

CASHD EMPLOYER TERMS.

This agreement sets out the terms and conditions (**Agreement**) under which the entity specified in Item 2 of the Order Form (**Employer**), may access and use the Services.

In this Agreement, a reference to CashD means the entity specified in Item 1 of the Order Form.

This Agreement is a legally binding agreement between CashD and the Employer. Please read this Agreement carefully and keep a copy for future reference.

By registering for the CashD Services and/ or accessing the CashD Services, the Employer agrees to the terms of this Agreement. If the Employer does not agree, it must stop using the Services immediately.

AGREEMENT.

1. Application and agency

1.1 Application

- 1.1.1 This Agreement applies to the use of the Services by the Employer and each of the Employer's Associated Entities specified in the Order Form.
- 1.1.2 Each reference to the Employer in this Agreement includes any Associated Entities specified in the Order Form, except in relation to clauses 4, 17 and 18 that only relate to the Lending Services.

1.2 Employer Agency

- 1.2.1 The Employer warrants that it is authorised to enter into this Agreement on its own behalf and on behalf of the Employer's Associated Entities.
- 1.2.2 If the Employer has entered into this Agreement as agent for any Associated Entities, it acknowledges and agrees that:
 - a. It is responsible and liable for the performance of any obligations under this Agreement by the Associated Entities;
 - b. It holds the benefits of any rights under this Agreement as agent for the Associated Entities; and
 - c. CashD may enforce any of its rights under the Agreement that pertain to an Associated Entity by enforcing those rights directly against the Employer as agent of the Associated Entity and there is no requirement for CashD to first seek to enforce those rights against the Associated Entity.
- 1.2.3 If the Employer has any Associated Entities, then all references to the Employer in the Agreement are taken to include a reference to the Associated Entities unless expressly provided otherwise.

1.3 Subcontracting

CashD may appoint any third party to perform any of its obligations under this Agreement without the Employer's prior written consent.

2. Services

2.1 Service provision

- 2.1.1 CashD will provide the following services under this Agreement:
 - a. Software Services; and
 - b. if specified in the Order Form, Lending Services.
- 2.1.2 CashD will provide the Services in accordance with the Service Levels.
- 2.1.3 CashD will comply, and ensure that any Service Providers comply, with all Applicable Laws in relation to the provision of the Services.
- 2.1.4 CashD will maintain, and ensure that any Service Provider maintains all licences, approvals and permits required in order to provide the Services.
- 2.1.5 CashD will ensure that its Personnel have the necessary skill, competence and experience to perform CashD's obligations under this Agreement in accordance with any industry standards.

2.2 Employer obligations

- 2.2.1 The Employer will provide CashD with all reasonably required co-operation and access to such information as may be required by this Agreement.
- 2.2.2 The Employer will comply with its obligations in clauses 3.2 and 4.
- 2.2.3 The Employer will comply with all Applicable Laws in relation to its activities under this Agreement.
- 2.2.4 The Employer will carry out all its obligations under this Agreement in a timely and efficient manner.

3. Software Services

3.1 CashD obligations

- 3.1.1 CashD will use commercially reasonable efforts to make the CashD Platform available on and from the Go-Live Date to:
 - a. the Employer;
 - b. all Associated Entities;
 - c. Users; and
 - d. Administrators.
- 3.1.2 If the Employer provides notice under clause 3.2.18 in relation to its Associated Entities, CashD will ensure the CashD Platform is:
 - a. made available to any new Associated Entities, subject to:
 - i. conducting any due diligence or checks CashD considers reasonable having regard to the Services provided under this Agreement; and
 - ii. the Employer providing CashD with the information required to conduct any due diligence or checks; and
 - b. no longer made available to any entities that are no longer Associated Entities.
- 3.1.3 CashD will provide the Employer with the Collateral before the Go-Live Date.
- 3.1.4 CashD will ensure that the Collateral is current, accurate and complete and is otherwise not misleading or deceptive.
- 3.1.5 CashD will provide the Employer with reasonable notice and details of any updates to the Collateral.
- 3.1.6 If required, CashD will provide training to Administrators in relation to their Administrator Access;
- 3.1.7 CashD will provide the Support Services;
- 3.1.8 CashD will ensure that each User is issued with log-in credentials for them to access and/or register with the CashD Platform.

- 3.1.9 From the Go-Live Date or such other date agreed between the parties, CashD will grant Administrator Access to each Administrator in the CashD Platform.

3.2 Employer acknowledgements and obligations

The Employer acknowledges and agrees that:

- 3.2.1 it will cooperate and collaborate with CashD to assist CashD in meeting its obligations under clause 3.1.1 to make the CashD Platform available from the Go-Live Date;
- 3.2.2 CashD's ability to meet its obligations under clause 3.1.1 to make the CashD Platform available from the Go-Live Date is dependent on the Employer providing all reasonable assistance as required under this Agreement. CashD will not be liable for any failure to meet the Go-Live Date if such failure is caused or contributed to by the Employer not providing such reasonable assistance;
- 3.2.3 it is responsible for communicating to Users the benefits and features of CashD using the Collateral;
- 3.2.4 it provides CashD with the authority to market the benefits and features of the CashD Platform directly to Users ;
- 3.2.5 if requested by CashD, is responsible for providing Users with an email notification explaining how to download the App and register with the CashD Platform;
- 3.2.6 it will be a party to the CashD Terms and will perform its obligations under and comply with all of the terms in the CashD Terms;
- 3.2.7 Users will be required to agree to and comply with the CashD Terms and Privacy Policy before accessing the CashD Platform;
- 3.2.8 it must immediately notify CashD if it becomes aware of any unauthorised use;
- 3.2.9 it is responsible for any and all actions taken using an Administrator's log-in credentials and must immediately notify CashD if it becomes aware of any unauthorised use;
- 3.2.10 it is responsible for ensuring Users keep their log-in credentials secure and confidential. CashD will not be liable for any Loss arising from any failure by a User to maintain the security and confidentiality of their log-in credentials;
- 3.2.11 it is responsible for ensuring each Administrator keeps its log-in credentials secure and confidential and CashD is not liable for any Loss arising from any failure by an Administrator to maintain the security and confidentiality of their log-in credentials;
- 3.2.12 it must procure that each Administrator complies with, and does not seek to circumvent, any restrictions imposed on Administrator Access to the CashD Platform;
- 3.2.13 it must ensure that it provides CashD with the Employer Data by the Start Date or as soon as reasonably practicable thereafter;
- 3.2.14 the timely provision of all Employer Data is a critical dependency for successfully launching on the Go-Live Date and for the ongoing provision of Services. The Employer acknowledges and agrees that if the Employer Data is not provided to CashD then CashD may not be able to provide some or all of the Services. If the Employer does not provide CashD with the Employer Data and CashD is unable to provide some or all of the Services, CashD will not be liable for any loss or damages suffered by the Employer or User as a result and the Employer acknowledges and agrees that the indemnity in clause 12 in favour of CashD will apply to any loss suffered by the Employer or User;
- 3.2.15 it must provide CashD with accurate, current, complete and valid information that CashD requires to provide the Services and promptly notify CashD of any changes;
- 3.2.16 it must ensure that the provision of any information under this clause 3.2 complies with the Applicable Law;
- 3.2.17 it must maintain a list of Users and must promptly notify CashD of any new Personnel that should be added as Users or any Users that should be removed;

