

**Ebury Mass Payments Limited, DIFC Branch - Relationship Agreement****Schedule 1 - General Terms and Conditions (v.1/2024)****1 Our Relationship With You**

1.1 This Agreement sets out the terms and conditions governing the relationship between the Customer and Ebury in respect to certain of our products and services. We will offer the following services to you on the terms set out in this Agreement (we will not offer services other than those detailed below unless otherwise agreed in writing):

- (a) place funds onto a Segregated Client Account with the view of making payments;
- (b) make payments using such funds; and
- (c) enter into Trades,

each a **"Service"** and collectively, the **"Services"**. We may, from time to time, provide other services to you as agreed between us and such additional service will form part of the definition of **"Service"** and **"Services"** and will be governed under this Agreement (unless specified otherwise) and any supplemental terms entered into by you in respect of such additional service.

1.2 The Services will be provided by us from Ebury Mass Payments Limited acting via its DIFC Branch. In performing its actions under this Agreement, Ebury Mass Payments Limited acting via its DIFC Branch, will be providing regulated Services in or from the DIFC. The Services constitute "Providing Money Services" by "Issuing Payment Instruments" and "Providing or Operating Payment Accounts" pursuant to and each as defined under the DFSA Rules. We will also arrange for you to receive money services from our head office, Ebury Mass Payments Limited or an Ebury Affiliate. For all other Services we will only be offering services of our head office, Ebury Mass Payments Limited, or an Ebury Affiliate.

**2 Definitions and Interpretation**

2.1 As used in this Agreement:

**"Act of Insolvency"** means where one or more of the following occurs:

- (a) the Customer (i) is unable or admits its inability to pay its debts as they fall due; (ii) suspends making payments on any of its debts; or (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) any corporate action, legal proceedings or other procedure or step is taken in relation to: (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Customer other than a solvent liquidation or reorganisation; (ii) a composition, compromise, assignment or arrangement with any creditor of the Customer; (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Customer or any of its assets; (iv) enforcement of any security over any assets of the Customer, or (v) any analogous procedure or step is taken in any jurisdiction; or
- (c) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

**"Affiliate"** means, in relation to a party, every entity that, directly or indirectly, through one or more intermediaries, is at the relevant time Controlled by, Controls or is under common Control with such party;

**"Applicable Laws"** means any applicable law, statute, regulation, rules or legally binding requirement or order (as interpreted by us, having taken into account any regulatory policy, guidance or industry code) as in force from time to time in any jurisdiction, whether domestic or foreign and as amended, modified or supplemented from time to time;

**"API"** means the application programme interface developed by Ebury and offered to you or a third party to enable you to access the Services pursuant to an API licensing agreement or similar;

**"Authorised Party"** means any person that you notify us from time to time is authorised to act on your behalf;

**"Beneficiary"** means you or any third party payee nominated by you in a Payment Order;

**"Beneficiary Account"** means the bank account nominated by you to which funds are to be transferred;

**"Business Day"** means a day on which banks are open for general banking business in the United Arab Emirates, unless otherwise specified;

**"Close Out"** means the termination, cancellation or a reversal of a Trade or pending Trade;

**"Confidential Information"** means all information a party gets as a result of entering or performing this Agreement which relates to any of these (i) the negotiations leading up to, and the provisions or subject matter of, this Agreement or any ancillary matter and (ii) the other party's business, customers, financial or other affairs;

**"Control"** means the possession, directly or indirectly, of the power to vote fifty percent (50%) or more of the securities that have ordinary voting power for the election of directors of any entity or the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of securities, by contract or otherwise;

**"Cross-Default"** has the meaning set out in Clause 9.2(n);

**"Delivery Date"** means, in respect of a Transfer and/or Trade, the Business Day on which a Transfer and/or Trade is expected to be settled as notified by Ebury to you from time to time;

**"DIFC"** means the Dubai International Financial Centre;

**"DIFC Data Protection Laws"** means the DIFC Data Protection Law, DIFC Law No.5 of 2020, (as amended, modified or supplemented from time to time);

**"DFSA"** means Dubai Financial Services Authority, the financial services regulator in the DIFC;

**"DFSA Rules"** means the rules and guidance issued by the DFSA, which govern the regulatory framework within the DIFC and are applicable to the Services, as may be amended, modified, or supplemented from time to time;

**"Effective Date"** has the meaning set out in Clause 3.1;

**"Ebury Representative"** means any Ebury representative who you may contact in respect to the Services;

**"Financial Position"** means the overall financial condition of the Customer (and/or its Affiliates) as determined by us in our sole discretion (including by reference to, without limitation, items on the Customers (and/or its Affiliates) balance sheet and income statements (such as assets, liabilities, revenues, expenses, net earnings and equity);

**"Force Majeure Event"** means an event which is beyond the reasonable control of a party including, without limitation, acts of war and terrorism, insurrection, civil disorder, acts of God, postal or other strikes or similar industrial action, acts or regulations of any governmental or supranational bodies or authorities or markets, the failure of any market to perform its obligations, the breakdown, failure or malfunction of any telecommunications or computer service, epidemics, pandemics, quarantines, diseases or government intervention as a result of such;

**"Forward Contract"** means a foreign exchange contract under which we agree, on a specific date or specified range of dates in the future (and which may, if agreed, be contingent on a specific event or circumstances occurring) to physically exchange money with you at an agreed exchange rate and at an agreed time to facilitate payments for a commercial purpose for identifiable goods, services or direct investments;

