

## BiiGGA Terms and Conditions

### 1. Sale and Purchase of Future Revenue

- 1.1. The Merchant sells and BiiGGA purchases the Purchased Amount for the Advance Amount.
- 1.2. The Advance Amount paid by BiiGGA is for delivery of that portion of the Future Revenue of the Merchant comprising the Purchased Amount and is not a loan or credit from BiiGGA to the Merchant.
- 1.3. Prior to purchasing the Purchased Amount for the Advance Amount, BiiGGA must be satisfied, in its sole and absolute discretion, that it has received the Merchant's KYC Check in form and substance satisfactory to BiiGGA.
- 1.4. Upon BiiGGA's payment of the Advance Amount to the Merchant, BiiGGA will own all beneficial right, title and interest in and to the Purchased Amount without need for any other act of transfer.
- 1.5. Upon receipt by the Merchant of any Future Revenue comprising any part of the Purchased Amount, the Merchant receives such revenue in trust for BiiGGA and simultaneously transfers to BiiGGA all legal right, title and interest in and to such revenue without need for any other act of transfer.
- 1.6. For clarity, the parties intend that the full rights, title and interest in and to the Purchased Amount are assigned and transferred by the Merchant to BiiGGA and the Merchant must receive and deal with any Future Revenue comprising any part of the Purchased Amount as trustee in accordance with the terms of this Agreement.

### 2. Assignment of Future Revenue

From the date of the offer, the Merchant irrevocably and unconditionally assigns and transfers to BiiGGA all of its right, title and interest in and to the parts of its Future Revenue determined under this Agreement that come into existence after the date of acceptance of the offer by BiiGGA in consideration for the provision of the Advance Amount in accordance with this Agreement. An assignment or transfer of rights in respect of Future Revenue contemplated by this Agreement will not constitute, and is not intended to result in, any assumption by BiiGGA of any obligation of the Merchant, any of its Authorised Representatives, any customer or vendor of the Merchant, or any other person in connection with the relevant parts of the Merchant's Future Revenue or any document or agreement relating to any of them.

### 3. Delivery of Purchased Amount

- 3.1. The Purchased Amount shall immediately be allocated from all Future Revenue of the Merchant first and in priority and held in trust and delivered to BiiGGA in parts as and when any Future Revenue is originated, produced or received by the Merchant and in accordance with the terms of this Agreement. The Merchant shall deliver the Purchased Amount in amounts calculated as the Debit Order Amount and drawn from the Nominated Bank Account on every Debit Order Processing Day.
- 3.2. A debit order to the Nominated Bank will be created on the terms specified in this Agreement, and: (i) the relevant Debit Order Amount will be drawn from the Nominated Bank Account; and (ii) transferred to BiiGGA on every Debit Order Processing Day.
- 3.3. In the event that any of the Future Revenue is for any reason reversed in the Nominated Bank Account, BiiGGA shall not return such reversed amount (or any portion thereof) but shall rather notify the Merchant and take the reversal into account when assessing any adjustment of the Debit Order Amount during a Review Period.
- 3.4. The Debit Order Amount shall be agreed upon initially by the Parties as set out in the Summary of Advance Arrangement form and may be adjusted by BiiGGA from time to time so as to reflect the agreed Debit Order Type and Debit Order Frequency and BiiGGA's assessments from time to time. Any such adjustment of the Debit Order Amount is within BiiGGA's reasonable discretion, subject only to the terms of this Agreement.
- 3.5. In the event a debit order is returned unpaid, the Merchant consents to BiiGGA re-submitting any unpaid or unprocessed debit order in addition to any other debit order until the direct debit order is successful.
- 3.6. By signing a Direct Debit Order or by providing BiiGGA with a valid instruction, the Merchant has authorised BiiGGA to arrange for funds comprising the Purchased Amount or amounts payable under the Agreement to be debited from the Nominated Bank Account. BiiGGA will only arrange for funds to be debited from the Nominated Bank Account as authorised in the Direct Debit Order.
- 3.7. If the Debit Order Processing Day falls on a day that is not a banking day, BiiGGA may direct the Nominated Bank to debit the Nominated Bank

Account on the previous banking day. If the Merchant is unsure about which day the Nominated Bank Account has or will be debited the Merchant should ask its Nominated Bank.

- 3.8. BiiGGA may vary any details of a Direct Debit Order at any time in accordance with the terms of this Agreement. Where BiiGGA varies any details of a Direct Debit Order in a way that has a materially adverse impact on the Merchant, BiiGGA must consult with the Merchant before it does so. The Merchant undertakes not to change the Nominated Bank Account debiting arrangement under this Agreement without the prior written consent of BiiGGA. Any step taken by the Merchant to change, alter or otherwise deal with the Direct Debit Order or Nominated Bank Account debiting arrangement without the consent of BiiGGA, may be an Event of Default.
- 3.9. The Merchant may change its Nominated Bank Account, Read-Only Access or like delivery arrangements in respect of debit orders only upon the expiry of at least 5 Business Days written notice to BiiGGA, which notice must provide details of the changes and confirmation that the arrangements for the purposes of the Agreement apply to such changed Direct Debit Order. In the event that Read-Only Access to the Nominated Bank Account is changed without notification and provision of renewed Read-Only Access is denied due an immediate and necessary event requiring such change to protect the Nominated Bank Account (for example the loss or compromise of a password or notice from the Nominated Bank of a system compromise), the Merchant shall promptly provide BiiGGA with renewed Read-Only Access and details of changes in writing within 5 Business Days of such changes. The Merchant's financial institution may change the Merchant's debit payment only to the extent of advising BiiGGA of the Merchant's new account details.
- 3.10. The Merchant must ensure that BiiGGA has Read-Only Access to the Nominated Bank Account at all times and there are sufficient cleared funds available in the Nominated Bank Account to allow a debit order to be made in accordance with the Direct Debit Order. If there are insufficient cleared funds in the Merchant's Nominated Bank Account to meet a Direct Debit Order or Read-Only Access is not available to BiiGGA: (i) the Merchant may be charged a fee and interest by the Nominated Bank and (ii) the Merchant may also be responsible for reasonable fees or charges, incurred by BiiGGA as a direct consequence of the insufficient cleared funds in the Merchant's Nominated Bank Account to meet a debit payment or Read-Only Access is not available to BiiGGA; and (iii) the Merchant must arrange for Read-Only Access to the Nominated Bank Account and sufficient cleared funds to be in the Nominated Bank Account so that BiiGGA can calculate the Debit Order Amount (if applicable) and process the relevant Debit Order Amount.
- 3.11. BiiGGA may request the Merchant to provide it with such information that it reasonably requires in order to determine whether all Future Revenue is being deposited in the Nominated Bank Account and the Merchant must as soon as reasonably practicable and in any event by no later than 5 Business Days after the date of such request, provide BiiGGA with access to all such information for this purpose.
- 3.12. The Merchant undertakes to regularly check the Nominated Bank Account statements to verify that the Direct Debit Amounts debited from the Nominated Bank Account are correct. If the Merchant believes that there has been an error in debiting the Nominated Bank Account, the Merchant should raise a query with BiiGGA directly on 1300 472 663 or via [info@BiiGGA.au](mailto:info@BiiGGA.au) and confirm in writing as soon as possible so that BiiGGA can resolve the Merchant's query in a timely fashion.
- 3.13. BiiGGA may delay, block or refuse to process any Direct Debit Order or other transaction contemplated by this Agreement without incurring any liability if BiiGGA knows or reasonably suspects that the transaction or the application of its proceeds will: (i) breach, or cause BiiGGA to breach, any applicable laws or regulations of any jurisdiction (including any sanctions); or (ii) allow the imposition of any penalty on BiiGGA under such law or regulation, including where the transaction or application of its proceeds involves any entity or activity the subject of any applicable sanctions of any jurisdiction binding on BiiGGA, or the direct or indirect proceeds of unlawful activity. Any action taken by BiiGGA pursuant to this clause may be an Event of Default.
- 3.14. The Merchant warrants that: (i) it has confirmed with the Nominated Bank whether direct debiting is available from the Nominated Bank Account (as direct debiting is not available on all accounts offered by financial institutions); and (ii) the Nominated Bank Account details which the Merchant has provided to BiiGGA are verified as correct by checking those details against a recent

account statement from the Nominated Bank; and (iii) it has consulted with the Nominated Bank before completing the Direct Debit Order and providing access to the Nominated Bank Account (should the Merchant have any queries about how to complete the Direct Debit Order or how to provide BiiGGA with access to the Nominated Bank Account).

- 3.15. The parties agree that the mechanism for delivery of the Purchased Amount may be changed in the future as more effective, more efficient or more flexible payment or delivery mechanisms become available in the banking, payments and settlements infrastructure. It is agreed by the parties that such change will only occur if the Merchant and BiiGGA consent thereto in writing, such consents not to be unreasonably withheld.

