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Introduction

This document shall be referred to as the General Terms & Conditions and shall comprise provisions in support of the Soft Spark Merchant Agreement (“Agreement”). It shall be read together with and form part of the entire Agreement.

1. Definitions And Interpretation.

1.1. In this Agreement, the following words and expressions shall, unless inconsistent with or otherwise indicated by the context, have the following meanings and cognate expressions shall have corresponding meanings:

Term	Definition
Affiliate	Means in relation to a Party, a subsidiary, or a holding company of that Party, or any subsidiary of the holding company and all of its subsidiaries.
Affiliate Agreement	Means an agreement enabling contracting Parties' affiliates to enter into a contract based on a Master Agreement.
Agreement	Means the agreement recorded in this document and all schedules, appendices and/or annexures hereto.
Alphanumeric Code	Means unique Sender ID identifying the Merchant in SMS correspondence between the Merchant and the Customers.
API	Means application programming interface which constitutes the routine, protocols and tools that enable two software applications to communicate with one another.
Bill	Means a payment due by a Customer to the Merchant in respect of the Merchant Services.
Business Day(s)	Means any day of the week save for weekends and public holidays in the Relevant Country or Territory.

Term	Definition
Card Payments	Means a Payment made by a Customer to Soft Spark Merchant(s) via VISA, MasterCard and any other card scheme approved by the Merchants and undertaken through the Bank.
Chargeback	Means a return of funds transferred for a transaction back to the customer. This typically happens when a cardholder disputes a transaction with their card issuing bank. The bank then charges the funds back from the merchant's bank and credits it back to the cardholder's account.
Soft Spark Account	Means an account opened by Soft Spark for purposes of the service for which Soft Spark will provide the details to the Merchant.
Soft Spark Merchants	Means the Merchants specifically engaged by Soft Spark and in respect of whom Soft Spark offers certain services in the ordinary course of its business including inter alia the processing of payments made to the said merchants through Merchant channels.
Soft Spark Technology	Means the applications, software, databases, systems, and equipment (including improvements and upgrades thereto) utilized by Soft Spark for the purposes of providing the Services and includes the Payment Gateway.
Soft Spark Technology Documentation	Means the documentation (if any) provided by Soft Spark to the Merchant which describes the technical features, functionality and performance of

Term	Definition
	any Soft Spark Technology.
Confidential Information	<p>Means all information (whether oral, visual, electronic or recorded in any other medium) disclosed to, or obtained by one Party from the other or a third party acting on that other Party’s behalf including:</p> <ul style="list-style-type: none"> (i) information ascertainable by inspection or analysis of samples, (ii) operations, processes, plans, intentions, designs, trade secrets, software, and business affairs.
Credit	Means a unit that facilitates the transmission of an SMS and constitutes a maximum of 160 characters per SMS.
Customer	Means any person who makes payment to the Merchant in relation to the Merchant Services using the Payment Gateway.
Data	Means any data, including personal data, supplied to a Party by the other Party and held, stored, collected, collated, accessed, or processed on behalf of the first-mentioned Party by the other Party.
Data Protection Laws	Means all applicable statutes, laws, secondary legislation, and regulations pertaining to ownership, sharing, privacy, confidentiality, and/or the protection and/or storage of Data in the Relevant Country.

Term	Definition
Disbursements	Means claims paid by Soft Spark to the Customer or a supplier on the Merchant’s instruction on behalf of the Merchant. They may also be referred to as Payouts.
Fraud risk transactions	<p>Shall include but not be limited to:</p> <ul style="list-style-type: none"> ▪ Any purchase or transaction from a card used by someone other than the authorized cardholder. ▪ Use of a card not authorized in terms of the card issuance rules.
Initial Soft Spark Merchants	Means the Soft Spark Merchants listed in the Merchant Agreement which Soft Spark shall make available to the Merchant as part of the Services on the Signature Date.
Intellectual Property	Means all trademarks, logos, brand names, trade names, patents, emblems, designs, copyrights or similar industrial/commercial rights owned by the respective parties or their subsidiaries/associates.
Master Agreement	Means an agreement entered into by Parties seeking to scope services across multiple countries and allowing their respective Affiliates to provide and receive the services on a contract signed by their respective Affiliates.
Merchant Channels	Means the channels used by the Merchant in the provision of their services which may include Web, App or Bank Channels.

Term	Definition
Merchant Services	Means the products and services provided by the Merchant to the Customers in the ordinary conduct of its business and for which Customers will pay using the Payment Gateway.
MNOs	Means the mobile network operators licensed to provide mobile telephony services in the Relevant Country or Territory.
Online Terms	Means the Soft Spark contractual terms found@ https://www.softsparkltd.com
Parties	Means (jointly) the Merchant and Soft Spark as parties to this Agreement and “Party” shall have a singular and composite meaning.
Payments	Means payments made by the Customers to the Merchant through the Payment Gateway.
Payments Account	Means an MNO e-value account owned by the Merchant or Soft Spark (as the case may be) and through which Disbursements or Payouts are processed.
Payment Facility Provider	Means and includes financial institutions and MNOs which have agreements with Soft Spark integrating their systems with the Payment Gateway for provisioning services to merchants and customers.

Term	Definition
Payment Gateway	Is a payment platform of Soft Spark that facilitates processing of payments made to Merchants through various channels, including the Payment Methods.
Payment Methods	Means the modes of payment that can be used by Customers to make payments through the Payment Gateway, including: (a) Mobile Money Transfers, (b) Bank Accounts, and (c) any other applicable modes introduced by Soft Spark.
Relevant Country	Means the country in which the service shall be performed and/or received and whose laws and regulations the parties shall abide by.
Signature Date	Means the date of the last signature of the Merchant Agreement which shall mean the date appearing hereinabove.
Services	Means the services to be provided by Soft Spark to the Merchant on the terms set out in the Merchant Agreement.
Short Code	Means the short code to be obtained from the MNO by Soft Spark on behalf of the Merchant and availed for SMS communication with Customers.
SMS	Means Short Messaging Services, a communication protocol allowing the interchange of short text messages between mobile phone devices.

