

AIRPORT COORDINATION LIMITED

Terms and Conditions of ACL's Slot Transfer and Exchange Facilitation Service

These Terms and Conditions must be read together with the details of the Services which ACL provides to facilitate the transfer or exchange of slots, as set out on ACL's Website from time to time.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following terms shall have the following meanings:

ACL means **AIRPORT COORDINATION LIMITED** whose registered office is at Capital Place, 120 Bath Road, Hayes, Middlesex UB3 5AN, United Kingdom and whose registered company number is 2603583.

ACL Data means the information from time to time made available through access to the ACL Website and including (without limitation) the ACL Database and any other information about transfers or exchanges of slots between air carriers, slots available for transfer or exchange and slots required for transfer or exchange.

ACL Database means the database of information concerning the Schedules of air carriers operating through airports where ACL is responsible for coordination and from time to time comprised in or stored on ACL's computer systems.

ACL Parties means ACL's officers, employees, agents, consultants, sub-contractors and representatives.

ACL Website means ACL's web portal at www.slottrade.aero or such other URL as may replace it including data accessible from click throughs from ACL's web portal.

Aerodrome Licence means the licence to operate an airport.

Airport means the airport at which a Slot allocated to an air carrier is available for transfer or exchange.

Agreement means these Terms and Conditions taken together with the Services as set out on ACL's Website from time to time.

Applicable Laws means all statutory and other rules, laws, regulations, regulatory policies, instruments and provisions in force from time to time, which apply to a Slot in respect of which ACL supplies Services under this Agreement including the rules,

guidelines, codes of conduct, codes of practice, practice requirements and accreditation terms stipulated by any authority or body which apply to the provision of the Services or to the terms on which slots are allocated at an Airport, including the IATA Guidelines.

Authorised Representative means a designated representative of the Customer who is authorised to bind the Customer.

Charges means the charges set out on the ACL Website from time to time and to be paid by the Customer in accordance with clause 8.

Commencement Date means the date when ACL accepts a Customer's first request to ACL to provide any of the Services set out in clause 5.

Confidential Information any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing Party, together with all information derived by the receiving Party from any such information and any other information clearly designated by a disclosing Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential and including, without prejudice to the generality of the foregoing (as respects Confidential Information of ACL) the ACL Data and the ACL Database.

Customer means the air carrier or other person who has engaged ACL to provide the Services set out in clause 5.

Deliverables means all documents, products and materials developed by ACL or its agents, sub-contractors, consultants and employees in relation to the Services in any form, including computer programmes, data, reports and specifications (including drafts).

Due Date has the meaning given to it in clause 8.3.

EU Slot Regulation means EU Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, as amended from time to time, and any regulation replacing it having the same or similar effect.

Force Majeure means any acts beyond ACL's reasonable control, including: any acts of God, explosion, flood, storm, fire, accident, restrictions, regulations, bylaws,

prohibitions or other measures of any kind on the part of any governmental parliamentary local or supranational authority; war, threat of war, sabotage, insurrection or disturbance, requisition, or national emergency; strikes or lock-outs or industrial disputes affecting ACL or a third party supplier to ACL for which a substitute party is not reasonably available; epidemics; any failure on the part of any telecommunications operator or any electricity or other supplier; or any interruption in or cessation of the Customer's and/or ACL's ability to gain access to the ACL Data or the ACL Database.

