xpate

# xpate Acquiring Services Agreement

| | |
|---|---|
| Version | 3.8 |
| Last Updated | 22.10.2025 |

# 1. This Agreement

1.1. This is a legal agreement between you (hereinafter "**Customer**" or "**you**" as applicable) and xpate Ltd, which defines the terms and conditions that govern the provision of our Acquiring Services (as defined in section 3 below) to the Customer (the "**Agreement**"). xpate Ltd and the Customer are hereinafter jointly referred to as the **Parties** and individually as a **Party**. By signing the Order Form referencing the Agreement ("**Order Form**"), the Customer agrees to all the terms and conditions of this Agreement.

1.2. xpate Ltd is a company incorporated under the laws of England and Wales with company number 11920779 (hereinafter "**xpate**", "**we**", "**us**", or "**our**" as applicable). xpate is authorised to issue electronic money and provide payment services by the Financial Conduct Authority, firm reference number 901021. Under this Agreement:

1.2.1. xpate will provide payment processing and payment acquiring services to the Customer so that the Customer can offer different payment methods to the Customer's buyers in order for them to pay for the Customer's goods and services.

1.2.2. xpate will provide payment gateway services to the Customer so that the Customer can accept online card-not-present payments from the Customer's buyers, unless we have agreed otherwise, including for you to use your own payment gateway or a third party provider.

1.2.3. xpate acts as the acquirer and the principal member of the relevant Payment Scheme and will provide the Acquiring Services to the Customer directly or via a relevant associate member of the Payment Scheme. The ultimate responsibility for all transactions, compliance with Payment Scheme Rules, and any resulting obligations or losses shall remain solely with xpate.

1.2.4. This Agreement refers to and incorporates additional documents (the "**Additional Documents**") which are mandatory and are considered as part of Agreement:

1.2.5. Our **Terms and Conditions**, as set out in the relevant Schedule of the Order Form, which defines the terms and conditions on which we provide our Services to the Customer, including the Customer xpate Account if applicable; and,

1.2.6. Our **Prohibited Activities** which sets the activities that we decide are prohibited business or activity from time to time (collectively, "**Prohibited Activities**").

1.3. The Customer should read this together with our Privacy Policy.

1.4. Some capitalised terms are defined in section 2 below or are defined in the Terms and Conditions. Unless the context otherwise requires, the terms used but not defined herein shall have the meanings assigned to them in the Terms and Conditions, Order Form, relevant Card Scheme Rules and Applicable Law.

1.5. In the event of any conflict or inconsistency, the Order Form will take precedence unless stated otherwise.

1.6. **Future changes to this Agreement.** Subject to section 9, xpate will make changes to this Agreement from time to time. The revised Agreement will take effect on the date notified to the Customer.

## 2. Definitions

2.1. **Acquiring Services** means the services defined in section 3 of this Agreement, which for the avoidance of doubt, is a "**Service**" as defined under Additional Documents.

2.2. **API** means the application programming interface provided by xpate to the Customer.

2.3. **Applicable Law** means any and all laws, regulations, requirements, guidance or directions of any regulatory authority, agency or governmental entities, including but not limited to courts and financial services regulators, applicable to a party or to any Transaction or Chargeback for the time being in force in all relevant jurisdictions. These include but are not limited to legislation on Anti Money Laundering (AML), Counter Terrorist Financing (CTF), embargos, sanctions, anti-bribery, tax, consumer protection and Data Protection.

2.4. **Authorisation** means approval of a Transaction to a Payment Method according to the Payment Scheme Rules.

2.5. **Buyer** means any person authorised to use a Payment Method (i.e. Card) and has initiated a Transaction in respect of products or services from the Customer, including a Cardholder.

2.6. **Cardholder** means an individual, company, firm or other body to whom a valid Card has been issued by an Issuer.

2.7. **Card** means a valid and current credit, debit, prepaid, commercial or any other payment card issued by the Issuer to the Cardholder.

2.8. **Card Scheme** means Mastercard, Visa or any other comparable body that provides Cards and regulates their issuance and acceptance.

2.9. **Chargeback** means a Transaction which is successfully charged back following a demand by the Issuer or Cardholder in accordance with the relevant Card Scheme Rules resulting in the cancellation of a Transaction in respect of which the Customer has been paid or was due to be paid. If a Chargeback occurs for a Transaction in respect of which xpate has paid the relevant funds to the Customer, this results in the unconditional obligation for the Customer to immediately return the remitted funds to us.

2.10. **Data Controller** and **Data Processor** shall have the same meaning as they have in GDPR and Data Protection Act 2018.

2.11. **Data Protection Legislation** means GDPR together with any national implementing laws, including but not limited to the Data Protection Act 2018 and any applicable laws and regulations in any member state within the European Economic Area ("EEA") or in the UK relating to the Processing of Personal Data within the relevant jurisdiction in which Services are provided, as amended from time to time.

2.12. **Deductions** have the meaning given in section 6.2.

2.13. **GDPR** means the Regulation of the European Parliament and of the Council (EU) no. 2016/679 from 27 April 2016, as amended from time to time.

2.14. **Issuer** means an institution member of a Card Scheme that enters into a contractual relationship with a Cardholder for the issuance and use of one or more Cards and whose name appears on the Card as the Issuer.

2.15. **Customer Service Fees** or **CS Fees** have the meaning given in section 6.1.

2.16. **Customer's Products/ Services** means goods and/or services which the Customer is selling on its URLs and for which the Transactions are submitted for processing by xpate.

2.17. **Customer xpate Account** means an account held by the Customer with xpate, governed by the Terms and Conditions, to which funds may be transferred from xpate to the Customer in accordance with this Agreement.

2.18. **Software** means the collective set of software, data or technologies developed and/or operated by xpate and provided to the Customer to receive the Acquiring Services.

2.19. **Payout** means an amount paid by xpate to the Customer.

2.20. **PCI DSS** stands for "Payment Card Industry Data Security Standard" and means a worldwide information security standard for transmitting, processing and storing Cardholder's data and Sensitive Authentication Data, as updated from time to time and published by the Payment Card Industry Security Standards Council (PCI SSC) at https://www.pcisecuritystandards.org.

2.21. **Payment Method** means a method of enabling the Customer to accept payments by Buyers provided by xpate, including Cards. At our discretion, or as required by the Payment Scheme, Applicable Law or any relevant regulatory authority, we may discontinue one or more of the Payment Methods or make future support conditional on the Customer's acceptance of additional conditions or fees.

2.22. **Payment Scheme** means the party regulating and/or offering the relevant Payment Method. This specifically includes Card Schemes.

2.23. **Payment Scheme Rules** means the collective set of by-laws, rules, regulations, operating regulations, procedures and/or waivers issued by the Payment Scheme, as may be amended or supplemented over time, and with which you must comply when using the relevant Payment Method. The Payment Scheme Rules specifically include the "**Card Scheme Rules**", which include but are not limited to Visa Inc. (referred to as 'Visa Core Rules and Visa Product and Service Rules' available here; Visa Acceptance Risk Standards (VARS) available here), Mastercard Worldwide (referred to as 'Mastercard Rules' and available here). Those rules that are not publicly available, shall be communicated to the Customer, as per guidance and instruction of the relevant Payment Scheme.

2.24. **Personal Data** shall have the same meaning as in the GDPR. This includes but is not limited to personal and financial details of your Buyer, your employees, directors and shareholders (or you yourself if you are a sole trader.

2.25. **Personal Data Breach** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored, or otherwise processed.

2.26. **Pre-Authorised Recurring Transaction** means a repetitive periodic Transaction that has been pre-authorised by the Buyer in writing and in advance to be debited from the Buyer's Card or other Payment Method, if available, at agreed intervals or on agreed dates and for which the goods or services are to be delivered or performed in the future by Customer without having to obtain approval from the Buyer each time, such as subscriptions.

2.27. **Processing of Personal Data** (or "Process Personal Data") means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval,

consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

2.28. **Proprietary Information** has the meaning given to it in section 7.2.

2.29. **Shared Personal Data** means the Personal Data to be shared and processed between the parties for the purposes of the Agreement.

2.30. **Reserve** means a balance held by xpate in accordance with section 6.5.

2.31. **Sensitive Authentication Data** means security-related information (including but not limited to card validation codes/values, full track data (from the magnetic stripe or equivalent on a chip), PINs, and PIN blocks) used to authenticate Cardholders and/or authorise Transactions.

2.32. **Settlement** means any amount received by xpate from the Payment Schemes related to a Transaction in accordance with this Agreement or the Payment Scheme Rules.

2.33. **Transaction** means the request made by the Customer to xpate to process the payment request or consent of the Customer's Buyer to his/her payment service provider for the Customer to receive the payment for products or services purchased by the Buyers.

2.34. **Transaction laundering:** Transactions that are knowingly intended to hide the true source and nature of the transaction by layering them through what appear as low risk but in fact it is prohibited goods or services as per the Payment Schemes.

2.35. **URL** stands for "uniform resource locator" and means the address owned or operated by the Customer where the Customer allows for or states that will allow Transactions to be processed.

2.36. **Website** means any webpage of xpate, including but not limited to www.xpate.com.

2.37. **xpate Gateway** means a payment gateway used to provide the "payment gateway service" (where applicable), described in section 3.3 of this Agreement.

