

**THIS END USER LICENCE AGREEMENT is** made on \_\_\_\_\_

BETWEEN:

- 1. Advanced Business Software and Solutions Limited** a company having its registered office at Ditton Park, Riding Court Road, Datchet, Berkshire SL3 9LL ("**The Reseller**")

**and**

- 2.** The customer whose name, registered number and registered office address or principal place of business (as appropriate) is set out in the Agreement Summary which shall include its employees, agents and sub-contractors ("**End user**")

Whereas **The Reseller** has entered into an agreement with **Capita Business Services Ltd**, a company engaged in the business of providing industry leading PCI compliant payment management solutions for the public and private sector ("the Capita Products"), whose registered office is at 71 Victoria Street, Westminster, London SW1H 0XA ("Capita") to act as reseller for Capita Products and the **End user** has contracted with The Reseller to purchase the Capita Products

### **Interpretations**

"Acceptance Certificate" means a document signed by an authorised officer of the End user certifying that acceptance tests have been successfully completed.

"Agreement" means this Agreement and (where the context permits), the Agreement Summary and any Schedule attached hereto;

"Agreement Summary" means the document of that name attached to this Agreement which contains, inter alia, details of the End user and a summary of The Reseller's agreement with the End user;

"AVS" means Address Verification Service, a facility which allows a CNP merchant to check the numerical digits from a cardholder's billing address.

"Approved Equipment" means any hardware (or equipment which is approved by The Reseller (such approval not to be unreasonably withheld);

"Charges" means the charges to be paid by the End user to The Reseller in respect of any part of the System or the Services as indicated in the relevant Schedule and the Agreement Summary;

"Client" means a member of the public attempting to utilise the System;

"CNP" means Card-Not-Present / End user Not Present transactions where the merchant, retailer or other service provider does not have physical access to the payment card; examples are transactions by telephone, mail order or Internet.

"CSC" means Card Security Code, an additional three or four-digit security code usually printed on the rear of a credit / debit card used to confirm that a card number provided is genuine and in the possession of the card holder.

"Intellectual Property Rights" means any copyright, patent, registered design, trademark, database and/or other intellectual property right of whatever nature subsisting anywhere in the world;

"Internet Transaction Data" means any data captured by The Reseller from the ePayment Web page or Portal which is processed by The Reseller and

subsequently collected by the End user in an encrypted file.

"IVR Transaction Data" means any data entered via a TouchTone telephone and transmitted via a dedicated telephone line, routed to The Reseller which is processed by The Reseller and subsequently collected by the End user in an encrypted file.

"Location" means the End user's office(s) at which the System is to be installed pursuant to this Agreement and shall (where the context permits) include any other location as the End user may use from time to time;

"Managed APACS Transaction Data" means any encrypted data exchanged with The Reseller as part of an authorisation or settlement request originating from a End user site, including (but not limited to) confidential cardholder information such as credit / debit card numbers, CSC codes, card holder name, address details (where AVS is used) and authorisation codes;

"Media" means the media on which The Reseller supplies the Software and the Software Documentation;

"New Release" means a new release or version of the Software incorporating enhancements and up-dates of the Software;

"Schedule" means the following schedules attached to this Agreement where applicable:

"Agreement Summary"

"Software Licence Schedule",

"Software Maintenance Schedule"

"System Installation Details Schedule"

"Transaction Charges Schedule"

"Services" mean Software Maintenance and implementation services as appropriate;

"Software" means the software to be licensed to the End user specified in the Software Licence Schedule including any New Release;

"Software Documentation" means the specifications, user instructions and other literature related to the Software supplied to the End user;

"Software Maintenance" means the services specified in Clause 2 and the Software Maintenance Schedule;

"Software Materials" means the Software, the Software Documentation and the Media;

"Software Materials Licence" means the licence granted by The Reseller pursuant to Clause 1 in relation to the Software, the Software Documentation and the Media;

"Standard Scale of Charges" means The Reseller's standard scale of charges from time to time;

"System" means the Hardware, Software and Bespoke Software supplied to the End user under this Agreement and (where the context permits) any Software Documentation and Media;

"Term" means the term of this Agreement specified in one or more of the Schedules and the Agreement Summary;

"Working Days" means Monday-Friday excluding public holidays between the hours of 09.00 and 17.30.

