

**Terms and Conditions to LPM Agreement (“T&C”)**

These T&Cs are an integral part of the LPM Agreement. By executing the LPM Agreement you agree to the following:

**1. Definitions**

"Actual Payment Volume"	means the monthly volume of Transactions processed by Merchant in any given calendar month following the Effective Date.
"Affiliate Group Company"	means an entity which is owned by or shares common ownership with Credorax.
"Agreement"	means (a) the LPM Agreement, Schedule 1 and cover letter to the LPM Services Agreement indicating the operational terms; (b) these T&Cs (c) Data Processing Addendum (“DPA”) found at <a href="https://www.credorax.com/legal/gdpr">https://www.credorax.com/legal/gdpr</a> , (d) LPM Specific Terms of Use: <a href="https://www.credorax.com/legal/lpm_spec_tou">https://www.credorax.com/legal/lpm_spec_tou</a> , and any other indicated schedules or appendices as may be provided by Credorax from time to time, which shall constitute the entire agreement of the Parties with respect to this subject matter, superseding all prior representations, warranties, arrangements and agreements between the Parties relating to it.
"Audit"	means an inspection conducted by an Auditor solely for the purpose of verifying Merchant’s compliance with its obligations under this Agreement.
"Auditor"	means any statutory, regulatory, or supervisory body or other external or internal auditor appointed by Credorax.
"Business Day"	means a day other than a Saturday or Sunday or a public holiday in Malta or in the UK and the relevant Payment Scheme country.
"Confidential Information"	means the existence and terms of this Agreement and all other information, including but not limited to business, technical and financial information, disclosed by one Party to the other (whether before or after the date of this Agreement) which is non-public, marked as or has been otherwise indicated to be confidential, which derives value to a Party from being confidential or which would be regarded as confidential by a reasonable business person, save to the extent that such information: is already in the public domain at the time of disclosure; or enters the public domain other than by a breach of any obligation of confidentiality.
"Consumer"	means the end-consumer/end-user and uses one or more Payment Methods.
"Credorax Group"	means any of the Credorax Affiliate Group Companies.
"Default Event"	means an event where: (i) Merchant, its directors or ultimate beneficial owners is/are in breach of any of the terms of the Agreement, applicable laws, or any of the Payment Schemes rules; (ii) Transactions submitted include a percentage of fraudulent or unauthorized Transactions; (iii) Merchant fails to comply with request for information or documentation, including matters related to Consumer due diligence and anti-money laundering; (iv) Merchant engages in misconduct with respect to its business or affairs; (v) changes to the business activities or practices of which Credorax was not informed or bank settlement details have occurred of which Credorax has not approved; and/or (vi) a guarantor withdraws any guarantee in relation to the Agreement; (vii) Merchant engages in the sale of products/goods and/or methods of selling which Credorax has not approved; (viii) Merchant processes any Transactions via its Merchant Account ID for websites not approved by Credorax; (ix) any security provided by the Merchant to Credorax fails or ceases in any respect to have full force and effect for any reason; (x) any other event or series of events which in the sole (but reasonable) opinion of Credorax, may affect Merchant’s ability or willingness to comply with all or any of its obligations under the Agreement, which negatively impacts the integrity, reputation or brand of Credorax or (xi)

	any breach of the Data Protection rules as laid down in Data Protection Addendum available at: <a href="https://www.credorax.com/legal/gdpr">https://www.credorax.com/legal/gdpr</a>
"Effective Date"	means the date of the first Transaction.
"Fees"	means any fees or payments that are due to be paid by Merchant either as consideration for the provision of the Products and Services or any associated or additional charges that may be levied on Merchant in accordance with the Agreement including Chargebacks, costs or penalty payments, as set out in Schedule 1 or in any other invoice or letter of demand.
"Force Majeure"	means unforeseeable circumstances where the performance of Credorax's obligations under the Agreement is not reasonable or practical. Such circumstances include natural calamities, accidents, fires, public disorders, pandemics, walkouts, revolutions, hostilities, legislative acts, government orders and directives of the authorities, which directly or indirectly prohibit the types of business stipulated herein, as well as any other circumstances beyond Credorax's reasonable control.
"LPM Gateway"	means the technical interface description (currently known as the LPM e-power Manual – which may be accessed here: <a href="https://epower.credorax.com/wp-content/uploads/2021/10/CRX-Source-APM-API_V1.8-rev-5.pdf">https://epower.credorax.com/wp-content/uploads/2021/10/CRX-Source-APM-API_V1.8-rev-5.pdf</a> ) setting out the protocols and specifications required to effect an integration of the Merchant's technical systems.
"LPM Chargeback"	means the return of funds to Merchant that are forcibly initiated by the issuing bank of particular Payment Methods, such as direct debit or credit card.
"Local Payment Methods (LPM) Specific Terms of Use"	means a separate document referred to here: <a href="https://www.credorax.com/legal/lpm_spec_tou">https://www.credorax.com/legal/lpm_spec_tou</a> containing the Payment Method Terms of Use and which explicitly forms part of the Agreement.
"LPM Transaction Fee "	means a LPM Fee payable per submitted Transaction to be usually calculated as a fixed amount according to the Transaction types in the Fees.
"Merchant"	means a seller who sells its products or services online or via point of sale.
"Merchant ID"	means the identification number assigned by Credorax to each Merchant that is registered and qualified by Credorax to have the Payment Methods made available to it.
"Merchant Application Form"	means the document provided to Merchant requesting identification, business and other details of Merchant who wishes to access and use the Payment Methods.
"Payment Processing Services"	means the provision of technical and financial services allowing for the electronic transfer of funds.
"Payment Services"	means any of the activities as set out in Part 1 of Schedule 1 to the UK Payment Services Regulations 2009.
"Payment Methods"	means all (a) online payment systems using online banking services; and (b) combined offline/online procedures, such as direct debit; and (c) forms of credit card acceptance.
"Payment Scheme"	means third party Payment Methods granting authorization for the use of the Payment Methods.
"Payment Gateway"	means the electronic commerce payment gateway.
"PCI-DSS"	means the applicable Payment Card Industry Data Security Standards as set out by the PCI Security Standards Council, LLC.
"Processor"	means Credorax, in its capacity as an entity that technically processes electronic payment transactions in their respective form and with which Merchant is technically integrated in order to accept online payments.