- 3.2.18 it must promptly notify CashD of any change to its Associated Entities listed in Item 3 of the Order Form including (but not limited to):
- a. the acquisition of a new entity it wishes to specify as a new Associated Entity;
 - b. the establishment or incorporation of a new entity that it wishes to specify as a new Associated Entity; or
 - c. the sale of an Associated Entity;
 - d. if an Associated Entity is likely to or is suffering an Insolvency Event;
- 3.2.19 it must promptly notify CashD of any changes to a User's employment status including (but not limited to) salary, pay cycle, days working, leave, suspension or termination;
- 3.2.20 in providing the Software Services, CashD may contact and communicate directly with Users in relation to the CashD Platform in accordance with the CashD Terms and without the Employer's consent;
- 3.2.21 CashD may amend the Privacy Policy or CashD Terms from time to time by displaying an updated Privacy Policy or CashD Terms on the CashD Platform when Users next log in. Users will need to agree to any updated Privacy Policy or CashD Terms before they can make any new Payment Requests. Any changes will apply to new Payment Requests by Users via the CashD Platform and not any existing Payment Requests made under the CashD Terms;
- 3.2.22 it is responsible for providing CashD with the necessary Employer Data to determine the User Limits and Employer Limit. The Employer acknowledges and agrees that Payment Requests will be automatically processed in accordance with the CashD Terms if the User Limit and / or Employer Limit is not breached and the Employer's CashD Account has sufficient funds;
- 3.2.23 CashD may amend any User Limit or the Employer Limit at any time in (its absolute discretion) based on the Employer Data. CashD will provide the Employer with written notice of any change to a User Limit or the Employer Limit. Any changes will apply to new Payment Requests by Users via the CashD Platform and not to any existing Payment Requests made under the CashD Terms. The Employer acknowledges and agrees that Payment Requests will be automatically processed in accordance with the CashD Terms if any amended User Limit and / or Employer Limit is not breached and the Employer's CashD Account has sufficient funds;;
- 3.2.24 unless the Order Form specifies that CashD will be providing Lending Services, it is responsible and liable for funding any Payment Requests made by a User via the CashD Platform in accordance with the CashD Terms;
- 3.2.25 when discussing CashD with Users it must accurately represent the terms of the CashD Platform and the characterisation of and impact of any Payment Request made by a User in accordance with the CashD Terms using the Collateral;
- 3.2.26 it must not represent that the Employer acts on behalf of, or as agent for, CashD;
- 3.2.27 it must not represent that the Employer can bind CashD;
- 3.2.28 all User disputes, complaints and enquiries will be dealt with by CashD or any Service Provider in the first instance in accordance with this Agreement and any Applicable Law. If a complaint, enquiry or dispute is directed to the Employer in the first instance, then the Employer will notify CashD of any User disputes, complaints and enquiries that relate to the operation or function of the CashD Platform as soon as reasonably practicably but in any event within two (2) business days of receiving the dispute, complaint or enquiry;
- 3.2.29 CashD will need to directly contact Users in relation to any dispute, complaints or enquiries the Employer provides notice to CashD under clause 3.2.28;
- 3.2.30 it will provide CashD with all reasonable assistance to resolve or address User disputes, complaints and enquiries; and

3.2.31 it will not contact a User in relation to a dispute, complaint or enquiry that it has notified CashD under clause 3.2.28 unless it is authorised by CashD to do so and follows any reasonable instructions issued by CashD;

3.2.32 it must not compromise, resolve or settle an enquiry, complaint or dispute under any circumstance, unless expressly authorised by CashD.

3.3 Liability

3.3.1 The Employer is responsible and liable for all payroll processing of ordinary wages or salary (including any tax and superannuation contributions or any other required deductions) to Users, including any costs, charges, fees or penalties in processing payroll.

3.3.2 Subject to clause 13, in the event that the Employer underpays or overpays wages or salary to Users (including any tax and superannuation contributions or other required deductions) as a result of any Payment Requests processed in accordance with this Agreement, the Employer is at all times:

- a. responsible and liable for recovering any overpayment from Users;
- b. responsible and liable for making any further payment to Users if there has been an underpayment; and
- c. responsible and liable for making any payments to CashD under clause 4 regardless of any overpayment or underpayment that the Employer is responsible or liable for under this clause 3.3.2.

4. Lending Services

4.1 Application

This clause applies if Lending Services has been specified in the Order Form.

4.2 Loan Facility

4.2.1 CashD will provide the Employer with access to a Loan Facility up to the Credit Limit to enable the Employer to finance Payment Requests made by Users via the CashD Platform in accordance with the CashD Terms.

4.2.2 Before CashD provides the Employer with a Loan Facility under this clause 4, the Employer must provide CashD with the information CashD requires and reasonably requests in order to assess the credit risk associated with the Employer and any Associated Entities in accordance with the Credit Policy and perform any other checks or procedures required under any Applicable Laws. The Employer acknowledges and agrees that CashD may refuse (in its absolute discretion) to provide a Loan Facility to the Employer for any reason, including (but not limited to) if the Employer's credit risk is not acceptable to CashD. If CashD refuses to provide the Employer with a Loan Facility under this clause 4, then CashD will not be providing any Lending Services to the Employer under this Agreement.

4.2.3 CashD acknowledges and agrees that the Employer may on lend any funds in the Loan Facility to any Associated Entities for those Associated Entities to finance Payment Requests made by Users via the CashD Platform in accordance with the CashD Terms. The Employer must ensure that any loan given to an Associated Entity under this clause is properly documented as an intercompany loan as between the Employer and the Associated Entity and that the funds are only used to meet Payment Requests by Users of the Associated Entity and not for any other purpose.

4.2.4 The Employer must, and must ensure that each Associated Entity, only use the Loan Facility to fund wages (as defined in section 9 of the *Corporations Act 2001* (Cth)) of Users who have made Payment Requests made by Users via the CashD Platform in accordance with the CashD Terms. CashD and the Employer acknowledge and agree that any use (or deemed use) of this Loan Facility will be an advance for the purposes of section 560 of the *Corporations Act 2001* (Cth) and the Loan Facility cannot be used for any other purpose.

- 4.2.5 CashD will provide the Employer with the Drawdown Amount from a loan account opened in the Employer's name and will deposit the Drawdown Amount in the Employer's CashD Account on the first day of each calendar month in accordance with clause 7.
- 4.2.6 Each Drawdown Amount must be less than:
- the Credit Limit; and
 - any Drawdown Amount Limit.
- 4.2.7 CashD may impose a Drawdown Amount Limit for the Employer that will apply to any Drawdown Amount paid in accordance with clause 4.2.4.
- 4.2.8 CashD (in its absolute discretion) may change the Drawdown Amount Limit for the Employer at any time and for any reason, including (but not limited to) the following:
- CashD forms the view that the Employer's credit risk as determined in accordance with the Credit Policy has changed;
 - the repayment history of the Employer in accordance with this clause 4.2;
 - a material change to the Employer's ownership structure or financial circumstances; or
 - any default of the Employer under this clause 4.2;
- 4.2.9 CashD may request at any time that the Employer provides it with the information required to assess whether a change to the Drawdown Amount Limit under clause 4.2.8 and the Employer undertakes to comply with such request.
- 4.2.10 Once a Drawdown Amount has been paid under 4.2.4, CashD will update the Employer's Unpaid Balance to reflect the Drawdown Amount.
- 4.2.11 The Employer must pay each Drawdown Amount by the last day of a Pay Cycle Period in which CashD advanced the Drawdown Amount under clause 4.2.4 (**Due Date**).
- 4.2.12 The obligation to pay under clause 4.2.11 will apply regardless of whether the Employer as on-lent any funds to any Associated Entities in accordance with clause 4.2.3.
- 4.2.13 The Employer acknowledges and agrees that:
- an automatic process will be implemented by CashD to process and collect the Employer's payment of the Drawdown Amounts under this clause 4.2.13;
 - the automatic process will use an Australian Banking Association (ABA) deduction file similar to that used for Payment Requests to deduct the repayment from the Employer's CashD Account.
- 4.2.14 If there are insufficient funds in the Employer's CashD Account to fund the repayment of the Drawdown Amounts under clause 4.2.12, then the Employer must deposit an amount equal to the outstanding repayments in the Employer's CashD Account. If the Employer does not comply, CashD may take any action permitted under clause 4 of this Agreement to recover the repayments.
- 4.2.15 The Employer may repay a Drawdown Amount in full at any time before the Due Date.
- 4.2.16 No further Drawdown Amounts will be advanced by CashD under clause 4.2.4 where:
- the Employer is in default of its obligations under this Agreement;
 - a Drawdown Amount has not been repaid by the Due Date;
 - the Drawdown Amount will exceed the Drawdown Amount Limit (if applicable) or Credit Limit;
 - CashD has reason to believe there has been or will be a significant adverse change in the Employer's financial circumstances;
 - the Employer no longer meets CashD's current credit criteria- and lending guidelines in the Credit Policy; or
 - the Employer has provided incomplete, inaccurate or invalid information to CashD in accordance with this Agreement.
- 4.2.17 Payments must be made in full, without any deduction or set-off of any amount CashD may owe the Employer.

