

SPUD Construct Ltd Merchant Terms and Conditions

1. **INFORMATION ABOUT THESE TERMS**

- 1.1 These Terms and Conditions (the “**Terms**”) are the terms on which the Platform and the Services shall be made available to you.
- 1.2 By selecting “Agree” via the option below to these Terms, you will thereby be granted access to the Platform and, if applicable, the Services. You agree to be bound by these Terms, so please read them carefully and if necessary print out and save a copy of them.
- 1.3 If you do not accept these Terms, you must not select “Agree” and you will not be permitted to use the Platform and/or the Services.

2. **DEFINITIONS AND INTERPRETATION**

- 2.1 In these Terms, unless the context otherwise requires:

“Confidential Information”	means the SPUD Data and the Merchant Data;
“Customer”	means any person using the Platform and submitting Customer Requests via the Platform in order to purchase Products from the Merchant;
“Customer Requests”	means requests for Products made by Customers to the Merchant via the Platform;
“Data Protection Legislation”	means all applicable laws and regulations relating to the processing of Personal Data and privacy including the EU Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC) and the EU’s General Data Protection Regulation (2016/679/EC) and the Data Protection Act 2018 including all law and regulations implementing or made under them, any amendment or re-enactment of them and, where applicable, the guidance and codes of practice issued by applicable Regulatory Bodies;
“Data Subject”	shall have the meaning set out in the Data Protection Legislation;
“Force Majeure”	means any event or circumstance beyond the reasonable control of a party including but not limited to fire, strikes, floods, storms, war, invasion of armed forces, blockade, insurrection, lockouts or other industrial disputes, governmental regulations or orders;
“Marks”	means trade marks, logos, devices, trade names and service marks;
“Merchant Customer Terms and Conditions”	means the Merchant’s standard terms and conditions applicable to the sale of the Products via the Platform as made available on the Platform from time to time;
“Personal Data”	shall have the meaning set out in the Data Protection Legislation, and for the purposes of these Terms,

“processing” of Personal Data has the meaning given to that term in the Data Protection Legislation and “process” and “processed” shall have a corresponding meaning;

- “Personal Data Breach” means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- “Platform” means the Website and any associated iOS or Android apps through which a Merchant is permitted to transact in line with these Terms;
- “Products” means the products the details of which will be uploaded by the Merchant to the Platform under these Terms;
- “Regulatory Bodies” shall mean those government departments and regulatory, statutory and other bodies, entities and committees which, whether under statute, rule, regulation, code of practice or otherwise, are entitled to regulate, investigate or influence the matters relating to the security of data, personal data and privacy;
- “Services” means the response to the Customer to be provided by the Merchant to meet the Service Level Standards set out at clause 7 of these Terms;
- “Service Level Standards” means the service level specifications and targets with regard to the Services as detailed and described at clause 7 of these Terms;
- “SPUD Data” means any information obtained by or disclosed to the Merchant in the performance of its obligations or in connection with these Terms and/or in the discussions or negotiations leading up to the entering into of these Terms which relate to SPUD and its business including, without limitation, all data SPUD possesses in connection with products, goods and services accessible from the Platform, all information relating to the structure of the Platform or to the business strategy, plans and objectives of SPUD, SPUD’s technology including inventions, designs and software and SPUD’s suppliers, subcontractors and employees;
- “Staff” means the employees, officers, independent contractors (and affiliates of any independent contractors and their staff), agency workers and agents in each case of each party and/or its affiliates and/or of any sub-Contractor of any such company;
- “VAT” means value added tax as provided for in the Value Added Tax Act 1994 and legislation supplemental to that Act, TVA or any other system of value added tax deriving from Article 2 of the EC Directive 67/227/EC applied in any member state of the European Union and any other similar turnover,

sales or purchase tax or duty levied by any other jurisdiction whether central, regional or local;

"Working Day" means Monday to Friday between 9am and 5pm but excluding any UK public holiday;

"Website" means (www.spudnow.co.uk) and/or such other URLs or electronic addresses on such distribution platforms as SPUD may notify to the Merchant from time to time.