#### 4. Representations and Warranties

- 4.1. The Merchant makes the representations and warranties set out in this Agreement, whether in this section or elsewhere in this Agreement, on the date of this Agreement and on each day on which any Purchased Amount (including any Further Purchase) is outstanding. Each of the warranties given by the Merchant is: (i) a separate warranty and is in no way limited or restricted by the terms of any other warranty; and (ii) is deemed to be a material representation inducing BiiGGA to enter into this Agreement.
- 4.2. **Status:** The Merchant warrants that if the Merchant is a natural person, the Merchant has no impairment to its full legal status, has had no impairment of its full legal status in the past seven years and is not a bankrupt or a rehabilitated bankrupt or otherwise precluded from being an officer or director of companies under the law, or was the subject of adverse credit reports that it had not disclosed in writing to BiiGGA at the time of the offer. If the Merchant is not a natural person, it is a legal person validly existing under the laws of the place of its establishment, being its address of business specified in the offer, and it has no impairment to its full legal status and has had no impairment of its full legal status in the past (including any voluntary administration or other process to enable financial restructuring of the Merchant or its business) or was the subject of adverse credit reports that it had not disclosed in writing to BiiGGA at the time of the offer.
- 4.3. **Power:** Each party warrants that it has the power to enter into and perform its obligations under this Agreement and documents to which it is expressed to be a party, to carry out the

transactions contemplated by those documents and to carry on its business as now conducted.

- 4.4. **Authority:** Each party warrants that it has taken all necessary personal, corporate or constitutional advice, action and steps to authorise the entry into and performance of the Agreement and documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents.
- 4.5. **Future Revenue:** The Merchant warrants that the Future Revenue is sufficient to repay the Purchased Amount within the anticipated term of the loan and there are currently no known or reasonably foreseeable future events, of which the Merchant is reasonably aware, that will materially impact on the disclosed current or projected Future Revenue.
- 4.6. **Purpose:** The Merchant has declared that it will only use the Future Revenue for business purposes. For the avoidance of doubt, the Merchant agrees that the Future Revenue may not, and will not, be used for personal, domestic or household purposes.
- 4.7. **Binding obligations:** The parties and their Authorised Representatives warrant that each document to which the parties are expressed to be a party is a valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
- 4.8. **Transactions permitted:** Each party warrants that the execution and performance by the respective party to the Agreement and documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of: (i) a law or treaty or a judgment, ruling, order or decree of a government agency binding on it; (ii) its constitution or other constituent documents; or (iii) any other document or agreement which is binding on it or its assets, and, (iv) in relation to the Merchant, except as provided by this Agreement entry into this agreement, did not and will not: (a) create or impose a Security Interest on any of its assets that will or may be detrimental to the Future Revenue of its business and the Purchased Amount portion of that Future Revenue to be dealt with in trust under this Agreement; or (ii) allow a person to accelerate or cancel an obligation with respect to financial indebtedness or constitute an event of default, cancellation event, prepayment event or similar event (whatever called) under an agreement relating to financial indebtedness, whether immediately or after notice or lapse of

time or both, that will or may be detrimental to the Future Revenue of its business and the Purchased Amount portion of that Future Revenue to be dealt with in trust under this Agreement.

- 4.9. **Authorisations:** Each party warrants that each authorisation which is required in relation to: (i) the execution, delivery and performance by it of the Agreement to which it is expressed to be a party and the transactions contemplated by those documents; (ii) the validity and enforceability of those documents; and (iii) its business as now conducted or contemplated and which is material, has been obtained or effected. Each is in full force and effect. It has complied with each of them.
- 4.10. **No default:** The Merchant warrants that it is not in default under a document or agreement (including any authorisation) binding on it or its assets which relates to financial indebtedness or is material, and that will or may be detrimental to the Future Revenue of its business and the Purchased Amount portion of that Future Revenue to be dealt with in trust under this Agreement. Nothing has occurred which constitutes an event of default, cancellation event, prepayment event or similar event (whatever called) under those documents or agreements, whether immediately or after notice or lapse of time or both.
- 4.11. **No misrepresentation:** Each party warrants that all information provided by the other party or its Authorised Representatives is true in all material respects at the date of this Agreement or, if later, when provided. Neither that information nor the party's conduct and the conduct of anyone on the party's behalf in relation to the transactions contemplated by the Agreement, was or is misleading, by omission or otherwise. All financial information has been prepared on the basis of the most recently available historical information and on the basis of reasonable assumptions.
- 4.12. **No proceedings:** The Merchant warrants that no litigation, arbitration, tax claim, dispute or administrative or other proceeding is current or pending or threatened in writing against the Merchant or any of its Authorised Representatives.
- 4.13. **Immunity from suit:** The Merchant warrants that it does not and its assets do not enjoy immunity from suit or execution in relation to its obligations under this Agreement.
- 4.14. **Indemnity:** To the maximum extent permitted by law, the Merchant indemnifies BiiGGA on a full

indemnity basis (including reasonable legal and other out of pocket expenses) against all loss, cost or expense BiiGGA might suffer or incur by reason of the default or failure of the Merchant to comply with its obligations under this Agreement or enforcing this Agreement against the Merchant, except to the extent of BiiGGA's own fraud or wilful misconduct.

- 4.15. **Commercial benefit:** The Merchant warrants that it benefits from entering into this Agreement to which it is a party.
- 4.16. **Title:** The Merchant warrants that subject to any Security Interest disclosed to and permitted by BiiGGA or permitted by this Agreement, the Merchant is the sole legal and beneficial owner of the Future Revenue of its business.
- 4.17. **Law:** The Merchant warrants that it has complied with all laws binding on it.
- 4.18. **Subsidiaries:** The Merchant warrants that, if a legal entity, the Merchant has no subsidiaries at the date of this Agreement that it has not disclosed to BiiGGA.
- 4.19. **Agreements disclosed:** The Merchant warrants that each document or agreement, including all bank accounts details and access, which is material to this Agreement has been disclosed to BiiGGA in writing.
- 4.20. **Copies of documents:** The Merchant warrants that all copies of documents, including all bank accounts details and access, given by it or on its behalf to BiiGGA are true and complete copies. Those documents are in full force and effect.

## 5. Information, Access and Other Covenants

- 5.1. BiiGGA relies on the accuracy of information provided to it by the Merchant and its Authorised Representatives, and by others on the Merchant's behalf, and BiiGGA will not normally seek to verify or check any information provided to it by the Merchant or them. The Merchant and each Authorised Representative acknowledges that BiiGGA will be entitled to reasonably rely on such information and representations and undertakings when carrying out its obligations under this Agreement and confirms that the Authorised Representatives and each of them is authorised to act on the Merchant's behalf.
- 5.2. The Merchant undertakes and covenants to BiiGGA as set out in this section, except to the extent set out in this Agreement or that BiiGGA consents in writing. Each covenant in this Agreement (whether set out in this section or elsewhere in this Agreement) continues from the date of this Agreement until the Purchased

Amount (and any Further Purchases) is fully and finally delivered and the Merchant's obligations under this Agreement are finally discharged. Whenever BiiGGA reasonably requests the Merchant to do anything to ensure this Agreement is fully effective, operationalized, enforceable or perfected and with the contemplated priority or for aiding the exercise of any right or power in this Agreement, the Merchant shall do it promptly at its own cost.

5.3. **All Future Revenue to Nominated Bank Account:**

The Merchant shall maintain the Nominated Bank Account and not open or maintain any other bank account with any financial institution other than the Nominated Bank Account from the date of this Agreement for the purposes of dealing with Future Revenue of the Merchant, and shall ensure that all Future Revenue of the Merchant (whether such amounts relate to any accounts receivable, sales on credit or otherwise) produced or originated by the Merchant in the course and scope of its business are first deposited into the Nominated Bank Account. To the extent that all Future Revenue of the Merchant which is deposited in the Nominated Bank Account is not sufficient to cover amounts payable to BiiGGA under this Agreement, the Merchant undertakes to deposit additional amounts into the Nominated Bank Account so there is no shortfall. The proceeds of any Advance Amount paid under this agreement must be paid directly into the Nominated Bank Account.

5.4. At any time after the Merchant receives notice from BiiGGA confirming that an Event of Default is continuing, and until such Event of Default is remedied or waived in writing by the BiiGGA, the Merchant shall not make any withdrawal from the Nominated Bank Account unless, the withdrawal is previously approved by the BiiGGA, or is used only towards delivering the Purchased Amount or settling any amounts due under this Agreement.

5.5. **Utmost good faith:** The Merchant shall deal with its business, the Nominated Bank Account and any Future Revenue of its business comprising any part of the Purchased Amount in the utmost good faith as a trustee owing fiduciary duties to BiiGGA in respect of such Future Revenue and the business that produces or originates such future revenue.