- 4.2.18 No fees, charges or interest are payable on any Drawdown Amount repaid by the Due Date.
- 4.2.19 CashD reserves the right to charge interest on any Drawdown Amount that is not repaid by the Due Date. The interest will be calculated daily by applying the Interest Rate to the Unpaid Balance as at that day and dividing by 365. Interest is debited in arrears on the last day of each month and on the date the Employer repays an overdue Drawdown Amount in full. Once interest charges are debited, they become part of the Unpaid Balance and must be repaid.
- 4.2.20 CashD may impose new fees and charges for the Loan Facility or any Drawdown Amount by giving at least thirty (30) days' written notice in accordance with the Applicable Law.
- 4.2.21 If there is a breach of this clause 4.2, CashD may debit the Employer's loan account with all Enforcement Expenses. The Employer agrees to pay all Enforcement Expenses on demand.
- 4.2.22 If the Employer has been provided with a Loan Facility under this clause 4, CashD will conduct a review of the Employer's credit risk in accordance with its Credit Policy at least annually. CashD may also conduct an ad hoc review having regard to any one of the following matters:
- a. the repayment history of the Employer in accordance with this clause 4.2;
 - b. a material change to the Employer's ownership structure or financial circumstances; or
 - c. any default of the Employer under this clause 4.2;
- The Employer undertakes to provide CashD with the information required to conduct a review.
- 4.2.23 Following a review under clause 4.2.22, CashD may do any one or more of the following:
- a. suspend or terminate the Loan Facility if the Employer's credit risk is no longer acceptable to CashD;
 - b. increase or decrease the Credit Limit;
 - c. increase or decrease the Drawdown Amount Limit;
 - d. increase or decrease any User Limit;
 - e. increase or decrease the Employer Limit;
 - f. i
 - g. CashD

4.3 Default

- 4.3.1 The Employer is in default if it does not pay any amount payable under this clause 4.
- 4.3.2 If the Employer is in default and:
- a. the default has not been remedied within the period specified in a notice from CashD stating what the default is and giving the Employer a period of at least thirty (30) days to remedy it; or
 - b. CashD believes on reasonable grounds that it was induced to enter into the Agreement by fraud on the Employer's part; or
 - c. CashD cannot locate the Employer after making reasonable efforts to do so; or
 - d. a court authorises CashD to do so,
- then:
- e. the Unpaid Balance, plus any fees and allowance for our reasonable costs, shall become immediately due and payable and CashD may begin enforcement proceedings against the Employer in relation to the Agreement; and
 - f. CashD may suspend the Loan Facility provided under clause 4.2.

4.4 Debt collection

- 4.4.1 CashD reserves the right to engage a third party collection agency to recover any amounts the Employer owes under this Agreement without the Employer's consent.
- 4.4.2 The costs of any debt collection activity undertaken by CashD will be fully payable by the Employer as an Enforcement Expense in accordance with clause 4.2.21.

5. Special Conditions

The parties may agree to certain special conditions and detail these conditions in Item 20 of the Order Form. If the parties agree to any special conditions, these special conditions will override the provisions of this Agreement to the extent there is any inconsistency.

6. Exclusivity

6.1 CashD

The parties acknowledge that CashD is free to provide services the same as, or similar to, the Services to any other person.

6.2 Employer

The Employer agrees that during the Term it will not provide, engage with any other person or enter into any arrangement with any other person for the provision of services that are substantively the same as or similar to the Services.

7. Account provisions

7.1 Software Services

- 7.1.1 If CashD is providing Software Services only under this Agreement, the Employer will deposit the Minimum Balance into the Employer's CashD Account so that Minimum Balance is available at least five (5) business days before the next Pay Cycle Period during the Term.
- 7.1.2 CashD will debit the Transaction Fee payable under clause 8 at the time a Payment Request is processed.
- 7.1.3 CashD may request that the Employer provide it with a direct debit authority to ensure that the Employer's CashD Account holds the Minimum Balance at all required times.

7.2 Lending Services

- 7.2.1 If CashD is providing Lending Services under this Agreement, CashD will disburse all Drawdown Amounts advanced under clause 4.2.5 to the Employer's CashD Account to finance any Payment Requests made by Users within a Pay Cycle Period in accordance with the CashD Terms.
- 7.2.2 CashD will debit the Transaction Fee payable under clause 8 at the time a Payment Request is processed.
- 7.2.3 CashD may request that the Employer provide it with a direct debit authority to ensure that the Employer's CashD Account holds the Minimum Balance at all required times.

8. Fees and charges

8.1 User Fees

- 8.1.1 CashD is absolutely entitled to charge and collect the Transaction Fee from Users in accordance with the CashD Terms.
- 8.1.2 The Employer acknowledges and agrees that CashD will charge and collect the Transaction Fee at the time a User makes a Payment Request in accordance with the CashD Terms.
- 8.1.3 The Employer authorises CashD to debit the Transaction Fee from the Employer's CashD Account in accordance with this clause 8.1 using an automatic process that deploys an Australian Banking Association (ABA) deduction file as part of the Payment Request process.

8.2 Employer Fees

CashD will pay the Employer the Employer Fees.

8.3 Licence Fees

If specified in the Order Form, the Employer will pay CashD the Licence Fees.

8.4 Implementation Fee

The Employer will pay CashD the Implementation Fee.

8.5 Expenses

Each party will bear all expenses it incurs in carrying out its obligations under this Agreement, except as otherwise specified in this Agreement or the parties agree otherwise.

8.6 Invoicing

8.6.1 CashD will invoice the Employer for the Implementation Fee in accordance with Item 15 of the Order Form.

8.6.2 At the end of each month, CashD must invoice the Employer for any Licence Fees payable under clause 8 in accordance with Item 14 of the Order Form.

8.6.3 If the Agreement provides or the parties agree that the Employer will pay for a particular expense, CashD will issue the Employer with an invoice in accordance with Item 16 of Schedule 1.

8.6.4 The Employer must pay the Implementation Fee, Licence Fees and any expense payable under clause 8.6.3 within the time set out in Item 15 of the Order Form.

8.7 Set-off

A party (**First Party**) may without prior notice to the other party (**Second Party**), setoff any amount owed by the First Party to the Second Party under this Agreement against any amount owed by the Second Party to the First Party under this Agreement.

9. Warranties

9.1 Mutual warranties

Each party warrants that it:

- 9.1.1 has full authority and all necessary consents to enter into and performs its duties and obligations under this Agreement;
- 9.1.2 it has the skill, facilities, capacity and staff necessary to perform its duties and obligations under this Agreement;
- 9.1.3 it is not the subject of any dispute, legal proceeding or regulatory investigation, disciplinary action or enforcement action, which could cause material prejudice to the other party, other than as disclosed in writing;
- 9.1.4 is not, and will not be, breaching the Applicable Laws or any other contract by entering into this Agreement;
- 9.1.5 has had the opportunity to seek independent legal advice before entering into this Agreement; and
- 9.1.6 it is solvent and is not experiencing an Insolvency Event.

9.2 Employer warranties

By entering into this Agreement, the Employer represents and warrants that:

- 9.2.1 all information provided, and to be provided, in accordance with this Agreement is accurate, complete, valid and current; and
- 9.2.2 it will use the CashD Platform in accordance with this Agreement.