Term	Definition
Term	Means the duration of the Merchant Agreement, determined in accordance with the provisions of clause 2.
Territory	Means the countries listed as countries of presence or operation for the Affiliates of either Party, or countries where services are to be provided or received.
APP	Means a payment services and Disbursement mobile commerce application developed by Soft Spark facilitating payments and collection via USSD, App and Web.
Transaction	Means a single Payment by a Customer to the Merchant.
USSD	Means Unstructured Supplementary Service Data, a communication protocol for transmitting information via mobile phone networks and telecommunication channels.

1.2. Words in the singular include the plural and vice versa.

1.3. Words importing any one gender include each of the other two genders.

1.4. References to natural persons include legal persons (incorporated or unincorporated) and vice versa.

1.5. A reference to a Party shall include a reference to that Party’s successors in title and permitted assigns.

1.6. The headings of clauses are intended for convenience only and shall not affect the interpretation of this Agreement.

1.7. Schedules and Annexures to this Agreement shall be deemed to form part of this Agreement.

1.8. Unless redefined within a particular annexure, terms defined in this Agreement shall bear the same meaning in the annexures.

1.9. Where words have been defined in the body of this Agreement, such words will have the meaning so assigned throughout the Agreement, unless the context clearly otherwise requires.

1.10. If any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the definition.

1.11. Where any period is prescribed in this Agreement, that period shall be reckoned inclusively of the first day and exclusively of the last day unless the last day is not a Business Day, in which case the last day shall be the next succeeding Business Day.

1.12. References in this Agreement to any statute or statutory provisions shall include any statute or statutory provision, which amends, extends, consolidates, or replaces the same and shall include orders, regulations, instruments, or other subordinate legislation made under the relevant statute or statutory provision.

1.13. Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.

1.14. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

1.15. The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement shall not apply.

1.16. Where in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by facsimile and electronic mail.

Term and Termination.

2.1. This Agreement shall come into force on the Signature Date and shall continue to subsist unless terminated by either Party in accordance with this clause.

2.2. The commercial terms of this Agreement may be reviewed annually where the Parties will appraise their relationship and make any amendments to this Agreement in respect of any such

commercial terms requiring any such amendments as may be deemed necessary. In the event that:

- (a) the annual review is not conducted; or
- (b) proposed amendments are not agreed upon;

this Agreement (together with any mutually approved amendments) shall continue in full force and effect.

2.3. This Agreement may be terminated:

- (a) By either Party without cause at any time on three (3) months' written notice.
- (b) By either Party forthwith by written notice to that effect if the other Party:
 - commits any material breach of its obligations hereunder which is not capable of remedy, or
 - commits a breach which is not remedied within seven (7) days of receiving a written complaint (delivered through email, fax or recorded delivery) specifying the nature of such breach and requiring its rectification.
- (c) By either Party forthwith if the other Party:
 - goes into liquidation other than for purposes of reconstruction or amalgamation,
 - suffers the appointment of a receiver of any of its property or income, or
 - makes any deed or arrangements with or composition for the benefit of any of its creditors.

2.4. In addition to any other termination rights granted by this Agreement, Soft Spark may terminate this Agreement immediately without liability and without any notice, if:

- (a) Soft Spark is notified or otherwise determines in good faith that the Merchant is using the Services in furtherance of any activity which violates any law, rules, regulations or policy of Soft Spark.
- (b) Soft Spark is notified by the MNO that the number and quantum of chargeback requests received in relation to the Merchant is beyond such limits as may have been advised in writing.
- (c) Soft Spark, or its directors, officers, stockholders, employees, or agents are made the subject of a criminal or civil action or investigation or are threatened by such action as a consequence of use of the facility by the Merchant.

2.5. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

3. Card Chargebacks and Refunds

3.1. If applicable, the Merchant acknowledges and agrees that in certain circumstances the Issuing Bank, Payment Scheme, or other financial institutions may:

- (i) Refuse to settle a transaction; or
- (ii) Impose Chargebacks on Soft Spark.

3.2. The Merchant agrees that it may be required to reimburse Soft Spark for Chargebacks where the Merchant has received settlement in respect of the relevant transaction and Soft Spark has settled chargebacks on the Merchant's behalf. Where applicable, the Merchant must respond to Cardholder disputes and handle Chargebacks in accordance with Payment Scheme Rules.

3.3. The Merchant agrees that Soft Spark shall have the right to send non-settled transactions received from the Customers to the Issuing Bank or authorities concerned for investigation. In case of objection and/or opposition to executed transactions by the Issuing Bank or the authorities for any reason, Soft Spark shall not be bound to pay the Merchant the transaction amount during the period contained in this agreement.

3.4. All Chargebacks shall correspond to the whole or part of the settlement value of the original transaction.

3.5. Notification of Chargebacks:

Where Chargebacks occur, Soft Spark agrees to promptly notify the Merchant of any chargeback requests, including:

- Any documentation related to the chargeback;
- The reasons provided by the Cardholder's bank for the chargeback.

Notification will be made by email or any other method agreed upon by both parties.

3.6. Liability for Chargebacks:

A Chargeback represents an immediate liability from the Merchant to Soft Spark. If the full amount of any Chargebacks or Chargeback Costs is not:

- Debited by Soft Spark from the Merchant's account, or

- Deducted from any remittance or invoiced,

then Soft Spark shall be entitled to recover the full amount by any lawful means. Soft Spark may recover the following:

- a. The full amount of the relevant Chargeback; and
- b. Any other costs, expenses, liabilities, or Fines incurred as a result of or in connection with such Chargeback (“Chargeback Costs”).
- c. If there are insufficient funds in the Merchant’s account, the Merchant agrees to immediately pay the amount owed upon request without cavil or argument.