5.6. **Read-Only Access:** The Merchant undertakes to BiiGGA that it will provide access (including electronic access) for BiiGGA to the Nominated Bank Account in such form or manner as may be required by BiiGGA to enable BiiGGA to view all

transactions which have taken place in the Nominated Bank Account. The Merchant will maintain such access and promptly notify BiiGGA of any changes it is aware of, including changes that may alter BiiGGA's access to the Nominated Bank Account, and take all reasonable steps and sign all documents necessary to ensure such access is promptly provided and maintained. The Merchant undertakes not to change the Nominated Bank Account or BiiGGA's access to the Nominated Bank Account, unless such change arises following due and proper notice to BiiGGA or from an immediate and necessary event requiring such change to protect the Nominated Bank Account (for example the loss or compromise of a password or notice from the Nominated Bank of a system compromise), in which event the Merchant shall promptly provide BiiGGA with renewed Read-Only Access in accordance with this covenant.

5.7. **Dealings with Future Revenue:** At all times the Merchant shall exercise any right, power or discretion in connection with the Purchased Amount and the portions of the Future Revenue or rights in respect of such Future Revenue comprising the Purchased Amount (as the case may be) under this Agreement as a trustee acting for the benefit of BiiGGA.

5.8. **Financial indebtedness:** It shall not incur or repay any financial indebtedness out of the Future Revenue in priority or preference to its duties as trustee or in a manner adverse to the interests of BiiGGA.

5.9. **Negative pledge:** The Merchant will not create or allow to exist a Security Interest over its assets, including Future Revenue, that would supersede its duties as a trustee or otherwise in a manner adverse to the interests of BiiGGA under this Agreement.

5.10. **Security deposit:** The Merchant will not deposit money with or lend money to a person to whom it is or is likely to become, actually or contingently indebted in contravention of its duties as a trustee or otherwise in a manner adverse to the interests of BiiGGA under this Agreement.

5.11. **Disposal of assets:** The Merchant will not sell or otherwise dispose of, part with possession of, or create an interest in all or a substantial part of its assets or agree or attempt to do so (whether in one or more related or unrelated transactions) or otherwise detract from its duties as a trustee or in a manner adverse to the interests of BiiGGA except disposals in the ordinary course of day to



day trading at arm's length, or otherwise with the prior written consent of BiiGGA.

- 5.12. **General Insurance:** The Merchant shall ensure it takes out and maintains insurances in relation to its business and assets against those risks with reputable insurers and underwriters in the manner and to the extent which is in accordance with prudent business practice for companies carrying on the same or substantially similar business as the Merchant and having regard to the nature of the business and assets of the Merchant (including all insurance required by applicable law).
- 5.13. **Authorisations:** The Merchant will ensure that each authorisation required for: the execution, delivery and performance by it of the Agreement to which it is expressed to be a party and the transactions contemplated by those documents; the execution, delivery and performance by it of its Guarantor which are expressed to be a party and the transactions contemplated by those documents; the validity and enforceability of those documents; and the carrying on by it of its business as now conducted or contemplated, is obtained and promptly renewed and maintained in full force and effect. If so, requested by BiiGGA, it will provide copies promptly to BiiGGA when those documents are obtained or renewed.
- 5.14. **Compliance with law:** The Merchant will comply with all laws binding on it in all material respects.
- 5.15. **Reputation and corporate existence:** If a natural person, the Merchant will do everything reasonably necessary to maintain its reputation in good standing. If a legal entity, the Merchant will do everything reasonably necessary to maintain its corporate existence in good standing, and it will not transfer its jurisdiction of incorporation or enter any merger or consolidation.
- 5.16. **Subsidiaries:** If a legal entity, the Merchant will not create or acquire a subsidiary such that the creation or acquisition is adverse to BiiGGA's interests under this Agreement.
- 5.17. **Change of business:** The Merchant will not cease or materially change its business unless required by law or where BiiGGA consents to such a change of business (such consent not to be unreasonably withheld).
- 5.18. **Pay Taxes:** The Merchant will pay all taxes payable by it when due.
- 5.19. **Amendments to constitutional documents:** If a legal entity, the Merchant will not amend its constituent documents in a manner adverse to the interests of BiiGGA (unless required by law or

where BiiGGA consents to such a change (such consent not to be unreasonably withheld).

- 5.20. **Pay outgoings:** The Merchant will promptly pay all outgoings payable by it in respect of its business (including rent and taxes). If outgoings are being contested in good faith they need not be paid until the final determination or settlement of the contest, except where failure to pay may have a material adverse effect on the Future Revenue and the Purchased Amount. On request by BiiGGA, the Merchant will immediately provide to BiiGGA evidence of every payment covered by this undertaking.

## 6. Security

- 6.1. **Granting of Security Interests:** In addition to any other remedies available to BiiGGA under applicable law, as security for payment of any amounts payable to BiiGGA and the performance of the Merchant's obligations under this Agreement, BiiGGA shall have, and the Merchant hereby grants to BiiGGA, a Security Interest over the portion of the Future Revenue payable by the Merchant to BiiGGA, in accordance with the terms of this Agreement, and which such Security Interest will be registered on the PPSR under collateral class "Intangible Property - Account". In addition to the Security Interest created above, if (i) the Summary of Advance Arrangement form specifies in the 'Advance Details' that the Advance Amount is \$150,000.00 or more or (ii) the aggregate amount advanced by BiiGGA to the Merchant at any time as a result of a Further Purchase or otherwise increases to \$150,000.00 or more, BiiGGA shall have, and the Merchant hereby grants to BiiGGA, a Security Interest over all of the Merchant's Secured Property as security for payment of any amounts payable to BiiGGA and the performance of the Merchant's obligations under this Agreement (or any other Agreements where the Advance Amount remains unpaid) and which such Security Interest may be registered on the PPSR under collateral class "All present and after-acquired property".
- 6.2. **Preservation and protection of Future Revenue:** Until the satisfaction of Merchant liabilities arising under this Agreement, the Merchant will promptly do everything in its power necessary or reasonably required by BiiGGA (including promptly executing other documents, by perfection and by registration): (i) to preserve and protect the Secured Property, including the value of its Future Revenue; (ii) to protect and enforce title to the Secured Property, including accounts

receivable and insurance policies; and (iii) to ensure that any material agreement relating to any Secured Property, including accounts receivable or insurance policies or revenue otherwise produced or originated by the Merchant that forms part of the Future Revenue of the business is of full force and effect.

## **7. Further Purchases**

- 7.1. BiiGGA may, upon application by the Merchant, agree to further purchases of the Merchant's Future Revenue ("Further Purchase").
- 7.2. The Merchant's application for a Further Purchase will be in such form or manner as notified by BiiGGA to the Merchant as the "Further Purchase Schedule" and shall be an addendum to this Agreement.
- 7.3. Upon execution of a Further Purchase Schedule by the parties, the Merchant will sell and BiiGGA will purchase the Further Purchased Amount from the Merchant for the Further Purchase Amount, and such Further Purchased Amount is added to and becomes part of the Purchased Amount under the terms and conditions of this Agreement.
- 7.4. Any of the defined items set out in the Further Purchase Schedule will supplement, vary or substitute the same or corresponding defined items set out in this Agreement. Notwithstanding any Further Purchases, the merchant number allocated to the Merchant by BiiGGA in respect of this Agreement will remain the same.
- 7.5. For clarity: (i) the Merchant shall have no right or option or entitlement to a Further Purchase by BiiGGA; (ii) the provisions of this section will apply in respect of each and every Further Purchase as may be agreed by BiiGGA; and (iii) unless otherwise agreed by the parties, save as expressly set out in a Further Purchase Schedule the definitions, terms, conditions, warranties, covenants and obligations set out in this Agreement shall remain unaltered and shall apply to any Further Purchases.

## **8. Settlement of Purchased Amount**

- 8.1. BiiGGA must consent to the extinguishment of the trusts created under this Agreement and the power of attorney will then be discharged when: (i) the Merchant has fully and finally and irrevocably discharged its duties and obligations to BiiGGA in full or has otherwise satisfied such duties and obligations in accordance with this Agreement; (ii) all the Merchant's obligations under this Agreement have been performed; and

(iii) no amount remains contingently payable or may become payable in respect of this Agreement (including under an indemnity or guarantee); and (iv) on payment or retention of all expenses incurred by or payable to BiiGGA, its authorised representatives or any attorney.

- 8.2. If BiiGGA is required to return or repay any money or asset it received and applied to the Merchant's or the Guarantor's account in satisfaction of the Merchant's duties and obligations in bankruptcy or liquidation or otherwise, BiiGGA is entitled to all rights in respect of the relevant money or asset and appointment as attorney and against the Merchant which it would have had if it had not received that money or asset. To the maximum extent permitted by law, and except to the extent of BiiGGA's own fraud or wilful misconduct, the Merchant indemnifies BiiGGA against any resulting loss, cost or expense.
- 8.3. This section will survive the discharge of this Agreement and any assignment, transfer, surrender or release of the duties and obligations of the Merchant and powers of attorney (as the case may be).

