

SECURE TRADING MERCHANT AGREEMENT TERMS

This Agreement sets out the terms and conditions for the provision of the Services between you - the individual or organisation which applies to use the service ("**you**" or "**Merchant**") and SecureTrading Limited ("**Secure Trading**" or "**we**" or "**us**") a company incorporated in England and Wales under registration number 4591066 the registered office of which is at 19th Floor, 40 Bank Street, Canary Wharf, London, E14 5NR. Please ensure that you have read and accept all the terms before you indicate your acceptance. This is a legal document and by entering into this Agreement you are acknowledging that you agree to be bound by its terms. Please note that Schedule 1 and Schedule 2 will be supplied separately by email.

INTRODUCTION

The Merchant wishes to have online payment services provided to it and Secure Trading agrees to provide such Services on the terms of and subject to the conditions contained in this Agreement.

OPERATIVE PROVISIONS

1. WHAT IS THE MEANING OF THE TERMS USED IN THIS AGREEMENT?

Acquirer	The bank or the provider of bank processing services on behalf of the Acquirer, with which the Merchant has, or intends to have a Merchant Contract and Internet Merchant ID No.
Additional Services	The additional services provided by Secure Trading to the Merchant, which will be charged at Secure Trading's then current rates as set out Schedule 1 Part C.
Agreement	This agreement together with any Schedules, Policy documents and any Technical Documents issued by Secure Trading or displayed on its website from time to time.
Applicable Taxes	Means any relevant taxes chargeable to the Merchant including without limitation Value Added Tax.
Affiliate	Means, in relation to a party, that party and any subsidiary or holding company or any body corporate with an immediate or ultimate holding company in common with that party where "subsidiary" and "holding company" shall have the meaning as set out in Section 1159 of the Companies Act 2006.
Authorisation	The authorisation of a Transaction for Settlement in accordance with this Agreement and subject to the Payment Card Scheme Rules.
Authorisation Request	An electronic or paper request of an Authorisation for a Transaction generated at the point of sale evidencing the purchase/refund of goods or services by a Cardholder from the Merchant.
Banking Day	The day on which banks are open for business and dealing in other currencies in London, excluding Saturdays, Sundays and public holidays.
Cardholder	A person to whom a Payment Card or other payment token is issued or is authorised to use such Payment Card or token.
Chargebacks	The fee which an Acquirer may charge from time to time in respect of invalid or disputed Transactions.
Commencement Date	The date this Agreement is accepted via our online Merchant Application Form.
Confidential Information	Shall have the meaning given to it in clause 22.
Configuration Changes	The changes which the Merchant is permitted to make to the Software for the purposes of configuring the Software to function correctly with the Merchant's Website.
Customer	Any customer of the Merchant using the Services.
Fees	The fees and Secure Trading Transaction Charges as set out in Schedule 1 payable by the

	Merchant to Secure Trading in accordance with clause 5 for the provision of Services and any Additional Services.
Go Live Date	The date from which the Merchant anticipates conducting live transactions through the Secure Trading payment Gateway as stated in the Merchant Application Form.
Intellectual Property	All and any intellectual property rights including without limitation patents, trademarks, service marks, trade names, rights in designs, copyrights, trade secrets and Know-how, whether or not registered, whether or not in existence on the date of this Agreement and including applications for any such right, matter or thing or registration thereof together with any related goodwill.
Interface	The Software interface, which can be downloaded from Secure Trading's Website, which may be amended or altered by Secure Trading from time to time. The purpose of such interface being the linking of Secure Trading's service to the Merchant's Website in order to facilitate the processing of Transactions.
Internet	The publicly accessible non-proprietary global data network comprising interconnected networks using TCP/IP (transmission control protocol/internet protocol).
Internet Merchant ID No	The unique identification number for each Merchant allocated to the Merchant by its Acquirer for the purpose of accepting card payments over the Internet.
IP Data Packet	The unit of data sent across a computer network.
Know-how	Such skills, knowledge, experience, technical information or techniques of whatsoever nature utilised by Secure Trading in the performance of this Agreement.
Merchant Application Form	The application form to be completed by the Merchant prior to any Services being provided.
Merchant Contract	The contract between the Merchant and its Acquirer for the provision of the Merchant's Internet Merchant bank account.
MyST	The online administration and management service tool for Secure Trading Merchants.
Network Boundary Points	The points at which an IP Data Packet passes from equipment wholly managed by Secure Trading (or on Secure Trading's behalf) to, or from, equipment not so managed.
Pay Bill	An online method of paying fees directly to Secure Trading using MyST.
Payment Card	A credit or debit payment card, which Secure Trading may process from time to time.
Payment Card Schemes	Any card scheme as notified to the Merchant by Secure Trading from time to time.
Payment Card Schemes Rules	The industry standard rules relating to the use of Payment Cards.
Payment Gateway Network	The hardware, software and telecommunications tools necessary to perform protocol conversion between different networks or applications and all associated software required for a Merchant to submit authorisation and data capture transactions to a provider of Bank Processing Services and to transmit authorisation and settlement transactions between a Merchant and the Acquirer.
Privacy Policy	The privacy policy as published by Secure Trading from time to time on its website.
Refund	Reimbursement of any sum due from the Merchant to a Cardholder.
Response Levels	The response levels for responding to any Service Interruption set out in the Service Level Agreement.
Secure Trading	SecureTrading Ltd. together with any Affiliates, sub-contractors and/or agents.
Secure Trading Fraud Control System	The electronic system owned and operated by Secure Trading which runs parallel checks to investigate the likelihood of a Transaction being fraudulent.
Secure Trading Logo	The Secure Trading logo and any other logos, which Secure Trading may use to indicate its goods and services, from time to time.
Secure Trading Server	Any server managed by Secure Trading.

