

## 1. INTRODUCTION

- These Terms and Conditions are part of the agreement between The Tooth Market Pty Ltd (ABN 28 640 722 425) (“**The Tooth Market, we, us, our or ourselves**”) and you as the client (“**you, your or yourself**”). It governs our dealings with you in relation to all Transactions made using the Account and contains information we are required by law to give you. You should keep them for future reference.
- The Agreement is constituted by the following documents:
  - these Terms and Conditions which include:
    - the Payment Schedule in clause 19; and
    - our Fee Schedule in clause 18.
  - You acknowledge and agree that:
    - you have read and understood all documentation provided to you by us including these Terms and Conditions;
    - all dealings in the Transactions and the performance by us of our obligations under the Agreement are subject to the Applicable Laws;
    - we will not provide legal, tax legal, tax, financial or accounting advice to you as part of the services that we provide to you in accordance with these Terms and Conditions; and
    - you accept the terms and conditions of the Agreement.
  - Upon signing up at fundmydental.com.au, you will be bound by the Agreement in all your dealings with us. Transactions that we conduct with you under the Agreement are legally binding and enforceable. These Terms and Conditions will come into effect on the date the version is issued.
  - You must read these Terms and Conditions carefully.

## 2. ELIGIBILITY

- To be eligible to use our services you must:
  - be an individual who is at least 18 years old;
  - be capable of entering into a legally binding contract;
  - have a valid and verifiable email address and Australian mobile telephone number;
  - provide a valid address in Australia;
  - have access to a Payment Method; and
  - use your real name and true personal details and not use an alias or false identity (even with the consent of the person whose identity you are using) or provide false, inaccurate or misleading personal details or seek to establish a fake, untraceable or unverifiable Account.
- By entering into this Agreement, you represent and warrant that you are eligible to use our services.

## 3. DEALINGS WITH US

- Upon signing up at fundmydental.com.au, our Agreement will be available via download and you will be required to enter your chosen Payment Method via the online form. The Agreement will be deemed to be accepted once it has been completed by you. (“**Acceptance Date**”)
- On the Acceptance Date, we will open an Account for you to be used for making Transactions in accordance with the Agreement. Payments will be debited from your Account in accordance with the Payment Schedule.
- Upon receiving goods and services from a Service Provider, the Service Provider will provide an Invoice to you in respect of the goods and services.

- Your Service Provider will provide us with a copy of the Invoice as confirmation of goods and services provided to you and The Tooth Market will disburse the appropriate payment to the Service Provider.
- We incur costs in providing the services set out in the Agreement, including but not limited to: Account set up and Account management; creating, monitoring and maintaining secure account systems; approving, authorising and verifying Transactions; providing Statements upon request; managing and processing your Payments through direct debit or credit card; reviewing unauthorised Transactions. Our Fees cover these costs incurred.
- **Financial Product Advice**
  - Any information or advice that we give you is generic in nature and does not take into account your financial situation, needs or personal objectives. In particular, you acknowledge that we do not provide personal advice or give you advice about whether you should utilise our services. You must consider the appropriateness of our services having regard to your own financial situation, needs or personal objectives and obtain your own independent financial advice.
  - The Tooth Market has not completed an assessment of your financial situation, needs or personal objectives pursuant to the responsible lending requirements of the *National Consumer Credit Protection Act 2009* (Cth). The Tooth Market does not provide credit assistance and therefore is not bound by the responsible lending provisions. Further, The Tooth Market will not conduct a credit check with a credit report bureau.
  - The Tooth Market does not provide any advice to you on any tax related matters. The Tooth Market encourages you to obtain independent advice from your financial advisor, auditor and/or legal counsel.
- **Anti-Money Laundering Legislation and Know Your Client**
  - You acknowledge and agree that we may require information from you from time to time to comply with the AML/CTF Laws. You undertake to provide us with all information and assistance that we may require to comply with the AML/CTF Laws.
  - We may pass on information collected from you and relating to dealings under this Agreement as required by the AML/CTF Laws or other Applicable Laws and regulations and are under no obligation to inform you we have done so. We may undertake all such anti-money laundering and other checks in relation to you (including restricted lists, blocked persons and countries lists) as deemed necessary or appropriate by us, and we reserve the right to take any action with regard thereto with no liability whatsoever therefore.
  - You also warrant that:
    - you are not aware and have no reason to suspect that the moneys used to fund your dealings under this Agreement have been or will be derived from or related to any money laundering, terrorism financing or other illegal activities, whether prohibited under Applicable Laws, international law or convention or by agreement; or
    - you are not a politically exposed person as the term is used in the AML/CTF Laws.