**"Interest Rate"** means the annual interest rate(s) published on our website from time to time ( [www.ebury.com/legal](http://www.ebury.com/legal));

**"Loss"** and **"Losses"** means all taxes, duties, levies, fees (including without limitation fees, registration fees, legal fees, accountancy fees and/or any other professional fees) charges, claims, proceedings, judgments, expenses, costs (including, without limitation, costs of investigation and expenses of litigation) fines, penalties, settlement payments, losses, damages and liabilities;

**"Major Currency"** means US dollar, euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish złoty and Romanian leu;

**"Margin"** means such amount that we determine at any time and from time to time (in our sole discretion) that you are required to provide to us for the purposes of securing or otherwise collateralising your obligations and liabilities to us under this Agreement or otherwise;

**"Margin Call"** means a request by us to you for Margin;

**"Margin Call Receipt"** means an email confirmation sent by us to you detailing the terms of a Margin Call;

**"Nominated Account"** means the Ebury bank account(s) which we notify to you from time to time;

**"Non-Major Currency"** means a currency which is not a Major Currency;

**"Online System"** means the electronic platform and interface (hosted by us) through which you can access the Services;

**"Order"** means a request by you to us to enter a Trade;

**"Order Facility"** has the meaning given in Clause 13.11;

**"Payment"** means any payment by you to us under this Agreement (including, without limitation, any payment in relation to an Order, Trade or Margin Call);

**"Payment Amount"** means the full amount which you are required to pay us to fulfil your Trade;

**"Payment File"** means a file containing payment details, including the Beneficiary, the Beneficiary Account, relevant currencies and amounts, and payment dates;

**"Payment Instruction Confirmation"** means the email we shall send to you for the purpose of confirming the Payment Amount and the Beneficiary Account;

**"Payment Order"** means an instruction by you to us to: (a) make a Transfer; (b) make a Payment; or (c) pay Margin;

**"Platform"** means the software owned or operated by you or a Third Party Platform Provider, which is integrated with the API and enables you to access all (or some) of the Services;

**"Purchase Currency"** means the currency which you shall buy from us;

**"PSRs"** means the Payment Services Regulations 2017 as amended, modified or supplemented from time to time;

**"Restricted Party"** means, in relation to a person or entity, any or all of the following:

- (a) the person or entity is listed or referred to on any list of designated or sanctioned parties created and maintained in line with Sanctions or otherwise targeted by Sanctions;
- (b) the person or entity is located in or ordinarily resident in any country or territory subject to comprehensive territorial Sanctions (at present, being the Crimea and Sevastopol region of Ukraine, the Donetsk, Luhansk, Kherson or Zaporizhzhia oblasts of Ukraine, Cuba, Iran, North Korea, and Syria) ("Sanctioned Countries");

- (c) the person or entity is a government, including its agencies and instrumentalities, that is targeted by Sanctions (at present, being the governments of Russia and Venezuela in addition to the governments of Sanctioned Countries) ("Sanctioned Governments"); or
- (d) the person or entity is owned (at 50% or more, directly or indirectly, individually or in the aggregate) or controlled by or acting on behalf or at the direction of, directly or indirectly, individually or in the aggregate a person or entity falling within paragraphs (a) or (b) above and/or a Sanctioned Government.

**"Sale Currency"** means the currency which you shall sell to us;

**"Sanctions"** means any sanctions, export or trade control, embargo, customs, anti-boycott or similar laws, rules or regulations imposed or administered from time to time by any country or intergovernmental or supranational organisation, including those of the United Nations, United Kingdom, the United States of America or the European Union, or any other country or intergovernmental or supranational organisation whose laws apply to you or us or otherwise in connection with the performance of this Agreement. In the event of a conflict between Ebury's obligations herein and any applicable Sanctions, the applicable Sanctions shall prevail;

**"Segregated Client Account"** means a segregated account provided to you and operated pursuant to the terms of this Agreement and displayed on the Online System and/or the API (and if more than one account, together the **"Segregated Client Accounts"**);

**"Spot Contract"** means a foreign exchange contract under which we agree to exchange money at an agreed exchange rate:

- (a) with respect to the exchange of one Major Currency against another Major Currency, within two Trading Days of the contract being entered into; and
- (b) with respect to the exchange of a Non-Major Currency against either another Non-Major Currency or against a Major Currency, the later of (i) within two Trading Days of the contract being entered into and (ii) the period generally accepted in the market for that currency pair as the standard delivery period.;

**"Service"** and **"Services"** shall have the meaning set out in Clause 1.1;

**"Termination Amount"** shall have the meaning set out in Clause 10.2;

**"Termination Date"** means the date on which this Agreement is terminated in accordance with Clause 9;

**"Third Party Platform Provider"** means a provider that is not you that owns or operates a Platform;

**"Third Party Provider"** means an appropriately authorised or registered Account Information Service Provider ("**AISP**"), Payment Initiation Service Provider ("**PISP**") or card-based payment instrument issuer ("**CBPPI**") (capitalised terms as defined in the DFSA Rules);

**"Trade"** means a Spot Contract, Forward Contract or any other transaction we enter into with you under or in connection to this Agreement;

**"Trading Day"** means a day of normal trading in the jurisdiction of both the currencies that are exchanged;

**"Transfer"** means a transfer of funds to a Beneficiary;

**"Transaction Receipt"** means an email confirmation sent by us to you detailing the terms of a Trade; and

**"UAE"** means the United Arab Emirates.

1.1 In this Agreement:

- (a) when we refer to a person, this could mean any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency

or department, state or agency of state or any other entity;

- (b) any references to the singular include the plural and vice versa;
- (c) any references to a time of day are to United Arab Emirates time;
- (d) any words following the words include, includes, including, in particular or any similar words or expressions are for illustration or emphasis only and are not intended to limit the meaning of the words preceding them;
- (e) any references to a party or to the parties means you and/or us as the context requires; and
- (f) headings and clause numbering herein are for guidance only and shall not affect the interpretation of the Agreement.