Secure Trading Transaction Charge	The transaction charge as set out in Schedule 1.
Server	Any computer server not owned or operated by Secure Trading.
Service Interruption	An unscheduled interruption to part or all of the Services.
Services	Electronic commerce payment processing services provided by us to you on a non-exclusive basis and relating to the processing of credit card payment authorisations and/or credit card, debit card or other payment transactions which are carried out in order to effect transfer of funds between you and your customers together with any related services we offer from time to time.
Settlement Consideration	The amount due to the Merchant, expressed in the Settlement Currency resulting from an Authorisation Request.
Settlement Currency	The currency which Secure Trading may use from time to time as specified in Schedule 1.
Severity Levels	The severity levels set out in the Service Level Agreement.
Software	Computer programs, protocols and the object codes, source codes and other forms of the same and or any portion of the same, together with any and all associated documentation, specification, reports, algorithms, logic, tools, formats, designs, methods and processes associated with such computer software provided by Secure Trading to the Merchant which enables the Merchant to use the Services.
Third Party	The Merchant and any other party whether connected or unconnected with the Merchant and/or Secure Trading, which the Merchant and/or Secure Trading may deal with for the purposes of this Agreement.
Transaction	A financial transaction conducted on the Internet using a Payment Card or other payment token.
Transaction Currency	The currency in which the Transaction is completed.
Transaction Data	The transmission of authorisation and settlement transaction messages between the Merchant and the Acquirer in a secure manner and in formats compatible with the Secure Trading system.
Validity Check	The checks on Payment Cards carried out by the Acquirer from time to time to check whether a Payment Card is valid for Authorisation of a Transaction.
Website	Either the Secure Trading website owned, operated and maintained by Secure Trading or the Merchant website owned, operated and maintained by the Merchant or by a third party on behalf of the Merchant.

- 1.1 Headings in this Agreement are only for convenience and shall not affect its construction.
- 1.2 All obligations given or entered into by more than one person are given to or entered into jointly and severally unless otherwise specified.
- 1.3 Any reference in this Agreement to a paragraph or a schedule is a reference to a paragraph or schedule of this Agreement.
- 1.4 Any reference to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

2. PROVISION OF SERVICES

- 2.1 In consideration of the Fees payable by the Merchant Secure Trading agrees with effect from the Commencement Date to provide the Services upon the terms of and subject to the conditions contained in this Agreement.
- 2.2 The scope of and charges applicable to any Additional Services to be provided by Secure Trading to the Merchant will be as set out in Schedule 1.

- 2.3 The Merchant agrees that Secure Trading in providing the Services does not act as principal but acts as facilitator on behalf of the Merchant to enable the Merchant to enter into Transactions with its customers. The Merchant further agrees to allow Secure Trading to act as facilitator on behalf of the Merchant for the purpose of processing Authorisation Requests. The Merchant waives any claims against Secure Trading, which the Merchant may have whether for the performance and/or non-performance of any Transaction entered into as a consequence of Secure Trading's acceptance of an Authorisation.
- 2.4 Secure Trading reserves its right to accept or reject any Merchant Application Forms submitted by the Merchant.
- 2.5 The Services will be provided from the date when the Merchant's site is enabled for payment processing by Secure Trading's Support department.
- 2.6 Secure Trading may from time to time without notice change all or alter the Network Boundary Points to which it connects for the processing of Transactions provided notice is given where possible.
- 2.7 Secure Trading is entitled to amend at any time in its absolute discretion the Services, the terms of this Agreement and Policies by posting the same on its Website in amended form or in writing to the Merchant with a note of the date on which the relevant document was last amended and the date when such amendment shall take effect.
- 2.8 Any dates provided by Secure Trading for the provision of the Services will be approximate only and Secure Trading shall not be liable for any delay in completion of any Services howsoever caused.
- 2.9 Notwithstanding this clause 2 Secure Trading does not make any representations express or implied about the suitability of the Services for the Merchants business.