## **1. Software Supply and Licence**

- 1.1 The Reseller will supply to the End user one copy of the object code of the Software and one copy of the Software Documentation for the Software specified in the Software Licence Schedule for the Term and for the Charges specified therein and otherwise subject to the terms of this Agreement.
- 1.2 Subject to the provisions of clause 1.11 and to payment by the End user to The Reseller of any Charges which may be due on or following acceptance of the Software, The Reseller grants to the End user a non-exclusive, non-transferable licence to use the Capita Software Materials subject to the constraints in clause 1.6 on and in conjunction with Approved Equipment at the Location for the Term in accordance with the Software Documentation and any other reasonable requirements notified to the End user by The Reseller in writing. This licence shall not extend to any of The Reseller's programs or materials other than the Capita Software Materials.
- 1.3 The Software shall be installed in accordance with the System Installation Details Schedule on the Approved Equipment only save that:
  - 1.3.1 if the Approved Equipment is inoperable for any reason or if short term disaster recovery tests are necessary, the Software Materials Licence shall be temporarily extended for use with any other satisfactory End user controlled equipment notified to The Reseller until such failure has been remedied or such tests have been completed;
  - 1.3.2 the use of the Software Materials on temporary or replacement equipment shall be at the sole risk and responsibility of the End user and The Reseller or Capita shall incur no liability in relation thereto.
- 1.4 On completion of the installation of the Software, acceptance tests will be conducted in accordance with the agreed procedures.
- 1.5 The Reseller warrants that Capita has deposited one copy of its most recent version of the source code of The Capita Software with NCC Escrow International Ltd ("NCC") and will update the deposited source code in accordance with any new general releases of the Capita software. The End user shall have right of access to the source code in the event of Capita being placed in receivership or liquidation. This right is dependent upon the End user taking out a contract for this service with NCC and paying the appropriate charges direct to NCC.
- 1.6 The End user shall only use the Software Materials for processing End user data and strictly for its own internal purposes as envisaged by this Agreement only and (unless authorised by The Reseller in writing) shall not permit or attempt to modify, alter, reverse engineer, disassemble or decompile any part of the Software Materials, except as permitted by law. The End user shall not, without the prior written consent of The Reseller, permit any third party to use the Software Materials (such consent not to be unreasonably withheld). The End user shall not use the Software to host systems or services as envisaged by this Agreement for any third party. The End user shall notify The Reseller immediately in writing if the End user becomes aware of any unauthorised use of the whole or any part of the Software Materials by any person. The End user shall effect and maintain adequate security measures to safeguard the Software Materials from access or use by any unauthorised person.
- 1.7 The End user may make only so many copies of the Software as are reasonably necessary for its operational security and use and it shall maintain an accurate record of all copies made. Such copies and the Media shall be the property of Capita and the End user shall ensure that all such copies

clearly bear Capita's proprietary notice. No copies may be made of the Software Documentation without the prior written consent of The Reseller. The End user will permit The Reseller to check the use of the Software Materials by the End user and its records in respect of the Software at all reasonable times

- 1.8 The End user may, with the prior written consent of The Reseller, at its sole expense and responsibility, combine the Software with other software and/or data to form a combined work provided that such merger is solely for the purpose of printing or reporting. The End user shall indemnify The Reseller against any loss, liability and/or costs which result from a claim (threatened or actual) that the use of the Software, in combination with such other software and/or data, infringes the rights of any third party and any services which are required to be provided by The Reseller as a result of such combination shall be deemed to be Additional Services. Upon termination or expiry of this Agreement, the End user shall, at its own cost, completely remove the Software from such combined work.
- 1.9 Subject to the End user complying with the terms of this Agreement, The Reseller warrants that the Software will, during the period between the date of acceptance by the End user and the earlier of the commencement of any Software Maintenance or two (2) months from the date of acceptance, when properly used on Approved Equipment, provide the facilities and functions set out in the Software Documentation. The Reseller warrants that, during this period, Capita will use its reasonable endeavours to remedy any material defect in the Software notified to it by the End user in writing within a reasonable time and without charge to the End user.
- 1.10 If The Reseller fails to comply with its obligations under Clause 1.9, its liability for such failure shall be limited to an aggregate sum which is equal to the amount of the Charges paid by the End user in respect of the Software Materials Licence and The Reseller shall not be liable for any failure by the End user to keep full and up to date security copies of the Software Materials or data, or other loss resulting from a failure by the End user to comply with the terms of this Agreement.
- 1.11 The software licence granted under clause 1.2 shall cease if the End user ceases to pay the charges for Software Maintenance as defined in the Software Maintenance Schedule.