#### 4. TRANSACTIONS

- We will make a Transaction on your Account upon receiving an Invoice from your Service Provider or via any other method as we may authorise from time to time. We do not accept any Transaction requests and/or instructions via any other means unless we agree with you to do so in advance. We have no liability to you if any communication is interrupted before we receive an Invoice from your Service Provider.
- We are not liable for any refusal or failure of a Service Provider to accept your instructions at any time or for the quality, performance or other matters in relation to goods and services paid for with Transactions on the Account unless this is required by law or a code or is covered by these Terms and Conditions.
- All Transactions made from your Account will be debited to your Account and you agree to pay them to us in accordance with the Agreement.

- A Transaction limit of AUD2000.00 (“**Transaction Limit**”) over a period of six (6) months, applies on the value of Transactions on your Account. We may also impose a Transaction limit on the number of Transactions on your account. If we apply or vary any daily or periodic Transaction Limit we will advise you.
- All Transactions made on your Account must be authorised by us. Circumstances where Transactions may not be authorised are where:
  - the Transaction would mean you are in excess of the Transaction Limit;
  - your Account is in default; or
  - there has been unsatisfactory Account performance or conduct; or
  - there is suspicious or fraudulent conduct; or
  - we are required to or instructed by a regulator, enforcement officer or court of law;
  - we become aware of a change in your financial circumstances that may affect your ability to make Payments under the Agreement; or
  - there is no active direct debit set up for Account Payments; or
  - we reasonably suspect or become aware that you have breached or are likely to breach any of these Terms and Conditions; or
  - there is, has been, or we become aware of a potential business disruption or technology issue which affects a Transaction, your Account or the services we provide under the Agreement.
- **Compliance with the Law**
  - Despite any provisions of these Terms and Conditions, in providing the services under these Terms and Conditions, we will be entitled to take any action as we consider necessary in our absolute discretion to ensure services provided under these Terms and Conditions are in compliance with all Applicable Laws.
  - You agree strictly to comply with all Applicable Laws. If we consider you have not so complied, we may terminate these Terms and Conditions immediately without notice.
- **Australian Dollars**
  - All payments made by you to us and by us to a Service Provider or to you will be in Australian dollars unless otherwise agreed.

## 5. PAYMENTS

- **How to make Payments**
  - Payments must be made by either:
    - direct debit from a nominated bank account;
    - debit card; or
    - credit card,

together “**Payment Methods**”.

- **Automatic Payment**

- An automatic Payment is a Payment made via the Payment Method you have chosen (“**Nominated Payment Method**”). The Payment is automatically charged directly to your Nominated Payment Method on a one-time or regular basis in agreed upon amounts as outlined in the Payment Schedule. You can update or change your Nominated Payment Method at any time by contacting us. Fees and charges may apply.
- Subject to the other terms of the Agreement, you expressly consent to, authorise and instruct us to deduct Payment amounts from your Nominated Payment Method in accordance with the Payment Schedule. You acknowledge that you are giving us the ability to collect variable Payment amounts from or to your Nominated Payment Method, in accordance with your Payment Schedule and the terms of the Agreement.