IATA	means the International Air Transport Association.
IATA Guidelines	means the IATA Worldwide Scheduling Guidelines (as amended from time to time).
Information	means the schedule data about any Movement or the transfer or exchange of any Slots contained in ACL's Database.
Information Provider	means any third party data provider whose information forms part of the ACL Data.
Initiator	means any air carrier wishing to dispose of or acquire Slots
Intellectual Property Rights	means any and all intellectual or industrial property rights of whatever description (whether registered or registrable or not) including copyright (including rights in computer software), rights in and to databases and data, moral rights, rental and lending rights, design rights and registered designs, patents, patent applications and any rights to inventions, know-how, trade and business names, trade secrets, logos and devices, all current and future trade and service marks and any applications therefore and all rights in confidential information, and all rights or forms of protection of a similar nature, or having a similar effect to any of the aforementioned, in each case subsisting at any time anywhere in the world.
Movement	means the landing or take-off of an aircraft at any airport (whether or not it is an airport for which ACL is the appointed coordinator or schedules facilitator).
Non-Disclosure Agreement	means such agreement as is entered into between the Initiator and the Responder not to disclose to any third party the identity of the other or any information in relation to the Slots they wish to

transfer or exchange.

Parties	means ACL and Customer and Party means either of them.
Responder	means any air carrier interested in acquiring or disposing of Slots.
Schedule	means the details of all air carriers' Movements at an Airport.
Services	means the services to be provided by ACL to the Customer as set out in clause 5 and more particularly described on ACL's Website from time to time.
Slot	means the permission given by a coordinator to use the full range of airport infrastructure necessary to operate an air service at the Airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator.
Slot Transfer	means any transfer of Slots which is made between a Customer and another air carrier which is, or is intended by the Customer to be, a valid Slot transfer and which includes a transfer of Slots by way of exchange.
Terms and Conditions	means the terms and conditions set out in this Agreement, as amended by ACL and posted on the ACL Website from time to time or as otherwise notified to Customers.
Trading Services	means those Services described on ACL's Website from time to time which may or will lead to a particular Slot Transfer.
UK Slot Regulations	means the Airports Slot Allocation Regulations 2006 No 2665 and including any amendment to, or re-enactment of, them.
VAT	means Value Added Tax (or other applicable similar or related tax or taxes).

1.2 The headings in these Terms and Conditions shall not affect their interpretation.

1.3 References to any statute, enactment, order, regulation or other similar instrument shall be a reference to the statute, enactment, order, regulation or instrument as amended from time to time by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

2. PROVISION OF SLOT TRANSFER SERVICES

- 2.1 ACL has expertise and experience in the coordination of Slots and schedule facilitation at airports and in order to assist the Customer in finding counterparties for the transfer or the exchange of Slots has agreed to provide such Services on the Terms and Conditions of this Agreement.
- 2.2 This Agreement shall take effect as from the Commencement Date and shall continue thereafter until terminated by either Party under clause 10.
- 2.3 ACL shall supply to the Customer such other consultancy activities and studies relating to the transfer or exchange of Slots as shall from time to time be agreed between the Parties on the terms of this Agreement.

3. ACL'S OBLIGATIONS

- 3.1 When asked by the Customer to do so ACL shall use its reasonable endeavours to facilitate introductions between air carriers wishing to transfer or exchange Slots or series of Slots which have historic precedence ('grandfather rights'), and then support the several processes involved in bringing these Slot Transfers to fruition according to the level of Service which the Customer chooses, as set out below.
- 3.2 ACL shall provide the Services and in doing so shall:-
 - 3.2.1 act in accordance with all Applicable Laws; and
 - 3.2.2 have regard to any provisions relating to the use of Slots contained in any Aerodrome Licence for an airport where Slots have been allocated which are involved in a transfer or exchange of Slots
- 3.3 ACL provides Services under this Agreement for a fee charged to the Customer; in providing such assistance it is not carrying out the functions of a co-ordinator or schedules facilitator at any Airport. Nonetheless, in providing Services, ACL shall also pay close regard to, and regard as paramount, its other functions, duties and powers under the EU Slot Regulation and the UK Slot Regulations, in particular its obligations to carry out those functions in an independent, neutral, non-discriminatory and transparent manner.
- 3.4 ACL shall provide the Services taking into full account the EU Slot Regulation and the UK Slot Regulations and any additional rules and guidelines established by the airline industry worldwide (such as IATA Guidelines) or EU wide, as well as local guidelines or rules applicable to operations at the Airport.
- 3.5 In providing the Services, ACL shall use its reasonable endeavours to meet the Customer's reasonable instructions when providing the Service in question. The Customer acknowledges that ACL provides services on the basis of information contained in the ACL Data and the ACL Database which is, or may be, also available to other Customers. The Customer has access to the ACL Database on an "as is" basis and ACL has no overriding knowledge as to whether any particular Slot is or is not available for transfer or exchange. ACL cannot guarantee and makes no representations that it is fully cognisant of all Slots which might be available for transfer or exchange.
- 3.6 Customer accepts and agrees that ACL gives no warranty as to the suitability of any Slot or series of Slots for transfer or exchange.

