

**PAYMENT SERVICES AGREEMENT (PAY-IN)
ONLINE GENERAL TERMS AND CONDITIONS
RESELLER PASS-THROUGH MODEL**

1. Definitions

1.1 Definitions. The following terms will have the following meanings. Other terms are defined in the Agreement.

Agreement means these general terms and the valid work orders or contractual documents (contract changes, etc.) executed with the Reseller, as the case may be.

Affiliate means, with respect to each Party, any other company or person that, directly or indirectly, Controls, is Controlled by or is under common Control with such Party.

APM means a provider of an alternative method of payment to global Card Schemes, such as real time bank transfer, offline bank transfer, direct debits, e-wallets, prepaid cards, pay now buy later, QR payment, and third party managed cash payment options.

Background Intellectual Property means all Intellectual Property owned or controlled by each Party and which was conceived or reduced to practice either (a) prior to commencement of the work performed pursuant to this Agreement or (b) outside the scope of the work performed pursuant to this Agreement, in both cases which is introduced, supplied or disclosed for the purposes of this Agreement.

Bespoke Provider means a third-party payment provider which is integrated into the Payment Platform at Customer's request, therefore becoming a Customer Selected Provider.

Business Rules means the set of rules/parameters established by Customer to regulate some processes or modules of the Payment Platform and how to trigger Transactions.

Card Schemes means Visa International, Visa Inc, Visa Europe, MasterCard Worldwide, MasterCard International and Maestro, American Express, Diners Club International, Discover Financial Services, China Union Pay, JCB, and any other card sponsorship organization or association that governs the issuing and use of credit, debit or pre-paid cards.

Charges means the fees payable by Customer in exchange for the provision of the Payment Solutions and services, as stated in the commercial terms, work orders or contractual documents executed with the Reseller.

Confidential Information means any information or materials provided by one Party, or its Affiliates (discloser) to the other Party, or its Affiliates (recipient) whether labelled with "confidential", "restricted" or "proprietary" terms or otherwise, including this Agreement, and any other oral, written or digital information treated as confidential by the discloser and would reasonably be understood by the recipient to be confidential, whether or not so marked, including the following information and other information of a similar nature: (a) discoveries, ideas, concepts, software in various stages of development, designs, drawings, specifications, techniques, models, data, source code, object code, documentation, diagrams, flow charts, research, processes, procedures, functions, "know-how," marketing techniques and materials, marketing, business and development plans, products, services, price lists, pricing policies, financial information of the discloser and any data processing documentation with respect to operation of the Payment Platform; and (b) any information received by the discloser from a third Party that has been designated as confidential, restricted, or proprietary.

For the avoidance of doubt, the definition of "Confidential Information" will exclude information that (a) was in the public domain at the date of disclosure; or (b) became generally available to the public after the date of disclosure, other than as a result of a disclosure by the receiving Party in violation of any confidentiality obligations; or (c) was lawfully known by the receipt Party other than as a result of a disclosure by the receiving Party in violation of any confidentiality obligations; or (d) was independently developed by the receiving Party without using the Confidential Information of the other Party.

Control means, with respect to an entity, the possession, directly or indirectly, of the power or right to direct or cause the direction of the management or policies of entity, whether through the ownership of share capital and/or voting securities, by contract or otherwise. Beneficial ownership of fifty percent (50%) or above of the voting securities constitutes control of such other person.

Cutover means the date on which the relevant Payment Solution is available in the Production

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Environment for the use of Customer or Service Recipients.

Cyber-Crime	any crime that involves a computer, a network, or the internet, including computer-related extortion, fraud and forgery, and unauthorized access to or interference with data, identity theft, software and media piracy, web-site vandalism, release of viruses and worms, (distributed) denial of service attacks, invasion of privacy, cyber-spying and illegal hacking.
Dispute	means a dispute, difference, disagreement or question relating to this Agreement including to the performance of any obligation under this Agreement or any non-contractual obligation arising from or connected with the Payment Solutions or this Agreement.
Customer Data	means all data and information generated, inputted or stored in the Payment Platform as a result of the Payment Solutions and relating specifically to Customer or its Affiliates, as well as their operations, facilities, customers, Personnel, assets and programs in whatever form that information may exist and be processed through the Payment Solutions, excluding (a) Outpayce Performance Data; and (b) Outpayce Systems Level Data.
Customer Selected Provider	means any third-party selected by the Customer (including Bespoke Providers and third parties mandated by any applicable local or regulatory requirements) which provides payment services to Customer through the Payment Platform.
Extraordinary Scheduled Outage	means any Outage that is scheduled on an infrequent basis to support exceptional activities, which cannot be completed within the Scheduled Outage windows.
Force Majeure Event	means any act of God, natural disasters (e.g., fire, flood, earthquake, elements of nature), hostilities, acts of terrorism or crime including Cyber-Crime, riot, explosion, sabotage, acts of government, change of Law and lock-outs and/or industrial disputes (to the extent that such lock-outs and/or industrial disputes do not arise solely in relation to the affected Party's own Personnel), or any other cause beyond the reasonable control of the relevant Party.
Implementation Charges	means the Charges payable for the integration, setup, configuration or modification of Payment Solutions.
Industry Mandates	means the industry mandates and rules published from time to time by Card Schemes, the Payment Card Industry or IATA.
Integrations	means the connection with front-ends or back-ends through which each Payment Solution will be provided.
Intellectual Property	means any and all patents, utility models, registered and unregistered trade and service marks, registered designs, rights in unregistered designs, trade and business names, rights in domain names, copyrights and moral rights, rights in any object code or source code, database rights, rights in inventions, know-how, trade secrets, lists of partners and customers and other Confidential Information, and all other intellectual property rights of a similar nature, registered, not registered or capable of registration, including New Releases and New Versions, and whether subsisting in any country, territory or part of the world together with all or any goodwill relating thereto.
IP Claim	means a claim of actual or alleged infringement of a third party's Intellectual Property related to the other Party's use of the Payment Solutions (or a licence granted to it under the Agreement) in accordance with the Agreement, except if such claim arises from: (a) modifications made by the aggrieved Party or its subcontractors; (b) the aggrieved Party's combination of the aggrieved Party's services, work product, software or materials with items not provided for under this Agreement; (c) a breach of this Agreement by the aggrieved Party; (d) failure of the aggrieved Party to immediately use the corrections or modifications provided by the other Party offering equivalent features and functionality (except where the correction or modification provided by the other Party does not relate to such failure); or (e) modifications made on the request of the aggrieved Party.
Law	means any law, statute (including an implemented European directive), regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a Party is subject; or any binding court order, judgment or decree.

