Appendix 5 – Online Card Payment Services Terms and Conditions

This Appendix 5 forms part of the Payment Services Agreement on which the Service is provided to Clients of Monoova. In addition to the terms of the Payment Services Agreement, you agree to these terms and conditions when using the Services as described in this Appendix 5 with Monoova.

1. Definitions and Interpretations

The interpretations clause as set out in the Payment Services Agreement shall apply to this Appendix as if it was set out in full. In this Appendix 5, the following capitalised terms have the meaning set out below unless already defined in the Payment Services Agreement.

Accepted Merchant Agreement or **Sponsored Merchant Agreement** means the agreement between Monoova and you in respect of the supply of the Services and includes this Appendix.

Accepted Merchant or **Sponsored Merchant** means you, in your capacity as a merchant accepted by Monoova to receive the Services under the Accepted Merchant Agreement or Sponsored Merchant Agreement.

Account means your account with Monoova.

Acquirer means an organisation which Monoova has an arrangement with regarding access to Card Schemes and Card Transactions and at the date of this Agreement includes American Express and GPA.

Acquirer Agreement means the payment facilitator agreement between Monoova and an Acquirer, as amended from time to time.

American Express means American Express Australia Limited ACN 108 952 085.

Authentication Procedures means those procedures as set out in the Card Scheme Rules.

Business Day means a day other than a Saturday, Sunday or national public holiday in Sydney, Australia.

Card Schemes means Visa, Mastercard, American Express and any other similar card scheme providers as agreed to by Monoova from time to time.

Card Scheme Rules means the relevant rules and regulations which regulate participants in the respective Card Schemes, as amended or varied from time to time.

Card Transaction means a sales transaction (and any tip or other amount) and refund transaction involving Nominated Cards however processed.

Cardholder or **Card Member** means the person or entity in whose name the Nominated Card has been issued.

Chargeback means the reversal of a Card Transaction (in whole or in part) by a card issuer, a Card Scheme, an Acquirer or Monoova in accordance with the Card Scheme Rules, and includes the debiting of your account for the amount of that transaction and any associated fee.

Client has the meaning given to it in the Payment Services Agreement.

Credit Card means a card that is recognised as a 'credit card' by the Card Schemes. For the purpose of the Authentication Procedures, a Credit Card also includes a Commercial Card or a Charge Card.

Customer means a Cardholder or other person making a payment to an Accepted Merchant as a customer through or using the Services subject of this Appendix.

Data Security Standards means the data security standards mandated by the Card Schemes for the protection of Cardholder details and Transaction information (including the Payment Card Industry Data Security Standards (PCI-DSS Standards) and the Payment Application Data Security Standard (PA-DSS)), issued by the Payment Card Industry Security Standards Council, as amended from time to time), and any additional standards of which GPA advises Monoova from time to time.

Debit Card means a debit card issued by a bank (or designated as a debit card by one of the Card Schemes, known as a Card Scheme Debit Card) which is linked to a bank account that may be used to withdraw cash from an ATM (auto-teller machine) or to pay for goods or services via the Merchant Services facility. It does not include Credit Cards or Charge Cards.

GPA means Global Payments Australia 1 Pty Ltd ABN 26 601 396 543.

Interchange Party has the meaning given to it in the Payment Services Agreement.

Marks means names, logos, service marks, trademarks, trade names, taglines, card art, design or imagery or other proprietary designations.

Merchant Services means the merchant services facility provided by GPA to Monoova in conjunction with an approved Payment Services Gateway Provider, who utilise the Authentication Procedures.

Merchant Services Transaction means a transaction carried out through or using the Merchant Services.

Monoova means Monoova Payments Pty Limited trading as Monoova ABN 38 126 015 227.

Nominated Card means a type of Credit Card or Debit Card issued by a bank or financial institution, in respect of a Card Scheme that is applicable to you.

Payment Services Gateway Provider means a third-party provider of software and internet technology that enables Transactions to be made securely over the internet to Monoova as the acquiring institution, in accordance with the Authentication Procedures.

Personal Information has the meaning given to it under the *Privacy Act 1988* (Cth).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Prohibited Goods and Services means goods and/or services of a kind which are restricted from time to time under Card Scheme Rules and may include, without limitation, unlawful goods or services, counterfeit or replica goods, tobacco and e-cigarettes, and sexually based goods and services.

Related Bodies Corporate has the meaning given to it in the *Corporations Act* 2001 (Cth).

Relevant Laws means any:

(i) statute, ordinance, code or other law including regulations and other instruments under them;

(ii) code of practice, guidelines or standards issued by relevant regulators or industry bodies, whether or not having the force of law; and

(iii) Card Scheme Rules (including the CECS Regulations).

Service means the payment services for Clients to accept online Card Transactions for Nominated Cards as described in this Appendix.

Transaction means a Merchant Services Transaction and a Card Transaction, as applicable.

Tri-Party Agreement has the meaning given in clause 3.

we, us or **our** means Monoova.

Wilful Misconduct means a deliberate act or omission done (or omitted to be done) which knowingly constitutes a breach of this Appendix and the Payment Services Agreement, or is intended to cause, or is in reckless disregard of or wanton indifference to, foreseeable and harmful consequences.

you and your means the holder of the Account, being a Client of Monoova.

2. Inconsistencies

(a) In the event of any inconsistency between the terms and conditions of this Appendix, the Payment Services Agreement and the requirements set out in the applicable Card Scheme Rules, the Card Scheme Rules prevail to the extent of that inconsistency.

(b) In the event this Appendix and the Payment Services Agreement are inconsistent with the Acquirer Agreement for the purposes of the Services provided by Monoova to you, Monoova may, in accordance with clauses 17 and 18 of the Payment Services Agreement (as applicable), amend the terms and conditions of this Appendix to make these terms and conditions consistent with the Acquirer Agreement.

(c) Without limiting clauses 2(a) and 2(b) above, in the event of an inconsistency between this Appendix and the Payment Services Agreement as regards the Services under this Appendix, this Appendix prevails to the extent of the inconsistency.

3. Tri-Party Agreement with Monoova and GPA

(a) You acknowledge that in respect of Card Transactions other than American Express Card Scheme Card Transactions via GPA:

(i) the Tri-Party Agreement in the form set out in Annexure 1 to this Appendix will apply to you and Monoova in respect of Card Transactions and to the extent that the remaining provisions of this Appendix 5 do not conflict with the Tri-Party Agreement, such remaining provisions will continue to apply to you in relation to our Service; and

(ii) GPA is a party to the Tri-Party Agreement in respect of the Card Transactions.

(b) For the avoidance of doubt, notwithstanding GPA being a party to the Tri-Party Agreement, Monoova will continue to perform the Service and provide the Service to you.

3A. American Express

Where you choose to accept American Express cards as part of the Service and Monoova agrees to offer such Service (if and when available) to you, the following provisions apply. In this clause 3A, capitalised terms that are not defined in this Appendix or the Payment Services Agreement have the meaning given to them in the American Express terms and conditions referred to in clause 3A.