3.7. Chargeback Fees:

In addition to the amount of the chargebacks, the Merchant is responsible for any fees associated with processing chargebacks. Soft Spark will provide a schedule of chargeback fees, which may be updated from time to time. These fees:

- Will be deducted from the Merchant’s account;
- Are non-refundable, regardless of the final resolution of the chargeback.

3.8. Disputing Chargebacks:

The Merchant has the right to dispute chargebacks in accordance with the rules and regulations of the relevant Cardholder’s bank and Card Schemes. To dispute a chargeback:

- The Merchant must provide Soft Spark with written notice and supporting documentation within the timeframe communicated by Soft Spark;
- Soft Spark will forward the documentation to the card issuer for review;
- Soft Spark is not obliged to investigate the validity of any Chargeback by the Issuing Bank, Payment Scheme, or financial institution, whose decision shall be final and binding.

Soft Spark agrees to assist the Merchant in the chargeback dispute process, but the outcome is not within Soft Spark’s control.

3.9. Excessive Chargebacks:

Soft Spark may immediately terminate this Agreement and Services if it considers the total value of Refunds and/or Chargebacks unreasonable. If the Merchant’s chargeback rate exceeds acceptable levels:

- Soft Spark reserves the right to impose additional fees;

- Suspend or terminate the Merchant's contract;
- Require the Merchant to maintain a reserve account to cover anticipated chargebacks and related fees, subject to clause 5.

As Chargebacks may arise a considerable period after the relevant transaction date, Soft Spark remains entitled to recover Chargebacks and related costs from the Merchant even after the contractual relationship ends.

4. Fraudulent Transactions

4.1. Fraudulent transactions shall include but not be limited to:

- Any purchase of goods and services and/or transaction arising from the use of a card by a person other than the authorised cardholder.
- Use of a card that is not authorised in terms of the rules governing the issuance and use of cards.

4.2. In the event that fraudulent transactions account for more than 0.10% of the Merchant's sales turnover in any one (1) month, Soft Spark may, in addition to any other remedy available to it, be entitled to unilaterally terminate this Agreement forthwith and/or request the Merchant to delist the affected customer from the use of the Payment Gateway and terminate the Merchant Agreement with the affected Customer.

4.3. Merchant agrees that it will always be responsible for its actions, and that of its employees including fraudulent acts or omission not traceable to the contributory negligence of Soft Spark.

4.4. Soft Spark reserves the right to hold collected funds if the transactions are suspected to pose fraud risk, or any other risk as may be deemed necessary, until such times as such transactions are cleared of the risk. The merchant will be notified of such action in 24 hours.

5. Security Deposit/rolling Reserve

5.1. Soft Spark reserves the right to require that the Merchant provides (or procures the provision of security in such form as to be agreed by the Parties) to secure the performance of the Merchant's actual, contingent or potential obligations under this Agreement or otherwise in connection with the Services. Such security may take the form of a deposit, a rolling reserve, a guarantee or indemnity.

5.2. Soft Spark may withhold up to 15% of processed transactions from the Merchant as rolling reserve for a period of up to 180 days from the date of transaction to cover any chargeback, fine or penalties as a result of the processed transactions.

5.3. The percentage of funds held and the period are discretionary to Soft Spark and shall be communicated to the merchant by the sales representatives, after entering into production.

5.4. The withheld funds shall be settled back to the merchant's account after 180 business days barring any outstanding chargebacks, refunds due on the transactions, penalties or fines that may be imposed by card schemes or regulatory agencies as a result of the merchant's actions.

5.5. The funds held as rolling reserve shall survive the termination of this agreement and shall remain in full force in the case of an insolvency procedure against the Merchant.

5.6. At the time of termination, Soft Spark may retain such amount from the security/reserve (if any) and settlement payable to the Merchant as may be determined by Soft Spark to cover Chargeback risk, Refund risk or any potential loss, damages, penalties, cost that may be incurred by Soft Spark for a period of one hundred and eighty days (180) Business Days. In the event that such retained amount is not sufficient to cover all outstanding amounts of the Merchant post termination, the Merchant shall ensure that it pays Soft Spark all pending amounts within twenty-one (21) Business Days of receiving the demand notice and shall at all times keep Soft Spark indemnified in this respect.

5.7. The funds held as rolling reserve do not represent a deposit and will not bear any interest.

5.8. Any liabilities to Soft Spark owed by the merchant as a result of chargebacks, fines, penalties or refunds, that is yet to be settled by the merchant will be clawed from the rolling reserve without any prior notice to the merchant, or approval by the merchant.

5.9. Soft Spark reserves the right to unilaterally call for an increase to the level of security/reserve held subject to a prior 21 days' notice in writing given to the merchant and may alter the terms, including percentage, of the rolling reserve if Soft Spark deems justified.

5.10. Soft Spark may require that any security provided be supplemented or replaced at any time, subject to a 5 days written notice with legitimate reasons as to the demand.

6. Set Off

6.1. Soft Spark may, with 5 days' notice, set off any debts or liabilities due from the Merchant to Soft Spark under this Agreement against any debts or liabilities owed by Soft Spark to the Merchant, regardless of the place of payment or currency of either obligation. If the obligations are in different currencies, Soft Spark may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

6.2. Soft Spark shall be entitled to defer any settlement or any other sum due to the Merchant having given a 5 days prior notice to the merchant, to the extent that Soft Spark considers necessary or appropriate to protect their ability to recover the Fees and/or the sums set out in

the Agreement or any other liability (actual or anticipated) of the Merchant in connection with this Agreement.

6.3. If Soft Spark has reasonable suspicion that a transaction may be fraudulent or involve other criminal activity, Soft Spark may:

- suspend the processing of that, and any connected, transaction,
- withhold settlement until the satisfactory completion of any investigation.

The Merchant shall not be entitled to any interest or other compensation whatsoever in respect of suspension or delay in receiving Payment.

6.4. The exercise by Soft Spark of any of its rights under this clause shall be without prejudice to any other rights or remedies (including but not limited to set-off) to which Soft Spark is otherwise entitled (by operation of law, contract, or otherwise).