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Losses	means losses, fines, liabilities and damage incurred by the aggrieved Party pursuant to (a) a final, non-appealable court judgment, agency decision or arbitration award against the aggrieved Party, or (b) a settlement consented by the aggrieving Party, or (c) a breach of the Agreement, excluding (i) exemplary, punitive or special damages, (ii) loss of revenues, profits or contract business, (iii) loss of anticipated savings, (iv) loss of goodwill or reputation, (v) loss of or damage to, and restitution of, records or data, (vi) loss of management time, and (vii) any indirect loss or damage, whether incidental, collateral or consequential (including the damages and losses listed in sections (i) to (vi) above, when such losses or damages are indirect, consequential, incidental or collateral).
Man Day	means a working day of seven (7) hours of chargeable time.
Man Day Rate	means the price payable by the Customer per each Man Day.
Man Year	means two hundred ten (210) Man Days.
New Version	any modification of any Payment Solution where any new feature or capability is different from the features or capabilities of earlier or later forms of the Payment Solution. That is, no backwards compatible changes. In terms of semantic versioning, version 1 vs version 2. For the purposes of this Agreement, the first versions of the Payment Solutions will be those implemented on each Cutover.
New Release	a new release of all or any part of the Payment Solutions suitable for use by Customers in which any modification, enhancement, improvement, revision or update has been made, or to which a further function or functions have been added but which does not constitute a New Version or Patch. That is, adding functionalities that, in general, are backward compatible (for instance, version 1.1 vs version 1.2 of any given Payment Solution).
Ongoing Charges	means the recurring charges payable by Customer for the provision of the Payment Solutions.
Outage	means a period of time during which the Payment Platform is not able to send valid responses to valid requests (and includes any Scheduled Outage, unscheduled Outage and Extraordinary Scheduled Outage).
Outpayce	means Outpayce, S.A.U., entidad de dinero electronico, an emoney institution corporation with principal offices at Salvador de Madariaga 1, 28027 Madrid, Spain. Bank of Spain registration number 6727.
Outpayce Data	means all data and information generated, processed, received, inputted, provided or stored by Outpayce (including in the Payment Platform) in electronic or hardcopy format, and whether or not relating to the operations, facilities, passengers, Personnel, assets and programs of Outpayce and its Affiliates in whatever form that information may exist (including Outpayce Performance Data and Outpayce Systems Level Data) relating to any of the foregoing, but excluding the Customer Data.
Outpayce Performance Data	means robot measurement data of Customer's usage of the Payment Platform, Customer user system logging based data, incident records, problem tracking records, incident management reports, problem management reports and similar data relating to Payment Solutions performance measurement.
Outpayce Subcontractor	means any supplier or Outpayce Subcontractor engaged by Outpayce to provide payment related products or services to it, in support of the Payment Solutions or services provided by Outpayce to Customer.
Outpayce System Level Data	means network error messages and messages generated by network monitoring tools such as "ping" used to test correct operation of the Payment Platform and coding and similar data forming an integral part of the Payment Platform at a system level, irrespective of Customer identity.
Parties	means Outpayce and/or Customer, as the case may be.
Patch	means a make backward compatible bug fix (for instance, version 1.1.1 vs version 1.1.2 of any given Payment Solution).
Payment Platform	means the combination of networks, terminals, systems and servers, and associated infrastructure, including any hardware, software, and tools, which are operated and/or controlled by Outpayce and/or Outpayce Affiliates, and used to provide certain

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information and technology and data processing services related to payments.

Payment Solutions

means the solutions contracted by Customer under this Agreement.

PCI DSS

means the PCI Data Security Standard, as amended or replaced.

Personal Data

means any information relating to an identified or identifiable living natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Personnel

means the employees, officers, directors, representatives, agents or contractors of the Parties or their Affiliates.

Production Environment

means the system environment within the Payment Platform which is accessible by Service Recipients to use the relevant Payment Solutions.

Regulatory Change

means any change in the Law, PCI Data Security Standards, Industry Mandates, APM rules, and/or any local, national or supranational regulations.

Reseller

Means an Outpayce Affiliate entitled to resell the Payment Solutions on behalf of Outpayce, in compliance with these general terms.

Scheduled Outage

means any Outage that is planned and communicated in accordance with the Outpayce outage scheduling.

Third-Party Providers

means any Outpayce Subcontractor or Customer Selected Provider, as the case may be.

Tokenization Transaction

means a conversion of card data into tokens/cryptograms or the other way around.

Transaction Request

means a request launched by the Payment Platform on behalf of Customer to the relevant Third-Party Provider for the processing of a transaction supporting the payment services provided by such Third-Party Provider, regardless of the result of the request.

2. Payment Solutions and Professional Services

2.1 **Payment Solutions.** Outpayce will provide to Customer the payment solutions contracted (the “**Payment Solutions**”) through each of the Integrations, provided that the Customer contracted the Payment Solutions with a Reseller in compliance with these general terms.

2.1.1 **Description.** The Payment Solutions that Outpayce can offer to Customers are described [here](#).

2.1.2 **Compliance with the Law and applicable rules / modifications.** Customer understands and accepts that the provision of Payment Solutions by Outpayce may be subject to Regulatory Changes, as well as the relationship with Third-Party Providers. Outpayce has the right to add Patches, create New Versions or New Releases, amend, modify, remove, discontinue, replace, substitute, upgrade or enhance the functions and components of, and the data provided through, all or any element of the Payment Solutions and their service descriptions, including the availability of any particular Third-Party Provider, at any time.

2.1.3 **Customization. New Integrations. Modifications.** Any customization of the Payment Solutions and/or addition of new Integrations requested by Customer and/or New Versions and New Releases of the Payment Solutions may be subject to additional Charges.

2.1.4 **Decommissioning Payment Solutions.** Outpayce reserves the right to decommission and sunset Payment Solutions and/or existing versions of Payment Solutions. In both cases, Outpayce will give at least six (6) calendar months prior notice to Customer.

