

Business Terms & Conditions

Xydus agrees to provide the Services to the Customer in accordance with this Agreement.

These terms and conditions shall govern and be incorporated in every Agreement made by or on behalf of the Customer with Xydus and shall prevail over any terms and conditions contained or referred to in any documentation submitted (or previously submitted) by the Customer.

Signature of the Services Schedule by the Customer (or its use of any of the Services if earlier) shall constitute unqualified acceptance of this Agreement.

1. Definitions and Interpretation

1.1 In these terms and conditions the following words shall have the following meanings (unless the context otherwise requires):

“Applicable Law” means, in respect of each Party, all applicable laws, regulations, statutes and legally binding codes of practice, governmental orders or guidance and orders of any other competent regulatory authority to which such Party is subject in connection with this Agreement, including Data Protection Law;

“Agreement” means these terms and conditions, the provisions of the Services Schedule (including any Supplementary Terms) and the provisions of any Service Level Agreement;

“Background Materials” means any information, materials, or software in any form used or provided to the Customer by (or on behalf of) Xydus from time to time in the provision of the Services or otherwise pursuant to this Agreement;

“Charges” means those charges for the Services, as set out in the Service Schedule and as may be varied from time to time in accordance with this Agreement;

“Commencement Date” means the commencement date in the Services Schedule;

"Confidential Information" means in relation to a Party, information in oral, written, graphic or electromagnetic form that is disclosed by the Disclosing Party to the Recipient (as defined in Clause 9) and which is designated orally or in writing by the Disclosing Party as confidential when disclosed or else is information which is not in the public domain or which is otherwise clearly by its nature confidential, and for the avoidance of doubt, "Confidential Information" includes all Xydus Data, as well as either Party's trade secrets, know-how, inventions, techniques, processes, software programmes, schematics, contracts, and any information which relates to its business, but excludes all Transaction Results;

"Customer" means the person identified as such in the Services Schedule;

"Customer Data" means any data provided to Xydus from time to time by (or on behalf of) the Customer pursuant to this Agreement;

"Data Protection Law" means the UK General Data Protection Regulation, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all other applicable UK data protection legislation in force from time to time together with (where the Customer is in the EU), the General Data Protection Regulation ((EU) 2016/679) and all other EU data protection legislation in force from time to time.

"End Customer" means the Customer's end customers and clients who are the subject of a Transaction (including Service Users);

"Initial Term" means the term starting on the earlier of (i) the Commencement Date; and (ii) the date Xydus commences any of the Services, and continuing for the duration specified in the Services Schedule;

"Parties" shall mean together Xydus and the Customer, and each of them shall be a "Party";

"Xydus" means Paycasso Verify Limited dba Xydus, a company registered in England and Wales with company number 08057477 whose registered office is at Suite 1, 3rd Floor 11-12 St. James's Square, London, United Kingdom, SW1Y 4LB;

"Xydus Data" means any data provided by Xydus to the Customer as part of, or in connection with, the Services, excluding Transaction Results;

"Permitted Purpose" has the meaning given to it in clause 3.3;

"Personal Data" has the meaning as defined in Data Protection Law;

"Services" means the services ordered by the Customer in the Services Schedule;

"Service Level Agreement" means the service level agreement in the Schedule to this Agreement;

"Services Schedule" means the schedule signed by or on behalf of the Customer and Xydus to which these terms and conditions apply;

"Service Users" means an individual engaging with a client service for which a Xydus service is deployed to support identity verification of that user;

"Software" means the software applications made available by Xydus as part of the Services;

"Supplementary Terms" means any additional terms and conditions as set out in the Services Schedule;

"Transaction" means a request by the Customer to use a Service to process its End Customer's details, the subject of the request;

"Transaction Result" means data provided by Xydus in direct response to the Customer's submitted Transaction;

"Unauthorised Use" means any use of the Services which is not for the Permitted Purpose, including any of the uses listed in Clause 3.4;