# 3. Our Acquiring Services

3.1. The services we provide include payment acquiring services, payment gateway services (unless we have agreed in writing for you to use your own payment gateway or from a third party provider) and other business services ("**Acquiring Services**"). The scope of our Acquiring Services is further clarified below in sections 3.2 (Payment acquiring services) and 3.3 (Payment gateway service). In accepting the Acquiring Services provided by us, the Customer commits to comply with the terms of this Agreement, Payment Scheme Rules and the Applicable Law relating to the supply of goods or services by the Customer.

### 3.2. Payment acquiring services

As part of our payment acquiring service, we will provide you with the following services:

a. Enabling Transactions to be routed to the relevant Payment Scheme;

b. Providing information and messaging about the status of the Transaction on the Payment Scheme network, including authorisation status (e.g. authorised, declined, etc.), clearing and settlement advisement, Chargeback dispute status, etc.;

c. Reconciling of: (i) the information routed to the relevant Payment Scheme with the information processed by that Payment Scheme, and communicated to us; (ii) the records and accounts of the Customer's entitlement to relevant funds with the records and accounts of the amounts safeguarded; and (iii) our internal records and accounts with those of our banking partners safeguarding the relevant funds;

d. Handling of the funds related to refunded or disputed Transactions, and supporting the presentment of disputed Transactions upon your request;

e. Paying out the funds to the Customer Bank Account or to the Customer xpate Account as per section 3.5 of the Agreement; and/or

f. Providing statements to the Customer relating to the Payments, CS Fees and Deductions.

### 3.3. Payment Gateway Service

If we have agreed to provide our payment gateway service, we will provide the Customer with services such as the following:

a. Enabling the secure entry and processing of payment transaction data, on our platform when applicable, and the secure submission of this data;

b. Information reporting, including information related to Transactions, Fees, Chargebacks, refunds, disputes, etc.;

c. Tokenisation Service means the process of taking sensitive information (e.g. card number) and substituting it with a non-sensitive string of characters, usually referred to within the payments industry as 'Card Token';

d. A dispute resolution interface, where applicable; and/or

e. A payment instruction interface.

### 3.4. xpate's acceptance of the Customer as a user of the Acquiring Services

a. xpate's acceptance of the Customer to use the Acquiring Services is strictly personal and limited to the Customer's use to receive Payouts for the Customer's Products / Services. xpate may require the Customer to provide information in addition to the information required in the Terms and Conditions to provide the Acquiring Services to the Customer.

b. The Customer shall only use the Acquiring Services for its own use to receive Payout for the Customer's Products / Services. If xpate suspects that the Customer is using the Acquiring Services otherwise or in breach of this Agreement, xpate has the right to suspend the Acquiring Services immediately. See further section 4 below, "Customer Obligations".

c. Support for each Payment Method is subject to acceptance by the relevant Payment Scheme used, which the Payment Scheme may withhold or withdraw at their discretion at any time. Certain Payment Schemes may require the Customer to enter into a direct agreement with the Payment Scheme before the Customer may use or continue the use of the relevant Payment Method.

### 3.5. Payouts from xpate to the Customer

a. Subject to section 3.5b and e below and in respect of validly submitted Transactions in accordance with section 4.4 below, xpate will initiate or procure the initiation of a Payout to the Customer Bank Account (defined in Section 6.3.b. below) or, if applicable, to the Customer's xpate Account. For the avoidance of doubt, xpate is not responsible for the time that it takes any third parties, including the Buyers' bank or the

Customer's bank, to make those funds available to the Customer or for any errors in the payment card details or bank account details provided to us.

b. xpate is only obliged to pay to the Customer funds related to the Transactions for which we have received Settlement(s) from the Payment Scheme, and this is net of the Customer Service Fees and any applicable Deductions. If Payouts were to go to the Customer Bank Account, the Customer is responsible for providing xpate with its correct bank details when prompted and agrees that xpate may set up a schedule for making Payouts at different intervals.

c. xpate may, at its own discretion, advance the amount related to a Transaction to make a Payout to the customer before xpate has received Settlement(s) ("**Pre-Fund**"). If we do this, the Customer agrees that the Pre-Fund constitutes a debt owed by the Customer to xpate until xpate receives the relevant Settlement, and the Customer hereby authorises xpate to deduct at any time the amount of the Pre-Fund provided by xpate from the relevant Settlement. If the Settlement related to a Transaction for which xpate has provided a Pre-Fund to the Customer is not received for any reason after a reasonable period of time ("**Non-Settled Pre-Fund**"), the amount of the Non-Settled Pre-Fund provided by xpate shall become automatically due and owed by the Customer to xpate. xpate may stop providing the Pre-Fund to the Customer at any time including if, among others, the Customer owes any amounts to xpate, the Customer's risk profile has changed, or we have reasons to believe the Customer is in breach of this Agreement or the Additional Documents. The Customer agrees that any Non-Settled Pre-Fund, overpaid and/or unduly received funds (e.g. related to the Transactions for which we have not received Settlements, or overpaid due to technical errors) shall be, upon our written notice to the Customer, and at our option: (i) deducted by us from the next Settlement(s), and/or (ii) refunded immediately by the Customer, and/or (iii) deducted from the Reserve, the Additional Collateral, or the Customer's xpate Account.

d. It is the Customer's responsibility to evaluate if the conditions of Payouts (which are set by us, taking into consideration the frequency of the Payment Schemes Settlements to us) are acceptable to the Customer before entering into this Agreement.

e. The Customer understands and agrees that, to the extent permissible under Applicable Law, xpate will not compensate the Customer for late or non-performance or for any insolvency or bankruptcy of the Payment Scheme causing a late Payout or non-Payout.

f. Notwithstanding anything to the contrary in the Agreement, xpate reserves the right to withhold and/or defer payments to the Customer related to Transactions if (i) they are submitted for authorisation, but reasonably suspected by xpate to be fraudulent purchases or related to illegal activities or likely to become subject to a Chargeback and/or Payment Scheme investigation; or (ii) xpate reasonably believes Customer may be in breach of Payment Scheme Rules, Applicable Law and/or the Agreement. xpate will withhold and/or defer payments to the Customer until satisfactory completion of our investigation of the situations mentioned above, that of the relevant Payment Scheme or that of a third party nominated by us hereby. The Customer shall give its full co-operation to any such investigation. No interest or other compensation will be payable in respect of amounts withheld or deferred in accordance with section 3.5 f of this Agreement.

### 3.6. Payment methods supported

a. Unless otherwise provided in writing by xpate (e.g. in an Order Form), the Customer may find the Payment Methods we will support on our Website.

b. At our discretion, or as required by the Payment Scheme, Applicable Law or any relevant regulatory authority, we may discontinue one or more of the Payment Methods or make future support conditional on the Customer's acceptance of additional conditions or fees.

# 4. Customer obligations

### 4.1. Obligations around information that must be provided by the Customer

a. The Customer must provide xpate with the Customer Information, as defined below, keep xpate informed of changes, and provide any additional financial information as may be required.

i. In order to comply with the Applicable Law, including but not limited to anti-terrorism, financial services, anti-tax evasion and anti-money laundering laws and regulations imposing customer due diligence requirements, as well as with the Payment Scheme's rules, the Customer must, before entering into the Agreement, and immediately upon request, provide us with the following information as well as any other information or documentation that would be required under Applicable Law: about the Customer, and in particular about the Customer's financial status, solvency and liquidity, its activities, its payment acquiring and processing arrangements, the Customer's ultimate beneficial owners and/or shareholders, the Customer products or services, registered office address, business or trading name, as well as any and all regulatory licences and registrations required to sell the Customer's Products/ Services (herein defined as the "**Customer Information**"). The Customer warrant unconditionally that all Customer Information provided to us is correct and up to date, and undertakes to provide us with at least five (5) Business Days prior written notice of any change of the Customer Information, including in particular (but not limited to) any change of directors, shareholders and/or ultimate beneficial owners, changes to the categories of items for sale or of services or changes to the categories of items for sale or of services, if it offers new ones or ceases selling items or services or closes a Customer outlet or URLs for accepting Transactions or if the Customer is subject to any insolvency proceedings (whether voluntarily or involuntarily).

ii. In addition to Customer Information specified in section 4.1a.(i) above, we may also, from time to time, request that the Customer provides additional financial and other information such as: (a) the current actual or expected delivery dates for processed Transactions; (b) estimates for the average time between Transaction authorisation and the related delivery date; (c) the Customer's ability to provide the Customer's Products/Services, (d) the Customer's balance sheet and income statements, and/or (e) the Customer's financial status, solvency and liquidity. The Customer must provide such requested information within five (5) Business Days of our written request.

iii. If the Customer fails to provide the data requested in accordance with sub-sections 4.1(a)(i) and 4.1(a)(ii) above, xpate reserves the right to suspend the provision of the Acquiring Services until such data is provided in the form and substance satisfactory to us.

iv. The Customer agrees that we may run further checks on the Customer's identity, creditworthiness and background by contacting and consulting relevant registries and governmental authorities or any other relevant sources.

v. The Customer hereby authorises us to share Customer Information or any other information we receive from the Customer with the relevant Payment Scheme in order to obtain permission for providing access to the Payment Methods or for any ongoing monitoring-related purpose.