## **9. Guarantors Guarantee the Merchant's Performance**

- 9.1. In consideration of BiiGGA providing the Advance Amount and accepting the offer, each Guarantor unconditionally guarantees the due and punctual performance of the Merchant of all obligations under this Agreement (including the due and punctual observance of any obligation to pay amounts due to BiiGGA or such other liabilities and obligations (whether monetary or non-monetary and whether present, future, actual or contingent)) (Guarantee).
- 9.2. Prior to the Guarantor providing its Guarantee, BiiGGA must be satisfied, in its sole and absolute discretion, that it has received the Guarantor's KYC Check in form and substance satisfactory to BiiGGA.
- 9.3. Without limiting clause 9.1, each Guarantor to the maximum extent permitted by law indemnifies BiiGGA on a full indemnity basis (including reasonable legal and other out of pocket expenses) against all loss, cost or expense BiiGGA might suffer or incur by reason of the default or failure of the Merchant to comply with its obligations under this Agreement or BiiGGA enforcing this Agreement against the Merchant, except to the extent of BiiGGA's own fraud or wilful misconduct.

- 9.4. The Guarantees given by a Guarantor are a continuing guarantee and remain in full force and effect until the Merchant's obligations have been paid and performed in full. If a Guarantor comprises more than one person, BiiGGA may at any time, and from time to time, proceed against any or all of them in respect of the Guarantor's obligations as BiiGGA may choose in its absolute discretion.
- 9.5. The Guarantor's obligations are principal obligations and are not ancillary to any of the Merchant's obligations under this Agreement.
- 9.6. The Guarantor's obligations are absolute, unconditional and irrevocable. The liability of the Guarantor's Guarantee under this Agreement extends to, and is not affected by an act or omission which, but for this clause, might otherwise affect it at law or in equity, including: (i) the release, amendment, variation, forbearance or delay of enforcement of the Merchant's obligations under this Agreement, whether or not these matters are formalised in writing and whether or not the Guarantor is aware of or consents to these matters (ii) the occurrence of an Ipso Facto Event; (iii) any judgment or right which BiiGGA may have or exercise against the Merchant, the Guarantor or any other person; (iv) any other person becoming a Guarantor of the Merchant's obligations or part of them; (v) any laches, acquiescence, delay or act or omission by BiiGGA in relation to enforcing this Guarantee; (vi) any security now or in the future being held by BiiGGA for the Merchant's obligations, or any negotiable or other instrument issued by the Merchant being still in circulation, or outstanding, or being or becoming void, voidable, unenforceable or defective either in whole or in part; (vii) BiiGGA failing or neglecting to recover by the realisation of any security or otherwise any moneys owing or to become owing to BiiGGA by the Merchant, or any mistake on the part of BiiGGA; (viii) any act or omission by BiiGGA in relation to any document, or any person having any rights, or obligations, in relation to such an act or omission; (ix) if the Merchant is a trustee of a trust; any breach, amendment or variation of the terms of the trust deed or a declaration of trust or settlement pursuant to which the Guarantor is a trustee, or the determination of the trust; (x) the fact that any security may be entered into after the execution of this Guarantee; (xi) the fact that the Merchant may enter into transactions with, or incur obligations to BiiGGA without the knowledge, or consent of, or notice to, the Guarantor; (xii) the provision of a new Advanced Amount from BiiGGA or any other party to the Merchant; and (xiii) any other fact, circumstance or thing whatever which, but for this provision, could or might operate to abrogate, prejudice, affect or discharge (either in whole or in part) this Guarantee.
- 9.7. The Guarantee binds each of the persons executing it notwithstanding that one or more persons named in this Agreement as a Guarantor does not execute or is not or ceases to be bound by the guarantee contained in this Agreement.
- 9.8. Each Guarantor makes the following representations and warranties for the benefit of BiiGGA and acknowledges that BiiGGA has entered into this Agreement including this Guarantee and agreed to take part in the transactions that this Guarantee contemplates in reliance on the following representations and warranties.
- 9.9. **Power:** The Guarantor warrants that it has the power to enter into and perform its obligations under this Agreement and documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted.
- 9.10. **Authority:** The Guarantor warrants that it has taken all necessary personal, corporate or constitutional advice, action and steps to authorise the entry into and performance of the Guarantee and documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents.
- 9.11. **Binding obligations:** The Guarantor warrants that each document to which the Guarantor is expressed to be a party is a valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
- 9.12. **Ranking of obligations:** The Guarantor's obligations rank at least equally with all other unsecured and unsubordinated payment obligations of the Guarantor except liabilities mandatorily preferred by law.
- 9.13. The Guarantor further acknowledges and confirms that it has received a copy of the Agreement, which the Guarantor has read, and the Guarantor has obtained independent legal advice on aspects of any quotation, its offer and this Agreement, it required, such that the Guarantor understands the contents and the legal implications of its Guarantee and this Agreement and makes an informed decision to provide such Guarantee and bind itself under this Agreement.



- 9.14. BiiGGA is not required to proceed against the Merchant, exhaust any remedy it may have against the Merchant or enforce any security it may hold with respect to the Merchant's obligations in priority to a Guarantor.
- 9.15. A party may, without prejudice to any other rights it may have in terms of this Agreement or at law and upon written notice to the relevant Guarantor, report that Guarantor's default (whether a default in the guaranteed performance of the Merchant or a default in the Guarantor's indemnity or otherwise a default under or breach of this Agreement) to a credit reporting agency.
- 9.16. BiiGGA may consent to the withdrawal or limitation of a Guarantee (including a discharge and release) provided another like or similar guarantee in manner or form consistent with the Guarantee as it existed prior to such variation, and reasonably acceptable to BiiGGA is substituted. BiiGGA must consent to the withdrawal or limitation of a Guarantee (including a discharge and release) provided: (i) another like or similar guarantee in manner or form consistent with the Guarantee as it existed prior to such variation, and reasonably acceptable to BiiGGA is substituted; and (ii) all the other Guarantors (if more than one) and the Merchant give their prior written consent to such withdrawal or limitation (including a discharge and release) and substitution. The party seeking the withdrawal or limitation of a Guarantee (including a discharge and release) is obliged to obtain the substituted Guarantee and all necessary written consents.

## 10. Appointment of Attorney

- 10.1. The Merchant and each Guarantor (each a "Principal Party") for valuable consideration and to secure the performance of their respective obligations under this Agreement, irrevocably appoints BiiGGA and each authorised representative of BiiGGA severally as the Principal Party's attorney to anything that the Principal Party must or may do by law, on the Principal Party's behalf and in the Principal Party's name while the Purchased Amount (including any Further Purchases) or any part thereof is outstanding to: (i) give full effect to this Agreement; (ii) further secure or better secure the Principal Party's performance under this Agreement; or (iii) assist in the execution or exercise of any power upon an Event of Default or for anything else that the Principal Party must do, or that BiiGGA may do, under this Agreement or by law. The attorney may exercise any power for the exclusive benefit of BiiGGA and the Principal Party agrees to ratify anything done by an attorney under this appointment.
- 10.2. The appointment of attorney by a Principal Party under this Agreement is made to assure the proper exercise of the Principal Party's duties and powers under this Agreement in case there is an Event of Default, but also to secure the performance a Principal Party's obligations under this Agreement. As such BiiGGA or an attorney will forbear exercising the powers granted by a Principal Party unless there is a wrongdoing by a Principal Party or any of its Authorised Representatives (generally, and without limitation, any failure to perform strictly in accordance with this Agreement by a Principal Party is considered a wrongdoing by the that relevant Principal Party, except to the extent such failure is caused or contributed to by BiiGGA's fraud or wilful misconduct). BiiGGA or an attorney is not required (but may do so to ensure the BiiGGA's interests are protected or to ensure that BiiGGA's interests do not suffer prejudice) to give notice of the grant of power of attorney to any other person or to obtain a Principal Party's consent to any exercise of a power under this Agreement.

## 11. Events of Default

- 11.1. Save as set out in this Agreement, each of the following events described in this section is an Event of Default (whether it is in the control of the Merchant or not, but not to the extent caused or contributed to by BiiGGA's fraud or wilful misconduct).
- 11.2. **Obligations under this Agreement:** Unless otherwise stipulated in the Agreement, the Merchant fails: (i) to deliver an amount due by it under this Agreement when due where the failure is not remedied within 10 Business Days of transmission of a notice of such failure, including where there is insufficient Future Revenue to pay a Debit Order Amount in full; (ii), to comply with any of its other obligations under this Agreement except to the extent it remedies the failure within 10 Business Days of transmission of a notice of such failure; or (iii) to satisfy within the time stipulated anything which BiiGGA made a condition of its waiving compliance with a term, condition, warranty or undertaking in this Agreement.
- 11.3. **Covenants:** An undertaking or covenant in the Agreement, including those in this section,

(howsoever described) is not satisfied and is not remedied within 10 Business Days of transmission of a notice of such failure.