2.1.5 **Service levels.** The service levels outlined below are provided for information purposes only. These service levels are indicative of services provided in the last twelve (12) months to other Outpayce customers and create no warranty or obligation as to result or performance, unless Customer is subscribed to our service credit scheme:

Service Level Metric	Service Level
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(production environment)	
Uptime¹ of the Payment Platform	99.90%
Scheduled Outages	Maximum four (4) per calendar year, less than twenty (20) minutes duration each
Extraordinary Scheduled Outages	A maximum of sixty (60) minutes per calendar year

2.2 Professional Services

- 2.2.1 Description. The general description of the professional services that Outpayce can offer to Customers can be found [here](#) (“**Professional Services**”).
- 2.2.2 Ad hoc Charges. Each Professional Service will be seized and charged on a case by case basis, and further described in the relevant order form or work order, as the case may be.
- 2.2.3 Non-solicitation. From the period commencing on the date of the delivery of the Professional Services, until one (1) year after the delivery of the Professional Services, Service Recipients will not, nor will cause any Affiliate to, solicit for employment, or entice away from employment with Outpayce or its Affiliates, directly or indirectly, any expert involved in the performance of the Professional Services, without the prior written consent of Outpayce.

2.3 Service Recipients

- 2.3.1 Customer Affiliates. The Payment Solutions and services contracted by Customer under this Agreement can be provided to the Customer or to Affiliates of the Customer (“**Service Recipients**”).
- 2.3.2 Adherence. Customer & Affiliates responsibility. In order to receive the Payment Solutions and/or Professional Services Customer Affiliates must adhere to this Agreement using the standard template provided by Outpayce to become Service Recipients. Customer is responsible for its Affiliates and their compliance with the terms of this Agreement.
- 2.3.3 No other third party beneficiaries. Other than Customer Affiliates as Service Recipients, as the case may be, this Agreement is for the sole benefit of the Parties and nothing in this instrument, express or implied, is intended to or will confer any legal or equitable right, benefit or remedy of any nature upon any other person (for instance, the end-users of the Payment Solutions such as consumers or travel agencies).

2.4 Disclaimers

- 2.4.1 Except as expressly warranted in this Agreement, Outpayce expressly disclaims any further warranties, conditions and terms, whether express, implied or statutory, common law or otherwise (including any implied warranties of satisfactory quality or fitness for a particular purpose or non-infringement or any implied warranty arising out of the course of dealing) to the fullest extent permitted by Law.
- 2.4.2 Outpayce does not make any warranties or commitments with respect to (a) the accuracy or reliability of the content or data within the Payment Platform, which is provided for information purposes only; (b) the specific functions of the Payment Platform or its accuracy, reliability, availability or ability to meet Customer needs, nor about the consequences or accuracy of Outpayce interpretation of that data or any subsequent interpretation or risk assessment that Customer undertakes in relation to that data; and (c) the uninterrupted or error-free operation of the Payment Platform nor that (d) it will be always available; (e) the information it contains will be current or up to date; (f) it will be free from bugs or viruses, or never be faulty.
- 2.4.3 Outpayce has no obligation to provide any Payment Solution and/or Professional Service resold unilaterally by a Reseller without consulting with Outpayce.

¹ Schedules Outages and Extraordinary Scheduled Outages do not account as downtime of the Payment Platform. All references are made to the Payment Platform only. Third-Party Provider’s systems are excluded from any computation of downtime.

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3. Implementation, maintenance, updates and upgrades

3.1 Implementation

3.1.1 General. As soon as reasonably practicable after the date of execution of this Agreement, Outpayce and Customer must discuss and agree the scope, timeline, and the manner, including necessary information and key implementation stages in which the Payment Solutions will be implemented and/or the Professional Services will be rendered.

3.1.2 Duty of cooperation. Customer understands and accepts completion of the implementation in a timely manner is contingent upon Customer and Third Party Provider's full and timely co-operation as set out in this Agreement. Outpayce may adjust any estimated dates for completion of the implementation equitably to account for any delays caused by Customer and/or Third Party Providers and such delay may give rise to additional Charges.

3.1.3 Allocation of resources and Personnel. Customer understands and accepts that, once a Payment Solution is contracted through a Reseller, Outpayce allocates resources and Personnel for scoping, implementation and delivery. If Customer contracts a Payment Solution but then delays or suspends the implementation, Clause 14.1.2(b) will apply.

3.2 Maintenance. Customer will remain responsible for maintaining the integration of its systems, business processes and equipment with the Payment Platform.

3.3 Software updates and upgrades

3.3.1 Customer. Customer must install and use any updates, upgrades or modules to software or equipment provided by Outpayce as part of the Payment Solutions. Outpayce will give Customer reasonable notice and documentation of any updates, upgrades or modules to be implemented.

3.3.2 Customer Selected Providers. Customer must cause its Customer Selected Providers to update and upgrade their systems to meet the requirements of the Payment Platform, at their sole cost (or at Customer's expense). Outpayce will assume no responsibility if Customer Selected Providers fail to update and/or upgrade their systems.

3.3.3 Excused performance. Outpayce will not be required to provide any Payment Solutions to the extent that those Payment Solutions depend on unsupported releases or versions of the software or equipment related to the Payment Solutions. Therefore, failure to install any updates, upgrades or modules in accordance with the preceding clauses will excuse Outpayce for any failure or delay in performing any of its obligations under this Agreement.

4. Third-Party Providers

4.1 Third-Party Providers

4.1.1 Customer understands and accepts that certain Payment Solutions rely on Third-Party Providers. Outpayce discharges any liability in relation to the provision of the services provided by Third-Party Providers.

4.1.2 Third-Party Providers can terminate their relationship with Customer and/or Outpayce. In this case, Outpayce will notify to Customer the date in which the affected Payment Solution will not be available anymore.

4.1.3 Customer authorizes Outpayce to: (a) prepare and/or deliver in Customer's name all application forms and other documents that are necessary for the configuration of the Payment Solutions by Third-Party Providers to Customer; and (b) receive and pass-through payment processing related data, files, documents, reports and communications as may be required for the provision of the Payment Solutions.

4.1.4 Third-Party Providers may request additional information to provide the affected Payment Solutions, for instance to comply with new legal and regulatory requirements, or to conduct customary ongoing KYCs. Any delay in the furnishment of this information may result in a total or partial disruption of the Payment Solutions. Not providing this information may result in a discontinuance of the affected Payment Solutions and/or Professional Services, as the case may be.

