

Terms & Conditions



Topic: Terms and Conditions of Software License

Version: 1.0

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iconnect360

membership management in the cloud

TERMS AND CONDITIONS OF SOFTWARE LICENCE

Our Agreement with you

1. We will:

- grant you a non-exclusive, non-transferable licence to use the Software in the Territory and in accordance with these Terms and Conditions on a Per User or Concurrent basis;
- provide you with maintenance and support in respect of the Software and in accordance with the appropriate Support Plan for the Software; and
- provide you with the Version of the Software which you have chosen and updates to this from time to time.

2. We may:

- provide you with a free trial period of 30 days from the date of signing this Agreement to use and test the Software subject to these Terms and Conditions; and
- sell you certain hardware items on the terms and conditions contained in Appendix A.

3. We will not:

- be your agent in any way;
- be your partner or joint venturer;
- be responsible for the configuration or integration of the Software with your internal systems, unless agreed in writing for an agreed fee;
- accept instructions on your behalf except from your authorised representative, as nominated in the Application Form; or
- provide legacy versions of the Software.

4. You must not:

- use another membership management and/or client management system during our Agreement;
- allow any third party to use or view the Software during the Term or the Trial Period without our prior written consent; or
- otherwise use the Software other than in accordance with these Terms and Conditions.

When our Agreement begins and ends

5. Our Agreement begins:

- on the date we process your Application Form;
- even if you are still in the Trial Period; and
- even if we have not processed any Transactions on your behalf.

6. Our Agreement ends:

- if you notify that you do not wish to proceed with the Agreement before the Trial Period ends;
- at the end of the Term;
- at the end of any Renewed Term; or
- earlier if we have a special right to terminate under our Agreement.

7. Where you purchase further User Licences during the Term then:

- each further User Licence will start once access is granted by us for that User Licence; and
- each further User Licence will be subject to the same Term and Renewed Term as the original User Licences but starting from the date the further User Licence is granted.

The Services we will provide

8. We will:

- provide you with access to the Version of the Software which you have elected in the Application Form;
- provide you upgrades to the Version of the Software which you are licensed to use, as appropriate from time to time;
- use all reasonable endeavours to meet the requirements of our Service Level Agreement;
- provide escalating levels of support and maintenance for the Software according to each Support Plan via online and phone based support methods; and
- provide access to the Data.

In connection with the Services

9. We will have the right to:

- designate a maximum number of User Licenses to you;
- audit the Services utilised by you in order to establish the name and password of each User;
- add or remove functionality from a Version of Software, as needed and at our discretion and to inform you of such changes; and
- add to or remove the Versions available to you based on our business needs provided the current Term is not affected or interrupted.

10. We may:

- allow you to purchase further User Licenses as required by you;
- allow you to upgrade your Support Plan at the cost specified in the Fee Schedule;
- allow you to upgrade the Version of Software used by you across all User Licences for the remainder of the Term at the cost specified in the Fee Schedule or as otherwise agreed in writing;
- alter the contents of any Service Level Agreement by posting an updated version on nz.iconnect360.com;
- alter the contents of any Support Plan by posting an updated version on nz.iconnect360.com
- provide site support, but only if agreed by us in writing and at an agreed fee;
- sell you SMS and/or email messages generated through the Software in bundles of no less than 500 messages; and
- without prior notice, automatically credit a further bundle of an equivalent amount of SMS and/or email messages when the previous bundle has been utilised.

11. We will not:

- provide a refund or credit in respect of any unused proportion of any bundle of SMS or email messages.

Your obligations regarding User Licenses

12. You must:

- ensure that each User Licence is only used by one authorised person at any one time;
- ensure that each User can only access the Software via a secure password;
- ensure that each User has a different secure password;
- take steps to ensure that the secure password used is kept secret and changed quarterly;
- ensure that each User is made aware of and complies with these Terms and Conditions;
- notify us immediately in writing if you reassign any User Licence purchased on a Per User basis among Users or to a new user;
- allow us to audit your use of the Services and the Software to make sure our records reflect the users and passwords under each User Licence;
- make payment to us for any shortfall in price if our audit reveals that you have used more than the maximum number of User Licences; and
- promptly remove access to the Software where any person is not an authorised user of a User Licence, whether this is revealed by our audit or otherwise.

13. You may:

- purchase further User Licences from time to time, subject to these Terms and Conditions.

14. You must:

- allocate User Licences to particular specified sites.

15. You must not:

- transfer User Licences between specified sites

Your obligations regarding License Fees

16. You must notify which of the two options you wish to adopt as a fee basis in the Application Form:

- payment of a monthly subscription fee for each User Licence; or
- a price per Transaction based on a minimum number of Transactions per month.

17. If we agree to the price per Transaction payment method then:

- we will agree with you in writing a minimum number of Transactions to be reached by you per month;
- we will agree with you in writing the transaction fee applicable to bank account transactions and credit card transactions;
- you must meet the minimum number of Transactions across all User Licences or, failing that, pay to us the shortfall between the actual Fees (applicable transaction fees multiplied by actual Transactions) and the required Fees (applicable transaction fees multiplied by minimum number of Transactions);

- the minimum number of Transactions will be subject to change if you change the number of User Licences or Versions of the Software used or if we substantially enhance the Software; and
- if we terminate the Agreement for any reason during the Term, you must pay the pro-rated amount of the Transactions fees (average Transactions but not less than the amount of the minimum Transaction) for the remaining Term.