- 11.4. **Misrepresentation:** A material representation, warranty or statement made or deemed to be made by or on behalf of the Merchant in this Agreement, or in a document provided under or in connection with this Agreement, is or proves to have been incorrect or misleading when made or deemed to be made, and BiiGGA reasonably considers that to have a material detrimental impact on BiiGGA's risk profile, or would have led BiiGGA to make a different decision about whether to provide funding at all (or to a different level).
- 11.5. **BiiGGA settles Merchant obligations to third parties:** From time to time, the Merchant may direct BiiGGA to use the Advance Amount to settle outstanding loans that the Merchant has with a third party financier prior to the date of this Agreement ("Existing Financier"). Unless otherwise stipulated in the Agreement or consented to by BiiGGA in writing, the Merchant will be in default if they obtain funding from that Existing Financier during the term of this Agreement whilst the Merchant has an outstanding balance owing to BiiGGA.
- 11.6. **Bankruptcy, administration, winding up, arrangements, insolvency etc.:** An administrator of the Merchant is appointed. Except for the purpose of a solvent reconstruction or amalgamation previously approved by BiiGGA: (i) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken, for: (a) the bankruptcy, winding up, dissolution or administration of the Merchant; or (b) the Merchant entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them, other than frivolous or vexatious applications, proceedings, notices and steps or, in the case of an application for the winding up, dissolution or administration of the Merchant, that application is withdrawn, permanently stayed or dismissed within 14 Business Days of being made; or (ii) the Merchant ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of a substantial part of its assets. The Merchant: (i) is, or under legislation is presumed or taken to be, insolvent or bankrupt (other than as the result of a failure to pay a debt or claim the subject of a good faith dispute); or (ii) stops or suspends or threatens to stop or suspend payment of all or a class of its debts.
- 11.7. **Enforcement against assets:** A receiver, receiver and manager, administrative receiver or similar officer is appointed to: (i) a security interest that becomes enforceable or is enforced over; or (ii) a distress, attachment or other execution is levied or enforced or applied for over, all or any of the assets and undertakings of the Merchant.
- 11.8. **Read-Only Access:** The Merchant changes the Nominated Bank Account or BiiGGA's Read-Only Access to the Nominated Bank Account, unless such changes are duly and properly notified to BiiGGA or such change arises from an immediate and necessary event requiring such change to protect the Nominated Bank Account (for example the loss or compromise of a password or notice from the Nominated Bank of a system compromise), in which event the Merchant shall promptly provide BiiGGA with renewed Read-Only Access. In the event that Read-Only Access to the Nominated Bank Account is changed without notification and provision of renewed Read-Only Access is denied due to exigent circumstances (an immediate and necessary event requiring such change to protect the Nominated Bank Account), then should the Merchant remedy the failure to notify and provide the requisite explanation and Read-Only Access to the Nominated Bank Account within a reasonable period of such exigent circumstances, such failures shall not be an Event of Default for these purposes.
- 11.9. **Investigation:** An investigation into all or part of the affairs of the Merchant commences under companies' legislation or law in circumstances material to its financial condition.
- 11.10. **Analogous process:** Anything analogous to anything referred to in this section inclusive, or which has substantially similar effect, occurs with respect to the Merchant.
- 11.11. **Vitiating of documents:** All or any part of this Agreement is terminated or is or becomes void, illegal, invalid, unenforceable, varied or of limited force and effect; a party becomes entitled to terminate, rescind or avoid all or part of this Agreement; or a person other than BiiGGA or an authority (such as a government agency or a tribunal or association or mediator or ombudsman) or a court of law alleges or asserts or orders (as the case may be) that an event described in this paragraph has occurred or that it

is entitled to so claim or assert or order as described in this paragraph.

- 11.12. **Revocation of Authorisation:** An authorisation which is material to the performance by the Merchant of this Agreement, or to the validity and enforceability of this Agreement or to the duties owed to BiiGGA, is repealed, revoked or terminated or expires, or is modified or amended or conditions are attached to it in a manner detrimental to BiiGGA's interests or not reasonably acceptable to BiiGGA, and is not replaced by another like or similar authorisation in manner or form reasonably acceptable to BiiGGA.
- 11.13. **Revocation of Guarantee:** A Guarantee provided to BiiGGA in respect of the Merchant's performance is revoked or terminated or expires, or is modified or amended or conditions are attached to it in a manner unacceptable to BiiGGA, and the Guarantee is not replaced by another like or similar guarantee in manner or form consistent with the Guarantee as it existed prior to such variation, and reasonably acceptable to BiiGGA in accordance with this Agreement.
- 11.14. **Control of Merchant:** There is a change in the ownership, management or control of the Merchant that has occurred without the prior consent of BiiGGA, which consent may not be unreasonably withheld unless the changed owners, managers or controllers of the Merchant (i) confirm the Merchant's continued warranties, covenants and obligations under this Agreement and (ii) affirm that they will continue to cause the Merchant to perform in accordance with this Agreement in manner or form consistent with the Merchant's performance as it existed prior to such change, and reasonably acceptable to BiiGGA.
- 11.15. **Cessation of business:** The Merchant ceases or suspends or thereafter to cease or suspend to carry on all or a substantial part of its business.
- 11.16. **Compulsory acquisition:** All or any part of the revenue or other assets of the Merchant is compulsorily acquired by or by order of a government agency or under law; a government agency orders the sale, vesting or divesting of all or any part of the revenue or other assets of the Merchant; or a government agency takes a step for the purpose of any of the above or proposes or threatens to do any of the above.
- 11.17. **Governmental interference:** A law or anything done by a government agency wholly or partially renders illegal, prevents or restricts the performance or effectiveness of this Agreement

or otherwise has or is likely to have an adverse effect on BiiGGA's interests under this Agreement or otherwise is reasonably likely to have a material adverse effect on the Merchant's ability to satisfy its obligations under this Agreement.

- 11.18. **Material Adverse Effect:** Any event or series of events, whether related or not, occurs which reasonably has or is likely to have a material adverse effect on BiiGGA's interests under this Agreement and which effect or effects are not remediated within 10 Business Days of such event or series of events. The party alleging the occurrence of an event or series of events, whether related or not, which reasonably has or is likely to have a material adverse effect on BiiGGA's interests under this Agreement is responsible for proving the occurrence of such event(s) and effect(s). The party alleging such effect or effects were remediated within 10 Business Days of such event or series of events or were not capable of remedy or were not material such as to require remediation is responsible for proving such remediation or that such effect(s) were not capable of remedy or were not material such as to require remediation.

## 12. BiiGGA's Rights upon an Event of Default

In addition to any other rights or claims or powers BiiGGA may be entitled to exercise under this Agreement or in law, upon the occurrence of an Event of Default or at any time thereafter whilst the Event of Default is continuing: (i) an amount equal to the amount of the Purchased Amount still to be delivered to BiiGGA at the time of the Event of Default shall be immediately due and payable upon presentment of a Default Certificate to the Merchant; (ii) the Merchant must upon demand by BiiGGA immediately pay in full all money owed under this Agreement (in the case of an additional charge, such as collections costs, court fees or reasonable legal costs incurred by BiiGGA, reduced to an amount which BiiGGA determines is attributable to the period up to the date of the demand); (iii) BiiGGA may, without prejudice to any other rights it may have in terms of this Agreement or at law and upon written notice to the Merchant, report the Merchant's default to a credit reporting agency (iv) BiiGGA is entitled but not obliged, without prejudice to any other rights it may have in terms of this Agreement or at law and by 10 Business Days written notice to the Merchant, to cancel this Agreement where the Merchant has not remedied an Event of Default under clause 11 and claim from the Merchant as liquidated damages the full amount which BiiGGA would have received had the Event of Default not occurred. Where an Event of Default occurs and the Agreement does not

terminate as a result of the Event of Default, BiiGGA may continue to submit any Debit Orders to the Nominated Bank Account on every Debit Order Processing Day.

### 13. Quotations & Inquiries

Any inquiry or resulting quotation to consider an offer is valid for 15 days from date of issue. A quotation does not indicate approval of the Merchant's offer, which is subject to BiiGGA's Advance Amount risk assessment and the terms and conditions of this Agreement. BiiGGA reserves the right to amend the quotation if the resultant offer would be outside the terms of this Agreement. The Merchant consents to and agrees that BiiGGA can make any enquiries (including obtaining and retaining and using personal, sensitive and private information) in relation to a quotation, the Merchant's offer or to any subsequent offers or this Agreement that BiiGGA may reasonably require and to any persons, including any credit reporting agency or bank, and provide those persons with details of the quotation or the offer or this Agreement and any matter arising from such quotation, offer and this Agreement now or in the future.

