

Client Services Terms and Conditions

Introduction

Moneytech Payments Pty Limited (ACN: 126 015 227/authorised representative no. 000428863) t/as “**Monoova**” operates a payment processing service for the purpose of facilitating automated processes for Client to receive, manage and disburse funds (the “**Service**”).

Moneytech Payments Pty Limited is an authorised representative of Moneytech Limited (ACN 106 249 852 / AFSL 421414) (“**Moneytech Limited**”). All financial services provided by Moneytech Payments Pty Limited are provided on behalf of Moneytech Limited.

The Service is offered to You subject to the following documents which together comprise the terms of Your agreement with Monoova (“**Transaction Documents**”):

- 1) Monoova Application Form;
- 2) These Client Services Terms and Conditions (“**Agreement**”); and
- 3) The separately signed transaction-workflow diagram and fee schedule (collectively “**Fee Schedule**”).

The Transaction Documents will become binding when You facilitate your first Transaction.

In the event of an inconsistency between the terms of this Agreement and the terms of any other Transaction Document, the terms of this Agreement prevail.

Definitions

In this Agreement (except for each Appendix of this Agreement, as amended from time to time), unless the contrary intention appears, words and expressions have the following meanings:

Account means the account/s nominated by You for acceptance of credit and debit entries under this Agreement and may include Your Virtual Account.

ADI means an authorised deposit-taking institution as defined in the *Banking Act 1959* (Cth).

Acquiring Institution means ANZ Bank, Commonwealth Bank of Australia, Westpac Banking Corporation, Cuscal Limited or any other bank as nominated from time to time which provides Monoova with infrastructure and services for the acceptance and processing of Transactions.

Agreement means these terms and conditions.

API means Monoova’s application programming interface which allows for certain Client system access to the Service.

Approval means an approval granted by Monoova for the Client to use and access the Service. **Approve** and **Approved** have corresponding meanings. For the purposes of this Agreement, You may cease to be Approved in Monoova’s sole and reasonable determination based on any of the following:

- (a) Monoova’s assessment of You and Your business using its internal credit and risk policies that it has in place and as varied from time to time;
- (b) Monoova is aware or becomes aware that a Material Adverse Effect occurs or is likely to occur;
- (c) an adverse change in market conditions occurs; or
- (d) any material disrupting event in the economy occurs.

BPAY Payer means a person or organisation that makes a BPAY Payment.

BPAY Payer Terms means the BPAY Payer Terms available for download online at:

Moneytech Payments Pty Ltd t/a Monoova

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PO Box 2015 North Sydney NSW 2059

F: 1300 656 157 F: 02 8907 2599 W: monoova.com

<http://www.monoova.com/legal>

BPAY Biller Terms means the terms and conditions annexed hereto and marked **Appendix 2** which govern Your appointment as a Sub Biller.

BPAY Payment means a payment transacted using the BPAY Scheme and in accordance with the BPAY Payer Terms and/or BPAY Biller Terms.

BPAY Scheme means the electronic payment and biller service promoted by BPAY Pty Limited (ABN 69 079 137 518).

Beneficiary Account means the transactional account/s You instruct Monoova to credit in accordance with this Agreement. For the purposes of this Agreement this may include a Virtual Account.

Client or **You** means the person or entity which is a party to the Transaction Documents.

Confidential Information means any information of whatever kind disclosed or revealed by Monoova to You under or in relation to the Transaction Documents that:

- (a) is by its nature confidential;
- (b) is designated by Monoova as confidential; or
- (c) You know or reasonably ought to know is confidential,

and includes (without limitation) the terms of the Transaction Documents, but does not include information that is published or has otherwise entered the public domain without a breach of the Transaction Documents, information obtained from a third party who has no obligation of confidentiality to Monoova or information independently developed or obtained without breach of the Transaction Documents.

Customer/s means (whichever the case may be):

- (a) a customer of Yours that has completed, signed and returned a valid Direct Debit Authorisation and/or uses the Service; and/or
- (b) a customer of Yours that has credited Monoova Account on Your instruction; and/or
- (c) a customer of Yours whom You instruct Us to credit using the Service; and/or
- (d) a BPAY Payer.

Direct Debit Authorisation means the authorisation You or a Customer grants Monoova to deduct payments from Your Account or the Customer's nominated account.

Government Agency means a government or any governmental, semi-governmental, legislative, administrative, fiscal, quasi-judicial or judicial entity, authority, department or other body, whether foreign, federal, State, Territorial or local (including any self-regulatory organisation established under statute or any stock exchange).