### 4.2. Obligations and restrictions related to the Customer's Products/ Services

a. The Customer will only use the Acquiring Services for receiving payment for those Customer's Products/ Services which the Customer registered for when entering into the Agreement with xpate and which are reflected in the Customer Information.

b. The Customer will only use the Acquiring Services for payments made online on the URL(s) set forth in the information provided to xpate. The Customer will not use the Acquiring Services in relation to any other forms of payment, including, without limitation, mail order or telephone order payments.

c. The Customer may not resell the Services to third parties, whether in its entirety or partially.

d. Prior to submitting Transactions in relation to the products and services which materially differ in value and/ or type from those set out in the Customer Information and could as such, impact either of the following: risk and fraud profile of the Transaction, compliance with the Payment Schemes Rules, and/or the Applicable Law, the Customer must update its Customer Information in writing.

e. The Customer is and remains solely responsible for ensuring that the Customer Products/Services sold are compliant with the Payment Scheme Rules, and the Applicable Law in the Customer's country and the countries the Customer's Buyers are based in.

f. xpate acceptance of the Customer as our customer should not be interpreted as advice or an opinion as to the legality of the Customer Products/Services, and/or of the Customer's intended use of the Acquiring Services.

### 4.3. Obligations related to the Customer's website and systems

a. Customer must notify xpate as soon as reasonably practicable regarding any other URLs, other than those previously provided to xpate by the Customer, which are intended to be used for processing Transactions. Such URLs may only be used for processing payments once they have been reviewed and approved by xpate in writing.

b. Customer shall ensure that the identity of Customer is prominent to the Buyer at all stages of a Transaction, including prominently displaying Customer's name or trading name on any website through which Customer conducts Transactions.

c. The Customer agrees to include the following information clearly and conspicuously on its websites:

   i. the Payment Scheme's brand mark in full colour to indicate that Payment Scheme's acceptance, in a clear and non-discriminatory manner, and in compliance with the Payment Scheme Rules, where applicable, governing the display of such label;

   ii. a complete description of the Customer's Products/Services offered by the Customer and the applicable terms and conditions; the terms and conditions should be displayed to your Buyer during the order process;

   iii. a complete description of the refund, return and cancellation policies (if the Customer has a limited refund policy, it must be clearly communicated to the Customer's Buyer prior to the purchase);

   iv. a "click to accept" button, or other acknowledgment, evidencing that the Buyer has accepted the Customer's terms and conditions and/or return/refund policy;

   v. The Customer's customer service contact information including email address or telephone number;

vi. The Customer's permanent business address including the country of the Customer's place of business;

vii. the Transaction currency in both words and symbols;

viii. all product/ services export restrictions (if applicable and known);

ix. The Customer's delivery policy, and special delivery policy if any (including policy for delivering of multiple shipments, if applicable);

x. confirmation of the Customer's location, which must be provided to the Customer's Buyer during the payment process;

xi. The Customer's Consumer data privacy policy; and

xii. The Customer's security capabilities and policy covering the transmission of payment card details when the Payment Method used is a Card or any other sensitive Buyer's details in relation to other Payment Methods. Additional information may be required, depending on the Payment Method used by the Customer.

d. Subject to all terms and conditions of this Agreement, we authorise the Customer and Customer agrees to use the logo, trade name, marks or any Intellectual Property of xpate and the Payment Schemes (referred to as "**Marks**") in accordance with the conditions set out in this Agreement for the sole purpose of using the Services. The Customer is authorised to use the Marks only on the Customer's promotional materials and website to indicate that Buyers can use the Payment Methods to purchase the Customer's Product/ Services. The Customer's use of the Marks, whether registered or not, does not entail any transfer of ownership rights or copyrights.

e. Customer must establish and maintain adequate security systems, controls and procedures that must be able, at a minimum, to provide:

i. Security of any system access codes and prevention of unauthorised use.

ii. Monitoring and prevention of unauthorised access to and use of xpate Gateway.

iii. Compliance with PCI DSS, as amended from time to time, and any other applicable standards, rules or recommendations of the PCI SSC.

f. The Customer will provide evidence of compliance with PCI DSS, all third parties that store, transmit or process Transactions on the Customer's behalf, prior to the commencement of this Agreement and thereafter at least once annually (or in other period defined by xpate), and at any time promptly following our request. In the event that xpate reasonably deems Customer to be non-compliant with PCI DSS, xpate will issue Customer with a non-compliance notice, and Customer shall promptly remedy areas of noncompliance.

### 4.4. Obligations related to the submission of Transactions and refunds for processing, integration and related consents

a. Customer must not:

i. Accept a Transaction or submit Transaction data for the processing which was not undertaken directly between the Customer and the Buyer;

ii. Submit Transaction data for processing where the Customer has or ought to have reasonable doubts as to whether the Buyer presenting the Card is the Cardholder;

iii. Submit Transactions on behalf of a third party without xpate 's prior written consent;

iv. process a refund in order to unjustly enrich the Cardholder by, for instance, accepting cash either from the Cardholder or a third party and submit a refund for the same amount to the benefit of the Cardholder;

v. submit any Transaction using any Payment Method issued in the name of: i) the Customer; ii) a partner in or director or other officers of the Customer's business; or iii) of the spouse or any member of the immediate family or household of any such person mentioned in i) or ii);

vi. submit Transaction data which Customer knows or ought to have known or reasonably suspect is illegal or which does not meet the requirements of the Payment Scheme Rules;

vii. add any tax to Transactions unless Applicable Law expressly requires that Customer imposes a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;

viii. submit a transaction that has been previously disputed and returned to the Customer;

ix. perform transaction laundering;

x. unauthorized storage, processing, or transmission of payment data through non-approved software and processes.

b. Customer may only submit Transactions to xpate which directly originate from Customer's own staff and systems, or via a third party that has been approved by xpate in writing to Customer. The Customer may not appoint any other form of intermediary to process Transactions or have access to Transaction data on the Customer's behalf.

c. The Customer shall not charge a higher price or impose additional charges for the Customer's Products/ Services because the Cardholder pays by Card unless Applicable Law specifically permits such charges.

d. If the Customer fails to comply with the above obligations for each Transaction and/or refund, xpate reserves the right to suspend the Transaction and/or refund processing immediately. xpate may revise the required data needed to process Transactions and refunds from time to time by giving notice to the Customer by email.

e. Where we execute a Transaction or a refund in accordance with the data provided by the Customer, the Transaction or refund will be deemed to have been correctly executed by us and/or the Payment Scheme involved.

f. Where the data provided by the Customer to us is incorrect, we are not liable for the non-execution or defective execution of the Transaction and/or refund. We will, however, endeavour to recover the funds involved in such a Transaction and/or refund and reserve the right to claim from the Customer the related costs and losses to us.

g. The Customer agrees to share with us the email address of the Customer's Buyers, in compliance with the applicable Data Protection Legislation, and procure and provide consent where required for us to contact the Customer's Buyers directly for the purposes of:

i. sending the receipt to confirm the status of Transaction and/or refund, and/or to confirm the billing descriptor to appear on the Customer's Buyer's Card or bank statement;

ii. requesting any additional information to confirm the Transaction and/or refund; and/or

iii. performing risk and/or fraud assessments and/or investigations, and of compliance with the anti-money laundering and counter-terrorism financing laws and regulations.

h. For all Transactions processed through the xpate Gateway, 3-D Secure authentication will be offered as a preferred option, provided it is supported by the Payment Method used and implemented by the current Software. We shall not be liable for any delays in the authentication response time or other malfunctioning of 3-D Secure authentication, where such malfunctioning is caused by third parties such as, but not limited to, the issuer banks and their 3-D Secure providers.

### 4.5. Obligations for accepting Pre-Authorised Recurring Transactions

a. For each Pre-Authorised Recurring Transaction, the Customer is required to obtain a prior express written consent from the Customer's Buyer (including specifically the Cardholder) to the Pre-Authorised Recurring Transaction in respect of Customer's Products / Services. When obtaining consent, the Customer must indicate:

i. The amount and frequency of the Pre-Authorised Recurring Transaction;

ii. Whether the amount is fixed or variable;

iii. the approximate date of the Pre-Authorised Recurring Transaction; and

iv. an agreed method of communication for all future correspondence with the Buyer.

b. The Customer must also, using the agreed method of communication, provide the Buyer with a confirmation that a Pre-Authorised Recurring Transaction agreement has been entered. This confirmation must be provided within two (2) Business Days of entering that Pre-Authorised Recurring Transaction agreement, which must be separate from the sales agreement.

c. The Pre-Authorised Recurring Transaction consent shall be maintained by the Customer for the duration of the recurring transactions, and for a period of eighteen (18) months after the final payment that is made pursuant to it. The Customer shall provide the Pre-Authorised Recurring Transaction consent to xpate on first demand.

d. Customer agrees that it will not complete any Pre-Authorised Recurring Transaction or debit or attempt to debit the Buyer's Card, bank account or any other Payment Method after receiving: (i) cancellation from the Buyer of the Pre-Authorised Recurring Transaction consent; (ii) written notice from xpate that Customer may no longer process Pre-Authorised Recurring Transactions; or (iii) written notice from xpate that the Buyer's Card or Payment Method is not to be honoured.

e. Customer must notify the Buyer of the amount of any Pre-authorised Recurring Transaction or the date on which any Pre-Authorised Recurring Transaction will take place if such amount or date is different from that specified in the Pre-authorised Recurring Transaction original agreement no less than fourteen (14) Business Days prior to submitting the Transaction data.

f. The Customer shall not submit for processing an existing Pre-Authorised Recurring Transaction without our prior written consent, shall provide us with the frequency of the Pre-Authorised Recurring Transaction and the period over which the Pre-Authorised Recurring Transaction will take place, and shall comply with any and all additional Payment Scheme's requirements and/or recommendations relating specifically to Pre-Authorised Recurring Transactions.

