

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“**MSA**”) governs the obligations and rights of the IXOPAY entity described in Section 12.4 (“**IXOPAY**”) and its Affiliates and the Customer. By signing a valid Order Form, Customer represents and warrants that it has read and understands the terms of this MSA and that the signer has the authority to bind Customer to this MSA.

### 1. DEFINITIONS

“**Affiliate**” means any legal entity which, directly or indirectly, controls, is controlled by, or is under common control with Customer, where “control” means (a) controlling the majority of the votes attached to shares issued by the entity, or (b) being in a position to appoint or dismiss the majority of the members of the entity’s administrative, managerial or supervisory body, or (c) having the right to exert significant influence by other means, or (d) by contract, having the right to decide how voting rights of shareholders required for establishing a majority of the votes required for the appointment or dismissal of the majority of the members of the entity’s managerial or supervisory body, are exercised.

“**Agreement**” has the meaning ascribed to it in the Order Form.

“**Authorized User**” means any natural or legal person accessing and using the Products in accordance with the Subscription terms set out herein.

“**Card Scheme**” means any organization or network setting rules, standards, and infrastructure for electronic payment card transactions, including issuance, acceptance, and processing of cards like credit, debit, and prepaid cards, defining the processes for payment authorization, clearing, and settlement between issuing and acquiring banks, such as Visa, Mastercard, American Express, and Discover.

“**Customer**” the entity signing the Order Form.

“**Documentation**” means the written information published by IXOPAY related to the Products, including user & administration manuals and where the Order Form includes a Platform Subscription, the Platform Description.

“**DPA**” means the Data Processing Addendum, available on [ixopay.com/en/legal/dpa](https://ixopay.com/en/legal/dpa), and any Product-specific Exhibit thereto.

“**End Client**” means a contractual partner of Merchant at the beginning (for payout: at the end) of a transaction submitting payment orders processed through the Products (or payout: to receive funds).

“**Merchant**” means a legal entity acting as a payee (for payout: as a payer) of payment transactions processed via the Products. Unless the context clearly provides otherwise, Merchants are not parties to the Agreement, and Customer remains fully responsible for any use of a Product under a Subscription.

“**Order Form**” means the document executed by the parties which includes an itemized description of the Products comprising the Subscription and any related fees.

“**Payment Service Providers**” means external service providers including acquirers or their (technical) service providers to whom the Products establish a direct connection in order to process transactions.



“**Platform**” means IXOPAY’s Payment Orchestration SaaS solution as described in Exhibit ‘Platform Description’, where the Order Form includes a Platform Subscription. The Platform is one of IXOPAY’s “Products”.

“**Products**” means any of the services offered by IXOPAY, whether bundled or purchased as a stand-alone solution as identified in an Order Form.

## 2. SCOPE

**2.1 Acknowledgments.** Customer is aware of the functionalities of the Products and desires to use them solely for the purposes specified in the Agreement. This includes full knowledge of all details (incl. Payment Service Provider Adapters & PCI Vault Adapter) available at [adapters.ixopay.com](https://adapters.ixopay.com) (without warranty as to the accuracy or completeness of the information) as relevant for Customer’s Platform use cases and regular consultation of the afore-said information as necessary. Customer acknowledges that IXOPAY cannot ensure the continued availability of Adapters indicated as ‘Live’ and may cease providing them if, for example, a Payment Service Provider ceases to make its service available for interoperation with the Platform in a manner acceptable to IXOPAY in IXOPAY’s sole reasonable discretion. Insofar as Customer acts as a service provider on behalf of Affiliates or other entities, Customer confirms that the said entities have agreed and authorized Customer to enter into the Agreement. In any case, Customer and IXOPAY must serve as sole points of contact for one another, and the entire legal relationship must be exclusively handled in its entirety between Customer and IXOPAY. Customer acknowledges that its subscription to the Products hereunder is not contingent on IXOPAY’s development of any future functionality or feature and is not dependent on any oral or written comments made by IXOPAY regarding any current or future functionality or features. Customer further confirms that IXOPAY solely provides technical services, does not engage in acquiring, settlement, or regulatory oversight of payment transactions, and has no control over goods, services, or other content paid for between Merchants and End Clients.

**2.2 Purpose.** The Agreement describes the obligations of the parties, and governs the provisioning and maintenance of the Products and any related services by IXOPAY to Customer. Any pre-printed or standard terms contained or referenced on any Customer purchase order or other business processing document shall have no effect on the relationship of the parties.

**2.3 Incorporation of Order Forms.** At any time during the Subscription Term, Customer may subscribe to additional products and services, or otherwise increase any initial minimum commitments identified on an Order Form through the execution of a new Order Form specifying any such increases to the commitments or additional products. All such future Order Forms are incorporated into and become part of the Agreement.

**2.4 Custom Feature Requests.** At any time during the Subscription Term, Customer may request services to build or develop custom or new features, including integrations, within the Platform by submitting a ticket. IXOPAY may review custom feature requests but is not obligated to perform any such services absent execution of an Order Form or statement of work reflecting the effort and any applicable additional fees related to the work.