- 3.7 If ACL's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, ACL shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 3.8 The Customer agrees and acknowledges that the exclusions from, and limits to, ACL's obligations under this clause are reasonable, particularly having regard to the fact that ACL is dependent on third parties for information as to which Slots may be available for transfer or exchange.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall provide ACL with full details of:
- 4.1.1 The airport(s) at which it wishes to transfer or exchange Slots;
 - 4.1.2 The winter or summer season for which the Customer wishes to transfer or exchange such Slots;
 - 4.1.3 Such other information which ACL needs or asks for in order to provide the Services
- 4.2 The Customer shall be deemed to have approved all acts or omissions by ACL in the course of performing the Services in accordance with the terms of this Agreement as between the Customer and any third party, unless:
- 4.2.1 prior to any such act or omission by ACL, the Customer shall have directed otherwise, whether specifically or by way of general policy (properly formulated and adopted in accordance with the Customer's internal procedures) and communicated it to ACL in writing; or
 - 4.2.2 ACL shall have knowingly acted contrary to any Applicable Laws or to this Agreement.
- 4.3 The Customer agrees, if so required by ACL, to confirm separately in writing to ACL and/or a third party the approval given in clause 4.2 in respect of a particular act or omission.
- 4.4 The Customer warrants that in respect of any Slot which it asks ACL to provide a Service relating to its possible transfer or exchange, the Customer has not done anything or omitted to do anything which would lead ACL, or any other coordinator, to withdraw that Slot from the air carrier to whom it has been allocated, whether under the EU Slot Regulation or otherwise.
- 4.5 The Customer shall satisfy itself that any Slot which it wishes to, or does, take by way of Slot Transfer is suitable for its needs and may be lawfully transferred or exchanged. The Customer alone is responsible for ensuring the suitability of the Slot or series of Slots which it wishes to take by way of transfer or exchange.
- 4.6 The Customer shall be liable to pay to ACL, on demand, all reasonable costs, charges or losses sustained or incurred by ACL (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's

fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to ACL confirming such costs, charges and losses to the Customer in writing.

- 4.7 The Customer shall act in good faith and in accordance with all Applicable Laws.
- 4.8 If there is any information (other than information referred to in clause 4.1) relating to a possible transfer or exchange of slots in respect of which the Customer has asked ACL to provide a Service which is confidential or commercially sensitive to Customer, the Customer must tell ACL of that fact. ACL can and will only treat such information as confidential if the Customer has specifically drawn that fact to ACL's attention.
- 4.9 The Customer shall comply and procure that its employees and all those acting on its authority comply with all security requirements issued by ACL in respect of the ACL Data and the ACL Database.

5. TYPES OF SERVICES

ACL shall provide such of the following Services that Customer asks for, as such Services are more fully described on ACL's Website from time to time.

5.1 **Basic Service** (air carriers and non-air carriers)

This will allow a Customer access to ACL's "Completed Trades" table and other statistical information as set out on the ACL Website.

5.2 **Advanced Service** (air carriers and non-air carriers)

The Customer will have access to a wider range of reports and data held on the ACL Website, pre-trade postings, and other information as set out on the ACL Website from time to time.

5.3 **Trading Services** (available to air carriers only)

ACL provides to an air carrier Services which may or will lead to a Slot Transfer.