"User" means the Customer's employees, contractors and agents who have been authorised by the Customer to use the Services;

"Virus" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 This Agreement shall be binding on, and inure to the benefit of, each Party's permitted assignees (if any) and/or its successors in title to substantially the whole of its undertaking;

1.3 Words denoting the singular shall include the plural and vice versa; references to a gender shall include all other genders; and references to the word "include" or "including" are to be construed without limitation; and

1.4 Any reference to any statute or statutory provision or subordinate legislation ("**Legislation**") shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which enacts or consolidates (with or without modification) any such Legislation.

2. Xydus Obligations

2.1 Xydus shall during the term of this Agreement:

2.1.1 in consideration of the Charges, provide the Services;

2.1.2 use commercially reasonable endeavours to achieve any service levels set out in any Service Level Agreement;

2.1.3 use all reasonable skill and care in the provision of the Services; and

2.1.4 comply with all Applicable Laws.

2.2 Xydus may from time to time vary the manner in which the Customer can access and use the Services and/or the form and content of the Services (or any part thereof), provided that it does not materially adversely affect the Services.

3.1 The Customer shall:

3.1.1 utilise the Services only in accordance with the rights of use granted by this Agreement and for the purposes set out in clause 3.3;

3.1.2 not permit access to, and shall take reasonable steps to prevent access to, the Services from anyone other than the Users (but without prejudice to the Customer's rights to permit its End Customers to access the Services to complete Transactions and to provide the Transaction Results to its End Customers);

3. Customer's Obligations

3.1.3 keep any user identification issued by or on behalf of Xydus (including all Customer account codes and/or passwords) secure and confidential;

3.1.4 comply at all times with all Applicable Laws, including those applicable to its use of the Services and the Xydus Data; and,

3.1.5 ensure its network and systems comply with the relevant specifications provided by Xydus from time to time.

3.2 Where Xydus receives a request for Services under the Customer's user identification (including the Customer's account code and passwords), then Xydus shall be entitled to treat such request as being authorised by the Customer, and the Customer shall be responsible for any and all Charges payable in respect of such Services.

3.3 The Services are provided to the Customer only for its own internal business and strictly for the purpose of assisting it (the "Permitted Purpose"):

3.3.1 in performing identity verification in connection with its End Customers; and/or

3.3.2 in the prevention of impersonation fraud in connection with its End Customers, and shall not be used by the Customer for any other purpose whatsoever.

3.4 Without prejudice to the foregoing, the Customer shall not, and shall procure that the Users shall not, except as permitted by Applicable Law that cannot be excluded by agreement between the parties and except to the extent expressly permitted by this Agreement:

3.4.1 disclose, sell, license, rent, loan, transfer, distribute, reproduce, adapt, translate, arrange, publish, display, copy, modify or create derivative works from or make available to any third party (either directly or indirectly) any part of the Xydus Data or the Services,;

3.4.2 decompile, reverse compile, disassemble, reverse engineer or otherwise reduce to human perceivable form all or any part of the Services or the Software;

3.4.3 access the Services in order to build a product or service which completes with the Services;

3.4.4 introduce any Virus into the Services or into Xydus or its subcontractor's network or information systems;

3.4.5 use the Services, the Transaction Results and/or any of the Xydus Data on behalf of or to provide services to any third party;

3.4.6 use the Xydus Data, the Transaction Results and/or any Service for direct marketing purposes; or

3.4.7 integrate any of the Xydus Data, the Transaction Results and/ or the Services into any product or service of the Customer (including any website) without the prior written agreement of Xydus.

3.5 The Customer is responsible for the acts and omissions of the End Customers and Users and shall ensure they use the Services in accordance with this Agreement.

3.6 Xydus shall not be responsible for any issues with or delays to the Services caused by the acts or omissions of the Customer and Xydus shall be allowed to adjust any delivery timetable or schedule to take account of such issues or delays.