Your other obligations

18. You acknowledge and agree that you are solely responsible for:

- obtaining and maintaining all necessary licences, consents and authorisations necessary to enable us, our contractors and our agents to perform their obligations under these Terms and Conditions, including providing the Services;
- making sure that your network and systems comply with the relevant specifications provided by us for the use of the Software from time to time;
- procuring and maintaining the network connections and telecommunications links from your computer network to our servers and/or data centres; and
- paying any licence or other fees to third parties to enable use of the Software.

What are our payment terms

19. You must:

- pay the Fees to us by way of direct debit from your Direct Debit Account, Distribution Account, other nominated account or credit card;
- pay the Fees to us directly or via Ezyppay or other third party collection agent as directed by us from time to time;
- where the Fee is known in advance, make payment monthly in advance;
- for the price per Transaction payment method:
 - make payment of the Fee for the agreed minimum monthly Transactions monthly in advance; then
 - make payment of the Fees for any additional Transactions at the end of the month.
- where the Fee is not otherwise ascertainable in advance, and not collected by us by direct debit in the normal course, ensure that you make payment within 7 days of us notifying you in writing of the amount due (**Due Date**); and
- acknowledge that all Fees, however calculated, are GST exclusive and that you are responsible for GST, sales tax or any other taxes applicable to the provision and sale of the Services.

20. You acknowledge that:

- funds collected on your behalf from Customers may be held by Ezyppay or another payment processing agent;
- funds may be held on our behalf by Ezyppay or other payment processing agent for payment of Fees;
- we may communicate with Ezyppay or other payment processing agent to ensure that our Fees are paid from money held by that organisation and you expressly authorise us to do this; and
- our Fees may be paid from funds held by Ezyppay or other payment processing organisation even though the funds were not originally intended to be applied in payment of our Fees.

21. If you do not pay the Fees within 7 days after the Due Date, we may:

- withdraw all or part of the Services while the applicable Licence Fees remain unpaid;
- without liability to you, stop access to any or all of your User Licences;
- without liability to you, disengage your password, account and access to all or part of the Services;
- charge interest on the outstanding amount from the Due Date until the outstanding amount is paid in full at a rate equal to 3% per annum above the base lending rate of Reserve Bank of Australia as at the Due Date; and
- set off and deduct from your Direct Debit Account or Distribution Account any amounts owing to us under these Terms and Conditions.

22. You must also pay for (in addition):

- any consulting services which we provide that are not part of the Services;
- travel expenses for on-site visits;
- a pre-paid usage fee for each bundle of SMS and/or email messages generated through the Software;
- a further pre-paid usage fee for each further bundle of SMS and/or email messages generated through the Software and automatically credited to you when the previous bundle has been utilised;
- an administration fee for the use of campaign manager tool in the Software; and
- all secondary fees and charges identified in the Fee Schedule as applicable from time to time.

Data storage and access

23. You acknowledge and agree that:

- we will have access to your personal information and your Data usage;
- we will have the right to access and amend the Data as and when required;
- we will transmit and securely store all financial information (including account details and other relevant information) through the Ezy pay payment system to ensure PCI DSS compliance;
- we are not responsible for the lawfulness, reliability, integrity, accuracy and quality of the Data in any circumstances;
- we may store Data and your personal information on servers overseas and at all times, in accordance with our privacy policy;
- you will indemnify us against any loss, claims or liability including legal costs made against us as a result of breach by you of Intellectual Property Rights in the Software or the Data; and
- there are limits placed on the amount of Data you can store within the iconnect 360 system based on the Version of the Software you are licensed to use.

24. We will:

- provide you with access to any Data stored by us pursuant to this Agreement in a mutually agreed format within fourteen (14) days of your request;
- charge you at the rate referred to in the Fee Schedule for any storage of data by you beyond the limit of the Version licensed to you;

- charge you at the rate referred to in the Fee Schedule for any request that we archive your Data; and
- charge you at the rate specified in the Fee Schedule for any request by you that we retrieve your Data from archiving.

25. We will not:

- store Data or provide access to the Data after the expiry of fourteen (14) days following the termination of this Agreement;
- provide access to your Data in circumstances where you have outstanding Fees, you are in breach of this Agreement, we are in dispute or we reasonably suspect that you have or will commit a breach of the law or a breach of this Agreement; or
- provide access to Data stored in the databases of third party systems even if access to those systems are granted through the Software.

Aggregated Data

26. We may:

- compile the Aggregated Data by compiling your Data (excluding Credit Card Data) with similar data received from our other clients and their customers; and
- compile, present or review the Aggregated Data in a collective manner and without disclosing personal or proprietary information about you or your Customers.

27. You acknowledge and agree that:

- the Aggregated Data is owned solely by us and will be used by us or Ezy pay or other third party processing agent for the purposes of research, analysis, business comparison, product development and/or business development.

Dealings with Customers

28. We may communicate with your Customers to:

- assist you to service and promote your products;
- promote our products;
- promote third party products including by way of advertising on our website;
- sell our products; and
- sell third party products through our website or otherwise.

Your relationship with third parties

29. You acknowledge and agree that:

- the Services and/or Software may enable or assist you to access the website content of, correspond with, and purchase products and services from third parties and that you do so solely at your own risk;
- we have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party, or any contract entered into by you or a Customer with any third-party;
- any contract entered into and any transaction completed with a third-party (even whilst using the Services or the Software) is between you and the relevant third-party, not us; and
- we will only undertake integration of the Software to third party systems at our discretion and at an agreed cost.

