

Dated this _____ day of _____ 2021

COMMERCIAL AGREEMENT

Between

SEVI INNOVATION LIMITED
(as the “**Provider**”)

And

(as the “**Seller**”)

Signature Seller

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COMMERCIAL AGREEMENT

This Commercial Agreement (**Agreement**) is made effective as of the date hereinabove written, by and between **SEVI INNOVATION LIMITED** (the **Provider**), a company limited in liability with offices at Luthers Plaza, 1st Floor, Left wing, Nyerere Road. Nairobi and

Company Name_____

Company Address _____

(the **Seller**) for the purpose of establishing the fundamental terms and conditions applicable to their relationship, the nature of which is more specifically set out in attachments to this Agreement. Therefore, the Provider shall provide and the Seller shall accept the Service in accordance with (i) these terms and conditions and (ii) Buyer Orders executed by the Seller and accepted by the Provider.

1. DEFINITIONS

Account

means a digital account on the Sevi platform, accessible through the Sevi app;

Buyer Orders

means an order by the Seller's Customers (the **Buyer**) to the Seller, using the Sevi payment option and/or submitted through the Sevi Platform, and accepted and executed by the Seller;

Buyer Credit

means a request for the Provider to provide pay-in-instalments services to the Seller's Customers (the **Buyer**), submitted through the Sevi Platform and accepted by the Provider;

Commercial Framework

means the document containing the description of the Service to be provided by the Provider to the Seller and the Buyer, the Commercial Framework forms an integral part of this Agreement and is attached hereto as Schedule 1;

Default

means a Buyer Credit which is more than 90 days overdue;

Goods

means any tangible products, including but not limited to, products, goods and services sold, leased, rented, licensed or otherwise sold by the Seller and delivered to the Buyer pursuant to any Buyer Order, whether or not accepted for the Pay-In-Instalments service provided by the Provider;

Set-Up-Fee

means the initial set up fee (if any) in respect of a Service as defined in the relevant Commercial Framework; and

Service

means the Sevi payment and/or check-out method either on the Seller's webshop or the Sevi mobile application, which includes the Pay-In-Instalments (or related) service provided by the Provider pursuant to an accepted Buyer Credit, where applicable.

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2. PAYMENT

- 2.1. Payment.** Once a Buyer uses the Sevi Service and the Buyer Credit is accepted by the Provider and the Goods have been delivered by the Seller to the Buyer, the Seller shall be paid by the Provider a sum equivalent to X% of the amount due for Goods purchased by the Buyer, as defined in the Commercial Framework. The balance of the sums shall be due only after the Buyer completes repayment of all instalments of the Buyer Credit to the Provider.
- 2.2. Default.** When a Buyer Credit goes to Default, the Provider shall no longer pay to the Seller, the balance of the sum as defined in the foregoing clause 2.1. In case of Default, the Provider is free to its sole discretion to engage a debt collector.
- 2.3. Settlement.** Payment is due in Kenya Shillings, unless otherwise stated, and shall be made to the Seller's Account on the Sevi platform. The Seller can at any time settle the balance of the Seller's Account to its Bank or M-Pesa account, through the Sevi app.
- 2.4. Fees by the Seller.** The Provider shall collect any fees charged to the Seller as defined in the Commercial Framework, from the Seller's account.
- 2.5. Fees to the Seller.** The Provider shall send any fees earned by the Seller as defined in the Commercial Framework, to the Seller's account.
- 2.6. Fees by the Buyer.** The Provider shall communicate any fees charged to the Buyer clearly in the Sevi app or by SMS, before the Buyer accepts the terms and conditions belonging to the Buyer Credit. Any fees charged to the Buyer will be included in the instalments and as such be paid by the Buyer.
- 2.7. Order amount.** Prices for Goods and/or Services are set by the Seller. The order amount shall be inclusive of VAT and, where applicable, any additional or substitute taxes, levies, imposts, duties, fees or charges whatsoever and whenever. Any taxes shall be settled with the relevant tax authorities by the Seller.
- 2.8. Returns and cancellations.** In case a Buyer Order is cancelled or returned, the Provider shall auto-collect the amount paid to the Seller from the Seller's account. When the balance on the Seller's account is too low and doesn't allow the collection of the amount paid, the Seller is obliged to top-up the account and/or the Provider is allowed to collect the amount from future payments. Upon successful auto-collection the Provider returns all payment belonging to the Buyer Order and/or Buyer Credit made by the Buyer to the Buyer's account.
- 2.9. Regulatory and legal changes.** In the event of a change in applicable law or regulation that materially changes the cost of delivery of the applicable Service, the Provider shall give the Seller written notice thereof and the Seller shall have 30 days to accept such increased costs or tender notice of termination of the Service.
- 2.10. Credit approval and deposits.** Providing the Pay-in-Instalment Service to a Buyer is subject to credit approval of the Buyer. If the Provider requires, the Buyer shall provide the Provider with credit information to demonstrate acceptable credit worthiness in advance of accepting a Buyer Credit. The Provider is allowed to collect credit data on the Buyer from other sources. The Provider shall require any Buyer to make a deposit subject to its credit rating approval, the terms and conditions of which will be documented separately.
- 2.11. Fraudulent use of Service.** The Seller shall be solely responsible for all charges and defaults incurred through or as a result of fraudulent or unauthorised use of any Service. The Provider is not obligated to detect or report unauthorised or fraudulent use of any Service.