The trading services at present provided by ACL are set out on the ACL Website. They may be amended from time to time by publication on the ACL Website

6. ACL DATA

- 6.1 The Customer acknowledges that all Intellectual Property Rights in the ACL Data are and shall be owned solely and exclusively by ACL as compiler and/or originator of the ACL Data.
- 6.2 The Customer further acknowledges and agrees that copyright and database rights subsist in the ACL Data and the ACL Database and that ACL is both the maker of the ACL Database and the sole and exclusive owner of the ACL Database and all copyright and database rights subsisting in the ACL Database.
- 6.3 The Customer shall use the ACL Data only for its own internal business purposes. The Customer shall not, unless ACL has first granted permission in writing and the terms of such permission are observed, compile an internal database from the ACL Data or re-utilise, store or extract a substantial amount (whether at any time or in aggregates over time) of the ACL Data other than to receive Services under this

Agreement or as ACL otherwise permits, including under the terms and conditions of the Online Coordination System used by ACL and known as OCS.

- 6.4 The Customer shall:
 - 6.4.1 not exploit the ACL Data in any manner, whether for gain or otherwise;
 - 6.4.2 not disclose the ACL Data to any third party.
- 6.5 Subject to clause 6.8, the Customer shall be permitted to make copies of the ACL Data only for, and make the ACL Data available to, its employees solely and on a need-to-know basis.
- 6.6 The Customer shall procure that any copies of the ACL Data made by it shall contain such copyright or proprietary notices as are contained in the ACL Data or otherwise specified by ACL.
- 6.7 The Customer shall assume sole responsibility for its use of the ACL Data (including the use and internal security relating to any passwords).
- 6.8 ACL shall be entitled (in addition and without prejudice to any other remedy it may have, including, without limit, termination of this Agreement) to be reimbursed by the Customer for any gain made by the Customer, and any party to whom the Customer has disclosed any ACL Data, without the prior knowledge and agreement in writing of ACL, in each case as a result of any breach by the Customer of this clause 6 and/or any failure by any third party to whom the Customer has disclosed any ACL Data to comply with this clause 6.
- 6.9 The Customer acknowledges that it is aware that use of ACL Data, whether by accessing, utilising, storing or otherwise dealing with it may be subject to certain statutory or other external regulations, conditions and restrictions. The Customer undertakes to comply with such regulations, conditions or restrictions applicable in the territory in which it uses ACL Data.
- 6.10 The Customer acknowledges that the way in which it interprets or uses the ACL Data is dependent upon the exercise of its own skill and judgement and that ACL has no responsibility and accepts no liability whatsoever for the Customer's interpretations or use of the ACL Data.
- 6.11 The Customer acknowledges that ACL and/or its third party suppliers, for maintenance or other purposes, may from time to time alter or suspend the times of the availability of access to the ACL Data or ACL Database. ACL shall, where practicable, give reasonable prior notice via email of any period of unavailability.
- 6.12 The Customer acknowledges that the ACL Data and the ACL Database may be continually amended and updated by ACL and Information Providers and that accordingly:
 - 6.12.1 ACL reserves the right to amend particular information and remove any file comprised in the ACL Data or the ACL Database and/or to alter the manner of presentation of the ACL Data from time to time at its discretion
 - 6.12.2 the Customer is advised to access the most up-to-date ACL Data possible when using it.

- 6.13 ACL shall use reasonable efforts to maintain the accuracy of the ACL Database. The Customer nevertheless acknowledges that ACL makes no representation as to the accuracy of the ACL Data or the ACL Database.
- 6.14 The Customer acknowledges that the ACL Database may contain data inaccessible to it for security or other reasons.
- 6.15 On termination or expiry of this Agreement the provisions of clause 11.1.6 will apply.