Limitation on our Services

30. We:

- do not make any express warranties;
- disclaim all implied warranties regarding our Services and the Software including implied warranties of merchantability and fitness for a particular purpose; and
- without limiting the above point, do not represent or warrant to you that:
 - your use of our Services or the Software will meet your requirements;
 - your use of our Services or Software will be uninterrupted, timely, secure or free from error;
 - our Services, Software or the server or website that makes our Services available on the internet are free of Malware or Phishing;
 - the functions contained in any Software will operate uninterrupted or without error; or
 - errors and defects in the Software will be corrected.

Exclusive Warranty

- 31.** Subject to these Terms and Conditions, we warrant to you that the Software will conform in all material respects with our specifications for the Software. The express warranty set forth in this clause 31 constitutes the only warranty given by us in respect of the Software. We do not offer or enter into any other representation, warranty, condition or other term of any kind, whether express or implied (either or by custom, course of dealing or by operation of law), with respect to the Software. We expressly exclude to the extent permitted by law all warranties, guarantees, conditions or other terms of satisfactory quality or fitness for a particular purpose.

Defects not covered by warranties

32. We shall have no obligation at all under the warranty contained in clause 31:

- if you or any other person or entity incorporates, attaches or otherwise engages any attachment, feature, program, or device to the Software; or
- if any non-conformance of the Software is caused by: misuse; alteration, translation, modification, or enhancement of the Software by you or any other person or entity; computer Malware; your failure to provide a suitable installation environment; your failure to provide adequate electrical power; your failure to ensure adequate software firewalls or protections; your use of supplies or materials not meeting specifications or not of sufficient size or capacity to properly utilise the Software; or use of the Software for other than the specific purpose for which the Software is designed.

Your sole remedy

33. If the Software does not conform in all material respects to our specifications (subject to clause 32), our sole obligation under the warranty in clause 31 shall be to:

- provide within a reasonable time the response necessary to correct any non-conformance of the Software to our specifications for the Software; and
- attempt to eliminate program or documentation errors by:
 - inserting a patch to the Software's object code;
 - correcting errors in any reference manuals; or
 - issuing a revision of the Software to you.

34. If we are unable to remedy the non-conformance within a reasonable time period given the nature of the non-conformance:

- your sole remedy shall be payment of the maximum amount determined in accordance with clause 37.

Limitation of liability

35. We are not responsible for any loss you may suffer as a result of any matter over which we have no control including:

- issues with your internet connection (however caused);
- network errors;
- incompatible hardware or Software;
- your misuse of the Software;
- you not acting in accordance with instructions or directions provided by us (or on our behalf) to you;
- limits on available bandwidth;
- infrastructure issues; and
- your handling of Credit Card Data.

36. We will have no liability or responsibility to you for any loss, damage or injury whether arising in contract, tort, equity or otherwise which does not flow directly from a breach of these Terms and Conditions, including:

- loss or profits or sales;
- loss of bargain;
- loss of opportunity;
- loss of use of any Software or any other computer equipment, Software or data;
- loss of time on the part of management or other staff; or
- any other indirect or consequential loss.

37. Our liability for any loss, damage or injury incurred or suffered by you for which we are liable under the terms of this Agreement or at law:

- shall not exceed in each instance a sum equal to the amount received by us from you under these Terms and Conditions in License Fees preceding the date on which the event giving rise to the loss, damage or injury arose.

Obligations of confidentiality

38. We both agree that:

- the Confidential Information will not be disclosed to others or independently used without proper authorisation from the party to whom the Confidential Information belongs;
- disclosure of Confidential Information by us to you shall not be construed, either expressly or by implication, as granting you (or your employees or other authorised persons) any ownership right in such Confidential Information; and
- this clause shall not operate to prevent us from compiling and using the Aggregated Data as contemplated by this Agreement.

When obligations of confidentiality do not apply

39. The obligations of non-disclosure do not apply:

- to any information which is (or which becomes) available to the public other than by breach of this Agreement or of any other duty;
- to any information which loses its confidentiality through no breach by the receiving party;
- where the disclosure has been permitted in writing by the disclosing party; or
- where the disclosure is required by compulsion of law.

Protection of our Intellectual Property Rights

40. You agree that:

- all Proprietary Rights are and will remain exclusively our property;
- you shall use all reasonable endeavours to safeguard the Proprietary Rights;
- you acknowledge that we are and remain the owner and licensor of all Intellectual Property in and with respect to the Software and the Aggregated Data;
- any right, title, interest, ownership or goodwill acquired by you in the Proprietary Rights or in any other Intellectual Property of ours as a result of this Agreement is fully assigned to us immediately upon the creation of such right, title, interest, ownership or goodwill; and
- except with our prior written consent you must not, and must not allow or cause any other person to:
 - make any copy, adaptation, translation, arrangement or version of the Software;
 - reverse compile, reverse engineer, decompile or disassemble the Software other than as permitted by applicable law and then only to the extent that we are not permitted by that applicable law to limit or exclude the right of you to do so;
 - conceal, alter or cover any product identification or notices of any proprietary or copyright restrictions from the Software;
 - deal with the Software, in a manner which is not permitted under this Agreement;
 - download, print, copy, burn, capture, re-transmit, stream or re-stream or reproduce the Software by any means;
 - allow unauthorised access to the Software;
 - alter, change, remove, obscure or add to any notices or other indications (including copyright notices) as to the ownership of or any other labels, symbols, logos, legends or Marks affixed to or embodied in the Software; or
 - frame, deep link or establish unauthorised links to any part of the Software.