### 4.6. Obligation to comply with Payment Scheme Rules, Applicable Law and this Agreement

a. Customer agrees to operate and to comply with all relevant and applicable Payment Scheme Rules, Applicable Law and this Agreement. Is strongly advised to regularly review the current Payment Scheme Rules (and in particular Card Scheme Rules), and the Applicable Law as applicable to the Customer Products /Services and business practices to ensure compliance with the same. For violations of certain key requirements, certain Payment Schemes such as Card Schemes can levy significant fines.

b. Customer shall at all times conduct its business in line with Applicable Law in all regions targeted by Customer, including but not limited to seeking necessary approvals, permits, consents, licences, authorisations, permissions, certificates and statutory agreements required from any competent authority and all consents, approvals and agreements from and with third parties necessary for the conduct of the Customer's business, including in respect of compliance with PCI DSS. If Customer's authorisation for conducting the business is withdrawn by an appropriate competent authority Customer shall notify xpate as soon as reasonably practicable.

c. Customer must not engage in activity that xpate or the Payment Schemes reasonably believe to be illegal, disreputable or may damage the reputation or brand of xpate, Payment Schemes or any other financial institution.

d. Where we become aware of and/or receive any notice of a potential exposure to a fine related to the Customer's behaviour, the Customer will, on first request, provide all reasonable co-operation to help investigate the relevant circumstances and remedy the relevant violation, notwithstanding all other rights and remedies we might have in such situation as per this Agreement. Where possible we will share with the Customer the relevant feedback regarding the potential fine by the Payment Scheme.

e. If fines are applied for the Customer violations, these may be invoiced by the Payment Scheme to us as their contracting party. The Customer shall fully indemnify and hold us harmless from any fines applied by the Payment Scheme as a result of the Customer's breach of the terms of the Agreement and/or the Payment Scheme Rules.

### 4.7. Obligation to implement Risk Management Controls and Records Retention

a. Customer agrees to have implemented sufficient risk management controls (including but not limited to the restrictions to certain geographies required by xpate to manage fraud or credit risk exposure). The Customer also agreed to maintain the proper facilities, equipment, inventory and records. The Customer regularly is informed about policies and procedures as per we define risk tolerance.

b. In addition to complying with all records retention provisions under the Applicable Law, and subject to the requirements of PCI DSS, the Customer must maintain a copy of all electronic and other records related to the Transaction ordering and delivery of the Customer Products/Services in the strictest confidence and in a secure environment for a period of eighteen (18) months after termination of this Agreement.

c. The Customer must, among others, ensure that any such details stored electronically are fully protected, correct, complete, not lost or damaged and can be reconstituted, in a complete and easily readable form. The copy of the records shall include, but not be limited to shipping details (if relevant), invoices for the delivered Customer Products/Services and all contacts with the Buyer. In case of any investigation by us or the Payment Scheme with respect to Chargebacks, suspected fraud or other requests for information, you must fully co-operate in the auditing of such records.

### 4.8. Obligations related to the security of Buyer's payment instrument

a. The Customer guarantees not to copy, capture, intercept, sell, exchange or in any manner disclose Buyer's payment instrument related information such as Card number and Sensitive Authentication Data that are entered on the xpate Gateway. Strict rules on the security of payment instruments are imposed by the Payment Schemes (and specifically Card Schemes) and PCI SSC to protect Buyers against misuse of their payment instruments, and are strictly enforced by the Card Schemes. A violation of these rules can lead to the application of fines by the Card Schemes. If we have any reasons to believe that the Customer is copying, capturing or intercepting the above-mentioned information, in violation of the Payment Scheme Rules and PCI SSC's rules, recommendations and standards (including specifically PCI DSS), we reserve the right to inspect the Customer's locations and to suspend processing of Transactions and/or refunds and to suspend Payouts. Customer will take all reasonable precautions to ensure that any of the information mentioned in this paragraph is not disclosed to any person other than xpate or misused by any person, unless otherwise required by any Applicable Law or by the Card Scheme Rules. The Customer shall fully indemnify and hold each one of us and our affiliates harmless from any losses, claims (including applied fines by the Payment Scheme or claims ), costs or damages incurred as a result of the Customer's breach of this obligation.

b. The Customer shall immediately notify us if any Cardholder data, Sensitive Authentication Data or similar Buyer's Payment Instrument related information is breached or compromised. The Customer must strictly comply, with respect to the security of the Buyer's payment instrument, with the terms of this Agreement, and with all the requirements of the Applicable Law, of the Payment Schemes (e.g. Mastercard's Site Data Protection Program), as well as with the guidance, requirements and standards of PCI SCC such as PCI DSS.

### 4.9. Obligation to notify of errors, misappropriation and/or unauthorised use of xpate Gateway

a. The Customer must notify us in writing immediately if the Customer believes there has been or will be an error, or misappropriation or unauthorised use of xpate Gateway. The Customer must give us all the information in the Customer's possession as to the circumstances of any errors and/or misappropriation or unauthorised use of xpate Gateway and take all reasonable steps to assist us in any investigation we may conduct.

b. We might provide third parties with the information we consider relevant in such circumstances. In order to prevent misappropriation or unauthorised use of xpate Gateway, the Customer must keep safe any and all password(s) that are necessary to access or use xpate Gateway and/or any confidential instruction provided by us for the integration of the Service.

c. The Customer shall also inform us promptly and no later than within thirteen (13) months after the Customer becomes aware of any unauthorised or incorrectly executed Transaction and/or refund. Where legally required, xpate shall refund the Customer immediately for such unauthorised or incorrectly executed refunds.

d. The Customer shall inform us promptly, and no later than sixty (60) days after the Customer becomes aware of any non-execution or defective execution of the refund, and we will make immediate efforts to trace the refund and notify the Customer of the outcome. Where we are liable for non-execution or defective execution, and where legally required, we will immediately refund the amount of the non-executed or defective refund.

### 4.10. Obligations relating to Audit

a. If we believe that a security breach or compromise of any Buyer's data has occurred, we may require the Customer to have a third party auditor that is approved by us to conduct a security audit of the Customer's systems and facilities and issue a report to be provided to us and/or the Payment Schemes, and the Customer shall be required to remedy any defects identified within a reasonable period or a timeframe given by the Payment Schemes. Save for when an audit (i) is required by regulatory or Card Scheme requirements, (ii) is triggered by a material breach by the Customer, or (iii) determines non-compliance by the Customer with this Agreement, xpate shall reimburse the Customer for the Customer's reasonable costs of providing information, access and assistance with respect to such audit.

b. In addition to the above, the Customer agrees to allow us, subject to a thirty (30) days written notice from us, to inspect the Customer's locations to confirm that the Customer is in compliance with the terms of this Agreement, and is maintaining the proper facilities, equipment, inventory, records, licences and permits where necessary to conduct the Customer's business. Our representatives may, during normal working hours, inspect, audit and make copies of the Customer's books, accounts, records, and files pertaining to any Transaction processed under this Agreement.

### 4.11. Obligations relating to complaints from Buyers

a. Customer shall respond promptly to inquiries from Buyers and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to xpate, xpate may terminate the Agreement in accordance with section 8.3. xpate reserves the right to charge Customer reasonable fees and reimbursement on account of excessive Buyer inquiries, refunds or Chargebacks.

b. Any complaints made by Buyers to Customer about the merchandise or services provided by Customer shall be settled by Customer and the Buyer. xpate is not liable for any claims arising from such complaints or the business relationship between Customer and the Buyer and xpate shall not undertake any intercession under the circumstances that such claims arise. Customer shall treat any complaints from Buyers in the same way as complaints from any other customers.

### 4.12. Rights and obligations relating to returns, refunds and cancellations to or by the Buyer

a. As per section 4.3.c of this Agreement, the Customer must clearly and accurately disclose to the Buyer the Customer's refund, return and cancellation policy. The Customer's refund, return and cancellation policy must comply with, and must be presented in accordance with, Applicable Law and Payment Scheme Rules.

b. If, in the usual course of Customer's business, Customer provides refunds to Customer's customers, other than Buyers, Customer must also provide refunds to Buyers on the same terms Customer provides refunds to Customer's other customers.

c. If the amount of credit or refund Transactions exceeds the amount of sales Transactions, Customer shall pay xpate the excess.

d. If no refund will be given, Buyers must be advised in writing at the time of the Transaction that the sale is a "final sale" and "no returns" are permitted. Buyers must also be advised in writing of any policy of Customer that provides for no-cash refunds.

e. Customer agrees that:

   i. Customer will not refund by cash or cheque or any other method for goods and/or services paid for by a Payment Method, other than when required by the Applicable Law;

ii. Customer will not refund by a Payment Method for goods and/or services paid for by cash or cheque or any other method;

iii. Customer will only refund Transactions in full or in part to the Payment Method which was originally used to make such Transactions; and

iv. Customer will not accept money from a Cardholder or third party in connection with processing a refund to the Cardholder's account.

f. We reserve the right to refuse to process or execute a refund if it is prohibited by Applicable Law or does not meet the conditions of this Agreement (subject to any mandatory rules under Applicable Law), or if there no sufficient balance in the Customer's xpate Account until the Customer's adds sufficient funds. We also reserve the right to suspend the Customer's 'refund functionality' provided by us if the Customer is placed under fraud investigation, is deemed by us to be generating an excessive amount of Chargebacks, and/or for any other risk-related reasons in our sole discretion.

g. We will notify you of such refusal or suspension, subject to any restrictions by the Applicable Law, indicating the reasons for such refusal or suspension and the procedure for correcting factual mistakes that led to it where possible. Any payment order that we refuse will be deemed not to have been received for the purposes of liability for non-execution or defective execution.