- You are responsible for ensuring that you have sufficient funds available in your Nominated Payment Method available to make automatic Payments on the dates specified in your Payment Schedule. You are liable for any fees or charges imposed by your Nominated Payment Method (e.g. interest charges on a nominated credit card), except to the extent that such fees or charges arise as a result of our error or system failure. If any fees or charges are imposed as a result of our error or system failure, please provide us with a copy of the relevant records, and we will reimburse you for the relevant fees or charges.
- If an automatic Payment fails (for example, if your Nominated Payment Method is a credit or debit card which has expired), Late Fees may apply unless you otherwise make the scheduled Payment on or before the relevant due date. You authorise us to satisfy any amount you owe us by:
  - debiting your Nominated Payment Method at a later time or date;
  - debiting any other card which you have provided details of;
  - offsetting the Payment amount against any amounts we may owe to you; or
  - any other legal means.
- Please see clause 2 below for more information regarding Late Fees.

## 6. FEES AND CHARGES

- **Our Fees**
  - You must pay us the fees and charges set out in the Fee Schedule, as varied or updated from time to time. We will debit the fees and charges to your Account when they are payable and they will appear on your Statement.
- **Late Fees**
  - Late fees will apply where you do not make Payments in accordance with the Payment Schedule. Details of late fees are set out in the Fee Schedule.
  - If you are unable to make Payments in accordance with the Payment Schedule, or the fees and charges applicable to your Account, please contact us as soon as possible. Please refer to our Hardship Policy for further information.
- **Government Fees and Charges**
  - You must pay all Government duties, rates, taxes and charges now, or in the future, charged on or otherwise payable in relation to your Transactions. You must pay us the amounts in accordance with the relevant legislation, whether or not you are liable for them under that legislation. We may debit these to your Account and they will appear on your Statement.

## 7. STATEMENTS

- You are also entitled to ask for a Statement showing the Transactions and Outstanding Balance of your Account at any time. We may charge you a fee to provide Statements on request.
- All Statements are provided electronically. It is your responsibility to check your Statement carefully as soon as you receive it and immediately notify us of any errors or unauthorised Transactions.

## 8. AMENDMENT AND TERMINATION OF THIS AGREEMENT

- **Amending these Terms and Conditions**
  - We may amend, change, revise, add, modify or replace these Terms and Conditions without your consent by giving:
    - forty (40) business days' written notice of changes to our fees, including the introduction of a new fee or an increase to an existing fee; and
    - thirty (30) business days' written notice of changes which are material or to your detriment, including changes in relation to:

1. Payments;
2. Transaction Limits;

3. functionality of our services; or
  4. introduction of new services or removal of existing services.
- When any amendments to these Terms and Conditions are made, we will make the most recently updated Terms and Conditions available on our Website. If at any time you would like to receive the latest copy of the Terms and Conditions, please email us.
  - Where the variation is not material or to your detriment, we may notify you after we have made the change or not give you any notice.
  - If you object to any changes, you must notify us within fourteen (14) days of the date the notice is deemed to be received under clause 15. If you do not do so, you will be deemed to have accepted the changes. If you give us notice that you object, then the changes will not bind you; but we may require you to (and you must) exit your Agreement with us as soon as reasonably practicable.
  - You understand that these Terms and Conditions cannot be modified by you via any verbal statements or written amendments without written acceptance or confirmation by us.
  - **Termination**
    - You may terminate your Agreement with us by giving us written notice or by contacting us. On termination of the Agreement:
      - no further Transactions will be permitted under the Agreement; and
      - your obligations under these Terms and Conditions will continue until you pay all amounts owed to us, including any Outstanding Balance or applicable fees and charges.
    - We may also terminate your Agreement with us with immediate effect by notice in writing to you if:
      - you are persistently in default in the performance or observance of any obligation on its part arising under this Terms and Conditions;
      - you assign this Terms and Conditions in breach of clause 2;
      - there is fraudulent or suspicious conduct;
      - any of the representations or warranties given by you in Terms and Conditions are, or become, untrue; or
      - your Account is in default.
    - Nothing in this clause 2 affects our other rights in these Terms and Conditions. Further, indemnity and limitations in clause 11 provided by you in these Terms and Conditions survives termination.