4. Charges and Payment

4.1 The Customer shall pay to Xydus the Charges in accordance with the payment terms set out in the Services Schedule, without any demand, deduction or set-off. All Charges shall be exclusive of VAT, which the Customer shall pay in addition to the Charges on receipt of a valid tax receipt therefor. No payment due under this Agreement shall be deemed to have been received until Xydus has received cleared funds.

4.2 The Charges shall be payable by the Customer to Xydus:

4.2.1 for the Services; and

4.2.2 for every Transaction conducted and result provided in accordance with this Agreement.

4.3 Without prejudice to Xydus's rights under Clause 5.3.1, if the Customer fails to pay to Xydus any sum due hereunder, the Customer shall be liable to pay interest to Xydus on such sum from the due date for payment at the rate of 4% a year above the official bank rate of the Bank of England from time to time calculated on a daily basis until payment is made, whether before or after any judgement.

4.4 Xydus may increase the Charges provided that Xydus gives the Customer at least three (3) months' written notice of the increase and the increase does not take effect during the Initial Term.

5. Term and Termination

5.1 This Agreement shall remain in force for the Initial Term and shall continue thereafter until it is terminated in accordance with its terms.

5.2 Either Party may terminate this Agreement by giving the other Party at least 3 months' written notice provided the notice expires on or after the expiry of the Initial Term.

5.3 Each Party shall have the right to terminate this Agreement at any time with immediate effect by the service of written notice on the other if:

5.3.1 the other Party is in material breach of the Agreement, provided that written notice has been served on the Party in breach specifying the breach complained of and requiring it to be remedied and such breach, where capable of remedy, remains un-remedied at the end of a period of 30 (thirty) days following the service of such notice; or

5.3.2 the other Party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction and the same is not dismissed or discharged within 30 (thirty) days thereafter.

5.4 Without prejudice to its other rights and remedies under this Agreement and pursuant to law, Xydus may, forthwith on written notice to the Customer but without incurring any liability to the Customer, suspend (in whole or in part) or terminate the Services:

5.4.1 to the extent required to comply with any Applicable Laws;

5.4.2 if the security processes set up to protect the Services are breached in any material way as a result of any breach by the Customer of this Agreement;

5.4.3 if the Charges are more than 30 days overdue (unless they have been disputed in good faith within such 30-day period); or

5.4.4 if Xydus knows or suspects (acting reasonably) that:

- (a) the Customer's (or any of its Users) use of the Services does not comply with any Applicable Law; or
- (b) the Customer (or any of its Users) are engaged in any Unauthorised Use.

5.5 On the termination of this Agreement for whatever reason:

5.5.1 Xydus shall cease to perform or make available to the Customer the Services;

5.5.2 the Customer shall forthwith make payment in full to Xydus of any Charges properly due to it as at the date of termination, and where such Charges have not been invoiced, Xydus shall submit its invoice which shall be paid by the Customer on receipt; and

5.5.3 the Customer shall, within 7 (seven) days, return to Xydus or destroy (at Xydus's request):

- a. all Background Material in its possession or control; and,
- b. all Confidential Information, including all Xydus Data, in its possession or control (and all copies of each of the foregoing) save that the Customer may retain a copy of the same to the extent required to comply with Applicable Law (provided that the Customer shall not use any retained copies for any other purpose, shall keep the same confidential and secure in accordance with Clause 9 and shall return or destroy the same as soon as it is no longer required to be retained under such Applicable Law) and Xydus likewise shall return to Customer or destroy all Confidential Information of Customer (provided that Xydus shall not use any retained copies for any other purpose, shall keep the same confidential and secure in accordance with Clause 9 and shall return or destroy the same as soon as it is no longer required to be retained under such Applicable Law); and,
- c. on receipt of a written request from Xydus, provide Xydus with a certificate of compliance with the provisions of this Clause 5.5 signed on behalf of the Customer by a duly authorised officer (and Xydus agrees to provide the same to Customer with regard to Customer's Confidential Information).