3. DELIVERY OF SERVICE

- 3.1. Provision of Service.** The Provider will provide the Buyer the Service as described in the appropriate Buyer Credit and the terms and conditions agreed to by the Buyer.
- 3.2.** The Provider reserves the right to vary the Commercial Framework, however the Provider shall inform the Seller of such variations, and the Seller shall have 30 days to accept such increased costs or tender notice of termination of the Service.
- 3.3. Title.** Title to the Goods sold under any Buyer Order and/or Buyer Credit shall pass to the Buyer only upon payment in full by the Buyer of the price therefor including any additional fees and interest charged by the Provider.

4. SUSPENSION OF SERVICE

- 4.1. Suspension of Service by Provider.** The Provider may, at its sole discretion, elect to suspend any or all Service forthwith if:
- 4.1.1.** the Seller fails to comply with any provision of clauses 2 or 5 of this Agreement;
 - 4.1.2.** the Provider has any reason to assume fraudulent use of the Service by the Seller and/or its Buyer;
 - 4.1.3.** the defaults on the sum of Buyer Credits of all the Seller's Buyers combined exceeds 10%;
 - 4.1.4.** the defaults on the sum of Buyer Credits of all the Seller's Buyers combined exceeds 50%;
 - 4.1.5.** such suspension is for the purpose of carrying out scheduled or emergency maintenance on the Provider's technology platform, provided that prior reasonable notice is given to the Seller;
 - 4.1.6.** such suspension is in accordance with an order, instruction or request of government, an emergency service organisation or other competent administrative authority or is a result of the Provider otherwise losing its authorisation to provide the Service(s);
 - 4.1.7.** the Provider may, at its sole discretion, elect to suspend any or all Service to a specific Buyer forthwith if the Buyer is overdue on any instalment or Buyer Credit.
 - 4.1.8.** in an event of the Seller files for bankruptcy or reorganisation or fails to discharge an involuntary petition therefor within 60 days after filing.
- Exercise by the Provider of its right of suspension under this clause shall not function as a waiver of any right of termination the Provider may have under this Agreement or any individual Buyer Credit or any Seller obligation under this Agreement.
- 4.2. Effect of suspension.** Upon the Provider's suspension of any Service to the Seller under
- 4.2.1.** any of the foregoing clauses except 4.1.5 and 4.1.6, the Provider may, in addition to all other remedies that may be available to the Provider at law or in equity, assess and collect from the Seller any applicable termination charge.
 - 4.2.2.** Clause 4.1.3 the Provider will no longer accept Buyer Credits to any of the Seller's Buyers.
 - 4.2.3.** Clause 4.1.2 and/or 4.1.4 the Seller becomes liable for the full defaulted amount of its Buyers
 - 4.2.4.** any of the foregoing clauses except 4.1.5 the Seller is not allowed to deliver any new Buyer Orders to the Buyer.

- 4.3. Resumption of Service.** If a Service has been suspended pursuant to clause 4.1.5, the Provider shall re-establish such Service as soon as reasonably possible.