9.3 CashD warranties

By entering into this Agreement, CashD represents and warrants that:

- 9.3.1 it is enrolled and registered with AUSTRAC;
- 9.3.2 it is not required to hold an Australian financial services licence or Australian credit licence;

- 9.3.3 all information provided, and to be provided, in accordance with this Agreement is accurate, complete and current; and
- 9.3.4 it will provide the CashD Platform and CashD Services in accordance with this Agreement.

10. Disclaimer

10.1 No Warranties

- 10.1.1 The Employer expressly understands and agrees that except as otherwise set out this Agreement, the CashD Platform and Services are provided on an “as is” and “as available” basis. CashD expressly disclaims all warranties of any kind, whether expressed or implied, including, but not limited to the implied warranty of merchantability, fitness for a particular purpose and non-infringement.
- 10.1.2 CashD makes no warranty that the CashD Platform or Services will:
 - a. be uninterrupted, timely, secure, or error-free;
 - b. the results that may be obtained from the use of the CashD Platform Services will be accurate or reliable;
 - c. subject to clause 13, that any errors or defects in the CashD Platform or Services will be corrected; or
 - d. will meet all of the Employer’s or Users’ requirements.
- 10.1.3 Although considerable effort is expended to make the CashD Platform and any other operating communication channels available at all times, no warranty is given that these channels will be available and error free every minute of every day.
- 10.1.4 The Employer acknowledges and agrees that CashD is not responsible for temporary interruptions in service due to failure beyond its control including, but not limited to, the failure of interconnecting operating systems, computer viruses, and forces of nature, labour disputes, pandemics and armed conflicts.
- 10.1.5 This clause 10.1 will apply to the maximum extent permitted by applicable law.

11. Updates and defects

11.1 Updates

- 11.1.1 CashD may implement an update or upgrade to the CashD Platform from time to time and will notify the Employer in advance if any such update or upgrade will materially impact the Service Levels.
- 11.1.2 CashD may need to implement an update urgently to rectify a security issue, bug or other urgent issue outside of the usual scheduled maintenance (**Urgent Upgrade**) in clause **Error! Reference source not found.** If this is the case, then the following will apply:
 - a. CashD will notify the Employer if an Urgent Upgrade is required and provide details of any potential impact to the Service Levels;
 - b. the Employer acknowledges and agrees that CashD does not require the Employer’s approval before releasing the approval; and
 - c. the Service Levels may not be met while the Urgent Upgrade is being released.
- 11.1.3 The Employer acknowledges and agrees that CashD does not require any approval from the Employer to release any Urgent Upgrade..
- 11.1.4 If an Employer requests an upgrade:
 - a. before the scheduled date under clause **Error! Reference source not found.**; or
 - b. that CashD would otherwise not be releasing,then, CashD may make such upgrade available to the Employer:
 - c. at a date agreed between the parties; and
 - d. may require the Employer to pay an additional Licence Fee and / or pay for the expense of the upgrade under clause 8.5..

11.2 Defects

- 11.2.1 The Employer must notify CashD of any Platform Defect it identifies as soon as reasonably practicable.
- 11.2.2 If CashD identifies a Platform Defect it will notify the Employer as soon as reasonably practicable.
- 11.2.3 CashD will develop and implement corrections, changes or workarounds for any Platform Defect on a timely basis in accordance with the Service Levels having regard to the nature and scope of the Platform Defect.

12. Indemnity

12.1 Employer indemnity

The Employer agrees to indemnify and hold CashD, and its related bodies corporate (within the meaning given in section 9 of the Corporations Act 2001 (Cth)), and their respective Personnel (**Indemnified Persons**) in respect of any Loss CashD suffers as a result of:

12.1.1 negligent or wrongful acts or omissions by:

- a. the Employer;
- b. any Associated Entities;
- c. Administrators; or
- d. Users.

12.1.2 the Employer's breach of Agreement;

12.1.3 a breach of the CashD Terms by a User or Administrator,

except to the extent the Loss is caused by, or contributed to, by negligent or wrongful acts or omissions of the Indemnified Persons.

12.2 Benefit

This clause 12 is for the benefit of, and is enforceable by, each Indemnified Person.

12.3 Survival

This clause 12 will survive the expiry or termination of this Agreement.

13. Liability for errors

13.1.1 In the event of an underpayment or overpayment of funds to a User (or multiple Users), an investigation will be launched by CashD to determine the root cause of the underpayment or overpayment. This may involve engagement with the Employer and other parties.

13.1.2 The Employer acknowledges and agrees that CashD will only be liable for an error to the extent that the error results from a software, system, processing or configuration error in the CashD Platform or is otherwise the fault of CashD (**CashD Error**).

13.1.3 CashD will be responsible for any overpayment or underpayment of any Payment Requests to the extent such overpayment or underpayment directly results from a CashD Error.

13.1.4 If clause 13.1.3 applies, CashD must develop a remediation methodology and process for correcting the overpayment or underpayment of any Payment Requests and will be responsible for all costs to remedy the overpayment or underpayment of the Payment Requests.

13.1.5 Under no circumstances will CashD be responsible or liable for any error caused by or resulting from (**Other Errors**):

- a. any Employer Data;
- b. any Third Party Software Product; or
- c. the Employer or any other person's actions or omissions.

13.1.6 The Employer acknowledges and agrees that:

- a. CashD is not responsible or liable for an Other Error;
- b. CashD is not responsible or liable for any overpayment or underpayment of Payment Requests that resulted from an Other Error;
- c. CashD is under no obligation to fix an Other Error or any overpayment or underpayment of Payment Requests that may have resulted from the Other Error; and
- d. CashD will only correct the Other Error if:
 - i. it is provided with any information that it requests from the Employer; and
 - ii. CashD's costs of remediating the Other Error, or any overpayment or underpayment of Payment Requests that may have resulted from the Other Error, are covered by the Employer or any other party responsible for the Other Error.

13.1.7 Any consequential losses associated with an overpayment or underpayment of Payment Requests, including but not limited to, loss of reputation are excluded from this clause 13.

14. Limitation of liability

14.1 Liability Cap

To the maximum extent permitted by law, CashD's liability to the Employer for all claims arising out of or in connection with this Agreement shall not exceed the total value of the Liability Cap, regardless of whether the liability arises under any breach of contract, tort (including negligence), statute, equity, contract or any other cause of action.

14.2 Exclusions

The liability cap in clause 14.1 does not apply to:

- 14.2.1 clause 16 (Intellectual Property);
- 14.2.2 clause 18 (Anti-Money Laundering);
- 14.2.3 clause 19 (Complaints);
- 14.2.4 clause 20 (Privacy);
- 14.2.5 clause 21 (Confidential Information); and
- 14.2.6 any liability arising from grossly negligent, intentionally wrongful or fraudulent acts or omission of CashD; and.
- 14.2.7 a claim by a third party that the Employer's or, Users use of the Services in accordance with this Agreement infringes a third party's intellectual property rights.

14.3 Consequential loss

Neither party is liable to the other for any consequential or indirect loss including, but not limited to, loss of profit, loss of accrued employment rights, lost opportunity cost, loss of enjoyment.