## 9. DEFAULT

- You are in default if:
  - you are in breach of any obligation, warranty or representation made under these Terms and Conditions (whether by act or omission);
  - any information provided to us in connection with these Terms and Conditions is or has become untrue or misleading;
  - we believe, on reasonable grounds, that we were induced by fraud on your part to enter into these Terms and Conditions or any Transaction; or
  - we consider that you may be in breach of or have failed to comply any Applicable Law.
- If you are in default we will send you a default notice in writing specifying the details of the default, how it may be corrected, and how long you have to correct it.
- If you do not remedy the default within seven (7) days:
  - all amounts you owe us (including amounts which have been accrued but not yet debited to your Account) will be immediately due and payable. We may exercise our rights under this Agreement at law including taking enforcement action; and
  - we reserve our rights to notify the Service Provider that your Account is in default and that no further funds or payments will be disbursed to the Service Provider in respect of goods and/or services provided to you.

- Enforcement expenses may be payable if you are in default. You must pay to us all reasonable enforcement expenses incurred by us or our agents in exercising our rights in relation to your default. Enforcement expenses when charged will be debited to your Account and will form part of the Outstanding Balance.
- Enforcement expenses include collection expenses, reasonable solicitors' legal costs and the reasonable expenses of our staff incurred in relation to any enforcement.

#### 10. YOUR CONSUMER RIGHTS

- As a consumer, you have certain rights under consumer protection legislation ("**Consumer Rights**"). These Consumer Rights include:
  - statutory guarantees under the Australian Consumer Law that goods will be of acceptable quality, match their description and be fit for any purpose made known to the consumer, and that services supplied will be provided with due care and skill and be reasonably fit for any specified purpose. When a statutory guarantee is breached, consumers are entitled to a range of remedies including, in some cases, damages for reasonably foreseeable losses; and
  - non-excludable implied warranties that financial services will be provided with due care and skill and that the services and any materials supplied in connection with them will be fit for any specified purpose.
- Nothing in this Agreement is intended to exclude, restrict or modify any of your Consumer Rights, including by limiting our liability or imposing liability on you in a manner which would be considered unfair under the relevant consumer protection laws.

#### 11. LIMITATION OF LIABILITY AND INDEMNITY

- **Limitation of Liability**
  - Subject to any laws restricting us from limiting our liability, and to the maximum extent permitted by those laws, we are not liable for:
    - any defects in the goods and services acquired by you through the use of the Account. You acknowledge and accept that all complaints about these goods and services must be addressed to the Service Provider who provided or sold those goods and services. Even if you make a complaint or dispute regarding a Transaction you must still pay us all amounts and charges charged to your Account;
    - any error or inaccuracy in, or unsuitability of, or omission from the Agreement, or any other information provided by us, whether negligent or otherwise;
    - any action we may take under these Terms and Conditions, so long as we act within the terms of its provisions and in particular act reasonably where required to do so;
    - anything which is beyond our control and the effect of which is beyond our control to avoid;
    - any government restriction, computer or telephone failure, unlawful access to our Website, theft, sabotage, war, earthquakes, strike, and, without limitation, any other conditions beyond our control; and
    - any claim, Loss, expense, cost or liability suffered or incurred by you (claims) except to the extent that such a Loss, expense, cost or liability is suffered or incurred as a result of our gross negligence or wilful default.
  - Unless we are prohibited from excluding such liability by law (for example, for Losses relating to death or personal injury or caused by our fraud), we will not be liable for any direct, indirect, special, incidental, punitive or consequential damages (including, without limitation, loss of business, loss of profits, failure to avoid a loss, loss of data, loss or corruption of data, loss of goodwill or reputation) caused by any act or omission of ours under this Agreement.
  - Regardless of whether we, our employees or agents, knew of the possibility of the claim being incurred, the limitations of liability in this clause 11 shall apply.
- **Indemnities**

- Subject to the Applicable Laws, you agree to continuously indemnify us, and keep us indemnified on demand, in respect of all Losses (including consequential losses), taxes, expenses, damages, charges, receipts, demands and expenses of any nature and on any account and liabilities present, future, contingent or otherwise and including legal fees and administrative costs on a full indemnity basis which may be suffered or incurred or brought against us or in connection with or caused by:
    - your breach of this Agreement;
    - any representation or warranty given by you being incorrect, misleading or untrue,

unless and to the extent only such is suffered or incurred as a result of our gross negligence or wilful default.