3. TRANSACTION PROCESSING

- 3.1 The Merchant acknowledges and accepts that Secure Trading will only be able to provide the Merchant with the Services and Software functionality if the Merchant;
- 3.1.1 properly collects and delivers to Secure Trading the Transaction Data in the form requested and;
 - 3.1.2 uses the Software to integrate the Merchant's Website into the Secure Trading Server; and
 - 3.1.3 does not alter, modify, translate, adapt, decompile, disassemble or reverse engineer the Software or Interface so as to affect or in any way prejudice the functionality of the Software.
- 3.2 The Merchant acknowledges and accepts that the collation and accuracy of any Transaction Data submitted to Secure Trading is the Merchant's exclusive responsibility and that Secure Trading is solely acting on the Merchant's behalf in seeking the Authorisation from the Merchant's Acquirer of the relevant Payment Card Scheme.

4. PAYMENT TERMS

- 4.1 The Merchant agrees to pay the Fees (plus VAT where applicable) as set out in Schedule 1 to Secure Trading monthly in arrears within 14 days of the date of invoice. Fees may be subject to amendment from time to time and Secure Trading will provide details of such amendment on its website or directly with a minimum of 14 days prior written notice. In particular Secure Trading shall be entitled to increase the Fees upon such notice in the event that the number of Transactions processed per month fall below the Forecast number as stated in the Merchant Application Form or such other minimum volume as may be agreed between the parties from time to time.
- 4.2 The Merchant agrees to sign a direct debit mandate to allow the Fees and any amount owed by the Merchant to Secure Trading to be debited directly from the Merchant's bank account in accordance with the relevant regulations. The Merchant agrees to keep such mandate in place until termination of this Agreement and all monies due to Secure Trading have been paid in full.
- 4.3 Secure Trading reserves the right to charge an additional administration fee of £5 per month if the Merchant does not sign a direct debit mandate.
- 4.4 When payment of any invoice or direct debit is overdue, Secure Trading may:
- 4.4.1 suspend the Services and/or terminate this Agreement at its discretion and;
 - 4.4.2 charge and recover interest from the Merchant on the sum of the outstanding invoice or direct debit calculated at a compound rate of two per cent per month from the due date until the date of full payment; and
 - 4.4.3 charge a reconnection fee of £50 plus VAT to resume the Services.

- 4.5 If Secure Trading is forced to take action against the Merchant to recover overdue payments, the Merchant shall be responsible for all costs and disbursements incurred by Secure Trading on a full indemnity basis.
- 4.6 If the Merchant has not commenced processing transactions through the Secure Trading payment gateway before the Go Live Date Secure Trading reserves the right to charge the Merchant the Fee specified in Schedule 1 at the end of the month in which the Go Live Date falls
- 4.7 Where the Secure Trading Transaction Charges are based upon a currency other than pounds sterling the currency rate for the purposes of calculating the Secure Trading Fees shall be based upon the rates published by Secure Trading at the date when such Secure Trading Fees are calculated by the billing system.

5. PAYMENT OF SETTLEMENT CONSIDERATION TO THE MERCHANT

- 5.1 The Acquirer shall be responsible for the payment of the Settlement Consideration to the Merchant in accordance with the terms of the Merchant Contract.

6. REFUNDS

- 6.1 All refunds shall be processed by the Merchant. In the event that the Merchant is unable to process its own refunds and wishes Secure Trading to process refunds on behalf of the Merchant, Secure Trading will levy a charge as set out in Schedule 1.

7. CHARGEBACKS

- 7.1 Secure Trading shall not be responsible for any Chargebacks. The Merchant agrees and acknowledges that the Merchant will deal with any and all Chargebacks directly with the Acquirer.
- 7.2 If requested by Secure Trading, the Merchant agrees and undertakes to provide Secure Trading with details of any and all Chargebacks so that Secure Trading can record such Chargebacks. Information should be provided within 14 days of the initial request by Secure Trading. This period may be extended at the sole discretion of Secure Trading.

8. MISUSE OF SERVICES

- 8.1 Secure Trading reserves the right to suspend or terminate the Merchant's rights of access to the Services if the Merchant is or appears to Secure Trading to be in breach of any of the provisions of this Agreement including without limitation, the provision of false information submitted on the Merchant Application Form or any other misuse of the Services

9. SUSPENSION OF SERVICES

- 9.1 From time to time the Services in whole or in part may be closed down for routine repair or maintenance work. Notwithstanding any Service Interruptions Secure Trading will give as much notice as is reasonable in the circumstances and shall as far as possible endeavour to carry out such work during the scheduled maintenance periods, which shall be notified to the Merchant from time to time.