5.6 Notwithstanding the termination of this Agreement, the Customer shall pay in full all invoices received from Xydus and dated prior to the date of termination including invoices for annual Charges invoiced in advance.

5.7 All Charges paid by the Customer are non-refundable.

5.8 The termination or expiry of this Agreement for any reason whatsoever shall not affect:

5.8.1 the accrued rights and liabilities of the Parties arising in any way out of this Agreement as at the date of termination and in particular but without limitation the right to recover damages against the other; and

5.8.2 all provisions which are expressed, or by their nature are intended (either expressly or impliedly), to survive this Agreement, which shall remain in full force and effect, including clauses 1, 4, 5.5, 5.6, 5.7, 5.8, 7, 8, 9, 10, 11 and 12.

6. Warranties

6.1 Each Party warrants to the other that it is duly incorporated, organised and validly subsisting under the laws of the jurisdiction of its incorporation and has all requisite powers to enter into this Agreement and that it has obtained all necessary approvals to do so.

6.2 The Customer warrants to Xydus that:

6.2.1 only authorised employees, contractors or agents of the Customer will be given access to user identification, including its account codes and passwords, which are issued to the Customer by or on behalf of Xydus; and

6.2.2 the Customer is acting for the purposes of a business and not as a consumer.

6.3 Subject to Clause 8, Xydus warrants to the Customer that:

6.3.1 the Services shall be provided by Xydus using reasonable skill and care;

6.3.2 the Services shall comply with any specification provided by Xydus in all material respects;

6.3.3 Xydus shall use its reasonable endeavours to provide accurate and complete Xydus Data in providing the Services; and

6.3.4 the Services, when used by the Customer for the Permitted Purpose and in accordance with the terms of this Agreement, shall not infringe the intellectual property rights of any third party (and the Customer's exclusive remedy for a breach of this clause 6.3.4 is the indemnity in clause 7.1).

6.4 Xydus is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.5 The Customer acknowledges that it is responsible for providing written instructions to Xydus if it wishes Xydus to purge Customer Data and upon what interval such data should be purged. Upon receipt of such reasonable instructions, Xydus will purge the Customer Data, and once purged the Customer Data is no longer identifiable. Prior to receipt of such instructions and prior to any purge, if any Customer Data is lost or damaged, the Customer's sole and exclusive remedy against Xydus shall be for Xydus to use reasonable commercial endeavours to restore the lost or damaged Customer Data from its latest back-up. Xydus shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except its subcontractors).

6.6 Xydus hereby excludes to the greatest extent permissible by law, any warranty, condition or representation, not expressly set out in this Agreement, whether express, implied or statutory including, without limitation, the implied representations, warranties or conditions of merchantability, satisfactory quality, accuracy, completeness and of fitness for a particular purpose, and any representation, warranty or condition that may arise by reason of trade usage, custom or course of dealing. Accordingly, the Customer hereby expressly waives irrevocably any and all rights and remedies it would otherwise have in respect of all such representations, warranties or conditions, other than the warranties set forth in this Agreement.

7. Indemnification

7.1 Subject to clause 7.2, Xydus shall at all times both during and after the term of this Agreement, indemnify the Customer and hold the Customer harmless from and against any and all liabilities, damages, losses, claims, costs and expenses, including reasonable legal fees, which may be asserted against or incurred by the Customer arising from or as a result of a breach of the warranty at clause 6.3.4 that results in a third party claim against the Customer, provided that such infringement does not arise as a result of, or in connection with, any breach by the Customer of this Agreement.

7.2 The Customer shall:

7.2.1 notify Xydus without delay of any claim which could lead to liability to the Customer under the indemnity at clause 7.1 ("**Claim**");

7.2.2 allow Xydus exclusive control and conduct of the Claim and not make any admission, settlement or compromise of the Claim without Xydus's prior written consent; and

7.2.3 co-operate with Xydus, at Xydus's reasonable cost, in respect of Xydus's handling of the Claim.