(a) Without limiting any other provision of the Payment Services Agreement relating to data, you agree that Monoova may disclose transaction data, data about you as Sponsored Merchant, Personal Information and other information about you, to American Express and its affiliates, agents, subcontractors, and employees, and that American Express and its affiliates, agents, subcontractors, and employees may use such information to perform the Services, operate and promote the network, perform analytics and create reports, and for legal, regulatory or compliance reasons, or for any other lawful business purpose.

(b) You authorise Monoova to submit Transactions to American Express and receive settlement from American Express on your behalf.

(c) You must display the American Express Marks and any other approved American Express logos on any payments or check out web page or app screen in a manner that is no less prominent than the Marks, logos or other images of any other card scheme, use those Marks and logos only in accordance with any brand or usage guidelines American Express or Monoova notifies to you, and give American Express equal representation with any signage, decals or other identification when promoting payment methods and remove them should this Appendix, the Sponsored Merchant Agreement or your acceptance of American Express Cards be terminated.

(d) Without limiting any other provision of the Payment Services Agreement you must co-operate with us and provide reasonable assistance in the resolution of any complaint, dispute or Chargeback affecting an American Express Card Member or Transaction, and must comply with the requirements relating to Card Member disputes, transaction processing, authorisation and submission, and the protection of Card Member information, set out in the documents referred to in clause 3A(h).

(e) You must maintain a refund policy which is disclosed to your customers at the time of purchase and which complies with all applicable laws. The refund policy must be no less favourable as regards American Express payments in comparison with the refund policy as it applies to other payment methods.

(f) You must comply with the requirements relating to fees and surcharging in the documents referred to in clause 3A(h), including clause 2(c) (Honouring the Card) of the Terms and Conditions for American Express Card Acceptance, as amended from time to time. You must not charge, impose, recover or attempt to recover from any Card Member any fee, surcharge or additional amount in connection with or as a condition of accepting an American Express Card. Where American Express instructs Monoova to do so, Monoova may cancel or suspend your American Express Cards acceptance facility, and you agree that Monoova may do so within the notice period specified in clause 7(b)(iv) or within such other period as American Express requires. You agree to indemnify Monoova against any fine, assessment or non-compliance fee imposed on Monoova by American Express in relation to your surcharging practices, except to the extent it arises from the fraud, gross negligence or Wilful Misconduct of Monoova.

(g) You agree to afford American Express the same rights under this Appendix and the Payment Services Agreement as are afforded to us, in respect of American Express related services. To the extent that American Express cannot lawfully exercise such rights you agree that we may exercise them as directed by American Express. American Express is a third party beneficiary of this Appendix in respect of this clause 3A, with the right (but not the obligation) to enforce the provisions of this clause 3A directly against you as necessary to protect the American Express brand. You also agree to promptly execute a deed poll in the form we reasonably require to confirm those rights upon our request.

(h) You expressly agree to accept American Express Cards in accordance with this Appendix, the Sponsored Merchant Agreement and the American Express terms and conditions set out below (each as amended from time to time), including any Australia specific requirements contained in those documents relating to fees and the prohibition on surcharging applicable to the acceptance of American Express Cards. You acknowledge that you have read the American Express terms and conditions set out below and consent to be bound by the terms relating to the Service. You agree and acknowledge that American Express may update the terms from time to time on its website at www.americanexpress.com or its successor website(s) and we will notify you of any material changes that may impact the Services where reasonably practicable:

A. Terms and Conditions for American Express Card Acceptance: go.amex/updatedterms

B. Merchant Regulations International: www.americanexpress.com/InternationalRegs

(i) You must not engage in any illegal or deceptive practices or process any Charges that would be considered Prohibited Uses (as defined in the Terms and Conditions for American Express Card Acceptance).

(j) Your website must not contain libelous, defamatory, obscene, pornographic, or profane material or any information that may cause harm to any individuals or to the American Express or Monoova brand.

(k) You agree and acknowledge that if you are considered a '**High CV Merchant**' by American Express (being if you submit Charges in any consecutive 12-month period that exceed AUD$1,500,000), American Express may request Monoova to transfer you to a separate card servicing program and direct card acceptance agreement with American Express. In such case, American Express may agree to permit the High CV Merchant to designate Monoova as its agent to receive settlement amounts and perform certain responsibilities in relation to the High CV Merchant's acceptance of the card, subject to the High CV Merchant's entry into the relevant agreement(s) with American Express. In such case, you also represent and warrant to Monoova that you will comply with your obligations under such separate card servicing program and direct card acceptance agreement to the extent that Monoova continues to service you in connection with the services and must promptly notify Monoova if there is any potential or reasonably suspected breach of such program and/or agreement, or would otherwise have a material adverse effect on Monoova's provision of its services to you.

(l) Your business operation must not fall within any of the Prohibited Industries, Restricted Industries or other industries prohibited as set out in the International Merchant Regulations from time to time.

(m) You are to comply with American Express' Data Security Operating Policy (DSOP), a copy of which is available within the Merchant Regulations International (as updated from time to time), and the applicable PCI Security Standard Council requirements (e.g. PCI DSS) at https://www.pcisecuritystandards.org.

(n) You must give Monoova accurate information about your industry and business activities and must promptly notify Monoova of any change to them. You acknowledge that Monoova is required to record the correct Merchant Category Code (**MCC**) for your industry for all Charges submitted on your behalf, that American Express may audit that classification, and that Monoova may assign or re-assign your MCC (including at American Express' request where American Express determines that an incorrect MCC has been assigned).

(o) You must comply with any industry specific requirements applicable to your acceptance of American Express Cards that Monoova notifies to you in writing from time to time.

(p) You agree to abide by any limitation on the liability of American Express set out in the Acquirer Agreement between Monoova and American Express, and acknowledge that American Express has no liability to you in connection with the Service. The limitations and exclusions of liability set out in the Payment Services Agreement apply to this Appendix, including to your acceptance of American Express Cards.

(q) You are responsible for all Charges, Credits, Chargebacks, credit and fraud losses, disputes and customer service issues relating to American Express Card Transactions submitted on your behalf. Monoova may refuse, reverse, charge back, deduct or set off the amount of any such transaction and debit your Account accordingly, on any of the grounds set out in clauses 8.1, 8.2 and 8.3 of Annexure 1 (reading references in those clauses to GPA as references to American Express) or where American Express exercises Chargeback or recourse rights against Monoova in respect of that transaction. You acknowledge that American Express may place you or Monoova on a fraud full recourse programme, including in respect of transactions preceding the date on which that programme is applied, and that Monoova may pass the effect of that programme through to you on notice.

(r) You must pay or reimburse Monoova for any fee, assessment, fine or non-compliance fee levied on Monoova by American Express to the extent it arises from your acts or omissions or those of your Customers, except to the extent caused by the fraud, gross negligence or Wilful Misconduct of Monoova. You acknowledge that American Express does not refund the merchant service fee on refunds or Chargebacks, and that fees charged to you in respect of a Card Transaction are not refundable in those circumstances.