41. You agree that:

- you may only use our Intellectual Property if agreed in writing by us;
- the use of any of our Intellectual Property must at all times include an acknowledgment of our ownership of all Intellectual Property Rights therein;

- you may not use or allow the use of any of our Intellectual Property in connection with any other Software, services or business or as part of your corporate name or any trade name;
- you will not register or otherwise carry on business as a company, partnership, joint venture or such other business or organisation, directly or indirectly, using any name, mark or logo identical with or similar to any of our Intellectual Property;
- you must not nor attempt to vary or cancel any registration of any of our Intellectual Property; and
- you must not apply nor attempt to register any Intellectual Property which is identical with or similar to any of our Intellectual Property.

Termination of our Agreement

42. Our right to terminate our Agreement

We may:

- terminate our Agreement at any time for any reason if we give you thirty (30) days prior written notice.

43. Your right to terminate our Agreement

You may:

- terminate our Agreement at the end of the relevant Term by giving us written notice no earlier than six (6) months and no later than sixty (60) days prior to the end of the Term.

What happens at the end of the Initial Term of our Agreement

44. At the end of the Initial Term:

- if you have provided us with between sixty (60) days and six (6) months prior written notice, our Agreement will end; and
- if you have not provided notice, our Agreement will continue for another term of the same length as the Initial Term.

45. On completion of any further period:

- again, our Agreement will end if you have provided between sixty (60) days and six (6) months prior written notice;
- again, if you have not given notice, our Agreement will continue for a further period of the same length as before; and
- our Agreement will keep being renewed on this basis indefinitely until one of us terminates it in accordance with these Terms and Conditions.

What happens if you terminate our Agreement without notice

46. If you do not give notice in a way we have described in clause 43 above, you must:

- pay Fees for the remainder of the Term of our Agreement.

Amount of Fees payable if you terminate our Agreement without notice

47. If you terminate without notice, we may:

- look at what you have been paying us for the last six months and charge you for the rest of the Term on that basis; or
- look at what you told us about anticipated Transaction volumes before our Agreement began and charge you for the rest of the Term on that basis.

What happens when our Agreement ends.

48. When our Agreement ends or notice of termination is given, we will:

- debit any Distribution Account or Direct Debit Account for any Fees or other amounts owed to us including any Fees in respect of termination without notice;
- give Ezy pay or other payment processing agent any necessary direction to give effect to this clause; and
- account to you for the monies we have received or debited.

49. We will also:

- charge you for any non-standard reporting or information technology support in accordance with the Fee Schedule.

50. We may after our Agreement ends:

- charge you for costs of standard reporting;
- charge you for costs of non-standard reporting or information technology support; and/or
- recover any outstanding debt and our reasonable costs.

When we may withdraw or suspend our Services

51. We may withdraw or suspend any part of our Services without notice if:

- you breach our Agreement;
- you threaten to breach our Agreement;
- you become Insolvent;
- we reasonably suspect that you or any of your officers, employees or agents have committed fraud;
- it appears that continuing the Services will be detrimental to you, us or a Customer;
- you fail to pay any applicable fees within 7 days of their due date;
- we withdraw or suspend services from a company which is associated with you through common directorship or shareholding; and/or
- it is otherwise reasonable in the circumstances.

What happens if we withdraw or suspend the Services

52. If we withdraw or suspend the Services, we will:

- hold your funds for a reasonable period to deduct any fees or other amounts owed to us;
- debit any Distribution Account or Direct Debit Account for any Fees or other amounts owed to us including any Fees in respect of termination without notice;
- give Ezy pay or other payment processing agent any necessary direction to give effect to this clause; and
- otherwise proceed in accordance with our Agreement.

What happens if you become Insolvent

53. If you become Insolvent, we may:

- immediately withdraw or suspend all or part of the Services;
- immediately terminate our Agreement;

- treat the insolvency as termination of our Agreement by you without notice;
- treat the insolvency as notice of termination of our Agreement by you;
- charge you for any legal or other fees we incur as a result;
- hold your funds for a reasonable period to deduct any Fees or other amounts owed to us;
- debit any Distribution Account or Direct Debit Account for any Fees or other amounts owed to us, including any Fees in respect of termination without notice; and/or
- give Ezy pay or other payment processing agent any necessary direction to give effect to this clause.

Privacy obligations

54. We must both:

- comply with all privacy obligations imposed upon us under the relevant legislation.

55. You may:

- refer to our privacy policy which is available on nz.iconnect360.com.

Our Intellectual Property

56. We are:

- the owner of our Software and the Aggregated Data; and
- the owner of all copyright in our Software and the Aggregated Data.

57. You have:

- a non-exclusive licence to use the Software in connection with the Services but no further rights to our Intellectual Property Rights.

58. If our Agreement ends:

- your licence to use the Software is automatically revoked; and
- you must immediately return any Software and associated material to us.

Your obligations in relation to payment and Fees generally

59. You must:

- promptly pay us all Fees and other amounts due under our Agreement;
- immediately notify us in writing if you change your Direct Debit Account or Distribution Account; and
- indemnify us for all Fees and other amounts due under our Agreement.

Your obligations in relation to payment and Fees – The Fee Schedule

60. We will charge you at the rate provided in the Fee Schedule for:

- Amex or Diners transactions where we have not otherwise agreed on a rate;
- any minimum Transaction Fees;
- any ad hoc or non-standard reporting or support; and
- requests that we undertake mail communication on your behalf (including in the fulfilment of our Services).

61. If a debit from your Direct Debit Account or Distribution Account fails:

- we will charge you the amounts provided in the Fee Schedule.