**2.5 Order of Precedence, Modifications.** To the extent of any conflicting terms or conditions among the documents forming the Agreement, the order of precedence shall be as follows: (1) Order Form and any Exhibits thereto, (2) DPA (available on [ixopay.com/en/legal/dpa](https://ixopay.com/en/legal/dpa)), (3) this MSA and (4) SLA (available on [ixopay.com/legal/sla](https://ixopay.com/legal/sla)), as applicable. This MSA and all documents forming part of the Agreement are subject to change at IXOPAY's discretion. In the event of such modifications, the modified version of the respective part of the Agreement will be posted in the [Terms](#) section of our website (available on [ixopay.com/legal/ixopay-terms](https://ixopay.com/legal/ixopay-terms)). Your continued use of the Product after any such modifications constitutes Customer's acceptance of and consent to the most recent version. IXOPAY's Privacy Notice is available at [ixopay.com](https://ixopay.com) and does not change the roles, instructions, or restrictions agreed in the DPA, including the limited cases where IXOPAY may act as an independent controller as described in the DPA.

**2.6 Cooperation.** The parties will cooperate in good faith. Customer will appoint at least one project manager to ensure proper communication and coordination between the parties during onboarding, support, and/or any development work requested by Customer. In the absence of such appointment, the point of contact provided on the Order Form will serve as the project manager. Project managers must be authorized to receive and make binding declarations on behalf of Customer. Each party will notify the other in the event it becomes apparent that the other party's specifications are erroneous, incomplete, equivocal, or if its performance is commercially or technically infeasible. All such notices shall include any possible adverse effects. In the event of such a notice, the parties will reasonably work together to reach an amicable resolution. A "**Project Steering Committee**" comprised of at least one authorized representative from each party may be assembled to serve as an escalation instance in the event the parties are unable to reach an amicable resolution of an issue or if the time schedule for project completion is materially at risk. All decisions of the Project Steering Committee shall be recorded in writing and exchanged via email.

### **3. PROPRIETARY RIGHTS**

**3.1 Subscription.** Subject to the terms contained in the Agreement, IXOPAY hereby grants to Customer, solely during the Subscription Term of any Order Form a worldwide, non-exclusive, non-transferrable, revocable (for cause), restricted right to use the Products identified on any applicable Order Form (the "**Subscription**"). In addition and subject to the foregoing, IXOPAY grants to Customer a right to grant sublicenses, as derived from Customer's rights, exclusively to organizational units of Customer (branches, permanent establishments, sales offices, or similar) and Affiliates of Customer. Limiting the foregoing sentence, Customer must not sublicense to any direct or indirect competitor of IXOPAY and any of its Affiliates. Customer shall only provide Authorized Users access to Documentation. Any further licensing requires IXOPAY's prior express consent in writing.

**3.2 Restrictions on Use.** Customer shall not itself, or through any Affiliate, employee, consultant, contractor, agent, or other third party: (i) sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, the Products; (ii) disassemble, decompile, or otherwise reverse engineer (or attempt to do so) all or any portion of the Products; (iii) use the Products for any unlawful purposes; (iv) export the Products or Documentation in violation of any applicable laws or regulations; (v) modify, adapt, or use the Products to



develop any competing software application intended for sale or resale; or (vi) disclose or publish, without IXOPAY's prior written consent, performance statistics or benchmark tests performed on the Products.

**3.3 Title.** IXOPAY retains sole and exclusive right, title, and interest in and to the Products and Documentation, including any services associated with the Products. Customer (i) consents to IXOPAY anonymising data (including personal data) arising from Customer's use of the Products and (ii) provides IXOPAY with a perpetual, non-cancelable, worldwide, non-exclusive right to use any such anonymised data solely for the purposes of improving the Products and developing new services. Except for any rights described in the Agreement, Customer has no rights or interest in or to the Products. All right, title, and interest in and to any copyright, trademark, or other proprietary right relating to the Products and any related logos or product names are retained by IXOPAY. Customer shall not obscure, alter, or modify any copyright, trademark, or other proprietary rights on the Products or Documentation. No implied rights or licenses are granted to Customer.

#### **4. CUSTOMER RESPONSIBILITIES**

**4.1 General.** Customer is solely responsible for the acts and omissions of all Authorized Users of the Products, including, without limitation, use of usernames, passwords, and other login credentials. Customer assumes responsibility for its collection of any information or data while utilizing the Products, including ensuring it has obtained all appropriate consents related to such collection, or ensures that such collection is covered by other applicable legal bases. Customer shall promptly report any bugs it discovers during use of the Products and shall reasonably cooperate at its sole expense with IXOPAY in identifying the root cause of any such bugs.

**4.2 Additional Responsibilities.** Customer must fulfill all obligations contained in the Agreement and must specifically:

4.2.1 keep a record of all Authorized Users of the Products.

4.2.2 protect and ensure the protection of all use and access permissions (user credentials) as well as all identification and authentication data of Customer and Authorized Users against third party access. In addition, Customer is responsible for maintaining the security of its own systems, whether directly or indirectly connected to the Products. This includes (i) implementing and regularly updating firewalls and other protective measures to prevent unauthorized access and data breaches, and (ii) ensuring that systems connected to the Products are free from any vulnerabilities that may compromise the security or functionality of the Products. Non-compliance may result in suspension of access to the Products until compliance is restored.

4.2.3 observe the intellectual property rights of IXOPAY and any third parties.



4.2.4 procure the legal basis necessary for the lawful collection, processing, and use of any data as relevant for all Merchants and their End Clients within the scope of the Agreement, including any authorizations necessary to assign IXOPAY as a subcontractor and/or (Sub-)Processor of Personal Data.

