



acceptcards®
Independent Payment Experts

Supply of Service to Merchants Terms & Conditions

Version: 1.0

Date of last revision: January 2018

AGREEMENT BETWEEN Accept Cards Limited of Briggate, Elland, West Yorkshire, HX5 9HG United Kingdom ("ACL") and the merchant subscriber to the ACL Service who has agreed to the Terms and Conditions of ACL in an online signup and integration ("Merchant")

WHEREBY Merchant is a merchant wishing to use ACL's secure payment services in order to transact with customers and ACL wishes to provide those payment services in return for agreed fees.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**conditions**):

Business Day: Monday, Tuesday, Wednesday, Thursday and Friday but not a Bank or Public Holiday.

ACL: Accept Cards Limited of Briggate, Elland, West Yorkshire, HX5 9HG.

ACL's Equipment: any equipment, including tools, systems, cabling or facilities, provided by ACL or its subcontractors and used directly or indirectly in the supply of the Services that are not the subject of a separate agreement between the Parties under which title passes to the Merchant.

Charges: collectively, the **Fixed Charge**, **Throughput Charge** and any other additional amounts payable to ACL by the Merchant pursuant to these conditions as amended from time to time in accordance with these conditions.

Commencement Date: the effective start date of the Contract is the date on which the Merchant signed up online to ACL's services.

Contract: this document together with the Terms and Conditions agreed to by the Merchant on signing up to ACL's services.

Document: includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

DPA: Data Protection Act 1998 (as amended or replaced from time to time).

Fixed Charge: an annual or monthly fixed charge, payable in advance either per annum or per calendar month of the Contract in respect of the Merchant's being given access to the Services (including, without limitation, the issuing of a user name and password to the Merchant by ACL for this purpose).

Indemnifier: is the Party providing the indemnity to the other Party

Indemnified Party: is the Party receiving indemnity from the Indemnifier

Intellectual Property Rights ("IPR"): all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, know how, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Merchant: the person, firm or company including its officers, employees and agents who purchases Services from ACL as agreed from time to time.

Merchant Equipment: any equipment, hardware, computer, systems, cabling or facilities provided by the Merchant and used directly or indirectly in the supply of the Services.

Merchant Information: data and any other materials (in whatever form) published or otherwise made available (directly or indirectly) by the Merchant or on behalf of the Merchant by using the Services or relating to the Services. Merchant Information may include information about the Merchant itself (including individual employees or representatives) or permitted users or clients of the Merchant (or prospective clients) that may include personal data subject to laws or regulations.

MPTV: maximum permitted transaction volume.

pa: per annum

Party(ies): ACL Limited and the Merchant as named in this document.

PCI: the Payment Card Industry.

PCI:DSS: the Payment Card Industry Data Security Standard.

pcm: per calendar month

Services: the services to be provided by ACL under the Contract for the authorisation and payment of credit, debit, purchase, fuel, charge and like card transactions together with the provision of the necessary interface through which authorisation and payment of credit/debit/charge card transactions takes place.

Special Conditions: special conditions relating to particular aspects of the Service required as set out in the Contract or otherwise specified.

Support: the second line support services (which do not include ACL's dealing directly with any Third Party) relating to diagnosis of errors, restoration of functionality and mandatory system upgrade by way of correction, re-configuration, patch provision, driver update, software re-load, interface guideline update or user guidance to remedy a fault and the implementation of mandatory updates, adjustments, additions or modifications to the Services as ACL may prescribe from time to time.

Throughput Charge: a monthly charge payable in arrears in each calendar month based upon the actual number of transactions processed by the Services in that calendar month at the rate set out when the Merchant accepted the online signup agreement.

Transaction: a transaction is defined as a successful or declined pre-authorisation, full authorisation or refund; this includes 3D Secure authentication requirements.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

Headings in these conditions shall not affect their interpretation.

A **person** includes a natural person, corporate or unincorporated body.

A reference to **writing** or **written** includes faxes and surface mail but not e-mail.

Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

References to conditions, schedules and appendices are to the conditions, schedules and appendices of the Contract.