## **2 How to Access our Services**

When using the Online System or the Platform:

- (a) you agree to keep your Segregated Client Account(s) log-in details (or equivalent security procedure) safe at all times, change your password regularly and never disclose your log-in details, password or similar security details to any other person (other than an Authorised Party in respect of the Segregated Client Account(s) of which they have been authorised); and
- (b) if you become aware that your log-in details, password or other security features relating to your Segregated Client Account(s) have been or may have been lost, stolen, misappropriated, used without authorisation or otherwise compromised, you must immediately (i) change your password and (ii) contact us.

The functionalities of the Segregated Client Account, as further described in Clause 13, will only be made available once that our registration and onboarding process that would be deemed necessary by us have been fully fulfilled.

## **3 Your relationship with us**

3.1 This Agreement shall take effect between you and us on the date of this Agreement (the “**Effective Date**”).

3.2 You must tell us immediately if any of the information you have previously provided to us changes, including:

- (a) a change of name, registered address, directors, country of incorporation, Authorised Parties, shareholders or beneficial owners;
- (b) a material change to your business activities or operations; or
- (c) a material change to your Financial Position.

3.3 You understand and agree that if any time prior to the occurrence of a Termination Date, we consider (in our sole and absolute discretion) that one or more of the events set out in Clause 9.2 below has occurred and is continuing in respect of you, we may without giving notice to you, suspend:

- (a) the provision of all or any Services to you under this Agreement, including disconnecting our API;
- (b) the payment of any amount which has become due and payable from us to you; and/or
- (c) any debit or credit entries being made to all or any of your Segregated Client Accounts,

save that Ebury shall not suspend any Segregated Client Account if we determine (in our sole discretion) that such Segregated Client Account is not related to one or more of the events set out in Clause 9.2.

#### **4 Your representations, warranties and undertakings**

4.1 You represent, warrant and undertake to us that as at the Effective Date and on an ongoing basis:

- (a) you have full power, capacity and authority to enter into and perform your obligations under this Agreement or any transaction contemplated by this Agreement;
- (b) the person(s) signing this Agreement has been duly authorised to execute this Agreement on your behalf and are duly organised, validly existing and in good standing under the laws of the jurisdiction of your incorporation;
- (c) you will at all times comply with all Applicable Laws, any provision of your constitutional documents, any order or judgment of any court or other agency applicable to you and you will not use the Services and/or the Segregated Client Accounts for the purposes of money laundering, tax evasion, terrorist financing or any other illegal activities;
- (d) neither you nor any of your parent, subsidiary, ultimate beneficial owner (holding at least 25% of interest), or Affiliate, as relevant, or any agent or service provider (including a financing or processing bank), in each case deployed or used in the performance of this Agreement:
  - (i) are a Restricted Party;
  - (ii) in the past five years, have breached any Sanctions;
  - (iii) will transfer or receive any funds to, from or via a Restricted Party, or otherwise in breach of Sanctions applicable to you or us;
  - (iv) have had any transactions or services declined by any bank or other service provider in the last five years on the grounds that to perform such transaction or provide such services would breach or create exposure to enforcement or other adverse action under Sanctions;
- (e) you:
  - (v) will at all times in connection with the activities envisaged under this Agreement, comply with Sanctions and you will not use the Services and/or the Segregated Client Account for any activity which may breach Sanctions or expose us to breaching or other adverse or enforcement action under Sanctions, including without limiting the foregoing any activity or transaction with a Sanctioned Country or a Restricted Party;
  - (vi) are not and in the past five years have not been subject to any investigation or enquiry into your compliance with Sanctions or any allegation of any breach of, or involvement in any breach of, Sanctions;
- (f) you will immediately notify Ebury in the event that any of the representations and warranties in Clauses 4.1(d) and (e) are or become incorrect providing such information as we may reasonably request to understand the nature of implications of such matters;
- (g) you and each Authorised Party have and will maintain all required rights, powers, authority, permits, licences, consents, permissions and authorisations to enter into this Agreement, make use of the Services and to perform your obligations under this Agreement, you shall be liable for any instructions and actions carried out by an Authorised Party pursuant to this Agreement (acting within the limits of their authority as you have notified to us) as if you had given the instruction or carried out that action yourself and it is your responsibility to withdraw your authority from, or impose limits on, any Authorised Party;
- (h) you shall be liable as a principal in respect of your obligations hereunder (including, without limitation, in respect of any Transfers and Trades entered into with us);
- (i) all of the information provided to us from time to time, is true, accurate and complete in every material respect;
- (j) you shall provide us with such accurately completed forms, documentation or other information as we may require from time to time to (i) fulfil or assist us with fulfilling our obligations under Applicable Laws; or (ii) determine whether we have any tax related obligations under Applicable Laws;

- (k) you have the necessary experience and knowledge (a) to understand the risks involved in relation to any Trade entered into under or in connection with this Agreement and (b) in relation to foreign exchange markets, products and services;
- (l) that any Forward Contract entered into by you is only (a) for non-speculative reasons and (b) to facilitate the payment by you of goods, services and/ or direct investments; and
- (m) if you are a partnership, each partner shall be jointly and severally liable under this Agreement.