(s) You must not use the Service to submit American Express Card Transactions on behalf of, or as an intermediary or aggregator for, any other person, and must not facilitate payment by Cardholders of invoices issued by third parties with whom you have no contractual relationship or whose identity you have not verified.

(t) Your acceptance of American Express Cards under this Appendix terminates automatically and immediately if the Acquirer Agreement between Monoova and American Express terminates for any reason, or if American Express requires Monoova to cease submitting Charges on your behalf.

(u) You acknowledge that you are not a third party beneficiary of, and have no rights under, the Acquirer Agreement between Monoova and American Express or any other agreement between Monoova and American Express.

4. Your Other Obligations

(a) Without limiting your obligations as set out in the Payment Services Agreement, you must:

(i) comply with this Appendix and the Payment Services Agreement, Card Scheme Rules, Data Security Standards (including those relating to privacy and the collection, storage and use of personal and sensitive information, data security, cyber security and electronic transactions) and all Relevant Laws;

(ii) notify Monoova before establishing a Card Transaction facility on any public-facing website, and comply with our reasonable directions in respect of such website as set out in clause 5 of this Appendix;

(iii) comply with Monoova's reasonable and lawful instructions;

(iv) provide Monoova with all necessary information and documents relevant to you, the Service and your Customers to enable Monoova to perform the Service, provided that Monoova gives you reasonable prior notice of any such requests;

(v) promptly notify Monoova of any change in its financial position which will, or is reasonably likely to, affect Monoova's ability to perform its obligations under the Acquirer Agreement; and

(vi) promptly notify Monoova of all enquiries or complaints by your Customers in respect of transactions and the Service.

(b) You must not:

(i) supply goods or services outside of Australia without Monoova's consent (not to be unreasonably withheld or delayed);

(ii) accept payment for goods or services that have been supplied to a Cardholder by a third party;

(iii) accept payment for Prohibited Goods and Services;

(iv) accept split payments by splitting a Card Transaction into two or more transactions;

(v) process refunds for any Card Transaction except where the entire transaction (or a discrete part of the transaction that relates to a discrete itemised part of the consideration for the transaction) is reversed and the refund is processed to the original card used in the Card Transaction;

(vi) where the Card is active, process whole or partial refunds for a Card Transaction by cash, cheque or electronic deposit;

(vii) knowingly submit any transaction that is illegal or that you should have known was illegal; or

(viii) without the prior consent of Monoova:

(A) change your ownership or effective control in any way;

(B) change your principal business activities and the fundamental line of business or commercial activities as notified to Monoova at the time of entry into this Appendix; or

(C) change the types of goods or services that you supply to your Customers as notified to Monoova at the time of entry into this Appendix.

(c) Without limiting any rights of Monoova under this Appendix and the Payment Services Agreement, if you undertake any of the changes referred to in clause 4(b)(viii), you must re-apply with, and be approved by, Monoova to receive the Service.

5. Website Requirements

(a) Unless you are otherwise notified in writing, you must, before you accept any electronic commerce transaction over the Internet, establish and maintain at your own expense a website that complies with the requirements of clause 5.

(b) The website must clearly display the following information:

(i) your business name (and Australian Business Number as applicable);

(ii) the address of your approved place of business;

(iii) your business contact details, including telephone numbers and an email address;

(iv) a complete description of the goods and services available for purchase on your website with the price advertised in Australian dollars or, if we have agreed that you can process transactions in another currency, that currency;

(v) details of your return and refund policy, including how a transaction can be cancelled by a Cardholder;

(vi) details of your delivery times for goods and services. Delivery times are to be appropriate for the type of business carried on by you. If the delivery is to be delayed, the Cardholder must be notified of the delay and an option provided to them to obtain a refund;

(vii) details of any Australian export restrictions (if applicable);

(viii) details of your privacy policy and how you intend to deal with, or share, Personal Information obtained from and about the Cardholder; and

(ix) a description of the measures you have to maintain the security of:

A. Cardholders' account data;

B. any other information which, by notice, we or GPA require you to display from time to time; and

C. any other information required for the purpose of complying with card scheme rules.

(c) You must provide us reasonable access to view, monitor and audit the pages of your website.

(d) Your website payments page must be protected by The Transport Layer Security 1.2 (TLS 1.2) protocol or any other form of security method approved in writing by us.

6. Security

(a) At any time we may, at our discretion and as a condition of the provision of further Services to you, require you to:

(i) make payment/s to us (as a deposit held by us as security for your obligations to Monoova under this Appendix and the Payment Services Agreement) of an amount to be determined by Monoova (**Security Deposit**) by giving reasonable notice to you; and/or

(ii) provide to us alternative security or collateral (as security for your obligations to Monoova under this Appendix and the Payment Services Agreement) (**Security Instrument**) by giving reasonable notice to you;

provided always we are acting reasonably and it is in our legitimate business interest to do so in providing Services to you.

(b) We will usually only require you to provide a Security Deposit and/or Security Instrument if the Interchange Party notifies us that it intends to increase (or has increased) the deposit we must pay to the Interchange Party (because of their assessment of your business risk). However, we may also require a Security Deposit and/or Security Instrument in other circumstances to protect our legitimate business interest in providing Services to you.

(c) You agree to provide the Security Deposit and/or Security Instrument within three (3) Business Days or a longer period we tell you after we give you notice, and that we may suspend the provision of Services to you, or limit the volume of Services, if you fail to do so.

(d) If you provide a Security Deposit, you agree that:

(i) we will hold the Security Deposit under a flawed asset arrangement (this means that although we hold the Security Deposit for you, you have no right to demand repayment and no right to require us to pay it to any other person, until all of your contingent liabilities to us are extinguished, or we agree to release the Security Deposit);

(ii) the Interchange Party is entitled to draw on the Security Deposit, to pay amounts which you would otherwise be responsible for paying to the Interchange Party;

(iii) we may set-off against the Security Deposit any amounts we have paid or are liable to pay to the Interchange Party in respect of your Account and/or any other amounts which you owe us under this Appendix and the Payment Services Agreement;

(iv) we may, at our discretion, reduce or increase the sum of the Security Deposit by giving reasonable notice to you, in order to protect our legitimate business interest in providing Services to you;

(v) if any of the Security Deposit is depleted due to an event described in sub-clause (ii) and/or (iii) above, you must promptly notify Monoova and within three (3) Business Days or a longer period we tell you after we give you notice, replenish the Security Deposit to the level we specify, and we can suspend your use of the Services or limit the volume of Services until the Security Deposit is replenished in order to protect our legitimate business interest in providing Services to you;

(vi) we may give you notice that the Security Deposit has been depleted, however you acknowledge that it is your responsibility to monitor the level of Security Deposit and proactively ensure that it is not below the level we require from time to time in accordance with clause 6(a);

(vii) the balance of any Security Deposit will be paid to you once Monoova has received payment for all amounts owing to it by you and there is no longer any risk of any claim by the Interchange Party against Monoova in respect of your Account including pre-payment, reversal or Chargeback risks in relation to your transactions with the Interchange Party, which will usually be approximately 60 days after you permanently cease using the Services;

(viii) until released, Monoova has a security interest in the Security Deposit (presently and in the future) which secures your obligations to Monoova under this Appendix and the Payment Services Agreement and this Appendix and the Payment Services Agreement constitute a security agreement for the purposes of the PPSA.