4.2.5 only use the Products to the extent permissible under the applicable (i) laws, (ii) regulations and procedures issued by the Card Schemes, (iii) authorization of any competent authority. Customer shall not misuse or permit the misuse of the Products for unlawful purposes and, furthermore, shall ensure that any feature requests are legally permissible. Customer must ensure that the monitoring and risk control of the transaction data complies with applicable laws and standards, as IXOPAY's implementation is based on instructions from Customer. Customer warrants that transaction data is thoroughly examined by Customer as necessary, including against sanctions lists and export control laws applicable to Customer and its Authorized Users. IXOPAY is not responsible for monitoring or examining transaction data.

4.2.6 ensure that Authorized Users do not use the Products in a way that could damage the reputation of IXOPAY, such as in relation to payment for illegal content and/or services or content that incites hatred, encourages crimes, or glorifies or plays down violence or that could cause moral harm to children or youths or impact their welfare.

4.2.7 refrain from accessing information or data without authorization either directly or indirectly through unauthorized third parties, intervening or causing the intervention in the Products and/or programs operated by IXOPAY, or harming the IT infrastructure of IXOPAY. Customer may only perform load tests with IXOPAY's prior written approval and in accordance with rate limits reasonably determined by IXOPAY.

4.2.8 proactively inform, instruct, and provide guidance to IXOPAY as regards: (i) all legal requirements IXOPAY has to indirectly comply with as a result of such requirements being directly imposed on Customer and/or its Authorized Users (including, if applicable, rules, regulations, releases, and other requirements promulgated by a Card Scheme) and (ii) all updates on outbound interfaces of Payment Service Providers or other third parties in use by Customer and/or its Authorized Users. Any notices under (i) and (ii) above, must be made on an ongoing basis, without undue delay and sufficiently in advance to allow IXOPAY to adjust to such requirements or updates, however not less than four weeks in advance of its applicability. Customer understands and agrees that IXOPAY is not obligated to seek or provide any legal advice relating to (i) above. If adjustments to a Product or additional efforts are necessary to meet these requirements, Customer shall bear all associated reasonable costs. IXOPAY will provide a fee estimate in advance, and all such efforts will be charged on a time-and-material basis.

4.2.9 take all necessary and reasonable efforts to prevent Merchants from (i) any use of the Products in violation of the Agreement, applicable laws, regulations and procedures issued by the Card Schemes, and (ii) using the Products in a way that adversely affects the Products, their security, or their use by users or other customers of IXOPAY. If a Merchant does not immediately cease its behavior despite



Customer's request, Customer must immediately deny the Merchant access to the Products. IXOPAY may take measures on the Merchants' configuration in a manner and for the duration required to address the risk posed, including deactivating Merchants. The Customer Indemnity under Section 8.3 applies for any claims made by any affected Merchant relating to any such measure.

4.2.10 where relevant and reasonable, notify IXOPAY via submitting a ticket in the IXOPAY Customer Experience Portal duly in advance of upcoming maintenance activities that affect Customer's connection to the Products and, thus, may falsely create the impression of IXOPAY's unavailability.

4.2.11. manage its own Payment Service Providers (and their adequate collaboration with IXOPAY), ensuring, in particular, all connectivity settings, authentication credentials, and Merchant configurations are correct, and conduct end-to-end testing as relevant for all use cases of Customer before enabling live transaction processing, including regarding any (re-)configuration of integrations with Payment Service Providers and Customer making material changes to Product settings.

4.2.12. maintain its integration with the Products in a manner that ensures continued compatibility, including in accordance with any applicable Documentation. IXOPAY is not responsible for transaction failures caused by misconfigurations or incomplete integrations by Customer, its Affiliates or Merchants.

## 5. IXOPAY Responsibilities

**5.1 Certificates.** IXOPAY shall maintain administrative, technical, physical and other safeguards designed to protect Customer data and information. IXOPAY has an ongoing obligation to maintain at least the following "**Certifications**": PCI-DSS Level 1 Service Provider, ISO 27001, and SSAE 18 SOC 2 Type II. IXOPAY will, upon written request from Customer, provide evidence of such certifications. If requested on legitimate grounds, IXOPAY will assist Customer by performing a comprehensive risk analysis taking into account any concerns reported by Customer to IXOPAY in writing. IXOPAY can substitute such analysis by providing Customer with a current PCI-DSS Certificate and/or a copy of its SOC 2 Type II audit report.

**5.2 Compliance.** IXOPAY shall comply with the applicable laws that are directly applicable to IXOPAY as a technical service provider. IXOPAY shall without undue delay report to Customer any development that may have a material impact to IXOPAY's ability to effectively carry out the key elements of its services.

**5.3 Third Party Service Provider.** To the extent IXOPAY acts as a third-party service provider providing PCI-related services, IXOPAY acknowledges its responsibility for the security of account data, including cardholder data and sensitive authentication data as prescribed by the Payment Card Industry Data Security Standard (the "PCI-Related Data") that is stored, processed, or transmitted on behalf of Customer. IXOPAY has implemented and will maintain appropriate security controls to protect such data in accordance with PCI DSS requirements, including by (i) conducting regular penetration tests and vulnerability scans of the Platform and Products, (ii) implementing strong access control measures, and (iii) regularly monitoring and testing its security



systems and processes. IXOPAY's responsibilities solely extend to the security of Customer's PCI-Related Data to the extent the Platform or Products could impact such PCI-Related Data.