1. APPLICATION OF CONDITIONS

1.1 These conditions shall:

(a) apply to and be incorporated into the Contract; and

(b) prevail over any inconsistent terms or conditions (whether express or implied) contained, or referred to, in any Merchant purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Merchant, or that have been or may be entered into between the Parties implied by law, trade custom, practice or course of dealing.

1.2 A Contract for the supply and purchase of the Services on and subject to these conditions will be established at such time as ACL commences provision of all or any part of the Services, whichever is the earlier. The Merchant's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

1.3 Quotations are given by ACL on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation can be withdrawn or amended by ACL at any time prior to a Contract being formed.

2. COMMENCEMENT AND DURATION

2.1 The Services supplied under the Contract shall be provided by ACL to the Merchant from the Commencement Date or as otherwise agreed in writing by ACL.

2.2 Subject to condition 10, the Services supplied under the Contract shall continue to be supplied for periods of one calendar month unless the Contract is terminated by one of the Parties giving to the other not less than one month's written notice.

3. ACL'S RIGHTS AND OBLIGATIONS

3.1 ACL shall use reasonable endeavours to provide the Services to the Merchant, in accordance in all material respects with these conditions and any Special Conditions.

3.2 ACL shall be entitled to suspend the Services (or any part thereof) at any time with immediate effect:

(a) for operational reasons such as repair, maintenance, improvement provided that ACL shall endeavour to give the Merchant as much as notice as is reasonably possible before doing so and shall restore the Service as soon as reasonably practicable following any such suspension;

(b) where ACL reasonably believes that the continued provision of the Services represents a threat or potential threat to the operation, security or functionality of any or all of the following (or any part thereof):

(i) the integrity of the ACL Equipment and computer server hardware;

(ii) the Merchant's Equipment;

(iii) the system or operation of any Third Party;

(iv) any aspect of services provided to a Third Party by ACL; or

(v) where ACL identifies or reasonably suspects any out of character traffic profile attributable or connected to the utilisation of the Services by the Merchant (eg MPTV). ACL will promptly contact the Merchant to advise if the MPTV is being exceeded, ahead of suspending the service. For the avoidance of doubt, the right to suspend is designed to protect the Service from risks such as DDoS and all reasonable steps will be taken to maintain the service.

3.4 ACL shall have the right to vary at any time the Services supplied to the Merchant pursuant to the Contract in order to comply with any law, regulation, industry standard (including without limitation any PCI standard or best practice) in any relevant jurisdiction and ACL shall endeavour to provide the Merchant with reasonable notice prior to doing so.

3.5 ACL shall be entitled to change the technical specification of the Services for purely operational reasons provided that any change to technical specification will not materially reduce the performance of the Services.

3.6 ACL shall endeavour to provide an uninterrupted Service with 99.5% availability (excluding scheduled service maintenance, of which ACL shall use its reasonable endeavours to give the Merchant reasonable notice to ensure minimum disruption to the Merchant. It shall be the responsibility of the Merchant to act in accordance with ACL's reasonable instructions in such circumstances.).

3.7 ACL shall provide the Services with reasonable care and skill, in a workmanlike manner and in accordance with industry standards and Payment Card Industry standards from time to time including in particular the PCI:DSS.

3.8 ACL shall have the right, at any time, and for any reason whatsoever to decline to allow any prospective Third Party customer, eg a customer of the Merchant's who may wish to use the Merchant as a payments bureau, to utilise the Services or any part thereof. In such an instance, the Merchant may apply to ACL to become a reseller of ACL's services.