"Products and Services"	means the various Payment Methods selected by Merchant, as well as any associated technical processing and payment acquiring services provided under the Agreement.
"Professional Services"	means additional services not covered or contained within the Agreement and which may be added from time to time in the Fees Addendum and is not limited to legal, consulting financial, advisory, technical or other services.
"Projected Payment Volume"	means the monthly volume of Transactions projected by Merchant before or after the Effective Date. The Fees may be determined by Credorax based on the Projected Payment Volume.
"Regulator"	means any statutory or industry body which regulates the business or operations of Credorax and any Credorax Group entity.
"Regulations"	Anti-Money Laundering Laws UK Proceeds of Crime Act 2002 Relevant LPM Rules and Regulations as specified <a href="https://www.credorax.com/legal/lpm_spec_tou">https://www.credorax.com/legal/lpm_spec_tou</a> General Data Protection Regulation (EU) 2016/679 Any other laws or regulations applicable to each Party
"Reserve"	means an amount withheld from the Merchant based on Credorax reasonable assessment of the potential exposure and other liabilities and on the basis of the information provided by the Merchant regarding its anticipated use of the Products and Services at the time of onboarding, as a security against any sums due to Credorax by the Merchant under the Agreement. The Reserve may take the form either of a fixed sum or a percentage of the settlement funds (Rolling Reserve) as may be set by Credorax from time to time and may be funded by one or more of the following means: (i) an extended settlement period of settlement funds to Merchant; (ii) one or more deductions or offsets to any settlement funds otherwise due to Merchant, before any deductions or payments are made from the amounts processed by the Merchant; and/or (iii) transfer of a monetary value to Credorax by or on behalf of Merchant.
"Term"	means the duration of the Agreement as provided for in the Term and Termination Clause.
"Transaction"	means a set of data transmitted to Credorax for processing and transmitting to a Payment Scheme.
"Transaction Payment (net amount)"	means the Transaction amount less any fees that are directly related to the transaction.

## 2. Integration with Credorax

- 2.1. Credorax shall provide its Products and Services as a Processor for the duration of the Agreement and will undertake the technical processing of electronic local payment transactions required specifically for the proper performance of this Agreement and the settlement to Merchant of funds representing the relevant Transaction Amounts.
- 2.2. In its capacity as a Processor, Credorax shall ensure the effective provision of technical processing services to Merchant in accordance with good industry practice and standards.
- 2.3. Except as specifically provided in this Agreement, there are no other warranties, express or implied, including, but not limited to, any implied warranty of merchantability or fitness of the Products and Services for a particular purpose.
- 2.4. Merchant shall comply with the requests of Credorax regarding the integration of its technical systems with the LPM Gateway.
- 2.5. Credorax grants Merchant a personal, non-exclusive, non-transferrable license to use the LPM Gateway and the API, which can display both synchronous and asynchronous payment flows; thereby allowing for transaction based data received for further processing to be transmitted to the acquirer and/or Merchant for the Term of this Agreement.
- 2.6. Credorax shall be free to modify, adjust or extend the LPM Gateway or its API at any time. Should Merchant be required to make modifications accordingly, Credorax shall notify Merchant of such modifications.
- 2.7. All data transmitted by Merchant to Credorax must be in an accessible electronic format in accordance with relevant technical specifications provided by Credorax. Any data received by Credorax that is non-compliant with the required format shall be returned to the Merchant at its own expense.
- 2.8. Merchant shall, at its own expense, ensure the implementation of all software required for the use of the Products and Services within the requested timeframe. Credorax shall provide Merchant with all reasonable support which it may require in order to adhere to the provisions of this clause.

- 2.9. Merchant shall ensure that its systems are operated in such a manner and interface with Credorax's systems in accordance with any technical specifications provided by Credorax and any instructions for use.
- 2.10. Merchant is wholly responsible for the implementation of the Credorax Payment Gateway interface.
- 2.11. Merchants shall implement a documented complaints and escalation procedure with a Consumer support function contactable by email.
- 2.12. Upon termination of this Agreement, Merchant will remove any links to the respective Payment Methods or the logos, Trademarks or other marks of the respective Payment Methods or Payment Scheme unless Merchant has sourced access to the same via a third party.
- 2.13. Upon termination of this Agreement, Merchant will immediately cease the use of the Products and Services, and each Party shall return to the other Party all of the other Party's Confidential Information in its possession and any outstanding Fees and/or Chargebacks (as may be notified to Credorax at any time after the Termination of the Agreement) shall become due and payable.

### **3. Credorax Obligations**

- 3.1. In consideration of the Fees paid by Merchant to Credorax and performance by Credorax of its obligations and duties under this Agreement, Credorax undertakes to provide Payment Processing Services and related Payment Services to Merchant to allow it to accept payments from Consumers via the Products and Services in accordance with this Agreement.
- 3.2. Credorax shall ensure Merchant is provided with the relevant software and technical specifications including LPM Gateway interface documentation required for it to implement and operate, or interface, with the selected Payment Methods. Credorax will also provide in a timely manner to Merchant information and materials about the Payment Methods offered and any information which may be required by Merchant so it may adhere to its obligations under this Agreement.
- 3.3. Credorax shall be the point of contact for all questions arising out of this Agreement.
- 3.4. Credorax shall:
  - 3.4.1. forward transactional data sets for the execution of Merchant's payment to Credorax;
  - 3.4.2. forward issued online payment transactions via the LPM Gateway interface to the respective Payment Scheme;
  - 3.4.3. transfer to Merchant all bank guarantees relating to the respective settled Consumer transactions.
- 3.5. Credorax shall forward to Merchant all Consumer's bank's feedback, which Credorax may have received from the Payment Schemes.

