust deed to enter into Engagements;
 - iii. has a right to be indemnified out of trust assets in respect of any liabilities it lawfully incurs as trustee; and
 - iv. will not retire as trustee of the trust or appoint any new or additional trustee without first notifying REPAID! Collections.
- (b) The Client agrees to provide REPAID! Collections with a copy of the trust deed upon request.

12. PARTNERSHIP

- (a) If the Client is a partnership:
- i. all members of the partnership warrant that each and every partner has agreed to these Terms and Conditions;
 - ii. the Client acknowledges that all members of the partnership are jointly and severally liable with every other partner for the obligations of the partnership under each Engagement; and
 - iii. the Client agrees not to admit new partners to, or discharge existing partners from the partnership, without first notifying REPAID! Collections.
- (b) If a partner leaves or resigns the partnership it does not discharge them from their liabilities pursuant to this agreement.

13. PERSONAL INFORMATION

The Client agrees for REPAID! Collections to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by REPAID! Collections. The Client agrees that REPAID! Collections may exchange information about the Client with those credit providers either names as trade references by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) To assess an application by the Client; and/or
- (b) To notify other credit providers of a default by the Client; and/or;
- (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) To assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act. The Client consents to REPAID! Collections being given a consumer credit report to collect overdue payment on commercial credit in accordance with the Privacy Act. The Client agrees that personal credit information provided may be used and retained by REPAID! Collections for the following purposes (and for other purposes as shall be agreed between the Client and REPAID! Collections or required by law from time to time;

- (e) The provision of goods; and/or
- (f) Analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of goods; and/or
- (g) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (h) Enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the goods.

REPAID! Collections may give information about the Client to a credit reporting agency for the following purposes:

- (i) To obtain a consumer credit report about the Client;

- (j) Allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

The information given to the credit reporting agency may include:

- (k) Personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number)
- (l) Details concerning the Client's application for credit or commercial credit and the amount requested;
- (m) Advice that REPAID! Collections is a current credit provider to the Client;
- (n) Advice of any overdue accounts, loan repayments and/or any outstanding monies owing which are overdue by more than 60 days, and for which debt collection action has been started;
- (o) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (p) Information that, in the opinion of REPAID! Collections, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with Client's credit obligations);
- (q) Advice that cheques drawn by the Client for one hundred dollars or more, have been dishonoured more than once;
- (r) The credit provided to the Client by REPAID! Collections has been paid or otherwise discharged.

14. INSOLVENCY AND BANKRUPTCY

- (a) If the Client, being a corporation or corporate trustee, enters into liquidation, voluntary administration or receivership, or being a natural person, enters bankruptcy or any form of personal insolvency agreement under the *Bankruptcy Act* 1966, all Engagements are immediately terminated and all monies due and payable by the Client in respect of any Engagement must be paid to REPAID! Collections immediately on demand, including any amounts owed by personal guarantors of the Client under any Engagement.
- (b) If the Client is a partnership and any corporate member thereof enters into liquidation, voluntary administration or receivership, or any member being a natural person enters into bankruptcy or a personal insolvency agreement, the members of the Client partnership jointly and severally acknowledge that the solvent member/s remain liable to perform the obligations of the Client under all Engagements, but that all or any Engagement/s may be terminated at any time by REPAID! Collections at its option. In the event of termination by REPAID! Collections under this clause, the liability of the Client and any personal guarantors in respect of their obligations under any Engagement is not affected or diminished in any way.

15. WAIVER

A waiver by REPAID! Collections of any provision of these Terms and Conditions acting to its benefit, or the indulgence by REPAID! Collections of any breach of a provision of these Terms and Conditions by the Client is not effective unless it is in writing, and only relates to the specific purpose for which it is given, it will not constitute a waiver in respect of any other breach of that or any other provision or affect or diminish the enforceability of any clause herein.

16. TAXES & DUTIES

- (a) In addition to any amounts for which the Client is liable to REPAID! Collections under any Engagement, the Client must pay GST on any taxable supply made

by REPAID! Collections to the Client under the respective Engagement.

- (b) If as a result of:
- i. any legislation becoming applicable to the subject matter of these Terms and Conditions; or
 - ii. any changes in legislation or the interpretation thereof by a court of competent jurisdiction or by any authority charged with the administration of taxation laws;

REPAID! Collections becomes liable to pay any tax, duty, excise, levy or similar in respect of the amounts received from the Client, then the Client must immediately reimburse REPAID! Collections for these additional amounts.

17. SET-OFF

- (a) All payments required to be made by the Client under an Engagement must be made free of any set-off or counterclaim and without deduction or withholding of any kind.
- (b) Any amount due and payable by the Client to REPAID! Collections from time to time may be deducted from any monies which may be or may become payable to the Client by REPAID! Collections and the Client irrevocably authorises any such payments from monies held on the Client's behalf by REPAID! Collections.

18. CONFIDENTIALITY OF INFORMATION

REPAID! Collections, together with its servants and agents, undertakes not to divulge to any third party, any information supplied by the Client in connection with an Engagement, except as required by legislation, court order or subpoena. This clause does not apply to such information as may be disclosed to Debtors as necessary to aid in the debt collection process or to any third parties as a result of the issuing of any legal proceedings.

19. MISCELLANEOUS

- (a) REPAID! Collections is not liable for any loss whatsoever caused to the Client by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotion, acts of God or any other activity outside the control of REPAID! Collections occurring or arising wholly or partially as a consequence of REPAID! Collections taking debt recovery action on the Client's behalf.
- (b) REPAID! Collections is not liable for any loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of right or any other indirect loss suffered by the Client occurring or arising wholly or partially as a consequence of REPAID! Collections taking debt recovery action on the Client's behalf.
- (c) REPAID! Collections will not be responsible for any loss or damage or any consequential loss or damage suffered by the Client arising out of any delay in collecting the debt by REPAID! Collections
- (d) REPAID! Collections does not make any representation or give any guarantee whatsoever that it will be able to secure the payment of the Debt or Debts owing to the Client.

20. SEVERANCE

- (a) Nothing in these Terms and Conditions has the effect of or is taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable legislation. If it is determined that any word, phrase, sentence, paragraph, clause or provision of these Terms and Conditions is unenforceable, illegal or void then it is severed and the other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

- (b) If any part of these Terms and Conditions is severed, that part is deleted and the remainder of these Terms and Conditions remains effective.

21. SURVIVAL

Except as otherwise agreed in writing by the parties and to the extent necessary, any securities, guarantees, indemnities and obligations of confidence provided under these Terms and Conditions are independent and survive termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement.

22. ENTIRE AGREEMENT

These Terms and Conditions together with each Authority to Act constitute the entire agreement between the parties relating to each respective Engagement. All previous negotiations, understandings, representations, warranties, memoranda or commitments regarding the subject matter of any particular Engagement are obsolete and of no further effect. No oral explanation or information provided by one party to the other affects the meaning or interpretation of these Terms and Conditions or constitutes any collateral agreement, warranty or understanding.

23. JURISDICTION

The parties agree that each Engagement shall be governed by the laws of the State of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.

SCHEDULE 1**Client details**

Name of Client	
Trading as (If applicable)	
As Trustee for (If applicable)	
ACN/ABN	
Registered Address (not principal place of business)	

SCHEDULE 2

Guarantor

Name of Guarantor	
Position	
Address	

USE IF MORE THAN ONE.

Name of Guarantor	
Position	
Address	