- To the extent permitted by law, you will indemnify, protect and hold us harmless from and against all Loss, liabilities, judgements, suits, actions, proceedings, claims, damages or costs resulting from or arising out of any act or omission by any person obtaining access to your Account whether or not you authorised such access.
- To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep The Tooth Market and its respective officers, employees, agents and representatives indemnified from and against all claims arising out of:
  - any default, whether by your act or omission under these Terms and Conditions;
  - any breach by you of any Applicable Laws;
  - any representation or warranty made or given by you under these Terms and Conditions proving to be untrue or incorrect;
  - any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you;
  - anything lawfully done by us in accordance with, pursuant or incidental to these Terms and Conditions;
  - any instruction, request or direction given by you;
  - by reason of The Tooth Market complying with any direction, request or requirement of any Applicable Laws, any government body or any regulatory body having jurisdiction over The Tooth Market.

## 12. WARRANTIES AND REPRESENTATIONS

- **Your Warranties**
- You undertake, warrant and represent to us, with the intention that the following undertakings, warranties and representations are repeated each time you provide instructions to us:
  - **legal disability:** you are not under any legal disability and are not subject to any law which prevents you from entering these Terms and Conditions or any Products;
  - **compliance with laws and valid obligations:** you are complying with all laws to which you are subject, and the obligations expressed to be assumed by you under these Terms and Conditions are your legal, valid, binding and enforceable obligations;
  - **able to pay debts:** you are able to pay your debts as and when they fall due and are not otherwise insolvent or presumed to be insolvent under any law;
  - **information accurate:** at all times the information provided by you to us will be complete, accurate and not misleading.
- **Notification of Changes**
  - You undertake that throughout the term of these Terms and Conditions you will promptly notify us of any change to your details including but not limited to:
    - your contact details;
    - you have changed your name, either first or last name;
    - you have been declared bankrupt or commit an act of bankruptcy; or
    - your Payment instructions change (for example you may wish to change your Nominated Payment Method).
  - You must also tell us if you think there is any information that we should be aware of about your ability to comply with this Agreement.

- **Statutory Warranties**

- Where any Applicable Law implies in these Terms and Conditions any term, condition or warranty, and makes void or prohibits excluding or modifying the application of or exercise of, or liability under such term, condition or warranty, such term, condition or warranty will be deemed to have been included in these Terms and Conditions. However, our liability for any breach of such term, condition or warranty will be limited, at our option, to any one or more of the following:
- if the breach relates to goods:
  1. the replacement of the goods or the supply of equivalent or similar goods;
  2. the repair of the goods;
  3. the payment of the cost of repairing the goods or acquiring the relevant goods, or
  4. payment of the cost of having the goods repaired; or
- if the breach relates to services:
  1. the supplying of the services again; or
  2. the payment of the cost of having the services supplied again.

### 13. DISPUTE RESOLUTION

- **Informing Us About Disputes**

- You should inform us immediately in writing of any dispute or difference whatsoever in connection with these Terms and Conditions. We will investigate and endeavour to resolve any dispute or difference in accordance with our internal customer service team.
- You can contact us by:

- **Email:** [hello@thetoothmarket.com.au](mailto:hello@thetoothmarket.com.au)

- **Telephone:** 0483 851 321

- **Website:** [com.au](http://com.au)