## 5. Chargebacks and assessments

5.1. The Customer agrees to be held responsible and liable for: (i) any and all Chargebacks; and (ii) any assessment, fines, fees, charges or expenses of any nature which a Payment Scheme and in particular Card Schemes, Issuers, levy on us at any time directly or indirectly in relation to any aspect of our relationship with the Customer (all together defined herein as "**Assessment**"). Each Chargeback and Assessment represents a debt immediately due and payable to us.

5.2. Any Chargebacks for which the Customer is required to reimburse us shall correspond to the whole or part of the processing value of the original Transaction.

5.3. Where a Chargeback or an Assessment occurs, we shall immediately be entitled to debit the Customer's xpate Account, the Reserve, Additional Collateral, and/or make a deduction from any Settlement, and/or invoice the Customer to recover: (i) the full amount of the relevant Chargeback or Assessment; and (ii) any other costs, expenses, including without limitation legal fees and other legal expenses, liabilities or fines which xpate may incur as a result of or in connection with such Chargeback or Assessment ("**Chargeback and Assessment Costs**").

5.4. Where the full amount of any Chargeback, Assessment and/or any 'Chargeback and Assessment Costs' is not debited by xpate from the Customer's xpate Account, the Reserve, Additional Collateral and/or deducted from any Settlement and/or invoiced, then we shall be entitled to otherwise recover from the Customer by any means the full amount of such Chargeback, Assessment or 'Chargeback and Assessment Cost'.

5.5. As Chargebacks and Assessments may arise a considerable period after the date of the relevant Transaction, Customer acknowledges and agrees that, notwithstanding any termination of the Agreement for any reason, xpate remains entitled to recover Chargebacks, Assessments and 'Chargeback and Assessment Cost' from the Customer in respect of all Chargebacks, Assessments and

'Chargeback and Assessment Costs' that occur in relation to Transactions effected during the term of the Agreement.

5.6. xpate is not obliged to:

a. assist Customer in procuring payment of any sums that may be properly due to Customer from the Buyer if the Transaction has been the subject of a Chargeback for any reason.

b. investigate the validity of any Chargeback or Assessment by any Issuer, Payment Scheme, whose decision or determination shall be final and binding in respect of any Chargeback or Assessment.

5.7. In the event that Customer wishes to dispute a Chargeback, it remains Customer's responsibility to prove to the satisfaction of xpate, the Card Scheme, Card Issuer or other financial institution that the debit of the Cardholder's Card or account was authorised by the Card and/or account holder. Customer must provide xpate, the Card Scheme, Card Issuer or other financial institution any such evidence required to support the claim within seven (7) days of being made aware of the Chargeback.

5.8. The Customer undertakes to use all reasonable efforts to maintain Chargeback and fraud rates at a level acceptable to xpate and the Card Schemes. Specifically,

a. For Visa issued Cards we process, the Customer:

i. Must not exceed 50 Chargebacks in the current calendar month and maintain a chargeback-to-sales ratio of no more than 0.5% within the same month; and

ii. Must not exceed a total fraud volume of USD 30,000 and a fraud-to-sales ratio of 0.3% within the current calendar month.

b. For Mastercard issued Cards we process, the Customer:

i. Must not exceed 70 Chargebacks in the current calendar month, or have a chargeback-to-sales ratio over 0.7% calculated based on the Transactions processed in the previous calendar month; and,

ii. Must not exceed a total confirmed fraud volume of USD 30,000 in the current calendar month and must maintain a fraud-to-sales ratio of no more than 0.3%, based on the transactions processed in the previous calendar month.

5.9. In case of breach of the Chargeback and fraud levels stated above, xpate may terminate the Agreement in accordance with section 8.3.

# 6. Fees and Payouts

### 6.1. Customer Service Fees

a. Customer shall pay to xpate all applicable fees specified in this Agreement, the Order Form or as notified to the Customer in accordance with the notification procedure set out in section 13.2 of this Agreement in which case your use of the Acquiring Services after such notification shall constitute acceptance of our fees.

b. If after carrying out investigations on the Customer, xpate reasonably believes that the Customer is engaging or has engaged in fraudulent or illegal activity, xpate may, at its sole discretion, charge the Customer an investigation fee which shall amount between 10% to 100% of the total balance held in the Customer's xpate Account. The investigation fee percentage will depend on, among other things, the volume of transactions

processed by the Customer or the ratio of error Transactions, Chargebacks, fraudulent Transactions, refunds and/or declined Authorisation.

c. All the fees referred to in this section 6.1 are together and collectively referred to in this Agreement as the "**Customer Service Fees**" or "**CS Fees**".

### 6.2. Deductions

The Customer shall be liable for all deductions applicable under this Agreement ("**Deductions**"). Deductions include: (i) Chargebacks, (ii) Assessments, (iii) Refunds, (iv) Non-Settled Pre-Funds, (v) amounts for the Reserve in accordance with section 6.5., and, (vi) amounts for the Additional Collateral in accordance with section 6.6.

### 6.3. Collection of CS Fees and related Statements

a. We have the right to collect the CS Fees or Deductions, at our option, by:

   i. debiting such amounts from any Settlement or the received funds held by us, without notice or demand, before Payouts;

   ii. debiting such amount from the Reserve and/or Additional Collateral without notice or demand;

   iii. deducting such amounts from the Customer xpate Account, if available;

   iv. debiting such amounts from the Customer's designated bank account by direct debit per paragraph 6.3 b. below;

   v. deducting from any fees that are due by xpate to the Customer;

   vi. invoicing the amount of the CS Fees or Deductions to the Customer; or

   vii. taking any lawful collection measures, in court or otherwise to collect such sums.

b. The Customer is required to maintain an account with another financial institution (the "**Customer Bank Account**") and a direct debit instruction (or equivalent) to authorise xpate to directly debit from the Customer's designated bank account any sums due to us and payable by the Customer under or in connection to this Agreement. The Customer will ensure that the Customer's designated bank account and the Customer xpate Account shall at all times have a credit balance sufficient to meet any sums due and payable to us under or in connection with this Agreement. Customer shall notify xpate in writing and in advance, within a reasonable time period, of any changes proposed by Customer to the Customer Bank Account and shall not implement changes without xpate prior written consent.

c. Where the CS Fees or Deductions are collected by invoicing the amount to the Customer, the Customer must pay sums due under any invoice under this Agreement within fourteen (14) days of the date of the receipt of such invoice. CS Fees and Deductions may be invoiced by xpate to the customer at the beginning of each calendar month ("Billing Date") unless changed by xpate by providing written notice. If a fee becomes due in the middle of a calendar month, xpate will bill said fee or its applicable proportion on the next Billing Date.

d. Interest shall accrue on any unpaid invoice owed by the Customer to us at the rate of five (5) % per annum above the Bank of England's Base Rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Customer shall pay the interest together with the overdue amount.

e. We shall provide the Customer with access to electronic statements and/or invoices as applicable. Printed statements can be requested by contacting us (additional reasonable costs may be charged by us).

### 6.4. Changes to CS Fees

a. We shall have the right to change the CS Fees at any time upon two (2) months' notice to the Customer. The Customer may, however, during the two (2) months' notice period, terminate the Agreement with us by providing a written notice.

b. Customer acknowledges that its fees and charges, as set out in the Agreement and Order Form, may be based on its representations, including but limited to its volume of Transactions, method of processing, type of business, average Transaction value, refund rates, location and xpate's risk assessment.

c. If the actual volumes differ materially from the figures provided by the Customer, we have the right to proportionally adjust our fees, based on the actual then-current volume characteristics upon two (2) months' notice to you. The Customer may, however, during the two (2) months' notice period, terminate the Agreement with us by providing a written notice.

### 6.5. Reserve

a. The Customer agrees that xpate is entitled (at our sole discretion) to withhold an amount of funds ("**Reserve**") in relation to the Customer for the purpose of protecting xpate against the risk of providing the Services to the Customer. The Reserve provides a source of funds to cover xpate for any and all, actual and reasonably anticipated amounts and liabilities owed by Customer to xpate, including to cover for unpaid CS Fees, Deductions such as Chargebacks, Assessments, and refunds, or any other payment obligations under this Agreement.

b. The Reserve may, at the reasonable discretion of xpate, be funded by: (i) requiring Customer to provide to xpate an amount determined by xpate within seven (7) Business Days of written notice from xpate to Customer; and/or (ii) withholding a percentage of the daily gross sales volume processed by us; and/or (iii) debiting the Customer xpate Account; and/or (iv) exercising any other right we have to recover funds from the Customer under this Agreement.

c. xpate will determine the Reserve, and the period of time it is held for, based on our assessment of the risk the Customer pose. The percentage amount may be anywhere between 0% and 100%, and the period of time is also at our discretion.

d. xpate, at our sole discretion, may change the terms of the Reserve immediately upon a written notification to the Customer. We may do so, for example, if:

   i. The Customer or its customers' activities increase the risk of loss to us or to the Buyers;

   ii. We have a reasonable belief that the Customer has violated these Agreement or the Additional Documents;

   iii. We think the number of disputes or refunds the Customer has is high;

   iv. we think that the period of time between a Transaction and delivery of the Customer's services to its Buyers is significant;

   v. we have any other reasonable basis for doing so.

e. The Customer agrees that the Customer is not entitled to any interest on the Reserve, that the Customer has no right to direct that Reserve, and that the Customer cannot and will not assign or grant any security

interest in those funds, or allow any encumbrance upon the funds. All our rights with respect to the Reserve shall survive the termination of this Agreement.