2.2 Construction of Certain References

In these Terms where the context admits:

- (A) references to a statutory provision include a reference to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it;
- (B) any reference to:
 - (1) a person includes any individual, company, body corporate, corporation sole or aggregate, government, state or agency of a state, firm, partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists) and a reference to any of them shall include a reference to the others;
 - (2) the singular includes the plural and vice versa and any gender includes all genders;
 - (3) a party means a party to these Terms and includes successors and permitted assigns;
 - (4) the words "include", "includes" and "including" shall be construed without limitation to the generality of the preceding words or to the words following.

2.3 Headings and Schedules

The headings and sub-headings are inserted for convenience only and shall not affect the construction of these Terms.

3. **DURATION**

- 3.1 These Terms shall be deemed to have come into force on the date on which you select "Agree" below and shall continue in force (subject to earlier termination as provided in clause 17) for a period of twelve (12) months (the "**Initial Period**") and thereafter shall continue unless and until terminated by three (3) months' prior written notice by either party, such notice to expire no earlier than the end of the Initial Period.

4. **LISTING OF PRODUCTS ON THE PLATFORM**

- 4.1 SPUD shall solely be responsible for making the Platform available to allow Products to be made available for sale by the Merchant directly to Customers via the Platform.
- 4.2 All terms and conditions relating to the condition, price, fitness for purpose, rights and obligations, and warranties of the Products shall be governed by the Merchant Terms and Conditions, which shall only be made available through direct communications between the Merchant and the Customer and shall not be made available via the Platform.

5. **SALE OF PRODUCTS AND SUPPLY OF SERVICES**

- 5.1 SPUD shall at all times maintain all reasonable efforts to observe and comply with the relevant Service Level Standards applicable to the Platform by virtue of this Agreement.
- 5.2 Any Customer Requests made to the Merchant by the Customer via the Platform shall be responded to and/or supplied in the manner and within any applicable timeframes specified in the Merchant Terms of Conditions. SPUD shall have no responsibility or liability for the content or speed of any response made by a Merchant to a Customer Order via the Platform.
- 5.3 The Platform may provide product descriptions and other general information that is not tailored specifically for an individual Customer (the "**Platform Content**"). Any inclusion of the Platform Content on the Platform is for informational purposes only and will be provided via the direct input of the Merchant. Whilst SPUD shall use reasonable endeavours to correct any errors or omissions to the Platform Content as soon as reasonably practicable provided that they are brought to SPUD's attention, SPUD shall accept no liability for any inaccuracies or mistakes contained therein.
- 5.4 The Merchant shall (and procure that its workers shall) at all times keep confidential the SPUD user names, passwords and account details provided to it, and shall be responsible for all activities that occur under such password or account on the Platform. The Merchant shall inform SPUD immediately if it becomes aware of any unauthorised use of such password or account details and shall take all reasonable measures within its control to prevent such unauthorised use of SPUD user names, passwords and account details.
- 5.5 The Merchant hereby warrants, represents and undertakes that all Products sold, and all Services supplied by it to Customers, pursuant to these Terms shall comply in all respects with all applicable laws and regulations which govern the promotion, sale and supply of goods and services.
- 5.6 The Merchant hereby warrants, represents and undertakes that it shall exercise all reasonable and proper skill and care in the provision of the Services.
- 5.7 The parties shall each bear their own costs in relation to the performance of their obligations under these Terms, including without limitation any costs incurred in complying with the Service Level Standards.

6. **MARKETING AND PROMOTIONAL ACTIVITIES**

- 6.1 Neither party shall conduct any marketing or promotional activities in connection with these Terms without the prior written consent of the other party, such consent not to be unreasonably withheld save that nothing in this clause 6.1 shall require SPUD to obtain the Merchant's consent for any marketing or promotion relating to the production or business of the Platform.
- 6.2 The Merchant may, through its use of the Platform, provide relevant advertising or third party links, or other internet sites or resources to Customers. SPUD shall not have responsibility for (or accept any liability for) the availability of such external sites or resources and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites, resources or advertising sources.