7. INTELLECTUAL PROPERTY

- 7.1 Subject to clause 6, the Customer agrees that all Intellectual Property Rights in all Deliverables, materials and other things produced by, or on behalf of, ACL for the Customer or other customers for the Services, including all inventions, improvements, programs, data, reports, specifications, formulae, designs, models, prototypes, programs, sketches, drawings, plans and databases (including the ACL Data and the ACL Database) shall vest in and belong to ACL, ACL's licensors or such other persons as ACL may direct and Customer hereby provides all necessary consents so that the fullest possible use of the ACL Data and ACL Database may be used by ACL and its assigns and licensors.
- 7.2 The Customer hereby agrees that all information, data and communications provided in relation to the Services may be used by ACL, and ACL may authorise use by others, as ACL may determine in relation to the provision of the Services or otherwise.
- 7.3 The Customer hereby agrees that it shall, at the request of ACL, take all such steps and execute all such further assignments, other agreements and documents as ACL may require to ensure that all Intellectual Property Rights referred to in clause 7.1 above vest in and belong to ACL or ACL's assigns and licensors, and for the registration or protection in any way of ACL's Intellectual Property Rights, or the Intellectual Property Rights of ACL's licensors, in any way whatsoever.
- 7.4 If any third party shall claim that the Customer's use of the ACL Data or ACL Database infringes its Intellectual Property Rights, then (whether the claim is made before or after termination of this Agreement) the Customer shall after becoming aware of it:
 - 7.4.1 promptly notify ACL of such claim in Writing;
 - 7.4.2 give ACL immediate and complete control of such claim, if ACL shall so require;
 - 7.4.3 not prejudice ACL's defence of such claim;
 - 7.4.4 give ACL all reasonable assistance with such claim (at the cost of ACL).
- 7.5 ACL shall have the right at its option and expense to replace or change all or any part of the ACL Data or ACL Database, or to procure a right for the Customer to use them, in order to avoid any infringement or suspected infringement of any third party's intellectual property rights. If ACL does not, within 60 days of the making of any claim as referred to in clause 7.4, replace or procure such a right in relation to the ACL Data or the ACL Database (as may be relevant), so that there is no material diminution in the usability of the ACL Data or the ACL Database (as may be relevant), then ACL or the Customer may terminate this Agreement with immediate effect by giving written notice to the other Party.

8. CHARGES AND PAYMENT

- 8.1 In return for the provision of the Services provided by ACL to the Customer under this Agreement, the Customer shall pay the Charges to ACL as stated on the ACL Website from time to time or as the Customer has agreed with ACL for bespoke services for the Customer.
- 8.2 Customer shall pay Charges for Services which are paid for by subscription or paid for in advance in accordance with the payment instructions set out on the ACL website.
- 8.3 In respect of Services which are charged for on a time-spent basis and as described on the ACL website and agreed specifically for Services bespoke for that Customer, ACL shall invoice the Customer for payment of the Charges at the end of the month in which the Services are supplied. All bank charges and/or deductions shall be for the account of the Customer in order that ACL receives the full amount.
- 8.4 The Customer shall pay the Charges which have become payable within thirty (30) days of receipt of an undisputed invoice from ACL (**Due Date**).
- 8.5 If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
- 8.5.1 The Customer shall notify ACL in writing as soon as reasonably practicable;
 - 8.5.2 The Customer's failure to pay the disputed Charges shall not be deemed to be a breach of this Agreement;
 - 8.5.3 The Customer shall pay the balance of the invoice which is not in dispute by the Due Date;
 - 8.5.4 to the extent that the Customer is obliged, following resolution of the dispute, to pay an amount, then ACL may charge interest in accordance with clause 8.5 from the original Due Date until the date of payment;
 - 8.5.5 to the extent that ACL is obliged to refund an amount to the Customer, interest shall be added to that amount at the rate set out in clause 8.5; and
 - 8.5.6 once the dispute has been resolved, where either Party is required to make a balancing payment or issue a credit note, it shall do so within ten (10) days.
- 8.6 The Customer shall pay interest to ACL on any payment received after the Due Date at a daily rate equal to three per cent (3%) above the base rate from time to time of Barclays Bank plc, such interest to be payable in respect of the period between the Due Date of payment and the actual date on which payment is received by ACL.
- 8.7 All sums payable by either Party under this Agreement shall be paid in pounds sterling.
- 8.8 The Charges are stated exclusive of any applicable taxes, including VAT, if any, which shall be added at the prevailing rate as applicable and paid by the Customer

following delivery of a valid invoice including such VAT or other applicable tax as may be required in accordance with any Applicable Law.

