

## SPARE Merchant-Partner Program Agreement

You are agreeing to process cash requests via mobile, web or a partner hardware device (point-of-sale, POS, cash register) using the patented software solutions provided by SPARE CS, Inc (SPARE). Please reach out to the company or sales representative if you have issues operating your system.

This SPARE Merchant-Partner Program Agreement, and the Exhibits attached hereto, (collectively "Agreement") is a contract between SPARE and you, the entity or individual named on the submitted merchant-partner registration form, (referred to as "you," "your" or "Partner") as a member in the SPARE Merchant-Partner Program (the "Program"). You must read, agree with, and accept all of the terms and conditions contained in this Agreement. This Agreement is effective from October 1, 2022 or the date you accept the agreement, whichever is later ("Effective Date"). We may amend this Agreement at any time by emailing such notice to you. The revised version will be effective 30 days from the date we email such notice to you. By continuing to use the Services after any revision to this Agreement or any change in Services, you agree to abide by and be bound by any such revisions or changes. All capitalized terms shall have the meaning assigned to them in Section 9.

### ARTICLE I: THE PROGRAM

Section 1.1. Program. SPARE has developed a program for its merchant-partners to integrate the SPARE Services into the Merchant-partner point-of-sale system, market the SPARE Services, and refer other merchants to SPARE ("Program"). You agree to participate in the Program after (i) execution of this Agreement; (ii) registration for any required hardware association programs through SPARE's hardware partners, and (iii) proof of KYB compliance, if applicable.

### ARTICLE II: Partner Obligations

Section 2.1. Partner Marketing. In marketing the SPARE Service, you will: (i) portray the SPARE Service accurately, and (ii) strictly adhere to any SPARE branding or marketing requirements or guidelines as may be communicated to you from time to time. Further, you represent and warrant that all your marketing activities relating in any way to the SPARE Service shall comply with applicable laws, regulations, industry self-regulatory standards (including applicable behavioral advertising standards), and best practices.

Section 2.2. Customer Support. You will be responsible for all customer service for your products, services and any of your customers' work product. You will refer inquiries to SPARE customer service for questions relating to the SPARE Services.

### ARTICLE III: SPARE Obligations

Section 3.1. Provision of the SPARE Service. SPARE shall provide the SPARE Services to Referred Merchants in accordance with the User Agreement and SPARE Privacy Policy applicable to such Referred Merchant. All costs of integration of Referred Merchants shall be your and/or the Referred Merchant's responsibility.

Section 3.2. SPARE Benefits. During the Term, you will receive Program benefits as set out at <http://www.gotspare.com/>.

Section 3.3. Partner Support. SPARE shall respond to your inquiries in the same manner that it responds to all similarly situated partners. For SPARE Services, SPARE will be responsible for customer service. SPARE will refer inquiries to your customer service for questions relating to your website(s) and Partner Product.

**Section 3.4. Merchant-Merchant-Partner Portal Access.** SPARE may provide you with access to the Merchant-Partner Portal in connection with the Benefits, as defined below. You agree to use the Merchant-Partner Portal in the manner specified by SPARE and subject to the restrictions on the use and disclosure of Confidential Information contained herein. You are responsible for all changes you make to your accounts via the Merchant-Partner Portal.

#### ARTICLE IV: PROGRAM BENEFITS

Section 4.1. **Benefits.** SPARE shall provide the program benefits ("Benefits") as set forth in the SPARE Merchant-Partner Program Guide located at [www.gotspare.com](http://www.gotspare.com) ("Program Guide"). SPARE will make the Benefits available to Partners meeting various eligibility conditions or requirements as SPARE sets forth in its sole discretion from time to time. SPARE may change the Benefits at any time.

Section 4.2. **Additional Requirements.** SPARE may, in its sole discretion, provide you with additional requirements related to your collection, usage, storage of SPARE User Data. SPARE will provide as much notice as possible for any additional requirements.

Section 4.3. **Your User Information.** This Agreement does not limit your ability to collect, use, and store information from Your Users as long as the information is not SPARE User Information, and you did not gain the information from your usage of the SPARE Services.