### 14. Additional Charges and Certificates

- 14.1. The Merchant is responsible for all duty, taxes or government fees it is required by law to pay, whether as a trustee under this Agreement and whether as a business in connection with this Agreement or otherwise and no liability for a failure to pay duty, taxes or government fees in this regard shall arise for BiiGGA. The Merchant must in addition to any other amounts pay reasonable costs, fees and interest incurred by BiiGGA following any breach of this Agreement or default by the Merchant or a Guarantor, including those following an Event of Default.
- 14.2. The parties agree that any certificate signed by or issued under the signature of BiiGGA or on BiiGGA's behalf certifying an amount as due and payable or the amount of the Purchased Amount still outstanding (whether currently due and payable or deliverable or not), and any other information recorded on such a certificate as to any fact, matter or thing related to the Purchased Amount, a Guarantee or otherwise in terms of this Agreement, will be accepted as *prima facie* (that is, face value) proof of the contents and correctness of the certificate. It will not be necessary to prove the appointment or signature of the person signing any such certificate. Such certificate will be sufficient for the purposes of any queries, complaints or dispute resolution process, including summary judgment, default

judgment, provisional sentence, interim or permanent injunctions or any other proceedings, shall be valid as a liquid document for such purposes and shall, in addition, be *prima facie* (that is, face value) proof for purposes of queries, complaints, disputes, grievances, pleadings or trials in any proceedings (whether at court, arbitration or mediation and under any dispute resolution process whether formal or informal) arising from this Agreement. The parties agree that, except for any manifest error, in order to prosecute or defend (as the case may be) any such queries or complaints or disputes or proceedings, it will be necessary for the party disputing such certificate to prove that the information (including dates and amounts) recorded on the certificate is not correct as at the date stated on the certificate or as at the date of the certificate.

### 15. Termination and Liability for Loss

- 15.1. This Agreement may be cancelled by either the Merchant or BiiGGA, with or without cause, upon the expiry of 30 days' written notice to the other. If the Merchant cancels this Agreement, with or without cause, its notice of cancellation to BiiGGA is irrevocable and save as set out in this Agreement, BiiGGA will thereupon have no obligation or duty to provide capital, though BiiGGA's rights and powers under this Agreement remain in force and enforceable until BiiGGA has received all monies payable to it under the Agreement (and BiiGGA will not breach any duty or incur any liability as a result of exercising such rights and powers). Upon the cancellation of this Agreement for any reason, BiiGGA remains entitled to recover from the Merchant and its Guarantor such compensation and reimbursement, if any, accrued under the terms of this Agreement including an amount calculated as though the Future Revenue had been realised and the balance of the Purchased Amount had been collected, but not yet delivered, by the Merchant as of the date the Agreement was cancelled and that amount and all fees and charges up to the date of the cancellation will be charged and become immediately payable. For clarity, and without limiting the foregoing, whether this Agreement is cancelled or terminates with or without cause, the Merchant shall nevertheless pay the balance of the Purchased Amount that would have been deliverable but for the cancellation or termination. In addition, the Merchant shall

reimburse BiiGGA for any non-cancellable obligations, any cancellation penalties, and, unless BiiGGA terminates the Agreement without cause, any expenditures reasonably made or undertaken in order to make the capital available and perform the services that were to occur had cancellation not occurred. Upon the cancellation of this Agreement or termination of this Agreement for any reason BiiGGA will issue a final certificate of account as soon as practicable which will include the balance of the Purchased Amount as liquidated damages, fees, charges and expenses and which the Merchant agrees and undertakes to pay as stipulated in this Agreement (including by process of a Debit Order).

- 15.2. To the extent permitted by law, BiiGGA or any of its authorised representatives or any attorney is liable for any exercise, omission, or delay in exercising any power, right, discretion or remedy under this Agreement or for any involuntary loss or irregularity that may occur in relation to the exercise or non-exercise of any of them except to the extent of its own fraud, gross negligence or wilful misconduct. For clarity, on 'the extent of the law' (but without limiting that phrase), if any legislation: (i) states that BiiGGA is providing a good or service under this Agreement; and (ii) it is proved by the party making the allegation that BiiGGA is providing a good or service under this Agreement for the purpose of that legislation; and (iii) there is a guarantee in relation to any good or service supplied by BiiGGA in connection with this Agreement for the purpose of that legislation; and (iv) BiiGGA's liability for failing to comply with that guarantee cannot be excluded but may be limited under that legislation, then: BiiGGA's liability for that failure is limited to (at its election), in the case of a supply of goods, BiiGGA replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, BiiGGA supplying the services again or paying the cost of having the services supplied again. To the extent permitted by law, if BiiGGA is in possession of a bank account or an insurance policy or a receiver enters into possession of such bank account or such insurance policy, none of BiiGGA, any of its authorised representatives or agents or any attorney or other person authorised by BiiGGA is liable to account, whether as owner or secured party in possession or otherwise, for anything except actual receipts; or for any loss on realisation or for any default or omission for which an owner or secured party in possession might be liable. BiiGGA, an authorised

representative of BiiGGA, or attorney, or other person appointed by BiiGGA under this Agreement may exercise or agree to exercising a power given by this Agreement or by law even though that person may have an actual or potential conflict of interest or duty in, or might benefit from, exercising the power. To the extent permitted by law and except to the extent of BiiGGA's performance of its obligations under this Agreement or BiiGGA's own fraud, gross negligence or wilful misconduct, the Merchant indemnifies BiiGGA on a full indemnity basis (including reasonable legal costs charged at the usual commercial rates of the relevant legal services provider) against all loss, cost or expense BiiGGA might suffer or incur in relying on the Merchant's or the Authorised Representatives' representations, taking steps under this Agreement or enforcing this Agreement against the Merchant or the Authorised Representatives.

## 16. GST

- 16.1. Words and expressions used in this clause 16 which are not defined in this Agreement, but which are defined in the GST Act, have the meaning given to them in the GST Act.
- 16.2. The consideration for any supply made by the BiiGGA under or in connection with this Agreement does not include an amount for GST.
- 16.3. If GST is or becomes payable on any supply made by BiiGGA under or in connection with this Agreement, the Merchant must pay to BiiGGA, in addition to and at the same time as the consideration for the supply is to be provided, an amount equal to the amount of GST on the supply.
- 16.4. Where the Merchant is required under this Agreement to reimburse or indemnify BiiGGA for any Loss, the amount to be reimbursed or indemnified will be the Loss reduced by the amount of any input tax credit that BiiGGA determines that it or its representative member is entitled to claim for the Loss and increased by the amount of any GST payable in accordance with clause 16.3.

## 17. PPS Act

- 17.1. The Merchant acknowledges and agrees that any Security Interest granted in favour of BiiGGA under this Agreement is registrable on the PPSR and that, in respect of each such Security Interest the Merchant must do anything reasonably requested by BiiGGA for the purposes of (i) ensuring that the Security Interest is enforceable,



perfected and otherwise effective; (ii) enabling BiiGGA to give any notification, in connection with a Security Interest; or (iii) enabling BiiGGA to exercise rights in connection with a Security Interest.

- 17.2. The parties agree to the extent permitted that (i) the Merchant waives its right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any Financing Statement or any related Financing Change Statement; (ii) to the extent that Chapter 4 of the PPS Act would otherwise apply to any enforcement by BiiGGA of any Security Interest arising under this Agreement, the Merchant agrees that sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act do not apply; and (iii) no party may disclose to an "interested person" (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act. The Merchant agrees that it will only authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act if approved by BiiGGA (such approval not to be unreasonably withheld or delayed).
- 17.3. Nothing in this clause will prevent any disclosure by BiiGGA (i) that BiiGGA believes is necessary to comply with its other obligations under the PPS Act; or (ii) to any assignee or transferee or potential assignee or transferee of BiiGGA's rights under this Agreement.