5. OBLIGATIONS OF SELLER

- 5.1. Obligations of the Seller.** The Seller shall be responsible for:

- 5.1.1.** implementing and maintaining of the Sevi 'Pay in Instalment' plugin in accordance with the specifications;
- 5.1.2.** meeting all regulatory approvals required;
- 5.1.3.** providing assistance to its Buyers in (i) using the Sevi Service, (ii) understanding the Credit Terms and Conditions set by the Provider and (iii) applying for a Buyer Credit;
- 5.1.4.** cooperating with the promotion and advertising of the Provider's brand and the Provider's services and products in collaboration with the Provider's and Seller's marketing advertising guidelines (if any). Such promotions and advertisements shall be mutually agreed upon;
- 5.1.5.** providing correct product pricing of Buyer Orders
- 5.1.6.** the delivery of the goods to the Buyer;
- 5.1.7.** handling the return of Goods;
- 5.1.8.** handling of warranties of any sort on the Goods;
- 5.1.9.** addressing any primary complaints, a Buyer may have on the Goods (including workmanship and fit for service) and such complaints shall exclude any financial aspects that the Provider's pay-in-instalments service shall cater to;
- 5.1.10.** cooperate in any KYC and due diligence process on the Seller or Buyer the Provider is required to perform by law or otherwise;
- 5.1.11.** follow-up with Buyer when any instalment due date belonging to a Buyer Credit has expired. Seller should provide all required cooperation and information and refuse any further services to such Buyer; and
- 5.1.12.** reclaim product(s) from Buyer when a Buyer Credit has status 'default'.

6. WARRANTY AND DISCLAIMER OF WARRANTIES AND CONDITIONS

- 6.1.** Due to the nature of the Internet, except as provided above, the Service is provided on an 'as is' and 'as available' basis without warranties or conditions of any kind, express or implied.
- 6.2.** The Seller confirms that it has not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

7. LIMITATION OF LIABILITY

- 7.1.** The provisions of this Agreement set out the maximum liability of the parties under or in connection with this Agreement and each Buyer Order and each Buyer Credit and all other liability is excluded.
- 7.2.** The liability of the Provider for damages arising out of any Buyer Order or any Buyer Credit or any other matter under this Agreement, including but not limited to mistakes, omissions, interruptions, delays, tortious conduct or errors, or other defects, representations, or use of the Sevi Service; or arising out of the failure to furnish the Service, whether caused by acts of commission or omission, (including Seller software or hardware failures or any other damage occurring after the provision of any Service) shall be limited to the price paid for such Goods in the applicable Buyer Order.
- 7.3.** Neither party shall be liable to the other for any indirect, incidental, special, consequential, exemplary or punitive damages, including but not limited to

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damages for lost profits, lost contracts or lost revenues (whether direct or indirect), however caused (excluding wilful misconduct) and regardless of whether such party has been informed of the possibility or likelihood of such damages arising.

- 7.4.** No employee or representative of the Provider, other than a duly authorised officer, has any authority to bind the Provider to any warranty or undertaking whatsoever.

8. TERM AND TERMINATION

- 8.1. Term.** This Agreement shall be for a term of 12 months commencing with the first agreed by the Seller and shall be automatically renewed every 12 months thereafter unless terminated by either party pursuant to the terms of this Agreement, with a one-month notice.
- 8.2. Termination.** The Provider may immediately terminate this Agreement only by written notice to the Seller if (i) any breach of a material provision of this Agreement that if remediable is not remedied by the Seller within 14 days' of the Seller's receipt of written notice from the Provider specifying the breach and requiring its remedy; (ii) any regulatory decision or governmental order requiring the Provider to suspend Service(s), or the Seller to suspend delivery of Goods or which is reasonably likely to result in the loss of the Provider's operating authority; or (iii) in an event of the Seller files for bankruptcy or reorganisation or fails to discharge an involuntary petition therefor within 60 days after filing.
- 8.3.** Any termination under this Agreement, except in accordance with clause 8.2(ii) above, shall not relieve the Provider of its obligation to pay to the Seller any amount due already incurred prior to termination.
- 8.4.** Termination of this Agreement shall not terminate any open Buyer Orders or any open Buyer Credit, prior to the issuance of a termination notice and such open Buyer Credits shall not relieve the Buyer for making instalment payments according the Buyer Credit. Where there are open Buyer Credits and a termination notice has been issued by the Seller, the Agreement shall only terminate at the completion of all full and final payments due by the Buyers to the Provider.