(e) You agree that any interest accrued or earned on any Security Deposit, security or other collateral you have provided to, and/or held by, Monoova is retained by Monoova.

(f) Monoova may, by prior notice to you and at your expense, apply for any registration, or give any notification, in connection with any security interest under this clause 6. This includes registration under the PPSA for whatever collateral class Monoova thinks fit. You consent to any such registration or notification and agree not to make an amendment demand. To the extent the law permits, you waive your rights to receive any notice or statement that is required by any provision of the PPSA (including a notice of a verification statement). You agree that sections 96 and 117 of the PPSA do not apply. You must, at your expense, do anything reasonably required by us to enable us to register our security interest, with the priority we reasonably require and to maintain that registration.

(g) Nothing in this clause 6 prevents Monoova from taking collection action or legal action against you to recover any amounts outstanding from time to time.

7. Monoova Obligations and Rights

(a) Subject to the terms of the Payment Services Agreement including clause 17, Monoova will provide you with reasonable prior notice of changes to the Payment Services Agreement (including this Appendix) as a result of:

(i) any changes in the Data Security Standards;

(ii) any changes in Relevant Laws from time to time,

that would have a material impact on the Service under this Appendix; and

(iii) any other matters relating to the Service that would have a material impact on your use of the Service.

(b) Without limiting the rights of Monoova under the suspension rights clauses of the Payment Services Agreement, Monoova may by notice to you suspend the Service if:

(i) it is of the reasonable opinion that you have breached this Appendix; or

(ii) it is otherwise reasonable for Monoova to do so in the circumstances, including circumstances that may lead to or cause Monoova to breach its obligations under the Card Scheme Rules, its agreement with the acquirer or under any Relevant Laws,

and subject to the following:

(iii) Monoova must believe that doing so is reasonable for it to manage a material or immediate risk (including credit, legal, compliance, security or reputational risk) to its business or the Service(s) it provides, or that it considers the event to have a material impact on the Client's ability to meet its financial obligations to Monoova (or Monoova's ability to assess this);

(iv) if applicable, where the relevant breach or default by you is capable of being remedied in Monoova's reasonable opinion, Monoova will give a reasonable notice period to you to remedy the breach, before exercising any of its rights under this clause. The notice period shall not be less than twenty (20) days, unless it is reasonable for Monoova to give a shorter notice period, or no notice, in order to manage a material or immediate risk to its business or the Service(s) it provides.

(c) Without limiting the rights of Monoova under the termination rights clauses of the Payment Services Agreement, Monoova may terminate this Appendix by notice to you with immediate effect if:

(i) in the opinion of Monoova, an Acquirer or the relevant Card Scheme, you have utilised or attempted to utilise the Service in any unlawful, fraudulent, unconscionable or improper manner;

(ii) Monoova is required to do so by a Card Scheme or an Acquirer under the Card Scheme Rules or an Acquirer Agreement; or

(iii) your actions may lead to or cause Monoova to breach the Acquirer Agreement or may lead to or cause Monoova or an Acquirer to breach their obligations under the Card Scheme Rules or any other Relevant Laws, except to an extent that is cumulatively immaterial.

(d) Monoova does not collect, process or store the personal data of individuals within the European Union (**EU**) and is not subject to regulation under the General Data Protection Regulation (**GDPR**). For the avoidance of doubt, Monoova does not:

(i) operate within the EU or Switzerland;

(ii) offer goods or services to EU or Swiss data subjects;

(iii) monitor the behaviour of EU or Swiss data subjects, or

(iv) process personal data within the scope of the GDPR.

Consequently, Monoova will not provide any of the Services including the provision of card payment services where you are established in, or offer your goods or services to data subjects in, the EU or Switzerland. For the avoidance of doubt, this does not prevent the acceptance of a Nominated Card issued outside Australia in the ordinary course of a Card Transaction.

8. Audits

(a) Without limiting the rights to audit you under the Payment Services Agreement, you acknowledge and agree that Monoova, each Acquirer relevant to you and relevant Card Scheme operators (and their respective employees or representatives) may, from time to time and without notice to you, audit and review:

(i) your compliance with all Relevant Laws;

(ii) your operations and processes that support its obligations under this Appendix;

(iii) any transactions processed under this Appendix; or

(iv) the funds flow from you to Monoova or from Monoova to you,

provided that where such audit and review requires the provision of information by you, the attendance of Monoova, an Acquirer or Card Scheme operator or their respective representatives at your premises or the provision of assistance by you, then Monoova will provide reasonable notice to you of the requirement for such information, attendance or need for assistance.

(b) Monoova may audit your disbursement records by requesting the information directly from you or by analysing any internal records and information Monoova holds with respect to you and the provision of the Service.

9. Representations and Warranties

(a) Without limiting the representations and warranties from you under the Payment Services Agreement, you represent and warrant to Monoova that:

(i) information about the transactions which Monoova transmits to an Acquirer for you or arranges for you to be transmitted to an Acquirer has been obtained and provided in accordance with the terms of this Appendix;

(ii) if you or your Related Bodies Corporate or officers, employees or agents has at any time been listed on a database of terminated merchants maintained by any Card Scheme or has otherwise had services similar to the Service terminated by another acquiring bank, other acquirer or Monoova, you have disclosed that fact to Monoova.

10. Service Provider Requirements

(a) You agree and acknowledge that Monoova uses third party fraud prevention and monitoring services (**Fraud Prevention Services**) as part of providing the card payment services to you. In this regard, where required by such service providers, you are responsible for complying with their pass-through terms and conditions, including the following: **Exhibit A | Sift** where 'CLIENT' means you and 'CUSTOMER' means Monoova.

(b) Without limiting the indemnities you have provided in favour of Monoova, to the maximum extent permitted by law, you agree that you will defend, indemnify and hold harmless Monoova, its officers, directors and employees against any third party claim, demand, suit, investigation or proceeding relating to any violation or alleged violation by you of any terms of the pass-through terms in relation to the Fraud Prevention Services (current copy available here: **Exhibit A | Sift**), unless such claim, demand, suit, investigation or proceeding was caused directly by the fraud, gross negligence or Wilful Misconduct of Monoova, or a material breach of this Appendix and the Payment Services Agreement by Monoova that is unable to be remedied within a reasonable period of time as agreed by the parties (acting reasonably at all times).

ANNEXURE 1: TRI-PARTY AGREEMENT

This agreement applies to all clients of **Monoova Payments Pty Ltd trading as Monoova (ACN 126 015 227)** payment service who have been approved to accept Visa and Mastercard transactions.

This agreement is made between (1) you, the merchant (**you**); (2) Global Payments Australia 1 Pty Ltd (**GPA**); and (3) Monoova Payments Pty Ltd (**Monoova**).