## 18. Interpretation, Severability and Governing Law

Unless otherwise defined in this Agreement, all capitalised terms in this Agreement have the meaning given to them in Glossary section and any PPSR terms used in the Agreement bear the meaning those terms have under the PPS Act. The singular includes the plural and insofar as the Merchant comprises two or more persons (as defined in the offer) this Agreement binds those persons jointly and severally as though each had entered into this Agreement separately. If any part of this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force. The rules of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract or that a clause shall be construed against the party who holds the benefit of that clause, shall not apply. Save as expressly set out in this Agreement, the rules of construction or evidence that a party making an allegation in any dispute arising from a contract is responsible for proving that allegation shall be applied and any presumptions to the contrary in any

legislation are waived by the parties and deemed to be rebutted by this clause. BiiGGA may change its privacy policy, terms of use, and Terms and Conditions from time to time on 30 days written notice to the Merchant (**Change Notice**). Changes to Codes, policies and terms and conditions occur because of changes from time to time in operating costs, changes in the law, changes in BiiGGA's business and other market conditions. If any change set out in a Change Notice is materially detrimental to the Merchant and the Merchant does not agree to the change, the Merchant must notify BiiGGA within 30 days of receiving the Change Notice, in which case: (i) if the change is required to comply with Law, the change set out in the Change Notice will take effect from the end of the notice period originally given by BiiGGA (or sooner if required by law); (ii) if the change is not required to comply with law, BiiGGA will reasonably consider any amendments requested by the Merchant to address the materially detrimental impact; and (iii) if an agreement can not be reached under clause 18(ii), the Merchant may terminate the agreement on written notice to BiiGGA. The Merchant's right to cancel the Agreement and the Guarantor's right to obtain consent to the withdrawal or limitation of a Guarantee (including a discharge and release) will not be affected by any such changes. Where the Merchant considers the changes to the policies to be materially detrimental to it, it may notify BiiGGA, and BiiGGA will reasonably consider any amendments to the policies to address that materially detrimental impact. The Agreement is governed by the laws of the State of Queensland. Save as set out in the Agreement, the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Queensland courts and courts of appeal from them, and the parties agree that time is of the essence in relation to the performance of its obligations under this Agreement. No waiver or period of grace or forbearance by BiiGGA will apply unless given in writing by BiiGGA. Any waiver or period of grace or forbearance by BiiGGA will apply strictly in the terms stated in such written communication and shall apply only to the extent of such terms and shall not otherwise detract from or diminish the Merchant's duties or the Guarantor's obligations or BiiGGA's rights or powers or discretions to require punctual and strict performance by the Merchant at any other time.

## 19. Notices

All notices must be in writing. Any party may serve notice by hand delivery, post, delivery to the last known facsimile number, by Short Message Service ("SMS") to the phone number nominated or to the email address nominated (i) for BiiGGA, by BiiGGA as set out in this Agreement; or (ii) for the Merchant, by the Merchant as

set out in the Summary of Advance Arrangement form; or (iii) for the Guarantor, by the Guarantor as set out in the Summary of Advance Arrangement form. A notice posted will be deemed received on the 3rd Business Day after posting. A notice sent by SMS or electronic mail will be deemed to be received immediately after sending unless an automated system generated non-delivery notification is received within 1 hour of transmission. A notice sent by facsimile transmission will be deemed received on production of a transmission report showing the facsimile was sent to the relevant facsimile number without error. A party may change its nominated addresses (or any of them) on 7 days' notice to the other parties. The parties agree that all processes, including complaints, disputes, and court processes, may be duly served on the respective party by electronic means and shall be deemed to be duly served on the day after transmission to the last nominated or notified email address.

## **20. Assignment of this Agreement**

**BiiGGA** may assign its rights under this Agreement with notice to the Merchant where it reasonably considers that assignment does not have a material detrimental impact on the Merchant. The Merchant may not assign its rights under this Agreement without **BiiGGA's** prior written consent and to the extent of the law any successor of the Merchant is bound by the terms of this Agreement. A reference in this Agreement to the Merchant or the Guarantor or **BiiGGA** includes a reference to any respective successors and assigns.

## **21. Consideration**

The Merchant acknowledges that the Merchant has received valuable consideration from **BiiGGA** for the Advance Amount which includes, but is not limited to, **BiiGGA** accepting the offer and entering into the Agreement. The Merchant further acknowledges and confirms that the Merchant has received a copy of the Agreement, which the Merchant has read, and the Merchant has obtained independent legal advice on aspects of any quotation, its offer and this Agreement the Merchant required, such that the Merchant understands the contents and the legal implications of its offer and this Agreement and makes an informed decision to enter into this Agreement.

## **22. Acknowledgement**

By signing or submitting the Summary of Advance Arrangement form electronically and whether by the Merchant or its Authorised Representative, the Merchant (the Merchant named in the Summary of Advance Arrangement form) and each Authorised Representative noted in the Summary of Advance

Arrangement form and whose personal details have been verified by **BiiGGA** (the Guarantor named in the Summary of Advance Arrangement form), thereby ACKNOWLEDGE, CONFIRM, AGREE and DECLARE that: (i) the Merchant offers the Future Revenue as described under the Advance Details in the Summary of Advance Arrangement form and in accordance with these Terms and Conditions; (ii) each Guarantor offers a Guarantee as described under the Advance Details in the Summary of Advance Arrangement form and in accordance with this Agreement; (iii) the Merchant and each Guarantor confirms it has read and understood this Agreement and have sought any required independent legal advice prior to such signing or submission; (iv) the Merchant and each Guarantor has checked each section of details submitted, all of which are true and correct and binding on the persons whose personal information is included in the submitted details and verified by **BiiGGA**; (v) the Merchant and each Guarantor has received, read and understood, and agreed to the Agreement, which is, upon submission of the Summary of Advance Arrangement form, binding on the Merchant and each Guarantor; (vi) if **BiiGGA** pays the Advance Amount to the Nominated Bank Account, such payment constitutes fulfilment of **BiiGGA's** obligations under this Agreement; (vii) the Merchant assigns, transfers and delegates all of its rights and interest in, and in connection with, the Future Revenue comprising the Purchased Amount and as set out in the Agreement, and shall deal with such Future Revenue as trustee for the benefit of **BiiGGA** in accordance with the terms and conditions of the Agreement; (viii) the signatories or persons submitting the Summary of Advance Arrangement form are duly authorised by the Merchant and each Guarantor to sign or submit the Summary of Advance Arrangement form and declaration, which binds the Merchant and each Guarantor under the terms and conditions of the Agreement.

## **23. Privacy Statement**

23.1. The **BiiGGA** Privacy Statement is a summary of **BiiGGA's** privacy policy for ease of reference and to ensure that the Merchant and each Authorised Representative and each Guarantor is aware that **BiiGGA** collects from the Merchant and each Authorised Representative and each Guarantor, and all other available sources, personal, including sensitive, and private information (together "private information") about the Merchant and its Authorised Representatives and Guarantors for **BiiGGA** (i) to formulate a quote; (ii) to assess offers; (iii) to administer and manage the products and services it provides to the Merchant, including **BiiGGA's** obligations under

anti-money laundering and counter-terrorism funding laws; (iv) to notify credit providers, entities related to BiiGGA and credit reporting agencies about any default on obligations owed to BiiGGA; (e) to take the action that BiiGGA considers appropriate in relation to any overdue obligation or any default on the terms of obligations owed to BiiGGA; and (f) to provide the Merchant with information about other products and services offered by BiiGGA.

- 23.2. If the Merchant or its Authorised Representatives or its Guarantor do not provide the private information sought by BiiGGA, now and from time to time in the future, BiiGGA may be unable to provide capital or goods or services or to administer its business. BiiGGA may collect private information (including personal and sensitive information) of the Merchant and its Authorised Representatives and its Guarantor from: (i) finance brokers, insurance brokers, financial advisers, agents, banks, insurers and other financial institutions; (ii) accountants, and other professional service providers; (iii) current and past employers; (iv) credit reporting agencies; (v) collection agencies; and (vi) its related persons or entities. BiiGGA may disclose such private information to its agents and contractors that provide administrative or other services including: (i) its bankers and other financial institutions or funds providers in relation to any financing arrangement that it has or may establish at any time in the future; (ii) credit reporting agencies; (iii) collection agencies; (iv) where it collects such private information from someone else, or another entity, then BiiGGA may disclose any of such private information to that person or entity; and (v) relevant complaints tribunals, dispute resolution bodies or process and government agencies including the Australian Taxation Office and AUSTAC, in accordance with its regulatory obligations.
- 23.3. A copy of BiiGGA's privacy policy is available on BiiGGA's website [www.BiiGGA.au](http://www.BiiGGA.au). The Merchant or Authorised Representatives (including its Guarantor) can request access to their respective private information or BiiGGA's Privacy Policy by contacting BiiGGA's Privacy Officer in writing by email: [support@BiiGGA.au](mailto:support@BiiGGA.au) or by mail to PO Box 7055, Upper Mt Gravatt QLD 4122. The Merchant or Authorised Representatives (including its Guarantor) may ask BiiGGA at any time to correct this information where the Merchant or Authorised Representatives (including its Guarantor) believe it is incorrect or out of date.

- 23.4. The Merchant or Authorised Representatives (including its Guarantor) may be charged reasonable expenses incurred in giving the Merchant or Authorised Representatives (including its Guarantor) any information the Merchant or Authorised Representatives (including its Guarantor) have requested (such as searching and photocopying costs) and may be required to provide evidence supporting a request to correct such information.

- 23.5. By using BiiGGA's website, obtaining a quote, or completing its offer form or submitting it to BiiGGA, the Merchant and each Authorised Representative and each Guarantor consents to BiiGGA collecting, using, disclosing and handling its respective personal and private information in accordance with BiiGGA's privacy policy, whether collected on the offer form or any other form completed now or in the future.

## GLOSSARY

For the purposes of this Agreement the following capitalised words or phrases have the meanings set out opposite them.

**Advance Amount:** The purchase price of the amount of Future Revenue offered to BiiGGA, as stipulated in the Summary of Advance Arrangement form.