#### ARTICLE V: INTELLECTUAL PROPERTY AND LICENSE RIGHTS

Section 5.1. **Intellectual Property.** SPARE shall retain sole and exclusive right, title, and interest to SPARE's Intellectual Property, the SPARE Site, and the SPARE Services, the technology related to the SPARE Services, including without limitation all intellectual property rights in and to all aspects of the SPARE Services, the SPARE APIs, the SPARE Benefits Guide, the SPARE Content, and the SPARE Materials. You shall retain sole and exclusive right, title, and interest to your intellectual property and the Partner Product. There are no implied licenses under this Agreement, and any rights not expressly granted are reserved by SPARE. Except for the licenses herein, this Agreement does not transfer any Intellectual Property rights between the parties.

Section 5.2. **License to You.** Subject to the terms of this Agreement, SPARE grants you a revocable, non-exclusive, non-transferable license to access and integrate the SPARE APIs into the Partner Product, solely to enable the SPARE Services for your customers through the Partner Product, all in accordance with any integration requirements and the terms of this Agreement. This license does not authorize you to use the SPARE API's, to access, use, copy, or distribute any SPARE Content.

Section 5.3. **SPARE Marks.** Subject to the terms of this Agreement, SPARE grants you a revocable, non-exclusive, non-transferable license to use the SPARE Marks solely in connection with advertising and marketing the SPARE Services or the Partner Product and in accordance with SPARE's branding requirements. Any usage of the SPARE Marks that is outside the scope of the Branding Requirements requires SPARE's prior approval.

Section 5.4. **Your Marks.** You grant SPARE a revocable, non-exclusive, non-transferable license to use your Marks to publicize your usage of the SPARE Services. SPARE may do so (i) through press releases, public announcements, and other oral communications at conferences, media events, or other marketing opportunities; (ii) on the SPARE website or through other electronic communications such as emails to SPARE Users, newsletters, or in materials that SPARE otherwise makes publicly available; and (iii) through any other channel to promote the use of SPARE.

Section 5.5. **User ID.** SPARE shall provide you a unique confidential identification code, certificate, and User ID that shall permit you to use the SPARE Services. The User ID is SPARE's property and may be immediately revoked or terminated by SPARE if you disclose it to a third party or for any other reason deemed necessary by SPARE. You may not sell, transfer, sublicense, or disclose your User ID to any third party (other than a Service Provider performing services on your behalf).

Section 5.6. **Service Providers.** You may use third party Service Providers to exercise your rights or perform your obligations under this Agreement so long as the Service Provider is subject to the terms and conditions of this Agreement. You agree that any act or omission by your Service Providers amounting to a breach of this Agreement will be deemed a breach by you for which you and the Service Provider will be jointly and severally liable.

#### ARTICLE VI: CONFIDENTIALITY

Section 6.1. **Confidential Information Defined.** Confidential Information means all information that either Party provides to the other under this Agreement, including but not limited to the following: (i) the SPARE User Information, User Data, and all other information received through the APIs or otherwise related to the Partner Product, (ii) API Credentials, and all access IDs and passwords, (iii) all information disclosed in writing and marked "confidential", "proprietary", or with a substantially similar marking, (iv) all information disclosed orally and identified as confidential at the time of the disclosure, and (v) any other information that by its very nature you understand to be the disclosing Party's confidential information.

Section 6.2. **Confidentiality Obligations.** Each Party must maintain the Confidential Information in confidence and shall not disclose it to third parties or use it for any purpose other than as necessary and required to perform the services. In the event that Confidential Information is required to be disclosed by a court, government agency, regulatory requirement, or similar disclosure requirement, you shall immediately notify the disclosing Party and use reasonable efforts to obtain confidential treatment or a protection order of any disclosed Confidential Information. The obligations hereunder shall survive the termination of this Agreement for a period of three (3) years.

Section 6.3. **Protection of Confidential Information.** The Parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information and that the disclosing Party will be entitled (without waiving any other rights or remedies) to injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, without obligation to post any bond.