**5.4 Warranties.** IXOPAY warrants:

5.4.1 that the Products are maintained in functionality meaning they will be free of material Errors, which is defined as a reproducible failure of the Products that results in a Severity Level 1, 2, or 3 issue, as defined in the CXP & Support Policy. IXOPAY can, at its own option, remedy Errors by (i) subsequent improvement, (ii) troubleshooting, (iii) replacement of the affected part(s) of the Product by at least functionally equivalent ones, (iv) releasing a new version or by (v) demonstrating to Customer options for avoiding the consequences of the Error (workaround) as Customer's exclusive remedy and IXOPAY's entire liability for any breach of this warranty;

5.4.2 that for each update to a Product the Documentation is updated accordingly, including descriptions of the Products to the extent made in any part of the Agreement;

5.4.3 that, as regards the scope of the Certifications, all relevant components of the Products are maintained in a level of security as reasonably necessary to maintain the Certifications.

5.4.4 If a corrective remedy is impossible or disproportionate for IXOPAY, both Parties are entitled to terminate the affected Product by written notice with immediate effect a corrective remedy is, in any event, disproportionate if it imposes costs on IXOPAY which exceed the total amount of fees paid by Customer for the affected Product in the preceding 12 months.

**5.5 Maintenance.** IXOPAY will perform maintenance to ensure the ongoing functionality, performance, and security of the Products during the Subscription Term. Maintenance includes routine bug fixes, patches, and updates within a major release supported by IXOPAY. Maintenance provided as part of the Subscription does not include upgrades, new features, or new versions, which are available exclusively through the purchase of a Customer Experience Package (CXP) or order, subject to additional fees.

**5.6 Deprecation of Inbound Interfaces.** IXOPAY may discontinue maintenance for inbound interfaces (e.g., Transaction API, Transparent Gateway API) that have been replaced by new versions, provided it gives Customer at least six months' prior notice. IXOPAY reserves the right to deactivate the replaced version at its sole discretion after an additional six-month period (total transition period: twelve months). For clarity, there will be no warranty for the replaced versions of such interfaces.

**6. PAYMENT CONDITIONS**

**6.1 Fees.** IXOPAY will send invoices in accordance with the invoice events specified on the Order Form and Customer shall pay all undisputed invoices within 30 days of the date of the invoice. All fees will be invoiced in the currency used on the Order Form. Volume commitments shall not be decreased during the Initial



Subscription Term or any Renewal Subscription Term. Fees paid are non-refundable and, once placed, Order Forms are non-cancelable. Without prejudice to anything to the contrary in the Agreement, IXOPAY shall be entitled to suspend access to the Products and/or any related services if any fees owed under the Agreement are more than 30 days past due. The Customer Indemnity under Section 8.3 applies for any claims made by any affected Merchant relating to any such measure. IXOPAY shall provide at least 5 days written notice of its intent to suspend the services in connection with this right.

**6.2 Price Increases.** Absent a signed renewal Order Form, IXOPAY reserves the right to increase prices by 5 % per each contractual year including each renewal term (if any), such price increase to apply starting at the anniversary date of the initial term.

**6.3 Disputed Invoices.** Customer shall provide IXOPAY with detailed written notification within 30 days following the date of the invoice if Customer reasonably disputes the fees detailed in any such invoice. IXOPAY will not exercise any applicable suspension rights if Customer, acting in good faith, disputes an invoice and is working with IXOPAY in good faith on a resolution. Customer's failure to provide IXOPAY with written notice of any disputed amounts within the timeframe specified herein shall be deemed as Customer's acceptance of the content of such invoice.

**6.4 Taxes.** Customer will be responsible for all taxes, fees, duties, and other governmental charges of any kind (including sales, use, withholding tax, and value-added taxes, but excluding any taxes based on the gross revenue or net income of IXOPAY) which are imposed by or under the authority of any law or regulation of any government or any political subdivision thereof on the fees or any aspect of the Agreement unless Customer provides a valid tax exemption certificate or other written documentation evidencing Customer's tax exempt status. Such charges will not be considered a part of, a deduction from, or an offset against other payments due under the Agreement. For Customers of IXOPAY GmbH, all Products are supplied where the Customer is established. Tax liability is transferred to the Customer (Reverse Charge).

**6.5 Past Due Payment.** In the event invoices are not paid by the due date, IXOPAY shall be permitted to charge interest at the lesser of 1.5% per month or the maximum rate permitted by law.

## **7. NONDISCLOSURE**

**7.1 General.** This Section 7.1 supersedes all previously executed Nondisclosure Agreements or similar agreements governing the parties' confidentiality obligations. All Confidential Information (as defined below) disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The recipient will not disclose any Confidential Information except as authorized under the Agreement. The recipient will limit access to Confidential Information to those Affiliates, employees, and authorized representatives with a need to know and will instruct them to keep such information confidential. The recipient may disclose Confidential Information of the disclosing party to subcontractors, contractors, and/or consultants as is reasonably necessary to perform its obligations under the Agreement, provided all such subcontractors, contractors and/or consultants have been subjected by the recipient to, or who are otherwise bound by, confidentiality obligations