7. Warranties

7.1. The Merchant warrants that it has never had an agreement with a payment scheme provider which was terminated upon request and/or demand by the payment scheme provider or any regulatory authority.

7.2. The Merchant warrants not to submit any transaction that the Merchant knows is illegal or fraudulent and that all transactions submitted to Soft Spark under this Agreement represent bona fide sale of products in the ordinary course of business for the stated price.

7.3. The Merchant warrants it will conduct appropriate due diligence, including KYC, on all Customers (if applicable) and will not knowingly engage in any activity that will damage the goodwill of Soft Spark or the Payment Scheme.

7.4. The Merchant warrants it will use the Services in good faith, in accordance with the terms of this Agreement and in accordance with all Applicable Law and Payment Scheme Rules. In particular, the Merchant will not use the Services in a manner that could result in a violation of anti-money laundering, anti-corruption, counter terrorist financing and similar legal and regulatory obligations.

7.5. The Merchant warrants that there is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened which if decided adversely would materially impair Merchant's ability to carry on its business substantially as now conducted or which would adversely affect its financial condition or operations.

7.6. The Merchant warrants to fully abide by APPLICABLE LAW throughout the term of this Agreement. The Merchant furthermore undertakes to abide by the Payment Scheme Rules and

any other operating instructions from Soft Spark. The Merchant guarantees that the employees or others who are involved in transactions for Merchant will respect the above-mentioned rules and instructions.

7.7. If Merchant, at any time, becomes aware of any information that indicates that any representation or warranty set forth in this Agreement is or may be false, or becomes aware of a breach of a warranty, Merchant will immediately make Soft Spark aware of such information and take immediate steps to rectify and remedy the representation or warranty.

7.8. The Merchant acknowledges that it is responsible for, and undertakes to, meet all costs associated with achieving and maintaining compliance with the provision of this agreement as agreed by parties relating to the provision of this service, including any fines, costs or charges arising from Merchant being compromised or not being compliant with the provision of this Agreement as agreed by parties or data held by Merchant being compromised and/or used for fraudulent purposes.

7.9. The Merchant further confirms, undertakes and assures Soft Spark that it shall not extend Soft Spark's infrastructures or services to their sub-merchants without the prior approval of Soft Spark's compliance team, and shall use the services only for the purposes contemplated herein. In the event of the violation of this clause, rules, regulations, byelaws, payment scheme rules, and any applicable standards of authority by the Merchant and/or the Merchant clients resulting in any loss or penalty being imposed on Soft Spark, the Merchant shall on receipt of the claim from Soft Spark, undertake to indemnify in full, and forthwith pay to Soft Spark, the amount of penalty/fine imposed.

7.10. The Parties warrant that they are duly registered and licensed, and have the full capacity, regulatory approvals, and corporate authorisation to carry on their respective businesses and enter into this Agreement and discharge the obligations and responsibilities created herein.

7.11. The Parties further warrant that no element of this transaction constitutes a breach of any existing law, regulation, patent, copyright, or other intellectual property in its country or countries of domicile and operation.

7.12. The Parties warrant that in the case of any third-party software used in respect of this Agreement, that they have the required licence and the right to grant a sublicense to use such third-party software.

7.13. Each Party warrants to the other that this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms and obligations therein and no provision of this Agreement is in conflict with any of the Party's obligations under its constitutional documents, Applicable Law or any other document, charter or agreement to which the Party is subject.

7.14. The Parties shall keep each other indemnified against all actions, claims, proceedings and all legal cost or other expenses arising out of any breach of the above warranties or out of any claim by a third party based on any facts which if substantiated would constitute such a breach or a breach of other relevant legal or contractual duty.

7.15. Soft Spark neither warrants that the use of the Payment Gateway or the operation thereof will be uninterrupted or error free, however, Soft Spark warrants that it shall use its best effort to ensure that the Payment Gateway functions optimally at all times and within generally accepted industry standards during the term of this Agreement and in the case of any interruption or error Soft Spark shall resolve it within a reasonable time as provided in the SLA.

7.16. Except as set forth in this clause 6, Soft Spark makes no express or implied representations or warranties with respect to the Payment Gateway and related services or their condition, merchantability, fitness for any particular purpose or use by the Merchant or the Merchant's customers.

7.17. Disclaimer. EXCEPT FOR THE WARRANTIES SPECIFICALLY SET FORTH IN THIS AGREEMENT, EACH PARTY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES.

8. Indemnification And Limitation of Liability

8.1. Without prejudice to any other remedies that Soft Spark may have in law or equity, the Merchant shall indemnify and hold Soft Spark harmless from and against any damage, accrued chargeback, loss, liability, action, claim, damage, proceedings, expense (including legal costs on attorneys) that Soft Spark may incur with respect to:

- any negligent act or omission by, or willful misconduct of, the Merchant, its employees or agents in connection with this Agreement;
- the violation of any applicable law, statute or regulation by the Merchant or its personnel;
- any breach of the Merchant's obligations, representations, or warranties under this Agreement;
- the Merchant willfully or carelessly exposing the Service to the public during the process of carrying out tests in the controlled Live environment;
- any modification or amendment of the prescribed terms of use communicated by Soft Spark, that Soft Spark did not specifically approve in writing;

- any warranty, condition, representation, indemnity or guarantee granted by the Merchant with respect to its use of the Payment Gateway and with respect to the limited warranties specified in clause 7;
- any omission or inaccuracy in the Merchant's advertisements or promotional materials that relate to the Payment Gateway;
- any modification of or addition to the Payment Gateway not provided or approved by Soft Spark.