3.9 The Services shall not include training of personnel utilised by the Merchant.

4. MERCHANT'S OBLIGATIONS

4.1 The Merchant shall:

- (a) co-operate fully with ACL in all matters relating to the Services;
- (b) provide to ACL, in a timely manner, such Merchant Information and other information as ACL may reasonably require to ensure the safe and compliant provision of the service;
- (c) if applicable, be responsible (at its own cost) for providing the telecommunications services and correctly configured Merchant Equipment that is needed to connect to the Services;
- (d) provide details of a systems administrator who, on behalf of the Merchant, will be familiar with the Services and available to be contacted by ACL to provide details of any change to the contact details of the system administrators;
- (e) if applicable, be responsible for configuration and management of access to the Services including configuration of network, firewall, DNS, routers and any personal computers as well as any integration of the Service into a website or call centre application;
- (f) allow ACL to incorporate the Merchant Information into the ACL databases solely for the purpose of providing ACL Services, including PCI compliant fraud screening services;
- (g) where material compliance issues in the Merchant's processes are identified, the Merchant shall implement the recommendations given by ACL or their own appointed PCI QSA in relation to the Services;

Security

- (h) be responsible for the security and proper use of all user identities ("User IDs") and passwords in connection with the Services (including changing passwords on a regular basis) and agrees to ensure that User IDs are kept confidential, secure, used properly and not disclosed to any unauthorised person and to inform ACL immediately if there has been (or is likely to be) a breach of security or misuse of the Service;
- (i) promptly change any or all of the passwords used in connection with the Service when requested to do so by ACL where ACL reasonably believes that there is or is likely to be a breach of security or misuse of the Services;
- (j) promptly inform ACL if any of the information supplied on or in relation to the online registration changes;
- (k) not store card details on their systems whether in plain text or encrypted form. Where a Merchant, with the agreement of its acquiring bank, needs to store card details on its systems whether in plain text or encrypted form, the Merchant agrees to notify ACL in order to be assessed for their adherence to PCI:DSS. In such a case, the Merchant will be authorised by ACL to maintain a store of card numbers only if those aspects of the Merchant's systems have a current PCI:DSS class 1 approval, in which case the annual certificate from the Merchant's QSA must be provided to ACL without delay;

Use of the Service

- (l) only access the Services as permitted by the Contract and shall not make any attempt to circumvent the system security of the Services or those of ACL at any time;

Regulations

- (m) comply with all legislation, instructions or guidelines issued by any regulatory authority, relevant licensees and any other codes of practice that apply to the Merchant and that relate to the provision of the Merchant Information or in any way in relation to the Services (including without limitation any PCI Standards of which ACL inform the Merchant from time to time);
- (n) immediately notify and appropriately indemnify ACL if it becomes aware of any unauthorised use of all or any part of the Services.

5. CHARGES AND PAYMENT

5.1 In consideration of the provision of the Services by ACL, the Merchant shall pay the Charges in accordance with the following conditions:

- (a) ACL will invoice the Merchant calendar monthly using the same date in the month as their internet signup date for the ACL Service in respect of the monthly Fixed Charge and Throughput Charges.
- (b) The Merchant agrees for all Charges payable pursuant to the Contract to be paid to ACL by credit or debit card; or by direct bank transfer as determined by ACL and the Merchant shall provide ACL with a signed Mandate to effect such payment. The Charges shall be paid on receipt of the ACL invoice and payment shall be made without any set-off, withholding or counterclaim. During account setup, the initial credit or debit card used will become subject to the automated recurring credit or debit card transaction process. This credit or debit card will be used to automatically pay for invoices raised by ACL. By contacting ACL, a credit or debit card can be updated at any time and the Merchant can opt out of recurring credit or debit card transactions if required.
- (c) The Charges shall be invoiced and paid in pounds sterling. ACL will (where applicable) add value added tax (or any other applicable tax or charge in any country where the Services are provided) to the ACL invoices.

5.5 ACL reserves the right at any time to require that the Merchant pay all or any part of the Charges in advance of provision of all or any part of the Services or a deposit in advance or to provide a guarantee as security for payment of future invoices in respect of the Services to be provided if the Merchant gives legitimate cause for concern by defaulting on or being late in paying due ACL invoices.

5.6 The Charges do not include any call charges or service charges incurred by the Merchant in accessing the Services via the internet or via a Third Party internet service provider. The Merchant agrees to pay these charges directly to the relevant service provider.

