

SOFTWARE TERMS OF SERVICE

Last Update: October 2023

These Terms of Service apply to the provision of Services by Xplor to Client. By executing the Order Form, Client agrees to be bound by the terms of the Order Form and these Terms of Service (together this **Agreement**).

1.1 DEFINITIONS

1.2 In this Agreement the following words and expressions have the following meanings unless otherwise defined in the Order Form:

Acceptable Usage Policy means the acceptable usage policy in respect of the Solution (as may be updated by Xplor from time to time), located at <https://www.xplortechnologies.com/us/acceptable-use-policy>.

Additional Services means the additional services set out in the Order Form (if any).

Affiliate means, in respect of any specified person or entity, any other person or entity that, at the time of determination, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified person or entity.

Agreement means this agreement, which consists of the Order Form and these Terms of Service.

Applicable Data Protection Laws means all federal, provincial, municipal or other applicable statutes, laws or regulations of any governmental authority in any jurisdiction governing the collection, use or disclosure of Personal Data, including, without limitation, the *Personal Information and Protection of Electronic Documents Act* (Canada) and equivalent provincial, federal, municipal, state and foreign legislation, each when and as applicable, and each as they come into effect and/or as may be amended from time to time.

Applicable Law means all applicable laws, statutes, ordinances, principles of common law, rules and regulations (including all Applicable Data Protection Laws).

Cardholder Data means credit card numbers, CVV, expiration dates, billing address, and cardholder name as entered by Client and/or end users.

Change has the meaning given to it in Section 8.1.

Change of Control means any transaction which results in a person who immediately prior to such transaction did not have Control of Client acquiring Control of Client.

Change Requirements has the meaning given to it in Section 8.2.1.

Clearances means all rights, licenses, permissions, consents, registrations and other clearances required: (a) to enable Xplor to provide the Services and the Solution; and (b) in respect of the Client Materials in order for Xplor to use them in connection with its obligations under this Agreement.

Client means the client set out in the Order Form

Client Materials means any and all equipment, data, information, content, branding and other materials uploaded to the Solution and/or otherwise supplied to Xplor by or on behalf of Client (and/or its Permitted Users) for use in connection with the performance of this Agreement.

Client Personal Data means Personal Data relating to Client, its customers and/or end users.

Confidential Information has the meaning given to it in Section 14.1.1.

Connected Account Agreement means a Stripe Connected Account Agreement entered into between Client or Client's Affiliates and Stripe and as updated from time to time. The applicable agreement is located at [https://stripe.com/\[CountryCode\]/connect/account-terms](https://stripe.com/[CountryCode]/connect/account-terms) where "[Country Code]" is the two letter code for the jurisdiction in which Your Connected Account (as defined in the Connected Account Agreement) is located.

Contract Year means each Year commencing on the date of the Agreement as included on the Order Form.

Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

Defaulting Party has the meaning given to it in Section 13.1.

Delivery means arrival at the delivery location agreed in writing between the parties, regardless of any failure by Client to take delivery.

Derivative Work means any revision, improvement, enhancement, modification, adaptation, customization, translation, update or upgrade to or derivative of the Solution and any Proprietary Materials, including those made in response to any feedback or suggestions from Client.

Early Termination Fees means the amount equal to the relevant monthly Fees multiplied by the number of months remaining in the Initial License Period or Renewal Period (as appropriate).

Fees means the fees set out in the Order Form, this Agreement or as otherwise notified to Client.

Force Majeure Event has the meaning given to it in Section 11.6.

Go Live Date means the go live date set out in the Order Form if any.

Hardware means any hardware which will be made available to Client as part of the Additional Services.

Indemnified Infringement has the meaning given to it in Section 9.3.

Indemnified Party has the meaning given to it in Section 12.3.

Indemnifying Party has the meaning given to it in Section 12.3.

Information has the meaning given to it in Section 5.8.

Initial License Period means the initial license period set out in the Order Form.

Insolvency Event means, in respect of a party, the occurrence of one or more of the following events: (a) an inability to pay its debts when they become due; (b) the making of an order, or passing of a resolution, for that person's liquidation, administration, winding-up, or dissolution (apart from for the purposes of a solvent amalgamation, reorganization or reconstruction); (c) the appointment of a receiver, manager, trustee, liquidator, administrator, custodian or similar officer over all or any substantial part of the assets of that person which is not

discharged within 14 days or taking possession by any such official in any involuntary case or other proceeding commenced against such party; (d) a general assignment for the benefit of creditors; (e) any corporate action to authorize any of the foregoing; or (f) anything analogous to any of the events described in (a) – (e) above being suffered by that person in any jurisdiction.

Intellectual Property Rights means all intellectual property rights of any nature worldwide including: (a) copyright, patents, trademarks, goodwill, source identifying matter, works of authorship, database rights, designs, format rights, inventions, know-how, trade secrets, techniques, confidential information, customer and supplier lists and other proprietary knowledge and information (whether registered or unregistered); (b) intellectual property rights in any software and technology; (c) applications and all rights to apply for registration for any of the foregoing; and (d) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world in each case for their full term and together with any revivals, renewals or extensions.

Liabilities means any and all costs, losses, liabilities, obligations, damages, deficiencies, penalties, fines, interest and expenses.

License Period means the Initial License Period and any Renewal Period(s).

Order Form means the order form (in whatever form) signed by or otherwise accepted by the parties in which these Terms of Service are referenced, including any and all Annexes.

Payment Services has the meaning given to it in Section 5.6.

PCI has the meaning given to it in Section 5.6.

Permitted Users means the employees, contractors, Affiliates, franchisees, consultants, advisors, independent coaches or trainers of Client (and any other category of permitted end user authorized by Client) to be granted access to the Solution, subject to any limitations set out in the Solution Functionality.

Personal Data means any information which, on its own or when reasonably combined with other available information, relates to an identified or identifiable natural person..

Personal Data Breach means, in addition to any definition for any similar term (e.g., “data breach”) provided by Applicable Data Protection Laws a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data.

Professional Services means the professional services provided by Xplor as set out on the Order Form.

Proprietary Materials means all methods, methodologies, products, processes, tools, techniques, inventions, databases, know how, software or other materials (and all Intellectual Property Rights thereto) owned or licensed by Xplor, which are comprised within the Solution or otherwise utilized by Xplor in the performance of this Agreement.

Records has the meaning given to it in Section 10.4.

Renewal Period has the meaning given to it in Section 2.2.

Services means the Set-Up Services, the Support Services and the Additional Services and Professional Services where relevant.

Service Limit: means any Xplor standard service limitations related to particular Services as notified to Client from-time-

to-time in writing, notified to Client within the Solution or as otherwise identified in an Order Form.

Set-Up Services has the meaning given to it in Section 3.1.

Solution means the software solution set out in the Order Form.

Solution Functionality means the Solution functionality set out in the Order Form.

Stripe means Stripe, Inc or an Affiliate of Stripe, Inc.

Terms of Service means the terms set forth in these Terms of Service, including any and all Schedules.

Support Services means the support services set out in the Order Form (if any).

Term has the meaning given to it in Section 2.1.

Terminating Party has the meaning given to it in Section 13.1.

Terms of Service means these terms and conditions including any Annexes to the Order Form.

Third Party Claim has the meaning given to it in Section 12.3.

Third Party Services has the meaning given to it in Section 5.5.

User Content means any fitness, wellness and health or other related text, photographs, videos, contact and location information, communications or other content uploaded or posted on the Services by Client, its Affiliates, Permitted Users or end users.

Xplor means the Xplor entity defined as Xplor in the Order Form.

Xplor Content means content, materials, information, audio, graphics, photos, text, videos and or other collateral provided by Xplor.

Xplor Loss has the meaning given to it in Section 5.9.

Year means each consecutive period of 12 months during the License Period.

- 1.3 References to **parties** are to Xplor and Client, each a **party**.
- 1.4 References to **Sections**, **Schedules** and **Annexes** are to Sections in and schedules to these Terms of Service and annexes to the Order Form.
- 1.5 Headings are inserted for convenience only and will not affect the construction of this Agreement.
- 1.6 References to **persons** include natural persons, companies and other corporate bodies, unincorporated associations, partnerships, firms and government bodies, governments, states and any other organisations.
- 1.7 The singular includes the plural and vice versa.
- 1.8 Use of the terms **include(s)**, **including**, **such as** or similar will be construed without limiting the generality of the words preceding those terms.
- 1.9 In the event of any conflict between the terms of the Order Form and these Terms of Service, the terms of the Order Form will take precedence.
2. **COMMENCEMENT & DURATION**
- 2.1 This Agreement will commence on the date the Order Form is signed (or otherwise accepted if online) by both parties and will continue, unless terminated earlier in accordance with its terms, until expiry of the License Period (the **Term**).
- 2.2 Following the Initial License Period, this Agreement will automatically renew for successive periods of 12 months (each a **Renewal Period**) unless either party provides written notice of termination to the other party at least 60

days prior to the expiration of the Initial License Period or any Renewal Period.

2.3 Xplor will be entitled to increase the Fees payable by notifying Client no less than two (2) months prior to such increase. Where such increase is greater than CPI and Client does not agree to that Fee increase, Client may terminate this Agreement without penalty by providing written notice to Xplor within ten (10) days of receiving notice from Xplor notifying Client of an increase to the Fees payable. In such case termination will take effect on and from the date the Fee increase was due to take effect. Otherwise, Client will be deemed to have accepted the Fee increase two (2) months from being notified of it.

2.4 Xplor may vary this Agreement in respect of any item of pricing contained in the Fees or otherwise in respect of any service provided if there is an increase to the fees applied by third parties that apply to the services, such as card scheme fees and/or interchange, but only to the extent of and to reflect such change.

3. **SERVICES**

3.1 Subject to Client complying with Section 6 and paying any applicable fees, Xplor will configure and integrate the Solution for use during the License Period (the **Set-Up Services**) up to the Service Limit (where applicable). The parties will work together in good faith to agree a target go live date. If the Set-Up Services have not been completed on or before the target go live date due to the act(s) or omission(s) of the Client then Xplor will be entitled to charge Client its reasonable costs associated with the Set-Up Services to that date on a time and materials basis and any agreed implementation fees will become immediately due and payable without discount.

3.2 If applicable, Xplor will provide the Support Services and/or the Additional Services and/or the Professional Services to Client during the License Period up to the Service Limit (where applicable).

3.3 Xplor agrees to provide the Services up to the Service Limit (where applicable):

3.3.1 in a professional manner, using due skill and care; and

3.3.2 using suitably qualified personnel with appropriate experience.

3.4 Client acknowledges that unless otherwise explicitly provided in the Order Form, the Solution has not been designed specifically for Client.

3.5 Client acknowledges and agrees that the Solution and the Services (including any Xplor Content) are not intended to constitute or comprise advisory services of any kind. Client will be solely responsible for establishing that the Solution and the Services are fit for Client's purposes and that their receipt and use comply with its legal obligations. Without limiting the generality of the foregoing, to the extent that Xplor provides Client with any customer terms and conditions, waivers, landing pages, marketing formats or other templates or suggested forms (and/or any similar resources) pursuant to the Services, Client acknowledges and agrees that such documents are provided for illustrative purposes only and are used at Client's sole risk. Client will be solely responsible for obtaining appropriate legal advice in respect of its terms and conditions with its customers, the use and regulatory compliance of such documents and/or any activities undertaken by it using, or otherwise in connection with, the Solution and/or the Services.

3.6 Without limiting Section 3.5 above, Client acknowledges and agrees that the Services and any Xplor Content are for

informational use only. Nothing contained in the Services, including the Xplor Content, is intended to be a substitute for, nor does it replace, professional healthcare or wellness advice, diagnosis or treatment. Client acknowledges, and must ensure that its Permitted Users and end users acknowledge, that Xplor and its Affiliates are not engaged in the practice of medicine, and all decisions made will be Client's or its end users exclusive responsibility. XPLORE EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR ANY ADVERSE CONSEQUENCES OR DAMAGES RESULTING FROM CLIENT, ITS AFFILIATES, PERMITTED USERS OR END USERS', RELIANCE ON THE SERVICES, XPLORE CONTENT OR ANY INFORMATION PROVIDED THEREFROM.

3.7 Client acknowledges and agrees that the Services are not directed at children. Client hereby understands and agrees that Client will be solely responsible for ensuring compliance with all applicable children's privacy laws and regulations, including obtaining all necessary consents, in connection with Client authorizing access and use of the Services by individuals under the age of 18.

3.8 Notwithstanding the generality of section 3.7, Client agrees that it, its Affiliates, staff, employees, contractors, consultants, advisors, independent coaches or trainers and end users, will not a) direct or target the Services to children or individuals under the age of 18 or otherwise market the Services using content that could be construed as directed or targeted to children or individuals under the age of 18; or b) knowingly collect any information from children or any individuals under the age of 18 in connection with or through the Services unless it has the specific consent from the parents or legal guardians of such children/individuals in compliance with all applicable law, including but not limited to the Children's Online Privacy Protection Act (COPPA).

3.9 Xplor may make available to Client free, trial or beta Services from time to time at no charge to Client, in Xplor's sole discretion. These Terms and Conditions apply to Client's use of any free, trial or beta Services. ANY FREE, TRIAL OR BETA SERVICES ARE PROVIDED "AS IS" WITH NO WARRANTIES OF ANY KIND. XPLORE IS NOT RESPONSIBLE FOR ANY DATA OR CLIENT MATERIALS, INCLUDING RETENTION OR RETURN, WHEN CLIENT USES OR ACCESSES FREE, TRIAL OR BETA SERVICES. Xplor may discontinue, or suspend Client's use of any free, trial or beta Services at any time, with or without notice and without any further obligations or liability to Client. Any free, trial or beta Services may also be changed to a subscription with a fee at Xplor's sole discretion, and upon prior notice to Client. Upon such notice, Client's right to continue to use such services on a free, trial or beta basis shall cease on the earlier of the effective date specified in the notice or upon conversion to a subscription with a fee.

3.10 Client agrees that its purchase of the Solution and Services is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments by Xplor regarding future functionality or features.

3.11 Xplor may suspend and/or temporarily cease providing the Solution or any Services (a) during planned downtime, (b) in connection with a Force Majeure event (as described in Section 11.6), (c) if it reasonably believes any malicious software is being used in connection with Client's account, or (d) if it reasonably believes suspension is necessary to protect the rights of any of its customers or end users of the Solution or any Services at any time.

- 3.12 Notwithstanding any other provision of this Agreement, Xplor may from time to time in its sole discretion withdraw or decommission a product, software, Solution or a Service that Client is using and will, if practicable, give Client reasonable prior notice of this.
4. **HARDWARE**
- 4.1 Xplor agrees that any Hardware provided by it to Client pursuant to the Additional Services will: (a) comply in all material respects with any description agreed under the Order Form; and (b) be fit for the intended purpose specified in the Order Form.
- 4.2 To the extent that the provision of the Additional Services includes the provision of Hardware for permanent retention by Client:
- 4.2.1 risk in the Hardware will pass to Client on Delivery;
- 4.2.2 title to the Hardware will pass to Client on receipt in full by Xplor of the corresponding Fees; and
- 4.2.3 until title to the Hardware has passed to Client:
- (a) Client will store the Hardware separately from all other goods held by Client so that it remains readily identifiable as Xplor's property;
- (b) Client will not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;
- (c) Client will maintain the Hardware in satisfactory condition and keep it insured with a reputable insurer for its full price against all risks; and
- (d) if Client is in breach of its payment obligations under this Agreement, Xplor may require Client to deliver up the Hardware and, if Client fails to do so within five (5) days of the request, enter any premises where the Hardware is stored in order to recover it.
- 4.3 The parties acknowledge and agree that any specified Delivery dates are estimates only. Xplor will use reasonable endeavours to meet such Delivery dates and will keep Client reasonably updated as to any required changes. The parties acknowledge that Xplor will be entitled to deliver Hardware in instalments where it deems appropriate. Client will reimburse Xplor for any costs and expenses arising out of Client's failure to take delivery of the Hardware.
5. **ACCESS TO THE PLATFORM**
- 5.1 Subject to Client complying with its obligations under this Agreement, Xplor grants to Client a non-exclusive, non-transferable, non-sub-licensable license for the License Period to access the Solution solely for the purpose of enabling Permitted Users to use the Solution Functionality.
- 5.2 Xplor will provide Permitted Users with access to the Solution, subject to each Permitted User generating a unique username and password. It will be the responsibility of Client to ensure that the Permitted Users keep their usernames and passwords secure and confidential at all times and Client will promptly notify Xplor of any actual or suspected unauthorized disclosure. Client will notify Xplor of the details of all Permitted Users reasonably in advance in writing.
- 5.3 Client will:
- 5.3.1 comply, and will ensure that its Permitted Users comply, with the Acceptable Usage Policy; and
- 5.3.2 indemnify, defend and hold harmless Xplor and its Affiliates against any and all Liabilities suffered or incurred by Xplor and/or its Affiliates arising out of or in connection with its breach of Section 5.3.1.
- 5.4 Without limiting Xplor's other rights or remedies, Xplor reserves the right to suspend access to the Solution (including, without liability, to remove or delete any Permitted User or other end user of the Client) without liability if at any time Xplor knows or reasonably suspects that Client and/or any Permitted User is in breach of the Acceptable Usage Policy and/or any other term(s) of this Agreement. Client will remain liable for the Fees during any period of suspension of its access under this Section.
- 5.5 Xplor or third parties may make third party content, data, software, or other functionality available through, or for use in conjunction with, the Solution or otherwise in connection with using the Services (**Third Party Services**). Third Party Services are not Services or part of the Solution Functionality and Xplor makes no warranties of any kind in respect of Third Party Services or other non-Xplor products or services, whether or not they are provided by an Affiliate, compatible with the Solution or otherwise designated as "recommended" or "approved" by Xplor. Any procurement, access or use by Client of a Third Party Service, and any exchange of data between Client and the provider of such Third Party Service, is solely between Client and such provider. Without prejudice to any restriction in this Agreement, if Client enables or installs any Third Party Service for use with the Solution or Services, Client agrees (and confirms that it has the right, power and authority to agree) that Xplor may allow the provider of the Third Party Service to access Client data (including Client Personal Data) as required for the interoperation of that Third Party Service with the Solution, and Xplor is not responsible for any disclosure, modification or deletion of such data resulting from such access. Xplor may restrict or disable access to any Third Party Services that are made available through the Solution or the Services without notice and for any reason, including if the provider ceases to make it available. Client's use of Third Party Services:
- 5.5.1 is entirely at its own risk and Xplor shall have no liability whatsoever in connection with the same; and
- 5.5.2 may be subject to additional terms, conditions and policies applicable to such Third Party Services (such as terms of service or privacy policies of the providers of such Third Party Services).
- 5.6 **Payment Services.** Xplor offers the ability to process payments through the Solution (**Payment Services**). Payment Services are provided by our third party payment processor partners and are deemed to be Third Party Services for all purposes under this Agreement. Any procurement by Client of Payment Services will be subject to a separate merchant agreement which will be solely between Client and the third-party payment processor. If Client uses Payment Services it agrees that it will comply with the terms and conditions of any applicable merchant agreements and all applicable card network rules, policies, laws and regulations, at all times while using such Payment Services. Client also agrees that it will comply with the relevant portions of the Payment Card Industry (PCI) Data Security Standard (**PCI**) when collecting, accessing, storing, processing or otherwise using credit card information from its users.
- 5.7 To the extent that Client enters into a Connected Account Agreement with Stripe in respect of Payment Services,

Client authorizes Xplor to perform certain activity in respect of Client's Connected Account (as defined in Client's Connected Account Agreement with Stripe) and to share certain data with Stripe in order to communicate information about transactions and refunds, account balance adjustments, handling of disputes (including chargebacks) as well as take any other actions necessary to manage Client's Connected Account on Client's behalf.

- 5.8 Client is responsible for the accuracy and completeness of the information provided to Xplor and/or to Stripe in respect of its Connected Account (**Information**) and Client is responsible for ensuring the accuracy of such Information is maintained throughout the term of this Agreement. Client agrees to indemnify, defend and hold harmless Xplor and its Affiliates against any third party claim against Xplor or its Affiliates which arises as a result of any failure to provide and maintain accurate Information.
- 5.9 Client acknowledges that, in the event that Stripe suffers loss due to activity in respect of Client's Connected Account (including, but not limited to, in respect of transactions, chargebacks, refunds, reversals or fines) and Stripe cannot collect any amount due to it directly from such Connected Account, Stripe will deduct such amounts from Xplor's or its Affiliates' account(s) or otherwise require Xplor or its Affiliates to indemnify and pay Stripe in respect of those amounts (the **Xplor Loss**). Client therefore indemnifies, defends and holds harmless Xplor and its Affiliates against any Xplor Loss that Xplor or any of its Affiliates suffer as a result of any activity on Client's Connected Account. Client agrees and authorizes Xplor to instruct Stripe to withhold any Xplor Loss from any sums payable to Client and to pay such withheld amount to Xplor.
- 5.10 The Payment Services may include functionality that enables Client to receive recurring or subscription payments from its customers. If Client uses the Payment Services to submit recurring or subscription transactions, it agrees to comply with Applicable Law and card scheme rules, including clearly informing customers in advance of submitting the initial transaction that they will be charged on an ongoing basis and explaining the method for unsubscribing or cancelling their recurring billing or subscription.
- 5.11 Xplor may, on Client's reasonable request, assist Client with disputes with Stripe regarding chargebacks. Client acknowledges that neither Xplor nor Stripe shall be obliged to investigate the validity of any chargeback or dispute, and that any decision or determination by Xplor and/or Stripe as to the validity and extent of any chargeback shall be final and binding. In no circumstance will Xplor be liable for the payment of any sums with respect to any chargeback or chargeback costs or fees related thereto. Client shall remain fully liable for any fees or costs and shall reimburse Xplor in the event Xplor is charged any fees or costs for such chargeback, and such fees or costs shall be included in the definition of Xplor Loss.

6. **CLIENT OBLIGATIONS**

- 6.1 Client will:
- 6.1.1 provide such Client Materials as Xplor may reasonably require to perform its obligations under this Agreement (including providing all information Xplor deems necessary to comply with anti-money laundering and sanctions Applicable Laws). Xplor's obligations under this Agreement shall be conditional on Xplor successfully completing (which Xplor shall determine in its sole discretion) all required anti-

money laundering, counter terrorism financing and other applicable customer due diligence checks in respect of the Client. Xplor may terminate this Agreement immediately on written notice to the Client in the event that such due diligence checks are not adequately (in Xplor's sole discretion) completed.

- 6.1.2 provide all Client Materials to Xplor in such timeframes and formats, and via such methods, as Xplor may reasonably require;
- 6.1.3 obtain all necessary Clearances;
- 6.1.4 cooperate fully with Xplor and provide such information, access and assistance as Xplor may reasonably require in the performance of this Agreement;
- 6.1.5 ensure that it meets any dependencies notified by Xplor to Client from time to time (including the minimum technical requirements for user IT equipment, network access and other matters not in Xplor's control);
- 6.1.6 comply with any additional responsibilities of Client set out in the Order Form; and
- 6.1.7 carry out its obligations under this Agreement, and access and use the Solution, in accordance with all Applicable Law, including but not limited to Applicable Data Protection Laws.
- 6.2 Client will include appropriate terms and conditions in its agreements with its end users that are at a minimum as restrictive as these Terms of Service. Throughout the term of this Agreement, Client and its Affiliates will ensure compliance by its Permitted Users and end users with the relevant provisions of those terms and conditions. Client is solely responsible for its own relationships and agreements with any and all Permitted Users and end users, and Xplor has no responsibility or liability of any kind. Any references in this Agreement to Client access or use of the Services is deemed to include access or use by its Affiliates, staff, employees, contractors, consultants, advisors, independent coaches or trainers, and Permitted Users or other end users, as applicable.
- 6.3 Client understands that by posting User Content, Client, or its Permitted Users, have no expectation of privacy for such User Content. All User Content shall comply with the Acceptable Use Policy.
- 6.4 Client shall ensure that its collection, use, sharing, notice, consent and control of data complies with all Applicable Data Protection Laws. Client is solely responsible for any liability resulting from Client or its Affiliate's handling of Cardholder Data.
- 6.5 As between Client, its Permitted Users and end users, Client acknowledges that any disputes regarding ownership of any User Content or other Client Materials that have been uploaded to the Solution and/or Services are between Client and the Permitted User, end user or third party licensor, and Xplor has no responsibility or liability related thereto. Client understands and hereby agrees that all Client Materials and User Content are Client's sole responsibility. Under no circumstances shall Xplor be liable in any way for any Client Materials or User Content including, but not limited to, any errors, inaccuracies, misuse, misappropriation, omissions, and/or loss of any content, or for any liability, claim, actions, harm, cost, judgment, proceeding, expense (including legal fees and costs), or damage of any kind incurred as a result thereof.

7. **FEES**

- 7.1 Xplor will invoice Client for, and Client will pay, the Fees in accordance with the Payment Schedule.
- 7.2 Payments by Client to Xplor will be made by electronic transfer to the bank account specified on the relevant invoice or otherwise as agreed in writing by Xplor. In the event Client authorizes payment by credit card, Client hereby grants Xplor permission to process the applicable payments. Client agrees to promptly pay Xplor for all Fees owed plus any past due charges and any additional charges incurred by Xplor in the event of any refusal by your bank or credit card issuer to pay any amount to Xplor for any reason.
- 7.3 Without limiting any other right or remedy of Xplor, if Client fails to pay any instalment of the Fees by its due date for payment:
- 7.3.1 Client will pay interest on the overdue amount at the rate of 1% of the outstanding balance per month (19.5% compounded per annum), or the maximum interest permitted by applicable law (whichever is less). Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Client will pay the interest together with the overdue amount;
- 7.3.2 Xplor will be entitled to suspend performance of its obligations under this Agreement without liability until such non-payment is remedied; and
- 7.3.3 Client will pay to Xplor any and all collection costs incurred by Xplor in collection of late payment together with the overdue amount.
- 7.4 In this Agreement all sums payable are stated exclusive of any applicable sales tax, which will be payable by Client in addition at the prevailing rate.
- 7.5 If Client believes a payment has been processed in error, it must provide written notice to Xplor within thirty (30) days after the date of payment specifying the nature of the error and the amount in dispute. If notice is not received by Xplor within such thirty (30) day period, the payment will be deemed final.
- 7.6 Payments by Client to Xplor will be made without deduction or withholding unless required by law. If any deduction or withholding is required by law, Client will pay such additional sum as is required to ensure that the net amount received and retained by Xplor equals the amount that would have been received without such deduction or withholding.

8. **CHANGE CONTROL**

- 8.1 Subject to Section 8.4, if either party wishes to change the scope or execution of the Services, it will submit details of the requested change (**Change**) to the other in writing.
- 8.2 Where either party requests a Change, Xplor will, within a reasonable time:
- 8.2.1 provide to Client written details of:
- (a) the likely time required to implement the Change;
 - (b) any necessary variations to the Fees arising from the Change; and
 - (c) any other impact of the Change on this Agreement,
- (collectively, the **Change Requirements**); or

8.2.2 notify Client that such Change is not reasonably practical.

8.3 If Client notifies Xplor in writing that it wishes to proceed with any Change under Section 8.2.1, implementation of such Change will be subject to agreement of the Change Requirements in accordance with Section 15.10.

8.4 The parties acknowledge and agree that Xplor will be entitled to update, upgrade or modify the Solution at its own cost at its discretion provided that no such change will materially diminish the Solution Functionality (unless such change is required by Applicable Law). Nothing in this Agreement will oblige Xplor to make available to Client any new feature or function of the Solution not included within the Solution Functionality.

8.5 Xplor may vary:

8.5.1 any provision(s) of these Terms of Service by giving Client no less than two (2) months' prior written notice; and/or

8.5.2 any provision(s) of this Agreement from time to time by giving Client prior written notice if there is a change to Applicable Law that affects the Services or the Solution but only to the extent required to comply with such change.

In each case, such variations may be notified by reference to materials available on Xplor's website, as set out in Section 15.3.

8.6 Where any change pursuant to Section 8.5.1 will have a material adverse effect on Client, Client shall promptly notify Xplor of such material adverse effect and Client and Xplor shall work together in good faith to mitigate the impact of the change to the Client. In the event the parties determine that it is not possible to mitigate the material adverse effect caused by the change, Client shall be entitled to terminate this Agreement with effect from expiry of the variation notice by provision of no less than one (1) month's prior written notice to Xplor. Where Client terminates pursuant to this Section, Xplor shall reimburse Client for any prepaid Fees attributable to the period after the date of termination.

9. **INTELLECTUAL PROPERTY RIGHTS**

9.1 Client hereby grants, and warrants that it is (and will remain) entitled to grant, to Xplor and its Affiliates a royalty-free, fully paid-up, worldwide, non-exclusive, sublicensable license to use the Client Materials (and any Intellectual Property contained therein) during the Term solely for the purpose of performing its and their obligations under this Agreement.

9.2 Client agrees to indemnify, defend and hold harmless Xplor and its Affiliates from and against any and all Liabilities suffered or incurred by Xplor and/or its Affiliates arising out of or in connection with: (a) any failure of Client to obtain all necessary Clearances; and/or (b) any claim that the use of the Client Materials in accordance with this Agreement infringes the rights (including the Intellectual Property Rights) of any third party.

9.3 Subject to Section 9.4, Xplor agrees to indemnify, defend and hold harmless Client from and against any and all Liabilities suffered or incurred by Client arising out of or in connection with any claim that the use of the Solution, excluding any Client Materials, in accordance with this Agreement infringes the Intellectual Property Rights of any third party (**Indemnified Infringement**).

- 9.4 In no event will Xplor, its employees, agents and/or sub-contractors be liable to Client to the extent that the alleged infringement is based on:
- 9.4.1 bespoke or customized functionality specifically required by Client;
 - 9.4.2 a modification of the Solution by Client or anyone acting under its direction or on its behalf;
 - 9.4.3 Client's use of the Solution in a manner contrary to the instructions given to it by Xplor (including in the Acceptable Use Policy); or
 - 9.4.4 Client's use of the Solution after notice or becoming aware of the alleged or actual infringement.
- 9.5 If Xplor determines a risk of an Indemnified Infringement, Xplor may, without liability: (a) replace or modify any functionality of the Solution with substantially equivalent or replacement functionality (as applicable) so that the same is no longer infringing; (b) obtain for Client the right to continue using the Solution; or (c) terminate this Agreement and reimburse Client for any prepaid Fees attributable to the period after the date of termination (calculated, unless otherwise agreed in writing, on a pro-rata in time basis).
- 9.6 Client acknowledges and agrees that:
- 9.6.1 as between the parties, all rights, title and interest (including all Intellectual Property Rights) in and to the Solution and any Proprietary Materials will at all times be and remain the property of Xplor (or its licensors), including any Derivative Work;
 - 9.6.2 to the extent any rights to such Derivative Works have vested in the Client by operation of law, Client hereby assigns all of its rights, title and interest in such Derivative Works to Xplor; and
 - 9.6.3 any rights in and to the Solution and the Proprietary Materials not expressly granted to Client under this Agreement are reserved to Xplor and any uses not expressly permitted are prohibited.
- 9.7 Xplor will be entitled to make reasonable use of, and reference to, Client's name and trade or service marks in any promotional or corporate material relating to Xplor's services.
- 9.8 Each party agrees to execute such documents and/or do such things as the other may reasonably require during the Term, or at any time after termination or expiry of this Agreement, to give effect to the provisions of this Section 8.5.
10. **DATA PROTECTION**
- 10.1 Client is and shall remain the owner of all Personal Data provided or made accessible by Client to Xplor under this Agreement. Xplor will collect, use and disclose such Client Personal Data in accordance with (i) the instructions of Client, (ii) as necessary to carry out the business purposes of the Agreement, (iii) as otherwise authorized by Client in writing; and/or (iv) as permitted or required under Applicable Data Protection Laws. Xplor will:
- 10.1.1 require any persons authorized to collect, use or disclose Personal Data in performance of the Services to commit themselves to confidentiality;
 - 10.1.2 only collect, use, retain, or disclose this Personal Data for the purpose of providing the Services specified in this Agreement for Client, or as otherwise permitted by Applicable Data Protection Laws;
 - 10.1.3 not use, retain, or disclose this Personal Data for any purpose (including for a commercial purpose) outside of providing the Services for Client and/or as otherwise allowed by this Agreement, except for: (i) solely internal uses, limited to the improvement of its Services; and (ii) detecting security incidents and protecting against fraudulent or illegal activity;
 - 10.1.4 upon the expiration of the Agreement or termination of the Services, no longer use Client Personal Data except as permitted by this Agreement or otherwise required by Applicable Data Protection Law;
 - 10.1.5 not sell or share any such Personal Data with any third party, nor combine Personal Data from the Client with Personal Data of any person(s) collected from Xplor's own interaction with a consumer except as permitted by Applicable Data Protection Law and/or this Agreement;
 - 10.1.6 ensure that any subcontractors appointed by it (in accordance with Section 10.5) are bound by terms similar to those of this Section 10.1;
 - 10.1.7 taking into account the nature of Xplor's use of Client Personal Data and the information available to Xplor, provide reasonable assistance to Client in complying with Client's obligations under Applicable Data Protection Laws
 - 10.1.8 to the extent reasonably practical, on the expiration or termination of this Agreement and upon reasonable request and notice from Client, promptly return or delete all Client Personal Data, unless Applicable Law prevents Xplor from doing so
 - 10.1.9 notify Client as soon as reasonably possible after discovery of a Personal Data Breach relating to the Client Personal Data; and
 - 10.1.10 take appropriate and reasonable technical and organisational measures against the unauthorized or unlawful processing of Client Personal Data, and against the accidental loss or destruction of, or damage to Client Personal Data.
 - 10.1.11 In the event that Xplor determines that it can no longer meet its obligations under this Agreement, notify Client as soon as reasonably possible allowing Client the right to take reasonable and appropriate steps to stop and remediate unauthorized use of Personal Data.
- 10.2 In the event that Xplor receives any complaint, notice, request, or communication (from either a governmental authority or an individual in relation to their rights), Xplor shall notify Client and provide reasonable co-operation and assistance to Client in responding to such complaints, notices, requests, or communications, if and only to the extent Client cannot otherwise address the complaints, notices, requests, or communications without Xplor's assistance.
- 10.3 Xplor will keep at its normal place of business, such records as required by Applicable Data Protection Laws (whether in electronic form or hard copy) relating to its Processing of Client Personal Data (**Records**).
- 10.4 Client may, upon reasonable notice, request information reasonably necessary to establish that Xplor has met its obligations under this Section 10.

- 10.5 Client hereby grants general authorization to Xplor to utilize subcontractors in providing the Services under this Agreement. Xplor shall provide Client with a list of current subcontractors upon reasonable request, and shall inform Client of any intended changes concerning the addition or replacement of subcontractors, to which changes Client has the right to reasonably object. The Parties agree to operate in good faith to resolve any objections. Xplor shall enter into a written agreement with each subcontractor that imposes materially similar obligations as Xplor's obligations as set forth under this Agreement.
- 10.6 Client warrants and undertakes that:
- 10.6.1 it will comply with all of its obligations under Applicable Data Protection Laws;
- 10.6.2 its disclosure to and Xplor's collection, use and disclosure of Client Personal Data in accordance with this Agreement complies with Applicable Data Protection Laws;
- it has notified and obtained the consent of individuals for Xplor's (and, where relevant, Stripe's) collection, use and disclosure of Client Personal Data; and
- 10.6.3 where relevant, it has obtained the specific consent of individuals in accordance with Applicable Data Protection Laws to permit the sending of unsolicited electronic direct marketing communications.
- 10.7 Notwithstanding anything else in this Section 10 or the Agreement to the contrary, Client acknowledges and agrees that Xplor will be entitled to aggregate and/or anonymize Client Personal Data and to use such aggregated and/or anonymized data for its business purposes (including, but not limited to, providing, improving, developing Xplor's products and services and/or complementary products and services of Xplor's partners) during and after the Term.
- 10.8 Client agrees that this Agreement (including the Order Form), constitutes its complete and final instructions to Xplor in relation to the collection, use and disclosure of Personal Data.
- 10.9 Client acknowledges that Xplor may disclose information, which may include Client Personal Data to any governmental authority, law enforcement authority or regulatory authority.
- 10.10 Notwithstanding anything else in this Section 10 or the Agreement to the contrary, Client acknowledges, consents and agrees that Xplor may use the Personal Data it collects from Client to communicate with Client by email and send Client information about its exclusive offers and promotions, as well as the exclusive offers and promotions of Xplor's third-party partners. Client may opt-out of receiving promotional emails from Xplor at any time by contacting Xplor or clicking the 'unsubscribe' button in the emails. Additional information regarding how to contact Xplor and its privacy practices is available in the Xplor group privacy notice available at this link: <https://www.xplortechnologies.com/us/privacy-notice>. Additional information regarding Xplor's third-party partners' privacy practices can be found by clicking on the links contained within the body of the email and navigating to the identified partners' websites.
11. **LIABILITY**
- 11.1 Nothing in this Agreement will exclude or limit either party's liability in respect of: (a) death or personal injury caused by the negligence of that party; (b) fraud (including fraudulent misrepresentation); or (c) any liability which may not otherwise be lawfully excluded or limited.
- 11.2 SUBJECT TO SECTION 11.1, XPLOR AND ITS AFFILIATES WILL NOT BE LIABLE IN CONTRACT, TORT (INCLUDING NEGLIGENCE, BREACH OF STATUTORY DUTY, LIABILITY UNDER INDEMNITIES OR OTHERWISE) OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT FOR: (A) ANY SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT, LOSS, DAMAGE, COST, AND/OR EXPENSE WHATSOEVER; OR (B) ANY LOST PROFITS, LOST GOODWILL (OR ANY OTHER DAMAGE TO REPUTATION), LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF ANTICIPATED SAVINGS, BUSINESS INTERRUPTION, LOSS OF OPPORTUNITY, LOSS OF BARGAIN, OR LOST OR CORRUPTED DATA, IN EACH CASE REGARDLESS OF WHETHER ANY OF THESE TYPES OF LOSSES ARE DIRECT, INDIRECT OR CONSEQUENTIAL. IN EACH CASE, EVEN IF A PARTY IS AWARE OF THE POSSIBILITY THAT SUCH LOSSES MIGHT BE INCURRED.
- 11.3 SUBJECT TO SECTION 11.1, XPLOR'S AND ITS AFFILIATES' AGGREGATE LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE, BREACH OF STATUTORY DUTY, LIABILITY UNDER INDEMNITIES OR OTHERWISE) OR OTHERWISE UNDER OR IN CONNECTION WITH ANY AND ALL CLAIMS MADE RELATING TO THIS AGREEMENT WILL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES (EXCLUDING TAXES AND ANY THIRD PARTY FEES) PAID IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE FIRST SUCH CLAIM.
- 11.4 XPLOR AND ITS AFFILIATES WILL HAVE NO LIABILITY IN RESPECT OF: (A) ANY DELAY OR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT TO THE EXTENT THE SAME RESULTS FROM CLIENT'S ACTS OR OMISSIONS; OR (B) ANY LIABILITIES SUFFERED BY CLIENT WHICH ARISES DIRECTLY OR INDIRECTLY FROM XPLOR'S OR ANY OF ITS AFFILIATES' COMPLIANCE WITH CLIENT'S INSTRUCTION, OR ANY OF THE DATA RECEIVED BY XPLOR OR ANY OF ITS AFFILIATES BEING INACCURATE OR INCOMPLETE.
- 11.5 CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SOLUTION, THE SOLUTION FUNCTIONALITIES AND THE SERVICES IS AT CLIENT'S SOLE RISK. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO SECTION 11.1, THE SOLUTION, THE SOLUTION FUNCTIONALITIES AND THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND WITHOUT WARRANTY OF ANY KIND, AND XPLOR AND ITS AFFILIATES MAKE NO, AND HEREBY DISCLAIM ALL, REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES WITH RESPECT TO THE SOLUTION, THE SOLUTION FUNCTIONALITIES AND THE SERVICES, WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW, CUSTOM, TRADE USAGE, COURSE OF DEALING OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. XPLOR AND ITS AFFILIATES DO NOT WARRANT THAT THE SOLUTION, THE SOLUTION FUNCTIONALITIES AND/OR THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SOLUTION, THE SOLUTION FUNCTIONALITIES AND/OR THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS AND/OR BUGS IN THE SOLUTION, THE SOLUTION FUNCTIONALITIES AND/OR THE SERVICES WILL BE CORRECTED.

- 11.6 NEITHER PARTY WILL BE LIABLE FOR ANY FAILURE, REDUCTION IN SERVICE OR DELAY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IF AND TO THE EXTENT THAT SUCH FAILURE, REDUCTION IN SERVICE OR DELAY IS THE RESULT OF ANY EVENT OR CIRCUMSTANCE THAT IS OUTSIDE THE REASONABLE CONTROL OF THE AFFECTED PARTY (A **FORCE MAJEURE EVENT**). WHERE A PARTY'S PERFORMANCE IS OR MAY BE AFFECTED BY A FORCE MAJEURE EVENT, IT WILL INFORM THE OTHER PARTY AS SOON AS REASONABLY PRACTICABLE AFTER BECOMING AWARE OF THE FORCE MAJEURE EVENT. THIS SECTION 11.6 DOES NOT APPLY TO ANY OBLIGATION OF EITHER PARTY TO MAKE PAYMENT TO THE OTHER.
12. **INDEMNIFICATION**
- 12.1 Client's indemnification obligations under this Agreement shall be limited to the obligations set forth in Sections 5.3.2, 5.8, 5.9 and 9.2.
- 12.2 Xplor's indemnification obligations under this Agreement shall be limited to the obligations set forth in Section 9.3.
- 12.3 Without limiting a party's indemnification obligations, where either party wishes to be indemnified (the **Indemnified Party**) by the other party (the **Indemnifying Party**) to any extent in respect of any claim, demand, threat or proceeding brought by any third party against the Indemnified Party in respect of which the Indemnifying Party would be liable under any indemnity given under this Agreement (a **Third Party Claim**):
- 12.3.1 the Indemnified Party will inform the Indemnifying Party as soon as reasonably practicable of the Third Party Claim (including the particulars of it in reasonable detail);
- 12.3.2 subject to the Indemnifying Party dealing expeditiously with the Third Party Claim following notice from the Indemnified Party, the Indemnified Party will not respond, enter into any correspondence or take any legal action or other measures in respect of the Third Party Claim; and
- 12.3.3 subject to the Indemnifying Party doing so expeditiously and in a manner that does not bring the Indemnified Party into disrepute, the Indemnifying Party will be entitled, on notice, to take full conduct of a Third Party Claim and the Indemnified Party will comply with the Indemnifying Party's reasonable instructions in relation to that Third Party Claim.
13. **TERMINATION**
- 13.1 Either party (the **Terminating Party**) will be entitled to terminate this Agreement immediately on written notice to the other party if the other party (the **Defaulting Party**):
- 13.1.1 is in material breach of this Agreement (being a single event which is, or a series of events which are together, a material breach) and either such breach is not capable of remedy or, if the breach is capable of remedy, the Defaulting Party has failed to remedy such breach within 14 business days of receiving written notice from the Terminating Party requiring it to do so; or
- 13.1.2 suffers an Insolvency Event.
- 13.2 Xplor will have the right to terminate this Agreement immediately by written notice to Client:
- 13.2.1 if Client breaches Section 6.1 or 7.1;
- 13.2.2 if Client ceases to hold any of the Clearances; or
- 13.2.3 if Client, by virtue of its activities or undergoing a Change of Control that, in Xplor's reasonable opinion, could bring Xplor into disrepute.
- 13.3 On expiry or termination of this Agreement:
- 13.3.1 all licenses granted by Xplor under this Agreement will terminate and Client will immediately cease accessing and/or using the Solution;
- 13.3.2 all outstanding invoices and any unvoiced sums attributable to the period up to termination shall become immediately due and payable; and
- 13.3.3 all provisions of this Agreement will cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue will continue in full force and effect.
- 13.4 Notwithstanding any term of this Agreement, if (a) Client terminates this Agreement other than pursuant to Section 13.1; or (b) Xplor terminates this Agreement pursuant to Section 13.1 or Section 13.2, in each case prior to the expiry of the Initial License Period or Renewal Period (as the case may be) then, in addition to any outstanding Fees owed at termination, Client shall pay Xplor the Early Termination Fee.
- 13.5 Termination or expiry of this Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.
14. **CONFIDENTIALITY**
- 14.1 Subject to Sections 14.2, 10.7 and 10.10, each party undertakes to the other that:
- 14.1.1 it will treat as confidential: (a) the contents (including the financial details) of this Agreement; and (b) all information relating in any manner to the business and/or affairs of the other party or its Affiliates which may be communicated to it under or in connection with this Agreement (**Confidential Information**);
- 14.1.2 it will not use, or disclose to any person, any Confidential Information except as follows:
- (a) each party may disclose Confidential Information as required by Applicable Law, a court of competent jurisdiction or any governmental, stock exchange (where applicable and in accordance with listing rules) or regulatory authority provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as reasonably possible and furnishes only that portion of the Confidential Information that is legally required to be disclosed and maintains the confidentiality of such Confidential Information, in accordance with this Agreement, for all other purposes; and/or
- (b) each party may disclose Confidential Information: (i) to its professional advisors; (ii) as necessary to exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (iii) to employees and/or contractors with a need to know such Confidential Information who

are subject to obligations at least as protective of such Confidential Information as this Section 14 prior to such disclosure; or (iv) as otherwise agreed by the parties in writing.

14.2 Section 14.1 does not apply to any information which the recipient party can evidence is: (a) in the public domain through no fault of the recipient party; (b) obtained by the recipient party from an unrestricted third party; or (c) has already been independently generated by the recipient party.

14.3 Subject to Section 11.1, no party will be entitled to the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Agreement. Neither party will have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

14.4 Client is not obligated to provide Xplor with ideas, suggestions, improvements, feature requests, comments or other communications regarding Xplor's products, Services or technology (collectively, **Feedback**). Any Feedback that is offered or communicated to Xplor is voluntary and shall be the property of Xplor without any compensation to Client, its Affiliates or Permitted Users. Feedback will not be considered Confidential Information. If Client chooses to give Xplor Feedback, Xplor reserves the right to reproduce, use, disclose, distribute, exploit or otherwise act on such Feedback without any obligation.

15. GENERAL

15.1 Each party represents, warrants and undertakes to the other that it has full capacity and authority to enter into and to perform this Agreement.

15.2 Any notice given under this Agreement will be in writing and served by hand, prepaid recorded or special delivery, prepaid international recorded airmail or email to the relevant party at the address stated below, or such other address as the relevant party may notify in accordance with this Section. Any such notice will be deemed served at the time of delivery (provided that, in the case of notice by email, no automated delivery failure notice is received by the sender).

Xplor

Attention: Commercial Support with a copy to The Legal Department

Address: Registered office as set out in Order Form

Email: As set out in the Order Form where relevant with a copy to legal@xplortechnologies.com

Client

Attention: Client

Address: Registered office set out in Order Form

Email: As set out in Order Form

15.3 In addition to formal notices given in accordance with Section 15.2, it is agreed between the parties that Xplor may communicate with Client from time to time in relation to its use of and Xplor's provision of the Services by means of newsletters, emails, SMS or text message and messages on its website. It is agreed between the Parties that Xplor may also communicate with Client through products such as the Client Portal. Such communications may include notification of changes to the operating instructions or

network rules, or new or replacement products or services in connection with the Solution and/or Services

15.4 Where Client provides an email address, Client agrees that Xplor may send notices to and rely on the authenticity of communications it receives from that email address as being from and binding on Client. Client must ensure only it and/or persons with authority to act on its behalf have access to its email addresses, that they are kept secure and that it contacts us immediately if it becomes aware or suspects any relevant unauthorised use or security compromise.

15.5 Client shall provide Xplor with complete and accurate account information, including Client's legal company name, street address, e-mail address, contact information of a designated account administrator, and such other contact information as may be requested by Xplor. Client is responsible for keeping its account information up to date, and Client agrees to promptly notify Xplor in writing if such information changes.

15.6 If any court finds that any part of this Agreement is illegal, invalid or unenforceable, that part will be considered removed, but no other part of this Agreement will be affected. If possible, the affected part will be replaced by such valid lawful and enforceable provision as most closely achieves the affected part's original legal, economic or commercial purpose.

15.7 Client may not charge, assign, novate, transfer or otherwise part with any of its rights or obligations under this Agreement without Xplor's prior written consent (not to be unreasonably withheld or delayed). Xplor may assign, novate or transfer its rights and obligations under this Agreement to any Affiliate or to a successor-in-interest by way of merger, consolidation, or corporate reorganization of, or by the purchase of all or substantially all of the assets or the ownership interests in, Xplor or any of its Affiliates. This Agreement will be binding upon and will inure to the benefit of the Parties and their successors and permitted assigns, and any reference to a Party will also be a reference to a successor or permitted assign.

15.8 This Agreement contains the whole agreement between the parties and replaces all prior arrangements relating to its subject matter. The parties agree that this Agreement applies in place of any terms and conditions of Client, any terms attached to (or incorporated by reference into) any purchase order and any Incoterms.

15.9 The waiver by either party of a breach of any term or provision of this Agreement shall not be construed as a waiver of a subsequent breach of the same provision by any party or of a breach of any other term or provision of this Agreement, and the failure by either party at any time to require performance by the other party shall not constitute a waiver of any right to require performance in the future or performance of any other obligation nor prejudice either party with respect to any subsequent action. The observance of any provision of this Agreement may be waived only by mutual consent set forth in a writing signed by both parties.

15.10 Subject to Section 8.5, this Agreement may only be amended, restated, supplemented or otherwise modified by a written document signed by both parties (provided that electronic signatures shall be deemed sufficient).

15.11 No one other than a party to this Agreement, their successors and permitted assignees and Xplor's Affiliates, will have any right to enforce any of the terms of this Agreement.

- 15.12 This Agreement will not be deemed to constitute a partnership or joint venture or contract of employment between the parties.
- 15.13 This Agreement is drafted in the English language. Any translations of this Agreement are provided/produced for convenience only. In the event of any conflict between the English language version of this Agreement and any translation, the English language version will prevail.
- 15.14 No rule of construction that disfavors the drafting party will apply to this Agreement. As used in this Agreement, “including” and words of similar import mean “including but not limited to.” The use of “or” will not be deemed to be exclusive.
- 15.15 The Order Form may be executed in counterparts, each of which when executed will constitute a duplicate original, but all the counterparts will together with these Terms of Service constitute the one Agreement. Delivery of an executed counterpart by electronic mail will be as effective as delivery of a manually executed counterpart. Each party has the option to sign this Agreement by means of an electronic signature system. A party that elects to use such system warrants that the person signing the Order Form on behalf of that party has the requisite authority to bind that party by means of that system. By affixing electronic signatures, the signatories acknowledge and agree that they intend to bind the parties. Any electronic signature constitutes valid signature and will be construed as (and given equal evidentiary weight as) the signatory having signed the document as an original in manuscript.
- 15.16 On notice of any dispute, each party will appoint a senior decision-maker who will use all reasonable endeavours in good faith to settle any dispute arising in connection with this Agreement. If the matter is not resolved by such senior decision-makers within fourteen (14) days of notice of the dispute, either party may issue proceedings pursuant to Section 15.17. Nothing in this Section 15.16 will prevent or restrict a party from seeking injunctive relief in the courts or commencing proceedings where this is reasonably necessary to avoid any loss of a claim due to the statutes of limitations.
- 15.17 Client will comply with all applicable export laws and restrictions and regulations of the Department of Foreign Affairs and International Trade or other Canadian or foreign agency or authority, and will not use the Solution to export, or allow any export or re-export in violation of any such restrictions, laws or regulations. Client represents and warrants to Xplor that it is not a prohibited party or located in, under the control of, or a national or resident of any restricted country, and that will otherwise comply with all applicable export control laws. If Client resides outside the Canada, then in addition to complying with the foregoing, it will comply with any relevant export control laws in its local jurisdiction.
- 15.18 This Agreement and all claims or defenses based on, arising out of, or related to this Agreement or the relationship of the Parties created hereby, including, without limitation, those arising from or related to the negotiation, execution, performance or breach of this Agreement, whether in contract, tort, law, equity or otherwise shall be governed by and enforced in accordance with the laws of Province of Ontario and the federal laws of Canada applicable therein, without reference to its choice of law rules or any principle calling for application of the law of any other jurisdiction. All actions, claims or disputes arising under or relating to this Agreement shall be brought in the courts in province of Ontario. Client waives any objection to any proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.
- 15.19 Without affecting a party’s obligation under Section 12.3.1, each party agrees that it must notify the other of any claim it may have under this Agreement within 6 months of when the asserting party first knew or reasonably should have known of the basis of the claim. Any service of process in relation to such claim must also be made within that time period, otherwise the claim is extinguished.
- 15.20 Client acknowledges that the Services, software, and other Xplor technology and derivatives thereof, may be subject to Canadian export control and economic sanctions restrictions, laws and regulations. Client agrees that all use, exports, and imports related to the Agreement will be in compliance with these restrictions, laws and regulations. Client will not, and will not permit any Affiliate, Permitted User or end user or any other third party, to access, use, transfer, import, or download directly or indirectly, the Solution, Services, content, software, technology or any other materials associated with the Services, into any embargoed or terrorist-supporting country or region, to anyone on or deemed to be covered by, the Consolidated Canadian Autonomous Sanctions List at https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/consolidated-consolide.aspx?lang=eng , or otherwise in violation of any Canada export laws and regulations. Client represents that it is not named on any Canadian government denied persons list.
- 15.21 PLEASE READ THIS PROVISION CAREFULLY; IT INCLUDES A CLASS ACTION WAIVER, WHICH MEANS THAT YOU AGREE TO PROCEED WITH ANY DISPUTE INDIVIDUALLY AND NOT AS PART OF A CLASS ACTION. THIS AGREEMENT ALSO INCLUDES A JURY WAIVER. CLASS ARBITRATIONS, CLASS ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS OR PROCEEDINGS ARE NOT PERMITTED. CLIENT, ITS AFFILIATES AND PERMITTED USERS, HEREBY WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS ACTION AGAINST XPLORE. EACH PARTY HEREBY AGREES TO WAIVE ANY RIGHT TO A JURY TRIAL INVOLVING ANY CLAIMS OR DISPUTES RELATING TO THIS AGREEMENT. IN NO EVENT SHALL ANY CLAIM, ACTION OR PROCEEDING BY CLIENT RELATED IN ANY WAY TO THIS AGREEMENT BE INSTITUTED MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION AROSE.
- 15.22 The software may contain or be provided with components subject to the terms and conditions of “open source” software licenses (“Open Source Software”). Open Source Software may be identified in the Documentation, or Xplor may provide a list of the Open Source Software for a particular version of the Software upon Client’s written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement only with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.
- 15.23 The parties hereto acknowledge that a French version of this Agreement has been made available to the Client, which French version the Client acknowledges having access to. Following such access, the parties hereto agree to be bound solely by the English version of this Agreement, and

that any notice, document or instrument relating to it may be drawn up in English only but without prejudice to any such notice, document or instrument which may from time to time be drawn up in French only or in both French and English. *Les parties aux présentes reconnaissent qu'une version française de la présente convention a été mise à la disposition du Client, version française à laquelle le Client reconnaît avoir accès. Suite à un tel accès, les parties aux présentes conviennent d'être liées seulement par la version anglaise de la présente convention et que tous autres avis, actes ou documents s'y rattachant peuvent être rédigés en anglais seulement mais sans préjudice à tous tels avis, actes ou documents qui pourraient à l'occasion être rédigés en français seulement ou à la fois en anglais et en français.*