consistent with the terms of this Section. The recipient is liable for any misuse, misappropriation, or improper disclosure of the disclosing party's Confidential Information by any Affiliates, employees, authorized representatives, subcontractors, contractors, consultants, or other third parties within the sphere of its responsibility. Any recipient of Confidential Information must use appropriate measures to protect it against unauthorized access and unlawful disclosure. Upon termination of the Agreement, the recipient will permanently delete all Confidential Information and copies in tangible and/or electronic form. Without prejudice to the foregoing, the recipient may retain Confidential Information that is reasonably necessary to comply with its legal, regulatory, or legitimate business obligations (such as business contact information or billing records) in accordance with applicable laws and industry-standard retention practices. The Recipient will not be required to access or delete electronic backup, active archive, or archived copies of Confidential Information that were generated in accordance with the recipient's bona fide, industry-standard backup or archiving practices. The obligations under this section shall survive the termination of the Agreement until final deletion of Confidential Information. In the event of the unauthorized disclosure or use of Confidential Information in violation of the Agreement or any suspicion thereof, the party in breach will immediately inform the other party in writing regarding all details of such disclosure (inter alia including further information concerning actual or any other possible recipients) and must assist the other party at its own expense to mitigate any further adverse effects. The parties agree to inform each other without undue delay and at no charge about audit activities or requests by competent authorities regarding the scope of the Agreement, particularly in circumstances where a disclosure of any documentation, data, or relevant information (whether Confidential Information or not) is required.

**7.2 Confidential Information; Exclusions.** Confidential Information means (any part of) the Products, the Documentation, operational procedures, pricing, transaction data or other proprietary business information and other information provided by the disclosing party to the recipient, whether or not such information is marked as confidential, however excluding Personal Data which is exclusively governed by the DPA. Information shall not be deemed Confidential Information if the recipient can prove that such information: (i) is or becomes generally known or available to the public through no fault of the recipient; (ii) was in the recipient's lawful possession prior to disclosure by the disclosing party; (iii) is lawfully obtained from a third party who has the right to make such disclosure on a non-confidential basis; or (iv) has been independently developed by the recipient without reference to the Confidential Information. Confidential Information shall include the existence of the Agreement, including the terms and conditions contained herein. The obligations of IXOPAY set forth in Sections 7.1 and 7.2 shall not apply to suggestions and feedback for product or service improvement provided by Customer in connection with the Products and, as such, IXOPAY shall have no obligation or liability to Customer for its use of or disclosure of such feedback.

## **8. INDEMNITY**

**8.1 IXOPAY Indemnity.** IXOPAY will defend Customer as set forth below in any claim brought by a third party arising out of IXOPAY's culpable violation of any third party's patent, copyright, trade secret, or other intellectual property rights ("**3rd Party IP Rights**") by Customer's use of the Products in accordance with the Agreement. In connection with such a 3rd Party IP Rights claim, IXOPAY will indemnify Customer from any reasonably foreseeable damages (including reasonable attorneys' fees as determined by any applicable



statutory law and court costs solely to the extent IXOPAY fails to promptly assume the defense) finally awarded in any non-appealable resolution, whether by judgment or settlement awards, or any other kind of final and binding decision. Any amounts payable under the IXOPAY Indemnity count towards the Limit on Monetary Damages in Section 9.3, which reflects IXOPAY's entire liability and Customer's exclusive remedy for infringement of intellectual property rights of any kind.

**8.1.1. Condition, Conduct of Claims.** IXOPAY's obligations under Section 8.1 are conditional upon each: (a) IXOPAY's prompt written notification of any such claim by Customer, (b) Customer's reasonable cooperation with IXOPAY with the defense and investigation of any such claim, (c) IXOPAY having sole control of any such claim, including all negotiations for its settlement, and (d) Customer's reasonable steps to mitigate its damages including not admitting any liability or agreeing to any settlement or compromise of a such a claim without IXOPAY's reasonable prior approval. Customer shall be permitted to participate in the defense of any such claim at Customer's sole cost and expense. If Customer's use of the Products becomes, or in IXOPAY's reasonable opinion, is likely to become the subject of such a claim, Customer will permit IXOPAY, at IXOPAY's expense and option, to: (i) procure for Customer the right to continue to use the Products, (ii) replace or modify the Products related to the claim so Customer's use of the Products no longer violates the 3rd Party IP Rights, or (iii) if neither (i) or (ii) are reasonably feasible or are impossible, terminate the Agreement and grant Customer a prorated refund of all applicable prepaid fees for Products or parts thereof related to the violation of 3rd Party IP Rights, provided that, in the case of severable Products, termination will be limited to those parts of the Agreement that relate to the severable, infringing Product.

**8.2 IXOPAY Indemnity Exclusions.** IXOPAY has no responsibility to Customer (through indemnity obligations or otherwise) for any claims based, in whole or in part, directly or indirectly, on: (i) Customer's and/or any of its Authorized Users' use of the Products in violation of the Agreement or any applicable Documentation; (ii) any use of the Products in combination with any third party software or products not provided by IXOPAY; or (iii) any modification to the Products by Customer or for Customer by any third party that is not expressly authorized by IXOPAY (collectively, the "**Exclusions**").

**8.3 Customer Indemnity.** Customer will defend IXOPAY in any claim brought by a third party arising out of or relating to any of the Exclusions set out in Section 8.2 above. In connection with such a claim, Customer will indemnify IXOPAY against any damages (including reasonable attorneys' fees and court costs) finally awarded in a non-appealable resolution, whether by judgment or settlement awards, or any other kind of final and binding decision (including reasonable attorneys' fees and court costs) arising out of or relating to any claim by a third party relating to any of the Exclusions set out in Section 8.2 above, provided that: (i) IXOPAY shall provide prompt notification of any such claim; (ii) IXOPAY will reasonably cooperate with Customer in the defense and investigation of any such claim; and (iii) Customer will have sole control of the defense of any such claim and all negotiations for settlement. Notwithstanding the foregoing, in all circumstances, IXOPAY will be permitted to participate in the defense of any such claim.