**Advance Fee:** The amount charged by BiiGGA in respect of paying the Advance Amount upfront for future revenue of the Merchant and providing services and systems to enable the arrangements made under the Agreement after the offer is processed.

**Agreement:** The BiiGGA Terms and Conditions document, any addenda thereto and the Summary of Advance Arrangement form and the BiiGGA privacy policy read together and supersedes all previous written agreements between the Merchant and the Guarantor (as defined in the Summary of Advance Arrangement form) and BiiGGA for the purchase of Future Revenue from the Merchant by BiiGGA.

**Authorised Representative:** The person or persons whom usually have authority to represent the Merchant, including the Merchant's directors, officers, responsible persons, partners, trustees (in the case of corporate trustees, each of its directors, officers, responsible persons, agents and representatives personally) and any other of the Merchant's agents or representatives, and personally as a Guarantor when such person's personal details are verified by BiiGGA and noted on the Summary of Advance Arrangement form (whether by the Merchant or by BiiGGA or whether as being responsible for or giving rise to the offer or providing a Guarantee

under the offer) or otherwise in the Agreement. **BiiGGA:** BiiGGA Pty Ltd ABN 95 649 864 915.

**Business Day:** A day that is not a Saturday, Sunday or public holiday in the State of Queensland.

**Debit Order Amount:** The amount of Future Revenue that is part of the Purchased Amount to be delivered to BiiGGA by the Merchant on each Debit Order Processing Day, as stipulated in the Summary of Advance Arrangement form under the Advance Details section and as varied by BiiGGA from time to time upon calculating or recalculating the amount or as otherwise varied or changed from time to time under the Agreement.

**Debit Order Frequency:** The frequency of the Debit Order to be submitted to the Nominated Bank pursuant to the delivery of the Future Revenue, as stipulated in the Summary of Advance Arrangement form and as may be varied from time to time in accordance with the Agreement.

**Debit Order Processing Day:** Each Monday, Tuesday, Wednesday, Thursday or Friday on which a debit order could be processed and each day that BiiGGA should receive delivery of a Debit Order Amount by processing a Debit Order, as the case may be.

**Debit Order Type:** The type of Debit Order Amount may be a **fixed** amount for a period of time ('Review Period') or it may a **variable** amount that changes as the Merchant's income from selling its goods varies in the ordinary course of its business and for a period of time ('Review Period'), as stipulated in the Summary of Advance Arrangement form and as may be varied from time to time in accordance with the Agreement. **Direct Debit Order** means the direct debit order under which the Merchant sells and BiiGGA purchases the Purchased Amount for the Advance Amount from time to time.

**Event of Default:** The events of default described in section 11 of the Terms and Conditions.

**Future Revenue:** The income of the Merchant to be earned by the Merchant from selling its goods or providing its services to its customers or clients in the ordinary course of its business and before subtracting the Merchant's expenses (whether accrued or to be accrued by the Merchant) and without any returns, deductions, discounts or set-offs applicable after the sale is concluded. The phrase includes all the contracts between the Merchant and its customers in respect of the Merchant's business, all customer related contracts, receivables, accounts, documents, books, records, material, and arrangements, howsoever described, from which the Merchant's revenue is or may be calculated or

derived or generated or accounted for. Any such income is earned in the future if that income arises from a sale occurring at any time after payment of the Advance Amount and regardless of when that income is payable or is paid to the Merchant.

**GST:** As defined by the GST Act.

**GST Act:** A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Guarantor:** The person or persons described in the Summary of Advance Arrangement form under the Guarantor Details section offering to provide a Guarantee to BiiGGA and if such person is a natural person, the verified birthdate and the driver's license number of that person; and if such person is a legal person, the verified date of registration, incorporation or founding and the relevant registration number of that person.

**Ipso Facto Event:** The person is the subject of an announcement, application, compromise, arrangement, the appointment of a managing controller, or administration as described in sections 415D(1), 434J(1) or 451E(1) of the *Corporations Act 2001* (Cth) or any process which under any law with a similar purpose may give rise to a stay on, or prevention of, the exercise of contractual rights.

**KYC Check:** Completion of the BiiGGA's 'know your customer' or similar identification and verification checks and procedures in respect of the Merchant, the Guarantor and their Authorised Representatives, and any other person for whom BiiGGA reasonably believes that an applicable customer identification procedure must be conducted in connection with the Agreement and the transactions contemplated by the Agreement.

**Merchant:** The person or persons described in the Summary of Advance Arrangement form under the Merchant Details section making the offer to BiiGGA and if such person is a natural person, the verified birthdate and the Australian Business Number and driver's license number of that person; and if such person is a legal person, the verified date of registration, incorporation or founding and the Australian Business Number of that person.

**Nominated Bank:** The bank nominated by the Merchant in the Summary of Advance Arrangement form corresponding to the BSB number in the Advance Details and as may be varied from time to time in accordance with the Agreement.

**Nominated Bank Account:** The bank account nominated by the Merchant in the Summary of Advance Arrangement form corresponding to the Account Name and Account Number in the Advance Details and as may be varied from time to time in accordance with the Agreement.

**PPSR:** The Personal Property Securities Register established under the *Personal Property Securities Act 2009 (PPS Act)*. The PPS Registrar's office is part of a Commonwealth government department called the Australian Financial Security Authority (AFSA), an executive agency in the Attorney-General's portfolio. The PPS Act, (and any other rules, regulations, definition or laws made under it), contains rules about how the PPSR works; essentially to allow registration and search of security interests. It includes things like how registrations are made on the PPSR, what powers the Registrar has to make decisions about the PPSR and how to search the PPSR. The Attorney-General has responsibility for the PPS Act.

**Processing Fee:** The fee for the processing of an offer, including acceptance of the offer and establishment of the Agreement (if the offer is accepted), and related processes to establish accounts and make inquiries in connection therewith. This fee is non-refundable if the offer is accepted and is not part of the Advance Fee.

**Purchased Amount:** The portion of the Future Revenue (calculated as the sum of the Advance Amount and the Advance Fee) purchased from the Merchant, being the amount stipulated in the Summary of Advance Arrangement form and to be delivered to BiiGGA out of the Merchant's Future Revenue in accordance with the Agreement.

**Review Period:** The period of time (as a factor) used to calculate or recalculate the Debit Order Amount when BiiGGA assesses the historic revenue of the merchant for the purposes of attributing likely future revenue (as a factor) during the period of time and multiplying it by the Specified Percentage. If the Debit Order Type is 'variable' then the result is divided by the number of Debit Order Processing Days that would fall in that period of time in order to adjust and determine the Debit Order Amount applicable to likely future revenue (as a factor) until the next assessment occurs. Assessments are internal to BiiGGA's process and are usually undertaken by BiiGGA at least once every 14 Business Days if the Debit Order Frequency is greater than daily, but the assessment may occur more or less frequently if the nature of the Merchant's business, performance, historical revenue or likely future revenue indicates otherwise. An assessment during a 'fixed' Debit Order Type will not change the Debit Order Amount during the period that the Debit

Order Amount is fixed unless there is a failure by the Merchant or its Guarantor in that period.

**Security Interest:** Any document or act that creates a security for the payment of money or performance of an obligation. This includes a 'security interest' as defined in the PPS Act. It also includes any general security, specific security, mortgage, bill of sale, charge (whether fixed or floating), lien, pledge, hypothecation, encumbrance, title retention, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangement.

**Secured Property:** All of the Merchant's present and future property of any kind. It includes: (i) anything in respect of which the Merchant has at any time a sufficient right, interest or power to grant a Security Interest; (ii) where the Merchant acts as a trustee of a trust, all property of that trust; and (iii) where the Merchant is a partner in a partnership, all the present and future property of any kind of the partnership. It includes anything in respect of which the partnership has at any time a sufficient right, interest or power to grant a Security Interest and each partner's interest in the partnership.

**Specified Percentage or Specified %:** The factor (as a percentage) used to calculate the amount of Future Revenue that is part of the Purchased Amount to be delivered to BiiGGA on each Debit Order Processing Day. A percentage (as a factor) may be used in BiiGGA's assessments and other internal processes even if the Specified Percentage is shown as 'not applicable' in the Summary of Advance Arrangement form. A 'not applicable' may appear in the Specified Percentage field in the Summary of Advance Arrangement form as an indication that the Debit Order Type is 'fixed'.

**Summary of Advance Arrangement form:** The Merchant details, the Guarantor details, the Nominated Bank details and the Advance Details screens on BiiGGA's online platform and the content thereof as a form submitted by the Merchant / Guarantor or the Merchant's / Guarantor's representative (as the case may be).

**Term:** As defined in the Summary of Advance Arrangement form.



BiiGGA Pty Ltd (ABN 95 649 864 915)  
Physical Address 5/88 Brandl St, Eight Mile Plains QLD 4113  
PO Box 7055, Upper Mt Gravatt QLD 4122  
P: 1300 363 590 | F: 1300 569 914

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