Intellectual Property Rights means patents, trade-marks, service marks, registered designs, applications for any of the foregoing, copyright, design rights, know-how, domain names, trade secrets, circuit layout rights, technical information, Confidential Information, trade and business names, and any other similar protected rights in any country including any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future.

Interchange Party means Monoova and any other third party (including financial institution, bank or union) that is involved in the settlement of Transactions.

Material Adverse Effect means a material adverse effect on (i) Your ability to perform any of Your obligations under this Agreement or under any Transaction Document or (ii) Your business, assets or financial condition.

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Monoova Application Form means the form called “*Monoova Application Form*” (or any variations or previous or subsequent versions) submitted by You to Monoova and accepted by Monoova.

Monoova Account means the account in Monoova’s name that Monoova has established with an ADI for the purposes of receiving funds from You or Customers in order for Monoova to complete the Transactions generally.

Monoova Material means any material and Intellectual Property Rights:

- (a) owned by Monoova or which Monoova has or acquires a license to use; and
- (b) which is provided by Monoova to You for the purposes of this Agreement.

Monoova Portal means Monoova interface giving You certain manual access to the Service.

NPP means the New Payments Platform operated by NPP Australia Limited.

NPP Payment means a payment cleared and settled via the NPP.

NPP Terms means the terms and conditions which govern your use of, and access to, the NPP and which are set out in **Appendix 1** attached hereto.

Relevant Law means any statute, ordinance, exemption, code or other law including regulations pursuant to them and any code of practice, practice notes, guidelines, rules, membership rules or standards issued by relevant regulators or industry bodies, whether or not having the force of law, applicable to this Agreement and includes, without limitation, the *Corporations Act 2001* (Cth), the *Anti-money Laundering and Counter- terrorism Financing Act 2006* (Cth), any statute or regulation relating to the proceeds of crime and economic sanctions, the terms and conditions of the Australian financial services licence held by Moneytech Limited and the terms and conditions of authorised representative appointment granted to Monoova by Moneytech Limited.

Reserve means Client funds held by Monoova on deposit and which are set aside to cover Reversals, refunds, or other payment obligations arising under this Agreement and Fee Schedule.

Reversal “Reversal/s” or “Reversed” means Monoova reverses the settlement of funds from a processed Transaction that You received because:

- (a) the settlement funds were sent to You in error by:
 - i. Monoova or the Acquiring Institution;
 - ii. the processors or suppliers of Monoova; or
 - iii. any of the respective affiliates, agents, directors and employees of any of the entities listed in (i) or (ii) above;
- (b) the sender of the payment did not have authorisation to send the payment (for example, the Customer accessed an account unlawfully to make a payment); or
- (c) you received the payment for activities that violated this Agreement or any other Transaction Document.

Service means the non cash payment processing facility offered by Monoova.

Sub biller means an organisation approved by Monoova to receive BPAY Payments from Customers.

Transaction means (whichever the case may be) a transaction to:

- (a) debit Your or a Customer’s bank, building society or credit union account in accordance with the Direct Debit Authorisation;
- (b) credit Your Account or a Beneficiary Account;
- (c) debit or credit Your Virtual Account ;

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- (d) facilitate an NPP Payment;
- (e) make a BPAY Payment; or
- (f) receive a BPAY Payment as a Sub biller.

Virtual Account means the unique client identifier provided by Monoova to You against which Monoova reconciles Transactions.

1. Monoova's Role

The Service enables You to facilitate automated processes for receiving, managing and disbursing funds (including, but not limited to BPAY Payments and NPP Payments) by instructing Monoova through the API and Monoova Portal as appropriate.

In providing the Service, Monoova will, subject to the Transaction Documents and Relevant Law, make available to You capability to receive, manage and disburse funds in Australia. This includes, but is not limited to, (1) issuing unique client identifiers in the form of bank state branch (or "BSB") and account numbers (2) direct-entry facilities to direct debit and direct credit bank Accounts, and (3) reports and statements relating to payments received and made by or to You. It may also include the ability to make and receive NPP and BPAY transactions.

Monoova is not a bank as defined under any Relevant Law and does not offer banking services You are required to register with Monoova to use the Service.

Pursuant to the Transaction Documents, You engage Monoova to provide the Service until this Agreement is terminated.