## **2. Software Maintenance**

- 2.1 Subject to the End user holding a current valid Software Materials Licence and complying with this Agreement, The Reseller shall provide Software Maintenance at the Location in respect of the Software, for the period(s) and at the Charges specified in the Software Maintenance Schedule.
- 2.2 The Reseller agrees to provide the End user with Software Maintenance for the diagnosis and correction of intrinsic errors in the Software Materials and the development and provision of New Releases. The End user shall be deemed to have accepted the New Release unless any material reason for non-acceptance is notified in writing to The Reseller within one (1) month of delivery.
- 2.3 The Reseller shall also provide the End user with such technical advice by telephone, facsimile transmission, post, electronic mail or any other means as may be introduced by The Reseller and as shall be agreed between the parties in respect of a New Release.
- 2.4 For so long as the End user requires Software Maintenance it shall:
  - 2.4.1 install New Releases and corrections within one (1) month of delivery;

- 2.4.2 not permit anyone other than The Reseller or Capita to provide any Software Maintenance;
- 2.4.3 report suspected errors promptly to The Reseller and co-operate in efforts to provide a remedy including making skilled staff and necessary facilities (such as, but not limited to, telecommunications facilities) available to The Reseller free of charge; and
- 2.4.4 following the delivery of corrections or technical improvements, test the same before using the Software as so modified for the processing of live data.
- 2.5 Software Maintenance shall not include services in respect of:
  - 2.5.1 any defects or errors resulting from modifications to the Software Materials by any person other than The Reseller;
  - 2.5.2 any version of the Software Materials other than the most recent New Release and the immediately preceding New Release;
  - 2.5.3 incorrect or improper use of the Software Materials or operational error; or
  - 2.5.4 any defects or errors caused by the use of the Software Materials on or in relation to hardware or equipment, which is not Approved Equipment.

**3. Internet, "Touch Tone"/Interactive Voice Response ("IVR") and Managed APACS Transactions [where applicable]**

- 3.1 The End user accepts responsibility for the collection, security and integrity of such of the Internet Transaction Data, IVR Transaction Data, and Managed APACS Transaction Data (Transaction Data") collected at 'end of day' from the time at which such collection occurs, along with such data that passes to The Reseller from the End user's corporate infrastructure in a medium and format agreed with The Reseller and The Reseller assume responsibility for security and integrity of such Transaction Data that it may retain in transaction data history files. Where delivery of the Transaction Data occurs, The Reseller assume responsibility for security, integrity and delivery of such Transaction Data until such delivery occurs.
- 3.2 The End user will operate and keep in good working order host and web systems approved by The Reseller and, for IVR, the End user will maintain the integrity and routing of any dedicated telephone number utilised to provide the Service. The Reseller will operate and keep in good working order host authorisation and submission of Internet, IVR and Managed APACS transactions approved by the agreed Merchant Services Acquirer ("MSA") and will facilitate upgrades to such systems as agreed between The Reseller and the MSA from time to time.
- 3.3 In addition to its payment obligations arising above and elsewhere in this Agreement, the End user shall make available and maintain a bank account acceptable to The Reseller for the purpose of making payments pursuant to Clause 3 to The Reseller. The Reseller shall be entitled to debit Transaction Charges due to The Reseller pursuant to Clause 3 only by direct debit and the End user will maintain with its bank an instruction to effect such debits

For the blended rate option:

- 3.4 The Reseller may vary the fees and charges set out in the Transaction Charges schedule by giving the End user four (4) weeks' notice in writing provided that no such variation shall be permitted, unless agreed by the End user, during the first twelve (12) months of this Agreement unless as a consequence of any stated change in the base rates of the MSA.'s service or transaction charges.

For the "per click" option:

- 3.4 The Reseller may vary the fees and charges set out in the Transaction Charges schedule by giving the End user four (4) weeks' notice in writing provided that no such variation shall be permitted, unless agreed by the End user, during the first twelve (12) months of this Agreement.
- 3.5 The Reseller will periodically send the End user an invoice showing any balance due from the End user to The Reseller pursuant to Clause 3. This invoice will be compiled from The Reseller's records of all credits and liabilities of the End user which The Reseller may then recover from the End user in accordance with the provisions of this Agreement.

For the blended rate option:

- 3.6 The parties confirm that they have entered into an agreement with an agreed MSA and in the event of conflict between this Agreement and the MSA Agreement then the terms of the MSA Agreement where applicable to the parties under this Clause 3 shall prevail.

For the "per click" option:

- 3.6 The End User confirms that it has entered into an agreement with an MSA and has a merchant account in place which will be made available to the reseller for the sole purpose of processing its transactions.
- 3.7 The Reseller confirms that the procedures of Capita, as service provider, adhere to PCI DSS requirements and acknowledges that it is responsible for the security of cardholder data which it possesses