4.2 Customer Selected Providers

4.2.1 The core services provided by Customer Selected Providers are defined under and governed by the respective terms and conditions applicable to, and contracted directly between, Customer and the respective Customer Selected Provider. Outpayce is not a party to these agreements.

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- 4.2.2 Outpayce is providing the connection with Customer Selected Provider upon Customer's instruction. Outpayce is responsible only for its part of the link to Customer Selected Providers.
- 4.2.3 Outpayce will not be responsible, liable, or accountable for:
- (a) any transactions processed (or not processed) by any Customer Selected Providers.
 - (b) any fine or penalty for the lack of compliance of Industry Mandates, APM rules or the Law by Customer or by any Customer Selected Provider.
 - (c) performing any quality control or validation of any information provided by any Customer Selected Provider.
- 4.2.4 Outpayce reserves the right to disconnect Customer Selected Providers in case of breach of the Outpayce terms and conditions (including but not limited to Outpayce' security standards).
- 4.2.5 Each connection to, or migration between, Customer Selected Providers selected may give rise to additional Charges.
- 4.2.6 Some Customer Selected Providers may require you to adhere to their general terms, available [here](#). By selecting any of these Customer Selected Providers, Customer is entering into an agreement with the relevant Customer Selected Provider, as set out above.
- 4.3 **Bespoke Providers**
- 4.3.1 Outpayce reserves the right to conduct regular due diligences on Bespoke Providers. If Outpayce believes, in its reasonable discretion, that the Bespoke Provider is or may be in breach of the Outpayce security requirements, Industry Mandates, or the Law, Outpayce will have the right to decommission the link to such Bespoke Provider. Customer will indemnify and hold harmless Outpayce for any damage that Outpayce or their Affiliates might suffer for the actions and/or inaction of the Bespoke Provider.
- 4.3.2 Outpayce has the right to decommission links to Bespoke Providers not used within twelve (12) calendar months, by giving two (2) calendar months' written notice to Customer. Customer will have no right to seek any damage or loss for this reason.
- 4.3.3 Once integrated into the Payment Platform, Bespoke Providers will be treated as Customer Selected Providers, with the specificities set out in Clause 4.3 and the Professional Service description.
- 5. Obligations of the Parties**
- 5.1 **Mutual obligations.** In addition to any other obligations outlined in the Agreement, both Parties will:
- 5.1.1 Provide to the other Party such cooperation as will be reasonably requested by the other Party to enable the Payment Solutions. In that sense, both Parties will (a) promptly notify the other Party and cooperate in good faith if the systems of the affected Party are compromised, there is a potential breach of this Agreement and/or there is risk of any security and/or data breach and cooperate with the other Party and with the relevant authorities to clarify and solve the situation; and (b) provide to the other Party the information and documents required by private or public entities and bodies to provide the Payment Solutions (for example, PCI DSS attestations of compliance and self-assessments, data audits, etc.).
- 5.1.2 Have in place adequate procedures designed to ensure compliance with anti-corruption, anti-bribery, counter-terrorist financing, sanctions, embargoes and export control Laws, and comply with such Laws.
- 5.1.3 Conduct their business in conformity with their own codes of conduct, including by requiring each of its Personnel to agree to and comply with such codes of conduct.
- 5.1.4 Implement effective policies and internal risk management and reporting systems necessary to ensure its compliance with the provisions of this Agreement, and provide training to their Personnel on matters relating to such compliance.
- 5.2 **Outpayce.** In addition to any obligation assumed under the Agreement, Outpayce must:
- 5.2.1 Comply at all times with the Law and Industry Mandates applicable to Outpayce under this Agreement.
- 5.2.2 Promptly notify Customer if any Payment Solution cannot be provided due to any technical, legal, regulatory reason, or *force majeure*, and use its commercially reasonable efforts to resolve the situation as soon as feasible.

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- 5.3 Customer. In addition to any obligation assumed under the Agreement, Customer must:
- 5.3.1 Define the necessary Business Rules relating to the Payment Solutions.
 - 5.3.2 Comply at all times with the Law and Industry Mandates applicable to Customer or its Affiliates under this Agreement, and ensure that all Customer Selected Providers are at all times compliant with any applicable Industry Mandate and/or PCI DSS obligations, and substantiate compliance with the foregoing within fifteen (15) calendar days, at Outpayce's request (for instance by providing the applicable PCI DSS attestation of compliance).
 - 5.3.3 Provide Outpayce with any information and documentation required to provide a specific Payment Solution, including information requested by Third-Party Providers (for instance to comply with new legal and regulatory requirements, or to conduct customary ongoing KYCs), as may be required from time to time.
 - 5.3.4 Use the Payment Solutions and the Payment Platform only for lawful purposes, and in compliance with this Agreement and the Law.
 - 5.3.5 Be responsible for the use of the Payment Solutions and the Payment Platform, including the content of Customer Data transmitted through it.
- 6. Charges**
- 6.1 Reimbursement of out-of-pocket expenses. Customer must reimburse Outpayce for reasonable travel related and other out-of-pocket expenses incurred in connection with this Agreement.
- 7. Representations and warranties**
- 7.1 The persons executing this Agreement have power and authority to enter into this Agreement on behalf of the Parties. Therefore, the relevant Party will be bound by this Agreement and to perform its obligations hereunder.
 - 7.2 The Parties have the right to use, license, or authorization to use the systems, platforms, and any other software used in connection with the Payment Solutions.
 - 7.3 No approvals, consents, orders or authorizations of, or designation, registration, declaration or filing with any public authority are required for the Parties' performance of their obligations under this Agreement.
 - 7.4 The Parties comply and have always complied with the Law and Industry Mandates.
 - 7.5 To the best knowledge of the Parties, there are no actions, suits, claims, governmental investigations or proceedings instituted, pending or threatened against the relevant Party or against any asset, interest or right of such Party, which may have a material adverse effect on such Party and/or its ability to perform its obligations under this Agreement.
 - 7.6 No form of bribe or inducement has been offered to the other Party to inducing it to entering into this Agreement or for the provision of any other services.
 - 7.7 The regulatory compliance and KYC information provided to the other Party before entering into this Agreement, especially regarding (a) anti-money laundering and counter-terrorist financing Laws, and (b) credit solvency is accurate, complete, and not misleading.
- 8. Damages. Limitations of liability. Remedies**
- 8.1 Obligations and exclusive remedies available
- 8.1.1 General obligations - Compensation in case of breach of certain obligations. The aggrieving Party will compensate the aggrieved Party against any Loss suffered due to any breach of its obligations under Clauses 4.3, 5, 7, 9, 10 and 11.
 - 8.1.2 IP Claims – Defence and compensation
 - (a) Each Party will defend the other Party, their Affiliates and their Personnel against any IP Claim.
 - (b) The aggrieving Party will compensate the aggrieved Party for any Loss resulting from the IP Claim.
 - 8.1.3 Breach of confidentiality obligations – Compensation and equitable remedies
 - (a) The aggrieving Party will compensate the aggrieved Party against any Loss suffered due to any breach of its obligations under Clause 16.
 - (b) On top of that, the aggrieved Party will be entitled to trigger equitable remedies (such as