15. Third-Party Content

15.1 Third Party Software Products

- 15.1.1 The CashD Platform may enable the Employer to select and connect or interact with a third party software product, such as an HR product, time and attendance product, payroll product or accounting software product, that the Employer uses (**Third Party Software Product**).
- 15.1.2 In order to connect or interact with a specific Third Party Software Product, the Employer will need to have, and actually be signed-in to, an active user account for that Third Party Software Product (**Third Party Software Product Account**).
- 15.1.3 The Employer is solely responsible for:
 - a. choosing a Third Party Software Provider;
 - b. registering its Third Party Software Product Account;
 - c. keeping its Third Party Software Product Account active;

- d. ensuring its Third Party Software Product Account is up to date and accurate; and
 - e. the payment of any Third Party Software Product fees to the provider of the Third Party Software Product in connection with use of that Third Party Software Product.
- 15.1.4 CashD is not affiliated with, has no control over, and assumes no responsibility for the operation of any Third Party Software Product or actions of a Third Party Software Product provider.
- 15.1.5 The Employer must provide CashD with at least sixty (60) days' notice before changing any Third Party Software Product connected or integrated with the CashD Platform.
- 15.1.6 If the Employer provides notice under clause 15.1.5, then CashD may:
- a. terminate this Agreement under clause 15.1.6 if the CashD Platform cannot connect or interact the new Third Party Software Product; or
 - b. require the parties to agree on an implementation plan and charge the Employer an implementation fee under clause 8.4 to connect or integrate the new Third Party Software Product with the CashD Platform.
- 15.1.7 CashD is not responsible for, and makes no warranty in relation to, any compatibility, usability or interoperability of the CashD Platform with any Third Party Software Product.
- 15.1.8 Any fees or charges associated with integrating any Third Party Software Product will be managed in accordance with clause 8.4.
- 15.1.9 The Employer acknowledges and agrees to review and be bound by the terms of use and privacy policy of any Third Party Software Product that it uses and connects with the CashD Platform.
- 15.1.10 The Employer agrees to indemnify and hold CashD harmless, and expressly releases CashD, from any and all liability arising from the Employer's use of, and/or connection to, a Third Party Software Product where CashD has acted in accordance with this Agreement.
- 15.1.11 If the Employer chooses to connect or interact with a Third Party Software Product then it:
- a. grants CashD authorisation to access its Third Party Software Product Account in order for the CashD Platform to interact with that Third Party Software Product in accordance with the rules for doing so prescribed by the Third Party Software Product provider; and
 - b. agrees to cooperate with CashD and provide any information that CashD or the Third Party Software Product provider may request in order to enable CashD to access the Employer's Third Party Software Product Account.
- 15.1.12 The Employer acknowledges and agrees that if permission is not granted under clause 15.1.11a, then CashD may be unable to provide the Services or access to the CashD Platform. The Employer acknowledges and agrees that in this case, CashD will not be liable for any loss or damages suffered by the Employer, Associated Entities and / or User as a result and the Employer acknowledges and agrees that the indemnity in clause 12 in favour of CashD will apply to any loss suffered by the Employer, Associated Entities or Users.
- 15.1.13 CashD will only access and use the Employer's Third Party Software Product Account in order to provide the Services and the Employer expressly consents to CashD accessing and using its Third Party Software Product Account for this purpose.
- 15.1.14 CashD may retain records of the information accessed and used in accordance with this Agreement and in accordance with the Applicable Laws and the Employer expressly consents to CashD's retention of these records.
- 15.1.15 If at any time CashD's access to the Employer's Third Party Software Product Account is limited or denied, then the Employer acknowledges and agrees that CashD may not be able to provide the Services. If this is the case, CashD may terminate the Agreement in accordance with clause 22.3.

16. Intellectual Property

16.1 Intellectual Property rights

- 16.1.1 The Employer acknowledges and agrees that the CashD Platform and Collateral contains proprietary and confidential information that is protected by the Applicable Laws.
- 16.1.2 Except as expressly authorised by CashD, the Employer agrees not to modify, rent, lease, loan, sell, distribute or create derivative works based on the CashD Platform, in whole or in part. The Employer also agrees to procure that its Users and Administrators will comply with requirement.
- 16.1.3 CashD grants the Employer a personal, non-transferable and non-exclusive right and licence to use the CashD Platform and Collateral provided that the Employer does not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the CashD Platform or Collateral.
- 16.1.4 CashD agrees that it will provide Users and Administrators with a personal, non-transferable and non-exclusive right and licence to use the CashD Platform in accordance with the CashD Terms.
- 16.1.5 The Employer agrees not to modify the CashD Platform in any manner or form, or to use modified versions of the CashD Platform, including (without limitation) for the purpose of obtaining unauthorised access to the CashD Platform. The Employer also agrees to procure that its Users and Administrators will comply with requirement.
- 16.1.6 The Employer agrees not to access the CashD Platform by any means other than through the App, Website or any other interface that is provided by CashD for use in accessing the CashD Platform. The Employer also agrees to procure that its Users and Administrators will comply with this requirement.
- 16.1.7 The Employer agrees not to modify the Collateral in any manner or form without the prior express written consent of CashD.
- 16.1.8 The Employer grants CashD a personal, non-transferable and non-exclusive right and licence to use the Employer Data only for the purposes of performing its obligations under this Agreement.

17. Identity checks and payments

- 17.1.1 The Employer agrees to provide CashD with any information or documentation CashD reasonably requests to verify the Employer's identity and assess the Employer's ability to make payments.
- 17.1.2 The Employer authorises CashD to make any enquiries, either directly or through third parties, to verify the Employer's identity and assess the Employer's ability to make payments.
- 17.1.3 All information CashD collects about the Employer, including information to verify the Employer's identity and assess the Employer's ability to make payments, will be collected, used, disclosed and stored in accordance with the Privacy Policy.

18. Anti-Money Laundering and Counter-Terrorism Financing

- 18.1.1 The Employer agrees to provide all information to CashD which CashD reasonably requires in order to manage its obligations in providing the Services in relation to anti-money laundering and counter terrorism financing or to comply with the Applicable Laws.
- 18.1.2 The Employer agrees to CashD disclosing any information which the Employer provides to any law enforcement, regulatory agency or court where required by Applicable Laws.
- 18.1.3 The Employer agrees that CashD may refuse to process any transaction under this Agreement without any liability if CashD suspects that the transaction may breach any Applicable Laws.

19. Complaints

- 19.1.1 All complaints, disputes and enquiries from Users and Administrators will be managed by CashD or its Service Provider.
- 19.1.2 If a User or Administrator directly contacts the Employer or its Personnel in relation to any complaint, dispute or enquiry, the Employer must notify CashD as soon as practicable but in any event within two (2) business days of receipt.
- 19.1.3 If the Employer would like to manage a particular complaint, dispute or enquiry from a User or Administrator it must notify CashD in accordance with clause 19.1.2 and as part of that notice request management of that complaint, dispute or enquiry.
- 19.1.4 CashD may approve or decline any request made by the Employer under clause 19.1.3 (in its absolute discretion and for any reason) and if CashD:
 - a. approves a request, it may set out any conditions or limitations it sees fit (in its absolute discretion) that will apply to the Employer's management of the complaint, dispute or enquiry that is the subject of the request; or
 - b. declines a request, then the Employer must not be involved in the management of the complaint, dispute or enquiry that is the subject of the request.
- 19.1.5 The Employer must:
 - a. unless expressly provided in clause 19, not hold itself out as capable of managing, resolving or settling any complaint, dispute or enquiry;
 - b. must keep CashD fully informed of all developments relating to any complaint, dispute or query it has been authorised to managed in accordance with clause 19;
 - c. use its best endeavours to assist CashD in managing any complaint, dispute or enquiry;
 - d. observe CashD's reasonable directions relating in any way to a complaint, dispute or enquiry;
 - e. not compromise, resolve or settle a complaint, dispute on enquiry without CashD's prior written consent.
- 19.1.6 The parties may agree on support guidelines that specify the types of enquiries that the Employer can manage and does not need to notify CashD under clause 19.1.2.

20. Privacy and data

20.1 Privacy

- 20.1.1 Each party must, and must ensure its Personnel:
 - a. comply with the obligations under the Privacy Act in relation to the collection, use, disclosure and storage of Personal Information; and
 - b. provide the other party with all reasonable assistance it may require to comply with the Privacy Act including (but not limited to) reporting or remediating any breaches of the Privacy Act.