8.2. Further, the Merchant shall indemnify and keep Soft Spark indemnified against any action, liability, cost, claim, loss, damage, proceedings, expense (including legal costs on attorneys) suffered or incurred by Soft Spark or in any way arising from:

- (a) any penalty imposed on Soft Spark by any Payment Facility Provider or Payment Scheme consequent to the fact that the number and quantum of chargeback requests received in relation to the Payment Gateway is beyond the limits considered acceptable for provision of the Payment Gateway;
- (b) any action taken by Customers against Soft Spark;
- (c) any loss or penalty imposed on Soft Spark as a result of the Merchant using the services for other purposes other than the purposes contemplated in this agreement, any violation of applicable rules, regulations, payment scheme rules, byelaws, and any applicable standards of authority, and the Merchant extending Soft Spark's infrastructure, or services to its sub-merchants without prior written approval from the Soft Spark compliance team, and/or granting access to any unauthorised third parties.

8.3. Subject to clause 9, Soft Spark hereby indemnifies the Merchant against all losses, actions, proceedings, damages and costs, claims, demand, or expenses that it may suffer or sustain as a result of the negligent performance of its obligations under this Agreement or due to a breach of the terms of this Agreement by Soft Spark.

8.4. The provisions of this Clause 8 shall survive the termination of this Agreement.

9. Limitation of Liability

The liability of Soft Spark to the Merchant, whether in contract, negligence, and tort, by way of indemnity or otherwise arising out of or in connection with this Agreement shall be subject to the financial limits set out below;

9.1. In no event shall Soft Spark's maximum cumulative liability to the Merchant be in excess of any amount that has accrued to Soft Spark from transactions emanating by virtue of this

Agreement, in the month immediately preceding the date of the occurrence of the claim from which the cost or expense arises and shall be subject to the following conditions having been met:

- (i) The Merchant must have expended best efforts towards recovery of any amounts lost including (but without limitation to) recovery from Customers;
- (ii) Soft Spark shall not indemnify the Merchant against any losses arising fully or in part from actions, inactions, faults, or negligence of the Merchant or any third parties;
- (iii) Without prejudice to the limitation of liability set out in this, the Merchant must have notified Soft Spark of any direct loss in respect of which a claim of indemnity arises within thirty days of the loss occurring. Soft Spark shall not be under obligation to indemnify the Merchant against any direct loss in respect of which notice has not been issued in accordance with the provisions of this clause.

9.2. No liability shall be raised against Soft Spark more than two (2) years after the accrual of the cause of such liability therefore. It is further agreed that notwithstanding anything to the contrary in this Agreement, the limitations on liability, expressed herein, shall inure to the benefit of and apply to all parents (both direct and indirect), subsidiaries and Affiliates of Soft Spark.

9.3. Soft Spark will not be liable for the actions or inactions of any third party not acting on the instructions of Soft Spark; neither will Soft Spark be liable for the actions or inactions not directly traceable to it.

9.4. Without prejudice to any remedies available to Soft Spark, Soft Spark shall be under no liability whatsoever to the Customer in respect of any loss or damage arising directly or indirectly out of:

- (a) any defect in the Merchant Services;
- (b) the refusal by the Merchant to honor or accept a Payment;
- (c) the malfunction of any of the Merchant's computer terminal or equipment;
- (d) the giving of Transaction instructions by any person other than by a customer;
- (e) any injury to the credit character and reputation of the Customer alleged to have been caused by the return or the refusal by the Merchant to honor or accept a Payment;
- (f) any misstatement, misrepresentation, error, or omission in any details disclosed by the Merchant to Soft Spark.

9.5. Notwithstanding anything to the contrary contained in this Agreement a Party, its officers, employees, sub-contractors, agents and partners shall not be liable to the other Party for any

indirect, consequential, incidental or special loss including (but not limited to) loss of profit, anticipated savings, loss of goodwill, corruption or loss of data howsoever arising.

10. Confidentiality And Intellectual Property

10.1. The Parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret all portions of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Dissemination of Confidential Information by each party shall be limited to those employees with the need for such access for the advancement of the goals anticipated under this Agreement. Each party agrees to maintain at least the same procedures regarding Confidential Information that it maintains with respect to its own Confidential Information. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the other party and both parties shall not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder.

10.2. The term "Confidential Information" shall not apply to any information which:

- **(a)** Is required to be disclosed by operation of law or any requirement of a competent authority PROVIDED ALWAYS that the disclosing Party shall promptly inform the other Party to whom the Confidential Information belongs of any such requirement to enable such Party take any legal measures or otherwise for purposes of protecting its interests; or
- **(b)** Is reasonably required to be disclosed in confidence to the Party's professional advisors for use in connection with this Agreement PROVIDED ALWAYS the said Party shall be responsible for ensuring its said professional advisors adhere to the Party's obligation of confidentiality as if such advisors were the receiving Party PROVIDED ALWAYS that the receiving Party's obligations with regard to the information it holds in confidence will not be transferred to its professional advisors but remain in it; or
- **(c)** Is or becomes within the public domain (otherwise than through the default of the recipient Party); or
- **(d)** Is in the possession of the receiving Party without restriction in relation to disclosure at the date of receipt from the disclosing Party; or
- **(e)** Is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

10.3. Neither Party shall (except in the proper course of performing its duties under this Agreement) during or after the period of this Agreement divulge to any person whatever or

otherwise make use of Confidential Information and each Party shall use its best endeavours to prevent the publication or disclosure of any Confidential Information.

10.4. All Intellectual Property Rights belonging to a Party prior to the execution of this Agreement shall remain vested in that Party.

10.5. For the avoidance of doubt, all Intellectual Property inherent in the software and other solutions provided by Soft Spark under this Agreement (including improvements and upgrades thereto) shall remain the sole and exclusive property of Soft Spark. Further and unless otherwise agreed in writing, neither Party shall be entitled to use of the Intellectual Property of the other save for the purposes of this Agreement.

10.6. All public announcements and/or press releases in connection with the subject matter of this Agreement or its implementation shall only be made after mutual consultation and agreement on all the parameters thereof including but not limited to the contents of such public announcements and/or press releases.

10.7. Any breach of this Clause shall entitle the offended Party to terminate this Agreement in addition to other remedies entitled to it under law.