### **4. Merchant Obligations**

- 4.1. Merchant understands, agrees and undertakes to uphold the terms of this Agreement that specifically pertain to the Payment Methods selected by the Merchant, as may be added or amended to from time to time.
- 4.2. Merchant warrants that at all times it has the right, power and ability to enter into this Agreement.
- 4.3. Merchant undertakes that it is compliant and shall remain compliant with all applicable local, state, national and international laws and Regulations, and maintain all licenses, permits and other permissions necessary in connection with the provision of or use of the services under this Agreement and represents and warrants that, at the Effective Date it is not, nor is it aware of any circumstances which would lead to it being, subject to any investigations or proceedings for breach of applicable regulatory laws, fraud or criminal offences.
- 4.4. Merchant is obliged to promptly and without delay pay any applicable Fees which may arise from time to time in accordance with the Agreement.
- 4.5. Merchant shall not treat individual Payment Methods offered more favorably than other Payment Methods offered, in particular with respect to advertising, marketing or promoting such Payment Methods in a manner that could reasonably be held to unfairly position or disadvantage one Payment Method from another based on the display of marks or other branding. Merchant shall not request a surcharge from Consumers in addition to charges already agreed to between Credorax and Merchant for payments made via the respective Payment Methods. This clause shall not affect the right of Merchant to decide at its sole discretion, which Payment Methods (if any) it chooses to expose within a particular market.
- 4.6. Merchant must provide correct bank details, such as account number, sort code, BIC/Swift, IBAN, for receipt of payments. Any resulting additional charges, including vis-a-vis the paying Consumer or due to outstanding receipt of payments, shall be borne by Merchant.
- 4.7. Each Party shall cooperate with and assist, as reasonably possible, the other Party to address any issues affecting provision of the Products and Services under this Agreement where cooperation or assistance from a Party may reasonably be required.

## 5. Term and Termination

- 5.1. This Agreement will start on the Effective Date and will have an initial duration of two (2) years (the "**Initial Period**"), after which this Agreement will be automatically renewed each year, on a yearly basis, for a new period of one (1) year, unless terminated by either Party in accordance with clause 5.2.
- 5.2. After the Initial Period, each Party shall have the right to terminate this Agreement at any time without cause upon three (3) months' prior notice to the other Party.
- 5.3. Without prejudice to any other right or remedy, if:
  - 5.3.1. Merchant is under a Default Event; or
  - 5.3.2. Merchant commits a material breach of this Agreement which is not capable of remedy, or which is capable of remedy, but Merchant fails to remedy such breach within fifteen (15) days of receiving notice from Credorax specifying the breach and requiring the breach to be remedied; or
  - 5.3.3. Merchant or any of its employees, agents or representatives, makes any representation which proves to have been false or misleading in any material respect as of the date made, and with respect to any such representation made in connection with the solvency or financial situation of Merchant (a "**Financial Representation**"), if such Financial Representation becomes false or misleading at any time; or
  - 5.3.4. any litigation, arbitration, administrative or other investigation is commenced against the Merchant, or if Merchant is found guilty of fraud or a criminal offence by a court of law; or
  - 5.3.5. Merchant suffers or may suffer any insolvency event; or
  - 5.3.6. Merchant fails to maintain its regulatory license or authorisation; or
  - 5.3.7. Merchant's business model is no longer supported by Credorax due to business or risk perspective, and/or there is a change to applicable laws and/or relevant scheme affecting Credorax's ability to provide Services to Merchant; or
  - 5.3.8. there is a change of control of Merchant's business that is not accepted by Credorax; or
  - 5.3.9. where in the event of a Force Majeure the performance of Credorax's obligations under this agreement is not reasonable or practical; or
  - 5.3.10. should Credorax reasonably suspect that the Merchant or its Consumer/s are involved with or connected to fraudulent or criminal activity or that the payments being processed on behalf of Credorax are the proceeds of crime;

Credorax may elect to terminate this Agreement with immediate effect, without involvement of a court, by providing the Merchant notice in writing of such termination.

- 5.4. In addition to any rights of termination provided, Credorax may terminate this Agreement with immediate effect pursuant to any regulatory demand, requirement or directive for the cessation of Payment Processing Services or Payment Services by a Regulator, for all or part of the Products and Services provided to Merchant, but shall make all reasonable efforts to satisfy any such regulatory demand, requirement or directive without termination of the Agreement and to provide notice of same to Merchant to enable Merchant appropriate assistance.
- 5.5. Merchant may terminate this Agreement at any time with one (1) month notice in the event that the ownership or control of Credorax is acquired by another entity, merges with another entity, or sells all or substantially all of its assets or shares (an "**M&A Event**").
- 5.6. Termination shall not affect any legal rights or obligations that may already have arisen under this Agreement at the date of termination, or that by their nature shall not be terminated.
- 5.7. Unless otherwise contrary to applicable law or to the Reserve, or to the held guarantee or security, within sixty (60) days of termination of the Agreement, Credorax shall pay the Merchant any net Transaction values less any refunds, Chargebacks or Fees owing for the period between when settlement was last made to the Merchant up until the effective date of termination as communicated to the Merchant by Credorax.

## 6. Fees and Charges

- 6.1. Merchant will pay Credorax all applicable Fees, contributions or costs referred to in this Agreement, as set out and agreed to by the Parties in Schedule 1 – Fees.
- 6.2. All Fees, contributions and costs referred to in this Agreement have been agreed to between the Parties based on Projected Payment Volumes of the Merchant. Should Actual Payment Volumes be substantially less than Projected Payment Volumes or otherwise in the reasonable estimation of Credorax less than an acceptable volume, Credorax reserves the right to negotiate new Fees. If the Parties are unable to reach an agreement in respect of the Fees, each Party has the right to terminate the Agreement upon three (3) months' written notice.
- 6.3. All Fees and other sums payable by the Merchant under this Agreement are exclusive of VAT and any other applicable taxes that may apply hereto under any law or Regulation. The Merchant shall be liable for all taxes

due in connection with the Fees or any other sums payable hereunder, except taxes on Credorax net income.