- **How Disputes Are Dealt With**

- Any dispute or difference in connection with this Terms and Conditions must be dealt with by you in Australia, in accordance with our procedures from time to time for handling disputes.
- We will provide you with a final written response within 45 days.
- Where the event the dispute or difference is unable to be resolved by us to your satisfaction in accordance with our internal complaints handling system you may refer the dispute or difference to the Australian Financial Complaints Authority (“**AFCA**”) for determination in accordance with their rules:

**Phone:** [1800 931 678](tel:1800931678)

**Internet:** [www.afca.org.au](http://www.afca.org.au)

**Email:** [info@afca.org.au](mailto:info@afca.org.au)

**Mail:** GPO Box 3, Melbourne, VIC 3001

- If the dispute or difference does not fall within AFCA’s rules:



- the dispute or difference may be submitted by us to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules the Arbitrator will be a person recommended by the Western Australian Chapter of the Institute of Arbitrators and Mediators of Australia; or
- you may request us to refer the dispute to arbitration in accordance with clause 2(d)(i) above, and:
  - 1. we may decide in our absolute discretion whether to agree to any such request;
  - 2. without agreement by us in accordance with this paragraph, you will not be able to refer the dispute or difference to arbitration, but will have to submit for the benefit of us only the dispute or difference to the exclusive jurisdiction of the Courts of Western Australia.
- You and we agree to accept any determination of the arbitrator under sub-paragraphs (b) or (c) above as final and binding and submit for the benefit of us only, to the exclusive jurisdiction of the Courts in Western Australia for the enforcement of any such determination. For the avoidance of doubt, this clause will not prevent us from commencing proceedings in any other jurisdictions for the enforcement of any such determination.
- **Where We May Commence Legal Proceedings**
  - Clause 2 is for the benefit of us only, and it does not prevent us from commencing proceedings against you in any relevant jurisdiction, in addition to submitting any dispute or difference whatsoever with you in connection with this Terms and Conditions to arbitration in accordance with clause 13.2(d)(i) of this Terms and Conditions.

#### 14. PRIVACY

- **Personal Information**
  - In the course of opening your Account and providing services to you under these Terms and Conditions, it will be necessary for us to obtain and hold personal information that we will obtain from you in accordance with Applicable Laws. You agree that we can rely on, hold and process personal information for the purpose of performing our services and obligations under these Terms and Conditions and for the purpose of improving those services.
  - If you do not provide the information requested by us or agree to our information handling practices detailed in these Terms and Conditions, we may not be able to provide our services to you.
  - We collect, use, hold, handle and/or disseminate your information in a way that is at all times compliant with the Privacy Act 1988 and its provisions. You can access our Privacy Policy here: <https://www.fundmydental.com.au/privacy-policy/>
- **Access to and Change of Information**
  - You may contact us if you wish to request access to any personal information that we hold about you.
  - You must immediately notify us if any of your personal information that you have previously provided to us changes. This is a continuing obligation of yours.

#### 15. NOTICES

- **Notices Must be in Writing**
  - Subject to clause 2, any notice or other communication given or made under or in connection with the matters contemplated by these Terms and Conditions will, except where oral communication is expressly provided for, be in writing and will be sent to the address below:

#### **The Tooth Market Pty Ltd**

Address: Fern, 79 St Georges Tce, Perth, Western Australia 6000

Phone 0483 851 321

Email Address: [hello@thetoothmarket.com.au](mailto:hello@thetoothmarket.com.au)

**You:** The address and electronic mail address provided by you for this purpose.

- **Provision of Notice**

- A notice in writing can be provided personally, by letter or the Website.
- We may send notices to you at your last known home or email address, place of work, fax, telephone, pager number or other contact details.

- **When Notices are Received**

- Any such notice will be deemed to have been received:

- if delivered personally or by hand, at the time of delivery;
- if posted, within three (3) Business Days of posting;
- if oral, whether by telephone or face to face, when actually given;
- if by leaving a message on a telephone answering machine or voice mail, when the message was left;
- if posted on or provided through the Website or if sent by electronic mail, on posting, providing or sending.