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temporary restraint orders) against the other Party.

- 8.1.4 Material breaches – Compensation and rescission of the Agreement
- (a) The aggrieving Party will compensate the aggrieved Party against any Loss suffered due to any material breach, as described in Clause 14.2.1.
 - (b) On top of that, either Party will be entitled to terminate the Agreement in case of a material breach, as described in Clause 14.2.1.
- 8.2 Outpayce liability cap. Save for the exceptions contemplated in Clause 8.3, Outpayce's aggregate liability under this Agreement, whether arising from contract, tort (including negligence), breach of statutory duty, contribution or otherwise, and regardless of the form of the action or the theory of recovery, for Customer's Losses arising under this Agreement, will not exceed:
- 8.2.1 Payment Solutions: EUR 25,000.
 - 8.2.2 Professional Services: EUR 5,000.
- 8.3 Unlimited liability. Neither Party (nor its Affiliates) excludes or limits its liability to the other Party (or to its Affiliates) in respect of damages and losses arising in respect of:
- 8.3.1 Fraud or malice (*dolo*)
 - 8.3.2 Death or bodily injury caused by negligence.
 - 8.3.3 Any liability that cannot be excluded or limited by Law.
 - 8.3.4 Customer's delinquency on Charges.
- 8.4 Time Barring.
- 8.4.1 General indemnities. Remedies under Clauses 8.1 above must be sought within twelve (12) months of the date of the event giving rise to liability.
 - 8.4.2 Specific indemnities. Remedies when any of the cases outlined in Clause 8.3 occur can be sought in accordance with the applicable statute of limitations.
- 8.5 Procedure for third-party claims. In the event of a third-party claim which might give rise to liability under this Agreement, the affected Party will:
- 8.5.1 Notify the potentially indemnifying Party promptly of any claims, with at least two-thirds (2/3) of the time to respond to the claim still pending.
 - 8.5.2 Permit the potentially indemnifying Party to control the defence and settlement of such claims, provided that the potentially indemnifying Party will not settle or compromise any claim that requires the indemnified Party to make any admission of liability or take any actions, without the indemnified Party's prior written consent.
 - 8.5.3 Without limiting the foregoing, the indemnified Party will reasonably assist and cooperate with the potentially indemnifying Party, as requested by the potentially indemnifying Party and at the potentially indemnifying Party's expense, in defending or settling the claim.
- 8.6 Mitigation of damages. Nothing in this clause or in the rest of this Agreement will restrict or limit either Party's general obligation at law to mitigate any damage it may suffer under this Agreement.
- 8.7 Negotiated liability provisions. The Parties accept that liability is limited proportionally in terms of risk and the Charges payable under this Agreement. Consequently, the Parties waive any right of court modification or amendment (*modulacion judicial*) of the provisions agreed under this section.
- 9. Data protection**
- 9.1 Data privacy agreement. The Parties will comply with the data privacy agreement available [here](#).
 - 9.2 Incidents and commercial communications. Customer authorizes Outpayce and its Affiliates to reach out to Customer and its Affiliates for (a) incident and servicing relating to Payment Solutions and Professional Services contracted by Customer and (b) commercial communications related to Payment Solutions and Professional Services provided by Outpayce and its Affiliates.
- 10. Data Security and PCI DSS**
- 10.1 Security standards. The Parties will comply with the security standards available [here](#).
- 11. Intellectual Property Rights**