4.2 You acknowledge that we may rely on the representations, warranties and undertakings set out in this Agreement, including this Clause 4.

## **5 Liability**

5.1 You understand and agree that we provide no representation or warranty (to you or any other person) that the Services provided to you hereunder will meet any particular requirements, that their operation will be entirely error-free or that any defects will be capable of correction or improvement. In the absence of fraud, no oral or written information or advice given by us or our Affiliates (or our, or our Affiliates', respective directors, officers, employees, agents, representatives and subcontractors) shall create any representation or warranty or give rise to any other liability other than as expressly set out in this Agreement.

5.2 Save as expressly provided in this Agreement, the Online System and any manuals or other materials provided to you are provided on an "as is" and "as available" basis and you agree that the express obligations and warranties made by us in this Agreement are in lieu of and to the exclusion of any warranty, condition or representation of any kind, express or implied, statutory or otherwise, relating to the Online System or any manuals or other materials provided to you under or in connection with this Agreement; including, without limitation, as to reliability, availability, accuracy, completeness, performance, functionality, conformance with any description, satisfactory quality, fitness for purpose of freedom from errors or defects.

5.3 You agree that the Online System is and shall remain the exclusive property of Ebury, and you are granted a non-exclusive, non-transferable and non-sub-licensable licence to access the Online System solely in connection with this Agreement. All intellectual property rights in the Online System remain vested with Ebury or the third parties that licenced them to Ebury. You are not permitted to recreate, copy, modify, reproduce or distribute the Online System or create derivative works from it or permit its reverse engineering, disassembly, decompilation or otherwise attempt to ascertain the source code or internal workings of the Online System.

5.4 We take the security of our Online System seriously. By using the Online System, you agree not to upload or otherwise send or transmit any material that contains viruses, Trojan horses, worms or any other harmful code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment associated with the Services or Online System. We will not be responsible to you for any loss of use or corruption or restitution of software, data or information for any events outside our reasonable control and/or if you have failed to comply with any of the security obligations set out in this Agreement.

5.5 Without prejudice to Clauses 5.6 and 5.7 below, neither Ebury nor any of our Affiliates shall be liable to you or any of your Affiliates for any indirect, special, consequential or incidental loss of profits, business, contracts, goodwill, reputation, opportunity, revenue production, or anticipated savings howsoever caused, arising out of, or in connection with, any supply, failure to supply or delay in supplying any of the Services, Online System or otherwise in connection with this Agreement.

5.6 We shall not be liable to you nor any of your Affiliates for any Losses incurred:

- (a) if we are prevented by Applicable Laws from fulfilling any of our obligations under this Agreement;
- (b) arising out of or in connection with a Force Majeure Event;
- (c) arising from your failure to comply with the terms of Clause 2; or
- (d) arising out of or in connection with any Service provided to you (including, without limitation, any Transfer or Trade) where we have acted on instructions which we reasonably believed were provided by you or an Authorised Party.

5.7 Our entire liability to you for any Loss or otherwise:

- (a) arising from any failure by us to process a Transfer or Trade in accordance with this Agreement is limited to the cost of reprocessing such Transfer or Trade less any applicable fees payable to us; and
- (b) whether for negligence, breach of contract, misrepresentation or otherwise arising out of or in connection with this Agreement in aggregate for any consecutive 12-month period shall be £5,000.

5.8 Whilst we may provide you with information about foreign exchange markets and related matters, we do not provide advice. Any decision you make to enter into a Trade or request a Transfer is made on your own judgement. It is your responsibility to familiarise yourself with foreign exchange products and services.

5.9 We shall not provide you any Service and/or shall not provide you with access to the Segregated Client Account to the extent that to do so would expose us or any of our Affiliates, agents or service providers (including correspondent banks that may be US persons) to breaching any Sanctions or any other enforcement or adverse action under Sanctions.

## **6 Indemnities**

6.1 You undertake to indemnify and hold harmless Ebury and our Affiliates (and our and their respective directors, officers, employees, agents, representatives and subcontractors) (each an **"Indemnified Person"** and together the **"Indemnified Persons"**) from and against any and all Losses suffered or incurred by any of them as a result of a failure by you to comply with your obligations or representations and warranties hereunder, including any Losses on a Close Out, save to the extent that such Losses flow directly from the wilful default, fraud or negligence on the part of the Indemnified Person concerned.

6.2 The benefit of Clause 6.1 shall apply severally to each Indemnified Persons and, without prejudice to Clause 26.1, shall also be enforceable by us on behalf of ourselves and on behalf of any other Indemnified Person. You waive any right you may have of first requiring us (or any other Indemnified Person) to proceed against or enforce any other rights or security or claim or payment from any person before claiming from you under this Clause 6. This waiver applies irrespective of any Applicable Laws or any provision of this Agreement to the contrary. Further, you expressly confirm that you intend that this indemnity shall extend, from time to time, to any and all variations to this Agreement.

6.3 For the avoidance of doubt, if a claim is brought against the Indemnified Persons by a Beneficiary or any other third party, we shall be entitled to settle or otherwise deal with the claim in our sole discretion. Further, if any discharge, release or arrangement (whether in respect of your obligations or any security for those obligations or otherwise) is made by us in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then your liability under this Clause 6 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

## **7 Combination and consolidation of accounts and set-off rights**

7.1 You acknowledge and agree that, subject to any Applicable Laws, we have the right in our sole discretion at any time and without notice to you to set-off any sum standing to the credit of a Segregated Client Account against any Payments, claims, costs, charges, penalties, expenses or other liabilities which you owe to us under that Segregated Client Account, save where it has been agreed between us that a particular Segregated Client Account will not be subject to the provisions of this Clause 7.