- **Change of Notice Details**

- You may alter the address (including electronic mail address) to which Statements and other communications are issued to you, by written notice to us and we may notify you of a change to any of our details as stated above, provided in either case that such alteration will only be effective on the later of the date specified in the notice and the time of deemed service under clause 3 of this Terms and Conditions.
- You agree and acknowledge that you are solely responsible for ensuring that we have your current address, telephone number, facsimile number and electronic mail address.

- **Deemed Notice**

- You agree and acknowledge that any Statements and any other written notices will be deemed to have been properly given or made available if sent to the address (including electronic mail address) last notified to us by you or if posted on or provided through the Website.

## 16. MISCELLANEOUS

- **Governing Law and Jurisdiction**

- These Terms and Conditions will be governed by and construed in accordance with the law of Western Australia, Australia.
- You and we submit, for the benefit of us only, to the exclusive jurisdiction of the law of Western Australia, Australia. For the avoidance of doubt, this clause 1 will not prevent us from commencing proceedings in any other relevant jurisdiction.

- **Assignment and Delegation**

- The following provisions apply in relation to assignment and delegation:
  - You may not assign or deal with any of your rights or delegate any of your obligations under these Terms and Conditions to any person without our prior written consent.
  - We may assign or deal with our rights or delegate any of our obligations under these Terms and Conditions to any person, without the need to obtain consent to you, subject to obtaining regulatory approval where, and to the extent that such approval is required by law.
  - You agree that we may appoint third party collections agencies to collect any amounts owing to us under these Terms and Conditions without your consent. You consent to us disclosing on a continuous basis any information or documents

relating to you we consider necessary to assign such rights, manage the assigned Terms and Conditions and assess your total liabilities to us and any related entity.

▪ **Cumulative Rights and Remedies**

- The rights, powers, authorities, discretions and remedies of a party under these Terms and Conditions are cumulative and not exclusive of any rights or remedies provided by law.

▪ **Rights of Third Parties**

- Nothing in these Terms and Conditions is intended to confer on any person other than us or you any right to enforce any term of these Terms and Conditions.

▪ **Illegality**

- If at any time any provision of these Terms and Conditions is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms and Conditions under the law of that jurisdiction nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction will be in any way affected.

▪ **Delay, Omission and Waiver**

- The following provisions apply to any delay, omission and waiver:

- No delay or omission on our part in exercising any right, power or remedy provided by law or under this Terms and Conditions, or partial or defective exercise thereof, will:
  1. impair or prevent further or other exercise of such right, power or remedy; or
  2. operate as a waiver of such right, power or remedy.
- No waiver of any breach of any term of these Terms and Conditions will (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.

## 17. INTERPRETATION AND DEFINITION

○ **Interpretation**

- The defined terms used in these Terms and Conditions are capitalised and set out in this clause.
- If there is any conflict between the terms of these Terms and Conditions and any Applicable Law, the Applicable Law (to the extent it cannot be excluded or modified by this Terms and Conditions) will prevail.
- In these Terms and Conditions any reference to a person includes bodies corporate, unincorporated associations, partnerships and individuals.
- In these Terms and Conditions, all references to times of the day are to the time in Perth, Western Australia, Australia, unless otherwise specified.
- Headings and examples in these Terms and Conditions are for reference only and do not affect the construction of the Agreement.
- In these Terms and Conditions any reference to any enactment includes references to any statutory modification or re-enactment of such enactment or to any regulation or order made under such enactment (or under such a modification or re-enactment).
- The terms and expressions in these Terms and Conditions have defined meanings, these meanings and the rules of interpretation, are set out in clause 2.