What we may do in relation to payment and Fees

62. We may:

- deduct any Fees or other monies owing to us from funds collected by Ezy pay or other payment processing agent;
- give Ezy pay or other payment processing agent any necessary direction to give effect to this clause;
- treat Customer payments made directly to you as payments received by us; and
- include Customer payments made directly to you in the calculation of our Fees.

63. If you breach our Agreement, we may:

- deduct any Fees and other monies owing to us from funds collected by Ezy pay or other payment processing agent;
- give Ezy pay or other payment processing agent any necessary direction to give effect to this clause; and
- deduct such amounts even if a Customer paid them for other purposes.

64. When we might adjust the Fees

We may:

- increase the rates of Fees without prior notice on the 30th of June of each year by CPI or 5%, whichever is greater; and/or
- amend the Fee Schedule by posting an updated version on the secure section of our website.

Things you must indemnify us against

65. You must indemnify us from and against:

- all claims, damages, actions, losses or liabilities suffered or incurred by us (including Customer claims),

including but not limited to:

- any failure by you to pay Licence Fees;
- any failure by you to pay any other amount due under our Agreement;
- any breach of our Agreement by you;
- any claim that any portion of Fees is void or voidable under any insolvency law;
- any bank fees or charges incurred in respect of a Direct Debit under circumstances described in this clause;
- any failure of a Direct Debit or any of its operations or processes due to any accident, neglect or misuse by you or a third party;
- any failure of a Direct Debit or any of its operations or processes due to any computer failure;
- any failure of a Direct Debit or any of its operations or processes due to any viruses, security hacking or any errors in code or software;
- any instance where we withhold your funds in accordance with our Agreement;

- your negligence or fraud or that of any of your employees, contractors or agents including any User;
- any failure by you to handle the Credit Card Data in a manner which does not comply with the requirements of the PCI DSS; and
- any legal or other fees we incur as a result of you becoming Insolvent or, as a result of you selling or otherwise changing the ownership of your business.

66. You must indemnify us as provided above even if:

- you have complied with our Agreement; or
- our Agreement has ended.

What happens if you have to indemnify us under our Agreement

67. We may:

- recover the indemnified amount from any amount held for you;
- direct debit any Distribution Account or Direct Debit Account for the amount;
- give Ezy pay or other payment processing agent any necessary direction to give effect to this clause; and/or
- recover the amount as a debt due to us.

What we are not liable for under our Agreement

68. We are not liable for and you release us from all liability in tort, contract or otherwise in respect of any claims, damages, actions, losses or liabilities (including any consequential or indirect loss) arising out of or in connection with:

- our Agreement;
- our performance of the Agreement;
- any breach of the Agreement by us;
- the provision of the Services by us;
- negligence, breach of contract or default on the part of our employees, agents or contractors;
- circumstances in which our Agreement provides that you are to indemnify us;
- any warranty not expressly included in our Agreement; or
- any warranty as to fitness for purpose or quality not required by law.

Warranties you are giving us in entering our Agreement

69. You warrant that:

- if you are a corporation, you are duly incorporated;
- if you are a trustee, the trust is validly formed;
- if you are a trustee, you have a full right of indemnity from the trust assets in respect of our Agreement;
- you have the legal capacity and authority to execute the Application Form and to be bound by our Agreement;
- your authorised representative is duly authorised to act on your behalf; and

- the person who executed the Application Form is duly authorised to execute on your behalf.

Your further obligations under our Agreement

70. You must:

- adhere at all times to our standard operating procedures as amended by us from time to time; and
- if we require, provide financial security to us to cover the risk of us providing the Services.

71. You must not:

- make or authorise any press release or other public statement concerning us or the Services without our prior written consent; or
- distribute any publicity, advertising or other materials containing references to us without our prior written consent.

Your obligation to provide updated information

72. You must provide us any requested information to verify that:

- you are compliant with our Agreement;
- you and your directors and/or proprietors are solvent; and
- our records are up to date.

73. We may need updated information including:

- ASIC information;
- bank statements;
- drivers licences; and/or
- address details.

Your obligation to comply with the PCI DSS

74. You acknowledge that:

- if you accept Visa, MasterCard, American Express or Diners credit cards for payment, you are subject to and will comply with the PCI DSS in relation to protection of Credit Card Data; and
- you are responsible for the proper handling and protection of Credit Card Data until it is properly uploaded and encrypted by the Software.

75. We will:

- keep the Credit Card Data secure once it is properly uploaded and encrypted by the Software.

76. You should:

- maintain appropriate antivirus software on all computers involved in handling Credit Card Data and remove all software identified as potentially malicious;
- restrict use of computers handling Credit Card Data to senior staff;
- ensure that operating systems on any computers handling Credit Card Data are given security updates from time to time as such updates become available;
- only store Credit Card Data in encrypted fields designed for that purpose in the Software; and

- destroy any hard copy records containing Credit Card Data.

77. You should not:

- record Credit Card Data in notes, contact logs or other unencrypted text fields within the Software;
- record Credit Card Data in any locally installed software program unless that program and your computer network is compliant with the PCI DSS;
- communicate Credit Card Data by email; or
- record credit card track data.

What happens if you want to sell or change your business

78. If you wish to sell your business, you must:

- give us sixty (60) days prior notice in writing.

79. If you wish to cease operations or change the control or management of your business, you must:

- give us sixty (60) days prior notice in writing.

80. If you give notice of change of ownership, control or management, we may:

- decline to perform the Agreement with the new operator; and
- after thirty (30) days written notice, terminate our Agreement.