7.3 In the event of any Claim Xydus may either change the Services so they become non-infringing (provided there is no material degradation to the Services), procure an appropriate licence for the Customer to continue to use the Services or terminate this Agreement by giving the Customer at least 5 days written notice.

8. Limitation of liability

8.1 This Clause 8 sets out the entire financial liability of Xydus (including any liability for the acts or omissions of its employees, agents or contractors) to the Customer in respect of:

8.1.1 any breach of this Agreement; and

8.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.

8.2 Without prejudice to Xydus's obligations under clause 2 (Xydus's Obligations), the Customer agrees that:

8.2.1 the Customer is solely responsible for the accuracy and completeness of the Customer Data and for the Transaction Results created from or as a result of the Customer Data; and

8.2.2 the Transaction Results constitute nothing more than data generated on the Customer's behalf by the processing of Transactions, and the use of such data is entirely at its discretion. In exercising such discretion, the Customer confirms that it is solely responsible for establishing the sufficiency and adequacy of the Transaction Results and of any internal or third party procedures that are implemented for the purposes of evaluating such data in order to verify the identity of its End Customers.

8.3 The limits and exclusions of liability set out in this Clause 8 do not apply to either Party's liability for:

8.3.1 death or personal injury resulting from its negligence;

8.3.2 fraud or fraudulent misrepresentation;

8.3.3 non-payment of the Charges; or

8.3.4 any liability for which it is not permitted to limit its liability by law.

8.4 Subject to Clauses 8.2 and 8.3:

8.4.1 Xydus shall not be liable to the Customer, either in contract, tort (including negligence) or otherwise (including under any indemnity) for:

- a. any loss of business, loss of anticipated savings, loss of reputation, loss of goodwill or business interruption, increase in debt; or
- b. any indirect consequential or special damages or losses, arising out of or in connection with the performance or non-performance of this Agreement or its subject matter whether or not Xydus had notice of the possibility of such loss arising; and

8.4.2 Xydus's total liability to the Customer in contract, tort (including negligence) or otherwise arising under or in relation to the performance or non-performance of this Agreement (including under any indemnity) shall be limited to the greater of:

- a. £1,000,000; and
- b. the total Charges paid to Xydus by the Customer in the 12 months immediately preceding the event giving rise to the applicable claim.

9. Confidentiality

9.1 Each Party shall:

9.1.1 keep all Confidential Information given to it (the "**Recipient**") by the other (the "**Disclosing Party**") or otherwise obtained by the Recipient confidential, and shall not disclose the Disclosing Party's Confidential Information except as expressly permitted under this Agreement;

9.1.2 safeguard the Disclosing Party's Confidential Information against any unauthorised copying, use, disclosure, access, damage or destruction; and

9.1.3 promptly notify the Disclosing Party if the Recipient suspects or becomes aware of any unauthorised access, copying, use or disclosure of Confidential Information in any form.

9.2 The Recipient shall not use any of the Disclosing Party's Confidential Information otherwise than for to the extent necessary and for the purpose of performing its obligations and exercising its rights under this Agreement.

9.3 Nothing in this Agreement prohibits the use, copying or disclosure of any Confidential Information by either Party to the extent that:

9.3.1 such Confidential Information is already known to the Recipient or in the public domain (other than through a breach of an obligation of confidence owed to the Disclosing Party); or

9.3.2 such Confidential Information has been independently developed by the Recipient without reference to the Confidential Information of the Disclosing Party;

9.4 Nothing in this Agreement shall prevent the Recipient from disclosing any Confidential Information where:

9.4.1 the Recipient is Xydus and the disclosure is of any Customer Data to any of its contractors or agents solely for the purpose of providing the Services, provided that such person has first entered into confidentiality terms no less onerous than this clause 9 in respect of such Confidential Information which Xydus shall ensure are complied with;