○ **Definitions**

In this Terms and Conditions, the following terms and expressions have, unless the context otherwise requires, the following meanings:

|                     |   |
|---------------------|---|
| ACCOUNT             | means an account we have opened to make Transactions on your behalf.  |
| AGREEMENT           | means these Terms and Conditions, the Fee Schedule, the Payment Schedule and any information on our Website, as amended, varied, or replaced from time to time, which together govern our relationship with you.  |
| AML/CTF LAWS        | means the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> and all regulations, rules and instruments made under that Act.   |
| APPLICABLE LAWS     | means all:<br><br>(a) applicable provisions of laws and regulations, including all relevant rules of government agencies, and self-regulatory organisations, that apply to the parties, the Agreement and the transactions contemplated by the Agreement; and<br><br>(b) applicable Australian law. |
| BUSINESS DAY        | means any day other than a Saturday, Sunday or public holiday on which banks are open for business in Perth, Western Australia, Australia.  |
| INVOICE             | means an Invoice provided by the Service Provider to The Tooth Market as confirmation of goods and services provided to you.  |
| OUTSTANDING BALANCE | means the difference between all amounts credited to and all amounts debited from your Account.   |
| PAYMENT             | means a payment made, or required to be made, in accordance with the Payment Schedule.  |

|                      |   |
|----------------------|---|
| PAYMENT METHOD       | means any payment method accepted by The Tooth Market from time to time.  |
| PAYMENT SCHEDULE     | means, in relation to a Transaction, a list of Payment amounts that The Tooth Market is entitled to receive from you. For the avoidance of doubt, the applicable time zone for all dates provided as part of a Payment Schedule shall be the applicable time zone in Perth, Western Australia, Australia. |
| SERVICE PROVIDER     | means a dentist who is registered with us to accept payment for their services via <a href="http://fundmydental.com.au">fundmydental.com.au</a> .   |
| STATEMENT            | means a statement of account issued by us in respect of your Account.   |
| TERMS AND CONDITIONS | means this Terms and Conditions document which forms part of the Agreement.   |
| TRANSACTION          | means a payment made by us to your Service Provider, upon receiving an Invoice, authorised by you and accepted and authorised by us under these Terms and Conditions.   |
| TRANSACTION LIMIT    | means the limit defined in clause 4.4 of these Terms and Conditions.  |
| WEBSITE              | means <a href="http://thetoothmarket.com.au">thetoothmarket.com.au</a> .  |

## 18. FEE SCHEDULE

- **Establishment Fee**
  - Depending on your Invoice total we will charge a fee of \$39 or \$79 to your Account upon your acceptance of the Agreement.
  - The Establishment Fee is payable upfront.

- **Late Payments**
  - If you fail to pay any amounts due to us in accordance with the Payment Schedule, fees will apply on each Payment that is due but not received. For the avoidance of doubt, fees will not be applied until the day immediately following the day that the Payment is due.
  - We may, at our sole discretion, reasonably delay the application of, or waive wholly or partly, any fee. If fees are incurred as a result of The Tooth Market's error, please let us know.
  - The following fees apply to late Payments:
    - \$29 fee if a Payment is due from you but not received by us in accordance with the Payment Schedule; and
    - a further \$29 fee added seven days after the Payment is due if the Payment is still unpaid. This further \$29 fee will be added weekly until the Outstanding Balance is paid. Fees for late Payments are capped at 10% of your Transaction Limit.
  - Please note, there are no partial fees, so all applied fees in relation to late Payments are \$29.
- **Request to Change Payment Method**
  - Where you make a request to update or change your Nominated Payment Method a fee of \$10 will apply to each request.

## 19. PAYMENT SCHEDULE

- On the Acceptance Date, we will debit the Establishment Fee from your Account.
- Where you have been provided with goods and/or services by a Service Provider on the Acceptance Date, a Payment of \$39 per week will be debited from your Nominated Account or Payment Method ("**Weekly Payment**"), commencing on the Acceptance Date.
- In the event goods and/or services were not provided by the Service Provider on the Acceptance Date, the Weekly Payment will commence on the day we receive an Invoice from the Service Provider in respect of goods and/or services provided to you.
- The Weekly Payment will cease where you have repaid in full the Outstanding Balance and all applicable fees and charges. This means that your final payment will be \$39 or the remaining amount owing (where this amount is less than \$39).