Pursuant to the Transaction Documents, You authorise Monoova to hold, receive, and disburse funds on Your behalf and in accordance with Your instructions when such funds are settled by the Acquiring Institution. You further authorise Monoova to instruct the Acquiring Institution in the manner of how Your settled funds should be disbursed to You or to the Beneficiary Account/s in accordance with Your instructions to Monoova regarding such disbursements.

You agree that (i) You are not entitled to any interest associated with the funds held in Monoova Account pending disbursement to Your Account or to the Beneficiary Account/s, (ii) You have no right to issue directions regarding Monoova Account other than to provide instructions for disbursement, and (iii) You may not assign any interest in Monoova Account without Monoova's prior written consent.

For the avoidance of doubt, Monoova Account holds funds on trust on Your behalf separately from its corporate funds and will not make the funds available to creditors in the event of Monoova's bankruptcy.

Your authorisations for providing Monoova with instructions relating to paying, holding and disbursing funds will remain in full force and effect until Your access to the Service is terminated in accordance with the Transaction Documents.

2. Your Obligations

2.1. You must:

- (a) provide Monoova with all information reasonably requested by Monoova to enable Monoova to provide the Service and comply with Relevant Law, including but not limited to Your full legal name, address, phone number, email address, bank-account details and Australian business number;
- (b) authorise Monoova to share, retrieve and verify information about Your identity, source of funds and business through appropriate third-party service providers to enable Monoova to provide the

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- Service and comply with Relevant Law;
- (c) process all Transactions in Australian dollars;
 - (d) maintain records of all Transactions, containing details reasonably requested by Monoova, for up to two (2) years from the date of the Transaction and to make these records available to Monoova upon request;
 - (e) assume all responsibility for the reconciliation of records of Transactions with actual Transactions;
 - (f) comply with Relevant Law in connection with Your use of the Service;
 - (g) make the BPAY Payer Terms available to your Customers; and
 - (h) maintain confidentiality and security of any personal information, user data and Confidential Information in Your possession including, but not limited to, API keys and login credentials to Monoova Portal. If deficiencies are found in Your data security in the context of the Service, You must promptly notify Monoova by no later than the day immediately following the day that You become aware of such deficiencies and You agree to work with Monoova to resolve those deficiencies.

2.2. You must not process, or continue to process, a Transaction:

- (a) if Monoova advises You that You have ceased to be Approved for the purposes of the Service
- (b) if to do so would result in the Transaction being processed through the Service more than once;
- (c) if You are aware that the Service is not online or is not functioning normally;
- (d) where You become aware, or form a reasonable suspicion, that the Account/s or Beneficiary Accounts are being used fraudulently or in furtherance of a contravention of Relevant Law;
- (e) which was not originated as a result of a Transaction between You and a Customer;
- (f) in relation to a BPAY Payment, where to do so would result in a breach of the BPAY Payer Terms;
- (g) where to do so would result in a breach of Relevant Laws or the terms of this Agreement; or
- (h) to pay a deposit or make recurring payments for goods or services not yet rendered.

2.3. A Transaction is invalid if:

- (a) it relates to or is in furtherance of a contravention of Relevant Law;
- (b) the Customer's authorisation of a Transaction is obtained by fraud or deception, is unauthorised or otherwise invalid;
- (c) the authority for completion of the Transaction is forged, unauthorised by the Client or not signed where a signature was required; or
- (d) You do not comply with the Transaction Documents in relation to the Transaction, including without limitation the provisions set out in clause 21 above; or
- (e) any event referred in clause 2.5 occurs.

2.4. Monoova may, in its absolute discretion, refuse to accept, or may debit Your Account, any Transaction if:

- (a) the Transaction is invalid (or Monoova has any reason to believe a Transaction is invalid) in accordance with clause 2.3;
- (b) the Customer claims the Transaction is invalid or disputes liability for the Transaction for any reason;
- (c) the Customer asserts a claim for set-off or a counterclaim; or
- (d) We are ordered to do so by any governmental or regulatory authority under any Relevant Law.

2.5. You must notify Monoova as soon as practicable if You suspect or become aware of:

- (a) a breach, or attempted breach, of Your systems, data security or Relevant Law which could impact the Service in any way;

- (b) any technical or operational error in relation to a Transaction;
- (c) the Service being unable to process a Transaction or is otherwise not functioning generally;
- (d) a Material Adverse Effect occurs or is likely to occur;
- (e) a proposal to sell, lease or transfer Your business; or
- (f) a change to Your principal business address or change to Your director or beneficial owner details or Your contact details (e.g. telephone number, facsimile number or email address).