7. **SERVICE LEVEL STANDARDS**

- 7.1 The Service Level Standards set out at this clause 7 set out the basic technical support service level standards that both parties agree to adhere to with respect to the provision / use of the Platform.
- 7.2 The Merchant will provide a telephone help line to the Merchant which shall be manned between the hours of 9.00am and 6:00pm Mondays to Fridays and 9.00am to 1.00pm on Saturdays.
- 7.3 The total number of calls answered must not fall below a monthly average of ninety-seven (97) percent of all calls received and eighty (80) percent of the calls shall be answered within twenty (20) seconds.
- 7.4 Ninety-five (95) percent of agreements to call a Merchant back within a specified period of time must be honoured within the period specified.
- 7.5 All Customer Requests submitted via the Platform shall receive an instantaneous full Customer Request confirmation from the Merchant via the Platform which shall confirm to the Customer:
- (A) the Merchant's ability to supply all the Products requested and/or any variation to the Customer Request in the event that the Merchant will be unable to provide any Product(s) requested;
 - (B) delivery details for each of the Products from the Merchant including delivery time and date, driver's name, delivery vehicle and delivery vehicle registration number;
 - (C) that the Customer's contract for Products will be directly with the Merchant and subject to the Merchant Terms and Conditions; and
 - (D) that the contract between the Merchant and the Customer for the supply of the Products is entered into on the Merchant's confirmation of the Customer Request or, where the Merchant proposes a variation to the Customer Request under clause 7.5(A), on the Merchant's further Customer Request confirmation (as described at clause 7.6 below).
- 7.6 In the event that the Merchant proposes a variation of a Customer Request in accordance with clause 7.5(A) above, the Customer shall be required to

acknowledge the proposed variation to the Customer Request and, subject to receipt of such acknowledgement, the Merchant shall issue a further Customer Request confirmation to the Customer.

8. **FULFILMENT**

8.1 The Merchant shall ensure that:

- (A) Merchant's Customer Request fulfilment standards are clearly indicated in the Merchant Customer Terms and Conditions; and
- (B) Merchant's Product pricing is communicated clearly and transparently, including distinguishing Product price explicitly from the cost of delivery.

9. **NON-SOLICITATION OF CUSTOMERS**

9.1 For the duration of these Terms and for a period of twelve (12) months following the termination of these Terms, the Merchant agrees not to solicit or endeavour to entice away from SPUD the direct business or custom of any Customer and to do nothing that would cause a Customer to cease subscribing to SPUD's Platform (including any iOS or Android application relating to SPUD's Platform).

10. **COMPLAINTS HANDLING**

10.1 In the event that SPUD receives any complaints concerning any Products or Services from Customers (other than complaints arising as a result of SPUD's negligence or from an act or omission of SPUD specifically in relation to its provision of the Platform) SPUD shall refer such complaints to the Merchant who shall resolve such complaints expeditiously and in accordance with the Merchant Terms and Conditions and, only if required by SPUD, shall then advise SPUD of the outcome of any complaint. In the event that the Merchant receives directly any complaints concerning any Products or Services (other than complaints arising as a result of any negligence or omission by SPUD specifically in relation to its provision of the Platform, which the Merchant will refer without undue delay to SPUD) the Merchant will resolve the complaint as soon as practicable and, only if required by SPUD, will advise SPUD of the nature and outcome of such complaints. In the event of a prolonged investigation being required to resolve a complaint, the Merchant will keep the Customer and SPUD regularly updated on a weekly basis of the progress being made and of the final resolution of such complaint.

10.2 All complaints shall be acknowledged by the Merchant within two (2) Working Days of receipt from the Customer and a full explanation supplied to the Customer within five (5) Working Days.

11. **CONFIDENTIALITY**

11.1 SPUD Data shall at all times be and remain the property of SPUD and the Merchant will not obtain any rights (including intellectual property rights), title or interest to it or any licence to use, sell or exploit it except that the Merchant may use and process any data relating to Customers who have requested the Products from the Merchant to the extent necessary for the purposes of fulfilling such Customer Requests.

- 11.2 Except to the extent that such information is public knowledge other than as a result of any breach of these Terms or of any confidentiality undertakings entered into by the parties prior to the date of these Terms all Confidential Information shall be treated by the parties both during and after termination of these Terms as confidential and shall not be used by the parties or their employees or sub-contractors for any purpose other than to the extent necessary for the proper performance of their obligations under these Terms.
- 11.3 Confidential Information shall only be disclosed to such employees, agents or subcontractors who need to know the same for proper performance of the party's obligations under these Terms and the parties shall ensure that such persons comply strictly with the confidentiality obligations set out herein. Confidential Information shall not be disclosed to any third party save as may be permitted by these Terms.
- 11.4 Each party shall notify the other immediately if it becomes aware of any breach of confidentiality obligations under these Terms by it or of any misuse or unauthorised disclosure of Confidential Information by any of its employees, agents, sub-contractors or any other person and shall give all reasonable assistance in connection with any legal proceedings which the other party may bring for breach of confidentiality.
- 11.5 The Merchant shall not for any purpose other than the performance of its obligations to SPUD under these Terms make any list or compile any marketing information or database in relation to Customers except where such materials are prepared in conjunction with SPUD and with the prior written consent of SPUD. The Merchant hereby agrees that Customers' identities and personal details shall remain strictly confidential to and in the ownership of SPUD. The Merchant is expressly prohibited from using any SPUD data to market specifically to Customers as a distinct group and/or from producing a list or database of Customers as a distinct group for the purposes of directly selling to Customers or a sale or transfer to a third party except where such activities are conducted in conjunction with SPUD and with the prior written consent of SPUD.