5.7 ACL may, at the end of each calendar year dating from the Merchant's internet signup date for the ACL Service, restructure the Contract and revise the Charges (or any part thereof) in line with inflationary increases or changes to compliance requirements from licensing or authorising bodies.

5.8 Without prejudice to any other right or remedy that it may have, if the Merchant fails to pay ACL on the due date in accordance with the Contract, ACL may:

(a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Merchant shall pay the interest immediately on demand. ACL may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

(b) suspend the provision of all or any Services until payment has been made in full in cleared funds.

5.9 Time for payment shall be of the essence of the Contract.

5.10 All sums payable to ACL under the Contract shall become due immediately on its termination for any reason whatsoever, notwithstanding any other provision. This condition 5.10 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

5.11 ACL may, without prejudice to any other rights it may have, set off any liability of the Merchant to ACL against any liability of ACL to the Merchant.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 As between the Merchant and ACL, all Intellectual Property Rights in ACL shall be owned by ACL. Subject to condition 6.2, ACL licenses all such rights to the Merchant free of charge and on a non-exclusive, worldwide basis to such extent as is necessary for the sole purpose of enabling the Merchant to make reasonable use of the Services. If this Contract expires or terminates, this licence shall automatically terminate simultaneously at the time of such termination.

6.2 ACL will indemnify the Merchant if any Third Party makes or threatens to make a claim against the Merchant based on allegations that the Merchant's use of the Services infringes that Third Party's intellectual property rights, provided that the Merchant:

(a) notifies ACL promptly in writing of any allegation of infringement;

(b) makes no admission relating to the infringement;

(c) allows ACL to conduct all negotiations and proceedings and gives ACL all reasonable assistance in doing so (ACL will pay the Merchant's reasonable expenses for such assistance); and

(d) allow ACL to modify the Services or any item provided as part of the Services, so as to avoid the infringement, provided that such modification does not materially affect the performance of the Services; provided, however, that, in the event that the scope of the Services is materially impacted as a result of such modification, the Merchant shall be entitled to terminate for cause immediately upon notice to ACL.

6.3 The indemnity in condition 6.2 does not apply to infringements caused by the use of the Services in conjunction with any other software or services that ACL has not supplied or to infringements caused by designs or specifications made by the Merchant or by any other Third Party.

6.4 The Merchant understands and accepts that ACL will have no direct control over the way that the Merchant may use the Services and consequently any misuse of the Services by the Merchant may have serious implications for ACL in respect of its reputation and relationships with Third Party suppliers and business partners. The Merchant therefore agrees to indemnify ACL fully, on demand, from and against any claims or legal proceedings that are brought or threatened against ACL by a Third Party where:

(a) the act and/or omissions of the Merchant have resulted in the Services' not being used in accordance with this Contract; or

(b) use of the Services in conjunction with other software and special services not supplied by ACL by the Merchant has caused a Third Party's IPR to be infringed.

7. NON-DISCLOSURE, CONFIDENTIALITY AND ACL'S PROPERTY

7.1 The Merchant and ACL both agree that all commercial arrangements including all Charges, Special Conditions and Services within this agreement will not be disclosed to any third party and remain strictly confidential.

7.2 Both the Merchant and ACL shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives that are of a confidential nature and have been disclosed to its employees, agents, consultants or subcontractors and any other confidential information concerning each Party's business or its products.

7.3 Either Party may disclose such information:

(a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out its obligations under the Contract; and

(b) as may be required by law, court order or any governmental or regulatory authority.

7.4 Each Party shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 7.

7.5 Each Party shall not use any such information for any purpose other than for the purposes of the Contract.

7.6 All materials, equipment and tools, drawings, specifications and data supplied by either Party shall, at all times, be and remain the exclusive property of the originating Party (or any relevant Third Party), but shall be held by the other Party in safe custody at its own risk and maintained and kept in good condition by the receiving Party until returned to the disclosing Party and shall not be disposed of or used other than in accordance with written instructions or authorisation of the other Party.

7.7 The Merchant agrees that once the Contract has been entered into, ACL may issue a press release (or any other form of public communication) relating to the entry into the Contract. The Customer will have the opportunity to approve such a release and such approval shall not be unreasonably withheld or delayed.