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- 11.1 Customer Background Intellectual Property. All Customer Background Intellectual Property will remain owned by Customer and its Affiliates.
- 11.2 Ownership of Outpayce Intellectual Property. Unless stated otherwise in this Agreement, Customer agrees and acknowledges that, except for Customer Background Intellectual Property, Outpayce (or Outpayce Affiliates, Outpayce Subcontractors, Third-Party Providers, or licensors as the case may be) owns all Outpayce Background Intellectual Property and/or Intellectual Property in the Payments Solutions, New Versions and New Releases, as the case may be.
- 11.3 License of access and use of Outpayce Intellectual Property. Subject to the terms and conditions of this Agreement and to the extent that Outpayce provides any Outpayce Intellectual Property to Customer or its Affiliates in connection with the performance of the Payment Solutions, Outpayce grants to Customer and/or other Service Recipients a non-exclusive, non-transferable, worldwide (excluding sanctioned countries) right to access and use, and permits Third-Party Providers to access and use, the Outpayce Intellectual Property of the Payment Solutions and the Payment Platform during the term of the Agreement.
- 11.4 License of access and use of Customer Intellectual Property. Subject to the terms and conditions of this Agreement, Customer grants to Outpayce, its Affiliates and Outpayce Subcontractors, a non-exclusive, non-transferable, world-wide right during the term of the Agreement to use all information and documentation provided to Outpayce in relation with the Payment Solutions and Professional Services provided under this Agreement, and as required by applicable Law, court or government authorities.
- 11.5 No implicit assignment of rights. Except as expressly specified in this clause, nothing in this Agreement will be deemed to grant to one Party, by implication, estoppel or otherwise, license rights, ownership rights or any other rights relating to the Intellectual Property of the other Party or its Affiliates. Each Party agrees to reproduce copyright legends or any other markings indicative of ownership that appear on any materials provided by the other Party, irrespective of ultimate ownership of the underlying Intellectual Property.
- 11.6 Assignment of Outpayce Intellectual Property. If Customer becomes the owner of Outpayce Intellectual Property in the Payment Solutions, New Versions and New Releases by operation of law, Customer hereby assigns to Outpayce all of such Intellectual Property (with full title guarantee, by way of present assignment of present and future rights, and free from any encumbrance). For such purposes, Customer agrees to deliver and/or execute all such documentation or legal or other instruments and to perform all such acts within its control as may be necessary to give effect to such assignment to Outpayce.
- 11.7 Conditions of use of the Payment Platform and the Payment Solutions. Customer will not, and will not permit any person (including Customer Selected Providers) to:
- 11.7.1 Modify, adapt, reverse-engineer, decompile, disassemble, or otherwise discover the source code of, any software or documentation comprised in the Outpayce Intellectual Property or the Payment Solutions, or attempt to do so for any reason, or access, create or modify the source code of such software or documentation in any way, save that you may modify documentation for internal training purposes.
- 11.7.2 Use any software, product or system forming part of the Outpayce Intellectual Property or the Payment Solutions in combination with any other software, product or system not made available, owned, developed or provided by Outpayce or any Outpayce Subcontractor or licensor, except through approved application programming interface products provided to the relevant Service Recipient by Outpayce.
- 11.7.3 Rent, sell, lease, sub-license, distribute, assign, copy, or in any way transfer the underlying software or any part or form thereof in the Payment Platform or in the Payment Solution or use the same otherwise than as contemplated by this Agreement or for the benefit of any Third-Party Provider.
- 11.7.4 Use any software, product or system forming part of the Payment Platform or the Payment Solution in contravention of specifications and system requirements.
- 11.7.5 Use, reproduce or exploit any software, product or system forming part of the Payment Platform or the Payment Solutions in contravention of any third party's Intellectual Property or Outpayce Intellectual Property.
- 11.8 Use of Outpayce's and Third-Party Provider's name and distinctive signs. Customer will not use Outpayce's or Third-Party Provider's name, trade name, logo or mark or refer to Outpayce directly or indirectly in any advertisement, media release, public statement or announcement or public disclosure relating to this Agreement, the Payment Solutions or the relationship of the Parties, including in any promotional or marketing materials or business presentations, without Outpayce's and/or Third-Party

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Providers' prior consent to each such use or release.

- 11.9 Publicity and use of Customer's name and distinctive signs. Customer hereby authorizes Outpayce and its Affiliates to (a) publicly disclose that Customer is a customer of Outpayce and its Affiliates, (b) publicly disclose details of the Payment Solutions provided to Customer, (c) use Customer's and its Affiliates' brands and logos in connection with such disclosures and (d) use Customer's name, logo, service mark and/or trademark, as updated from time to time, for the purposes of this Agreement.
- 11.10 Business intelligence solutions. Outpayce and/or its Affiliates may gather, compile, commingle and use Customer Data for aggregate statistical or analytical purposes and/or for evaluation of its provision and the use of the Payment Solutions. Such aggregate data may be used by Outpayce and/or its Affiliates for financial, accounting, product optimization, customer support, and other internal business purposes. Customer Data may be used by Outpayce and/or its Affiliates as input for business intelligence solutions sold to third parties, provided that such data and solutions do not contain any Personal Data and do not directly or indirectly identify Customer and/or its Affiliates. Outpayce and its Affiliates will have all rights to this compiled and anonymized data and business intelligence solutions.

12. Force Majeure

- 12.1 Force majeure & performance excuse. Partial and/or defective performance, and/or lack of compliance with the terms of this Agreement caused by a Force Majeure Event will not be regarded as a minor, material, partial or total breach of this Agreement.
- 12.2 Notice of force majeure & response. If any Party becomes affected by a Force Majeure Event, such Party will: (a) promptly notify the other Party of the nature, impact and likely duration of the Force Majeure Event; (b) use commercially reasonable efforts (without incurring into any material additional expense solely to comply with this Agreement) to mitigate or minimize the effects of the Force Majeure Event under this Agreement; and (c) resume full performance of its obligations under this Agreement after the cessation of the Force Majeure Event.

13. Suspension

- 13.1 Force majeure. Upon request of the affected Party, the Payment Solutions (in whole or in part, as the case may be) or the entire Agreement (as the case may be) will be suspended during a Force Majeure Event.
- 13.2 Third-Party Providers. Third-Party Providers may, at any time, delay, suspend or terminate, partially or entirely. In this case, Outpayce will have the right to delay or suspend the Payment Solutions affected with immediate effect.
- 13.3 Risk mitigation. In addition to the Outages contemplated in this Agreement, Outpayce has the right to interrupt the use of the Payment Platform and/or the Payment Solutions if Outpayce believes that (a) there is a security, compliance and/or legal risk, or (b) if any Service Recipient is causing technical problems, damage or interruption to the Payment Platform, results in inefficient or improper use of the Payment Platform, or is negatively influencing the provision of Payment Solutions or Professional Services to other customers.
- 13.4 Delinquency on Charges. Outpayce will be entitled to suspend all Payment Solutions and Professional Services in case Customer defaults on two (2) invoices of the Reseller within the same calendar year or if the Reseller defaults on two (2) Outpayce invoices within the same calendar year.
- 13.5 Remediation measures. Regardless of whether Outpayce decides to immediately suspend access to the Payment Platform and/or the provision of the Payment Solutions pursuant to this clause, Customer will use its best efforts to remedy the situation as soon as practicable, but in any event within ten (10) calendar days after notice thereof.

14. Termination

14.1 Termination of the provision of Payment Solutions

14.1.1 Mutual rights

- (a) Force Majeure. Following a suspension under Clause 13.1, if any given Payment Solution contracted under this Agreement cannot be resumed within sixty (60) calendar days, either Party will be entitled to terminate the provision of such affected Payment Solution by giving at least thirty (30) calendar days' prior notice.

In this case, neither Party will have any right to seek damages or compensation from the other Party on these grounds.

14.1.2 Outpayce rights

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- (a) Regulatory Change. If any Regulatory Change directly or indirectly affects the provision of the Payment Solutions, Outpayce will be entitled to terminate the provision of the Payment Solutions affected. Outpayce will provide at least fifteen (15) calendar days' prior written notice.

In this case, neither Party will have any right to seek damages or compensation from the other Party on these grounds.