1. Definitions

Unless the contrary intention appears, the following words have these meanings in this Tri-Party Agreement:

Banking Day means a day on which the Acquirer is open for general banking business in New South Wales, Australia and for the purposes of clause 9.1 only, a week day (other than Saturday, Sunday and Australian national public holidays).

Card means a card that has been designated by the issuer as a Visa or MasterCard card or a card issued by any other card scheme which you have agreed to accept, and we have agreed to process.

Card Transaction means a sales transaction (and any tip or other amount) and refund transaction involving Nominated Cards however processed.

Card Schemes means, unless otherwise agreed by the parties, Visa and MasterCard.

Card Scheme Rules means the rules and regulations which regulate participants in the Card Schemes.

Cardholder means the Person in whose name the Card has been issued.

Chargeback means the reversal of a Card Transaction (in whole or in part) by a card issuer, a Card Scheme, GPA or Monoova in accordance with the Card Scheme Rules, and includes the debiting of your account for the amount of that transaction and any associated fee.

Data Breach means any occurrence which results in the unauthorised access by a third party to confidential data relating to Card Transactions stored by your business or any entity engaged by you to provide storage or transmission services in respect of that data.

Data Security Standards means the Payment Card Industry Data Security Standards ("PCI DSS") mandated by the Card Schemes for the protection of Cardholder details and transaction information, and any additional or replacement standards of which you are advised from time to time.

GPA refers to Global Payments Australia 1 Pty Ltd, ABN 26 601 396 543.

Nominated Card means a type of Credit Card or Debit Card issued by a bank or financial institution, in respect of a Card Scheme that is applicable to you.

Payment Service means the service provided by Monoova as the payment facilitator.

Person includes an individual, firm, body corporate, unincorporated body or association, partnership, joint venture and any government agency or authority.

Personal Information has the meaning given to it under the *Privacy Act 1988* (Cth).

PIN means the personal identification number allocated by GPA, a card issuer or personally selected by the account holder.

Privacy Law means all legislation and principles relating to the collection, use, disclosure, storage and granting of access rights to Personal Information.

Related Body Corporate has the meaning given to it in the Corporations Act 2001 (Cth).

Relevant Law means any:

(a) statute, ordinance, code or other law including regulations and other instruments under them that are relevant to the obligations and rights of this Tri-Party Agreement; and

(b) any code of practice, guidelines or standards issued by relevant regulators or industry bodies, including any card scheme rules relevant to this Tri-Party Agreement.

Service Contracts has the meaning given to it in the Payment Services Agreement between you and Monoova.

Transaction Receipt means a document used to evidence a transaction.

we, us and our means, collectively, GPA and Monoova.

you and **your** means the Person to whom the Payment Service is provided by us.

2. Approval to Use Payment Services

2.1 You acknowledge that:

(a) the operation of this Tri-Party Agreement is conditional on GPA approving an application for Monoova to provide the Payment Services to you and any such conditions precedent as outlined in your Service Contract(s) with Monoova, including those set out in Monoova's Payment Services Agreement;

(b) in relation to information provided by you to Monoova in connection with your application:

(i) Monoova may provide that information to GPA;

(ii) we may rely on such information as being complete, accurate and not misleading or deceptive;

(iii) GPA is not obliged to verify the completeness or accuracy of the information it receives from Monoova;

(c) we may obtain from any Card Scheme or a person who is involved in any Card Scheme, any credit reporting agency or any other person, information about your merchant history or Personal Information about you, a Related Body Corporate, your officers, employees or agents for any purpose relating to the operation of those Card Schemes and we can use any such information to assess an application under clause 2.1(a);

(d) we can disclose information about your merchant history, a data breach and relevant Personal Information in the following circumstances:

(i) to any Card Scheme or to any person who is involved in any Card Scheme, information about you for any purpose related to the operation of those schemes, card fraud detection agencies (including information about termination of merchant solutions and reasons for termination of GPA merchant solutions);

(ii) where the law requires or permits us to do so;

(iii) where we have reasonable grounds to believe that either you are involved in dishonest or criminal activity, are a victim of such activity, may have information relevant to an inquiry into such activity or have experienced a data breach, to any state or federal law enforcement or regulatory agency whether or not we have been requested by that agency to provide such information;

(iv) to any related entities of ours and to any outsourced service providers engaged by us (for example, mail houses, debt collection agencies (where necessary) or data analytics providers);

(e) the decision whether to approve your application is at GPA's sole discretion and the reason for any decision which is made may not be given to you;

(f) an approval by GPA is specific to Monoova providing payment services to you and does not in any way constitute a representation by GPA that you will be able to use the services of another payment service provider or of GPA directly should you cease using Monoova's payment services for any reason; and

(g) any information obtained by GPA during its assessment of an application under clause 2.1(a) is and remains confidential to GPA and will not be shared with you. GPA is bound by Card Scheme Rules and all correspondence and discussions between Card Schemes and GPA are confidential as between GPA and the Card Schemes.

2.2 You represent and warrant that:

(a) any information you provide to Monoova in connection with an application for Monoova to provide the Services is complete, accurate and not misleading or deceptive;

(b) if you have disclosed Personal Information to Monoova in connection with the application under clause 2.1(a), you have obtained the relevant individual's prior consent to the disclosure and otherwise complied with your obligations under Privacy Law; and

(c) you are able to satisfy your obligations and responsibilities under this Tri-Party Agreement.

2.3 You acknowledge and agree that:

(a) Monoova and GPA are authorised to obtain from third parties financial and credit information relating to you in connection with our decision to approve your application and in respect of our continuing evaluation of your financial and credit worthiness; and

(b) any information collected by Monoova may be disclosed by us to GPA.

2.4 The Parties agree that no Party is or will be bound by this Tri-Party Agreement unless and until GPA has confirmed its approval for Monoova to provide the Payment Services to you.

3. Your Obligations

3.1 Without limiting your obligations to Monoova under your Service Contracts with Monoova (as defined under the Payment Services Agreement between you and Monoova), you:

(a) must immediately notify Monoova of any change to your financial position which may affect your ability to perform your obligations under this Tri-Party Agreement;

(b) must provide Monoova with prior written notice of any change in your place of business;

(c) not carry on business in a place which has not been approved by Monoova and must not move your place of business without our prior written consent (which shall not be unreasonably withheld);

(d) must not change your business name or ownership of your business without giving Monoova prior notice and not substantially change the type of goods and services you sell without our prior written consent (which shall not be unreasonably withheld);

(e) only submit a sales transaction where you are the supplier of the goods and/or services;

(f) not submit transactions on behalf of a third party. For the avoidance of doubt, this includes submitting transactions for goods or services sold on another Person's website;

(g) must allow the employees, contractors or agents of GPA or those of any Card Scheme reasonable access to your premises during normal business hours to check your compliance with this Tri-Party Agreement, the Data Security Standards or for the purposes of the relevant Card Scheme Rules;

(h) must provide Monoova and GPA with all information and assistance reasonably required to perform their obligations and to deal with any queries in relation to the Payment Service;

(i) must comply with all applicable Card Scheme Rules and Relevant Laws and contractual requirements in accepting card payments and performing your obligations under this Tri-Party Agreement; and

(j) will observe and implement the fraud prevention procedures set out in the manuals, guides or directions provided to you, unless otherwise mutually agreed to by the parties.