8. LIMITATION OF LIABILITY

8.1 In the event that the Services are available for less than 99.5% of the time within a given calendar month (with the ACL system log measurements being the conclusive record of this availability), then the Merchant's sole remedy in this respect shall be a credit by ACL to the Merchant of an amount equal to the following calendar month's Fixed Charge provided that the Merchant shall notify ACL in writing of any claim under this condition 8.1 within 60 (sixty) days of the incident of the Services' being unavailable for the period being claimed. This will be the sole remedy of the Merchant and any implied Service warranty or other remedy is hereby expressly excluded.

8.2 This condition 8 sets out the entire financial liability of ACL (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Merchant in respect of:

(a) any breach of the Contract;

(b) any use made by the Merchant of the Services, or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

8.3 Unless otherwise set out in this Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 Subject to condition 8.3 and clause 8.1:

(a) ACL shall not be liable for Merchant's losses including:

(i) loss of profits; or

(ii) loss of business; or

(iii) depletion of goodwill and/or similar losses; or

(iv) loss of anticipated savings; or

(v) loss of goods; or

(vi) loss of contract; or

(vii) loss of use; or

(viii) loss of, corruption or destruction of data or information; or

(ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) Each party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract in any 12 month period shall be limited to the total Fixed Charge fees paid by the Merchant for the Services in that 12 month period.

8.5 The indemnities provided under this Agreement are subject to the following provisions:

(a) the Indemnified Party makes no statement prejudicial to the Indemnifier;

(b) such a claim is not caused by or contributed to by acts of the Indemnified Party;

- (c) the Indemnifier is promptly notified in writing of the details of the claim;
- (d) the Indemnifier has sole control of the defence of such claim and all related statement negotiations;
- (e) the Indemnified Party gives the Indemnifier all reasonable assistance at the Indemnifier's expense in connection with it; and
- (f) the Indemnified Party takes all steps to mitigate the losses, costs, damages, liabilities, fees and expenses it may incur.

9 DATA PROTECTION

9.1 The Merchant acknowledges and agrees that details of the Merchant's name, address and payment record may be submitted to a credit reference agency and personal data will be processed by and on behalf of ACL in connection with the Services.

9.2 Each Party shall comply with its respective obligations under the DPA as specified in this condition 9. Neither Party shall do any act that puts the other Party in breach of its obligations set out in this condition 9 and nothing in this Contract shall be deemed to prevent any Party from taking the steps it reasonably deems necessary to comply with the DPA.

9.3 The Parties acknowledge that:

- (a) The Merchant alone shall determine the purposes for which and the manner in which personal data (as defined in the DPA) are, or are to be, processed in the performance of the Services;
- (b) The Merchant shall be the data controller (as defined in the DPA) in respect of all personal data processed in the performance of the Services; and
- (c) ACL shall be the data processor (as defined in the DPA) in respect of the personal data processed as required for performance of the Services.

9.4 The Merchant warrants and undertakes that any instructions given by it to ACL (whether specific or non-specific) in respect of the processing of personal data shall at all times be in accordance with the requirements of the DPA and that compliance with such instructions by ACL in its provision of the Services shall not put the Merchant or ACL in breach of the DPA.

9.5 Any obligation on ACL or the Merchant under this condition 9 to do, or refrain from doing, any act or thing shall include an obligation on ACL or the Merchant respectively to ensure that its employees, agents and sub-contractors (if any) also do, or refrain from doing, such act or thing.

9.6 In respect only of personal data that ACL processes on behalf of the Merchant in connection with the Services, ACL shall:

- (a) only process the personal data in accordance with instructions from the Merchant, which may be specific instructions or standing instructions of general application in relation to the Services, whether set out in this Contract or otherwise notified to ACL;
- (b) unless otherwise agreed in writing, only process the personal data to the extent and in such manner as is necessary for the provision of the Services or as is required by law or any regulatory body or otherwise as appropriate including where necessary involving credit reference, fraud prevention and law enforcement agencies and other organisations in relation to preventing fraud and money laundering;
- (c) maintain sufficient technical and organisational measures to prevent unauthorised or unlawful processing of personal data;
- (d) promptly notify the Merchant if it receives a request from a data subject (as defined in the DPA) to have access to personal data or any other complaint or request relating to the Merchant's obligations under the DPA; and
- (e) otherwise provide reasonable assistance to the Merchant as necessary to allow the Merchant to comply with the DPA.