12. **DATA PROTECTION AND DATA SECURITY**

- 12.1 In respect of any Personal Data that is transferred from one party (the "**Disclosing Party**") to the other party (the "**Recipient Party**") in connection with the activities to be carried out under the provisions of these Terms (the "**Relevant Personal Data**") the parties agree that the Disclosing Party and the Recipient Party shall each be a "data controller" (as defined in the Data Protection Legislation). A Customer may also be a data controller (as defined in the Data Protection Legislation) in relation to any Relevant Personal Data.
- 12.2 Where any Customer acts as a data controller (as defined in the Data Protection Legislation) in relation to any Relevant Personal Data transferred from the Disclosing Party to the Recipient Party under these Terms, the Recipient Party and the Disclosing Party shall nevertheless comply with all of the obligations as set out in clause 12.3 below.
- 12.3 In respect of its processing of any Relevant Personal Data under these Terms, each party shall:
- (A) comply at all times with all Data Protection Legislation at its own expense; and

- (B) provide the other party (or, where relevant, a Customer) with reasonable cooperation and assistance in connection with:
 - (1) its compliance with Data Protection Legislation in relation to the Relevant Personal Data; and
 - (2) any complaint or request made in relation to Data Subject rights (including a request made in respect of the Data Subject's right of access and data portability, right to object, right to be provided with fair processing information and his/her rights to rectification and erasure of their Personal Data within the statutory response periods),
 - (3) any Personal Data Breach including, where necessary, the reporting to, and ongoing cooperation with, any Regulatory Body regarding a Personal Data Breach,

provided that a party shall not be required to incur any material costs or expenses in providing such co-operation and assistance.

13. **REPRESENTATIONS AND WARRANTIES**

13.1 The Merchant represents, undertakes and warrants that:

- (A) It has full authority to enter into these Terms and will maintain such authority throughout the duration of these Terms;
- (B) in respect of any content and/or information delivered to SPUD or uploaded to the Platform for inclusion on the Platform, it owns or will prior to delivery have obtained all rights, consents, licences and clearances in respect of such content or information which are necessary to enable SPUD to make such content and/or information available on the Platform and the licenses granted to SPUD at clause 15.1;
- (C) there are no existing agreements or arrangements with third parties or orders, judgments or decrees the terms of which prevent the Merchant from entering into these Terms nor are there any actions, suits, proceedings or regulatory investigations pending or threatened against or affecting the Merchant or any of its Staff that may affect the ability of the Merchant to perform its obligations under these Terms;
- (D) it shall fulfil the Customer Requests in accordance with the provisions of these Terms, the Merchant Customer Terms and Conditions and in a professional and workmanlike manner;
- (E) none of the Products or Services shall breach any law or regulation or infringe any rights of copyright or other proprietary right or interest of any third party whatsoever or constitute a breach of confidence or be obscene or defamatory of any person;
- (F) no Products offered for sale or sold, nor any Services offered or supplied on or via the Platform, shall be counterfeit, forged or imitation;