2.6. When requested by Monoova, You must promptly complete and submit all forms and documents supplied or requested by Monoova within ten (10) days of a request where:

- (a) there is any change in the direct or indirect beneficial ownership or control of Your business (unless you are listed on the Australian Securities Exchange);
- (b) You dispose of the whole or any part of Your assets, operations or business;
- (c) You cease to carry on business;
- (d) You cease to be able to pay Your debts as they become due;
- (e) any step is taken by a mortgagee to take possession or dispose of the whole or any part of Your assets, operations or business;
- (f) any step is taken to enter into any arrangement between You and Your creditors;
- (g) any step is taken to appoint a receiver, a manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of Your assets or business; or
- (h) You are a partnership, any step is taken to dissolve that partnership.

3. Client Account and Financial Information

3.1. You must maintain an Account and advise Us of the details of that Account. On Your instructions, We will credit Your Account/s or the Beneficiary Account/s with the notional amount that You instruct to Us. You will notify Us as soon as practicable if Your Account or Beneficiary Account/s details change.

3.2. In addition to the terms stipulated in your Direct Debit Authorisation, We can debit Your Account with the following:

- (a) You are a partnership, any step is taken to dissolve that partnership.
- (b) all service charges, fees and other charges set by Us in the Fee Schedule and which are notified to You from time to time;
- (c) all government charges and taxes including goods and services taxes that apply;
- (d) any over credits We have made in respect of Transactions due to errors or omissions;
- (e) the value of Transactions which are invalid;
- (f) any fees, fines or penalties that We are required to pay to Interchange Parties as a direct or indirect result of Your failure to observe Your obligations under the Transaction Documents; and
- (g) any other money You owe Us under the Transaction Documents.

3.3. You must pay on demand the full amount of any debt You owe Us under the Transaction Documents which remains unpaid.

3.4. We can also debit or credit Your Account with the amount of any deficiencies or charges We establish are payable following an audit or check of Your Account.

3.5. We may withhold from processing credits to Your Account if We determine, in our absolute discretion, that it is necessary to establish a Reserve amount as security for Your obligations to Us under the Transaction Documents. The circumstances in which We may establish such a Reserve include, but are not limited to, the following circumstances:

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- (a) if We have concerns about Your solvency;
- (b) in the event of Your involvement in a disproportionately high number of Reversals, invalid or disputed Transactions; or
- (c) under other circumstances where We have legitimate concerns about You or Your business or Transaction processing and fraud monitoring protocols.

3.6. We may deduct from, or offset against, such a Reserve any and all amounts You owe Us. We will notify You if we establish such a Reserve.

3.7. Upon request, You will provide Us with quarterly financial statements or annual audited financial statements, prepared in accordance with generally accepted accounting principles.

4. Monoova's Obligations

4.1. Monoova will collect and make payments as authorised through the API and Monoova Portal from time to time by You. In the case of direct debits, You and Your Customers are required to have completed a valid Direct Debit Authorisation (in printed or electronic format). Monoova will issue You with unique account identifier numbers on request to facilitate your reconciliation of incoming payments.

4.2. You authorise Monoova to debit or credit (as the case may be) the Account/s and Beneficiary Account/s with the value of Transactions effected through the Service together with the value of each and every other indebtedness and obligation owed and payable by You to Monoova under the Transaction Documents.

4.3. Monoova will make available to You information on Transactions through the API and Monoova Portal. Additional information regarding Transactions can be requested by You from support@monoova.com

4.4. Monoova will, at times, settle Your Transactions based on information provided by other Interchange Parties. You agree that Monoova is not, and cannot be held, responsible for errors made by other Interchange Parties. You and Monoova agree to cooperate and use best endeavours to correct any such errors.

4.5. You acknowledge and agree that the settlement of the Transaction is conditional upon:

- (a) the Service being operational;
- (b) communication links between relevant parties being operational; and
- (c) other Interchange Parties' systems being operational.

4.6. You agree that Monoova cannot be responsible for delays in the Transaction settlement processes caused by other Interchange Parties' computer systems being inoperable or communication links being down.

4.7. Monoova acknowledges that the integrity of the Service depends on You being assured that authorised Transactions will not be reversed if the appropriate authorisation procedures are observed by You.

4.8. Monoova will provide You with customer service to resolve any issues relating to Your access to, and use of, the Service, and the distribution of funds to or from Your designated Account/s and Beneficiary Account/s. You, and You alone, are responsible for providing payment services to Your Customers, and for any and all issues related to Your products and services, including but not limited to issues arising from the processing of Transactions through the Service, any fraud suffered or incurred by Your Customer, and any disputed transaction or complaint raised by Your Customer. Monoova expressly disclaims any and all liability for losses suffered or incurred by Your Customer or any third party transacting on Your Customer's instruction.