9.7 The Merchant recognises that a breach of the DPA would severely impact the reputation and shareholder value of ACL and therefore agrees that it will on demand fully and effectively indemnify ACL and keep ACL fully indemnified against any loss, liability and costs incurred as a result of any breach of the DPA by the Merchant. ACL recognises that a breach of the DPA would severely impact the reputation and shareholder value of the Merchant and therefore agrees that it will on demand fully and effectively indemnify the Merchant and keep the Merchant fully indemnified against any loss, liability and costs incurred as a result of any breach of the DPA by ACL.

10. TERMINATION

10.1 Without prejudice to any other rights or remedies that the Parties may have, the Merchant may terminate the Contract without liability to ACL immediately on giving written notice to ACL if ACL commits a material breach of any of the terms of the Contract and, if such a breach is remediable, fails to remedy that breach within thirty (30) days of ACL's being notified in writing of the breach.

10.2 Without prejudice to any other rights or remedies that the Parties may have, ACL may immediately suspend the provision of the Services and/or terminate the Contract or any part of the Contract without liability to the Merchant immediately on giving written notice to the Merchant if:

- (a) the Merchant fails to pay any amount due under the Contract on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment; or
- (b) the Merchant commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of the Merchant being notified in writing of the breach; or

- (c) the Merchant notifies ACL that it does not accept any variation in the Charges pursuant to condition 5.7; or
- (d) the Merchant suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) the Merchant commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Merchant with one or more other companies or the solvent reconstruction of the Merchant; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Merchant other than for the sole purpose of a scheme for a solvent amalgamation of the Merchant with one or more other companies or the solvent reconstruction of the Merchant; or
- (g) an application is made to Court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Merchant; or
- (h) a floating charge holder over the assets of the Merchant has become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the Merchant or a receiver is appointed over the assets of the Merchant; or
- (j) a creditor or encumbrancer of the Merchant attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) the Merchant suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) any event occurs, or proceeding is taken, with respect to the Merchant in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 10.2(e) to condition 10.2(l) (inclusive); or
- (m) there is a change of control of the Merchant.

10.3 On termination of the Contract for any reason:

- (a) the Merchant shall, within fifteen (15) days, pay to ACL all of ACL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted and any portion of the remaining Fixed Charge for that calendar year and that has not yet been invoiced, ACL may submit an invoice, which shall be payable within fifteen (15) days of receipt;
- (b) the Merchant shall promptly return all and any of ACL's Equipment. If the Merchant fails to do so, then ACL may enter the Merchant's premises and take possession of them and the Merchant grants to ACL an irrevocable licence for his purpose. Until they have been returned or repossessed, the Merchant shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

10.4 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:

- (a) condition 6 (IPR);
- (b) condition 7 (Confidentiality and ACL's Property);
- (c) condition 8 (Limitation of Liability);
- (d) condition 9 (Data Protection)
- (e) condition 10 (Termination); and
- (f) condition 21 (Governing Law and Jurisdiction).

11. FORCE MAJEURE

ACL shall have no liability to the Merchant under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of ACL or any other Party); failure of a utility service or transport network; failure of or interruption to the internet or any other communication network; act of God and natural disaster; war, riot, civil commotion, malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident; breakdown of plant or machinery; fire, flood, or storm.

12. NON-SOLICITATION

12.1 Each Party agrees that they shall not, without the prior written consent of the other Party, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services or termination of the Contract, solicit or entice away from the other or employ (or attempt to employ) any person who is, or has been, directly engaged as an employee or as a consultant or subcontractor who has worked on ACL products if the Merchant were employing them for working on competing products of the other Party or vice versa; provided, however, it shall not be considered

a breach of this provision for either party to hire the employee of the other without consent of the other party during such period if such employee responds to a general solicitation of employment not targeting the employees of the other party.