10. SOFTWARE LICENCE (APPLICABLE TO XPAY AND SECURE TRADING API ONLY)

- 10.1 Secure Trading hereby grants to the Merchant a non-exclusive non-transferable licence to use the Software for the duration of this Agreement upon the terms and conditions set out in this clause 10.
- 10.2 The licence granted hereunder shall be deemed to incorporate and include all Software, which is supplied from time to time to the Merchant by Secure Trading. This clause 10 is without prejudice to Secure Trading's right to charge the Merchant for the supply of any bespoke software.
- 10.3 The licence hereby granted and the Merchant's rights to use the Software are subject to the following restrictions:-
- 10.3.1 the Software shall be used only by the Merchant for the purposes of this Agreement and in relation to the Merchant's Website;

- 10.3.2 the Merchant shall not assign sub-licence charge or otherwise dispose of or grant rights over the licence hereby granted or the Software and shall not attempt to do any such thing, without the prior written consent of Secure Trading;
- 10.3.3 the Merchant shall not attempt to ascertain or list the source programs or source code relating to the Software;
- 10.3.4 the Merchant shall not decompile or translate the Software into any other computer language or attempt to do so;
- 10.3.5 the Merchant undertakes that it shall not without the prior written consent of Secure Trading use the Software for any business purpose not approved by or acceptable to Secure Trading.

MODIFICATIONS

- 10.4 The Merchant shall not modify alter or in any way interfere with the Software or merge the Software with other data, programs or systems save that the Merchant shall be permitted to make the Configuration Changes.
- 10.5 Secure Trading reserves its right to make any improvements, substitutions or modifications in the specification of any element or part of the Software.

UNAUTHORISED USE

- 10.6 If any unauthorised use is made of the Software or any part of it and such use is due to the act or default of the Merchant then without prejudice to Secure Trading's rights and remedies:
 - 10.6.1 the Merchant will immediately be liable to pay Secure Trading an amount equal to the charges which Secure Trading would have levied had Secure Trading authorised the grant of a licence to or for such unauthorised use at the beginning of the period of such unauthorised use together with interest at the rate provided for in clause 4 on the date of such unauthorised use to the date of payment;
 - 10.6.2 Secure Trading shall be entitled to terminate this Agreement with immediate effect.

SOFTWARE WARRANTIES

- 10.7 Secure Trading warrants that:
 - 10.7.1 it has the full power and authority to grant the licence set out in this clause 10; and
 - 10.7.2 it has the full right and interest in the Software that it owns and the right to grant sub-licenses in relation to those parts of the software that it does not own.

11. MERCHANT ACCOUNT SERVICES

This paragraph 11 only applies if you apply for Merchant Account Services as a part of the Services.

- 11.1 If you complete the Merchant Account Application Form and submit it to the Acquirer, you make a formal application for a Merchant Account. Any information that you submit on the Merchant Account Application Form will be used in accordance with paragraph 26 and in accordance with the Acquirer's terms and conditions which you should read carefully.
- 11.2 By completing the Merchant Service Application Form, you acknowledge and agree that, should your application be successful, you will be entering into a direct contractual relationship with the Acquirer (or its agent) as well as a separate direct contractual relationship with us. Accordingly, you agree to fully comply with all of these terms and conditions and all of the Acquirer's terms and conditions.
- 11.3 You should ensure that your Merchant Service Application Form is fully completed before you submit it to the Acquirer. You must immediately inform the Acquirer directly if you wish to amend the details contained in your Merchant Account Application Form.
- 11.4 The Acquirer reserves the right to reject any applications and, if you subsequently enter into a Merchant Account Agreement with the Acquirer, it may terminate your Merchant Account Agreement at any time in accordance with its terms and conditions. You understand that the Acquirer (not us) decides whether or not to approve your application and may terminate your Merchant Account in accordance with its own terms and conditions. If your Merchant Account is terminated for any reason the this Agreement will unless an alternative Acquirer is found terminate at the same time and you must immediately pay to us all Fees due in relation to our Services for the remainder of the Initial Term. Termination of any Merchant Account Services will not affect the delivery of any other Services under this Agreement (which will continue unaffected unless a party terminates those Services as otherwise provided under this Agreement).
- 11.5 Our ability to provide Merchant Account Services is conditional upon you obtaining a Merchant Account and retaining it throughout the duration of the Merchant Account Services.

- 11.6 If your application for a Merchant Services Account is successful:
- 11.6.1 the Acquirer will, in accordance with its terms and conditions, provide you with a Merchant Account and settle all funds, manage all Chargebacks, risk, fraud and financial adjustments in accordance with its terms and conditions. The Acquirer will also administer your Merchant Account directly and invoice you for all fees associated with that Merchant Account. Accordingly, it will be necessary for you to complete a second direct debit mandate (available from the Acquirer) which will apply to the Acquirer's own fees.
 - 11.6.2 we will provide you with first line support in relation to your Merchant Account (as described on our website from time to time) and where appropriate liaise with the Acquirer on your behalf whilst you continue to pay to us the applicable Fees.