- (G) it shall not approach any Customer for the purpose of soliciting direct business from such Customer and shall do nothing that might result in the Customer ceasing to subscribe to the Platform; and
 - (H) it shall not (and shall procure that its workers shall not) upload, email or otherwise transmit: (a) any content that is false, inaccurate, unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, invasive of another's privacy, hateful, or that otherwise degrades or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability; (b) any content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party; (c) any unsolicited or unauthorised advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation; or (d) any material that contains software viruses or any other computer code, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.
- 13.2 Subject to any of the terms set out in this clause 13, SPUD shall have no responsibility for (nor accept any liability for) any content, transmitted via email or otherwise, that is uploaded to the Platform (including any iOS or Android app that may form part of the Platform) by the Merchant in connection with the Merchant's use of the Platform.
- 13.3 SPUD undertakes and warrants that:
- (A) it has full authority to enter into these Terms and that it will maintain such authority throughout the duration of these Terms;
 - (B) subject to clause 13.1(E) above and provided that the Merchant complies (and procures that its workers comply) with its obligations in relation to any data or content uploaded to the Platform (including the Platform Content), the Platform will not breach any law or regulation or infringe any rights of copyright or other proprietary right or interest of any third party whatsoever or constitute a breach of confidence or be defamatory of any person.
- 13.4 SPUD does not represent or warrant to the Merchant that the Platform shall be available continuously or uninterrupted during the Term, and shall not be liable for any loss, damage or claim of any kind whatsoever arising directly or indirectly as a result of any failure, delay or interruption in the availability of the Platform. Such failure, delay or interruption shall not constitute a breach of these Terms.
14. **LIABILITY/INDEMNITY**
- 14.1 SPUD shall assume no liability whatsoever in respect of the sale or offer for sale of Products and/or the supply of Services to the Customer or to any third parties pursuant to the terms of these Terms and the Merchant shall assume full responsibility therefor. Accordingly, the Merchant shall fully indemnify SPUD against any loss, liability, damage to or actions and/or claims against SPUD to the extent that any such loss, liability, damage, actions and/or claims arise from any sale of the Products and/or supply of Services, or offer therefor, to Customers hereunder.

- 14.2 Each party acknowledges and agrees that its liability for (i) death or personal injury caused by its negligence or (ii) for fraud or other liability which may not lawfully be excluded or limited and shall not be excluded or restricted notwithstanding any other provision of these Terms.
- 14.3 Subject to clause 14.2, to the full extent permitted by law, SPUD shall not be liable for any loss of profits or revenue or savings or other economic loss, any loss of business or goodwill, any loss of or damage to data, any incidental or special loss, any wasted or lost management time, or any indirect or consequential loss arising out of or in connection with these Terms, even if advised of the possibility of any such loss or damage or if such loss or damage was foreseeable.
- 14.4 Subject to clause 14.2, SPUD's total liability to the Merchant whether in contract, tort (including negligence), breach of statutory duty or otherwise in connection with these Terms shall be limited to £10,000.

15. **INTELLECTUAL PROPERTY RIGHTS**

- 15.1 The Merchant hereby grants to SPUD during the duration of these Terms for the purpose of facilitating the sale of the Products to Customer via the Platform a non-transferable, non-exclusive, royalty free licence to use and reproduce the Marks of the Merchant notified to SPUD by the Merchant in writing which shall be such Marks as may be reasonably required to enable SPUD to include references to the Merchant, its Products and the Merchant Terms and Conditions in the Website at any time during the course of these Terms (the "**Merchant Marks**") and to carry out any other obligations under these Terms from time to time.
- 15.2 The Merchant warrants to SPUD that the Merchant has all necessary rights to the use of the Merchant Marks, including the right to license such Marks to SPUD in accordance with these Terms. Nothing in these Terms will confer on SPUD any title, rights or interests in relation thereto. SPUD hereby acknowledges that it shall not acquire any rights in respect thereof and that all such rights and all associated rights including goodwill are and shall remain vested in the Merchant.
- 15.3 The Merchant shall indemnify SPUD in full against all actions, proceedings, claims, damages or other liabilities arising from any claim made against SPUD in connection with SPUD's authorised use of any Merchant Mark, including (but without prejudice to the generality of the foregoing) any administrative, printing and advertising costs arising out of any necessary or requested change and any legal or other expenses thereby properly and reasonably incurred.
- 15.4 SPUD agrees and acknowledges that the Merchant is the sole and exclusive owner of the Merchant Marks and that SPUD shall not obtain any rights to the Merchant Marks through the operation of these Terms. SPUD shall not be entitled to use any Merchant Mark on any material or documentation other than to reproduce material or documentation supplied by the Merchant for use expressly in connection with these Terms, or which may be previously approved in writing by the Merchant in its absolute discretion.
- 15.5 All content on the Platform (other than content belonging to the Merchant and other merchants) shall be and remain the property of SPUD and the Merchant shall not obtain any rights thereto in any way whatsoever.