7.2 At any time and from time to time, we may, without prior notice, set off any amount owing by you to us (or to any of our Affiliates) against any other amount owing by us to you, including amounts transferred to us as Margin. In the event that any Margin is used to set-off any amounts owed by you, you shall immediately restore such Margin, as requested by us; failing which we may terminate any or all unfulfilled Orders or Close Out any Trade or pending Trade, and you shall be responsible for any Losses suffered by us as a result of such termination. You acknowledge and consent to us netting Orders for the purpose of satisfying any Margin Call and/or satisfying any shortfall incurred by us on the (i) liquidation, termination or cancellation of any or all Orders and/or (ii) Close Out of any Trades or pending Trades. You acknowledge that we are not obliged to net Orders but may do so at our sole discretion.

7.3 Notwithstanding anything to the contrary, we shall only apply money from a Segregated Client Account to satisfy the obligations and liabilities specific to that Segregated Client Account, and not any other Segregated Client Account, save where it has otherwise been agreed between us.



- 7.4 All amounts due to us by you under this Agreement shall be paid by you to us in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Applicable Laws).
- 7.5 Any exercise by us of our rights under this Clause 7 shall be without prejudice to, and shall not limit or affect, any other rights or remedies available to us under this Agreement or otherwise.
- 7.6 Without prejudice to any other rights and remedies available to us under Applicable Laws, we may charge interest on any overdue sum owed to us under this Agreement for the period from (and including) the original due date to (but excluding) the actual date of payment, at the Interest Rate.
- 7.7 You understand and agree that we may, from time to time, prevent you from withdrawing funds from a Segregated Client Account where any sums (including any Payment and/or Margin) are due but unpaid by you to us in respect of that Segregated Client Account under the terms of this Agreement.

## **8 Changes to this Agreement**

- 8.1 This Agreement and the documents referenced herein may be updated and/or amended by us at any time and from time to time for any reason, including, without limitation:
- (a) to reflect a change in Applicable Laws or market practice;
  - (b) if we determine in our sole discretion that the change is for the benefit of customers;
  - (c) technology developments (or expected developments) (including the systems used to run the business) or in response to possible risks to the security of your Segregated Client Account(s) (including, without limitation, a change in or enhancements to the security steps you need to follow to access your Segregated Client Account(s) or submit an Order or Payment Order); or
  - (d) to respond to any other change that affects us.
- 8.2 Any updates and/or amendments we make to this Agreement and the documents referenced herein will be communicated to you in writing, at least four (4) weeks before such updates and/or amendments are due to take effect; unless such updates and/or amendments are in our reasonable determination:
- (a) required by Applicable Laws;
  - (b) to your advantage; or
  - (c) represents a change to an external reference exchange rate to which your exchange rate is linked,
- and, in such circumstances, we may make the necessary updates and/or amendments immediately and inform you of the same subsequent to the updates and/or amendments taking effect.
- 8.3 If you disagree with the updates and/or amendments, you must contact us communicating your objection to the updates and/or amendments before the updates and/or amendments are due to take effect and the parties shall discuss any updates and/or amendments in good faith with a view of reaching an agreement. The previous terms of the Agreement shall continue until an agreement has been reached (unless the update or amendment is required by Applicable Laws). If no agreement has been reached within two (2) weeks of you communicating your objection, you have the right to terminate this Agreement after this period. If you fail to notify us of your objection before the updates and/or amendments were originally due to take effect, you will be deemed to have accepted the updates and/or amendments.

## **9 Termination**

- 9.1 Subject to Clauses 9.2 and 9.3, either party may terminate this Agreement at any time without reason by giving at least two (2) months prior written notice to the other.
- 9.2 We may terminate this Agreement on any day with immediate effect, without giving notice to you if we consider (in our sole and absolute discretion):

- (a) that you become a Restricted Party;
- (b) that you are using our Services fraudulently, inappropriately or for illegal purposes;
- (c) that we must do so to fulfil our obligations pursuant to any Applicable Laws or to avoid any enforcement action or other adverse measures thereunder;
- (d) that you have breached Applicable Laws or have caused Ebury or its Affiliates or our agents or service providers (including correspondent banks) to breach Applicable Laws (including, without limitation, Applicable Laws relating to fraud, anti-money laundering, or terrorist financing) or exposed us or our agents or service providers (including correspondent banks) to enforcement action or other adverse measures thereunder, or that by continuing to provide Services to you, you or we are likely to breach or cause Ebury or its Affiliates or our agents or service providers (including correspondent banks) to breach Applicable Laws or expose us or them to enforcement action or other adverse measures thereunder;
- (e) that you have breached the terms of this Agreement (including, but not limited to, any (i) representation, warranty or undertaking or (ii) obligation) or any other agreement with us or our Affiliates, including any letter of undertaking as to Sanctions compliance entered into by you and us in connection with this Agreement;
- (f) that you have failed to make a Payment when due;
- (g) we have any material concerns over the adequacy of the information you have provided to us;
- (h) that you are subject to an Act of Insolvency;
- (i) that an applicable regulatory or law enforcement authority has initiated, or has announced that it will initiate, a regulatory or enforcement action, or investigation against you;
- (j) that your conduct is disreputable or is capable of damaging our reputation (or the reputation of our Affiliates) by association;
- (k) that there is a change in your circumstances (including, without limitation, a deterioration in or change to your Financial Position) or in the nature of your business which we consider materially adverse to us being able to continue providing Services to you hereunder;
- (l) that a Force Majeure Event has occurred and as a consequence of such we are prevented from, or it becomes impossible or impracticable for us to provide Services to you;
- (m) that you are no longer suitable to receive the Services;
- (n) that there has been the occurrence of a default, event of default, termination or other similar condition or event in respect of you or any of your Affiliates under one or more agreements with us or any of our Affiliates (a "**Cross-Default**"); or
- (o) that our relationship with you presents a business risk to us or any of our Affiliates.