Section 6.4. **User Data.** In the event a party discloses User Data to the other party that such receiving party has not otherwise collected in the course of providing its services ("Confidential User Data"), such receiving party understands that it shall have the right to use the Confidential User Data, and any derivative works thereof, only as strictly required and necessary to perform its obligations under this Agreement and is strictly prohibited from combining the Confidential User Data with its own User Data or directly or indirectly using the Confidential User Data in connection with any marketing activities. Further, the receiving party shall keep the Confidential User Data only as long as necessary to perform its obligations under this Agreement.

Section 6.5. **PCI Compliance.** You represent, warrant and covenant that you shall at all times comply with applicable Payment Card Industry Data Security Standards, ("PCI DSS") as such may be amended from time to time, with respect to all card data. SPARE may, in its sole discretion, provide you with additional requirements related to your collection, usage, and storage of SPARE User Data. SPARE will provide as much notice as reasonably practicable for any additional requirements. You must provide SPARE with documentation demonstrating Partner's PCI compliance upon request. If SPARE is unable to validate your PCI compliance, SPARE may (i) hold any funds due you, (ii) remove all marketing referring to you from SPARE.com, or (iii) notify Referred Merchants that you are not PCI compliant. This Agreement does not limit your ability to collect, use, and store information from Partner Users as long as the information is not SPARE User Information, and you did not gain the information from Partner's usage of the SPARE Services.

Section 6.6. **Feedback.** In the event that either Party provides suggestions, comments, or other feedback ("Feedback") with respect to the SPARE's Confidential Information, SPARE Services, Partner Product, or Intellectual Property, the following will apply:

- a) All Feedback shall be given entirely voluntarily;
- b) Feedback, even if marked confidential, shall not create any confidentiality obligations on a Party unless such Party has otherwise agreed in a signed agreement;
- c) a Party shall be free to use, disclose, reproduce, distribute and otherwise commercialize all Feedback provided without obligation or restriction of any kind on account of intellectual property rights or otherwise; and
- d) each Party waives all rights to be compensated or seek compensation for the Feedback.

ARTICLE VII: TERM AND TERMINATION

Section 7.1. **Term.** This Agreement is effective as of the Effective Date and shall continue unless terminated as set out herein.

Section 7.2. **Termination.** Either Party may terminate this Agreement at any time upon thirty (30) days' notice. We may terminate this Agreement if you breach a material term of this Agreement and the breach is not cured with ten (10) days after receiving written notice of the breach. The Agreement may be terminated by either Party effective immediately and without any requirement of notice, in the event that: (i) the other Party files a petition in bankruptcy, files a petition seeking any reorganization, arrangement, composition, or similar relief under any law regarding insolvency or relief for debtors, or makes an assignment for the benefit of creditors; (ii) a receiver, trustee, or similar officer is appointed for the business or property of such Party; (iii) any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against such Party and not stayed, enjoined, or discharged within sixty (60) days; or, (iv) the other Party adopts a resolution for discontinuance of its business or for dissolution.

Section 7.3. **Effect of Termination.** Upon termination or expiration of this Agreement the following shall apply: (i) all rights and licenses under this Agreement shall immediately terminate; (ii) you must destroy all SPARE User Information within seven (7) calendar days of termination, and upon SPARE's request provide proof of such destruction within seven (7) calendar days; and (iii) you will remain liable for any amounts or other liability under this Agreement.

ARTICLE VIII: LEGAL TERMS

Section 8.1. **Contracting Entity.** This chart explains the SPARE entity with whom you are entering into this Agreement, the address for notice to SPARE, which governing law applies to the Agreement, and which courts have jurisdiction to adjudicate lawsuits.

Country of Residence of Referred Merchant	Contracting Entity	Address for Notice to SPARE	Governing Law	Courts with Exclusive Jurisdiction
United States	SPARE, Inc. a Delaware corporation in the United States whose address is 750 San Vicente Blvd West Hollywood CA 90069	SPARE, Inc., Attention: Legal Department, 750 San Vicente Blvd West Hollywood CA 90069	The State of California	Santa Clara County, California

Section 8.2. **Notice.**

- a. **Notice to You.** You agree that SPARE may provide notice to you by emailing it to the email address listed in your SPARE Merchant-Partner Program Account and shall be considered to be received by you within 24 hours of the time we send the email.
- b. **Notices to SPARE.** Notice to SPARE must be sent by postal mail to the address for notice listed above.