20.2 Information

- 20.2.1 The Employer will provide CashD with Employer Data related to Users.
- 20.2.2 The Employer acknowledges that if the Employer chooses not to share certain parts of Employer Data then those features that rely on that information within the CashD Platform may not operate as expected or CashD may not be able to provide the CashD Services and CashD may suspend the provision of the CashD Services. The Employer acknowledges and agrees that CashD will not be liable for any loss if they are not able to provide the CashD Services due to certain Employer Data not being provided and that CashD will have the benefit of the indemnity in its favour in clause 12.

20.3 Obligations

- 20.3.1 CashD agrees to:

- a. collect, store, use and disclose any Employer Data provided by the Employer or collected by CashD under this Agreement only for the purposes of performing its obligations under this Agreement or exercising any rights CashD may have under this Agreement or law;
- b. collect, store, access and disclose any User Information to the extent it contains Personal Information in accordance with the Privacy Policy;
- c. take all reasonable steps to ensure that the Employer Data and any User Information is protected against misuse and loss, or unauthorised access, modification or disclosure.

20.4 Data Breach Reporting

20.4.1 If there is a disclosure of any data in breach of any laws (including but not limited to the Privacy Act), the party that has identified the breach ("the reporting party") will immediately notify the other party as soon as it becomes aware of such breach and the details of that breach (to the extent known).

20.4.2 The parties will agree on what actions may be required in respect of a data breach including notifying regulators and communicating to Employers and Users in accordance with the law.

20.5 Survival

This clause 20 survives the expiry or termination of this Agreement.

21. Confidentiality

21.1 Employer Data

21.1.1 During the Term, CashD is permitted to use the Employer Data to perform its obligations under this Agreement.

21.1.2 If this Agreement is terminated or the relationship between CashD and an Employer is terminated, then CashD may only retain copies of the Employer Data if:

- a. required by the Applicable Laws;
- b. to meet any obligations under this Agreement; and/or
- c. in accordance with the Privacy Policy.

21.2 Transaction Information and CashD Data

21.2.1 The parties acknowledge and agree that the Transaction Information and CashD Data is Confidential Information belonging to CashD.

21.2.2 During the Term, the Employer may be provided with the Transaction Information and CashD Data.

21.2.3 If this Agreement is terminated, then the Employer may only retain copies of the Transaction Information and CashD Data if required by the Applicable Laws.

21.3 Maintenance of confidential information

Each party agrees to keep confidential all Confidential Information and will not disclose or discuss any of that information without the prior written approval of the other party, except:

- 21.3.1 as specifically contemplated by this Agreement;
- 21.3.2 to the extent required by law;
- 21.3.3 to the extent required by the requirements of a stock exchange on which the party's shares (or that of its holding company) are listed, subject to compliance with clause 21.4;
- 21.3.4 to the extent required by that party's financiers or intended financiers in relation to the provision of finance for completion of the transactions contemplated by this Agreement; or
- 21.3.5 to the extent required to instruct the party's professional advisers in relation to the preparation and performance of this Agreement.

21.4 No public announcements

No announcements concerning this Agreement or its subject matter or any ancillary matter will be made before, on or after the date of this Agreement by any party except as required without the prior written approval of the parties (such approval not to be unreasonably withheld or delayed).

21.5 Marketing

CashD must obtain the Employer's consent (which must not be unreasonably withheld) before disclosing any information about this Agreement or the Employer's use of the CashD Platform on the Website or any marketing material.

21.6 Survival

This clause 21 survives the expiry or termination of this Agreement.

22. Term and Termination

22.1 Initial Term

This Agreement commences on the Start Date and continues for the Initial Term unless it is extended or terminated by a party in accordance with this clause 22.

22.2 Renewal Terms

22.2.1 On expiration of the Initial Term, the Agreement will be automatically renewed for a Renewal Term unless a party provides thirty (30) days' prior written notice that it does not wish to renew the Agreement.

22.2.2 If the Agreement is renewed for a Renewal Term under clause 22.2.1, the Agreement will be automatically renewed for successive Renewal Terms unless a party provides thirty (30) days' prior written notice before the relevant Renewal Term that it does not wish to renew the Agreement.

22.3 Termination

22.3.1 The Employer party may terminate this Agreement by providing thirty (30) days' notice in writing to CashD if:

- a. an update is made under clause 11 that materially limits or reduces the operation or functions of the CashD Platform; or
- b. an amendment is made to this Agreement that is materially detrimental to the Employer in terms of any of its rights and liabilities under this Agreement.

22.3.2 CashD may terminate this Agreement by providing thirty (30) days' notice in writing if:

- a. the Employer undergoes a material change in its management or control without the prior written consent of the other party
- b. the required access to a Third Party Software Product is not provided in accordance with clause 15;
- c. the Employer provides notice under clause 15 in relation to a new Third Party Software Product and:
 - i. the CashD Platform cannot connect or integrate with that Third Party Software Product;
 - ii. the Employer does not agree to an implementation plan and / or pay an implementation fee in accordance with clause 15.1.6b; or
- d. the Employer does not provide the requisite Employer Data in accordance with clause 20.2.

22.3.3 Either party may terminate this Agreement, with immediate effect, by giving the other party written notice if:

- a. the other party commits or is suspected of committing fraud or engaging in any misleading or deceptive conduct; or

- b. the other party commits a breach of any term of this Agreement which cannot be rectified;
- c. the other party commits a breach of any term of this Agreement that is capable of being rectified and fails to rectify the breach within [thirty (30)] days of receiving written notice requiring that party to rectify the breach;
- d. the other party commits or causes the first party to commit a breach of the Applicable Laws, which is required to be reported to a regulator;
- e. the other party suffers an Insolvency Event,
- f. a law enforcement, government agency or regulator requests that the Agreement be terminated;
- g. there are material and unexpected technical or security issues or problems; or
- h. a Force Majeure Event prevents CashD from complying with any of its obligations under this Agreement for a period of 60 days,

unless the operation of this clause is stayed by the *Corporations Act 2001* (Cth).

22.3.4 The parties must immediately notify each other in writing of any of the events in clause 22.3.2. Notwithstanding the provisions of this clause, this Agreement is immediately terminated on the date a party receives notice from the other party.

22.4 Obligations

Following termination of this Agreement:

- 22.4.1 CashD will cease providing the Services;
- 22.4.2 each party must pay to the other all money then owing to the other under this Agreement; and
- 22.4.3 each party will, as soon as reasonably possible, return or destroy the other parties Confidential Information in its possession or control, unless it is required to retain a copy of that information under the Applicable Laws or this Agreement.
- 22.4.4 CashD will delete all Employer Data except for data that would be permitted or required by law to be retained by CashD or any for:
 - a. a period required by law; and/or
 - b. a period of 12 months after the termination date for the sole purpose of allowing any potential audits of records to take place.
- 22.4.5 Any Confidential Information, Employer Data and other information that is retained by CashD or after termination of this Agreement will only be used for the purposes permitted under this Agreement.

22.5 Accrued rights and liabilities

Termination of this Agreement does not affect any accrued rights or liabilities of any party and does not affect any provision of this Agreement that is expressly or by implication intended to come into or continue in force on or after termination.

23. Contacts

Each party will appoint a Contact as the first point of contact between the parties for this Agreement

24. Changes to the Agreement

- 24.1.1 CashD reserves the right to modify, update or otherwise alter the terms of this Agreement.
- 24.1.2 CashD will notify the Employer of any changes to the Agreement, including any changes to fees and charges, by providing a copy to the contact in clause 23.
- 24.1.3 CashD must obtain the Employer's prior consent to any change made under this clause 24 that may:

- a. materially reduce or limit the functionality of the CashD Platform or scope of the Services; or
 - b. significantly increases any of the fees payable under clause 8.
- 24.1.4 If Lending Services are specified in the Order Form, then any changes made under this clause 24 will apply to the Employer's next Drawdown Amount, but will not apply to any Drawdown Amount that has been approved and which the Employer is currently making repayments for in accordance with clause 4.
- 24.1.5 If the Employer is unhappy with any of the changes made under this clause 24, it may terminate this Agreement in accordance with clause 22.3.1.