### 6.6. Additional Collateral

a. In addition to the Reserve, we may, at our sole discretion, request the Customer to provide funds to xpate as non-interest bearing 'Additional Collateral' as a security to guarantee payment of any and all debt or liability from the Customer to xpate and/or the Payment Schemes such as, without limitation, unpaid CS Fees, Deductions such as Chargebacks, Assessments, and Refunds, or other potential debt or liability, including those arising out of or in connection with any Payout.

b. The Customer agrees to fund the Additional Collateral for the amount specified on the Order Form (if applicable) or at xpate's request, and said funds shall be maintained in a separate account designated by xpate. The Additional Collateral shall constitute a full title transfer collateral arrangement in accordance with the laws of England and Wales. The Customer waives any right or claim to the Additional Collateral until xpate 's obligations are fully satisfied.

c. xpate may, at its sole discretion, at any time and without prior notice, draw and receive amounts from the Additional Collateral as required to cover any amounts owed to xpate or the Payment Schemes, which cannot be deducted from the Customer's Payouts because of lack of funds or otherwise. xpate may subsequently replenish the Additional Collateral from Payouts and funds due to the Customer under this Agreement or require that the Customer make a payment to xpate for the amount required to replenish the Additional Collateral.

d. Unless otherwise advised by xpate, the Additional Collateral will be held and maintained for a minimum of six (6) months from the termination of this Agreement. If, after such six (6) six-month period, there is still a risk of more Deductions such as Chargebacks, Assessments, and Refunds, or other potential debt or liability, then xpate will have the right to withhold the funds until such risk is eliminated. Upon expiration of this six (6) month period (or longer, as the case may be), any remaining amount of Additional Collateral will be transferred to the Customer. xpate will inform the Customer of any charges debited to the Additional Collateral during this period. All of xpate rights with respect to the Additional Collateral shall survive the termination of the Agreement.

e. xpate may change the Additional Collateral upon notice and at our sole discretion depending on refund ratios, fraud ratios, Chargeback ratios and other risk considerations.

f. The Customer expressly acknowledges and agrees:

   i. that the Additional Collateral is separate to and does not form part of the funds subject to our safeguarding obligations;

   ii. to any charge or debit made by xpate against the Additional Collateral;

   iii. that the Customer is not entitled to any interest on the Additional Collateral;

   iv. that the Customer has no right to direct the Additional Collateral; and

   v. that the Customer cannot and will not assign or grant any security interest in the Additional Collateral or allow any encumbrance upon those funds.

### 6.7. Set-off

a. The Customer hereby authorises xpate to, without notice to Customer, set off by whatever means the whole or any part of the Customer's liabilities (present, future, actual or contingent or potential, liquidated or unliquidated) to xpate under this Agreement or to xpate ´s affiliates under some other agreement between Customer and any xpate entity, against any or all amounts due and payable by xpate to Customer, including funds in the Reserve or to any property of Customer in the possession or control of xpate. Any exercise of our right under this provision is without prejudice and in addition to any other right or equitable remedy available to xpate in accordance with this Agreement or by law. In the event such set-off does not fully reimburse xpate for the amount owed, the Customer shall immediately pay xpate such amount. The Customer shall hold harmless any financial institution that follows our request pursuant to this section.

b. Customer may not set-off any of xpate's liabilities under this or any other agreement against any amounts due to xpate from Customer.

### 6.8. Taxes

a. Unless stated otherwise, all of xpate'S fees, charges and other payments to be made are exclusive of VAT, and any other applicable taxes or levies under any Applicable Law ("**Taxes**"), for which the Customer will be separately liable. If xpate is required to pay any Taxes, interests, fines or penalties owed by Customer, the said amount shall become immediately due and payable by Customer to xpate.

b. It is the Customer's responsibility to determine what, if any, Taxes apply to the sale of the Customer's products and services and/or the payments the Customer receives in connection with the Customer's use of the Service. It is solely the Customer responsibility to assess, collect, report, or remit the correct tax to the relevant tax authority. xpate is not obligated to, nor will we, determine whether Taxes apply, and will not calculate, collect or remit any Taxes to any tax authority arising from any Transaction, and this remains strictly the Customer's liability.

## 7. Software, API and Intellectual Property

7.1. xpate provides the Software (and, where applicable, any other relevant software) that enables the Customer to use the Services. Subject to section 7.4 below, xpate reserves the right to change or amend these and the interface at any time, to provide the Customer with a new version, and/or to change the functionalities and characteristics, and to require the Customer to install or update any and all software in order to continue using the Services.

7.2. The property rights in the API, the Software, the Marks and any and all other materials, and all other Intellectual Property rights related to the Acquiring Services are owned by us and our licensors ("**Proprietary Information**"). The Agreement does not transfer any Intellectual Property rights with respect thereto and only provides the Customer with a limited, non-exclusive and non-transferable licence (without the right to sub-licence) to use the Software, the Proprietary Information and all other materials made available by xpate solely for the purpose of using the Acquiring Services in accordance with this Agreement and the applicable usage instructions communicated to the Customer. The Customer shall not prepare any derivative work based on xpate 's intellectual property, nor shall the Customer translate, reverse engineer, decompile or disassemble xpate 's intellectual property. Any use of xpate's Intellectual Property or Proprietary Information not specifically permitted under this Agreement is strictly prohibited. The licences and authorizations granted by xpate or its licensors in this Agreement

terminate upon termination of this Agreement or if the Customer does not comply with this Agreement or any other service terms.

7.3. Customer agrees: a. not to use xpate's Intellectual Property Rights, the Proprietary Information or Acquiring Services in any way which would or is likely to bring xpate's reputation, the reputation of any of xpate's affiliates, or Payment Schemes into disrepute; b. not to cause or permit anything which may damage or endanger xpate's (or any of xpate's licensors') Intellectual Property Rights, the Proprietary Information or xpate's title to them or assist or allow others to do so; c. to notify xpate promptly of any actual, threatened or suspected infringement of xpate's Intellectual Property Rights and/or the Proprietary Information; d. to notify xpate without delay of any claim by any third party that the Acquiring Services infringe any Intellectual Property Rights of any third party; e. to take such reasonable action as xpate may direct in relation to such infringement; f. to indemnify xpate against all losses (including in respect of third party claims) which xpate incurs arising from, relating to or in connection with any liability incurred by xpate to third parties for any Customer use of xpate Intellectual Property Rights or the Proprietary Information otherwise than in accordance with the Agreement.

7.4. Changes will be implemented by xpate which may materially reduce the functionality of the Acquiring Services including where necessary due to: (i) the need to follow generally accepted changes in the payment industry standards, (ii) changes in the Applicable Law, Payment Scheme Rules, (iii) the need for increased security due to security risks identified by us, or (iv) other reasonable grounds which warrant the reduction of functionality. If the Customer is significantly impacted by a material reduction of functionality due to a change in our Software and, where applicable, any other relevant software, the Customer may terminate the Agreement by giving written notice to us within thirty (30) days after we announced the change. We endeavour to provide advance notice of changes to the API and applicable software. Shorter notice periods may have to be made to comply with the Applicable Law, changes in requirements from the Payment Scheme, the need for increased security due to security risks identified by us, or in case of any updates to software.

## 8. Term and termination

8.1. This Agreement is effective upon the date the Customer accepts these terms and conditions. Except where explicitly agreed otherwise in the Agreement, the Agreement is entered into for an indefinite period until it is terminated: (i) by xpate by giving two (2) months' prior written notice to the Customer; or (ii) by the Customer by giving one (1) month's prior written notice to xpate.

8.2. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and Customer shall remain liable for all obligations to Buyers and xpate incurred while the Agreement was in effect.

8.3. xpate has the right to terminate the Agreement and/or to suspend the provision of any Services to the Customer immediately upon written notice in part, or in whole, if:

a. The ratio of error Transactions, Chargebacks, fraudulent Transactions, refunds and/or declined Authorisation requests is excessive in the opinion of xpate;

b. Customer commits a material breach of the Agreement and (if, upon xpate´s sole discretion, such a breach is remediable) it fails to remedy that breach within 10 Business Days of being notified in writing by xpate of the breach;

c. Any representation or warranty made by Customer in accordance with this Agreement is not true and correct in any material respect at any time;

d. Customer fails to provide required information and documents to xpate within a reasonable time following a reasonable request from Payment Schemes and/or xpate;

e. xpate has reasons to believe that the Customer is conducting any illegal, brand damaging, deceptive activities or is violating Payment Schemes rules and Applicable Law;

f. Customer files a petition under any bankruptcy or insolvency law, or any corporate action, legal proceedings or other procedure or formal step is taken (in any jurisdiction) in relation to the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of Customer, or if Customer is a partnership and the partnership ends, or if Customer is an individual and Customer dies or ceases to be legally capable (in which case notice will be sent to Customer's personal representatives).

g. The Customer materially varies its business from the business described in the Customer Information and/or subsequent agreed changes by xpate or there is any material adverse change in the nature, level, scope or control of Customer's business activities or Customer's financial condition;

h. Any governmental, regulatory, or judicial authority, banking or related partner or a Payment Scheme, requests or directs xpate to terminate the Agreement with the Customer;

i. Customer has not sent xpate a Transaction for processing in two (2) consecutive months;

j. Customer fails to show (to xpate's reasonable satisfaction) its compliance with the PCI DSS and any changes which may occur to those standards;

k. the Customer undertakes or has undertaken activities (such as scams or other fraudulent activities) which in xpate's reasonable opinion are detrimental to the brand, image or reputation of xpate or a Payment Scheme

l. the Customer uses, or permits the use of, any of the Services or xpate systems for any purpose contrary to Applicable Law;

m. the continued operation of this Agreement would breach any Applicable Law; or,

n. a financial regulator, regulatory or government agency, or law enforcement agency posts a warning with regard to the Customer or if the Customer is added to any list maintained by a Payment Scheme or regulatory authority that identifies merchants subject to restrictions, monitoring, or prohibitions, including but not limited to Mastercard's Member Alert to Control High-Risk Merchants (MATCH) list, Visa's Terminated Merchant File (TMF), or any equivalent list.