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5. Operating Procedures

- 5.1. You shall meet the cost of maintaining an active connection to the Service. The Service is provided “as is” and Monoova makes no representation or warranty, express or implied, that the Service will meet Your requirements, or that the Service will be uninterrupted, timely or error free.
- 5.2. Subject to Clause 10 (Liability), Monoova shall use reasonable endeavours to make the Service available to You on a 24 hours per day basis. For the avoidance of doubt, Monoova shall not be obligated to maintain the Service if required to attend to scheduled or urgent equipment or software maintenance. Where possible, Monoova will provide to You at least forty-eight (48) hours’ notification of any proposed scheduled maintenance to the Service and use reasonable endeavors to ensure that such maintenance not be carried out at peak Transaction volume times during business hours. In the event of unscheduled Monoova outages, Monoova will notify You as soon as is reasonably practicable once the outage has been identified by Monoova. Such notice shall include, if possible to determine, an estimated time of restoration of the Service. Once Monoova outage has been resolved and the Service restored, Monoova will provide a further notification outlining, where possible and appropriate, the reason for and the duration of the outage, and any corrective action taken by Monoova.
- 5.3. You shall ensure that You adhere to all relevant guidelines and standards from time to time reasonably declared by Monoova with regard to the technical and security aspects of the Service. This includes, but is not limited to, You retaining records of your outbound API calls to allow for resubmission once an outage has been resolved.

6. Costs and Charges

- 6.1. You shall pay to Monoova in respect of each Transaction which is authorised or declined, the transaction fees and such other fees contained in Your Fee Schedule.
- 6.2. All fees and charges set out or referred to in the Fee Schedule (including any fees which are varied pursuant to clause 6.3), are stated before the calculation of goods and services tax which shall, if required by law, be paid on all such fees and charges.
- 6.3. Monoova shall be entitled to vary the Fee Schedule at any time and shall notify You of the variation not less than two (2) weeks before such variation takes effect. You shall be permitted to exit the Agreement on 7 days’ written notice to Monoova should You not agree to the change to the Fee Schedule.

7. Intellectual Property

- 7.1. You acknowledge and agree that You have no right, title or interest in Monoova’s Material, other than the right to use Monoova’s Material for the purpose of performing Your obligations under this Agreement.
- 7.2. Monoova grants You a limited, non-exclusive, royalty-free, non-transferable, non-sublicensable and non-assignable license to display Monoova’s name and logo on Your Customer interfaces until such time as is the Transaction Documents are terminated.
- 7.3. You grant Monoova a limited, non-exclusive, royalty-free, non-transferable, non-sublicensable and non-assignable license to display Your name and logo on our website and Monoova Portal until such time as is the Transaction Documents are terminated.

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8. Costs, Conduct and Regulations

- 8.1. If there is any change in, any making of, or any change in the interpretation or application of any law or any control, request or directive of a Government Agency or the Acquiring Institution, Monoova (acting reasonably) reserves the right to further vary any of the terms of the Transaction Documents, to take into account those new circumstances.
- 8.2. If the circumstances occur as referred to in this Clause 8, Monoova agrees, where Monoova is able to do so, to:
- (a) provide You with reasonable notice of any changes Monoova will be required to make to the Transaction Documents; and
 - (b) give You reasonable time to implement any changes required as a result of Monoova varying the Transaction Documents.
- 8.3. If the changes that Monoova is required to implement are likely to result in You suffering a Material Adverse Effect, then You will be entitled to terminate the Transaction Documents by providing Monoova with not less than thirty (30) days' (or such shorter period as agreed by Monoova in its discretion, which shall not be unreasonably withheld) prior written notice.
- 8.4. Each party warrants and represents that it holds, and will continue to hold, maintain and keep current, all licenses, permits and authorisations required by Relevant Law to perform its respective obligations pursuant to the Agreement.
- 8.5. To the extent relevant to this Agreement, You agree to comply with all Relevant Law in relation to the Transactions that arise from the operation of the Transaction Documents. You are required to obey all Relevant Laws applicable to Your use of the Service (for example, those governing financial services, consumer protection, anti-money laundering and counter terrorism financing and or deceptive or misleading conduct).