Data Security Standards

3.2 This clause applies to you if you collect payment data directly from a cardholder or store any cardholder data. In addition to the other provisions of this Tri-Party Agreement, you acknowledge and agree:

(a) you must protect stored cardholder data, regardless of the method used to store such data. Data storage also includes physical storage and security of cardholder data. Some examples of other data storage which must be secured include an access or excel database and hard copy files. Storage should be kept to the minimum required for business, legal, and/or regulatory purposes;

(b) you must not store the personal identification number (PIN) or sensitive authentication data after authorisation (even if encrypted);

(c) if Monoova or GPA tell you that you must comply with the Payment Card Industry Data Security Standards, you must, at your cost, successfully complete the protocols for PCI DSS within the time frame stipulated by Monoova or the Card Schemes. You acknowledge and agree that if you fail to do so:

(i) Monoova or GPA may terminate the merchant services;

(ii) you are liable for any fine imposed upon GPA by the Card Schemes as a result of your failure to comply; and

(iii) you are liable for any fines which the Card Schemes levy in the event that you suffer a card data compromise incident, and have not complied with the PCI DSS Accreditation program;

(d) GPA is obliged to report all Data Breach events to Card Schemes, law enforcement agencies and/or Australian regulators. You grant irrevocable and enduring consent for GPA to release details of any such Data Breach to the aforementioned bodies;

(e) if you have suffered a Data Breach:

(i) you must give GPA and its agents full access to your systems and databases to facilitate a forensic analysis to ascertain:

(A) what card data has been compromised;

(B) what weaknesses in the system permitted the unauthorised access to the data base; and

(C) whether card data was created, deleted, altered, copied or manipulated in any manner;

(ii) all costs of the forensic analysis must be paid by you; and

(iii) in order to continue processing Card Transactions, you must undergo a full Payment Card Industry Data Security Standard ("**PCI DSS**") accreditation. All costs of this accreditation exercise must be paid by you.

Your Duties to Cardholders

3.3 Subject to the other provisions of this Tri-Party Agreement, you:

(a) must accept any valid and acceptable Card in a transaction;

(b) must only send Monoova a sales transaction when you have committed to provide the goods and services to the customer;

(c) must not accept a Card in a credit card transaction for the purpose of giving a Cardholder cash;

(d) must perform all obligations (including supplying all goods and/or services) to the cardholder in connection with the sale;

(e) must not sell, purchase, provide or exchange any information or document relating to a Cardholder's account number, or Card number, or a transaction, to any Person other than:

(i) Monoova;

(ii) GPA;

(iii) the card issuer; or

(iv) as required by law;

(f) must destroy any document that is no longer required to be retained by applicable law or card scheme rules, in a manner which makes the information unreadable;

(g) must take reasonable steps to ensure that the information and documents mentioned in clause 3.3(e) are protected from misuse and loss and from unauthorised access, modification or disclosure;

(h) must not make any representation in connection with any goods or services which may bind Monoova, GPA or any Card Scheme;

(i) must not indicate or imply that we, GPA or any Card Scheme endorse any goods or services or refer to a nominated Card in stating eligibility for goods, services, or any membership;

(j) must not accept a Card or a transaction which is of a type you have been previously advised is not acceptable;

(k) must prominently and unequivocally inform the Cardholder of your identity at all points of Cardholder interaction (including on any relevant website, promotional material and invoice) so that the Cardholder can readily distinguish you from Monoova, any supplier of goods or services to you, or any other third party;

(l) must provide notice to any Cardholder with whom you enter into a transaction that you are responsible for that transaction, including for any goods or services provided, any payment transaction, related service enquiries, dispute resolution, and performance of the terms and conditions of the transaction;

(m) must not unfairly distinguish between issuers of a Card when accepting a transaction;

(n) must not refuse to complete a transaction solely because a Cardholder refuses to provide additional identification information in circumstances where we do not require you to obtain it;

(o) if you collect or store Cardholder information, you must comply with any Data Security Standards notified to you; and

(p) You must not transfer or attempt to transfer financial liability under this Tri-Party Agreement by asking or requiring a Cardholder to waive his or her dispute rights.

Recurring Transactions

3.4 You may only process a transaction as a recurring transaction if:

(a) you have obtained cardholder permission (either electronically or in hardcopy) to periodically charge for a recurring service;

(b) you retain this permission for the duration of the recurring services and make it available to us on request;

(c) you provide a simple and accessible online cancellation procedure, if the cardholder request for the goods or services was initially accepted online.

Indemnity

3.5 Without limiting the indemnities provided by you to Monoova under the Payment Services Agreement, you agree to indemnify, and hold GPA and Monoova (as applicable) harmless from and against any fines imposed on GPA by a Card Scheme (or those imposed by GPA on Monoova, as applicable) because of your conduct in relation to the merchant services, including any fines imposed as a result of an unacceptable rate of Chargebacks, except to the extent that the fines flow from fraud, Wilful Misconduct or gross negligence of GPA or Monoova (as applicable) or their agents.

4. Website Requirements

4.1 You must comply at all times with the website requirements as set out in Appendix 5 of the Payment Services Agreement.

5. Card Acceptance Requirements

5.1 You must:

(a) use reasonable care to detect forged or unauthorised signatures or the unauthorised use or forgery of a Card;

(b) notify Monoova if you become aware of or suspect fraud on the part of a Cardholder;

(c) not deliberately reduce the value of any one transaction by:

(i) splitting a transaction into two or more transactions; or

(ii) allowing a Cardholder to purchase items separately;

(d) establish a fair policy for dealing with refunds and disputes about transactions and include information about that policy on Transaction Receipts as required by Monoova;

(e) only submit a transaction as a refund to a Cardholder if it is a genuine refund of a previous sale transaction. The refund must be processed to the same card that was used in the original sales transaction and be for the original sale amount;

(f) give refunds for Card Transactions by means of credit and not in cash or cheque;

(g) if unable to process the transaction to the same payment credential, you may either:

(i) process the credit transaction to a secondary payment credential; or

(ii) refund the transaction amount through an alternative means (cash, cheque, in-store credit or prepaid card);

(h) not process a refund Card Transaction as a way of transferring funds between your accounts;

(i) if a Card Transaction for a sale does not cover the full amount of the sale:

(i) where the Card is used to make a deposit or pay an instalment you may accept the Card in payment of all or part of the outstanding balance; and

(ii) in any other circumstance you must obtain the balance due at the time the sale is completed in cash;

(j) not state or set a minimum or maximum amount for a Card Transaction without our prior written consent;

(k) not ask a Cardholder to reveal their PIN or any other secret identifier;

(l) contact Monoova for instructions if the identification of a Cardholder or the validity of the Card is uncertain; and

(m) not knowingly submit for processing any transaction that is illegal or that you should have known is illegal.

