



CELLULANT GENERAL TERMS & CONDITIONS

This document shall be referred to as the General Terms & Conditions and shall comprise of provisions in support of the Cellulant 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:

“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 constitute 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;
“Card Payments”	means a Payment made by a Customer to Cellulant Merchant (s) via VISA, MasterCard and any other card scheme approved by the Merchants and undertaken through the Bank;
“Chargeback”	means a demand by a Customer for a Cellulant Merchant to make good the loss on a fraudulent Card Payment transaction;
“Cellulant Account”	means an account opened by Cellulant for purposes of the service for which Cellulant will provide the details to the Merchant;
“Cellulant Merchants”	means the Merchants specifically engaged by Cellulant and in respect of whom Cellulant 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;
“Cellulant Technology”	means the applications, software, databases, systems, and equipment (including improvements and upgrades



thereto) utilized by Cellulant for the purposes of providing the Services and includes the Payment Gateway;

“Cellulant Technology Documentation”

means the documentation (if any) provided by Cellulant to the Merchant which describes the technical features, functionality and performance of any Cellulant Technology;

“Confidential Information”

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 and without prejudice to the generality of the foregoing shall include but not be limited to: (i) any information ascertainable by the inspection or analysis of samples, (ii) any information relating to a Party’s operations, processes, plans, intentions, product information know-how, designs, trade secrets, software, market opportunities, customers, potential customers 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;

“Disbursements”

means claims paid by Cellulant to the Customer or a supplier on the Merchant’s instruction on behalf of the Merchant. They may also be referred to as Payouts;

“Initial Cellulant Merchants”

means the Cellulant Merchants listed in the Merchant Agreement which Cellulant 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 and copyright or other similar industrial or commercial monopoly rights owned by the respective parties or any of their subsidiary or associate companies;

“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;
“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 Cellulant contractual terms found at: https://www.cellulant.com/
“Parties”	means (jointly) the Merchant and Cellulant 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 Cellulant (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 entered into and implemented agreements with Cellulant by which their systems have been connected with the Payment Gateway for the effective provisioning of the Payment Gateway to merchants and their customers by Cellulant;
“Payment Gateway”	is a payment platform of Cellulant that facilitates processing of payments made to Merchants through various channels, including the Payment Methods;
“Payment Methods”	as referred to in this Agreement shall mean using one or more of the following modes of payment which can be used by Customers to make payments through the Payment Gateway: (a) Mobile Money Transfer facilities offered by MNOs; (b) Bank Account (online, ATM and payment through teller) and (c) Any other mode of payment as may be made applicable by Cellulant from time to time;
“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 Cellulant 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 the Cellulant on behalf of the Merchant and which shall be availed to the Merchant for the purpose of facilitating SMS correspondence between the Merchant and the Customers;
“Signature Date”	means the date of the last signature of the Merchant Agreement which shall mean the date appearing on the Agreement.
“SMS”	means Short Messaging Services a communication protocol allowing the interchange of short text messages between mobile phone devices;
"Term"	means the duration of the Merchant Agreement, determined in accordance with the provisions of clause 2 below;
“Territory”	means the countries listed as countries of presence or operation for the Affiliates of either Party, or countries in which the services is expected to be provided and/ or received in.
“Tingg”	means a payments services and airtime top up mobile commerce application developed, owned, and provided by Cellulant which facilitates the payment of various bills and the purchase of Airtime from various digital channels including 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 other 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.

2. 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 shall commit any material breach of its obligations hereunder which is not capable of remedy or which shall not have been remedied within seven (7) days of the other Party having received 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 shall go into liquidation other than for the purposes of reconstruction or amalgamation or shall suffer the appointment of a receiver of any of its property or income or make 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, Cellulant may terminate this Agreement immediately without liability and without any notice, if:
- (a) Cellulant is notified or otherwise determines in good faith that the Merchant is using the Services in furtherance of any activity which violates any law, rule, or regulation or policy of Cellulant.
 - (b) Cellulant is notified by the MNO that the number and quantum of charge back requests received in relation to the Merchant is beyond such limits as may have been advised in writing.
 - (c) Cellulant, or its directors, officers, stockholders, employees, or agents are made the subject of a criminal or civil 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

In the event that a Customer requests its issuing bank to lodge any chargeback requests:

- 3.1. The Merchant shall provide the chargeback amount to the relevant bank to be held until the chargeback process is completed and the any disputes in relation thereto resolved.
- 3.2. The Party determined to be liable for fraud upon proper investigations having been undertaken and duly completed shall bear the chargeback costs.
- 3.3. Where the Merchant informs the bank to decline a chargeback request and either Cellulant or the relevant bank so requires, the Merchant shall provide evidence that the goods/services were paid for/delivered.
- 3.4. Where the Merchant has made refunds to the Customer the evidence shall be provided to the Bank and Cellulant.
- 3.5. The evidence or justification shall be provided to the bank and/or Cellulant in a timely manner.

4. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 4.1. Each Party (“the Indemnifying Party”) shall indemnify and keep the other Party (“the Indemnified Party”) indemnified against any action, liability, cost, claim, loss, damage, proceedings, expense (including legal costs on attorneys) suffered or incurred by Indemnified Party or in any way arising from: -
- (a) any breach by the Indemnifying Party of any of its obligations, representations, or warranties under this Agreement;
 - (b) any matter relating to the Services hereunder or the performance of the Indemnifying Party’s obligations hereunder, or in any way arising out of any third-party claims, any claims arising from any act alleged to be illegal, claims for defamation, infringement of intellectual

property rights, damage to computer database, loss of data or distribution of illegal or obscene or offensive material;

- (c) violation of any laws or regulation of any governmental, regulatory, or judicial authority by the Indemnifying Party;
- (d) the gross negligence or willful misconduct of the Indemnifying Party or its employees or agents in connection with this Agreement.

PROVIDED THAT Cellulant's maximum cumulative liability under this Agreement shall not exceed the commission earned by Cellulant under this Agreement in the month immediately preceding the occurrence of the claim from which the costs or expense arise 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) Cellulant 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 Cellulant of any direct loss in respect of which a claim of indemnity arises within thirty days of the loss occurring. Cellulant 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.

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

- (a) any penalty imposed on Cellulant by any Payment Facility Provider consequent to the fact that the number and quantum of charge back 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 Cellulant.

4.3. Without prejudice to any remedies available to Cellulant, Cellulant 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 honour or accept a Payment;
- (f) any misstatement, misrepresentation, error, or omission in any details disclosed by the Merchant to Cellulant.

- 4.4. 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.

5. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 5.1. 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 to 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.
- 5.2. 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.
- 5.3. 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 endeavors to prevent the publication or disclosure of any Confidential Information.
- 5.4. All Intellectual Property Rights belonging to a Party prior to the execution of this Agreement shall remain vested in that Party.
- 5.5. For the avoidance of doubt all Intellectual Property inherent in the software and other solutions provided by Cellulant under this Agreement (including improvements and upgrades thereto) shall remain the sole and exclusive property of Cellulant. 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.

- 5.6. All public announcements and/or press release 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.
- 5.7. Any breach of this Clause shall entitle the offended Party to terminate this Agreement in addition to other remedies entitled to it under law.
- 5.8. This provision on confidentiality shall survive termination or expiry of this Agreement.

6. DATA PROTECTION

- 6.1. 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.
- 6.2. 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.
- 6.3. 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.
- 6.4. 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.

- 6.5. 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.

7. PROCEDURE UPON TERMINATION

- 7.1. 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;
- 7.2. 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.

8. FORCE MAJEURE

- 8.1. 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.
- 8.2. Force Majeure event shall include, but shall not be limited to floods, earthquakes, natural phenomena, war, and decisions of any relevant Governmental Authority.
- 8.3. 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.

9. NOTICES

- 9.1. 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).
- 9.2. 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 telefax or email at the expiration of forty-eight (48) hours after dispatch.

9.3. 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 registered post letter or that the telefax or email was properly addressed and dispatched.

10. AFFILIATE AGREEMENTS

10.1. 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 Cellulant or its relevant Affiliate, (in substantially the form provided by Cellulant) pursuant to which a severable and independent Agreement will arise between Cellulant 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 Cellulant 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.

10.2. Neither Cellulant nor any of the Cellulant'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.

10.3. 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 the all such agreements.

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

10.5. 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.

11. DISPUTE RESOLUTION

11.1. 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 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.

11.2. The second management level shall comprise:

	The Merchant	Cellulant
Second Level	Senior Manager/CEO	Senior Manager/CEO

11.3. 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.

11.4. 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.

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

11.6. 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.

12. GENERAL

12.1. Cellulant'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 Cellulant and the Merchant's employees. The Merchant shall have no right to obligate or bind Cellulant in any manner. The employees of the Merchant shall not have any claim/right/benefits whatsoever against Cellulant.

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

12.3. Cellulant processes Payment transactions through the Payment Gateway on behalf of the Merchant. Cellulant is not a bank, non-banking financial company or other depository institution.



Funds held by Cellulant 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.

- 12.4. This Agreement shall be binding upon and enure for the benefit of the successors and / or assigns of the Parties.
- 12.5. 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.
- 12.6. The provisions of this Agreement may only be added to, modified, or varied by mutual consent of and the written agreement of the Parties.

PROVIDED that the terms and conditions and specifications of the Services under this Agreement including but not limited to the pricing & payment terms of this Agreement may be amended, altered and/or, modified by Cellulant in consultation with the Merchant and upon prior written notice to the Merchant. Such amendment to or alteration or modification of the Agreement shall be in writing and signed by the senior designated authorized signatory of Cellulant.

- 12.7. 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.
- 12.8. 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.