9. GENERAL TERMS

- 9.1. Force majeure.** Neither party shall have any liability under or be deemed to be in breach of this Agreement or any affected Buyer Credit for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 6 months, the non-affected party may terminate this Agreement only by written notice to the other party.
- 9.2. Marketing.** The Seller agrees that the Provider may refer to the Seller and may briefly describe the Seller's business in the Provider's marketing materials and on the Provider's website and app.
- 9.3. Indemnification by Seller.** The Seller shall indemnify, defend and hold the Provider harmless from claims, loss, damage, expense (including reasonable lawyer's fees and court costs), or liability arising from:
- a. any claims made against the Provider by any person or entity in connection with the delivery or consumption of the Goods and/or Services;
 - b. the content of any communication transmitted via any Service or maintained in connection with any Buyer Order or Buyer Credit.
- 9.4. Severability.** If any provision of this Agreement is or becomes prohibited by law or is judged by a court to be unlawful, void or unenforceable, the provision shall,

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to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the remainder of this Agreement.

9.5. No Waiver. Unless a party expressly waives its rights in writing no delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

9.6. Data Protection. The parties undertake to comply with the provisions of the Data Protection Act and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

9.7. Interpretation. In this Agreement, unless the context otherwise requires:

- a. words importing any gender include every gender;
- b. words importing the singular number include the plural number and vice versa;
- c. words importing persons include firms, companies and corporations and vice versa;
- d. references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- e. reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- f. the headings to the clauses, schedules and paragraphs of this Agreement will not affect the interpretation;
- g. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- h. any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- i. any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

10. NATURE OF RELATIONSHIP

Neither this Agreement shall constitute or imply any partnership, joint venture, agency, fiduciary or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

11. AMENDMENTS

Neither this Agreement may be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

12. ASSIGNMENT

12.1. This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without prior notification to the other party.

13. NOTICES

13.1. All notices under this Agreement shall be in writing and must be in English.

13.2. Notices shall be deemed to have been duly given:

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- a. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- b. when sent, if transmitted by email and a successful transmission report or return receipt is generated; or
- c. on the fifth business day of the sender following mailing, if mailed by ordinary mail, postage prepaid; or
- d. on the tenth business day of the sender following mailing, if mailed by airmail, postage prepaid,
- e. in each case addressed to the most recent address, email address, or facsimile number notified to the other party.

14. COUNTERPARTS

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

15. COSTS AND EXPENSES

Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

16. SET-OFF

Where either party has incurred any liability to the other party, whether under this Agreement or otherwise, and whether such liability is liquidated or unliquidated each party may set off the amount of such liability against any sum that would otherwise be due to the other party under this Agreement.

17. DISPUTE RESOLUTION

17.1. The parties agree that they will first attempt to resolve any dispute arising out of or in connection with this Agreement including any disputes regarding the existence, validity or termination thereof through mutual consultation through their senior representatives. However, if such consultations do not result in satisfaction of any dispute to either party within twenty-one business days after one party has given written notice to the other to commence such consultations, then either party may refer the dispute to arbitration.

17.2. In the event of any dispute arising between the parties (and if not resolved by mutual agreement as set out above), such dispute shall be referred to arbitration by a single arbitrator chosen by mutual agreement of the parties. In default of agreement or failing such agreement upon an arbitrator within seven (7) days from the time when the appointment of an arbitrator is proposed by either party to the other, then the dispute shall be referred to a single arbitrator (being an Advocate of the High Court of Kenya of not less than fifteen (10) years standing in practice) appointed by the Chairperson for the time being of the Kenya Branch of the Chartered Institute of Arbitrators, UK and the provisions of Arbitration Act (as amended) shall apply to such dispute resolution.

IN WITNESS whereof this Agreement has been duly executed by the Seller hereto on the day and the year first hereinabove written.

Company name: _____

Signature and Stamp

Director name: _____

(NOTE: sign and scan ALL pages)

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