12. OBLIGATIONS OF THE MERCHANT

- 12.1 In addition to the Merchant's obligations contained elsewhere in this Agreement the Merchant agrees and undertakes to;
- 12.1.1 display the Secure Trading Logo and any associated text on its Website in which the Services are used and further agrees and undertakes to incorporate a hypertext link to the appropriate Secure Trading Website page (Secure Trading will provide the Merchant details of the relevant Website page). Any link on the Merchant's Website to Secure Trading's Website will be in the form agreed between the parties. The Merchant further agrees and undertakes to amend the Secure Trading Logo, any associated text, and hypertext link within 28 days of a written request from Secure Trading;
 - 12.1.2 provide Secure Trading with accurate information regarding the Merchant's designated bank accounts;
 - 12.1.3 pay any and all Fees in accordance with clause 4;
 - 12.1.4 not to use the Services in any manner whatsoever which constitute a violation of any law or regulation or which may cause Secure Trading to be subject to any investigation, prosecution or legal action or for any type of business which in the opinion of Secure Trading is unacceptable;
 - 12.1.5 describe accurately on the Merchant's Website the procedure for entering into a Transaction by making clear what is being sold on the Merchant's Website, the price and the action, which must be taken in order to enter into a legally binding contract;
 - 12.1.6 the Merchant shall not store Payment Card details on any server maintained by either the Merchant or any Third Party without first undergoing a security audit which should be carried out by a Secure Trading approved Third Party security auditor. Any and all costs shall be borne entirely by the Merchant. The Merchant shall ensure that all forms of customer data stored on their site are kept securely. Secure Trading take no responsibility for the security of the Merchant's systems.
- 12.2 For the avoidance of doubt, in the event of termination howsoever caused the Merchant agrees and undertakes to remove any such hypertext link and/or Secure Trading Logo from its Website immediately.

13. WARRANTY

- 13.1 Nothing in this agreement will limit or exclude either party's liability for fraud, death or personal injury caused by negligence or any other liability which a party cannot by law exclude and all other clauses of this agreement shall be read subject to this clause 13.1.
- 13.2 Secure Trading will use reasonable skill and care in providing the Services but will have no liability whatsoever for any and all direct, indirect or consequential loss arising from any delay or failure to provide all or any loss of data which may be sought from delays, failure to deliver or service interruptions outside the control of Secure Trading including (without limitation) those arising from errors or omissions on the part of the Merchant or from levels of use which are unusually large and which have the effect of causing disruption or delays in the Services.
- 13.3 Secure Trading does not warrant that the Services and/or software (including without limitation the Software) are error free or operate without interruption or are compatible with all equipment and software configurations. Secure Trading gives no warranty whatsoever as to the quality of information received through the Services and/or Software.
- 13.4 Subject to clause 18.5, where Secure Trading provides any specification, design, plan or scheme the Merchant agrees to check the accuracy and suitability of such specification, design, plan or scheme and agrees that Secure Trading shall not be liable for any omissions, errors or inaccuracies therein. Any documentation drawn up by Secure Trading is and will remain the property of Secure Trading and may not be reproduced in whole or in part without Secure Trading's prior written consent.

13.5 The warranties in this clause 12 shall be subject to the Merchant complying with the terms of this Agreement and all other relevant agreements between the parties.

14. FAULT RESOLUTION

14.1 In the event that a defect, fault or impairment in the Services causes a Service Interruption the matter shall be handled in accordance with the current Service Levels (Schedule 3) which are published on the Secure Trading website.

14.2 If Secure Trading determines in its reasonable opinion that any Service Interruption resulted directly or indirectly from:

- 14.2.1 the negligence, act, omission or default of the Merchant;
- 14.2.2 the Merchant's breach of this Agreement;
- 14.2.3 the operation failure or malfunction of any non Secure Trading software, hardware or network equipment under lease or controlled by the Merchant;
- 14.2.4 any Third Party action in response to an act or omission of the Merchant or any person given access to the Services by the Merchant;
- 14.2.5 failure to provide services by any Third Party; and/or
- 14.2.6 any failure due to communication protocols; then Secure Trading may recover in advance from the Merchant all reasonable costs incurred by it or on its behalf in connection with the remedy of such Service Interruption.

15. OBLIGATIONS OF SECURE TRADING

15.1 Secure Trading agrees to:

- 15.1.1 process all Merchant personal data in accordance with the Data Protection legislation, and the Privacy Policy and current industry standards;
- 15.1.2 carry out regular virus checks on the Software

16. TERM AND TERMINATION

16.1 This Agreement shall start on the Commencement Date and continue for an initial period of 12 months and thereafter on a rolling 12 month basis unless and until terminated by either party giving 180 days prior written notice to that effect to the other party to expire at the end of the relevant 12 month period subject always to the provisions for earlier termination contained in this Agreement.