15.6 The Merchant agrees and acknowledges that SPUD is the sole and exclusive owner of the SPUD Marks. The Merchant shall not use such Marks, names and logos other than as expressly approved in writing by SPUD.

16. **SUSPENSION OF THESE TERMS**

16.1 If SPUD has reason to suspect that the Merchant is acting or has acted in breach of any provision of these Terms or is affected by circumstances of Force Majeure lasting more than five (5) consecutive Working Days or an aggregate of eight (8) Working Days in any thirty (30) day period, then SPUD shall have the right, by giving the Merchant written notice, to immediately suspend the offering of Merchant's Products on the Platform without prejudice to any other right or remedy which may be available to it.

16.2 In the event that SPUD reasonably believes that the Merchant is not complying with the Service Level Standards set out at clause 7, SPUD may give the Merchant written notice explaining the nature of such non-compliance and requiring the non-compliance to be remedied without undue delay. The Merchant shall either demonstrate compliance or remedy such non-compliance within five (5) Working Days of receipt of the notice. In the event that the Merchant fails to demonstrate compliance to the reasonable satisfaction of SPUD, or remedy the non-compliance within that period, SPUD shall have the right on giving the Merchant written notice to immediately suspend the operation of these Terms (without prejudice to any other right or remedy which may be available to it) until such time as the Merchant is able to demonstrate, to SPUD's sole satisfaction, that it will comply in the future.

16.3 For the avoidance of doubt, suspension of these Terms pursuant to this clause 16 shall entitle SPUD to take such action as it deems appropriate including, but not limited to, the removal of the Merchant's Marks and name from the Platform.

17. **TERMINATION**

17.1 SPUD shall have the right at any time by giving written notice to the Merchant to terminate these Terms with immediate effect if:

(A) the Merchant commits any material breach (which, for the avoidance of doubt but without limitation, includes any breach of an express warranty or undertaking in these Terms) or persistently breaches any of the provisions of these Terms, which in the case of a material breach capable of remedy has not been remedied within ten (7) Working Days after receiving notice in writing from SPUD giving reasonable particulars of the breach and requiring it to be remedied;

(B) the Merchant makes any voluntary arrangement with its creditors or becomes subject to an administration or passes a resolution for winding-up (otherwise than for a bona fide reconstruction or amalgamation) or becomes bankrupt or insolvent or goes into liquidation or a receiver or similar officer is appointed over any or all of the assets of the Merchant or the Merchant ceases or threatens to cease to carry on business or disposes of the whole or a substantial part of its undertaking or assets;

(C) there is a change in the management, ownership or control of the Merchant;

- (D) the Merchant is unable to perform its obligations under these Terms (including by reason of Force Majeure) for a period of five (5) consecutive Working Days or an aggregate of eight (8) Working Days in any thirty (30) day period.

17.2 The Merchant shall have the right at any time by giving written notice to SPUD to terminate these Terms forthwith if:

- (A) SPUD commits any material breach of this Agreement, which in the case of a material breach capable of remedy has not been remedied within ten (10) Working Days after receiving notice in writing from the Merchant giving reasonable particulars of the breach and requiring it to be remedied; or
- (B) SPUD makes any voluntary arrangement with its creditors or becomes subject to an administration or passes a resolution for winding-up (otherwise than for a bona fide reconstruction or amalgamation) or becomes bankrupt or insolvent or goes into liquidation or a receiver or similar officer is appointed over any or all of the assets of SPUD or SPUD ceases or threatens to cease to carry on business or disposes of the whole or a substantial part of its undertaking or assets.

17.3 Termination of these Terms shall be without prejudice to the accrued rights of the parties under these Terms which shall in any event survive termination of these Terms.

18. **CONSEQUENCES OF TERMINATION**

18.1 Upon the termination of these Terms for whatever reason:

- (A) Clauses 9.2, 11, 12, 14, 15, 17, 18, 21, 22, 23.6 and 23.7 and any other provision which expressly or impliedly survives the expiry or termination of these Terms shall remain in force notwithstanding the expiry or termination of these Terms;
- (B) the Merchant shall fulfil its contractual commitments towards Customers introduced under these Terms; and
- (C) subject to clauses 18.1(A) and 18.1(B) above neither party shall have any further obligation to the other under these Terms.