5.2 For remote Card Transactions, you must:

(a) take reasonable steps to verify the identity of the Person you are dealing with, in order to confirm that they are the genuine Cardholder; and

(b) record reasonable identification details of the Person you are dealing with, as well as the commencement and expiry dates of the Card.

6. Surcharging

6.1 You must not charge, impose, recover or attempt to recover from a Cardholder any surcharge, fee or other additional amount in connection with, or as a condition of, accepting a Card or processing a Card Transaction.

6.2 You must not represent or otherwise imply that any amount payable by a Cardholder in respect of a Card Transaction is a surcharge levied by a card scheme, by us or by any other financial institution.

Definitions

6.3 "Surcharge" means any fee charged by a merchant to a cardholder that is added to a transaction for the acceptance of a card.

6.4 Costs that form your "reasonable costs of card acceptance" will be determined having regard to the Reserve Bank of Australia's Guidance Note: Interpretation of Surcharging Standards, as amended or replaced from time to time.

7. Transaction Receipt

7.1 Unless we have agreed that we will provide the transaction receipt to the cardholder, you must give the Cardholder a copy of the Transaction Receipt for each transaction, but you must not charge a fee for doing so.

7.2 If you are notified that you must prepare the Transaction Receipt, you must ensure the information contained in the Transaction Receipt:

(a) is identical with the information on any other copy; and

(b) legibly includes the information notified to you.

7.3 You must provide Monoova with the Transaction Receipt and any other required evidence of the transaction within seven (7) days if you are asked by Monoova to provide it.

7.4 If you wish to change your Internet or email address, or telephone number appearing on the Transaction Receipt, you must notify Monoova in writing at least fifteen (15) Banking Days prior to the change taking effect.

8. Invalid or Unacceptable Transactions

8.1 A transaction is not valid if:

(a) the transaction is illegal as per the Relevant Laws;

(b) if applicable, the signature on the voucher, Transaction Receipt or authority is forged or unauthorised;

(c) the transaction is before or after any validity period indicated on the relevant Card;

(d) You have been told not to accept the Card;

(e) the transaction is not authorised by the Cardholder;

(f) the particulars on the copy of the voucher or Transaction Receipt given to the Cardholder are not identical with the particulars on any other copy;

(g) the price charged for the goods or services is inflated to include a surcharge for card payments;

(h) another person has provided or is to provide the goods or services the subject of the transaction to a Cardholder;

(i) You did not actually supply the goods or services to a genuine Cardholder as required by the terms of the transaction, or have indicated your intention not to do so;

(j) the transaction did not relate to the actual sale of goods or services to a genuine Cardholder;

(k) the transaction is offered, recorded or billed in a currency we have not authorised you to accept;

(l) this Tri-Party Agreement was terminated before the date of the transaction;

(m) You have not complied with your obligations in clause 3.3;

(n) if applicable, the details are keyed into Equipment and you did not legibly record on a Transaction Receipt the information required by clause 7;

(o) it is a credit transaction in which:

(i) the amount of the transaction or transactions on the same occasion is more than any applicable limit notified to you;

(ii) you collected or refinanced an existing debt including, without limitation, the collection of a dishonoured cheque or payment for previous card charges; or

(iii) you provide a Cardholder with cash;

(p) it occurs during a period in which your rights under this Tri-Party Agreement were suspended under or after this Tri-Party Agreement was terminated;

(q) you cannot give a Transaction Receipt as required by clause 7; or

(r) for any other reason, the Cardholder is entitled under the Card Scheme Rules to a Chargeback of the transaction.

8.2 A transaction for a sale or refund is not acceptable if:

(a) the Cardholder disputes liability for the transaction for any reason or makes a claim for set-off or a counterclaim; or

(b) it is of a class which GPA or Monoova decide, in their discretion, is not acceptable (including a transaction in respect of Prohibited Goods and Services).

8.3 You acknowledge and agree that GPA or Monoova may:

(a) refuse to accept a transaction if it is invalid or unacceptable, or may charge it back to you if it has already been processed, even if we have given you an authorisation;

(b) reverse a sales transaction as a Chargeback, and debit your account for the amount of the Chargeback, for any of the reasons in clauses 8.1 and 8.2 and any other reason we notify you of from time to time; and

(c) without limiting the above, delay, block, freeze or refuse to accept any transaction where GPA or Monoova has reasonable grounds to believe that the transaction breaches Australian law or sanctions or the laws or sanctions of any other country.

9. Settlement of Transactions

9.1 GPA will provide settlement to Monoova on each Banking Day for the gross amount of all funds received from the card schemes in respect of transactions processed under this Tri-Party Agreement, less any Chargebacks or refunds.

9.2 Monoova is responsible for disbursing to you, in accordance with your funding, reserve and payment arrangements with Monoova, any settlement amounts received from GPA in respect of transactions processed under this Tri-Party Agreement.

9.3 You agree to direct any queries regarding settlement to Monoova.

9.4 Monoova will provide settlement to you generally within 7 Banking Days. Monoova may change this settlement period at its discretion by providing reasonable notice to you, and without notice where we exercise our suspension or termination rights under this Tri-Party Agreement or the Payment Services Agreement, as applicable.

9.5 Monoova may deduct any fees, charges or other amounts owing by you to Monoova or GPA (including any amounts paid or required to be paid by GPA or Monoova for Transactions that are reversed as Chargebacks or otherwise refunded) from any settlement funds to be remitted to you by Monoova.

9.6 You agree that Monoova's obligation is to settle and remit to you a sum of money equivalent to the sums or amounts received as agent, and not the precise funds received.

9.7 If at any time the total of amounts owing by you to Monoova or GPA under this Tri-Party Agreement (including amounts paid or required to be paid by GPA or Monoova for Transactions that are reversed as Chargebacks or otherwise refunded) exceed the settlement amounts held by Monoova, you will pay the amount of that excess to Monoova promptly on demand.

10. Use of Card Scheme Logos and Trade Marks

10.1 You acknowledge and agree that:

(a) the Card Scheme logos, names and holograms ("the Marks") are owned solely and exclusively by the relevant card scheme;

(b) you will not contest the ownership of the Marks for any reason;

(c) the Card Schemes may at any time, immediately and without notice, prohibit you from using any of the Marks for any reason; and

(d) you may only use advertising and promotional material for the cards or which show a card scheme mark in the manner GPA approves, unless you have received authorisation from the Card Schemes through other means.

11. Representations and Warranties by You

11.1 You represent and warrant that:

(a) by entering into this Tri-Party Agreement, you are not currently and will not be in breach of any Relevant Law or any obligation owed to any Person;

(b) where applicable, you are duly authorised to enter into this Tri-Party Agreement and the obligations under this Tri-Party Agreement are valid, binding and enforceable in accordance with its terms;

(c) if you are an incorporated body, you validly exist under the laws of your place of incorporation and have the power and authority to carry on your business as that business is now being conducted and using any name under which that business is being conducted; and

(d) if you, a Related Body Corporate or any officer, employee or agent of you or a Related Body Corporate has at any time been listed on a database of terminated merchants maintained by any Card Scheme or has otherwise had merchant services terminated by another acquiring bank, you have disclosed that fact to Monoova.