12.2 In the event that one Party gives consent in accordance with condition 12.1 above, the requesting Party agrees to pay the other Party, on demand, an amount that is equal to 30% of the relevant gross annual salary (or average annual income arising from working for the Merchant) of each person solicited or enticed in circumstances set out in condition 12.1.

13. VARIATION AND SCOPE CHANGE

13.1 ACL may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements or PCI standard guidance, provided that such changes do not materially affect the nature, scope of, or the Charges for the Services. If ACL requests a change to the scope of the Services for any other reason, the Merchant shall not unreasonably withhold or delay consent to it.

13.2 Subject to condition 5.7, 13.1 and 13.4, no variation of the Contract or these conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

13.3 The Merchant may at any time during the term request a change in the Services, a change in the MPTV or the addition of new Services (a "Change Request") by notifying ACL in writing of its requirements. ACL shall give due consideration to any Change Request from the Merchant and shall, within 5 Business Days of receiving a Change Request from the Merchant:

(a) confirm its acceptance of the Change Request, without any further variation to the terms of this Contract, in which case the Parties shall execute a variation to this Contract in accordance with condition 13 as soon as reasonably practicable and ACL shall implement the Change Request accordingly; or

(b) provide a written proposal for accepting the Change Request, subject to any variation that it reasonable considers necessary to the Services, or the Charges, including any new Services; or

(c) if ACL considers it is not reasonably practicable for any reason whatsoever, with or without any such variation, provide the Merchant with notification of this fact.

13.4 Any proposal provided by ACL under condition 13.3(b) shall be a fair and reasonable quotation for the Change Request.

13.5 The Merchant shall give due consideration to ACL's proposal under condition 13.3(b) and shall within 5 Business Days after receipt of the proposal either give ACL a written notice accepting the proposal (subject to or without further negotiation) or rejecting the proposal, in which case the Parties shall as soon as reasonably practicable execute a variation to or termination of this Contract in accordance with condition 13.2 and ACL shall implement the agreed variation or termination.

14. WAIVER

14.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

14.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15. SEVERANCE

15.1 If any provision of the Contract (or part of any provision) is found by any Court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the Parties' original commercial intention.

16. ENTIRE AGREEMENT

16.1 The Contract constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.

16.2 Subject to condition 16.3, each Party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), other than as expressly provided in the Contract.

16.3 Nothing in this condition 16 shall limit or exclude the liability of either Party for fraud.

17. ASSIGNMENT

17.1 The Merchant shall not, without the prior written consent of ACL, assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 The Merchant having rights under the Contract is acting on its own behalf and not for the benefit of another person.

18. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the Parties, nor constitute any Party the agent of another Party for any purpose. No Party shall have authority to act as agent for, or to bind, the other Party in any way.

19. RIGHTS OF THIRD PARTIES

A person who is not a Party to the Contract shall not have any rights under or in connection with it pursuant to the Contract (Rights of Third Parties) Act 1999 but nothing in the Contract shall affect any right or remedy of a Third Party that exists or is available otherwise than as a result of that Act.

20. NOTICES

20.1 Any notice required to be given under the Contract shall be in writing and shall be delivered

- (a) personally, during a Business Day between 9am and 5pm; and/or
- (b) by recorded delivery, commercial courier or other signed-for means; and/or
- (c) by email.

Addresses and numbers to be used for delivery are as follows:

Accept Cards Ltd, Briggate, Elland, HX5 9HG. Phone: 0345 269 6650 email: support@acceptcards.co.uk

20.2 Any notice shall be deemed to have been duly received if delivered personally to a ACL staff member at the address above but not if simply left to be found; or, if sent by "signed-for" post, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

20.3 A notice required to be given under the Contract shall be validly served if sent by e-mail only if the sender has received a manual reply to that email notice from the intended recipient and it is the sender's responsibility to ascertain that such email notice has been properly received.