9.4.2 the Recipient is the Customer and the disclosure is of any Background Materials, Xydus Data or Transaction Results to the End Customer or to any of its contractors or agents solely for the purpose of receiving the benefit of the Services, provided that such person has first entered into confidentiality terms no less onerous than this clause 9 in respect of such Confidential Information which the Customer shall ensure are complied with; or

9.4.3 the disclosure is expressly required by Applicable Law, provided that the Recipient gives the Disclosing Party prompt notice of such requirement to disclose to enable the Disclosing Party to seek an appropriate protective order to the extent permitted by Applicable Law.

10. Data protection and personal data

10.1 In this clause, references to "**Data Controller**", "**Data Processor**" and "**Data Subject**" have the meanings as set out in Data Protection Law. References to "**Personal Data**" mean the Customer Data which comprises of Personal Data as defined in Data Protection Law.

10.2 Both Parties shall comply with their obligations under Data Protection Law. In particular, the Customer shall only provide Personal Data to Xydus where it has given the Data Subject all required notices, obtained all required consents and has a lawful basis to do so under Data Protection Law and Xydus will only process Personal Data in order to perform the Services, in accordance with the Customer's instructions.

10.3 The Customer grants Xydus a royalty free, non-transferable, non-exclusive licence to, for so long as it is required for the purpose of providing the Service to:

10.3.1 retain Customer Data within its databases (subject to Clause 9 of this Agreement);

10.3.2 query (or procure the query of) the Customer Data solely in order to provide the Services and (except as permitted under clause 9) Xydus agrees not to disclose or make available the Customer Data to any other person, or use or process the Customer Data for any other purpose;

10.3.3 record Transaction Results into the Xydus database and to use such Transaction Results in order to provide the Services to the Customer;

10.4 With Respect to the Parties; rights and obligations under this Agreement, the Parties agree that, for the purpose of the Data Protection Law, the Customer shall be the Data Controller of all Personal Data it discloses to Xydus under

this Agreement and Xydus shall be Data Processor of such data. As such, Xydus agrees to:

a. Only process Personal Data of the Customer's on the documented instructions of the Customer (and the Parties confirm the performance of the Services under this Agreement is on the Customer's documented instructions);

b. apply appropriate technical and organisational measures to protect against unauthorised or unlawful processing of such Personal Data when in its possession or control and against accidental loss, unauthorised disclosure or destruction or alteration of, or damage to, such Personal Data when in its possession or control, appropriate to the harm that might result from such accidental, unauthorised or unlawful processing or loss, destruction or damage to Personal Data and the nature of the Personal Data;

c. ensure the on-going confidentiality, integrity, availability and resilience of processing systems and services as well as the ability to restore the availability and access to Personal Data in a prompt manner in the event of a physical or technical incident as required under Data Protection Law;

d. not engage another processor without the prior written consent of the Customer, and where another processor is engaged (a **"Sub-Processor"**) Xydus shall:

- I. ensure that the Sub-Processor complies with the obligations set out in this clause 10 and Data Protection Law;
- II. inform the Customer of any changes concerning the addition or replacement of Sub-Processors to which the Customer has the right to object; and
- III. remain liable for any act or omission of any Sub-Processor in respect of its obligations arising from its processing of the Personal Data;

e. assist the Customer to comply with its obligations under Data Protection Law, including in relation to the security of Personal Data;

f. assist the Customer to respond to requests by Data Subjects to exercise their rights under Data Protection Law, including taking any action required by the Customer to comply with such requests and promptly (and within 5 business days) notifying the Customer of any such requests received by it or any Sub-Processor without responding to such requests or enquiries unless expressly otherwise instructed by the Customer;

g. take all necessary steps to ensure the reliability of any of its staff who have access to Personal Data processed under this Agreement and ensure that they are subject to appropriate obligations of confidentiality;