11.2 The representations and warranties set out in this clause will be deemed to be repeated each day after the date you enter into this Tri-Party Agreement.

12. No Warranties by Us

Neither Monoova nor GPA makes any warranties in respect of any of the services provided under this Tri-Party Agreement other than warranties which are required by law and may not be excluded. To the maximum extent permitted by law, any and all implied warranties and guarantees are excluded. In respect of any warranty or guarantee which is able to be excluded under any relevant law, our liability in respect of a breach of that warranty or guarantee is limited to the re-supply of the goods or services or the payment of the cost of having the goods or services supplied again.

13. Exclusion of Liability

To the maximum extent permitted by the Relevant Laws, we are not liable to you or to any person for any act or omission of ours that results in any direct or indirect loss (including loss of profits), damage, injury or inconvenience you suffer because of any service failure that is not within our reasonable control, including any unavailability of the service, any delays or any errors unless (in the case of direct loss) the direct loss was caused directly by the fraud, gross negligence or Wilful Misconduct of us. Under no circumstances will we be liable to you for any lost sales, revenue or profit or loss of custom due to any service failure which results in you being unable to promptly accept payments from your customers.

14. Termination and Suspension

14.1 Without limiting the rights of Monoova under the Payment Services Agreement, GPA or Monoova may suspend or terminate this Tri-Party Agreement or suspend then terminate this Tri-Party Agreement or any part of it at any time if (subject to Monoova or GPA protecting its own legitimate business interests and/or to manage a real or immediate risk to their business or services):

(a) You are in breach of your obligations under or arising out of this Tri-Party Agreement except to the extent caused or contributed by the gross negligence, breach of Tri-Party Agreement, fraud and/or Wilful Misconduct of Monoova or GPA;

(b) if in Monoova's or GPA's reasonable opinion, the processing of your transactions exposes Monoova or GPA to an unacceptable level of risk;

(c) You are or have engaged in conduct which exposes Monoova or GPA to potential fines or penalties imposed under Relevant Law except to the extent caused or contributed by the gross negligence, breach of Tri-Party Agreement, fraud and/or Wilful Misconduct of Monoova or GPA;

(d) your business or Equipment is or has been targeted by a person engaged in fraudulent or dishonest activity whether with or without your knowledge, and the fraudulent or dishonest activity is ongoing and in our reasonable opinion constitutes a real risk of financial harm to you, us or any other person;

(e) you or any service provider (other than Monoova or GPA) that you use in connection with your merchant services has suffered a data breach which is material or uncontained;

(f) a direction is made by a Card Scheme or under Relevant Law that the Payment Service be suspended or terminated;

(g) if you become insolvent or are subject to any form of insolvency administration or a resolution is passed, or an order is made for winding up;

(h) you have a significant adverse credit event recorded against you; or

(i) Monoova is unable to obtain sufficient security or collateral from you in accordance with and under its agreement with you in relation to the Service.

14.2 This Tri-Party Agreement will terminate automatically and immediately if:

(a) Monoova's registration as a member service provider or independent sales organisation with any Card Scheme is cancelled;

(b) Monoova's agreement with GPA for the provision of Merchant Services is terminated for any reason; or

(c) any other agreement that you have with Monoova in respect of Monoova's payment processing services is terminated for your default or breach of such other agreement.

14.3 You authorise GPA to disclose to any Card Scheme advice of termination of this Tri-Party Agreement and the reasons for the termination. You acknowledge that the information concerning termination of this Tri-Party Agreement then becomes available to any member of the Card Schemes. This information, available to any member of the Card Schemes, may be used in assessing subsequent applications for merchant facilities.

14.4 If any event described in clause 14.1 occurs, Monoova may, in addition to its rights to suspend or terminate, change the settlement period applicable to you by notice to you.

14.5 This clause 14 survives termination of this Tri-Party Agreement.

15. Assignment or Novation

You may not assign or charge your rights under, or novate this Tri-Party Agreement without our prior written consent (which shall not be unreasonably withheld). Monoova and GPA may assign or novate this Tri-Party Agreement by reasonable written notice to you provided that the assignee is capable of performing the services.

16. Australian Domicile Requirements

You acknowledge that we may only provide services to you under this Tri-Party Agreement where you:

(a) have a permanent establishment in Australia through which transactions are completed;

(b) are registered to do business in Australia;

(c) have a local address in Australia for correspondence and acceptance of judicial process, other than a post-office box or mail-forwarding address;

(d) pay taxes in Australia (where required) in relation to the sales activity; and

(e) satisfy any other domesticity requirements imposed by card schemes from time to time.

In addition to any other right to terminate or suspend the services, we may immediately cease to accept transactions under this Tri-Party Agreement where you fail to satisfy the above requirements.

17. Governing Law

This Tri-Party Agreement is governed by the laws of the State of New South Wales. Each party submits to the jurisdiction of the courts of New South Wales and any courts of appeal from them.

18. Amendment

Without limiting the parties' rights of amendment and termination under the Payment Services Agreement, we may vary this Tri-Party Agreement on 30 days' written notice to you, acting reasonably, where to do so is in support of our legitimate business interest, including to respond to regulatory change, or in response to a bona fide change in the terms of or manner of operation of any Card Scheme.

19. Notices

19.1 You acknowledge that GPA or Monoova may deliver notices to you in any of the ways listed in this clause.

19.2 A notice must be in writing and is taken to be received:

(a) if delivered personally, at the time of delivery;

(b) if sent by pre-paid post, on the third day after the posting;

(c) if sent by facsimile transmission, on the date the transmitting machine records transmission of the complete document; or

(d) when the party sending the notice is GPA or Monoova, if sent by email, at the time when the email enters your information system.

19.3 The address, facsimile number or email address to be used for notices is the last address, facsimile number or email address advised by a party. You must inform Monoova immediately of any change of your address, facsimile number or email address.

20. Set Off

To the extent permitted by law, Monoova (acting reasonably and in accordance with its legitimate business interests) and GPA may at any time without notice to you set off any Liability owed by Monoova or GPA (as the case may be), to you on any account against any Liability owed by you to Monoova or GPA (as the case may be) under or in connection with this Tri-Party Agreement. For the purpose of this clause, "Liability" means any debt or monetary liability, irrespective of whether the debt or monetary liability is future or present, actual or contingent.

21. Binding Agreement

The completion of a Monoova Application, the continued use of Monoova's Payment Service or the conduct of your first transaction with Monoova for card payments (and in the latter situations it applies where your annual card transaction volume in respect of card transactions, other than American Express Card Scheme transactions, exceeds US$1,000,000), whichever occurs earlier, will be deemed to be your consent and intent to be bound by this Tri-Party Agreement.