- (b) Deemed unilateral rejection. If Customer refuses or fails to implement any contracted Payment Solution within six (6) months of the date on which the implementation plan was shared, such situation will be treated as a unilateral rejection of a contracted Payment Solution by Customer.

In this case, Outpayce will be entitled to charge time & materials to Customer to cover the cost of the resources and Personnel allocated to the project.

- (c) Deemed termination for convenience. Volumes below 12,000 Transaction Requests or Tokenization Requests per calendar year for each Payment Solution will be regarded as a unilateral termination for convenience by Customer, with no written prior notice.

In this case, Outpayce will have the right to seek damages under the doctrine of anticipatory repudiation of the Agreement.

- (b) Decommissioning. Outpayce is entitled to decommission Payment Solutions and, therefore, terminate the provision of the Payment Solutions affected, by giving at least six (6) calendar months prior notice to Customer.

In this case, neither Party will have any right to seek damages or compensation from the other Party on these grounds.

14.1.3 Customer rights

- (a) Rejection of Data Subprocessor. If Customer does not agree to the engagement of an Outpayce Subcontractor on reasonable grounds, and the Parties cannot find an alternative, Customer will be entitled to request termination of the affected Payment Solution.

In this case, neither Party will have any right to seek damages or compensation from the other Party on these grounds

14.2 Termination of the Agreement

14.2.1 Mutual rights

- (a) Material breach.

- (i) Definition. Any non-cured or incurable breach of the following clauses will be regarded as a material breach (*'incumplimiento de obligaciones esenciales'*), entitling the non-breaching Party to rescind the Agreement:

- (A) Clause 5.1
- (B) Clause 7.
- (C) Clause 9.
- (D) Clause 10.
- (E) Clause 11.

- (ii) Curing material breaches. If the material such breach is curable, the breaching will have thirty (30) calendar days since the other Party's notice of material breach to cure such material breach.

- (iii) Right to seek damages. In case of termination by material breach, the aggrieved Party will be also entitled to seek damages in accordance with Clause 8.

- (b) Force Majeure. Following a suspension under Clause 13.1, if none of the Payment Solutions contracted under this Agreement can be resumed within sixty (60) calendar days, either Party will be entitled to terminate this Agreement by giving at least thirty (30) calendar days' prior notice.

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In this case, neither Party will have any right to seek damages or compensation from the other Party on these grounds

14.2.2 Outpayce rights

- (a) Regulatory Change. If any Regulatory Change directly or indirectly affects the performance of the obligations assumed under this Agreement, Outpayce will be entitled to terminate this Agreement. Outpayce will provide at least fifteen (15) calendar days' prior written notice.

In this case, Customer will not be entitled to seek any damage or compensation on these grounds.

15. Consequences of suspension and termination

15.1 Consequences of suspension

15.1.1 If the provision of any Payment Solution is suspended for any of the reasons contemplated in Clause 13:

- (a) Outpayce will be discharged from any obligation in relation to the provision of such Payment Solution.
- (b) Outpayce will not be liable to any Service Recipient as a consequence of the suspension.
- (c) Customer will have no obligation to pay any Charge during the period of suspension if no Payment Solution or Professional Service is provided during such period.
- (d) If the affected Payment Solutions or Professional Service can be partially provided, the Parties will readjust the Charges to be paid during such period of partial suspension proportionally, in good faith.

15.2 Consequences of termination of the provision of a Payment Solution or of the Agreement

15.2.1 Vested rights, remedies, and actions. Termination of the provision of any Payment Solution or the Agreement will not prejudice or affect any vested right, action or remedy of the Parties, nor any right arising on termination (for instance, right to seek damages on termination for material breach, or termination for convenience without providing prior notice).

For the sake of clarity, the Parties will remain liable for any outstanding amount due and/or obligations arising from this Agreement.

15.2.2 Return & destruction of documents and information. Each Party will, at the other Party's option, return or destroy (where reasonably practicable and subject to ongoing use rights necessitating retention of a copy) all documentation in any medium that contains, refers to or relates to the other Party's, or any of its Affiliates', Confidential Information relating to the affected Payment Solutions.

15.2.3 Termination assistance. Should Customer request it, Outpayce will provide termination assistance in exchange for valid consideration. If Customer accepts the estimate, Outpayce will carry out the termination assistance agreed upon with Customer.

15.2.4 Survival of certain provisions. Any provision of this Agreement requiring compliance with certain obligations following termination of the Agreement will survive termination of the Agreement.

16. Confidentiality

16.1 Valuable information. The Parties understand and accept that the Confidential Information developed or received by the Parties in connection to this Agreement is (a) valuable for the Parties, (b) not in the public domain, and (c) strictly confidential.

16.2 Confidentiality obligations. During the term of this Agreement and after its termination on any grounds, the Parties will (a) refrain from disclosing, disseminating, or transferring the Confidential Information; (b) will use the Confidential Information only in relation to the provision of the Services; and (c) safeguard and protect the Confidential Information of the other Party and its Affiliates as it would do with its own Confidential Information.

16.3 Authorized Disclosure

16.3.1 The Parties can disclose the Confidential Information to their auditors, attorneys, accountants, consultants and Outpayce Subcontractors, provided however that:

- (a) The disclosure to such authorized recipient was necessary to receive professional

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advice in relation to this Agreement.

- (b) Such disclosure was necessary for the disclosing Party to comply with its obligations under this Agreement or any Law.
- (c) The recipient must be subject to (a) a duty of confidentiality or professional secrecy, or (b) entered into a confidentiality agreement mirroring the terms of this clause.
- (d) The disclosing Party will adopt all reasonable measures to protect the Confidential Information, and will be liable, accountable, and responsible for any breach of the confidentiality obligations by such disclosing Party or by the recipients of the Confidential Information.

16.3.2 The Parties can disclose the Confidential Information of the other Party to comply with legal or regulatory obligations, or if required by any administrative or court or authority with jurisdiction over the Parties, provided however, that:

- (a) The disclosing Party must promptly notify the other Party about the disclosure requirement.
- (b) The Parties will cooperate and use reasonable efforts to narrow the disclosure and to obtain an order or other reliable confirmation regarding the Confidential Information disclosed.
- (c) The disclosing Party will furnish only the Confidential Information that is legally compelled to disclose according to the advice of its legal counsel.