## **7. Clearing, Settlement and Remittance**

- 7.1. All Transactions must be submitted with the respective Merchant ID provided to Merchant by Credorax. All Transactions shall be subject to the specifications and other technical processing requirements stipulated herein by Credorax.
- 7.2. A clearing statement shall be generated by Credorax and issued to the Merchant electronically per payment.
- 7.3. Settlement shall constitute full and final settlement of any claim that Merchant may have against Credorax with respect thereto and that by settling, Credorax is fulfilling its obligations to transfer settlement funds to Merchant in accordance with the Agreement and Credorax shall have no further liability in this respect to Merchant.
- 7.4. Credorax shall have no obligation to transfer settlement funds under the Agreement where Credorax has not received such settlement funds from the Payment Schemes.
- 7.5. The Merchant further acknowledges that Credorax cannot sell, pledge or utilise for own purposes the receivables from Payment Schemes, resulting from the respective transaction processed, and therefore has to pass-through these receivables without material delay to the Merchant once collected. In addition, in the case where the Agreement has prefunding arrangements with Credorax, Credorax has the right to reclaim the funds from the Merchant if the relevant Payment Scheme does not pay out Credorax.
- 7.6. Settlement shall occur in a frequency as agreed between Parties and shall be subject to certain days of funding delay as stipulated by Credorax in the Agreement as may be amended from time to time in accordance herewith.
- 7.7. Fund remittance shall be made as follows:
  - 7.7.1. Credorax shall aggregate all incoming LPM funds respective to a Merchant on the basis of the Merchant ID.
  - 7.7.2. Subject to the Minimum transaction fee being achieved, remittance of funds less the applicable Fees, Chargebacks, penalties and/or costs, shall be made by bank transfer to the Merchant within the timeframes detailed in the cover letter.
  - 7.7.3. The amount of the funds remitted to the Merchant shall be equal to the amount as stated in the corresponding clearing statement less the applicable Fees, Chargebacks, costs and/or penalties.
- 7.8. Credorax may issue the Merchant an invoice following the relevant Settlement Period should the aggregated funds not be sufficient to meet any Fees owed to Credorax by the Merchant. Unless it notifies the Merchant otherwise, Credorax shall set off the invoice sum payable by the Merchant against subsequent settlement amounts until such sum has been accounted for in full. Credorax may and is authorized to set off the whole or any part of the Merchant's liabilities to Credorax, whether such liabilities are present or future, actual or contingent, or liquidated or unliquidated, against any sums held by Credorax and owed to the Merchant whether under this Agreement or any other agreement between Credorax and the Merchant.
- 7.9. The Merchant shall immediately examine any invoices and/or clearing statement issued to it and immediately notify Credorax in writing regarding any objections, however no later than three (3) weeks following receipt of the respective invoice or clearing statement. Following expiry of the objection period the invoice shall be otherwise deemed approved.
- 7.10. Guarantee and Security: Credorax may require that Merchant procures within thirty (30) days (or such longer period as Credorax may determine is reasonable) from Credorax's request, that a person (or persons) reasonably satisfactory to Credorax provide Credorax with a guarantee, indemnity, cash reserve or other security (including the replacement of any existing security) in such form and over such assets as Credorax may reasonably require to secure the performance of the Merchant's obligations from time to time under this Agreement.
- 7.11. Credorax will be entitled to charge the Merchant for its reasonable external costs incurred in obtaining the guarantee, indemnity, cash Reserve or other security referred to herein.
- 7.12. Credorax may deduct any accruing third party costs directly related to the processing of Transactions, such as third party bank charges, from sums owed by Credorax to the Merchant under the Agreement. Exercise of this right of set off will not prevent Credorax from using any other rights or remedies available to it under the Agreement or otherwise.

## 8. Conversion of Currencies

- 8.1. Merchant hereby authorizes Credorax to convert any amounts (including, without limitation, settlement funds, gross settlement amount, transaction amount, any of applicable Fees, etc.) in any currency ("**Transaction Currency**") into an applicable currency of the account ("**Settlement Currency**"), in its sole discretion. To avoid any doubt, if Transaction Currency is not supported as a Settlement Currency, then the designated amounts will be converted into Euro (EUR).
- 8.2. Conversions shall always be carried out at the rate based on prevailing rates and sources, including but without limitation, Reuters, central banks and others ("**Credorax Exchange Rate**"). Credorax Exchange Rate applied to any amounts shall be concluded by Credorax in its sole discretion.
- 8.3. Merchant shall get the information relating to the applicable Credorax Exchange Rate upon a written request. Credorax shall make Credorax Exchange Rate available to Merchant via periodical reports or in any other manner indicated in any relevant and applicable guidelines, procedures, rules or conditions issued by Credorax.
- 8.4. Merchant acknowledges that the Credorax Exchange Rate may fluctuate, and the Merchant shall in no case hold Credorax liable for any fluctuations in the Credorax Exchange Rate.
- 8.5. Any objections relating to the applicable Credorax Exchange Rate shall be raised in writing not less than ten (10) Business Days upon issuance of a periodical report to Merchant or after settlement of funds to the Merchant's bank account, the earlier to occur. In cases that no such objections were raised in a specified time frame as mentioned above, the calculations of conversions shall be considered as final and non-disputable.
- 8.6. All Transactions and settlement funds are subject to audit and final checking by Credorax and may be adjusted for inaccuracies and errors. Merchant acknowledges that all monies provided to Merchant are provisional and subject at any time to: (i) Chargebacks, refunds, penalties and costs in accordance with the Payment Scheme; and (ii) any of its obligations to Credorax under the Agreement.
- 8.7. Merchant shall maintain a zero or positive merchant account balance in every currency with Credorax at all times during and after the term of the Agreement. If at any time the settlement funds are not sufficient to cover the amounts due by Merchant under the Agreement, Merchant shall transfer the full amount of funds due as instructed by Credorax within fourteen (14) calendar days of receipt of written notice. In the event Merchant does not make the balance positive within fourteen (14) calendar days, Credorax shall – without prejudice to any further claims for compensation or damages – be entitled to interest on arrears from Merchant, at the rate of 5% per annum above the published European Central Bank 1mth Euribor rate. Such interest shall accrue on a daily basis until actual payment of the overdue amount, whether before or after any related judgment.
- 8.8. Furthermore, Merchant authorizes Credorax to recover amounts due under the Agreement in the settlement currency as agreed between the Parties in accordance herewith if the funds are unavailable in the processing currency as indicated in the cover letter or any subsequent notice amending the same.
- 8.9. Merchant acknowledges that throughout the term of the Agreement and after its termination for any reason, Credorax shall be entitled to defer (for such period as it shall in its reasonable discretion consider appropriate) the date upon which settlement would be due to be paid, in order to protect its position with respect to actual or anticipated Chargebacks, refunds, penalties and costs or any other liability of Merchant or relating to any Transactions, whether actual or anticipated. Without limiting the foregoing, in the event that Credorax is of the opinion that Merchant's financial condition deteriorates or its Transactions present increased risk exposure to Credorax, in Credorax's sole (but reasonable) opinion, then Credorax may (without prejudice to any other of its rights) defer settlement for such periods it deems appropriate to cover the increased risk exposure.