- 8.9 The Parties agree that ACL may from time to time review and amend the Charges. Any variation will be set out on the ACL Website, to take effect as from a date set out there.
- 8.10 Time for payment shall be of the essence of this Agreement.
- 8.11 ACL may, without prejudice to any other rights it may have, set off any financial liability of the Customer to ACL against any financial liability of ACL to the Customer.
- 8.12 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay ACL on the Due Date, ACL may suspend all Services until payment has been made in full.

9. INDEMNITY AND LIABILITY

- 9.1 ACL shall not be liable to the Customer for any loss, injury, damage, expense or delay incurred or suffered by the Customer arising directly or indirectly from or in any way connected with the provisions of any Service, and in particular, but without limitation to the foregoing any loss, injury, damage, expense or delay arising from or in any way connected with:-
 - 9.1.1 Failure of any Slot Transfer to meet the requirements of the Customer for all or any of the purposes of the Customer or the failure of any transfer or exchange of Slots to take place;
 - 9.1.2 Any act or omission of the Customer, whether wilful, negligent, fraudulent, dishonest, reckless, or otherwise;
 - 9.1.3 Any loss, injury, damage, expense or delay incurred or suffered by the Customer.
- 9.2 Subject to clause 9.1 above, ACL's total aggregate liability, whether arising from tort (including negligence), breach of contract or otherwise arising out of or in connection with this Agreement, or a breach of this Agreement, shall in no event exceed the amount of the Charges payable by the Customer in accordance with this Agreement for the calendar year in which the breach arises.
- 9.3 Neither Party shall be liable to the other Party for:
 - 9.3.1 any indirect, special or consequential loss or damage; or
 - 9.3.2 any loss of profits, business opportunities, revenue, or damage to goodwill, whether arising from breach of contract, tort or breach of statutory duty, and whether or not the first party has been made aware of the likelihood of any such loss or damage.
- 9.4 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

- 9.5 All warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from this Agreement.
- 9.6 The Customer acknowledges that the limitations and exclusions of the obligations and liabilities of ACL set out herein are reasonable and reflected in the charges payable to ACL and shall accept risk and/or insure accordingly.
- 9.7 Nothing in this clause 9 shall be construed as purporting to exclude or restrict liability of ACL to the Customer for personal injury or death resulting from ACL's negligence (as defined in the Unfair Contract Terms Act 1977) nor exclude any statutory or other limitation or exclusion of liability which is prohibited by law.

10. TERM AND TERMINATION

- 10.1 This Agreement shall start on the Commencement Date and shall, unless terminated by either Party in accordance with this clause 10, continue until such time as ACL or the Customer gives notice to terminate this agreement on giving not less than 30 days' notice.
- 10.2 Notwithstanding Clause 10.1, where Customer pays for Services by annual or either periodic subscriptions, this Agreement shall end [30] days after a renewal of subscription becomes due if such renewal subscription is then still unpaid.
- 10.3 Without prejudice to any other rights or remedies which ACL may have against the Customer, ACL may, at its option, either suspend its provision of Services under this Agreement or terminate this Agreement without liability to the Customer immediately on giving notice to the Customer if the Customer:
- 10.3.1 fails to pay any amount due under this Agreement on the Due Date for payment and remains in default for not less than 30 days after being notified in writing to make such payment; or
 - 10.3.2 commits a material breach of any term of this Agreement and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of ACL notifying the Customer in writing of the breach; or
 - 10.3.3 repeatedly breaches any of the terms of this Agreement in such a manner that ACL can reasonably take the view that the Customer's conduct is inconsistent with it having the intention or ability to give effect to or be bound by the terms of this Agreement;
 - 10.3.4 ACL reasonably believes that the Customer may have breached the terms of this Agreement or the terms of any Non-Disclosure Agreement with another Customer; or
 - 10.3.5 enters into liquidation whether, compulsory or voluntary, or is unable to pay its debts or compounds with, or convenes a meeting of, its creditors or has a receiver, manager, administrator or administrative receiver appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the Party giving notice means the other Party may be unable to pay its debts. ACL may also terminate this agreement if performance of the Services pursuant to this Agreement is prohibited by any Applicable Law.