81. If we do not terminate the Agreement within sixty (60) days of you notifying the change, then:

- when the change happens, this Agreement will be deemed to be assigned to the new operator as Client; and
- when the change happens, the new operator will have the same rights and obligations as you under this Agreement.

82. We may:

- refrain from accounting to the new operator until we receive satisfactory evidence of the change in ownership, control or management;
- refrain from accounting to the new operator until we see properly amended ASIC records or business name records.
- charge you for any legal or other fees we incur as a result of you selling or otherwise changing the ownership of your business;
- debit any amounts held for you and/or debit any Distribution Account or Direct Debit Account for any Fees or other amounts owing to us; and/or
- give Ezyppay or other payment processing agent any necessary direction to give effect to this clause.

Miscellaneous matters

83. We both acknowledge and agree that:

- the Terms and Conditions will apply to each and every upgrade or modification of the Software and any version of it and if your continued use of the Software or the Services after any such upgrade or modification will be deemed to be an acceptance of the same;
- our Agreement is governed by the laws of the State of New South Wales, Australia;
- we will both, failing any alternative dispute resolution attempts, go to the Courts of New South Wales, Australia for resolution of any dispute;

- if any part of our Agreement is held to be illegal or invalid, then only the illegal or invalid part will be void and the rest of our Agreement will remain in full force and effect;
- if either of us does not require performance at any time of an obligation under this Agreement, we will still be able to seek to enforce that obligation if we choose;
- if either of us does not enforce a breach of our Agreement, this does not mean that a further breach of the same kind is excused;
- where either of us must provide notice, the notice must be in writing and addressed to the party to which it is given as shown on the Application Form or other address notified in writing;
- all notices will be effective on the date of delivery or, if sent by ordinary mail, after two days following the date which the notice bears;
- this Agreement contains the entire agreement between us and, except for the purposes of clause 47, supersedes all previous agreements, discussions, representation, understandings and negotiations between us in relation to the matters covered in our Agreement; and
- our Agreement will apply to our respective successors, permitted sub-contractors and assigns.

84. We may:

- assign our Agreement after giving you thirty (30) days prior written notice;
- amend these Terms and Conditions by posting an updated version on the secure part of our website; and
- amend the Fee Schedule by posting an updated version on the secure section of our website.

85. You must not:

- assign our Agreement except with our prior written consent or as expressly provided for in these Terms and Conditions.

86. Any amended versions of the Terms and Conditions, the Fee Schedule or the Service Level Agreement will form part of our Agreement if:

- we post the amended version on our website;
- 14 days after posting, you have not objected; and
- you continue to use our Services, and/or the Software,

but this will not impact on:

- terms and conditions which have been the subject of specific written agreement between us.

87. Where the expression “We may” is used in our Agreement, it means that:

- we have the right referred to but no obligation to exercise the right;
- the right may be exercised at our discretion;
- you acknowledge and agree that we have the right; and
- you authorise us to exercise the right if we choose.

88. Where the expression “You may” is used in our Agreement, it means that:

- you have the right referred to in the way described directly above.

89. Unless otherwise stated or the context otherwise requires, these Terms shall be construed as follows:

- headings are inserted for reference only and shall be ignored in construing this;
- references to clauses, schedules or appendices are references to clauses, schedules or appendices in or to this Agreement;
- reference to this Agreement includes its Schedules;
- references to a party in this Agreement include the representatives, successors, substitutes, executors, administrators and permitted assigns of that party;
- reference to a person includes any company, firm, partnership, joint venture, association, corporation or other body corporate and any governmental agency and vice versa;
- references to \$, dollars or monetary amounts are to the lawful currency of Australia;
- words importing the singular shall include the plural and vice versa and one gender includes all genders;
- references to times are to New South Wales standard time or daylight saving time, as applicable;
- "law" includes any statute, legislation, law, regulation, by-law, scheme, determination, ordinance, rule or other statutory provision (whether Commonwealth, State or municipal);
- "tax" includes any impost, duty, levy, income tax, goods and services tax or other tax or charge imposed under any law;
- "business day" means the days Monday to Friday of each week, excluding public holidays applicable in New South Wales;
- "including" and other similar words are not words of limitation;
- an agreement, deed, covenant, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally; and
- an agreement, deed, covenant, representation or warranty on the part of two or more persons binds them jointly and severally.

Definitions

Aggregated Data	means Data (excluding Credit Card Data) compiled together with similar data obtained from our other clients and their customers for the purposes of, amongst other things, research, analysis, business comparison, product development and business development.
Agreement	refers to the Agreement between us and you consisting of: <ul style="list-style-type: none">(a) the Application Form;(b) the Fee Schedule;(c) these Terms and Conditions;(d) the policies, plans and agreements referred to in these Terms and Conditions and available on our website; and(e) any further conditions agreed in writing by us and you from time to time.
Application Form	refers to our iconnect Application Form for the registration of our Services.
Credit Card Data	means credit or debit card numbers, credit or debit card CCV numbers, credit or debit card expiry dates, credit or debit card types, billing addresses and credit or debit card holder names of Customers.
Client	refers to the person or entity in the "Client Details" field on the Application Form, and in cases where a business name is referred to, the person or entity which owns the name. References to "you", "your" and "yours" are references to the Client, unless the context requires otherwise.
Concurrent	means a type of User Licence able to be used by any one User at any time.
Confidential Information	means information disclosed to or known by you as a consequence of or through your relationship with us not generally known in the industry in which we are or may become engaged and our financial, technological (including designs, technical and other specifications or standards), strategic, market or business information, including information related to research and development, budgets, purchasing, accounting, engineering, manufacturing, marketing, merchandising and selling, prices, margins, rebates, costs, inputs, concepts not reduced to writing, processes not reduced to writing, methods not reduced to writing, customer and supplier lists, source and object codes and details and technology developed by or on behalf of us.
Customer	refers to a customer of yours.
Data	means all information and content in the Software made up of text and images and including information that you use, load, access or review as part of your use of the Software and, unless specified otherwise, includes the Credit Card Data.