19. **FORCE MAJEURE**

19.1 Neither party shall be liable for any failure, interruption or delay in the performance of its obligations under these Terms, in whole or in part, if such delay or failure is due to Force Majeure. Both parties shall make all reasonable efforts to minimise the effect of any such Force Majeure upon the performance and fulfilment of these Terms and shall meet as soon as possible and in any event within three (3) Working Days from the date of notice of any Force Majeure (which shall be given as soon as practicable) to agree upon any action to avoid delays.

20. **ASSIGNMENT/SUB-CONTRACTING**

- 20.1 Subject to clause 20.2, neither party shall assign the benefit or burden of these Terms without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 20.2 SPUD may require that the Merchant enter into a novation of these Terms in favour of any entity in which it has a shareholding or any holding company of SPUD or the subsidiary of a holding company of SPUD or a purchaser of all or substantially all of the assets of SPUD.
- 20.3 Either party may employ the services of agents or sub-contractors in the performance of any of its obligations under these Terms, subject always to that party procuring that such agent or sub-contractor complies with the provisions of these Terms in all respects, including, without limitation, all confidentiality obligations. Such party shall remain at all times liable for the acts, omissions and negligence of any such agent or sub-contractor.

21. **NOTICES**

- 21.1 Any notice to be sent under these Terms shall be in writing and shall be delivered to the addressee personally or sent by first class prepaid post or by fax to the Merchant at its registered office and to SPUD at its registered office marked for the attention of the Commercial Director. Any notices, other than notices served pursuant to clauses 3, 16 and 17 may be sent to such email addresses as may be specified by the parties from time to time.
- 21.2 Any notice delivered personally shall be deemed to have been duly served at the time of delivery.
- 21.3 Any notice sent by post shall be deemed to have been duly served two (2) Working Days after it was posted.
- 21.4 Any notice sent by fax transmission shall be deemed to have been duly served at the time of transmission provided that the sender can produce an error-free transmission report and further provided that, if the notice was transmitted on a day which was not a Working Day, it shall be deemed to have been received on the following Working Day.
- 21.5 Any notice sent by email shall be deemed to have been duly served at the time of sending, provided that, if the email was sent on a day which was not a Working Day, it shall be deemed to have been received on the following Working Day.

22. **DISPUTE RESOLUTION**

- 22.1 Any dispute or difference arising out of or in connection with these Terms shall be determined by a director or other duly authorised representative of each party who shall meet in good faith to resolve the dispute, or failing agreement within fourteen (14) days, such dispute may then be referred to mediation (if both parties agree to mediation) or to the courts.

23. **MISCELLANEOUS**

23.1 **Nature of Relationship**

Nothing in these Terms shall create or be deemed to create a partnership, an agency arrangement or the relationship of employer and employee between the parties.

23.2 **Waiver**

No delay or forbearance by either party in enforcing any of its rights under these Terms shall act as a waiver of those rights in relation to the specific breach or to any repetition of such breach.

23.3 **Entire Agreement**

This document contains the entire agreement between SPUD and the Merchant relating to the provisions of these Terms and each of the parties acknowledges that it has not entered into these Terms in reliance wholly or partly on any statement or representation made by either of them to the other except as contained or referred to in these Terms.

23.4 **Variation/Duly Authorised Representatives**

No variation of these Terms shall be valid unless it is in writing and signed by a duly authorised representative of each party.

23.5 **Invalidity and Severability**

If any provision of these Terms is found to be invalid or unenforceable it shall not affect the other provisions of these Terms which shall remain in full force and effect. The parties shall attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision.

23.6 **Third Party Rights**

Except in the case of any permitted assignment pursuant to clause 20, these Terms are made solely and specified between and for the benefit of the parties and is not intended to be for the benefit of and shall not be enforceable by any person who is not named at the date of these Terms as a party to it under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

23.7 **Law**

These Terms and any non-contractual obligations arising from or connected with it shall be governed by and construed in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales in respect of all proceedings arising out of its subject matter (whether relating to contractual or non-contractual obligations).

24. **AGREEMENT TO THESE TERMS**

24.1 I/We confirm that I have fully read and understood all the rights and obligations set out within these Terms and that by selecting “**Agree**” below, I/we agree to be bound by these Terms for the purposes of my/our use of the Platform.

DRAFT (2): 04 July 2018