25. Disputes

25.1 Dispute Notice

If a party considers that a dispute has arisen in connection with this Agreement, then that party must give written notice to the other party setting out reasonable details of the nature of the dispute (**Dispute Notice**) within 7 days of becoming aware of that dispute.

25.2 Meeting

Representatives nominated by each party will meet within 7 days of the date that the receiving parties receive the Dispute Notice and attempt in a good faith effort to resolve the dispute as quickly as possible.

25.3 Mediator

If the nominated representatives are unable to resolve the dispute within 12 days of the Dispute Notice, then the parties may refer the dispute to mediation by a mediator agreed upon between them, or failing agreement, a mediator appointed by the Australian Disputes Centre or any body which replaces it.

25.4 Court proceedings

If the dispute is not resolved within 30 days of its reference to mediation or if a party refuses to comply with its obligations for mediation, then any party to the dispute may commence court proceedings.

25.5 Injunction

Nothing in this clause 25 prevents a party from seeking an interim injunction at any time where it deems appropriate.

26. GST

26.1 GST payable

If GST is payable in relation to a supply made under or in connection with this Agreement, then:

- 26.1.1 the recipient must pay an additional amount to the supplier equal to the amount of that GST; and
- 26.1.2 any additional amount payable in accordance with this clause must be paid at the same time as the amount owing and the supplier must provide a tax invoice to the recipient no later than that time.

26.2 Adjustments to GST payable

If the GST payable by the supplier varies from the additional amount paid by recipient under clause 26.1 such that a further amount of GST is payable by the supplier or the supplier receives a refund or credit of any GST then:

- 26.2.1 where the supplier is required to make a further payment, the recipient will make a further payment to the supplier equal to the additional amount payable by the supplier;

- 26.2.2 where the supplier receives a refund or credit, the supplier will provide a corresponding refund or credit to the recipient, or the recipient will be entitled to receive the amount of that variation from the supplier;
- 26.2.3 any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the additional amount payable under clause 26.1;
- 26.2.4 the supplier must provide the recipient with an adjustment note within five (5) business days of the becoming aware of the relevant adjustment; and
- 26.2.5 any refund, credit or payment must be provided no later than ten (10) business days after the supplier receives the relevant adjustment note.

26.3 GST inclusive amounts

Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 26.

26.4 Registration

The parties each warrant that at the date of this Agreement and at any time during the term when a taxable supply is made they are or will be registered for GST. A party must produce written evidence of registration on request from another party.

26.5 Tax Invoices

The supplier must provide a tax invoice to the recipient within 28 days after the date of a taxable supply. Any tax invoice rendered in connection with a taxable supply under this agreement must comply with the requirements of the GST laws

27. General

- 27.1.1 Neither party may assign, transfer or novate any of their rights or obligations under this Agreement without the prior consent of the other party (which must not be unreasonably withheld)
- 27.1.2 This Agreement is governed by the law in force in the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that place.
- 27.1.3 Any failure to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision.
- 27.1.4 If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in full force and effect.
- 27.1.5 Unless stated otherwise, all amounts in this Agreement are exclusive of GST (if any).
- 27.1.6 CashD may provide the Employer with notices and communications by electronic means including email, or by regular mail, to the contact details specified in the Order Form. The Employer must provide notices to CashD by email using the contact details in the Order Form (or such other email address notified to you from time to time).
- 27.1.7 No party will be liable to the other party for any failure to perform its obligations under this Agreement during the time and to the extent that such performance is prevented by a Force Majeure Event. The party subject to a Force Majeure Event (the non-performing party) must notify the other party of the relevant details as soon as practicable after the Force Majeure Event occurs and endeavour to mitigate and remedy the effect of the Force Majeure Event and minimise the impact of the event on the other party.

28. Definitions

In this Agreement, unless the context indicates otherwise:

Administrator means any Personnel responsible for administering the CashD Platform on behalf of the Employer and any of its Associated Entities.

Administrator Access means:

- a. access to certain information selected and made available by CashD on the CashD Platform about the Users and the use of the CashD Platform by Users;
- b. approving Payment Requests made by Users in accordance with the CashD Terms;
- c. providing or uploading Employer Data (and any other relevant data) to the CashD Platform to enable the provision of the Services under this Agreement;
- d. access to relevant configuration and setting components in the CashD Platform; and
- e. access to any other information, features or functionality made available by CashD to Administrators from time to time.

Administrator Data means in respect of an Administrator their personal details, contact details, job title, employment status and any other information (including Personal Information) that is provided or generated under this Agreement or in connection with their Administrator Access.

Agreement means this agreement, together with any other documents incorporated by reference, including the Privacy Policy, CashD Terms and Order Form.

App means the CashD app that may be downloaded from the Website, AppleStore or GooglePlay

Applicable Laws refers to all applicable legislation, regulations, legislative instruments and any policy statements, directives or guidance issued by a regulator as well as industry codes, which apply to the subject matter of, or the Services contemplated by, the Agreement.

Associated Entities means any related body corporate (within the meaning of the Corporations Act 2001 (Cth)) of the Employer that is to be covered by the Agreement and is specified in Item 3 of the Order Form or added in accordance with clause 3.1.2a. It does not include any Associated Entity removed in accordance with 3.1.2b.

Business Hours means 9:00am to 5:00pm AEST on a day (other than a Saturday or Sunday) on which banks are open for general business in Sydney, Australia.

CashD means the entity listed in Item 1 of the Order Form.

CashD Account means an account that CashD will establish for the Employer with Monoova (or some other third party payment provider) in order to provide a real time payment solution that facilitates the clearing and settlement of Payment Requests. Before CashD can establish this account, the Employer must provide CashD with a completed copy of the form in Schedule 3, which includes details of the account name, access rights, reporting and authorised users.

CashD Data means any materials, data and insights derived or created by on behalf of CashD or its Personnel in connection with the CashD Platform including:

- a. aggregated or de-identified statistical data about Users;
- b. aggregated or de-identified statistical data about the Employer and any other employer who may use the CashD Platform;
- c. information about the use of the CashD Platform by the Employer, Users and Administrators;
- d. characteristics of the User base; or
- e. any materials, data or insights which are otherwise based on, created or derived from or co-mingled with any Employer Data.; or
- f. Transaction Information.

CashD Platform means the online platform accessible from the Website or App that can be used to process Payment Requests by Users under the CashD Terms in the ordinary course of employment or contract work.

CashD Terms means the CashD Terms and Conditions set out in the CashD Platform governing the relationship between the User, Employer, and CashD in respect of the CashD Platform (as amended from time to time).

Collateral means any marketing material or information provided by CashD that explains the benefits, features or operation of the CashD Platform for Users and includes any training material.

Confidential Information means all information, data, practices and techniques relating to a party's, or a related body corporate's (within the meaning of the *Corporations Act 2001* (Cth)), customers, competitors, business, operations, strategies, computer systems, marketing and intellectual property or other property of which the other party becomes aware in performing this Agreement. Confidential Information includes the terms of this Agreement and all negotiations leading to its preparation. Confidential Information does not include information that is in the public domain (unless it came into the public domain by a breach of confidentiality) or information that is obtained lawfully from a third party without a breach of confidentiality.

Contact means:

- a. for CashD, the person listed in Item 5 of the Order Form;
- b. for the Employer, the person listed in Item 6 of the Order Form.

Credit Limit means the amount listed in Item 7 of the Order Form.

Dispute Notice has the meaning in clause 25.1.

Drawdown Amount means the sum of each amount that has been advanced by CashD under clause 4 of this Agreement.

Drawdown Amount Limit means the amount listed in Item 8 of the Order Form.

Due Date has the meaning in clause 4.2.11.

Employer means the person listed in Item 2 of the Order Form.

Employer Data means any User Data, Administrator Data or any other data provided or made available by the Employer to CashD in connection with this Agreement.

Employer Fees means the fees payable to the Employer listed in Item 13 of the Order Form.