9.3 You will notify us immediately upon becoming aware of the occurrence of any of the events referred to in Clause 9.2 above.

## 10 Consequences of termination

10.1 On or as soon as reasonably possible following a Termination Date all Trades shall be Closed Out, pending Orders and Payment Orders shall be cancelled and we shall determine (in our sole discretion):

- (a) the amount recorded as being held in your Segregated Client Account(s) on the Termination Date;
- (b) the total Losses incurred by us in respect of and following a Close Out;
- (c) the market value of all Margin being held by us as at the Termination Date; and

- (d) the total balance of any amounts, other Losses, Payments, fees and/or commissions payable by you as a result of the provision of Services by us pursuant to this Agreement or otherwise and which remain unpaid.

10.2 Based on the sums so established pursuant to Clause 10.1, we shall determine the balance due from each party to the other (each a **"Due Balance"**). Following such determination and subject to Applicable Laws, a party's Due Balance shall be set-off against the other party's Due Balance, and the net balance of such set-off shall be calculated; with the resulting balance being the **"Termination Amount"**. Subject to Applicable Laws, if the Due Balance due to us by you is greater than the Due balance due to you, the Termination Amount shall be payable by you to us; and if the Due Balance due to you by us is greater than the Due balance due to us, the Termination Amount shall be payable by us to you. For the purposes of this calculation, all sums not denominated in USD be converted into USD at the spot rate prevailing at such dates and times determined by us, acting reasonably.

10.3 The parties understand and agree that following a Termination Date:

- (a) we will not be required to accept any further instructions, Orders or Payment Orders from you;
- (b) we will not be required to:
  - (i) take into account for the purposes of the determination of the Termination Amount; or
  - (ii) pay or otherwise account to you,any profit made by us in respect of and following a Close Out; and
- (c) in the event that all or any part of the Termination Amount owed by you to us is not paid when due, such unpaid amount will accrue interest for the period from (and including) the original due date to (but excluding) the actual date of payment, at the Interest Rate.

10.4 Subject to Applicable Laws, if the Termination Amount is payable by:

- (a) you to us, such amount shall be immediately due and payable to our Nominated Account; or
- (b) us to you, such amount shall be immediately due and payable to your nominated bank account (but in all cases, subject to our rights to set-off such Termination Amount in accordance with the terms of this Agreement).

10.5 Upon or following the occurrence of a Termination Date and subject to Applicable Laws, we shall have the right without prior notice to you or any other person to:

- (a) set-off any Termination Amount owed by us to you against any obligation owed by you (or any of your Affiliates) to us (or any of our Affiliates) across any or all of your Segregated Client Accounts, whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or booking office of the obligation, or
- (b) set-off any Termination Amount owed by you to us against any obligation owed by us (or any of our Affiliates) to you (or any of your Affiliates) across any or all of your Segregated Client Accounts, whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or booking office of the obligation),

(the **"Other Amounts"**). To the extent that any Other Amounts are so set-off, those Other Amounts will be discharged promptly and in all respects. For the purpose of cross-currency set-off, we may convert either obligation at the applicable market exchange rate selected by us on the relevant date. If an amount of an obligation is unascertained, we may estimate that amount and set off in respect of the estimate, subject to the relevant party accounting to the other when the amount of the obligation is ascertained. Nothing in this Clause 11.5 will be effective to create a charge or other security interest. This Clause 10.5 will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirements to which a party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise). The parties agree that in the event of a termination in accordance with Clause 9, Clauses 7.1 and 7.3 shall not apply.

10.6 Following the payment of the Termination Amount in full (and, if applicable, any set-off in accordance with Clause 10.5), we may close your Segregated Client Account(s).

10.7 The termination of this Agreement shall not affect any provisions of this Agreement that are expressly or by necessary implication intended to survive such termination.

## **11 Contacting us/complaints**

11.1 If you wish to contact us regarding your Segregated Client Account(s) or any of the Services, you can do so (unless we say otherwise) through an Ebury Representative or otherwise by contacting [mpcompliance@ebury.com](mailto:mpcompliance@ebury.com).

11.2 If you are unhappy with any of our Services, you can contact Ebury's compliance team by using any of the following details:

Telephone: +971 4 526 1555

Post: Compliance Officer  
Ebury Mass Payments Limited  
Unit C1005, Level 10, Burj Daman  
Dubai International Financial Centre, Dubai,  
United Arab Emirates

Email: [mpcompliance@ebury.com](mailto:mpcompliance@ebury.com).

11.3 For further information on our complaints policy, please see [www.ebury.com/legal/emp-complaints-policy](http://www.ebury.com/legal/emp-complaints-policy).

## **12 The Segregated Client Account(s)**

12.1 A Segregated Client Account is not a personal bank or deposit account and you will not earn any interest on the funds held in a Segregated Client Account.

12.2 As the provider of your Segregated Client Account(s), the DIFC branch of Ebury Mass Payments Limited is authorised by the DFSA to provide the Financial Services of "Providing Money Services" in or from the DIFC, which allows us to provide and operate payment accounts.