9. Anti-Money Laundering and Sanctions

- 9.1. You agree that Monoova may, in its sole and absolute discretion:
- (a) delay, block or refuse to process a Transaction;
 - (b) delay, block or refuse to settle any Transaction; or
 - (c) refuse to perform any one or more of its obligations under the Transaction Documents; without incurring any liability, if Monoova is aware, or suspects for any reason, that:
 - i. an action required or requested to take the Transaction Documents;
 - ii. its involvement in any Transaction that is any way connected with the Transaction Documents;
 - iii. its performance of any services for any person in connection with the Transaction Documents; might in any way cause Monoova to:
breach any Relevant Law (including, without limitation, laws relating to anti-money laundering and counter-terrorism financing); commit, aid, abet or procure an unlawful act;
 - (d) deal in any way with a person (natural, corporate or government) that is subject to sanctions or is connected in any way to any person that is subject to sanctions, under economic and trade sanctions imposed by Australia, the United Nations, the European Union or any country.
- 9.2. You must provide all information to Monoova which Monoova reasonably requires in order to:
- (a) manage anti-money laundering, counter terrorism financing risk;
 - (b) comply with any Relevant Laws (including, without limitation, laws relating to anti-money laundering and counter-terrorism financing and sanctions), regulations or prohibitions that may be applicable to

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- (c) Monoova with respect to any Transaction; or avoid any unlawful act.

9.3. You further warrant and undertake that you will not request Monoova to take any action or perform any obligation, in connection with the Transaction Documents that might cause Monoova to be involved in any unlawful act or breach any Relevant Law

9.4. You agree that Monoova may disclose any information concerning You to any law enforcement agency, regulator or court where require to do so under any Relevant Law (including that of a foreign place or

10. Monoova's Liability

10.1. Monoova:

- (a) does not warrant that the Service will be fully operational at all times;
- (b) does not warrant that the Service is free from inaccuracies, defects or errors; and
- (c) must use reasonable endeavours to ensure that the Service is, to the best of Monoova's knowledge, information and belief, substantially free of any known errors.

10.2. To the maximum extent permitted by law, and notwithstanding any other provision of the Transaction Documents, Monoova is not liable to You, Customers or third-parties and is fully released from any loss or liability (including legal fees) suffered or incurred by You, Customers or third-parties arising from or in connection with any use of the Service. This limitation of liability includes (without limitation) loss or liability suffered or incurred as a result of:

- (a) anything done by Monoova in good faith and not otherwise in breach of the Transaction Documents;
- (b) a missing or erroneous payment made beyond the reasonable control of Monoova (including, without limitation, due to a failure by You to notify Monoova of correct and up to date Account and Beneficiary Account details);
- (c) any process, computer failure or Service disruption beyond the control of Monoova;
- (d) termination of the Transaction Documents in accordance with clause 14;
- (e) an Acquiring Institution processing Transactions;
- (f) any Reversal;
- (g) use of the Service by Customers;
- (h) any illegal or fraudulent use of the Service by You or Customers; and
- (i) any scheduled or unscheduled maintenance of the Service.

10.3. To the maximum extent permitted by law, Monoova's total liability and Your sole and exclusive remedy for:

- (a) any one claim of any type; and
- (b) the aggregate of all claims (of any type) that occur in a 12 month period, shall be AUD \$10,000.00

10.4. To the maximum extent permitted by law, Monoova provides the Service "as is" and makes no and hereby specifically disclaims any, representations or warranties, express or implied, regarding the Service, the Service and other deliverables contemplated by the Transaction Documents or otherwise arising under or in connection with the Transaction Documents, Monoova specifically disclaims any implied warranty of merchantability, fitness for a particular purpose, title, or non-infringement, and implied warranties arising from course of dealing or course of performance.

10.5. Where You are a consumer in relation to any particular services or products supplied under the Transaction Documents, certain legislation may imply warranties or conditions or impose obligations upon Monoova which cannot be excluded, restricted or modified. If such legislation applies, and to the extent

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Monoova is able to do so, Monoova' liability will be limited, at its option, to:

- (a) in the case of products: the replacement of products or resupply of equivalent products; repair of the products; payment of the cost of replacing the products or acquiring equivalent products; or the payment of the cost of having the products repaired; and
- (b) in the case of services: the supply of the services again; or payment of the reasonable cost of having the services supplied again.

10.6. Monoova does not assume any liability for the products or services purchased by You or Your Customers using the Service.