11. CONSEQUENCES OF SUSPENSION OR TERMINATION

11.1 On suspension or termination of this Agreement for any reason:

11.1.1 ACL shall cease providing the Services;

11.1.2 the Customer shall immediately pay all of ACL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, ACL may submit an invoice which shall be payable immediately on receipt;

11.1.3 the acquired rights and liabilities of the Parties shall not be affected;

11.1.4 the Intellectual Property Rights vesting in ACL and all consents and authorisations provided by the Customer shall not be affected;

11.1.5 the continuation of any provision of these Terms and Conditions expressly stated to survive or impliedly surviving termination shall not be affected; and

11.1.6 all and any right of the Customer to access or use the ACL Data will cease automatically.

12. FORCE MAJEURE

12.1 ACL shall not have any liability, or be deemed to be in default, if the performance by ACL of any of its obligations under this Agreement is delayed, hindered or prevented due to Force Majeure. ACL shall be excused from performance of such obligation for as long as and to the extent that the effects of the Force Majeure continue.

13. CONFIDENTIALITY

13.1 Each Party undertakes that it shall not at any time during this Agreement, nor for a period of five years after termination of this Agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by clause 13.2.

13.2 Each Party may disclose the other Party's Confidential Information:

13.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 13; and

13.2.2 to any other Customer or to any other person for the purpose of facilitating a particular Slot Transfer, provided the other Party has given its prior consent to such disclosure (orally or in writing);

13.2.3 as may be required by law, court order, the European Commission or any other governmental or regulatory authority.

13.3 No Party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

- 13.4 For the avoidance of doubt neither Party is entitled to disclose any Confidential Information received pursuant to this Agreement in response to a request for information pursuant to the Freedom of Information Act 2000 (“**the FOI Act**”). All such Confidential Information is to be considered exempt from disclosure under the FOI Act. Notwithstanding the provisions concerning disclosure contained in this clause 13.5, either Party is entitled to disclose the existence of this clause in the Agreement.
- 13.5 The obligations and restrictions provided in clauses 13.2, 13.3, and 13.4 shall not apply to information which is:
- 13.5.1 now or becomes available to the public, otherwise than by breach of this Agreement by either Party, or
 - 13.5.2 lawfully disclosed to either Party by a third party without restrictions as to use and disclosure, or
 - 13.5.3 independently developed by employees of a Party, or
 - 13.5.4 disclosed with the prior written approval of the Party whose Confidential Information it otherwise would be; or
 - 13.5.5 not designated by the disclosing Party as Confidential Information in accordance with this Agreement.
- 13.6 Each Party will utilise, in respect of the other Party’s Confidential Information, the same care and controls as it employs to avoid disclosure, publication and dissemination of its own Confidential Information and warrants that such care and controls provide adequate protection for its own Confidential Information
- 13.7 Customer understands and agrees that a Slot Transfer once made, and entered on the database of the relevant co-ordinator, is not confidential and will be , or may be, published.