Employer Limit means the overall limit that applies to all Payment Requests that can be processed for a particular Employer within a Pay Cycle and that is specified in Item 11 of Schedule 1.

Enforcement Expenses means the amounts reasonably incurred or expended by CashD in relation to recovering any Drawdown Amount, including appointing a debt collection agent under clause 4.4.

Force Majeure Event means an event or circumstance beyond the reasonable control of any party (including a natural event or disaster, pandemic, act of war, revolution, strikes, lockouts and acts of government) which makes it impossible, impracticable or illegal for a party to perform its obligations under this Agreement, but does not include lack of funds for any reason.

Go-Live Date means the actual date on which the CashD Platform is first made fully available to Users. The Go-Live Date will be agreed to in writing between the parties.

GST means goods and services tax.

Implementation Fees means the fees specified in Item 15 of the Order Form.

Initial Term means the initial term listed in Item 17 of the Order Form.

Insolvency Event means:

- a. being an insolvent under administration or insolvent (each as defined in the Corporations Act);
- b. having a controller (as defined in the Corporations Act) appointed;
- c. any step being taken by a mortgagee to take possession, or dispose, of the whole or any part of the Employer's assets, operations or business;
- d. any step being taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator, a statutory manager or other like person in respect of the whole or any part of the Employer's assets or business;
- e. any step being taken which could result in being subject to any arrangement, assignment or composition, protected from creditors under any statute or dissolved (other than to carry out a reconstruction while solvent);
- f. being otherwise unable to pay debts when they fall due; or
- g. having something with the same or a similar effect happen under the laws of any jurisdiction; or
- h. ceasing to carry on business.

Interest Rate means the rate listed in Item 10 of the Order Form.

Lending Services means the services provided by CashD in accordance with clause 4.

Licence Fee means the fees payable to CashD listed in Item 14 of the Order Form

Loan Facility means the line of credit provided to the Employer by CashD.

Loss means any loss, cost, damage, claim or expense arising under tort, statute, equity, contract or some other cause of action.

Mandatory Updates means general upgrades, security patches, improvements, bug-fixes, modifications and enhancements for the CashD Platform.

Minimum Balance means the amount listed in Item 12 of the Order Form.

Monoova means Moneytech Payments Pty Limited ACN 126 015 227 Authorised Representative No. 000428863 trading as Monoova.

Order Form means the CashD order form that must be completed by the Employer in connection with this Agreement and which is included as Schedule 1 to this Agreement.

Pay Cycle means the frequency that the Employer usually pays Users' wages or salary e.g. weekly, biweekly or monthly.

Pay Cycle Period means the time period between the last Pay Cycle and the next Pay Cycle.

Payment Request means a request by a User submitted via the CashD Platform, for them to be paid, prior to their usual pay day, some or all of their wages or salary which has been earned but not yet paid by your Employer.

Personal Information has the same meaning as defined in section 6 of the Privacy Act, and includes Sensitive Information.

Personnel means in respect of a party, any director, officer, employee, contractor or agent of the party.

Privacy Act means the *Privacy Act 1988* (Cth).

Platform Defect means any defect, error or malfunction in the CashD Platform that may impact the provision of the Services.

Privacy Policy means the CashD privacy policy accessible at [\[insert link\]](#).

Renewal Term means the renewal term specified in Item 18 of the Order Form.

Sensitive Information has the meaning given to that term in the Privacy Act

Services means the services listed in Item 4 of the Order Form that are provided under clause 2.1.1.

Service Levels means the service levels detailed in Schedule 2.

Service Provider means any third party appointed under clause 1.3.

Software Services means the services provided by CashD in accordance with clause 3.

Start Date means the date the Employer agrees to this Agreement by signing the Order Form.

Support Services means the following software support services:

- a. responding to User enquiries, complaints or disputes via live chat, or email ticket support within the Business Hours;
- b. access to a support web portal;
- c. technical support for Users and Administrators via phone, online or email within the Business Hours; and
- d. any other services listed in Item 19 of the Order Form.

Third Party Software Product has the meaning in clause 15.1.1.

Third Party Software Account has the meaning in clause 15.1.2.

Transaction Fee means the fee listed in Item 13 of the Order Form.

Transaction Information means all available and collected information through the CashD Platform and any third party system associated with the CashD Platform (e.g. Payment Provider or bank), including meta-data related to a Payment Request including the unique user ID, transaction ID, date, time, amount, location, device, bank id, merchant or transaction fees, taxes and any relevant merchant and/or bank references or ID's, transaction status – all associated with each specific Payment Request. Transaction Information excludes any Personal Information and Sensitive Information associated with Users, except to the extent the Transaction Information is required to identify the User.

Unpaid Balance on any given day, means the amount the Employer owes under the Loan Facility at the close of that day.

User means any Personnel of the Employer or Associated Entity whose:

- a. details have been uploaded or imported into the CashD Platform; or
- b. who have been sent a link or other type of invitation or mechanism to access the CashD Platform by the Employer or Associated Entity or CashD prompting them to register and input their details into the CashD Platform.

User Data means in respect of a User their personal details, contact details, salary information, bank account information, roster information, employment status and any other information (including Personal Information) that is provided under this Agreement in order to deliver the Services.

User Limit means the amount listed in Item 9 of the Order Form.

Website means CashD's website accessible from this link www.cashd.com.au.

SCHEDULE 1 - ORDER FORM.

This Order Form is agreed to under the Employer Services Agreement between CashD and the Employer and will be governed by the terms of the Agreement. In the event of any conflict between this Order Form and the Agreement, the Order Form will prevail unless the Agreement expressly contemplates otherwise.

Item	Description
Item 1 CashD	CashD Trading Pty Limited ABN 17 650 146 731 Level 3, Suit 301A, 9-13 Bronte Road Bondi Junction Sydney NSW 2022
Item 2 Employer	As per your CashD registration details
Item 3 Associated Entities	N/A
Item 4 Services	N/A
Item 5 CashD Contact	Marcus Lasarow Director marcus@cashd.com.au
Item 6 Employer Contact	As per your CashD
Item 7 Credit Limit	N/A
Item 8 Drawdown Amount Limit	\$50: The worker can withdraw a minimum of \$50
Item 9 User Limit	50%: The worker can withdraw up to 50% of their available balance
Item 10 Interest Rate	0%
Item 11 Employer Limit	N/A
Item 12 Minimum Balance	N/A
Item 13 Transaction Fee	Up to a max of 5%
Item 13 Employer Fee	N/A
Item 14 Licence Fee	Nil
Item 15 Implementation Fee	Nil
Item 16 Expenses	Nil
Item 17 Initial Term	Up to 1 month or as extended by CashD

Item	Description
Item 18 Renewal Term/s	As per Item 17
Item 19 Other Support Services	Customer Support and Training
Item 20 Special Conditions	N/A

SCHEDULE 2 - SERVICE LEVELS.

Description	Service Level	Target	Service Credit
Service Availability	<p>The CashD Platform is expected to be available 24 hours a day for every day of the year, excluding scheduled outages.</p> <p>Downtime will accrue as soon as CashD becomes reasonably aware that an outage has occurred or when reported by the Employer, whichever is the earlier.</p> <p>CashD will advise the Employer:</p> <ul style="list-style-type: none"> + Of an outage when they are first aware of the outage + Within an hour of the first advice the expected duration of the outage + Of updated status every 2 hours till resolved + Of rectification of the outage and the cause. 	97%	<ul style="list-style-type: none"> + If at least 97%, no Service Credit; + If between 90% and 97%, Service Credit that is equal to TBA; or + If less than 90%, Service credit that is equal to TBA
Scheduled Outages	Scheduled Outages are not to exceed 8 hours throughout the course of a calendar month.	Less than 8 hours	No Service Credits will be applied.
Scheduled Outage Communication	Scheduled Outages are to be communicated 7 days or more from the intended outage event unless otherwise agreed by the parties to resolve a defect.	At least 7 days' notice	No Service Credits will be applied