Section 8.3. **Indemnification / Limitation of Liability / Disclaimers.**

- a. **Indemnification.** Each Party agrees to defend, indemnify and hold harmless the other Party, its parent, officers, directors and employees from any claim, suit, or demand (including attorney's fees) made or incurred by any third party that is based on or arising out of: (i) breach of this Agreement, (ii) violation of any law, regulation, or rule; (iii) infringement of any third party's IP rights, (iv) use of the SPARE Services or the Partner Product, and/or (v) other actions or omissions resulting in liability to the other Party.
- b. **Limitations of Liability.** IN NO EVENT SHALL EITHER PARTY, PARENT, SUBSIDIARIES, AFFILIATES, OR SUPPLIERS BE LIABLE FOR (i) INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, WEBSITES, OR OTHER ACTIONS OR OMISSIONS, AND/OR (ii) AN AMOUNT EXCEEDING THE AMOUNT OF THE DIRECT DAMAGES DIRECTLY CAUSED BY THE BREACH OF THIS AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY.
- c. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SPARE DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SPARE WEBSITE, AND SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT. THE SPARE WEBSITE, AND SERVICES ARE PROVIDED "AS-IS" AND SPARE MAKES NO WARRANTY THAT OUR WEBSITE AND SERVICES, WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. SPARE DOES NOT HAVE CONTROL OF, OR LIABILITY FOR, THE PRODUCTS OR SERVICES PURCHASED USING THE SPARE SERVICES, OR GUARANTEE THE IDENTITY OF ANY SPARE USER.
- d. **Security and Stability.** You acknowledge that it is in the best interests of both you and SPARE that SPARE maintains a secure and stable environment; to that end, SPARE reserves the right to change the method of access at any time. You also agree that, in the event of degradation or instability of SPARE's system or an emergency, SPARE may, in its sole discretion, temporarily suspend your access to any of these services in order to minimize threats to and protect the operational stability and security of the SPARE system.
- e. **Uptime.** SPARE does not guarantee that the SPARE website and/or SPARE Services will be available twenty-four hours a day, seven days a week.

Section 8.4. **Competitive or Similar Materials.** Notwithstanding the foregoing, in no event shall SPARE be precluded from developing for itself, having developed, acquiring, licensing or developing for third parties, as well as marketing and/or distributing, materials which are competitive with your products and/or services, so long as SPARE does not infringe on your intellectual property rights.

Section 8.5. Taxes. It is your responsibility to determine what, if any, taxes apply to the payments you make or receive, and it is your responsibility to collect, report and remit the correct tax to the appropriate tax authority. SPARE is not responsible for determining whether taxes apply to your transaction, or for collecting, reporting, or remitting any taxes arising from any transaction.

Section 8.6. Your Relationship with SPARE. You and SPARE are independent contractors. This Agreement does not create or imply any partnership, agency, or joint venture.

Section 8.7. Assignment. You may not transfer or assign any rights or obligations you have under this Agreement without SPARE's prior approval. SPARE reserves the right to transfer or assign this Agreement or any right or obligation under this Agreement by providing you with notice of such transfer or assignment.

Section 8.8. No Waiver. Any failure to enforce any provision of this Agreement will not be deemed a waiver of a Party's ability to enforce the same provision of the Agreement at a future date.

Section 8.9. Severability. If any provision of this Agreement shall be held illegal or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

Section 8.10. Force Majeure. SPARE is not responsible for any failure to perform its obligations under this Agreement if such failure is caused by acts of God, war, strikes, revolutions, lack or failure of transportation facilities, laws or governmental regulations or other causes that are beyond SPARE's reasonable control. In the event of such a failure, SPARE's obligations shall be suspended until such time as the cessation of any cause of such failure.

Section 8.11. Complete Agreement. This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. This Agreement and the other agreements you have entered into with SPARE sets forth the entire understanding between you and SPARE with respect to the SPARE Services.