11. Client Indemnification

11.1. You and Your successors and assigns (collectively "**Indemnifying Parties**") shall defend, indemnify and hold Monoova, its officers, employees and agents (collectively "**Indemnified Parties**") harmless from and against any and all loss or liability suffered or incurred (including reasonable legal costs and expenses) by the Indemnified Parties where such loss or liability arises out of or in connection with:

- (a) any use of the Service by You or Customers otherwise than in accordance with the Transaction Documents;
- (b) any infringement, misuse or misappropriation of any third-party Intellectual Property Rights by You or Customers in relation to use of the Service including for the avoidance of doubt Intellectual Property Rights subsisting in Monoova Material;
- (c) failure on the part of You or Customers to comply with any Relevant Laws in relation to use of the Service;
- (d) a refusal by Monoova to make payment where the refusal to pay arises from a direction to refuse payment given by You, Customers or as a result of Monoova exercising any of its rights pursuant to the Transaction Documents;
- (e) a claim or demand of any kind against Monoova or its affiliates by You or Customers or any other person arising from or relating in any way to a Transaction;
- (f) any loss suffered or incurred by any of the Customers or other third parties arising out of Monoova blocking, delaying, freezing or refusing any transactions as it is permitted to do so under the Transaction Documents;
- (g) any incorrect payment of money to, or the incorrect debiting of an Account or an account operated by another financial institution caused by the acts, omissions, negligence or fraud on Your part or that of Your Customers including (without limitation) for the full amount of any funds credited or debited erroneously due to a failure by You to provide us with notice of changed Account or Beneficiary Account details, provided that the loss or liability is not caused by any fraud, negligence or willful default on the part of Monoova, its employees, its servants or agents

11.2. For the purposes of this clause 11, Monoova will not be taken to have been negligent if it has acted as required or contemplated by this Agreement or at the express request or direction of You even if those acts of Monoova might otherwise be considered negligent.

Moneytech Payments Pty Ltd t/a Monoova

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A: Level 6, 97 Pacific Highway, North Sydney NSW 2060

PO Box 2015 North Sydney NSW 2059

P: 1300 656 157 **F:** 02 8907 2599 **W:** monoova.com

12. Consequential Loss Exclusion

12.1. Neither party shall be liable to the other for lost profits or business, loss of goodwill or damage to reputation, increased overheads or any costs or expenses incurred, loss of production, or any other indirect, consequential, special, incidental, exemplary or punitive damages or loss, whether based in agreement or tort (including negligence, strict liability or otherwise) whether or not either party has been advised of the possibility of such damages or loss under the Transaction Documents.

13. Audit and Compliance Review

13.1. You acknowledge and agree that, subject to clause 13.2, Monoova or a person nominated by Monoova, may conduct audits and reviews of Your compliance with Your obligations under the Transaction Documents, including in relation to:

- (a) Your processes, practices and procedures as they relate to the Transaction Documents;
- (b) the accuracy of Your records and reports in relation to the Transaction Documents; or
- (c) any other matters reasonably determined by Monoova to be relevant to compliance with this Agreement

13.2. Without limiting the above, You acknowledge and agree that Monoova or a person nominated by Monoova may, without prior notice to You, undertake random compliance testing of Your goods and services to confirm Your compliance (or otherwise) with Your obligations under the Transaction Documents.

13.3. Generally, each party must bear its own costs of any audits or compliance reviews. However, if the audit or compliance review concludes that You have breached the Transaction Documents, Monoova may, by notice in writing to You, require You to reimburse Monoova for Monoova' reasonable costs incurred in conducting the audit or compliance review.

14. Termination

14.1. The Transaction Documents and Your access to the Service automatically terminates with immediate effect upon You ceasing to be Approved for the purposes of the Service.

14.2. Either party may voluntarily withdraw from the Service at any time. Such party must give at least 180 days' written notice to the other.

14.3. For the avoidance of doubt, Monoova may immediately terminate the Transaction Documents or suspend Your access to the Service, on written notice, upon the happening of any one or more of the following events:

- (a) You are, or Monoova acting reasonably suspects You are or might be, involved in any unauthorised or illegal act, fraud or dishonesty;
- (b) You breach, or Monoova' acting reasonably suspects You may breach, any Relevant Law;
- (c) You are subject to any banning order or disqualification pursuant to any Relevant Law; or
- (d) a change in any Relevant Law or industry code by which Monoova is bound impacts its ability to provide the Service.