8.4. In the event of the termination of the Agreement, Customer shall cease charging any Payment Instrument and shall remove physical or electronic information indicating association with the Payment Scheme or Payment Instrument without delay. The Customer also undertakes to return all electronic information received from xpate. If this has not been returned within one (1) month xpate has the right to levy reasonable periodical fines until its return.

8.5. Upon termination of the Agreement with cause, xpate reserves the right to report the Customer to the Payment Schemes and Customer would be listed on the Terminated Merchant File (e.g., Visa Merchant Screening Service (VMSS), Mastercard Alert to Control High-risk Merchants system (MATCH)).

## 9. Changes to the Agreement

9.1. xpate may change the Agreement from time to time by giving the Customer two (2) months' written notice via email. If the Customer does not notify us of any objections to the changes within two (2) months after receiving written notice of the change, the Customer will be deemed to have accepted the changed Agreement.

9.2. If the Customer notifies us of any objection to the changes within a period of two (2) months of our written notice of the change, and we still do not withdraw the changes, the Customer may terminate the Agreement immediately by giving us a written notice after the entry into force of the changes.

9.3. However, if the Customer does not object to the changes by terminating this Agreement no later than five (5) Business Days after the entry into force of the change, the Customer will be deemed to have accepted it. The use of the Acquiring Services after we provide any such notice, constitutes the Customer's acceptance of the terms of the modified Agreement.

9.4. The Customer is not entitled to object to and shall not have the rights set out in this section for any change, which we implement in order to comply with Applicable Law or requirements by the relevant Payment Schemes. For such imposed changes shorter notice periods may be imposed.

9.5. Notwithstanding anything in this Agreement, changes to this Agreement which do not require two (2) months notification are those which are: (i) more favourable to the Customer; (ii) required by law; (iii) related to the addition of a new service, extra functionality to the existing Service; or (iv) changes which neither reduce the Customer's rights nor increase the Customer's responsibilities, will come into effect immediately if they are stated in the change notice.

## 10. Data Protection

10.1. For the purposes of this Agreement, xpate and Customer will act as independent data controller in relation to the Processing of Personal Data in the course of performance of this Agreement and will comply with Data Protection Legislation at all times in relation to our respective processing purposes.

10.2. Taking into account the state of technical development and the nature of Processing, both Parties will implement appropriate technical, security and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of or damage to Personal Data in compliance with the GDPR and the Data Protection Legislation including the measures contemplated by Article 32 of the GDPR.

10.3. Each party represents and warrants that:

a. it will comply with its respective obligations under applicable Data Protection Legislation;

b. it has an appropriate lawful basis under Data Protection Legislation; and

c. in each case, with respect to the sharing of Personal Data with the other party, it will act as contemplated by this Agreement in section 10.4 below.

10.4. Each Party agrees to:

a. process the Personal Data of the other party only for its own Processing Purposes as contemplated by this Agreement;

b. process Personal Data in accordance with Applicable Law including

i. informing data subjects of the purposes for which it will process their Personal Data and to provide all the information that it is obliged to provide under the Data Protection Legislation to ensure that the data subjects understand how their Personal Data will be processed by that party; and,

ii. ensure that no transfer or disclosure of the Personal Data to any person located outside of the EEA takes place without appropriate safeguards that provide an adequate level of protection of the rights of data subjects;

c. promptly provide the other party such reasonable cooperation, information and assistance as required to allow the other party to comply with its obligations under Data Protection Legislation. Each party shall meet their own costs in providing the same save to the extent that it is required pursuant to a breach of this Agreement by the other; and

d. notify the other party of any potential or actual unauthorised disclosure, deletion, or third-party access to the Shared Personal Data as soon as possible and, in any event, within one (1) Business Day of identification of any potential or actual loss to enable the Parties to consider what action is required to resolve the issue.

10.5. The Parties:

a. must not knowingly perform their obligations under this section 10 in such a way as to cause the other party to breach any of its obligations under Data Protection Legislation; and

b. accept full responsibility and liability for the acts or omissions of their processors and contractors in respect of the provisions of this Agreement.

10.6. In the event that either party agrees to act as Data Processor on behalf of the other in relation to the Personal Data, the Parties shall enter into a data processing agreement in accordance with the applicable Data Protection Legislation prior to commencing such processing.

10.7. Both us and you will ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and comply with all applicable Data Protection Legislation.

10.8. You warrant that you have all necessary consents and permissions in relation to the Personal Data concerned for the purposes of processing Personal Data under this Agreement, including for Personal Data to be disclosed, where applicable, to the relevant Payment Scheme.

10.9. You agree to indemnify us, keep us indemnified for and defend us against, at your own expense, all reasonable costs, claims, damages or expenses incurred by us, for which you may become liable due to any failure by you or your employees or agents to comply with any of your obligations set out in this section 10.

10.10. Except where expressly permitted by law, the Data Receiver shall not retain, or Process Personal Data shared under this Agreement for longer than is necessary for the purposes contemplated by this Agreement.

10.11. If at any time during the term of this Agreement Data Protection Legislation change in a way that this section 10 is no longer adequate for the purpose of governing lawful data processing, the Parties shall negotiate in good faith to review this section in the light of the new legislation.

10.12. Subject to the Data Protection Legislation, it is xpate and Customer's expectation that: a. xpate will ordinarily be acting as Data Controller when Personal Data is processed in order to issue or administer the Services or to meet xpate's obligations under Applicable Law (for example, in connection with "customer due diligence" requirements under money laundering legislation and other obligations and requirements constituted under xpate's regulatory authorization to provide financial services, such as but not limited to payment service and e-money regulation, credit and insurance risk checks arising from the Agreement. b. Customer will be a Data Controller in respect of Personal Data processed for its own purposes in connection with the Services, in particular, when collecting, receiving and processing Personal Data for the purpose of marketing and/or offering any other services.

10.13. The subject-matter, nature and purpose of the processing, categories of Personal Data processed, and categories of data subjects are described in xpate's Privacy Policy.

## 11. Customer Representations and Warranties

11.1. The Customer represents and warrants to xpate continuously and every time that the Customer uses the Acquiring Services that:

a. The Customer shall not use the Acquiring Services in connection with any illegal or fraudulent business activities;

b. it will deliver the Customer Products/Services to its Buyers without delay;

c. the Customer Products/Services that are made available to Buyers comply with applicable law in any jurisdiction in or to which the Customer is making its goods and services available;

d. The Customer have obtained and shall maintain any and all licences, permits and registrations required under the Applicable Law to conduct the Customer's business in all jurisdictions where the Customer sells the Customer's Products/Services, and shall inform us immediately should this change;

e. The Customer has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorised, and will not violate any provisions of law, or conflict with any other agreement to which such party is subject;

f. to the best of the Customer's knowledge, there is no action, suit or proceeding at law or in equity now pending or threatened by or against or affecting the Customer which would substantially impair the Customer's right to carry on its business as now conducted or adversely affect the Customer's financial condition or operations;

g. The Customer have never experienced excessive Chargebacks, committed fraud, nor have the Customer ever been terminated by an acquirer or asked to terminate the Customer's agreement with an acquirer or subject to any Payment Scheme's monitoring programme(s);

h. The Customer's directors, shareholders and ultimate beneficial owners have never been convicted of a criminal offence and are not currently subject of any investigation relating to any criminal offence, and the Customer undertake to inform us immediately should this change;

i. The Customer's directors, shareholders and ultimate beneficial owners are not listed on any sanctions list, including but not limited to the UK sanctions list, EU sanctions list, and U.S. Department of Treasury's Office of Foreign Asset Control SDN list, and the Customer undertake to inform us immediately should this change.

11.2. Customer acknowledges that it is responsible for, and undertakes to, meet all costs associated with achieving and maintaining compliance, including any fines, costs or charges arising from Customer being compromised or not being compliant or data held by Customer being compromised and/or used for fraudulent purposes.

## 12. Indemnity, liability and limitation of liability

12.1. In this section 12, we use the term "xpate" or "us" to include xpate Corporate Group (as defined in the Terms and Conditions), and each of their respective directors, officers, employees, agents, joint venturers, service providers and suppliers.