## 9. LIMITATION OF LIABILITY; WARRANTIES; DISCLAIMER

**9.1 Exclusion of Consequential Damages.** Unless otherwise prohibited by law, under no circumstances shall IXOPAY be liable for special, indirect, punitive, incidental, consequential, or similar damages, whether in contract or in tort, and regardless the theory of liability. In particular, IXOPAY shall not be responsible for damages for: (a) error or interruption of use, (b) loss or corruption of Customer data, (c) the cost of procurement for substitute services or technology, or (d) loss of business or lost profits.

**9.2 Additional Exclusions.** For the avoidance of doubt, IXOPAY shall not be liable for circumstances that are beyond its control and products and services that do not form part of the contractual obligations, such as: (i) any outage, suspension, disruption, or delay of the internet, communications networks, Payment Service Providers, or any other third party service; (ii) any failure, disruption, or malfunction of the Products beyond IXOPAY's reasonable control; or (iii) transaction errors, disputes, or regulatory violations, including any damage caused by late, multiple, or not executed payment transactions, arising from Customer's and/or any Authorized User's configuration, operation, or use of the Products, including failure to adhere to applicable Documentation, Card Scheme rules or regulatory requirements; or (iv) Customer's failure to provide timely notice, instructions, or guidance set forth in Section 4.2.8 above.

**9.3 Limit on Monetary Damages.** Unless otherwise prohibited by law, and subject to Sections 9.1 and 9.2 above, under no circumstance shall IXOPAY's entire liability for all direct damages incurred by Customer under the Agreement caused by (slight) negligence exceed 50% of the fees actually paid by Customer for the Products during the twelve month period before the event giving rise to liability ("Liability Relevant Fees"), whereas the limit for damages caused by gross negligence is 100% of the Liability Relevant Fees paid. These limitations apply to IXOPAY, its affiliates, subcontractors, and sub-processors collectively.

**9.4 Process.** Any damages and recourse claims of Customer are precluded unless they are asserted within twelve months after Customer becomes aware, or should have become aware, of the damage and the liable party, however, no later than within three years after the occurrence of the event giving rise to such claim. The burden of proving IXOPAY's fault lies with Customer.

**9.5 Warranties.** In addition to either party's warranties set forth in the Agreement, each party represents and warrants that: (i) it is a legal entity duly organized, validly existing, and in good standing; (ii) it will comply with all laws applicable to its business for its respective obligations under the Agreement; and (iii) it has all requisite corporate power and authority to execute, deliver, and perform its obligations hereunder.

**9.6 WARRANTY EXCLUSIONS.** CUSTOMER'S RIGHTS UNDER THE EXPRESS WARRANTIES APPLY ONLY IF AND TO THE EXTENT THAT CUSTOMER EXAMINES ALL DELIVERABLES AND NOTIFIES IXOPAY OF DEFECTS BY SUBMITTING AN ERROR NOTIFICATION TO SUPPORT@IXOPAY.COM NOT LATER THAN WITHIN TEN DAYS AFTER IXOPAY'S DELIVERY OF THE RESPECTIVE DELIVERABLE; OTHERWISE, ANY AND ALL REMEDIES OF CLIENT RELATING TO THE DEFECT LAPSE. NOTIFICATION OF HIDDEN DEFECTS SHALL BE NOTIFIED IN THE SAME FORM IMMEDIATELY, BUT NOT LATER THAN WITHIN FIVE DAYS AFTER THEIR DISCOVERY. EXCEPT FOR ANY WARRANTIES



EXPRESSLY PROVIDED IN THE AGREEMENT, IXOPAY EXPRESSLY DISCLAIMS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL WARRANTIES OF ANY NATURE REGARDING THE PRODUCTS, INCLUDING ANY IMPLIED WARRANTIES SUCH AS OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE. IXOPAY DOES NOT WARRANT THAT THE PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR NEEDS OR THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE EXCEPT FOR AS STIPULATED IN THE SLA. IXOPAY DOES NOT PROVIDE ANY WARRANTIES OR SUPPORT SERVICES FOR ANY MODIFICATIONS TO THE PRODUCTS MADE BY CUSTOMER.

## 10. TERM AND TERMINATION

**10.1 Term and Renewal.** The term of the Agreement commences on the Subscription Term Start Date and continues until all applicable Order Forms are terminated in accordance with a party's rights and obligations under the Agreement (the "**Agreement Term**"). The parties waive their right of termination for convenience for the duration of the Subscription Term for each Product, which Subscription Term will be contained in each applicable Order Form. Upon each Renewal Subscription Term, Customer agrees to be bound by the version of the Agreement in effect at the start of the renewal, as published on IXOPAY's website or otherwise made available to Customer, and continued use of the Products after the start of any Renewal Subscription Term constitutes acceptance thereof. Customer acknowledges its obligation to consult the applicable terms prior to each Renewal Subscription Term. Notwithstanding the foregoing, IXOPAY will not implement changes that materially degrade the quality of the services or the core functionalities of the Products without Customer's prior written agreement.