## 9. Refunds

- 9.1. Where a Merchant requests Credorax to refund a transaction and where refunds are possible via the relevant Payment Method, Credorax will submit a refund request to the relevant Payment Scheme.
- 9.2. Credorax shall process the refunds in a timely and accurate manner.
- 9.3. Credorax shall assume no liability for disputes, loss or damages incurred to Merchant as a result of a Payment Scheme, or other third party erroneous, duplicated or unauthorized processing of refund.
- 9.4. Notwithstanding Credorax's set off rights under clauses 7.8 and 7.12, all invoiced amounts shall be due for payment at the latest within fourteen (14) days of Credorax issuing an invoice or clearing statement to the Merchant.
- 9.5. Notwithstanding the provisions under clause 7.9, Credorax shall be entitled, upon giving prior written notice, to discontinue its services until the outstanding invoices or statements are paid in full should the Merchant be in arrears with its payment.

## 10. Reserve

- 10.1. Credorax may, and is authorized to, establish a Reserve, as may be stipulated by Credorax from time to

time, for the purpose of providing a source of funds to pay Credorax for any and all amounts owed or that may be owed by Merchant pursuant to this Agreement, as a condition of providing Credorax's Products and Services to Merchant. The Reserve will be notified to the Merchant, and Credorax shall be entitled, where reasonable, to adjust this Reserve at any time notice of which shall be provided to Merchant.

- 10.2. Credorax may take into account the following factors when determining the amount of any Reserve:
  - 10.2.1. the Merchant ceases its business or a substantial part thereof;
  - 10.2.2. the Merchant materially alters the nature of its business;
  - 10.2.3. the risk of Chargebacks or other reversals of Merchant's payments;
  - 10.2.4. the overall financial standing of the Merchant;
  - 10.2.5. the Merchant becomes or may become insolvent or is otherwise unable to pay its debts as they fall due;
  - 10.2.6. Credorax, at its sole discretion, has a reasonable belief that the Merchant will be unable to perform its obligations under this Agreement;
  - 10.2.7. Credorax receives a frequent number of enquiries from Payment Schemes, police or regulatory authorities relating to the business activities of the Merchant in connection with actual or suspected fraud or financial crime;
  - 10.2.8. the provisions within Suspension clause have not been triggered or brought into effect.
- 10.3. Credorax reserves the right to retain the Reserve and/or any other requested guarantee or security for a period of six (6) months after termination of the Agreement, or six (6) months after the goods and/or services of the last processed Transaction have been delivered to the Consumer, whichever occurs later (the "**Chargeback Period**"). Provided that where upon the termination of the Chargeback Period, any liabilities remain contingent or pending, Credorax may extend the Chargeback Period to the extent necessary to cover such liabilities. Merchant acknowledges that the release of the Reserve and any outstanding balances may take place up to two (2) months following the lapse of the Chargeback Period.
- 10.4. In addition and without prejudice to the Reserve, Credorax may block and retain a percentage or the full amount of the settlement funds as a cover against actual and anticipated losses from Chargebacks, Fees or any other liabilities which cannot be recovered by Credorax. Furthermore, Credorax may (without prejudice to any other rights Credorax may have) defer settlement of sums due to the Merchant, in Credorax's sole (but reasonable) opinion, for a specified period in the event (i) Merchant fails to provide information within the timescales set hereunder; (ii) the financial information indicates a deterioration in the financial condition of the Merchant; or - (iii) of an increased risk exposure to Credorax. Credorax shall exercise the rights as stipulated in this section in good faith. In the event that the financial condition and risk profile of Merchant improves, in the reasonable opinion of Credorax, then Credorax will return any (or part thereof) of the funds withheld in excess of the Reserve.

## **11. Certification, Registration, Due Diligence**

- 11.1. In order to access and use the Payment Methods, Merchant should submit a Merchant Application Form, upon which Credorax shall issue a Merchant ID. Unless otherwise agreed by the Parties, Merchant shall not be permitted to access or use a particular Payment Method before such Merchant ID is issued.
- 11.2. Merchant shall submit to Credorax any requested information and documentation concerning Merchant as may be required solely for the purposes of ensuring compliance with the Payment Method Terms of Use and Credorax's obligations as a regulated financial institution, including any applicable requirements under anti-money laundering laws and Regulations. Credorax may request Merchant to regularly inspect such submitted information for any changes or modifications. Prior to issuing a Merchant ID, Credorax shall evaluate all such information including the website of Merchant, against the specifications of the individual Payment Scheme in accordance with an appropriate risk management process and in particular with regard to the criteria referred to in clause 13. Any changes in such information concerning Merchant must be reported to Credorax immediately.
- 11.3. The evaluation criteria used by Credorax in the foregoing clauses are subject to regulatory requirements and the specifications of the individual Payment Schemes and therefore subject to change at any time.
- 11.4. Credorax shall be entitled to withhold, at its sole discretion, the allocation of a Merchant ID following such evaluation if it has knowledge of or reasonable suspicion that Merchant is infringing or will infringe one or several of its incumbent obligations in accordance with this Agreement or that Merchant presents a high risk of financial loss for Credorax or risk of money laundering. Should Merchant not meet the requirements of the Payment Method Terms of Use, Credorax shall be entitled to withhold or revoke allocation of a Merchant ID.