Definitions

Direct Debit	means any debiting of your Direct Debit Account or Distribution Account by us to make any payments payable by you under this Agreement.
Direct Debit Account	means the business account held by you and debited by us or Ezyipay or other payment processing agent from time to time in accordance with the Agreement, details of which are provided to us from time to time (including but not limited to the account included for this purpose on the Application Form).
Distribution Account	means the business account held by you and debited and credited by us or Ezyipay or other payment processing agent from time to time in accordance with the Agreement, details of which are provided to us from time to time (including but not limited to the account included for this purpose on the Application Form). This account is used by Ezyipay or another collection agent to distribute monies collected from Customers on your behalf.
Email	means electronic mail.
Ezyipay	refers to Ezyipay Pty Limited, who distributes the Software and processes payments on our behalf.
Fees (or Licence Fees)	refers to the fees and rates payable by you to us as described in the Agreement including in the Application Form, the Ezyipay application form, these Terms and Conditions and the Fee Schedule.
Fee Schedule	means the Schedule included in the Application Form and/or the Ezyipay application form and/or the separate Schedule to this Agreement (and as amended by us from time to time) outlining general fees and charges applicable for the services.
GST	means goods and services tax payable pursuant to the A New Tax System (Goods and Services Tax) Act 1999.
iconnect	means iconnect 360 Sdn. Bhd. (906629-A) of Malaysia (formerly known as Goodwill Digital Sdn. Bhd. (906629-A) of Malaysia). References to “we”, “us”, “our” and “ours” are references to iconnect, but not in cases such as “our Agreement” or “we both agree” where the context clearly requires otherwise.
Intellectual Property	means designs, copyright, trademarks, patents, trade and business names, inventions, techniques, discoveries and improvements, concepts, adaptations, computer programs, processes and know how (whether registered or unregistered) and includes names, brands, marks, logos, indicia, applications, drawings, trade secrets, technical data, formulae and data bases and reference to Intellectual Property Rights or rights in Intellectual Property means and includes all right, title, interest and goodwill in Intellectual Property including moral rights and neighbouring or related rights.
Initial Term	means, unless otherwise agreed, a term of the length specified in the Application Form and commencing on the date described in clause 5.

Definitions

Insolvent	means bankrupt, in liquidation, in administration, in receivership, subject to deed of company arrangement, subject to scheme of arrangement or otherwise unable to pay your debts as and when they fall due.
Malware	is a category of malicious code that includes viruses, worms, and Trojan horses.
Marks	means any trade mark, registered or unregistered, held or owned by us in Australia or elsewhere in relation to the Software.
PCI	means the Payment Card Industry as identified by the Payment Card Industry Security Standards Council.
PCI DSS	means the Payment Card Industry Data Security Standard.
Per User	means a type of User Licence granted to a specific identified User.
Phishing	is a way of attempting to acquire usernames, passwords details by masquerading as our trustworthy website in an electronic communication.
Proprietary Rights	means all right, title, interest and goodwill including our Intellectual Property Rights in and with respect to the Software and the Aggregated Data.
Renewed Term	means any period after the Initial Term where this Agreement has been extended under clauses 44 or 45.
Service Level Agreement	means the agreement we will enter into with you which defines the service level which we will commit to including key performance indicators (and as amended by us from time to time) and as posted on nz.iconnect360.com .
Services	refers to those services specified in clause 8 of these Terms and Conditions.
SMS	means short messaging services.
Software	means the integrated billing, point of sale and customer relationship management software developed by us which can be integrated with the Ezy pay direct debit system or with a third party payment processor and which is known as iconnect360 (as updated from time to time).
Support Plan	means the support program which you have chosen for your elected Version of the Software (and as amended by us from time to time) and as posted on nz.iconnect360.com .
Term	means the Initial Term or a renewal of the Initial Term by operation of clause 44 or 45, as the case may be.
Termination Date	refers to the date of termination or expiry of the Agreement, in accordance with these Terms and Conditions.
Terms and Conditions	means these Terms and Conditions which form part of the Agreement.

Definitions

Territory

means the country of Australia and any other country in which we agree to licence the Software.

Transaction

means any direct debit or reoccurring credit card transaction with a Customer or any third party which is administered or processed through the Software.

Trial Period

means the period of 30 (calendar) days from the date of signing this Agreement.

User

means a person authorised to use the Software under a User Licence.

User Licence

means each individual licence granted to you for use of the Software by your officer, employees, agents and subcontractors under the terms of this Agreement, whether on a Per User or Concurrent basis.

Version

means the version of Software which you have chosen to use under this Agreement and consists of the following (as amended by us from time to time) and as referred to on nz.iconnect360.com:

- (a) Express;
- (b) Standard; and
- (c) Enterprise.