14.4. Upon termination of the Transaction Documents:

- (a) You must not accept, instruct or process a Transaction;
- (b) You must promptly remove any reference to Monoova in Your interactions with Your Customers and other stakeholders
- (c) You must return any Monoova Material to Monoova within ten (10) business days of the date of termination;

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- (d) to the maximum extent permitted by law, You waive all rights to damages, claims or other compensation from Monoova for any loss You suffer or may suffer as a result of the termination, however caused, and
- (e) any accrued rights or remedies of Monoova or You are not affected by termination.

14.5. Subject to applicable law and the rules of any industry code, for a period of two (2) weeks from the date of the termination or expiry of this Agreement, Monoova will assist You in transferring Customer information (including Direct Debit Authorisation) from Our Service to Your replacement service provider. Monoova will have no further obligations under this clause following the expiry of this two (2) week period in respect of the matter set out in this clause.

14.6. Within a reasonable time period following the termination or expiry of the Transaction Documents, Monoova will:

- (a) deduct all outstanding fees or other amounts owing by You to Monoova from the funds held by Monoova on Your behalf in Your Account/s; and
- (b) pay to You the balance of the funds held by Monoova on Your behalf.

15. Variation

15.1. Monoova may amend the Transaction Documents at any time by giving You 30 days' notice of the variation in writing which includes the date on which such variation takes effect.

15.2. You are bound by any amendments made by Monoova on the date You process a Transaction after the amendment takes effect.

16. Privacy and Confidentiality

16.1. You agree to keep confidential all Confidential Information.

16.2. Monoova is committed to comply with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles. Our Privacy Policy and Credit Reporting Policy sets out how We look after Your personal information generally as well as containing specific details as to how We look after Your credit related personal information. It is available for You to view online at www.monoova.com

17. Client Representations and Warranties

17.1. You represent and warrant to Monoova that:

- (a) the information contained in the Transaction Documents relating to You and Customers is true and not misleading (by omission or otherwise);
- (b) all information provided by You to Monoova from time to time (including, without limitation, in relation to Transactions) is true and complete when provided and, to the extent such information ceases to be true and complete, you will update Monoova as soon as practicable;
- (c) Transactions processed using the Service are valid;
- (d) any sale in respect of a Transaction is not subject to any dispute, set-off or counterclaim;
- (e) You are not aware of and have no reason to suspect that any Transaction contravenes Relevant Law;
- (f) You are a "wholesale client" for the purposes of the *Corporations Act 2001* (Cth), and as such a product disclosure statement or financial services guide is not required in connection with the offer of the Service to You; and
- (g) You have the authority to enter into and perform Your obligations under the Transaction Documents.

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You must notify Monoova as soon as possible if any of the representations and warranties contained in the Transaction Documents become incorrect or misleading in any respect.

18. Dispute Resolution

18.1. In the event of any dispute between the parties concerning any provision of the Transaction Documents, the dispute resolution process set out in this clause 18 must be used before any other remedy can be sought, unless a party wishes to seek urgent interlocutory relief in which case that party is not required to follow the procedures set out in this clause. This clause 18 will not affect a party's right to terminate the Transaction Documents.

18.2. The dispute resolution process shall consist of the following:

- (a) A party claiming that a dispute has arisen in respect of the Transaction Documents must notify the other party in writing specifying the nature of the dispute.
- (b) Within seven (7) days after receipt of the notice, the representatives of each party will meet face to face to negotiate in good faith to seek resolution of the dispute. If the representatives resolve the dispute, their agreement will be recorded in writing and will be binding on both parties.
- (c) If, after following the procedure set out in 18.2(b), the parties fail to resolve a dispute, and do not otherwise agree on a process to resolve the dispute within forty five (45) days of conclusion of that procedure, the dispute is to be submitted to mediation by a mediator selected by the Australasian Dispute Resolution Centre ("**ADRC**") and the mediation will be conducted in accordance with the then current ADRC mediation guidelines.

18.3. A decision of a mediator appointed under clause 18.2(c) is binding on the parties.

19. Survival

Clauses 2, 5, 6, 10, 11, 14, 16, 17 and 18, survive termination of this Agreement together with and any other clause of the Transaction Documents which by their nature survive termination.

20. Assignment

You may not assign Your rights under the Transaction Documents without the prior written consent of Monoova. Monoova may assign its rights under the Transaction Documents on written notice to You.

21. Governing Law

The Transaction Documents are governed by the laws of New South Wales and the parties agree to irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts of the State of New South Wales.

22. Independent Legal Advice

You have obtained Your own independent legal advice in respect of the Transaction Documents and agree to submit to and comply with the Transaction Documents.