10.8. This provision on confidentiality shall survive termination or expiry of this Agreement.

11. Data Protection

11.1. Each Party shall take all appropriate technical and organizational security measures to ensure that Data supplied by the other Party (“Discloser’s Data”) is protected against loss, destruction and damage, and against unauthorized access, use, modification, deletion, disclosure or other misuse.

11.2. Each Party shall take reasonable steps to identify all reasonably foreseeable internal and external risks posed to the Discloser’s Data under its possession or control and establish and maintain appropriate safeguards against any risks identified. The safeguards shall be updated continually in response to new risks or deficiencies in previously implemented safeguards.

11.3. Each Party further warrants, represents and undertakes that it shall ensure that its technology, including all databases, systems, network and equipment on which the Discloser’s Data is processed as part of providing the Services, shall at all times be in a standard no less than the standards which are in compliance with the best industry practice for the protection, control and use of the Discloser’s Data and conform to the disclosing Party’s reasonable requirements.

11.4. Each Party shall and shall ensure that its employees, suppliers, agents, and sub-contractors shall, in respect of the Discloser’s Data:

- i. Not process any Discloser's Data (including personal or private information or personnel, clients, or Customers) for any purpose other than to the extent necessary to provide the Services under this Agreement;
- ii. At all times strictly comply with all the provisions and requirements of any of the disclosing Party's protection policies and procedures which may be in force from time to time;
- iii. Comply with any request made or direction given by disclosing Party in connection with the requirements of any Data Protection and other Laws governing the provision of the services under this Agreement;
- iv. Not do or permit anything to be done which might jeopardize or contravene any Data Protection and other Laws governing the provision of the services under this Agreement;
- v. Not disclose Discloser's Data without the written authority of the disclosing Party (except for the purposes of fulfilling its obligations under this Agreement), and immediately notify the disclosing Party where it becomes aware that a disclosure of Discloser's Data may be required by law; and
- vi. Immediately notify the disclosing Party when it becomes aware of a breach of this clause.

11.5. Each Party shall indemnify the other from and against all claims, actions, proceedings, costs (including attorneys' fees), expenses, losses, damages and liabilities by the other Party arising out of or in connection to a breach of this clause subject to any limitations as to liability as may be provided in this Agreement.

12. Procedure Upon Termination

12.1. Upon termination of this Agreement for whatever reason:

- **(a)** All arrears of payments, if any, and any other agreed sums due under the terms of this Agreement shall be paid PROVIDED THAT any arrears shall only be payable for any Services provided during the period up to the date of termination of this Agreement.
- **(b)** The Parties shall return all Confidential Information and other information, documents, material, and data obtained while carrying out the Services pertaining to this Agreement;

12.2. Subject to the provisions of this Agreement, the Parties shall be entitled to exercise any one or more of the rights and remedies given to it under law and under the terms of this Agreement and the determination of this Agreement shall not affect or prejudice such rights and remedies and each Party shall be and remain liable to perform all outstanding liabilities and obligations under this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it.

13. Force Majeure

13.1. None of the Parties hereto shall be held liable for any breach of any of its obligations under this Agreement if such a breach results from an event of Force Majeure which for the purposes of this Agreement shall mean any event or circumstance which materially affects such Party hereto in a manner which prevents that party from performing or fulfilling all of its obligations under this Agreement and where such event or circumstance or its effects cannot be prevented, avoided or removed by such Party acting in accordance with prudent practice and has not been precipitated or caused by default, negligence, omission or act of any Party hereto.

13.2. Force Majeure events shall include, but shall not be limited to:

- Floods
- Earthquakes
- Natural phenomena
- War
- Pandemic
- Decisions of any relevant Governmental Authority

13.3. As soon as reasonably practicable after the start of the Force Majeure event, but no later than 5 business days from its start, the affected party shall notify the other party in writing of the Force Majeure event, the date on which it started, its likely potential duration, and the effect of the Force Majeure event on its ability to perform any of its obligations under the agreement.

13.4. Where the Force Majeure event shall continue to subsist for a period of Twenty-Eight (28) days, the other Party may at any time thereafter terminate this Agreement upon not less than Fourteen (14) days' notice in writing but without prejudice to any antecedent rights or liabilities of either Party.

14. Notices

14.1. Any notice to be given for the purposes of this Agreement shall either be delivered personally or sent by registered post or facsimile transfer (telefax) or electronic mail (email).

14.2. A notice shall be deemed to have been served as follows:

- (a) if personally delivered at the time of delivery;
- (b) if sent by registered post at the expiration of fourteen (14) days after the same was delivered into the custody of the postal authorities;

- (c) if sent by email, at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume.

14.3. In proving such service, it shall be sufficient to prove that delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a registered post letter or that the telefax or email was properly addressed and dispatched.

15. Affiliate Agreements

15.1. Should the Merchant wish (either by itself or in its Affiliate) to avail itself of the rights or obligations set out in this Agreement in any of the countries in the Territory, the Merchant or its Affiliate (as the case may be) shall:

- (a) Execute an Affiliate Agreement to the Agreement with Soft Spark or its relevant Affiliate, (in substantially the form provided by Soft Spark) pursuant to which a severable and independent Agreement will arise between Soft Spark or its Affiliate and the Merchant or the Merchant's Affiliate (as the case may be) on the terms of this Agreement as read with and amended by the specific terms set out in the Affiliate Agreement; and
- (b) The Affiliate Agreement shall set out the specific services to be provided by Soft Spark or its relevant Affiliate to the Merchant or the Merchant's Affiliate as well as any specific terms or amendments which may be applicable to such relationship;
- (c) Each such Affiliate Agreement will constitute a separate and divisible relationship between the relevant parties thereto with the effect that should:
 - i. Any Affiliate Agreement be terminated for whatsoever reason, whether due to a breach thereof by either Party or otherwise, such termination will not affect the continuation or enforceability of any other Affiliate Agreement or this Agreement; and
 - ii. This Agreement be terminated for whatsoever reason, such termination will not affect the continuation or enforceability of any Affiliate Agreement and, to the extent necessary to give effect to such Affiliate Agreement, the terms and conditions of this Agreement will endure as between the Parties to such Affiliate Agreement.