## **12. Obligation to Inform, Security and Auditing**

- 12.1. Merchant shall ensure that it implements appropriate processes and policies within the sphere of its staff

and premises, in order to prevent the misuse of equipment or unauthorized access to sensitive data either by company staff or unauthorized persons.

- 12.2. Where necessary in order to fulfill its obligations under this Agreement, Credorax is entitled to forward all relevant information collected from Merchant to clearing centres, Acquirers, Payment Schemes, authorized banking partners and credit agencies, authorities, or other parties as provided by law and Regulations.
- 12.3. Merchant undertakes to immediately make available to Credorax upon request or optionally allow access to such relevant data and documents, which evidence Merchant's compliance with its obligations under this Agreement or in order for Credorax to adequately respond to requests from the Payment Schemes or a Regulator, or in order to comply with an Audit. Such data and documentation shall include information, and documentation regarding the Merchant's corporate structure and its business in accordance with the Payment Method Terms of Use and any of Credorax's regulatory obligations.
- 12.4. If Credorax suspects that Merchant, any of its affiliates or Consumers, as applicable, are involved in or connected with money laundering, terrorist financing, fraud or any other financial crime, Credorax shall be entitled to suspend parts or the entirety of the Agreement without notification and without stating any reasons and, if necessary and where applicable, to temporarily aggregate funds and withhold the settlement of Transaction Amounts.
- 12.5. Merchant shall indemnify Credorax from all direct financial consequences arising from Merchant's infringement of one or more of the obligations under this clause.
- 12.6. Credorax may, in complying with its obligations under the Regulations, request information from Merchant in relation to its company structure. Merchant warrants that any information pertaining to shareholders contained therein and the scope of their participation at the Effective Date is complete and accurate.

### **13. Obligations and Acceptance of Payments**

- 13.1. Merchant undertakes to process or otherwise accept payments exclusively for products or services that have been delivered or are yet to be delivered on the basis of an actual contractual relationship between the Merchant and a Consumer.
- 13.2. Merchant shall not accept payments for goods or services:
  - 13.2.1. that are not provided on the Merchant's own account/website;
  - 13.2.2. that are not provided within the scope of the normal business operation of the Merchant as stated in the Merchant Application Form;
- 13.3. In order to maintain the security of online payments facilitated under this Agreement, Merchant undertakes to implement the necessary technical solutions, processes or policies in order to ensure that transaction flows are secured with end to end encryption in accordance with industry standards.
- 13.4. Merchant shall inform Credorax immediately with regard to any changes of internet URLs or website addresses being used by a Merchant additional to those stated in the Merchant Application Form.
- 13.5. Merchant shall comply with all legal provisions and information relating to distance sales agreements as may be applicable, and that the Products and Services are provided in conjunction with Consumer protection laws, if applicable.

### **14. Documentation and Data Security**

- 14.1. Merchant shall manage and secure all API keys and login credentials used by authorized users in connection with their use of the LPM Gateway and protect the same against unauthorized use or disclosure.
- 14.2. Merchant shall keep secure and not disclose any Consumer identification and/or authenticating data that could be used to place orders. Merchant shall make sure that:
  - 14.2.1. any Consumer identification and/or authenticating data that could be used to place orders shall not be stored electronically or written down in another form;
  - 14.2.2. during the input of Consumer identification and/or authenticating data that could be used to place orders, third parties are prevented from obtaining such data.
- 14.3. In the event that Merchant discovers that a third party has attained knowledge of Consumer identification and authenticating data, or misuse is suspected, Merchant shall immediately inform Credorax thereof and where possible Credorax may disable access to the Products and Services until the matter is resolved.
- 14.4. Credorax shall not, at any time, be held liable for a breach of data security obligations, where such breach is due solely to an act or omission of Merchant, whether known or accidental.
- 14.5. Merchant shall ensure the legality of the collection, processing, use and transfer of the Personal Data of the respective Consumers that use the Payment Methods. In transferring Personal Data to Credorax, Merchant shall take the needed steps to ensure that such data was lawfully collected and

may be processed, used and transferred to the respective Payment Scheme. Credorax shall not be obliged to verify the legality of the collection, processing and use of such data. Merchant shall indemnify Credorax against any claims of third parties which are based on the fact that the collection, processing, use or transfer of Personal Data was unlawful.

- 14.6. The obligations set out under clauses 14.1 to 14.5 will survive and remain in force after termination of this Agreement.
- 14.7. Both Parties shall ensure proper back-up and protection of their data and observe any relevant provisions of data protection law.
- 14.8. Both Parties shall collaborate in good faith in order to ensure the safeguarding of data transfer up to its submission to LPM Gateway, which shall be within the scope of responsibility and risk of Merchant.
- 14.9. Merchant will ensure that all access data, passwords or certificates are stored securely and protected against access from unauthorized parties. Should any actual or potential breach in data security occur (including situations where Merchant reasonably suspects a data breach or unauthorized third party access to its systems), Merchant must inform Credorax with immediate effect.
- 14.10. Each Party undertakes to notify the other with immediate effect regarding any malfunctions of LPM Gateway of which it becomes aware of during the Term of the Agreement.

## 15. Data Protection

- 15.1. Unless otherwise indicated, the capitalised terms in this clause shall have the same meaning as those assigned to them under the Data Protection Addendum to this Agreement, also available at <https://www.credorax.com/legal/gdpr>. In the interest of clarity, the provisions of the Data Protection Addendum are an integral part of this Agreement and in the event of conflict between this clause and the Data Protection Addendum, the provisions of the Data Protection Addendum shall apply.
- 15.2. The Parties hereby acknowledge that:
  - 15.2.1. the determination of the type of transactions to be accepted by Credorax does not include the extent, degree and amount of Personal Data to be processed, which determination is made solely by the Merchant;
  - 15.2.2. the bank accounts to which settlement is requested is determined by the Merchant and Credorax does not process Personal Data to effect settlement;
  - 15.2.3. anonymized and aggregated data is used for the purposes of reporting in line with Credorax's legal obligations;
  - 15.2.4. in the case of Chargebacks, Credorax may access and process Consumer data, including but not limited to, name, surname and transaction amount in order to verify and effect the Chargeback solely at the request of the Merchant or Consumer and in accordance with their instructions.
- 15.3. In view of the foregoing, the Parties hereby acknowledge and agree that in the event that Credorax processes data which qualifies as Personal Data in terms of Data Protection Laws, Credorax acts solely on the instructions of the Merchant, and therefore acts solely as data processor. The Data Protection Addendum to this Agreement regulates the relationship between the Merchant as Controller and Credorax as Processor pursuant to Article 28(3) of GDPR.
- 15.4. Without prejudice to the fact that Credorax acts as Processor of Merchant Data, Credorax may in order to comply with its legal obligations under AML Legislation request due diligence data from the Merchant pursuant to clauses 11 and/or 12. Insofar and to the extent that Credorax may act as data controller in such a case, Credorax shall comply with its obligations as controller of Personal Data.
- 15.5. Merchant hereby grants its express consent to the inclusion and storage, of its data and Transaction data in directories kept by any of the relevant Payment Schemes or a participating bank or a Regulator and in accordance with the relevant data protection laws.