20.4 This condition 20 shall not apply to the service of any documents in any proceedings or other documents in any legal action.

21. GOVERNING LAW AND JURISDICTION

21.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

21.2 The Parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

ACL Safety & Security As soon as a Customer enters into the application process, all information transferred between the Customer and ACL is encrypted using SSL encryption. Even if this data were to be intercepted over the Internet, it would be useless due to the encryption. When entering a secure area on the ACL site, the Internet browser will show a picture of a small padlock, normally appearing at the bottom of the screen or just to the right of the address bar. To check whether the page is secure, simply right click on the page and select 'properties' or 'view frame info' from the list.

Also, a secure web page can be identified from the web site address. Where a standard page will begin with 'http://', a secure web page will begin with 'https://', denoting that the page is using a secure server for the transmission of data. All credit card details entered on the ACL site are encrypted using ACL's 128bit SSL (Secure Sockets Layer) Software. When a secure connection is established, the downloaded web site sends a digital certificate to the Customer's web browser. When the certificate arrives, it will contain a public key, which functions as a one-way encryption device. The browser then uses this key to scramble any personal data (i.e. Credit Card Information) before sending it over the Internet. Information encrypted with the public key cannot be decrypted without the corresponding private key, held only by ACL. Therefore, without this exclusively held private key, no personal information can be read.

ACL Privacy Policy and Information Confidentiality ACL is committed to retaining Customer confidentiality and trust. Accordingly, ACL maintains a strict privacy policy to protect all personal information provided online.

It is ACL policy that all personal information including, but not limited to, names, postal address(es), e-mail address(es) and telephone number(s), is kept private and confidential. All personal information provided is stored in a secure location, accessible only by designated ACL staff. It is used only for the purposes for which the information is provided (such as to reply to requests or to handle Customer queries). Also, if indicated on our site that the Customer would like to receive information about other products and services, such as publications or membership, their personal information will be added to the appropriate ACL mailing lists. If, at any time, a Customer changes their mind and would like to add or remove their name from any of ACL's mailing lists or correct their personal information, they need simply to send a secure message to ACL via the Merchant Management System.

Personal information will not be released to third parties except to further the purpose for which the information is provided. This may include release where required by law or where pertinent to judicial or governmental investigations or proceedings. There are no other circumstances under which we will provide or sell personal information to third parties.

ACL Disclaimer ACL does not guarantee that Customer applications will be successful, nor is ACL responsible or liable for any external costs or fees incurred by the Customer as part of their application process. ACL is also not responsible for Merchant integrations and encourages all Merchants to use the latest integration guidelines available. ACL is not responsible or liable for any third party technical integrations.

ACL Setup Timescales From the point when ACL has received all the necessary details (i.e. completion of the fields in the 'view/update account details' section of the Merchant Management System) your account will typically take 24-72 hours to be connected and activated. ACL make no guarantee that connection and activation will not take more than 72 hours and will not accept liability for any damages or costs associated with a delay in setting up an account.

ACL Response Time ACL will endeavour to respond to Customer queries within one working day of submission. ACL does not accept responsibility or liability for any delay in responding to queries submitted that cannot be dealt with internally by ACL and that require input or information from third parties.

ACL Cancellation and Refunds Upon account connection with ACL, all Customers agree to a minimum 12 month initial contract. After this period, ACL require 30 days' notice in writing - an email to ACL Support is acceptable - for cancellation of the account. Once notification of cancellation has been received, ACL will contact the Customer, either by email or telephone, to notify them of any outstanding amounts requiring payment for settlement. It is the responsibility of all Customers to be aware of their ACL Subscription renewal date and ACL does not provide refunds for yearly Service Subscription fees paid in advance.

ACL Customer Agreement Upon activation of their ACL account, all ACL Customers are bound by the ACL Payment Gateway Customer Agreement.

ACL Customer Authority By submitting an online application form to ACL, we accept the ACL Terms and Conditions as set out above. We have notified our accounts department of ACL and the service they will be providing to us.