Section 8.12. Survival. The following sections shall survive termination of this Agreement: SPARE User Information, Confidentiality and Intellectual Property, Term and Termination, Legal Terms, and Definitions; as well as any other terms which by their nature should survive, will survive the termination of this Agreement.

#### ARTICLE IX: Definitions

##### Section 9.1. Defined Terms.

- a. "API Credentials" means your API username and password, and either an API signature or an API certificate.
- b. "Intellectual Property" means any and all intellectual property or proprietary rights under any jurisdiction including without limitation (i) Marks, and all goodwill associated therewith and symbolized thereby; (ii) inventions, discoveries and ideas, whether patentable or not, and all patents, registrations, and applications thereof, (collectively, "Patents"); (iii) published and unpublished works of authorship, whether copyrightable or not (including without limitation databases and other compilations of information), copyrights therein and thereto, and registrations and applications thereof, (collectively, "Copyrights"); (iv) trade secrets, (v) all moral rights in the foregoing (that is, the right to claim authorship of or object to the modification of any work); and (vi) all applications, renewals, extensions, restorations and reinstatements of the foregoing.
- c. "Marks" means the trademarks including registered and common law trademarks, trade names, service marks, logos, domain names and designations of a Party
- d. "New Merchant" means a United States or Canadian merchant that (i) does not have a SPARE account or has not processed any transactions through SPARE in the 365 days immediately preceding the New Merchant's first transaction with SPARE; (ii) is referred by a Trackable Means; and (iii) has a SPARE account in good standing.
- e. "Merchant-Partner Portal" means the website located at [www.gotspare.com](http://www.gotspare.com) or a successor site designated by SPARE with dedicated partner specific content and confidential log in and password. The Merchant-Partner Portal provides tools and information about the Program, including the Program Guide, Terms of Use, and Privacy Policy.
- f. "Partner Product" means the ecommerce or retail related product or solution offered by you to your customers, which incorporates the SPARE Services, as contemplated in this Agreement.
- g. "SPARE", "us," and "our" means the contracting entity based on the country as described in the Legal Terms section of this Agreement.
- h. "SPARE API" means the SPARE application programming interfaces used by SPARE merchants to interface with the SPARE Systems in connection with their use of the SPARE Services.
- i. "SPARE Content" means all the data passed through the SPARE APIs, including any User Data of SPARE or its merchants. SPARE Content does not include any data that you obtain independent of SPARE and the SPARE APIs.
- j. "SPARE Materials" means any information and materials provided by SPARE to you describing the SPARE Services for use in conjunction marketing such services.
- k. "SPARE Services" means the payment services provided by SPARE to its merchants. The SPARE Services may be updated with certain functionality from time to time.
- l. "SPARE Site" means [www.gotspare.com](http://www.gotspare.com) or such other website(s) provided by SPARE for its users located in particular countries or jurisdictions.
- m. "SPARE Systems" means the facilities, hardware, software, SPARE APIs and processes owned or licensed by SPARE to provide the SPARE Services to its users.
- n. "SPARE Users" means any person who accesses a SPARE website, uses the SPARE Services, and/or any person or entity that has agreed to the SPARE User Agreement
- o. "Referred Merchant" means (i) New Merchant or (ii) United States or Canadian merchant that (a) has a SPARE account in good standing; (b) is referred by a Trackable Means, and (c) is eligible from the date of your first partner agreement with SPARE but in any event no earlier than October 1, 2007.
- p. "Trackable Means" means a unique transaction identifier provided by SPARE to Partner and added by the Partner to applicable SPARE integrations and is the means of identifying, tracking, and associating merchants using such integrations with Partner. The unique transaction identifier may be a web address or URL embedded with a Partner ID assigned to Partner, a unique identifier sent in the transaction referred to as a partner ID, or a BN Code.
- q. "User Agreement" means the SPARE User Agreement found on each SPARE Site.
- r. "User Data" means customer or User Information, including personally identifiable information, collected from a customer or user of a Party.
- s. "User Information" means any customer information that a Party collects directly from its Users without the use of the SPARE Services or the Partner Product as the case may be.
- t. "Your Users" mean customers that have entered into a relationship with you to purchase goods or services. Your Users that have a SPARE account are also SPARE Users.