16.2 Without prejudice to any other provisions of this Agreement, this Agreement may be terminated with immediate effect by either party:

- 16.2.1 on giving written notice to the other party if the other party is in breach of this Agreement and shall have failed either to remedy the breach or in the case of an irremediable breach, to pay reasonable compensation to the other party in either case within 30 days of the receipt of a written request from the other party to remedy the breach or pay reasonable compensation (the time for performance of any obligation being extended accordingly for the purpose of this clause 16.2.1) such request indicating that failure to remedy the breach or pay reasonable compensation may result in the termination of this Agreement; or
- 16.2.2 on giving written notice to the other party if the other party (being a company) shall have a receiver, manager, administrator, administrative receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of solvent amalgamation or reconstruction) or a court shall make an order to that effect or if the other party shall enter into any composition or arrangement with its creditors or if the Merchant (being an individual) shall have a petition for bankruptcy presented to him or a bankruptcy order is made against him.

16.3 Secure Trading may terminate the Agreement with immediate effect in the event that:

- 16.3.1 any Acquirer declines to offer or continue to provide the Merchant with services for any reason whatsoever including without limitation if the Merchant's Internet Merchant ID No. is withdrawn for any reason whatsoever.
- 16.3.2 where the Merchant wishes to use the Services to support a business which is contrary to any applicable laws or prohibited under the Payment Scheme Rules or is considered likely to harm the brand or reputation of Secure Trading.

17. EFFECTS OF TERMINATION

- 17.1 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 17.2 In respect of the period if any between the date that notice of termination is given and the effective date of termination ("**the Termination Date**") the following provisions shall have effect:
- 17.2.1 Secure Trading shall continue to provide the Services until the Termination Date;
 - 17.2.2 on the Termination Date Secure Trading shall cease to provide the Services; and
 - 17.2.3 the Merchant shall pay all Fees due in accordance with clause 4 up to and including the Termination Date.
 - 17.2.4 Following termination of this Agreement the Merchant shall destroy the Software from its computer systems.

18. LIMITATION OF LIABILITY

- 18.1 Secure Trading will not be liable for any of the following losses which may arise by reason of any breach of the express terms of this Agreement or to the extent that they have not been excluded by clause 13.1 any implied warranty, condition or other term, any representation or any duty of any kind imposed on Secure Trading by operation of law: indirect; incidental; consequential; income; data; use; information; increased costs or expenses; profits; business; contracts or revenues from savings, with the exception of death or personal injury caused by Secure Trading's negligence.
- 18.2 Unless otherwise provided in this Agreement the liability of Secure Trading in contract, tort (including negligence or breach of statutory duty) statute or otherwise shall be limited to the reasonable cost reprocessing any transactions which have been processed by Secure Trading.
- 18.3 The obligations set out in this clause 18 as to the limitations of liability shall remain in full force and effect notwithstanding expiration or termination howsoever caused of this Agreement for any reason whatsoever.
- 18.4 Other than as expressly set out elsewhere in this Agreement all representations, warranties, conditions and terms express or implied whether Statutory or otherwise are expressly excluded by Secure Trading to the fullest extent permitted by law.
- 18.5 The Merchant acknowledges and accepts that it shall not rely upon information in any brochures, service descriptions or similar documentation provided by Secure Trading prior to the execution of this Agreement.
- 18.6 The Merchant acknowledges and agrees that Secure Trading has no control over or responsibility for quality of the Service obtainable through any networks or services beyond the Network Boundary Points and accordingly any liability in respect of the same whatsoever is hereby excluded.
- 18.7 Secure Trading is not responsible whatsoever for any use by the Merchant of Third Party services or for any charges that the Merchant may incur with any Third Party including without limitation any software running in conjunction with the Services and/or Software.

19. INDEMNITY

- 19.1 Secure Trading will indemnify and keep indemnified the Merchant from and against all losses, actions, costs, claims, demands and proceedings and all expenses including reasonable legal expenses, incurred by the Merchant arising from claims of a third party which arise in whole or in part from the infringement of any Intellectual Property rights arising from the Services, or the negligence or wilful misconduct of Secure Trading.
- 19.2 Secure Trading's obligations under this Agreement are subject to the following:-
- 19.2.1 any messages that originate from a Third Party Server will be deemed to be authorised by the Merchant and Secure Trading shall not be liable for any processing of such messages;;
 - 19.2.2 Secure Trading is not responsible for the security of data residing on a Third Party Server; and
 - 19.2.3 Secure Trading shall have no liability for any failure or delay in performing its obligations under this Agreement if such failure or delay is caused by the Merchants acts, omissions or results from actions taken by Secure Trading in good faith to avoid violating a law, rule or regulation of any government authority or is caused by circumstances beyond Secure Trading's reasonable control.