15.2. Neither Soft Spark nor any of the Soft Spark's Affiliate shall, under any circumstances whatsoever, whether as surety, guarantor or otherwise, be liable for any obligations agreed to or liability incurred by its relevant Affiliate in terms of such Affiliate Agreement.

15.3. All limits of liability and indemnification will apply in respect of each of the Affiliate Agreement(s) and this Agreement and will not be aggregated across all such agreements.

15.4. An Affiliate Agreement is capable of termination, cessation, amendment, and extension independently of this Agreement and any other Affiliate Agreement.

15.5. Where there is inconsistency between the Master Agreement and an Affiliate Agreement, the terms of the Master Agreement shall prevail unless otherwise agreed in writing by the Parties to this Agreement.

16. Dispute Resolution.

16.1. Any dispute arising out of or in connection with this Agreement will in the first instance be referred to the Parties' Project Representatives ("the first management level") for discussion and resolution at an inter-Party meeting to be held seven (7) Business Days after notification (by either Party) of a dispute. If a dispute is not resolved at that meeting, the dispute will be referred to the second management level below who must meet within three (3) Business Days of the reference to attempt to resolve the dispute. If the unresolved dispute is having a material effect on the Services or the receipt by Customers of the benefit thereof, the Parties will use their respective best endeavors to reduce the elapsed time in reaching a resolution of the dispute.

16.2. The second management level shall comprise:

- The Merchant
- Soft Spark

Second Level	Senior Manager/CEO	Senior Manager/CEO
Merchant	Soft Spark	

16.3. Each Party will use all reasonable endeavors to reach a negotiated resolution through the above dispute resolution procedure. The specific format for such resolution will be left to the reasonable discretion of the relevant management level but may include the preparation of statements of fact or of position.

16.4. If the dispute is not resolved at the meeting of the second management level, then at the option of either Party, the dispute may be referred for arbitration in a location agreed upon by the Parties or indicated in the Merchant Agreement, by one Arbitrator to be agreed on by the

parties, and in the absence of agreement, to be appointed by the Chairperson of an arbitral body agreed upon by the Parties or indicated in the Merchant Agreement. The provisions of the Arbitration Act in force in the Relevant Country as amended from time to time shall apply to all such arbitration proceedings. Such arbitration proceedings shall be in the English language unless otherwise agreed upon and the decision of the arbitrator shall, so far as permitted by law, be binding on the Parties.

16.5. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.

16.6. Nothing in this Agreement shall prevent or delay a Party from making claims or seeking injunctive or interlocutory relief in courts of competent jurisdiction in the Relevant Country.

17. AML/CFT, Anti-bribery And Corruption Compliance

17.1. Each Party hereby undertakes that, at the date of this Agreement, itself, its directors, officers, employees or Affiliates have not offered, promised, given, authorised, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with this Agreement and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

17.2. Each Party shall comply with (and shall procure that each person associated with it who is performing under this Agreement shall comply with) all applicable anti-bribery and anti-corruption Laws in any relevant jurisdiction (including those in the Territory and the Foreign Corrupt Practice Act of the United States of America and the Bribery Act 2010 of the United Kingdom) and all applicable anti-bribery and anti-corruption regulations and codes of practice.

17.3. The Merchant shall ensure that this clause 17 is observed in all relationships with its customers.

17.4. The Merchant shall ensure that it has, and maintains in place adequate policies and procedures, to ensure compliance with the Anti-Bribery Laws (and shall procure that persons associated with it in connection with this Agreement, or other persons who are performing services on its behalf in connection with this Agreement shall have, and shall maintain, such policies and procedures);

17.5. The Merchant shall be responsible for (and shall ensure) the observance, performance and compliance with the Anti-Bribery Laws by each person associated with it who is performing in connection with this Agreement and shall be directly liable to Soft Spark for any breach by such persons of any of the Anti-Bribery Laws;

17.6. The Merchant shall immediately report to Soft Spark: any knowledge or suspicion of any violations by the Merchant, its officers, Personnel or any person associated with it of any of the Anti-Bribery Laws; or any requests or demands for any undue financial or other advantage of any kind received by the Merchant in connection with this Agreement.

17.7. Each Party warrants and represents that neither it nor any of its officers, Personnel or, having made reasonable enquiries, so far as it is aware, other persons associated with it in connection with this Agreement:

- 17.7.1. have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Anti-Bribery Laws; or
- 17.7.2. have been or is involved in any activity which may violate the Anti-Bribery Laws in respect of the conduct of business processes and/or negotiations that resulted in the conclusion of this Agreement.

17.8. Each party undertakes that it will not, and will procure that their personnel, agents, contractors, subcontractors and other stakeholders, affiliates and subsidiaries etc. will not directly or indirectly engage in, promote or support other organisations or individuals who engage in or attempt to commit or promote or support terrorist activity or knowingly provide material support or resources to any individual or entity that commits, attempts to commit, facilitates, or participates in terrorist acts.

17.9. Each party undertakes that it will not, and will procure that their personnel, agents, contractors, subcontractors and other stakeholders, affiliates and subsidiaries etc. will not engage in any fraudulent or unethical business practices or by an act or omission, including any misrepresentation knowingly misleads, or attempt to mislead, a party in order to obtain any financial or other advantage, or to avoid any obligation, to benefit the perpetrator or a related party.

17.10. Each party undertakes that it has complied with all anti-money laundering laws and regulations, including without limitation, the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (FATF recommendations) and all other relevant guidelines.

17.11. Notwithstanding anything to the contrary in this Agreement, a breach by a Party of any of its obligations under this clause 17 shall entitle the other Party to forthwith cancel this Agreement upon written notice to the other Party and to claim such damages as it may have suffered as a result of such breach.