Fee Schedule

1. License fees

Unless otherwise agreed in writing, fees will be charged per license at:

iconnect360 Express	\$150 per month
iconnect360 Standard	\$250 per month
iconnect360 Enterprise	\$350 per month

2. Data limits

Data limits for each version per site are as follows:

iconnect360 Express	5GB
iconnect360 Standard	8GB
iconnect360 Enterprise	12GB

3. Extra data storage fees

iconnect360 Express	\$80 per site per month per GB
iconnect360 Standard	\$70 per site per month per GB
iconnect360 Enterprise	\$60 per site per month per GB

4. SMS and/or email messages

These are available in pre-paid bundles at the follow costs:

500 bundle	\$110
1000 bundle	\$190
2000 bundle	\$320
5000 bundle	\$650
10000 bundle	\$1000

5. Surcharging Rates (for payments to us – NOT Ezy pay transaction Fees)

Payment of fees or services provided to you by us e.g. hardware will be subject to merchant fees as follows:

Cheques and Direct Credit	Nil
Bank or savings accounts direct debit transaction	Nil
Master/Visa card payment	1.6%
Amex/Diners card payment	3.5%
Failure or dishonour or bounced Cheque	\$10.00

Please note:

- *These are not rates for your Ezy pay transaction fees for customer collections.*
- *These will be quoted separately by Ezy pay and included in your Ezy pay and/or iconnect360 application form.*
- *This is the rate we will surcharge you for payments to us (iconnect360).*

6. Data archiving or data retrieval

Requests for data archiving or data retrieval from archiving will be charged per request at the following costs:

Data archiving	\$500.00 per site
Data retrieval	\$300.00 per site

7. Ad-hoc or non-standard reporting or information technology support

Ad-hoc or non-standard reporting request	\$180.00 per hour charged in one hour increments
Non-standard information technology support	\$180.00 per hour charged in one hour increments

8. Special mail communication

Requests for special mail communication (including in the fulfilment of these services) will be charged at \$2.50 per piece of mail.

9. Consulting

Consulting will be charged at \$1,000 per day. Please note

- Travel and accommodation will be charged at cost plus 10%
- Meals will be charged at \$60.00 per day.

10. Training

Training will be charged in the following manner:

One day of a Guru's time This is 8 hours of training onsite	\$1400
Two days of a Guru's time This is 16 hours of training onsite	\$2,300
Three days of a Guru's time This is 24 hours of training onsite	\$3,200
Four days of a Guru's time This is 32 hours of training onsite	\$4100
Five days of a Guru's time This is 40 hours of training onsite	\$5,000

Please note:

- Travel and accommodation will be charged at cost plus 10%
- Meals will be charged at \$60.00 per day.

- For onsite training no more than 10 participants can attend each session
- Non-scheduled webinar training can be provided for \$180.00 per hour for up to 2 hours per session.

11. Data migration

Data migration for one site only	Specific*	\$1500
Data migration for one site only	Customised	Quoted based on the data to migrate
Prospect data migration for one site only	Specific*	\$1500
Prospect data migration for one site only	Customised	Quoted based on the data to migrate

Please note:

- the specific migrations include the fields set out in the data transfer spread sheet only
- the prices for data migration above are based on the average migration taking no more than 10 hours of IT time. If the data migration takes more than 10 hours of IT time then we may charge an additional \$180 an hour.

12. Support Plans

Silver	\$0 per site and included in your monthly license fee
Ad hoc telephone support	\$45 per call
Gold	\$175 per month per site up to 5 users

Please note: the specific information on the Silver and Gold support plans is outlined in the Cloud Care Support document found on nz.iconnect360.com

13. Implementation Management

Implementation Management	\$1500
Implementation Management And 1 site data migration	\$2500
Implementation Management And 2 sites data migration	\$3000

Please note: the specific information on implementation is outlined in the Cloud Care Support document found on nz.iconnect360.com

14. Hardware

We be charged as per quotation and subject to our Hardware terms and conditions

Appendix A – Hardware

Supply of Hardware by us

1. We may:

- from time to time offer to sell you hardware items on these terms and conditions; and
- charge you for the sale and delivery of any hardware items.

2. You must:

- in the event that you are making a bulk order, purchase one (1) item of hardware first to make an assessment of the item prior to making a bulk order; and
- pay in cleared funds in advance for any items of hardware and before any delivery is made by us.

3. You acknowledge that:

- we will estimate delivery dates on the basis of information provided to us by manufacturers and suppliers and cannot give any guarantee or assurance in relation to proposed dates of delivery;
- hardware items are supplied by us on the basis of the terms and conditions of use specified by the manufacturer of the item at the time of delivery;
- all items of hardware are covered by a warranty issued by the manufacturer; and
- you will contact the manufacturer directly in relation to any warranty claim or related enquiry.

What happens if a hardware item is wrongly described, does not correspond to a sample shown to you or is not fit for its intended purpose

4. We will:

- accept return of a hardware item, subject to the process below; and
- provide, at your election, a replacement or a refund in respect of a hardware item.

5. You must:

- notify us of any such hardware item within seven (7) days from the time you took delivery of the item;
- issue any request for return or replacement of the hardware item by email to support@iconnect360.com and state the number on your invoice;
- if required by us, complete a hardware return/replacement application form; and
- provide a reason for the requested return or replacement of the hardware item including details of any problems with the hardware item.

What happens if you choose a refund?

6. We will:

- refund the credit card used to pay for the hardware item or the bank account we received payment from; and
- deduct any fees or charges by banks or credit card companies we incur in respect of the refund.

7. We will not:

- issue the refund until the subject hardware item has been received by our head office and the refund agreed to by us;
- issue a refund for purchases by you of more than two (2) of the same item; or
- issue a refund if you change your mind about purchasing the hardware item following delivery.

8. You acknowledge that:

- we may take ten (10) days to process a refund once approved.