## 16. Suspension of Service

- 16.1. Credorax has the right to block access to particular Payment Schemes or Products and Services, or suspend the settlement of funds to Merchant, should Merchant infringe material contractual obligations imposed on it. This is particularly but not exclusively the case, if:
  - 16.1.1. Merchant turnovers that are not exclusively from the respective Merchant's own business operation, but rather turnovers of third parties (referred to as "**Third Party Processing**");
  - 16.1.2. Merchant does not possess the requisite permissions, authorisations, licenses or other official approval necessary for the operation of its business;

- 16.1.3. Merchant does not provide the requested documentation to Credorax within the time frame requested by Credorax;
  - 16.1.4. Merchant does not make reference to its general terms and conditions in a clearly visible manner, including – but not limited to – the law applicable to particular Consumer agreements;
  - 16.1.5. Merchant does not reference individual Payment Methods in the manner prescribed by Credorax;
  - 16.1.6. A Merchant distributes goods or services contrary to clause 13;
  - 16.1.7. Merchant submits turnovers via URLs other than those registered via the Merchant Application Form;
  - 16.1.8. Merchant commits actual fraud or Credorax reasonably suspects that actual fraud has otherwise been committed.
- 16.2. Should a suspension of service be initiated, Credorax shall be entitled in the first instance to withhold remittance of funds otherwise due under clause 7.
- 16.3. Credorax may suspend or block a Merchant's access and use of a Payment Method and any associated payment account should it reasonably suspect unauthorized or fraudulent use of the same, or for reasons related to the security of the payment account. Where Merchant cannot first resolve the issue to the reasonable satisfaction of Credorax within the period requested by Credorax, Credorax may at its sole discretion, suspend provision of the Products and Services to Merchant due to a potential loss in market reputation or increase in financial risk. Credorax will notify Merchant in advance of such a suspension or block unless to do so would be contrary to any applicable law or regulation or would jeopardise any investigation of fraud. Once the issue regarding the suspension of service is resolved to the reasonable satisfaction of Credorax, the suspension will be removed.

## 17. Indemnification and Liability

- 17.1. Merchant shall not (i) use the Products and Services provided for under this Agreement for the purposes of money laundering, terrorist financing, fraud or any other financial crime; and (ii) the funds being transferred are not the proceeds of crime in accordance with the Regulations.
- 17.2. Merchant acknowledges and agrees that it shall be liable for all aspects of payment transactions that it transfers to Credorax and for all its breaches of the Agreement. This liability is not subject to any limitation of liability that may be expressed elsewhere in the Agreement and survives termination or expiration of the Agreement.
- 17.3. Credorax will not be liable or in any way held responsible for any arrangement (including any agreement or understanding whether or not legally enforceable) of Merchant and any third parties including any of its Consumers.
- 17.4. Subject to the provisions of clause 17.9 and notwithstanding anything in this Agreement to the contrary, in no event will Credorax be liable (whether arising from breach of contract, negligence, breach of statutory duty, other tort, under an indemnity or otherwise) for:
- 17.4.1. loss of profits or revenue; or
  - 17.4.2. loss of business, loss of business opportunities; or
  - 17.4.3. operation or goodwill; or
  - 17.4.4. costs of equipment or anticipated savings;
- whether such losses are considered direct or indirect or consequential losses: and/or indirect or consequential losses;
- regardless of whether such damages were foreseeable or whether any Contractual Party has been advised of the possibility of such damages.
- 17.5. The maximum liability of Credorax in negligence, breach of contract, breach of statutory duty, other tort, under an indemnity or otherwise due to, under and/or arising out of or in connection with this Agreement will be, in aggregate, limited to the total amount of Fees actually paid by Merchant during the twelve (12) months period immediately preceding such breach irrespective of the Effective Date.
- 17.6. To the extent that the liability of a Party is excluded or limited, this shall also apply to the personal liability of its employees, staff members, co-workers, representatives and agents.
- 17.7. Merchant's claim for breach of contract in connection with the provision of services under of this Agreement must be made within 1 (one) year of the occurrence of the alleged breach or otherwise be deemed invalid.
- 17.8. Credorax's responsibility in regard to the remittance of funds is strictly restricted to transferring to Merchant the amount as received from the respective bank, financial institution or Payment Scheme subject to any deductions as made in accordance with this Agreement. In no event shall Credorax bear any responsibility or assume any liability towards Merchant with respect to funds that have not been received by Credorax from the respective bank, financial institution or Payment Scheme. Under no circumstances shall Credorax be liable for any failure of the respective bank, financial institution or Payment Scheme to effect payment of the settlement amount or for any other act or omission by such entity.
- 17.9. Credorax does not warrant that the Credorax Products and Services and/or software and/or Payment

Services are error free or operate without interruption or are compatible with all equipment and software configurations. The Services and the LPM Gateway under the Agreement are provided "AS IS" on an "as available" basis, which Merchant has been able to review before and accepted by entering into this Agreement. Furthermore, Merchant acknowledges and agrees that actions or omissions, including downtime, on the part of Credorax's or Merchant's service providers, and other third parties may reduce in whole or in part the availability or functionality of the Services, and Credorax shall not be held liable for such reductions.

- 17.10. Merchant shall be liable for any delay in or failure to perform its obligations if that delay or failure is caused by circumstances beyond its reasonable control, including without limitation fires, strikes, insurrections, riots, pandemics, embargos, fire, act of god, flood, Payment Scheme network breaches or impairments, defects, disruption or malfunctioning of Payment Scheme computer hardware or software. Merchant further acknowledges that network breaches, impairments, defects, disruption or malfunctioning of computer hardware or software of outsourced service providers engaged by Credorax shall not fall within the scope of the exclusion of liability indicated in this clause.
- 17.11. Merchant shall be strictly liable for all penalty payments, damages and/or all related costs which are to be paid to the Payment Scheme, Credorax or other third parties for which it is liable as a direct result of its misuse of the Products and Services or the Payment Services.

#### **18. Assignment**

Neither Party shall assign, novate or otherwise transfer this Agreement or any or all of their rights and/or obligations under this Agreement nor any part of it, nor any benefit nor interest in or under it, to any third party without the prior written consent of the other Party which consent shall not be unreasonably withheld; provided, however that Credorax may assign, novate or otherwise transfer this Agreement without the consent or approval of Merchant to an affiliate, in connection with a merger, reorganization, recapitalization or sale of all of or substantially all of its respective stock, business or assets.

#### **19. Non Disclosure**

Each Party agrees to keep confidential and not disclose to any third party any Confidential Information. Merchant acknowledges and agrees that Confidential Information provided pursuant to this Agreement by Merchant, including but not limited to Personal Data, may be used, disclosed or processed by Credorax and its affiliates for any or all of the following purposes: (i) to comply with applicable laws, a court order or other legal process; (ii) to administer and operate the Agreement, including, where applicable, conducting identity and credit checks on Merchant and its principals, and to conduct, monitor and analyze Credorax's businesses; (iii) to market and sell to Merchant Products and Services offered by Credorax, whether relating to Credorax's Services or otherwise; (iv) to obtain advice from professional advisors; (v) to third party investors or potential investors in Credorax or their respective affiliates in the event of the sale, disposal, merger or transfer of the business of Credorax or its affiliates, or obtaining financing for Credorax's business, or negotiations in connection with that purpose. The Merchant acknowledges and agrees that Personal Data provided by the Merchant may be transferred outside of the European Economic Area for any and all of the foregoing reasons.

#### **20. Trademarks and Copyrights**

All intellectual property rights in the Services and any part thereof, including any and all derivatives, changes and improvements thereof lie exclusively with Credorax. Merchant shall (i) not attempt to infiltrate, hack, reverse engineer, decompile, or disassemble the Service or any part thereof for any purpose; (ii) not represent that it possesses any proprietary interest in Service, or any part or derivative thereof; (iii) not directly or indirectly, take any action to contest Credorax's intellectual property rights or infringe them in any way; (iv) except as specifically permitted in writing by Credorax, not use the name, trademarks, trade-names, and logos of Credorax; (v) except as specifically permitted herein, not copy any part or content of the portal, reports or documentation other than for Merchant's own internal business purposes; (vi) not copy any features, functions or graphics of the portal or use it to build a competitive product or service; and (vii) not remove the copyright, trademark and other proprietary notices contained on or in portal, or Services. All intellectual property rights in the Merchant Sites lie exclusively with Merchant or its licensors. Merchant shall take no action, directly or indirectly, to register Credorax trademarks (or their variation), domain names, or copyrights in its own name and shall provide commercially reasonable assistance to Credorax to prevent the occurrence of such activity by any third parties.

#### **21. Modifications of the Scope of Services, Partial Performance**

- 21.1. Credorax shall be entitled to modify the Payment Processing Services or the Products and Services in conjunction with standard commercial practice, in particular, with regard to technical innovations or requirements imposed by authorities, or improvements to the Products and Services, provided Merchant can be reasonably expected to accept such modifications.
- 21.2. Credorax may remove contractual Products and Services by providing a notification period:
- 21.2.1. the further support of the particular contractual product or service by Credorax cannot be continued

under reasonable economic conditions or changes in the used technology or current or forthcoming regulatory changes; or

21.2.2. Credorax decides so for business policy reasons.

- 21.3. Provided that where the deletion of contractual Products and Services is directly or indirectly consequent upon the removal of any Product and Service in whole or in part by a Payment Scheme, the notice period under this clause shall be such notice period as may have been provided by the Payment Scheme to Credorax.
- 21.4. Credorax shall be entitled to delete contractual Products and Services even without observing an appropriate period of notification, should Credorax itself lose the unauthorized to distribute such Products and Services due to termination or modification of its own agreements with any respective Payment Schemes. Credorax shall inform the Contractual Partner as soon as possible with regard to such termination and the respective date thereof.

## **22. Final Provisions**

- 22.1. Other than changes to the Payment Method Terms of Use, no amendment to this Agreement shall be valid unless set out in writing and signed by an authorized representative of each Party. Changes or amendments to the Payment Method Terms of Use may be made from time to time by Credorax and will be notified to Merchant as they arise.
- 22.2. The language of this Agreement is English and all notices and communications hereunder shall be in English.
- 22.3. This Agreement shall be governed and construed exclusively in accordance with the laws of Malta. The Parties irrevocably submit to the exclusive jurisdiction of the Maltese courts.
- 22.4. If any court finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision will, to the extent required, be deemed to be deleted and the validity and enforceability of the remaining provisions of the Agreement will not be affected.
- 22.5. Merchant warrants that it is neither a charity nor a micro-enterprise (where a micro-enterprise is an enterprise that has an annual turnover or balance sheet total that does not exceed €2 million and employs fewer than ten people). The Parties agree, pursuant to Article 14 of Directive 1 of the CBM, Title III of the Payment Services Directive as implemented in terms of Maltese law or any other relevant law, as well as any equivalent or similar requirements under any succeeding legislation, shall not apply between the Parties in so far as such disapplication is permissible under the Payment Services Directive or any succeeding legislation.

The Agreement and any documents referred to in the Agreement constitute the whole agreement between the parties and supersede all previous negotiations or agreements between the Parties relating to its subject matter.