- 19.3 The Merchant agrees and undertakes to fully indemnify and keep indemnified Secure Trading from and against all losses, actions, costs, claims, demands and proceedings and all expenses including reasonable legal expenses incurred by Secure Trading arising directly or indirectly from or relating to any:
- 19.3.1 transaction between the Merchant and its Customer; and any legal action arising in connection with such transaction and/or
 - 19.3.2 the Merchant's breach and non-observance of this Agreement and/or
 - 19.3.3 breach of any procedures and instructions resulting in additional work for Secure Trading;

- 19.4 For the purposes of clause 19.3 (and without prejudice to the indemnity contained therein) the Merchant agrees that Secure Trading shall be entitled in its entire discretion to accept, dispute, compromise or otherwise deal with any claim, alleged claim, loss or liability, which is made against it.

20. FORCE MAJEURE

- 20.1 Neither party shall be liable for any delay in or failure to perform its obligations if that delay or failure is caused by circumstances beyond its reasonable control, including without limitation fires, strikes, insurrection, riots, embargos, inability to obtain supplies, refusal or revocation of licence or regulations of any civil or military authority, fire, act of god, flood or any network breach, breakdown in any Third Party equipment including Third Party computer hardware or Third Party software. If any such circumstances continue for a period of one month either party may by notice to the other party terminate this Agreement.

21. INTELLECTUAL PROPERTY

- 21.1 The Merchant acknowledges and agrees that all Intellectual Property rights in and relating to the Secure Trading logo, Secure Trading trademarks and Software are owned by Secure Trading or its affiliates. The Merchant may only use such Intellectual Property rights in accordance with this Agreement and Secure Trading's written instructions from time to time.

22. CONFIDENTIALITY

- 22.1 Both parties will keep confidential and will ensure that its employees and sub-contractors keep confidential and will not (except as expressly authorised by either party or required by the duties imposed on either party hereunder) use or disclose or attempt to use or disclose to any person any Confidential Information which comes to the knowledge of the parties during this Agreement.
- 22.2 The term "Confidential Information" extends to all knowledge and information relating to the trade, business activities, operations, organisation, finances, processes, dealings, specifications, methods, designs, formulae, computer software and technology of and specifically concerning any of the parties customers or suppliers.
- 22.3 The restriction contained in clause 22.1 shall apply both during and after the termination of this Agreement but shall cease to apply to information or knowledge which:
- 22.3.1 has in its entirety become public knowledge otherwise than through any unauthorised disclosure or other breach of such restriction;
 - 22.3.2 has already come into the possession of either party or independent third party without breach of any obligation of confidentiality;
 - 22.3.3 either party has consented in writing to it being disclosed; and
 - 22.3.4 is or has been independently developed by either party without reference to or use of the Confidential Information.
- 22.4 All Confidential Information (howsoever stored) concerning either party supplied by either party or prepared by or on behalf of either party for the purposes of this Agreement and all copies and extracts of it made or acquired by or on behalf of either party shall be used only for the purposes of this Agreement and shall be the property of the party to whom such Confidential Information relates to and shall be returned to the party upon termination of this Agreement.
- 22.5 Nothing contained herein shall restrict disclosure:
- 22.5.1 to third parties to the extent necessary by legal, accounting or regulatory requirements; and
 - 22.5.2 to the professional advisers of either party in connection with the interpretation and operation of this Agreement and any dispute arising there from.

- 22.6 Both parties shall ensure compliance with the requirements of any and all legislation relating to the processing of personal data and use and misuse of computers (and any statutory modifications or re-enactment thereof from time to time in force) in respect of any information exchanged or supplied between the parties.
- 22.7 Both parties shall ensure that those of its employees or contractors engaged in the provision of the Services are aware of the confidential nature of the Confidential Information.
- 22.8 Either party shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom the parties divulges any part of such information and shall give the other party all reasonable assistance in connection with any proceedings which either party may institute against such persons for breach of confidence.
- 22.9 Save as otherwise set out in this Agreement, no announcement, circular, advertisement or other publicity in connection with this Agreement, its subject matter or any ancillary matter shall be made or issued for and on behalf of Secure Trading without the prior written consent of Secure Trading, such consent shall not be unreasonable withheld or delayed.

23. NON ASSIGNMENT

- 23.1 This Agreement is personal to the Merchant and the Merchant may not without the prior written consent of Secure Trading assign or dispose of it, part with any interest in it or grant any sub-licence or delegate any of the rights conferred by it. Secure Trading shall be entitled to assign and/or sub-licence this Agreement in whole or in part.
- 23.2 Secure Trading further reserves the right to fulfil any of its duties and powers under this Agreement by using agents and sub-contractors.