**10.2 Termination for Cause.** Each party may terminate the Agreement including all applicable Order Forms for cause via written notice in accordance with the notice clauses described herein. If the cause for termination relates solely to one or more Order Forms, termination is valid only for those affected Order Forms, and the Agreement and all other unaffected Order Forms shall remain in full force and effect. Cause exists in particular:

- (a) in the event of a material breach (such as Sections 3.2, 4.2.2 to 4.2.9, 7, 12.7 or 12.8) if the breaching party fails to cure the breach within 30 days of the initial notification specifying such breach;
- (b) if new or amended legal requirements under Section 4.2.8.(i), PCI standards, statutory laws, or decisions of a competent authority prohibit or materially impair a party's ability to continue its performance of the Agreement, and such prohibition or impairment cannot be reasonably remedied by adjustments to the Product(s);
- (c) if Customer defaults on payment, in whole or in part, of any fee due, following the expiration of a 30-day grace period;
- (d) if Customer initiates a dispute against IXOPAY;
- (e) if the other party (x) is liquidated, dissolved, or adjudged to be in a state of receivership, (y) makes an assignment for the benefit of creditors, or takes advantage of any law for the benefit of debtors, or (z) ceases to conduct business for any reason, leaving no successor-in-interest; or
- (f) if Customer is subject to a change of control and the entity that directly or indirectly acquires control of Customer is a competitor of IXOPAY, or if Customer or any entity that controls Customer directly or indirectly acquires control of a competitor of IXOPAY, whereby a change of control means acquisition of more than fifty percent (50%) of voting securities or the sale of all or substantially all assets.

**10.3 Effect of Termination.** In the event of termination or expiration of the Agreement, Customer shall immediately pay to IXOPAY all fees due and payable through the date of expiration or termination. If the parties mutually agree to terminate an Order Form for reasons other than under Section 10.2 above and another Order Form is still in effect, then the terms and conditions of the Agreement (including all terms related to the payment of fees) shall continue to govern until any such remaining Order Form expires or is terminated. For the avoidance of doubt, IXOPAY is under no obligation to develop, provide, or transfer any source code, proprietary software, or internal configurations to Customer or any third party as part of any termination process or otherwise.

10.3.1. **Data Export.** Upon termination of a Platform subscription by either party, Customer must first use the self-service Data Export functionality available through the Platform to retrieve all relevant data. To the extent Customer is unable to retrieve certain data using this functionality, IXOPAY will, upon request and subject to additional fees, to the extent such fees are permissible under applicable laws, (i) transfer tokens to a provider of Customer's choice as specified in the Documentation; and (ii) provide reasonable assistance, with an advance fee estimate based on applicable hourly rates, for exporting additional data that is readily available within IXOPAY's systems but cannot be retrieved through the Platform's functionalities.

10.3.2. **Migration Support.** If Customer requires additional support beyond the preceding Data Export subsection, including for migration to another service provider or its own infrastructure ("**Migration Support**"), IXOPAY may offer such services at its sole discretion. Migration Support must be requested by Customer within 30 days following termination, and any offer relating thereto will expire if not accepted within 14 days of receipt. Migration Support is subject to (i) full payment of all outstanding fees due under the Agreement and (ii) an upfront payment of 50% of the estimated Migration Support fees, to be charged at IXOPAY's then-current hourly rates.

**10.4 Survival.** Any provision that expressly states it shall survive or which, by its nature, must survive the completion, expiration, termination, or cancellation of the Agreement shall so survive.

## **11. FORCE MAJEURE**

**11.1 Force Majeure.** "**Force Majeure**" means the occurrence of an event or circumstance that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that party proves: (a) that such impediment is beyond its reasonable control; and (b) that it could not reasonably have been foreseen at the time of entering into the Agreement; and (c) that the effects of the impediment could not reasonably have been avoided or overcome by the affected party. In absence of proof to the contrary, the following events shall be presumed to fulfill conditions (a) and (b) above: (i) war (whether declared or not), invasion, civil war, riot, rebellion, and revolution, military or usurped power, insurrection, act of terrorism, sabotage, or piracy; (ii) currency and trade restriction, embargo, sanction; (iii) final and binding act of authority, whether lawful or unlawful, compliance with any law or governmental order, expropriation, nationalization; (iv) epidemic, pandemic, or natural disasters; (v) explosion, fire, destruction of equipment,



prolonged breakdown of supply chains, telecommunication, information systems, or energy, including power outages by grid operators, as well as interruption or destruction of data lines; (vi) general labor disturbance, such as boycott, strike, and lock-out.

**11.2 Notice.** Each party will notify the other party of Force Majeure without undue delay under the circumstances, and as soon as the impediment ceases to impede performance of its contractual obligations. The affected party is obliged to take all reasonable measures to limit the effect of the Force Majeure event.

**11.3 Miscellaneous.** A party successfully invoking this Section 11 is relieved from its obligations under the Agreement (excluding monetary obligations but including non-performance of obligations by subcontractors impacted by Force Majeure) and from any remedy for breach of contract from the time at which the Force Majeure causes the inability to perform, provided that the notice is given without delay as required in Section 11.2. Where the effect of the impediment invoked is temporary, the above consequences shall only apply for its duration. Where the duration of the impediment invoked causes that a fundamental, typically underlying, or jointly presumed condition of the contract does not apply or ceases, either party may terminate the Agreement with effect to the last day of the following calendar month. Additionally, the Agreement may be terminated by either party with immediate effect as soon as the duration of the Force Majeure exceeds 60 days.

## **12. GENERAL TERMS AND CONDITIONS, GOVERNING LAW, MISCELLANEOUS**

**12.1 Relationship of the Parties.** IXOPAY and Customer operate independently of one another. Nothing in the Agreement shall be construed as creating a joint venture, partnership, agency, or employer/employee relationship between the parties for any purpose, including for tax or employee benefits.

**12.2 Subcontractors.** IXOPAY will be responsible for any acts or omissions of its subcontractors to the same extent as if the act or omission were committed by IXOPAY.

**12.3 Assignment.** Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other party, provided, however, that IXOPAY may assign the Agreement without the requirement of consent to a successor-in-interest following a change in ownership, merger, acquisition, or corporate restructuring, or to any Affiliate. Any assignment in violation of this Section 12.3 shall be null and void. In the event of an assignment, IXOPAY shall provide Customer with written notice thereof.

**12.4 Governing Law.** The Agreement is entered into by the IXOPAY entity below and any actions brought hereunder will be governed by and construed in accordance with the applicable laws identified below (in exclusion of its conflict of law rules) for that IXOPAY entity. The IXOPAY contracting entity is determined by Customer's domicile (registered seat) unless set forth otherwise in the Order Form.

<b>If Customer is Domiciled in:</b>	<b>The Governing Law is:</b>
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United States of America Canada South America Latin America	The State of Delaware, USA
Europe The UK Asia Africa Australia New Zealand	Austria

**12.5 Jurisdiction.** If the IXOPAY Contracting Entity determined by the Order Form is IXOPAY, Inc., all disputes or claims arising out of or in connection with the Agreement, including disputes relating to its validity, breach, termination or nullity, are subject to the exclusive jurisdiction at the competent court in the state of Delaware, United States.

**12.6 Uniform Codes.** The Agreement does not constitute a sale of goods and, therefore, shall not be governed by any codification of Article 2 or 2a of the Uniform Commercial Code. Additionally, the United Nations Convention on Contracts for the International Sale of Goods ('CISG'), any state's enactment of the Uniform Computer Information Transactions Act ('UCITA'), and the United Nations Convention on the Limitation Period in the International Sale of Goods and any subsequent revisions of any of the foregoing, do not apply to the Agreement.

**12.7 Export Compliance.** The Products may be subject to export laws and regulations. Each party agrees that it is not named on any U.S. or EU government denied or sanctioned entity list. Customer agrees it will not permit any Authorized User to access or use the Products in an U.S. or EU embargoed country or in violation of any applicable export laws or regulations.

**12.8 Anti-Corruption.** Each party shall comply with all applicable laws and regulations relating to anti-bribery and anti-corruption, including without limitation the United States Foreign Corrupt Practices Act ('FCPA'), the United Kingdom Anti-Bribery Act, or any similar law or regulation promulgated by any other applicable country. Customer represents and warrants that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or item of value from any IXOPAY personnel or agent in exchange for subscribing to the Products. Reasonable gifts and entertainment provided in the ordinary course of business shall not be a violation of the foregoing restriction, provided that each party will comply with its internal policies and codes of conduct relating to the exchange of gifts or provision of entertainment. Each party will promptly notify the other party of any perceived or actual violations of its obligations as described in this Section 12.7.

**12.9 Non-solicitation.** During the term of the Agreement and for one year following its termination, neither party shall, directly or indirectly (including through Affiliates or external contractors), recruit, hire, engage (whether as an employee, consultant, or freelancer) any individual employed by the other party who was



involved in the performance of the Agreement, or encourage such individual to leave their employment engagement through targeted communication. This restriction does not apply to general, non-targeted recruitment efforts, such as public job postings or job fairs, or to responses to unsolicited inquiries. Nothing in this Section limits either party's right to seek injunctive relief or other legal remedies available under applicable law.

**12.10 Marketing Rights.** For the term of the Agreement, Customer hereby consents and confirms consent by any Affiliates, to be named as reference client including reasonably required use of logos and/or trademarks of Customer or their Affiliate(s) owning such rights in (i) a "reference clients" subsection of the Website of IXOPAY (currently [ixopay.com/company/clients](http://ixopay.com/company/clients) or similar), (ii) IXOPAY Platform presentations and other sales pitch decks, and (iii) in IXOPAY's business premises.

**12.11 Notice.** All notices under the Agreement directed (i) to IXOPAY shall be sent by email to [legal@ixopay.com](mailto:legal@ixopay.com), (ii) to Customer shall be sent to Customer's main point of contact specified in the Order Form. Such communications are deemed effectively served upon transmission to the email address(es) provided by each. Any changes must be promptly communicated to the other party's address.

**12.12 Waiver of Contractual Right.** The failure of either party to enforce any provision of the Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.

**12.13 Remedies not Exclusive.** Unless otherwise expressly stated, the remedies in the Agreement shall not be exclusive of other remedies that either party may have against the other party and shall not limit either party's ability to seek other remedies available under law or in equity. Unless otherwise agreed, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.

**12.14 Entire Agreement.** This MSA, together with any Order Form, the DPA, the SLA, and any other written contractual agreements set forth the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior oral and written understandings, quotations, communications, and agreements. Without prejudice to anything to the contrary in this MSA, the Agreement shall only be amended or modified by a written instrument signed by authorized representatives of the parties.

**12.15 Severability, Headings.**

If a provision is found to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed written and shall be construed and enforced as so limited. If such invalid or unenforceable provision cannot be rendered valid through limitation, it shall be replaced with a valid and enforceable provision that most closely reflects the parties' original economic intent. The same applies to any unintentional contractual gaps in the Agreement. The various section headings of the Agreement are included solely for convenience and are not intended to modify, define, limit, or expand the intent of the parties.