12.3 Being regulated by the DFSA, we are required under the DFSA Rules to ensure that the funds received by us from you are subject to the protection conferred by the DFSA's Client Money Provisions, and therefore will be held on your behalf in one or more segregated bank accounts separately from our own funds. In the event of our insolvency, winding up or other Act of Insolvency, these funds will be subject to the DFSA's 'Client Money Distribution Rules' as provided for under the DFSA Rules.

12.4 Where we receive funds from you, they will initially be received into a non-segregated account. After receipt by us, the funds will then be paid into the relevant segregated bank(s) within one Business Day.

12.5 You acknowledge and understand that when and if we hold your funds in a jurisdiction outside the DIFC, (a) the market practices, insolvency and legal regime in that jurisdiction may differ from the regime applicable in the DIFC, and (b) we may hold your funds in an account with an Affiliate.

12.6 Your Segregated Client Account(s) are denominated in the currencies as selected by you.

## **13 Using the Segregated Client Account(s)**

13.1 You may request that we open a Segregated Client Account from time to time.

13.2 Your Segregated Client Account(s) can be used to (a) make Transfers (alone or in combination with a Trade); (b) make Payments in connection with one or more obligations hereunder (including in respect of Trades); and (c) pay Margin.

13.3 We will not allow you to make any Transfer or Payment out of a Segregated Client Account where this would put that Segregated Client Account into a negative balance. You should therefore ensure that you have sufficient funds, including for the

purposes of satisfying any Margin Call which may be made from time-to-time, in the relevant Segregated Client Account before placing a Payment Order or Order.

- 13.4 You must pay any applicable fees in connection with our Services. Information on our fee structure is provided in Schedule 2 to this Agreement. We will let you know the amount of any fees we charge when you place or we process a Trade, an Order or a Payment Order (as applicable). All fees payable to us under or in connection with this Agreement are exclusive of any taxes (including any applicable value added tax or other relevant sales tax).
- 13.5 Please note that other costs, taxes, fees or charges may apply to you that are not charged by us and/or won't be paid through us unless otherwise agreed between us and you in writing. You are responsible for paying such costs, taxes, fees or charges where these apply. It is your responsibility to determine what, if any, taxes apply to the payments you make or receive, and it is your responsibility to collect, report and remit the correct amount of tax to the appropriate tax authorities. If we are required to withhold any taxes, we may deduct such taxes from amounts otherwise owed to you and pay them to the appropriate authority.
- 13.6 Where permitted by Applicable Law, we may provide or receive a monetary or non-monetary benefit from an Affiliate or a third party in respect of a Trade we enter into for you under this Agreement. Before providing you with Services under this Agreement, we will disclose to you information on payments and benefits including a generic description of minor non monetary benefits. Other non-minor benefits will be priced and disclosed separately. If we cannot ascertain the amount of any payment or benefit in advance, we will disclose to you the method of our calculation and will provide you more exact details of the payment or benefit once it is received. We will also inform you at least once a year about the actual amount of on-going payments or benefits received in connection with the Services.
- 13.7 You can place a Payment Order and/or an Order from any of your Segregated Client Accounts online or, with our prior written consent, via the Platform (to the extent the relevant Service(s) are enabled). You must log on to the Online System or the Platform (using your password and log-in details) and follow the instructions to submit your Payment Order and/or an Order.
- 13.8 When placing a Payment Order and/or an Order (including by a Payment File or otherwise) you will be required to provide us with the requisite details (including any unique identifier and other information which we may request).
- 13.9 A Payment Order and/or an Order will be deemed to have been authorised by you if the relevant instruction has been given (i) in accordance with this Agreement (which may include any applicable security procedures) or (ii) pursuant to any specific arrangements agreed with you and governed by separate terms and conditions or (iii) through any Third Party Provider. We may treat an instruction generated or given through your use of the Services or given through any Third Party Provider as if it was an instruction given by you or an Authorised Party under this Agreement, and the resulting Payment Order and/or Order as authorised accordingly.
- 13.10 Notwithstanding any provision to the contrary in this Agreement, where a Payment Order and/or an Order relates to a payment for a future date at least (1) one UAE Business Day after the instruction, we confirm that we may reserve the right to withdraw the instruction provided that at least (1) one UAE Business Days written notice is given to us prior to the date on which the Beneficiary's account is to be credited.
- 13.11 We reserve the right to stop the use of any means or method (including our Online System or any API connectivity) you or an Authorised Party use to give us a Payment Order and/or an Order (an "**Order Facility**") on reasonable grounds relating to the security of the Order Facility or the suspicion of unauthorised or fraudulent use of the Order Facility. Before stopping the use of any Order Facility, we will inform you that we intend to stop such use and give our reasons for doing so, unless it is not reasonably practicable to do so, in which case we will inform you immediately afterwards. In either case, we will inform you in the manner in which we consider most appropriate in the circumstances and will not be obliged to inform you where doing so would compromise our reasonable security measures or otherwise be contrary to Applicable Laws. You may request that the use of the Order Facility is no longer stopped by following the notification procedure referred to in the paragraph below, but we will not be obliged to accede to your request until after the reasons for stopping its use cease to exist.
- 13.12 We reserve the right to refuse any Payment Order or Order (including any given through any Third Party Provider) which does not satisfy all the relevant conditions as set out in this Agreement or the execution of which would contravene any Applicable Laws; and we shall not be liable to you for any such refusal. Unless such notification would be contrary to Applicable Laws, we will notify you in the manner in which we consider most appropriate in the circumstances of the fact of refusal, (if possible) the reasons for the refusal and (where it is possible to provide reasons for the refusal and those reasons relate to factual matters) the procedure you may use to rectify any factual errors that led to the refusal.