14. ASSIGNMENT AND SUB-CONTRACTING

- 14.1 No right arising under this Agreement may be sub-contracted, sub-licensed, assigned, transferred or otherwise disposed of, in whole or in part, without the prior written consent of the Parties.
- 14.2 Whilst either Party shall be entitled to sub-contract its obligations, as permitted by this clause 14, no sub-contracting by either Party of its obligations shall relieve that Party of responsibility for their due performance.

15. NOTICES

- 15.1 Any notice given under this Agreement shall be deemed to have been delivered if it is in writing and in the English language, and is hand delivered, faxed (with acknowledgement of receipt) or sent by electronic mail to the addresses, fax numbers or electronic mail addresses in the case of ACL at its registered office and in the case of the Customer at its usual place of business in the United Kingdom or as subsequently notified to the other Party in writing as the address to which notices, invoices, or other documents may be sent.
- 15.2 A notice given in accordance with clause 15.1 is taken to be received, in the absence of evidence of earlier receipt, if hand delivered, on delivery, and if sent by fax, at the time of transmission printed on the transmission confirmation sheet and if sent by electronic mail, on the day the sending Party receives confirmation of receipt by return electronic mail from the receiving Party.

16. WAIVER

- 16.1 No waiver or forbearance by either Party in enforcing any of its rights under this Agreement shall prejudice or affect the ability of such Party to enforce such rights or any of its other rights under this Agreement at any time in future.

17. SCOPE OF AGREEMENT

- 17.1 This Agreement taken together with the relevant parts of the ACL Website which describe more fully the Services provided by ACL is the entire Agreement and understanding between the Parties in relation to its subject matter and supersedes all prior agreements and representations made by either party whether written or oral.
- 17.2 Any purported variation of this Agreement shall only be binding if agreed in writing signed by an authorised representative of both Parties.
- 17.3 Each of the Parties acknowledges that in entering this Agreement (and any other document referred to in it) it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to this Agreement or not) that is not set out in this Agreement or any document referred to in it. Each Party waives all rights and remedies which, but for this clause 17, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance. The only remedy available to any Party in respect of any representation, warranty, collateral contract or other assurance that is set out in this Agreement (or any document referred to in it) is for breach of contract under the terms of this Agreement (or the relevant document).
- 17.4 Each renewal of subscription (in respect of services paid for by annual or other periodic subscription) and each request to ACL to provide a Trading Service leading to a possible Slot Transfer shall be deemed to be the Customer acceptance of the Terms and Conditions in force at that time.
- 17.5 Nothing in this clause 17 excludes or limits either Party's liability for fraud.

18. SEVERANCE

- 18.1 Any provision of this Agreement which is declared void or unenforceable by any competent authority or court shall to the extent of such invalidity or unenforceability

be deemed severable and shall not affect the other provisions of this Agreement, which shall continue unaffected.

- 18.2 If a provision of this Agreement (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.

19. SURVIVAL

- 19.1 The provisions of clauses 6 (ACL Data), 7 (Intellectual Property), 9 (Indemnity and Liability), 11 (Consequences of Termination), 13 (Confidentiality) and 15-25 (Notices, etc.) continue to apply notwithstanding termination of this Agreement.

20. COSTS

- 20.1 Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement.

21. CHOICE OF LAW

- 21.1 This Agreement will be governed by and construed in accordance with English law, and all claims and disputes between the Parties or any of them arising out of or in connection with this Agreement will be determined in accordance with English law.

22. SUBMISSION TO JURISDICTION

- 22.1 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be submitted to the non-exclusive jurisdiction of the English Courts.

23. VARIATION

- 23.1 No variation or alteration of this Agreement shall be effective unless it is agreed in writing and signed by or on behalf of each of the Parties.

24. NO PARTNERSHIP

- 24.1 Nothing in this Agreement shall constitute or be deemed to constitute a partnership or other form of joint venture between the Parties or constitute or be deemed to constitute either Party the agent or employee of the other Party for any purpose whatsoever.

25. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 25.1 No person who is not a party to this Agreement is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.