h. not transmit the Personal Data to a country or territory outside of the United Kingdom and European Economic Area without the prior written consent of the Customer, unless required to do so by applicable law to which Xydus is subject (in which case Xydus shall promptly inform the Customer of that legal requirement before carrying out such processing unless prohibited from doing so under applicable law);

i. allow the Customer to audit as and when necessary, in accordance with the Data Protection Law, the technical and organisational measures in place to ensure compliance with the Data Protection Law and to make available to the Customer all information necessary to demonstrate such compliance (provided such audits are not carried out more than once every 12 months except where required by Applicable Law or where there is an actual or suspected breach of this clause 10);

j. inform the Customer where in its opinion any of its instructions will result in a breach of Data Protection Law;

k. if required by the Customer, and on completion of the Services, delete or return (at the Customer's option) all Personal Data in its possession or control to the extent technically feasible save as required by any applicable law; and

l. notify the Customer as soon as possible (and in any event within 24 hours) if Xydus becomes aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data, and provide all information regarding such breach that the Customer specifically requests or which may reasonably be expected to be required or appropriate in order for the Customer to comply with its legal obligations under the Data Protection Law.

10.5 Each party agrees to save, defend, indemnify and hold harmless the other from and against all costs, claims, damages or expenses incurred by the indemnified party and/or for which the indemnified party may become liable due to any third party claim for failure by the indemnifying party, its employees, subcontractors or agents to comply with Data Protection Law ("**DP Claim**").

10.6 The indemnity in clause 10.5 is subject to the indemnified party (to the extent permitted by applicable law): (i) giving the indemnifying party prompt written notice of the DP Claim together with the details of the DP Claim; and (ii) giving the indemnifying party reasonable opportunity to make representations in relation to the DP Claim to both the indemnified party and the person or entity making the DP Claim.

10.7 The Services Schedule sets out the subject matter and duration of the processing, the nature and purpose of the processing, the types of Personal Data and categories of Data Subjects.

11. Intellectual property

11.1 Each Party acknowledges that the copyright, trade marks and other intellectual property rights subsisting in the other Party's products or services, including in the case of Xydus the Services (including the Xydus Data, the Transaction Results and the manner in which such Xydus Data and Transaction Results are presented and the Background Materials), are the property of that Party or are provided under licence to that Party. Neither Party grants to the other any rights in its intellectual property or data save as expressly provided for in this Agreement.

11.2 The parties agree that all new intellectual property rights created by (or on behalf of) Xydus under this Agreement shall vest in and belong solely to Xydus, while all Customer Data shall vest in and belong to the Customer. To the extent that any intellectual property rights created by (or on behalf of) Xydus under this Agreement vests in the Customer through the operation of law, the Customer hereby irrevocably assigns all such intellectual property rights to Xydus on their creation. Neither party grants to the other any rights in its intellectual property rights or data save as expressly provided for in this Agreement.

11.3 Xydus grants the Customer a non-exclusive, non-transferrable licence, without the right to grant sub-licences, to permit:

11.3.1 the Users to use the Services, the Xydus Data and the Background Materials for the term and for the Permitted Purpose and to use the Transaction Results for the Permitted Purpose; and

11.3.2 the End Customers to use the Transaction Results in connection with the Permitted Purpose.

11.4 The Customer is not granted any rights in or to the Software except the right to access the Software online in order to use the Services for the Permitted Purpose for the term of this Agreement.

11.5 Each Party acknowledges to the other that damages may not be an adequate remedy for any actual or potential infringement of its intellectual property rights and/or any breach by the other Party under Clause 9 and accordingly agrees that, in addition to any other right or remedy open to it, each Party may be entitled to immediate injunctive relief to restrain any actual or anticipated infringement or breach thereof.