18. General

18.1. Soft Spark's relationship with the Merchant will be that of an independent contractor and that of an agent for collection & receipt of Payments from Customers on behalf of the Merchant, and nothing in this Agreement shall be construed to create a partnership, joint venture, or employer-employee relationship between the parties hereto or between Soft Spark and the Merchant's employees. The Merchant shall have no right to obligate or bind Soft Spark in any manner. The employees of the Merchant shall not have any claim/right/benefits whatsoever against Soft Spark.

18.2. Notwithstanding any other provision of this Agreement, the Merchant shall have no right to use any of Soft Spark's trademarks, service marks, or trade names in connection with any products, services and/or promotion without the prior written consent of Soft Spark.

18.3. Soft Spark processes Payment transactions through the Payment Gateway on behalf of the Merchant. Soft Spark is not a bank, non-banking financial company or other depository institution. Funds held by Soft Spark in its bank account in connection with the processing of Payment transactions through the Payment Gateway are not deposit obligations and are not insured for the benefit of the Customer by any governmental agency.

18.4. This Agreement shall be binding upon and ensure for the benefit of the successors and/or assigns of the Parties.

18.5. This Agreement is personal to the Parties and may not be assigned at law or in equity without the prior written consent of the other Party.

18.6. The provisions of these Terms and Conditions may, at any time, be added to, modified, or varied by Soft Spark. Soft Spark may give notice to the Merchant of any changes to these Terms and Conditions.

18.7. This Agreement constitutes the whole agreement between the Parties relating to the subject matter of this Agreement and supersedes any previous written or oral Agreement between them in relation to the matters dealt with in this Agreement.

18.8. This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered shall be an original.

APPENDIX 1

Restricted Prohibited Products and Services

Prohibited Profiles

Soft Spark shall not accept as customer or conduct transactions with persons in the following circumstances:

- Identified by reliable sources as being a criminal or being associated with criminal groups.
- Identified by reliable sources as being a terrorist or being associated with a terrorist group or activities.
- Involved in certain criminal or other such activities (e.g., prostitution, drug trafficking, racketeering, etc.) which are high risk, given the nature of the source of funds.
- Has no physical presence i.e., shell companies.
- Has no clear business activities, services i.e., shelf companies.
- Identity cannot be verified i.e., anonymous/fictitious names.
- Incorporated/resident in or operating from a jurisdiction which Soft Spark has designated as a prohibited country/territory (refer to Soft Spark's Sanctions Policy and Country Risk Rating Control document). The following countries are currently on Soft Spark's prohibited list:
 - Russian Federation
 - Myanmar
 - North Korea
 - Islamic Republic of Iran
- Sanctioned or specially designated by UNSC, OFAC, HMT, EU or any other relevant governmental bodies.
- Known or suspected terrorist or terrorist organizations.
- Declared wanted by relevant authorities.

Prohibited Business Activities, Goods and Services

Soft Spark shall not onboard persons engaged in the sales or facilitation of the following goods and services:

- Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements.
- Production or trade in weapons and munitions.
- Production or trade in tobacco.
- Trade in wildlife or wildlife products regulated under CITES (The Convention on International Trade in Endangered Species of Wild Fauna and Flora).

- Production or trade in radioactive materials.
- Production or trade in or use of unbonded asbestos fibers.
- Purchase of logging equipment for use in primary tropical moist forest.
- Production or trade in pharmaceuticals subject to international phase outs or bans.
- Production or trade in pesticides/herbicides subject to international phase outs or bans.
- Drift net fishing in the marine environment using nets more than 2.5 km in length.
- Production or activities involving harmful or exploitative forms of forced labour/harmful child labour.
- Commercial logging operations for use in primary tropical moist forest.
- Production or trade in ozone depleting substances subject to international phase out.
- Production or trade in wood or other forestry products from unmanaged forests.
- Production, trade, storage, or transport of significant volumes of hazardous chemicals, or commercial scale usage of hazardous chemicals.
- Production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.
- Child adoption agencies.
- Adult entertainment, website or contents such as:
 - Sexually oriented items such as sex toys.
 - Adult escorts, prostitution services and massage parlours.
 - Child pornography.
 - Male or Female Sexual Enhancement Supplements or Products.
 - Video texting or paid subscriptions to live-streaming where it involves adult erotic content or conversations.
 - Gentleman's Clubs, Strip Clubs and Topless Bars.
- Product or sale of counterfeit items.
- Product or sale of drugs and any kind of illegal substances.

- Product or sale of herbs and seeds that have not been duly licensed / authorized by relevant authorities.
- Sale or distribution of human and body parts.
- Illegal or unauthorized investment schemes.
- Production, sale, distribution, upload and/or download of pirated or illegal contents such as:
 - Movies
 - Video games
 - Music
 - Computer software
 - Images
 - Software
- Production or sale of poisons and/or hazardous materials.
- Products/Services promoting abuse, hatred, racism, religious persecution, terrorism, violence or containing offensive content.
- Unauthorized products and services related to prevent and cure COVID-19 or any other epidemic.
- Products prohibited by local Public Health Agency, Sanitary Authority (checked by each country regulation).
- Pyramid schemes.
- Signal Jammers/Blockers that interfere with cellular/communication devices.
- Stolen goods.
- Surrogacy services.
- Tattoo Parlours.

The Merchant agrees to refrain from engaging in any of the above activities during the term of the Master Agreement.

Country-specific Prohibitions / Restrictions

The following business activities are prohibited/restricted in some countries but permitted in some other countries. These restrictions are subject to rapid/frequent changes to the regulatory landscape. Details of the affected countries and updates therein will be circulated by the Compliance team from time to time. Onboarding of customers involved in any of these activities is subject to Compliance team's approval:

- Cryptocurrencies and blockchain technologies
- Forex
- Dropshipping services
- Fantasy sports
- Pawn Shops
- Online doctor consultation (e-doctor, e-pharma or any related services)
- Precious metal dealers (physical or online)
- Private medical practice
- Political campaigning
- Social campaigning
- Securities Brokers & Investments
- Social network services eg: sale of likes and followers for social media
- Synthetic or non-traditional Securities
- Virtual world credits and selling of skins, coins and items for online games