### 12.2. Indemnity

a. Except to the extent prohibited under Applicable Laws, the Customer shall indemnify for and hold each one of us harmless from any losses, damages, liabilities, judgements, awards, costs and/or expenses incurred by us, or any liabilities, damages, judgements, awards, losses, costs and expenses or claim (including legal fees) brought against us by any third party (including any regulatory authority, and/or any Payment Scheme) arising out of or in connection with: (i) the Customer and/or any of the Customer's employees', agents' or authorised third parties' breach or alleged breach of this Agreement, (ii) the Customer and/or any of the Customer's employees', agents' or authorised third parties' breach or alleged breach of the Additional Documents, the Applicable Law and/or of the Payment Scheme Rules, (iii) the Customer and/or any of the Customer's employees', agents' or authorised third parties' use of, or activities in connection with, the Acquiring Services, and/or (iv) any acts or omissions of the Customer or the Customer's employees or agents and/or authorised third parties.

b. The Customer shall also indemnify for and hold each of us harmless from any and all losses related to Chargebacks, Assessments and 'Chargeback and Assessment Costs', third party IP right infringements, and any other losses, claims, actions, injuries, liabilities, fines, penalties or expenses (including reasonable legal costs) arising out of or in connection with this Agreement.

### 12.3. Exclusion of liability

a. xpate will not be liable for acts or omissions of third parties. In no event shall xpate be liable for acts or omissions of the Payment Schemes,, and card issuers, or for events or activities originating outside our system (such as infrastructure failure, internet disturbances or malfunctioning in third party systems).

b. xpate shall not be liable to the Customer or any third party for any liquidated, indirect, consequential, exemplary, or incidental damages (including damages for loss of business profits, business interruption, loss of business information and the like) arising out of this Agreement.

### 12.4. Limitation of liability

a. Subject to section 4.9 of this Agreement, and to the fullest extent permitted by the Applicable Law, xpate total liability (and our and their respective employees, directors, agents and representatives) arising out of or in connection with this Agreement, whether in contract or in tort or other legal theory, shall not exceed the total amount of the Customer Service Fees (net of the applicable Interchange and Payment Scheme fees) in connection with the Customer's use of the Service during the twelve (12) months period immediately preceding the event giving rise to the claim for liability.

b. In no event shall xpate be liable for lost profits or for any indirect, incidental, consequential, special, exemplary or punitive damages of any kind, under any contract, tort (including negligence), strict liability or other theory, including damages for loss of profits, use or data, loss of other intangibles, loss of business, loss of security of any information or other materials (including unauthorized interception by third parties of any information or other materials), even if advised in advance of the possibility of such damages or losses, however arising, including negligence, unless and to the extent prohibited by law. Our liability to the Customer or any third parties in any circumstance is limited to the actual amount of direct damages.

c. In addition, to the extent permitted by applicable law, xpate is not liable, and the Customer agrees not to hold xpate responsible, for any damages or losses (including, but not limited to, loss of money, goodwill, or reputation, profits, or other intangible losses or any special, indirect, or consequential damages) resulting directly or indirectly from: (1) the Customer's use of, or the Customer's inability to use, our websites, API, software, systems (including any networks and servers used to provide any of the Acquiring Services) operated by xpate or on xpate's behalf, or any of the Acquiring Services; (2) delays or disruptions in our Website software, API, systems (including any networks and servers used to provide any of the Acquiring Services) operated by us or on our behalf and any of the Acquiring Services; (3) viruses or other malicious software obtained by accessing our websites, API, software, systems (including any networks and servers used to provide any of the Services) operated by us or on our behalf or any of the Acquiring Services or any website or service linked to our websites, software or any of the Acquiring Services; (4) glitches, bugs, errors, or inaccuracies of any kind in our websites, software, systems (including any networks and servers used to provide any of the Services) operated by xpate or on xpate's behalf or any of the Services or in the information and graphics obtained from them; (5) the content, actions, or inactions of third parties; (6) a suspension or other action taken with respect to the Customer xpate Account; (7) the Customer need to modify the Customer's practices, content, or behavior, or the Customer's loss of or inability to do business, as a result of changes to this Agreement, any Additional Document or any other xpate policy; (8) the content, actions or inactions of any of your Buyers.

### 12.5. Disclaimer of Warranty

The Acquiring Services are provided "As-Is" "Where Is" and "Where Available" and without any representation or warranty, whether express, implied or statutory. xpate specifically disclaims any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement. xpate disclaim all warranties with respect to the Acquiring Services to the fullest extent permissible under applicable law, including the warranties of merchantability, fitness for a particular purpose, non-infringement and title.

### 12.6. Availability of Acquiring Services

xpate will try to make sure our Acquiring Services are available to the Customer when the Customer needs them. However, we do not guarantee that our Acquiring Services will always be available or be

uninterrupted. xpate may suspend, withdraw, discontinue or change all or any part of our Acquiring Service without notice. xpate will not be liable to the Customer if for any reason our Acquiring Services are unavailable at any time or for any period.

### 12.7. Release

a. If the Customer has a dispute with the Customer's Buyer, any other Customer xpate Account holder or any third party from using the Acquiring Services, the Customer releases xpate from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes.

b. In entering into this release the Customer expressly waive any protections (whether statutory or otherwise) that would otherwise limit the coverage of this release to include only those claims which the Customer may know or suspect to exist in the Customer's favour at the time of agreeing to this release

## 13. Miscellaneous

13.1. **Complaints.** Any complaint from the Customer with xpate relating to the Services provided under this Agreement shall be handled following the procedure established in the Terms and Conditions.

13.2. **Consent to Electronic Communications and Electronic Signature Consent.** The Customer agrees to the receipt of electronic communications and notices by email or by posting of the information on our Website. Such communications may pertain to the Acquiring Services delivered by us, changes in laws or rules impacting the service or other reasons, such as amendment of this Agreement. The Customer may request a copy of any legally required disclosures (including this Agreement) from us and we will provide this to the Customer in a form which allows the Customer to store and reproduce the information (for example, by email) and the Customer may terminate its consent to receive required disclosures through electronic communications by contacting us as described in section – of the Agreement. xpate may charge the Customer a records request fee to provide this information. We reserve the right to terminate this Agreement if the Customer withdraws the Customer's consent to receive electronic communications.

### 13.3. Assignment, Agency and Subcontracting

a. Subject to the Applicable Law and the Payment Scheme Rules, we reserve the right to transfer, assign or novate this Agreement (including the Customer xpate Account) or any right or obligation under this Agreement at any time without the Customer consent or providing written notice to the Customer. Customer authorises disclosure of details relating to it and its Customer arrangements to any prospective persons or entity to which xpate is novating, assigning and/or sublicensing the Agreement. Customer agrees to enter into such documents as xpate may reasonably require in order to effect such assignment, novation, transfer or sub-licence.

b. The Customer may not transfer, assign, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of the Customer rights and obligations under this Agreement (including the Customer xpate Account) without our prior written consent.

c. xpate may appoint at any time, and without prior notice to you, an agent or sub-contractor to perform any of our obligations under the Agreement.

13.4. **Partnership.** Nothing in this Agreement shall be construed as constitution of a partnership between the Parties, except where expressly provided, nor shall it constitute, or deem to constitute, one party as the agent of any other party for any purpose.

### 13.5. Marketing and other use of logos

a. The Customer agrees that the Customer's name, standard logo and trademark(s) (as published by the Customer) may be included by us on xpate's client list on our Website and in our marketing materials. The Customer grants to us and our affiliates, a worldwide, non-exclusive, non-transferable, non-sublicensable, royalty-free licence during the term of this Agreement to use the Customer's name, logo, trademark(s) and any other marks provided to us. xpate shall be entitled to use said list freely in our commercial efforts. The Customer also agrees that the Customer's name and standard logo may be included by us in our communications with the Customer's Buyer in relation to the Transaction. Any other use of your name, logo or information shall only occur with the Customer's prior written consent which the Customer shall not unreasonably withhold.

b. The Customer may on the Customer's website in the information related section refer to us as the Customer's payment service provider, explaining that this is the reason why the name of xpate (or other xpate affiliates names, our trade name or similar) may appear on the Customer's bank statements. The Customer may also include an internet link to our Website in such a context. The Customer may not use our logo anywhere else on the Customer's website, or otherwise, without our prior express written approval.

c. **Governing law and jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), provided always that we shall not be limited to the forum of England and Wales for the enforcement of any judgement relating to this Agreement and shall have the right to bring the relevant action in any jurisdiction where you are incorporated or may have assets.

d. **Force Majeure.** Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control including, strikes, lock-outs or other industrial disputes (whether involving the workforce of Parties or any other party), failure of a utility service or transport or telecommunications network or the internet, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, pandemic, storm or default of suppliers or sub-contractors (each a "**Force Majeure Event**"). If the Force Majeure Event makes it impossible for the relevant party to perform any of its obligations under this Agreement for a period exceeding two (2) months, the other party may terminate this Agreement with immediate effect by giving written notice to the other party.

e. **Remedies are Cumulative.** Except where expressly agreed otherwise in the Agreement, the rights and remedies of the parties under the Agreement are cumulative, may be exercised as often as the parties consider appropriate and are in addition to their rights and remedies under Applicable Law.

f. **Cooperation.** In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the Transactions contemplated hereby.

g. **Entire Agreement.** This Agreement, the Additional Documents, and the relevant Order Form, if applicable, supersedes and extinguishes all previous agreements between the Customer and xpate, whether written or oral, relating to its subject matter.