24. NOTICES

- 24.1 Any notice or other communication required to be given under this Agreement shall be given by email post or facsimile addressed to the other party at its address contained in this Agreement or such other addresses as shall have been notified to the other for the purposes of this Agreement. Any notice sent by email shall be deemed to be received one hour after being sent, or if this falls after 5pm, at 9am the next day - providing that an undeliverable receipt has not been returned to the sender by this time. Any notice so given by post shall unless contrary is proved, be deemed served at the expiry of three days after it is posted and in proving such posting it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted as a first class pre-paid letter. Any notice given by facsimile shall, unless the contrary is shown, be deemed to have been served when in the ordinary course of transmission it would first be received by the addressee in normal business hours.

25. SUPERVENING ILLEGALITY AND SEVERANCE

- 25.1 If any term or provision of this Agreement shall be held to be illegal or unenforceable in whole or in part, under any enactment or rule of law, such term or provision or part shall to the extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.

26. PRIVACY POLICY

- 26.1 The Privacy Policy which is displayed on our website at www.securetrading.com forms part of this Agreement. Please see the policy for further details of our use of personal data. We will comply with all applicable laws relating to Data Protection and Privacy.
- 26.2 We may use any information provided to us under this Agreement to:
- 26.2.1 Provide the services to you and fulfil our obligations to you under this Agreement; and
 - 26.2.2 Contact you to ask if you would like to take part in any customer research; and
 - 26.2.3 Contact you about other products and services which we consider may be of interest to you.
- 26.3 We shall be entitled to disclose information to Affiliate Companies and to:
- 26.3.1 Law enforcement or government agencies as appropriate; and
 - 26.3.2 The Acquirer, Payment card schemes and your Customer's issuing bank where necessary; and
 - 26.3.3 We may contact you directly or through other companies whom we have employed to contact you for us.
- 26.4 By agreeing to the terms of this Agreement you consent to the way we handle personal data as outlined in this clause.

26.5 If at any time you do not wish us to use your personal data as outlined in clause 26.2.2 or 26.2.3 please email us at marketing@securetrading.com.

26.6 It is your responsibility to let us know promptly of any changes in your named contacts

27. PUBLICITY

27.1 The Merchant acknowledges that Secure Trading may from time to time send communications to the Merchant via electronic mail advising the Merchant of further goods and services offered by or through Secure Trading.

28. GENERAL

28.1 This Agreement together with the Schedules, Policy documents referenced in it and technical documents issued by us represents the entire agreement and understanding between the parties relating to the subject matter of this Agreement and (in relation to that subject matter) supersedes any and all prior agreements, arrangements, statements and understandings, except for any fraud or fraudulent representation by either party. No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach.

28.2 The Merchant acknowledges and accepts that in entering into this Agreement on the terms set out herein the Merchant is not relying upon any representation, warranty, promise or assurance made or given by or on behalf of Secure Trading or any other person, whether or not in writing, at any time prior to the signature of this Agreement which is not expressly set out in this Agreement.

28.3 For the purposes of this Agreement and the Services to be performed hereunder Secure Trading is acting as an independent contractor. The Merchant shall have no right, power or authority whatsoever to create any obligation, express or implied, on behalf of Secure Trading unless Secure Trading has specifically authorised the same in writing.

28.4 The Agreement shall operate for the benefit of and be binding on the respective successors in title and permitted assignees or transferees of each party.

28.5 The Merchant will provide Secure Trading with reasonable assistance requested from time to time for the prevention and detection of fraudulent Transactions and will inform Secure Trading of any material change in the nature of or size of its business.

28.6 The Merchant hereby grants to Secure Trading a non-exclusive royalty free licence to use, display and reproduce the trademarks, service mark and logos of the Merchant solely in connection with Secure Trading's marketing of its services. Secure Trading shall use the Merchant's Intellectual Property rights in accordance with policies as approved by the Merchant from time to time.

28.7 The formation, construction, performance, validity and all aspects whatsoever of this Agreement shall be governed by the laws of England and Wales.

28.8 Any dispute, which arises between the parties concerning this Agreement, shall be determined as follows:

28.8.1 If the dispute shall be of a technical nature concerning matters of computing such dispute shall be referred for final settlement to an expert nominated jointly by the parties or in default of such agreement within 14 days of a request by one party to the other therefore nominated at the request of either party by the President for the time being of the British Computer Society . Such expert shall be deemed to act as an expert and not as an arbitrator. His decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of a party hereto is such that such party should bear a greater proportion of such fees.

28.8.2 In any other case, the parties hereby submit themselves to the exclusive jurisdiction of the English Courts.

SIGNED ON BEHALF OF:

SIGNED BY (PRINT NAME):

POSITION:

SIGNATURE:

DATE:

SIGNED ON BEHALF OF: **SecureTrading Limited**

SIGNED BY (PRINT NAME):

POSITION:

SIGNATURE:

DATE: