



## Arcade Games Terms and Conditions

### 1 Our Disclosures

Our complete terms and conditions are contained below, but some important points for you to know before you become a customer are set out below:

- we may amend these Terms or your Membership at any time, by providing written notice to you;
- if you are a Client and you terminate these Terms for your convenience, you will liable to pay (or you will not be entitled to a refund in respect of) the remaining Fees as outlined in this agreement;
- our liability under these Terms is limited to us repaying you an amount up to a maximum of \$20,000 and we will not be liable for Consequential Loss;
- we will have no liability for the use or results of any Third Party ID Service or Identity Check, any aspect of the User and Client or Advertiser interaction including the goods and services offered by the Client, the description of the goods and services requested or offered, any advice provided, the performance of services supply and delivery of goods solely to the extent that we are not involved in any such interaction, and any event outside of our reasonable control;
- we may terminate these Terms at any time by giving 30 days' written notice to you; and

Nothing in these Terms limit your rights under the Australian Consumer Law.

### 2 Introduction

- 2.1 These terms and conditions (**Terms**) are entered into between Spark Up Group Pty Ltd ABN 94 653 903 916 (**we, us or our**) and you, together the **Parties** and each a **Party**.
- 2.2 We provide a platform where Clients (**Clients**), corporate Advertisers (**Advertisers**) and Users (**Users**) can connect and transact (**PlatformPlaySpark Platform**).
- 2.3 In these Terms, **you** means (as applicable) the person or entity registered with us as either a User, Advertiser or Client, or the individual accessing or using the PlatformPlaySpark Platform.
- 2.4 If you are using the PlatformPlaySpark Platform on behalf of your employer or a business entity, you, in your individual capacity, represent and warrant that you are authorised to act on behalf of your employer or the business entity and to bind the entity and the entity's personnel to these Terms.

### 3 Acceptance and PlatformPlaySpark Platform Licence

- 3.1 You accept these Terms by the earlier of checking the box, clicking "I accept", registering on the PlatformPlaySpark Platform, and using the PlatformPlaySpark Platform or the Sportz Services, or by signing these Terms (if applicable).
- 3.2 You must be at least 13 years old to use the PlatformPlaySpark Platform.
- 3.3 We may amend these Terms at any time, by providing written notice to you. By clicking "I accept" or continuing to use the PlatformPlaySpark Platform after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment, you may terminate these Terms in accordance with the "Cancellations and Changes to Membership" clause (clause 9.6).
- 3.4 If you access or download our mobile application from: (1) the Apple App Store, you agree to any Usage Rules set forth in the App Store Terms of Service; or (2) the Google Play Store, you agree to the Android, Google Inc. Terms and Conditions including the Google Apps Terms of Service.
- 3.5 Subject to your compliance with these Terms, we grant you a personal, non-exclusive, royalty-free, revocable, worldwide, non-transferable licence to download and use our PlatformPlaySpark Platform in accordance with these Terms. All other uses are prohibited without our prior written consent.
- 3.6 When using the PlatformPlaySpark Platform, you must not do or attempt to do anything that is unlawful or inappropriate, including:
  - (a) anything that would constitute a breach of an individual's privacy (including uploading private or personal information without an individual's consent) or any other legal rights;
  - (b) using the PlatformPlaySpark Platform to defame, harass, threaten, menace or offend any person;
  - (c) using the PlatformPlaySpark Platform for unlawful purposes;

- (d) interfering with any user of the PlatformPlaySpark Platform;
- (e) tampering with or modifying the PlatformPlaySpark Platform (including by transmitting viruses and using trojan horses);
- (f) using the PlatformPlaySpark Platform to send unsolicited electronic messages;
- (g) using data mining, robots, screen scraping or similar data gathering and extraction tools on the PlatformPlaySpark Platform; or
- (h) facilitating or assisting a third party to do any of the above acts.

#### 4 AccountsAdvertisers

- 4.1 You must register on the PlatformPlaySpark Platform and create an account (**Account**) to access the PlatformPlaySpark Platform's features.
- 4.2 You may only have 1 Account as a Client, 1 Account as a Advertiser and 1 Account as a User on the PlatformPlaySpark Platform, as applicable.
- 4.3 You must provide basic information when registering for an Account including your business name (for Clients and Advertisers), your name (for Users), contact name and email address and you must choose a username and password.
- 4.4 The username you choose must not (1) be offensive or in other ways insulting or (2) contain characteristics which belong to a third party, including names of famous persons, or personal names to which you do not own the rights.
- 4.5 You may also register for an Account using your Facebook, Google or other social media network account (**Social Media Account**). If you sign in to your Account using your Social Media Account, you authorise us to access certain information on your Social Media Account including but not limited to your current profile photo, name and email address.
- 4.6 Once you have registered an Account, your Account information will be used to create a profile which you may then curate.
- 4.7 All personal information you provide to us will be treated in accordance with our Privacy Policy and the Privacy Act (1988) (Cth).
- 4.8 You agree to provide and maintain up to date information in your Account and to not share your Account password with any other person. Your Account is personal and you must not transfer it to others.
- 4.9 You are responsible for keeping your Account details and your username and password confidential and you will be liable for all activity on your Account, including purchases made using your Account details. You agree to immediately notify us of any unauthorised use of your Account.
- 4.10 If you are a Client or Advertiser, we will review your request for an Account before approving the request. We may request additional information, including ID verification, objectives and relevant media or branding. If you do not provide us with information we reasonably request, we may refuse to create an Account for you. If you provide us with any information which indicates you are not a fit and proper person to be provided with an Account, we may refuse to provide you with an Account, in our sole discretion.
- 4.11 We may make access to and use of certain parts of the PlatformPlaySpark Platform subject to conditions or requirements, including identity verification, cancellation history, quality of services and threshold of reviews.
- 4.12 When you create an Account as a Client, you must also select a membership (**Membership**). You may choose between different tiers of Membership with different services and different membership periods as set out on our PlatformPlaySpark Platform.
- 4.13 If you discover an issue related to your wallet, please contact your wallet provider. Likewise, you are solely responsible for your Account and any associated wallet and we are not liable for any acts or omissions by you in connection with your Account or as a result of your Account or wallet being compromised. You agree to immediately notify us if you discover or otherwise suspect any security issues related to the PlatformPlaySpark Platform or your Account.
- 4.14 If you are a Advertiser, you may cancel or suspend your Account at any time through your Account or via email.

#### 5 PlatformPlaySpark Platform summary

- 5.1 The PlatformPlaySpark Platform is a gamified loyalty platform.
- 5.2 Users can earn points for performing certain tasks and behaviours on the PlatformPlaySpark Platform.
- 5.3 The PlatformPlaySpark Platform also aims to connect Advertisers of Clients closer to Users by allowing them to reward Users for interacting with Advertiser content on the PlatformPlaySpark Platform.
- 5.4 We provide the PlatformPlaySpark Platform to users (including hosting and maintaining the PlatformPlaySpark Platform), process payments between Users, Clients and Advertisers and assist in onboarding Clients and Advertisers (together, the **SportzUser Services**). You understand and agree that we only make available the Sportz Services. We are not party to any agreement entered into between a User, Advertiser and/or a Client and we have no control over the conduct of Clients, Advertisers, Users or any other users of the PlatformPlaySpark Platform.

- 5.5 A Client wanting to offer products to Users creates an Account on the PlatformPlaySpark Platform and posts an accurate and complete description of their Client and the offers they can provide to Users, from time to time, including the details of particular offers (for example, Client membership offers, product coupons or vouchers) (**Client Offers**).
- 5.6 A Advertiser wanting to offer Tokens to Users creates an Account on the PlatformPlaySpark Platform and posts an accurate and complete description of their business and the offers they can provide to Users for interacting with their and Clients' content, from time to time, including the details of particular offers (for example, discounts) (**Advertiser Offers**).
- 5.7 A User wanting to earn or win Offers from Clients and Advertisers creates an Account on the PlatformPlaySpark Platform to view and browse Client Offers and Advertiser Offers.
- 5.8 A User can elect to purchase or redeem a Client Offer or Advertiser Offer via the PlatformPlaySpark Platform by submitting a **Purchase Request**. Once the relevant Client, Advertiser or User accepts a Redemption Request it will be deemed to be a **Confirmed Purchase**.
- 5.9 By accepting a Purchase Request, the relevant Client, Advertiser or User confirms that it is legally entitled to and capable of supplying the goods or services described in the Purchase Request.
- 5.10 Advertisers and Clients may enter into written agreements with Users in relation to the Advertiser's and Clients goods and services, as applicable. To the extent there is inconsistency between any additional terms and conditions and these Terms, these Terms will prevail.
- 5.11 Clients and Advertisers must include all additional terms and conditions relating to their goods and services in the relevant Client Offer or Advertiser Offer or must clearly state that there are additional terms and conditions. By sending a Purchase Request, a User is accepting the additional terms and conditions of the relevant Client or Advertiser.

## **6 Promotional Opportunities and Discount Codes**

- 6.1 As a Client, you may choose to purchase promotional opportunities, such as a feature in our email marketing or placement on our home page (**Promotional Opportunity**). Promotional Opportunities are subject to the fees and the terms and conditions as set out in any Promotional Opportunity offer and displayed on the PlatformPlaySpark Platform or otherwise communicated to you. In the event of any conflict between any Promotional Opportunity terms and conditions and these Terms, the Promotional Opportunity terms and conditions will prevail.
- 6.2 As a User, we may from time-to-time issue to you promotional discount codes for use on the PlatformPlaySpark Platform. To claim the discount, you must enter the promotional discount code at the time of submitting your Purchase Request on the PlatformPlaySpark Platform. The conditions of use relating to promotional discount codes will be set out on the PlatformPlaySpark Platform. We may also from time to time run competitions on the PlatformPlaySpark Platform or on social media. These competitions are subject to terms and conditions which will be made available on the PlatformPlaySpark Platform at the time of the competition.

## **7 Communication**

- 7.1 We may contact you via the PlatformPlaySpark Platform using in-Account notifications, or via off-PlatformPlaySpark Platform communication channels, such as text message or email.
- 7.2 Users, Advertisers and Clients can communicate privately using our private messaging service Advertisers or offline using the listed contact details. Users and Clients or Advertisers must not communicate outside of the PlatformPlaySpark Platform until a Confirmed Purchase has been made. You must not use the contact details to organise the provision of the goods and services off the PlatformPlaySpark Platform, or otherwise to attempt to circumvent the payment of Service Fees to us.

## **8 Memberships**

- 8.1 Any Membership will only commence once the PlatformPlaySpark Platform is live and ready to use, notwithstanding that you may have accepted these Terms before this occurs.
- 8.2 Membership Fees are only payable by Clients, not Users or Advertisers.
- 8.3 If you are a Client, your Membership may begin with a free trial. The free trial period of your Membership will last for the period specified on the PlatformPlaySpark Platform or in your Account. We determine free trial eligibility in our sole discretion and we may limit eligibility to prevent free trial abuse. We reserve the right to revoke the free trial and suspend your Account at any time in the event that we determine that you are not eligible. If you do not cancel during the free trial period, we will charge your chosen payment method for the Membership you have chosen and its corresponding membership fee (**Membership Fee**) on the day your free trial ends.
- 8.4 Your Membership is subject to a minimum term of 1 month. Without limiting your rights under the Australian Consumer Law 8.722.5, you may only cancel your Membership at the expiry of the minimum term.
- 8.5 At the end of the period for which you have paid the Membership Fee, the Parties may agree to extend Membership for a further period as agreed between the Parties.

8.6 **Cancellations and Changes to your Membership:** If you wish to cancel, suspend or change your Membership (for example, by upgrading to a different Membership tier), you must provide notice to us via email that you wish to cancel, suspend or vary your Membership at least 24 hours before the next date when payment is required under these Terms. If you vary your Membership and the Membership Fee also varies, you will be charged the new Membership Fee on the next date when payment is required under these Terms.

8.7 We may need to change the Membership (for example, the inclusions and exclusions) and Membership Fee from time to time. If you are a Client and we change your Membership or Membership Fee, we will provide you with 30 days' notice of the change. After 30 days, we will apply the new Membership Fee to your existing payment details for all future payments, and your Membership changes will take effect on the same date. If you do not agree with the new Membership or Membership Fee, you may cancel your Membership in accordance with these terms.

## 9 Tax

9.1 You are solely responsible for determining what, if any, taxes apply to transactions you participate in on the PlatformPlaySpark Platform.

## 10 Refunds and Cancellation Policy

10.1 The cancellation, exchange, variation, or refund of any goods and services ordered on this PlatformPlaySpark Platform is strictly a matter between the relevant User and Client or Advertiser. The terms and conditions agreed to between the Client and the User must be set out clearly in the relevant Client Offer or Advertiser Offer. Should the Client or Advertiser and User agree to a refund of the Token Fees, both the Client or Advertiser and User acknowledge and agree that to the maximum extent permitted by law, our Service Fee is not refundable. All sales of Tokens between Users are not refundable.

10.2 For disputes between Users, Clients and Advertisers, we encourage Parties to attempt to resolve disputes (including claims for returns or refunds) with the other Party directly and in good faith, either on the PlatformPlaySpark Platform or through external communication methods. In the event that a dispute cannot be resolved through these means, the Parties may choose to resolve the dispute in any manner agreed between the Parties or otherwise in accordance with applicable laws.

10.3 This clause 12 will survive the termination or expiry of these Terms.

## 11 Identify verification

11.1 If we choose to conduct identity verification or background checks on any Client or Advertiser, to the extent permitted by law, we disclaim all warranties of any kind, either express or implied, that such checks will identify prior misconduct by a Client or Advertiser or guarantee that a Client or Advertiser will not engage in misconduct in the future. Any verification of Clients on the PlatformPlaySpark Platform is not an endorsement or recommendation that the Client is trustworthy or suitable. You should do your own due diligence before transacting with another user of the PlatformPlaySpark Platform.

11.2 As a Client or Advertiser, we may offer you the option of verifying your identity and/or validating your Account using a third party verification service (**Third Party ID Service**).

11.3 Where you have elected to verify your identity under this clause 13, you acknowledge and agree that (1) we may contact, connect to or otherwise liaise with Third Party ID Services to validate your identity and information (**Identity Check**); and (2) Third Party ID Services may provide us with your personal information or sensitive information, and you consent to us receiving and using this information to enable us to perform an Identity Check.

11.4 Following a successful Identity Check, you acknowledge and agree that (1) we may permit you to use verification signs, icons or badges in connection with your Account to indicate that a successful Identity Check has been performed (**Verification Icon**); and (2) a Verification Icon may only be used by the individual or business for whom the relevant Identity Check has been successfully performed and the relevant Verification Icon has been issued, and then, only where that individual is directly providing the relevant goods and services .

11.5 You acknowledge and agree that (1) the Identity Check and any issuance of a Verification Icon may not be fully accurate, as they are dependent on the information provided by the relevant individual or business and/or information or checks performed by third parties; and (2) you should not rely on the Identity Checks or the Verification Icons, and you should make your own inquiries as to the accuracy, legitimacy, validity, credibility or authenticity of any users of the PlatformPlaySpark Platform.

## 12 Reviews

12.1 Users may review their experience with the Client on the PlatformPlaySpark Platform, including the goods and services (**Review**).

12.2 Reviews can be viewed by any user and will remain viewable until the relevant Account is removed or terminated.

12.3 You agree to provide true, fair and accurate information in your Review. If we consider that the Review is untrue, unfair, inaccurate, offensive or inappropriate, we may delete the Review or ban you from posting the Review. We do not undertake to review each Review. To the maximum extent permitted by law, we are not responsible for the content of any Reviews.

- 12.4 You can write a Review about a Client if you have had an experience with that Client, which means that (1) you have engaged the Client through the PlatformPlaySpark Platform; or (2) you can otherwise document your interaction with the Client in relation to the PlatformPlaySpark Platform, including via correspondence (collectively referred to as a **User Experience**).
- 12.5 You may not write a review about a Client you have previously owned, currently own, or which an immediate family member currently owns, or if you are an executive or employee of that Client, or work for the Client. Similarly, you may not write a Review about a direct competitor to the Client that you own, are employed by or work for.
- 12.6 Your User Experience must have occurred in the 12 months prior to you writing a Review.
- 12.7 You may only write about your own User Experience. You are not permitted to write a Review about somebody else's User Experience, such as that of a family member or friend.
- 12.8 You are encouraged to be specific and factual in your Reviews. If you have been offered an incentive by a Client to write a Review, you should include information about this in your Review. Incentives include the Client offering you a gift, reward, discount or advantage for writing a Review about the Client on the PlatformPlaySpark Platform.
- 12.9 This clause 14 will survive the termination or expiry of these Terms.

### **13 Intellectual Property**

- 13.1 All intellectual property (including copyright) developed, adapted, modified or created by a Party or a Party's personnel (including in connection with the Terms, any content on the PlatformPlaySpark Platform, and the products) (**Intellectual Property**) will at all times vest, or remain vested, in that Party.
- 13.2 Each Party authorises the other Party to use the original Party's Intellectual Property solely for the purposes for which it was intended to be used.
- 13.3 A Party must not, without the other Party's prior written consent:
- (a) copy, in whole or in part, any of the other Party's Intellectual Property;
  - (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of the other Party's Intellectual Property to any third party; or
  - (c) breach any intellectual property rights connected with the PlatformPlaySpark Platform, including (without limitation) altering or modifying any of the other Party's Intellectual Property; causing any of the other Party's Intellectual Property to be framed or embedded in another website; or creating derivative works from any of the other Party's Intellectual Property.
- 13.4 Nothing in the above clause 15.3 restricts a Party's ability to publish, post or repost the other Party's Intellectual Property on your social media page or blog, provided that:
- (a) the Party does not assert that it is the owner of the other Party's Intellectual Property;
  - (b) unless explicitly agreed by the other Party in writing, the Party does not assert that it is endorsed or approved by the other Party;
  - (c) the Party does not damage or take advantage of the other Party's reputation, including in a manner that is illegal, unfair, misleading or deceptive; and
  - (d) the Party complies with all other terms of these Terms.
- 13.5 This clause 15 will survive the termination or expiry of these Terms.

### **14 Content you upload**

- 14.1 You may be permitted to post, upload, publish, submit or transmit relevant information and content including Reviews (**User Content**) on the PlatformPlaySpark Platform. We may run campaigns via the PlatformPlaySpark Platform and via social media that encourage you to post User Content on social media using specific hashtags (#) (**Tag**).
- 14.2 If you make any User Content available on or through the PlatformPlaySpark Platform, including on social media using a Tag, you grant to us a worldwide, irrevocable, perpetual, non-exclusive, non-transferable, royalty-free licence to use the User Content, with the right to use, view, copy, communicate, publicly display, publicly perform, transmit, stream, broadcast or access such User Content on, through or by means of the PlatformPlaySpark Platform and our social media platforms always subject to your written approval. You may request that any of your User Content is removed from the PlatformPlaySpark Platform or social media by sending us an email to the address at the end of these Terms. We will endeavour to action any removal requests within a reasonable time.
- 14.3 You agree that you are solely responsible for all User Content that you make available on or through the PlatformPlaySpark Platform, including on social media using a Tag. You represent and warrant that:
- (a) you are either the sole and exclusive owner of all User Content or you have all rights, licences, consents and releases that are necessary to grant to us the rights in such User Content (as contemplated by these Terms); and
  - (b) neither the User Content nor the posting, uploading, publication, submission or transmission of the User Content or our use of the User Content on, through or by means of our PlatformPlaySpark Platform (including on social media) will

infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

- 14.4 We do not endorse or approve, and are not responsible for, any User Content. We may, at any time (at our sole discretion), remove any User Content.
- 14.5 We encourage Advertisers and Clients to actively collaborate on the PlatformPlaySpark Platform. To the extent that Advertisers or Clients intend to share or collaborate User Content, or to license one another's Intellectual Property Rights, this is a matter for the relevant Advertisers and Client. To the maximum extent permitted by law, we have no liability for any Liability arising from or in connection with any such sharing or collaboration (and we are not a party to any Intellectual Property licensing or other agreement covering such sharing or collaboration).
- 14.6 This clause 16 will survive the termination or expiry of these Terms.

## 15 User Data

- 15.1 The Parties acknowledge and agree that any data that the Users input via the PlatformPlaySpark Platform in response to any surveys or other content posted by Advertisers will be owned by us (**User Data**).
- 15.2 If you are a User, you agree that us and the relevant Advertiser may access and use the User Data for our respective business purposes.
- 15.3 Where we provide, or make available, the **User** Data to a **Advertiser** or **Client** (on the Platform or otherwise), we grant the relevant Advertiser or Client a revocable, non-exclusive, non-transferable, non-sublicensable and royalty-free licence, for the duration of the period when the Advertiser has an active Account, to use User Data for its internal business purposes only and as reasonably contemplated by this Agreement. We may impose additional terms and conditions at our sole discretion.

## 16 Warranties

- 16.1 You represent, warrant and agree that:
- (a) not used;
  - (b) there are no legal restrictions preventing you from entering into these Terms;
  - (c) not used;
  - (d) you have not relied on any representations or warranties made by us in relation to the PlatformPlaySpark Platform (including as to whether the PlatformPlaySpark Platform is or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms, including in clause 5;
  - (e) where you are a Client or Advertiser, you are responsible for complying with all laws, rules and regulations which apply to providing the goods and services in your Client Offers or Advertiser Offers; and
  - (f) where you are a Client or Advertiser, you are appropriately qualified, and have any required skills, knowledge or training, to provide the goods and services.
- 16.2 We represent, warrant and agree that:
- (a) there are no legal restrictions preventing us from entering into these Terms;
  - (b) the PlatformPlaySpark Platform will perform in a manner that is consistent with the summary outlined in clause 5;
  - (c) we are responsible for complying with all laws, rules and regulations which apply to providing the goods and services; and
  - (d) our personnel are appropriately qualified, and have any required skills, knowledge or training, to provide the goods and services.

## 17 Australian Consumer Law

- 17.1 Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010 (Cth)*, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the PlatformPlaySpark Platform by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**).
- 17.2 If the ACL applies to you as a consumer, nothing in these Terms excludes your Consumer Law Rights as a consumer under the ACL. You agree that our Liability for the PlatformPlaySpark Platform provided to an entity defined as a consumer under the ACL is governed solely by the ACL and these Terms.
- 17.3 Subject to your Consumer Law Rights, we exclude all express and implied warranties, and all material, work and services (including the PlatformPlaySpark Platform) are provided to you without warranties of any kind, either express or implied, whether in statute, at law or on any other basis.
- 17.4 As a User, the goods and services provided by a Client may also confer on you certain rights under the ACL.
- 17.5 This clause 19 will survive the termination or expiry of these Terms.

## 18 Exclusions to liability



- 18.1 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:
- (a) the use or results of any Third Party ID Service or Identity Check;
  - (b) any interaction between Users, Clients and/or Advertisers, including goods and services offered by the Client or Advertiser, the description of the goods and services requested or offered, any advice provided, the performance of the services or supply and delivery of the goods, solely to the extent that we are not involved in any such interaction;
  - (c) risk referred to in the Risk Disclosure Notice below; and
  - (d) any event outside of our reasonable control.
- 18.2 You agree to indemnify us for any Liability we incur due to your breach of the Acceptance and PlatformPlaySpark Platform Licence clause (clause 3), the Confidentiality clause (clause 26.3) and the Intellectual Property clause (clause 15) of these Terms.
- 18.3 We agree to indemnify you for any Liability you incur due to our breach of the Confidentiality clause (clause 26.3) and the Intellectual Property (clause 15) clause of these Terms.
- 18.4 This clause 20 will survive the termination or expiry of these Terms.

## 19 Risk Disclosure Notice

- 19.1 Despite our best efforts, there are risks associated with our offering, which include:

- (a) Software risk – While we will use our best efforts and develop our software with high security standards, we do not warrant or represent that the Tokens, the PlatformPlaySpark Platform or any related software are secure or safe, or protected from fishing, malware or other malicious attacks. Further, the Tokens, the PlatformPlaySpark Platform and related software may contain weaknesses, bugs, vulnerabilities, viruses or other defects which may have a material adverse effect on the operation of the Tokens, the PlatformPlaySpark Platform or any such related software or may lead to losses and damages for you;
- (b) Blockchain risk – The Tokens will be deployed on the Polygon blockchain network, and may also be deployed on other blockchains in the future. Accordingly, any malfunction, breakdown or abandonment of such blockchain(s) may have a material adverse effect on the Tokens.

Legal uncertainty - Our intended activities, as set out in these Terms, are subject to Australian laws and regulations. We might be obliged to obtain different licenses or other permissive documents in Australia and, accordingly, our business in Australia shall always be subject to obtaining licenses or permissive documents, if so directed by applicable laws or government agencies. Despite our best efforts and seeking legal advice, there is a risk that certain activities may be deemed in violation of any existing or new laws or regulations. Penalties for any such potential violation would be unknown. Additionally, changes in applicable laws or regulations or evolving interpretations of existing law may result in increased compliance costs which may affect our ability to perform our business operations.

## 20 Limitations on liability

- 20.1 To the maximum extent permitted by law:
- (a) neither Party will be liable for Consequential Loss;
  - (b) each Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party or any of that Party's personnel, including any failure by that party to mitigate its losses; and
  - (c) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to \$20,000.
- 20.2 The limitation of liability in clause 22.1(c) does not apply to our liability to you under clause 20.3.
- 20.3 This clause 22 will survive the termination or expiry of these Terms.

## 21 Termination

- 21.1 Your Account and these Terms may be terminated by you at any time, using the 'cancel Account' functionality (or similar) in the Account page section of your Account settings.
- 21.2 We may terminate these Terms at any time by giving 30 days' written notice to you. You may terminate these Terms at any time by giving 30 days' written notice to us. (**Termination for Convenience**).
- 21.3 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:
- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
  - (b) the Defaulting Party is unable to pay its debts as they fall due.
- 21.4 If you are in breach of these Terms, we may suspend your Account while we investigate the suspected breach.
- 21.5 Upon expiry or termination of these Terms:
- (a) we will remove your access to the PlatformPlaySpark Platform and cease using any of your Intellectual Property;

- (b) we will immediately cease providing the SportzUser Services;
- (c) you agree that other than where termination is due to our Termination for Convenience or we have breached a material term under clause 23.5(a) and to the maximum extent permitted by law, any payments made by you to us (including any Membership Fees and Service Fees) are not refundable to you;
- (d) where you are a User, we will cancel any existing Confirmed Purchases and you will lose any Token Fees and other amounts paid other than where termination is due to our Termination for Convenience;
- (e) where you are a Client, we will cancel any existing Confirmed Purchases and refund the relevant Users in accordance with clause 1211;
- (f) where you are a Client and you terminate these Terms by exercising your Termination for Convenience right, you acknowledge and agree that you are liable to pay the annual Membership Fees in full for the remainder of the year of your Membership in which you terminate these Terms (i.e. not the calendar year), or if you have paid the annual Membership Fees in advance, you acknowledge and agree that such annual Membership Fees are non-refundable to you; and
- (g) where we terminate the Terms for any reason other than a Termination for Convenience, you also agree to pay us our reasonable additional costs directly arising from such termination (including legal fees, debt collector fees and mercantile agent fees).

21.6 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

21.7 This clause 23 will survive the termination or expiry of these Terms.

## 22 Client / Advertiser insurance

22.1 As a Client or Advertiser, we may request that you provide evidence of your insurance. Where we do so, we are not confirming that the insurance you have is sufficient or suitable for the goods and services you choose to provide to Users. If we do not ask you to provide evidence of insurance this does not indicate that we believe you do not require insurance. You acknowledge and agree it is your responsibility to make your own investigations and receive professional advice on the insurance you require.

## 23 Notice regarding Apple

- 23.1 To the extent that you are using or accessing our PlatformPlaySpark Platform on an iOS device, you further acknowledge and agree to the terms of this clause 25. You acknowledge that these Terms are between you and us only, not with Apple Inc. (**Apple**), and Apple is not responsible for the PlatformPlaySpark Platform and any content available on the PlatformPlaySpark Platform.
- 23.2 Apple has no obligation to furnish you with any maintenance and support services with respect to our PlatformPlaySpark Platform.
- 23.3 If our mobile application fails to conform to any applicable warranty, you may notify Apple and Apple will refund the purchase price of the mobile application to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the mobile application and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be our responsibility.
- 23.4 Apple is not responsible for addressing any claims by you or any third party relating to our mobile application or your use of our mobile application, including but not limited to (1) product liability claims; (2) any claim that our mobile application fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation.
- 23.5 Apple is not responsible for the investigation, defence, settlement and discharge of any third-party claim that our mobile application infringes that third party's intellectual property rights.
- 23.6 You agree to comply with any applicable third-party terms when using our mobile application, including any Usage Rules set forth in the Apple App Store Agreement of Service.
- 23.7 Apple and Apple's subsidiaries are third-party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary of these Terms.
- 23.8 You hereby represent and warrant that (1) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (2) you are not listed on any U.S. Government list of prohibited or restricted parties.

## 24 General

24.1 **Assignment:** Subject to the below clause 26.2, a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).



- 24.2 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.
- 24.3 **Confidentiality:** Other than where the disclosure is permitted by law, each Party agrees not to disclose any confidential information it may access on or through the PlatformPlaySpark Platform to a third party, or otherwise misuse such confidential information. Confidential information may include confidential information supplied to you by us, by a **User**, or by a **Client**.
- 24.4 **Disputes:** In relation to a dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) between a User and us, or a Client and us, a Party may not commence court proceedings relating to a Dispute without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Institute of Victoria to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause 26.4 will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 24.5 **Entire Terms:** Subject to your Consumer Law Rights, these Terms (and any special conditions entered into between the Parties) contain the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 24.6 **Further assurance:** Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to these Terms and their obligations under it.
- 24.7 **Governing law:** This Agreement is governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 24.8 **Notices:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you at the details provided in your Account. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 24.9 **Privacy:** Each Party agrees to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines. We will deal with your Personal Information (as defined in the Privacy Act) in accordance with our Privacy Policy, which can be found on the Platform.
- 24.10 **Publicity:** With your prior written consent, you agree that we may advertise or publicise the broad nature of our supply of the SportzUser Services to you, including on our website or in our promotional material.
- 24.11 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency subject to us acting as your limited payment agent) relationship between the Parties.
- 24.12 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.
- 24.13 **Third party sites:** The PlatformPlaySpark Platform may contain links to websites operated by third parties. Unless we tell you otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites. We recommend that you make your own investigations with respect to the suitability of those websites. If you purchase goods or services from a third party website linked from the PlatformPlaySpark Platform, such third party provides the goods and services to you, not us. We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the PlatformPlaySpark Platform (**Affiliate Link**) or for featuring certain products or services on the PlatformPlaySpark Platform. We will make it clear by notice to you which (if any) products or services we receive a benefit to feature on the PlatformPlaySpark Platform, or which (if any) third party links are Affiliate Links.
- 24.14 **Trust provisions:** Each Party described in these Terms as a trustee (**Trustee**) enters into these Terms only in its capacity as a trustee of the trust of which it is described as the Trustee (**Trust**). Subject to the following sentence, and despite any other provision of these Terms, a Liability arising under or in connection with these Terms is limited and can be enforced against a Trustee only to the extent to which the Trustee is indemnified out of the assets of the Trust. The limitation set out in the previous sentence does not apply where the Trustee's right to indemnification is reduced or lost as a result of fraud, breach of trust or breach of duty by the Trustee. This clause 26.14 will survive the termination or expiry of these Terms.

- 25.1 **Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- 25.2 **Intellectual Property** means any copyright, registered or unregistered designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.
- 25.3 **Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.
- 25.4 **Intellectual Property Breach** means any breach by a Party (or any of that Party's personnel) of any of the other Party's Intellectual Property Rights (or any breaches of third party rights including any Intellectual Property Rights of third parties).
- Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.

**For any questions or notices, please contact us at:**

Spark Up Group Pty Ltd ABN 94 653 903 916

**Email:** [luke@playspark.co](mailto:luke@playspark.co)

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