

**PLEASE READ CAREFULLY BEFORE USING THE SOFTWARE:**

This end user licence agreement (**EULA**) is a legal agreement between you (**Licensee** or **you**) and Xperate Limited (company number 13539512) whose registered office is at 1 Winnall Valley Road, Winchester, Hampshire, SO23 0LD (**Xperate, us or we**) for any standard software created by Us, which We supply to You, as detailed in an order form entered into between the Licensee and Us (**Order Form**) (**Software**);

We license use of the Software to you on the basis of this EULA. We do not sell the Software to you. We remain the owners of the Software and any documentation associated with it at all times.

**IMPORTANT NOTICE TO ALL USERS:**

- BY CONTINUING TO USE THE SOFTWARE YOU AGREE TO THE TERMS OF THIS EULA WHICH WILL APPLY TO YOU AND YOUR EMPLOYEES. THE TERMS OF THIS EULA INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CONDITION 4.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT ACCESS THE SOFTWARE.

**We recommend you print a copy of this EULA for your records.**

**1. GRANT AND SCOPE OF EULA**

- 1.1 In consideration of payment by you (or your employer) of the agreed licence fee and you agreeing to abide by the terms of this EULA, we grant to you a non-exclusive, non-transferable licence to use the Software on the terms of this EULA.
- 1.2 You may download, install and use the Software for your internal business purposes only by the number of users agreed in writing in the Order Form or for all your users where no user number is indicated.

**2. RESTRICTIONS**

- 2.1 Except as expressly set out in this EULA or as permitted by any local law, you undertake:
  - 2.1.1 not to copy the Software except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up or operational security;
  - 2.1.2 not to assign, lease, rent, sub-license, loan, transmit, network or otherwise distribute the Software, or adapt, vary or modify the Software;
  - 2.1.3 not to make alterations to, or modifications of, the whole or any part of the Software;
  - 2.1.4 not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving interoperability of the Software with another software program, and provided that the information obtained by you during such activities:

- 2.1.4.1 is used only for the purpose of achieving inter-operability of the Software with another software program; and
- 2.1.4.2 is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
- 2.1.4.3 is not used to create any software which is substantially similar to the Software;
- 2.1.5 to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- 2.1.6 where applicable, to include our copyright notice on all entire and partial copies you make of the Software; and
- 2.1.7 not to provide or otherwise make available the Software in whole or in part in any form to any person other than your employees without prior written consent from us.

### **3. INTELLECTUAL PROPERTY RIGHTS**

- 3.1 You acknowledge that all intellectual property rights in the Software belong to us, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software other than the right to use them in accordance with the terms of this EULA.
- 3.2 You acknowledge that you have no right to have access to the Software in source code form.

### **4. LIABILITY**

- 4.1 You acknowledge that the Software has not been developed to meet your individual requirements, including any particular cybersecurity requirements you might be subject to under law or otherwise, and that it is therefore your responsibility to ensure that the facilities and functions of the Software meet your requirements. The Software is provided on an “as is” basis without any form of warranty, unless this has been otherwise agreed with you in writing in a separate contract between us. Accordingly, no form of warranty is given as to suitability or fitness for purposes.
- 4.2 We only supply the Software for internal use by your business, and you agree not to use the Software for any re-sale purposes.
- 4.3 We shall not in any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the EULA for loss of profits, sales, business, or revenue; business interruption; loss of anticipated savings; loss or corruption of data or information; loss of business opportunity, goodwill or reputation; where any of the losses set out in condition 4.3 to condition 4.3 are direct or indirect; or any special, indirect or consequential loss, damage, charges or expenses.
- 4.4 Other than the losses set out in condition 4.3 (for which we are not liable), our maximum aggregate liability under or in connection with this EULA whether in contract, tort (including negligence) or otherwise, shall (unless agreed otherwise in

writing) in all circumstances be limited to a sum equal the licence fee paid by you for the Software in the twelve months preceding the event giving rise to the claim. This maximum cap does not apply to condition 4.5.

- 4.5 Nothing in this EULA shall limit or exclude our liability for:
- 4.5.1 death or personal injury resulting from our negligence;
  - 4.5.2 fraud or fraudulent misrepresentation;
  - 4.5.3 any other liability that cannot be excluded or limited by English law.
- 4.6 This EULA sets out the full extent of our obligations and liabilities in respect of the supply of the Software. Except as expressly stated in this EULA, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Software which might otherwise be implied into, or incorporated in, this EULA whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

## 5. TERMINATION

- 5.1 We may terminate this EULA immediately by written notice to you if you commit a material or persistent breach of this EULA which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.
- 5.2 On termination for any reason:
- 5.2.1 all rights granted to you under this EULA shall cease;
  - 5.2.2 you must immediately cease all activities authorised by this EULA; and
  - 5.2.3 you must immediately and permanently delete or remove the Software from all computer equipment in your possession, and immediately destroy or return to us (at our option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

## 6. COMMUNICATIONS BETWEEN US

- 6.1 We may update the terms of this EULA at any time on notice to you in accordance with this condition 6. Your continued use of the Software following the deemed receipt and service of the notice under condition 6.3 shall constitute your acceptance to the terms of this EULA, as varied. If you do not wish to accept the terms of the EULA (as varied) you must immediately stop using and accessing the Software on the deemed receipt and service of the notice.
- 6.2 If we have to contact you, we will do so by email or by pre-paid post to the address you provided in accordance with your order for the Software.
- 6.3 Note that any notice:

- 6.3.1 given by us to you will be deemed received and properly served 24 hours after it is first posted on our website, 24 hours after an email is sent, or three days after the date of posting of any letter; and
- 6.3.2 given by you to us will be deemed received and properly served 24 hours after an email is sent, or three days after the date of posting of any letter.
- 6.4 In proving the service of any notice, it will be sufficient to prove, in the case of posting on our website, that the website was generally accessible to the public for a period of 24 hours after the first posting of the notice; in the case of a letter, that such letter was properly addressed, stamped and placed in the post to the address of the recipient given for these purposes; and, in the case of an email, that such email was sent to the email address of the recipient given for these purposes.

## 7. OTHER IMPORTANT TERMS

- 7.1 We may transfer our rights and obligations under this EULA to another organisation, but this will not affect your rights or our obligations under this EULA.
- 7.2 For information about how we handle personal data, please refer to our privacy policy available at <https://xperate.com/privacy-policy>.
- 7.3 You may only transfer your rights or your obligations under this EULA to another person if we agree in writing.
- 7.4 This EULA and any document expressly referred to in it constitutes the entire agreement between us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. You agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this EULA or any document expressly referred to in it. You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this EULA or any document expressly referred to in it.
- 7.5 If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing and that will not mean that we will automatically waive any later default by you.
- 7.6 Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 7.7 This EULA, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.

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