16.4 **Restrictions.** Unless otherwise provided for in this Agreement, the receiving Party will not:

16.4.1 Make any use or copies of the Confidential Information of the other Party.

16.4.2 Acquire any right or license in, or assert any lien against, the Confidential Information of the other Party.

16.4.3 Sell, assign, transfer, lease or otherwise dispose of the Confidential Information of the other Party or use the Confidential Information for any other use than the to comply with the obligations of this Agreement.

16.5 **Equitable relief.** The Parties acknowledge and agree that the disclosing Party may be irreparably harmed by the receiving Party's breach of any confidentiality obligation set out in this Agreement and that money damages may not constitute an adequate remedy. Accordingly, the non-breaching Party will be entitled, in addition to damages and any other available relief, to equitable relief, including without limitation one or more injunctions, specific performance orders, or other orders, prohibiting any breach and requiring strict compliance with the terms of this Agreement.

17. Notices

17.1 **Written notices. Language.** All notices, notifications, requests, or communications relating to this Agreement must be in writing (email being sufficient if responded by the other Party) and in English or Spanish.

17.2 **Address and emails for notices.** Customers can serve written notice to Outpayce at legal@outpayce.com or Outpayce, S.A.U., entidad de dinero electronico, Salvador de Madariaga 1, 28027 Madrid, Spain. Outpayce can serve notices to Customers to the registered address or emails included in the contract executed with the Reseller.

17.3 **Changes in address or emails for notices.** The Parties can modify the address and/or email for notices by giving the other Party prior written notice of the new address or addressee, and the date upon which the change will become effective.

17.4 **Effective delivery of notices.** All notices must be deemed to have been properly delivered to the recipient: (a) if delivered by certified post, upon the date of receipt or rejection or, on condition that the notice was served in the address provided by the recipient. If delivery was attempted twice (x2), but the notice was not either accepted or rejected (just "not received"), the date of receipt will be five (5) calendar days after the date of second (2nd) attempted delivery; or (b) if delivered by email, when such email is acknowledged or responded by the receiving Party.

18. Governing law and arbitration

18.1 **Governing Law.** This Agreement, the performance of the obligations contemplated herein, and any non-contractual obligations arising from, or in connection with, this Agreement, will be governed by and

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construed in accordance with the general laws of Spain ('*derecho comun*') and the Spanish Code of Commerce.

18.2 Amicable dispute resolution procedure

18.2.1 Either Party can raise Disputes. For such purposes, the disputing Party will give written notice to the other Party, justifying the grounds for the Dispute.

18.2.2 Within ninety (90) calendar days from the notification of such Dispute, the Parties will use their reasonable endeavours to resolve the Dispute in good faith, following their respective internal escalation procedures.

18.2.3 During this amicable dispute resolution period, the Parties will continue performing their obligations under this Agreement while any Dispute is being resolved. However, this provision will not operate as extending the term of this Agreement or precluding or delaying the exercise of any right of termination or other remedy permitted under this Agreement.

18.3 Arbitration. If the Parties fail to resolve the Dispute following the amicable dispute resolution procedure described above, the Parties will submit the Dispute to arbitration.

18.3.1 Arbitration rules. The arbitration proceedings will follow the Rules of Arbitration of the International Chamber of Commerce ("**ICC**").

18.3.2 Venue. The arbitration proceedings will take place in Madrid, Spain.

18.3.3 Language. The arbitration proceedings will be conducted in English.

18.3.4 Number of arbitrators. The proceedings will be conducted by one (1) arbitrator, nominated by the ICC

18.3.5 Arbitration award. The arbitration award will be binding for both Parties. Neither Party will be entitled to appeal the arbitration award, save for the exceptional cases permitted under Spanish arbitration laws.

18.3.6 Enforcement of the arbitration award. The arbitration award can be entered in any court of competent jurisdiction.

19. Miscellaneous

19.1 Contract principles

19.1.1 Entire agreement. The Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, and supersedes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, oral or written, relating to such subject matter.

19.1.2 Severability. If any provision of the Agreement is held to be invalid, illegal, and/or unenforceable in any respect, the relevant provisions will be ineffective only to the extent of such invalidity, illegality or unenforceability and will not affect or impair the validity, legality and enforceability of any other provision of this Agreement. The Parties will discuss in good faith to replace the invalid, illegal or unenforceable provisions or such portion thereof with a valid, legal and enforceable provision(s) with the same or similar effect.

19.1.3 Links. The information outlined in the links included in the general terms form part of the Agreement.

19.1.4 Prevalence

(a) General terms vs. work orders. If a conflict arises between the general terms and any work order executed with a Reseller, the general terms will prevail.

(b) Work orders. If a conflict arises between work orders, the most recent work order will prevail.

(c) Body of the general terms vs links. If a conflict arises between the body of the general terms and the content of any link, the latter will prevail.

19.1.5 Waivers. The waiver, forbearance or failure of a Party to demand specific performance of any provision hereunder will not be construed as a waiver or relinquishment of the rights of said Party to request compliance with such provision in the future.

19.1.6 Duty of cooperation. The Parties undertake to execute, procure, and/or take part in any action, document, or procedure that the other Party reasonably required to be able to comply with the

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provisions of this Agreement (at the cost of the requesting Party).

19.1.7 Amendments

- (a) Outpayce reserves the right to modify unilaterally the general terms and the content of the links (standard description of the Payment Solutions and Professional Services, data privacy agreement and security standards).
- (b) Upon each unilateral modification, Customer will have one (1) calendar month to request withdrawal from (a) the Agreement (if the general terms are modified) or (b) the provision of the affected Payment Solution and/or Professional Service (if the standard descriptions are modified).

19.1.8 Assignment and subcontracting

- (a) The Parties cannot assign or otherwise transfer this Agreement or any of their rights hereunder to any third party without the prior written consent of the other Party. Such consent will not be unreasonably withheld or delayed.
- (b) As an exception to the foregoing, Outpayce will be entitled to assign any right hereunder or the Agreement to any of its Affiliates, or to any other entity that acquired all or substantially all the assets of Outpayce, providing notice to Customer. Furthermore, can subcontract, totally or partially, any of the services provided under this Agreement
- (c) Any assignment in violation of these rules will be null and void.

19.1.9 Language prevalence. The general terms may be executed in different languages accepted by Outpayce. These versions are non-official translations of the English version of the general terms. In case of discrepancy between versions, the English version will prevail.