12. Other matters

12.1 Force Majeure

12.1.1 If either Party is prevented or delayed in the performance of any of its obligations hereunder by a Force Majeure, and serves notice thereof on the other specifying the matters constituting Force Majeure together with such evidence as it can reasonably give and specifying the period for which it is estimated that such prevention or delay will continue, then the Party giving notice shall be excused from the performance or the punctual performance as the case may be as from the date of such notice for so long as and to the extent such cause of prevention or delay shall continue. For the purpose of this Agreement, **"Force Majeure"** means any act, event, omission or accident beyond the relevant Party's reasonable control, including but not limited to Acts of God, fire, explosion or accidental damage, terrorism, riot, civil commotion, pandemic or epidemic, war and hostilities, labour dispute and interruptions or failures of utility service;

12.1.2 If the event of Force Majeure prevails for a continuous period of more than 30 days, either Party may terminate this Agreement by giving 14 days' written notice to the other;

12.1.3 The provisions of this Clause 12.1 shall not apply to any obligation under this Agreement to pay money.

12.2 Contracts (Rights of Third Parties) Act 1999

No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

12.2 Assignment and Sub-Contracting

12.2.1 Xydus shall be entitled to sub-contract the performance of any of its obligations under this Agreement to any party provided that Xydus shall be responsible for any acts or defaults of its sub-contractors as if they were its own acts or defaults.

12.2.2 Neither Party shall be entitled to assign, transfer, charge or deal in any other manner with any of its rights or obligations under this Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

12.3 Whole Agreement

12.3.1 This Agreement supersedes any prior agreement between the Parties relating to the matters covered in this Agreement whether written or oral and any such prior agreements are cancelled as at the date of issue by Xydus of these terms and conditions but without prejudice to any rights which have already accrued to either of the Parties thereunder.

12.3.2 This Agreement contains the whole agreement between the Parties relating to the subject matter hereof and neither Party has relied upon any oral or written representations made to it by the other Party or its employees or agents other than (if at all) as expressed herein, provided that the provisions of this clause shall not exclude any liability which either of the Parties would otherwise have in respect of any statements made fraudulently or any fraudulent concealment.

12.4 Waiver

The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be. The rights or remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

12.5 Change of Details

Each of the Parties shall give notice to the other of the change of its name, address, telephone number or e-mail address at the earliest possible opportunity but in any event within a reasonable time following of such change.

12.6 Notices

Any notice to be served on either of the Parties by the other under or in connection with this Agreement shall be in English and sent by prepaid recorded delivery or registered post to the receiving Party's address as set out in the Services Schedule, or by recognized overnight courier such as Federal Express. Such notice shall be deemed to have been duly given two days (excluding Saturdays, Sundays or any public holiday in the United Kingdom or the United States) after the date of posting, provided that if any such notice, would otherwise be deemed to be given or made after 5.00 p.m. such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next day.

12.7 Severability

If any provision of this Agreement is determined to be or rendered void illegal or unenforceable in any respect by a court of competent jurisdiction or under any law such provision shall be deemed to have been deleted without affecting or impairing the remaining provisions of this Agreement.

12.8 Relationship of the Parties

The Parties are not partners or joint ventures nor in a relationship of agency. Save as expressly authorized hereby (if at all) neither Party has any right or authority to act on behalf of the other or to make any representation on its behalf and neither Party will represent that it has such right or authority.

12.9 Multiple Counterparts

This Agreement may be executed in any number of counterparts and all counterparts taken together will be deemed to constitute one and the same instrument.

12.10 Governing law

12.10.1 This Agreement shall be governed by and construed in accordance with English law and, subject to clause 12.10.2, the Parties hereby submit to the exclusive jurisdiction of the Courts of England & Wales.

12.10.2 Where the Customer is based or incorporated outside England & Wales, Xydus reserves the right to bring proceedings against the Customer in the country or territory where the Customer is based or incorporated.

rtwuk@xydus.com

Notice of confidentiality

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