13.13 You acknowledge and agree that with respect to transactions which are:

- (a) payment transactions in euro within the European Economic Area (the "EEA");
- (b) national payment transactions in a non-euro currency of a member state of the EEA; or
- (c) payment transactions within the EEA involving the conversion between euro and a non-euro currency of a member state of the EEA, and where:
  - (i) the currency conversion is carried out in the member state which has a non-euro currency; and
  - (ii) in the case of cross-border payment transactions, the cross-border transfer takes place in euro,

the Beneficiary's Account shall be credited by no later than the end of the Business Day following the Business Day on which the relevant payment order was received by us. In the event that a Payment Order is received by us after the specified cut-off time in the latest cut-off times document, it shall be deemed to have been received by us on the following Business Day.

13.14 Where you make a payment using any of your Segregated Client Accounts, the amount of the payment will be deducted by us from that Segregated Client Account balance. You must ensure that you have sufficient funds in the relevant Segregated Client Account to cover the amount of the Payment Order or Order you want to make using this Segregated Client Account. If you do not have sufficient funds in this Segregated Client Account, we reserve the right to postpone the execution of such Payment Order or Order, and we may impose a charge to cover the costs of us doing so.

13.15 You can check the balance held in any of your Segregated Client Accounts by logging into the Online System or Platform (to the extent the relevant Service(s) are enabled. Key information relating to payments made using any of your Segregated Client Accounts, including all fees and any other charges applied to the relevant Segregated Client Account and transaction history, will be available (in accordance with Applicable Laws) by logging into the Online System or Platform (to the extent the relevant Service(s) are enabled.

13.16 Each transaction made using any of your Segregated Client Accounts will be given a unique transaction ID which will be set out in the transaction history. You must quote this transaction ID when communicating with an Ebury Representative about a particular transaction.

13.17 Unless we agree otherwise, any return of funds from any of your Segregated Client Accounts will be returned to the source bank account where the funds were originally sent.

13.18 You understand and agree that, notwithstanding the terms of this Clause 13, we may, at any time and from time to time, delay a payment to or from any of your Segregated Client Accounts whilst we investigate, and conduct such other reasonable checks and enquiries, for the purposes of ensuring that such payment will not contravene any Applicable Laws. We may suspend, terminate or cancel any such payments which we believe (in our sole and absolute discretion) contravene Applicable Laws.

#### **14 Liability for incorrect execution and unauthorised payments**

14.1 In the case of a Payment Order that we agree has been improperly executed due to our mistake, we shall immediately refund the amount to the Segregated Client Account from which the Payment Order was made. In the event that you identify an error in a Payment Order, you have up to five (5) Business Days from the date you become aware of the error to notify us of it; after which time we will have no obligation to investigate or act upon your notification or provide a refund.

14.2 In the case of an unauthorised payment from any of your Segregated Client Accounts, at your written request we shall refund the unauthorised payment amount to the effected Segregated Client Account. We will not however be required to refund such a payment:

- (a) Where your actions (or omissions) have caused or contributed to the unauthorised payment being made from your Segregated Client Account;
- (b) where the unauthorised payment arises from your failure to keep your Segregated Client Account log-in, password or other security details safe;

- (c) if you fail to notify us without undue delay of any Loss or misuse of a log-in or password or another event that could reasonably be expected to have compromised the security of your Segregated Client Account after you have gained knowledge of such event, in which case you shall remain liable for all Losses incurred after gaining such knowledge; or
- (d) if you fail to dispute and bring the unauthorised payment to our attention within five (5) Business Days from the date of the relevant payment.

14.3 You further understand and agree that:

- (a) in the event that you discover an unauthorised payment, you must notify us no later than six (6) months from the date of that unauthorised payment in order to be entitled to redress;
- (b) in the event that a payment was not authorised by you, we will refund the amount of the transaction to you, and your maximum liability in respect of such unauthorised payment will be £35 unless you are found to have acted fraudulently or negligently or allowed another person to use your Segregated Client Account;
- (c) where you believe that we may have failed to perform or incorrectly performed a payment transaction, you must notify us without undue delay and in any event no later than six (6) months from the date of such payment. We will make appropriate efforts to investigate and where we have failed to perform or incorrectly performed such payment transactions, we will make good and correct the error.

## **15 Limiting use of your Segregated Client Account(s)**

- 15.1 We may suspend or otherwise restrict the functionality of all or any your Segregated Client Accounts on any reasonable grounds relating to the security of the Segregated Client Account(s) or any of its security features or if we reasonably suspect that an unauthorised or fraudulent use of all or any of your Segregated Client Accounts has occurred or that any of its security features have been compromised or where a Force Majeure Event occurs and is continuing. At any time, and from time to time, (in our sole and absolute discretion), we may increase or otherwise enhance our security checks in relation to all or any of your Segregated Client Accounts, any Payment Order and/or any Order made by you.
- 15.2 We may also suspend all or any your Segregated Client Account, restrict its functionality and/or reduce your trading limit to nil if any Payments are outstanding.
- 15.3 We will notify you of any suspension or restriction and of the reasons for such suspension or restriction in advance or, where it is impracticable to do so, immediately after the suspension or restriction has been imposed, unless that would be unlawful or compromise our reasonable security interests.
- 15.4 We will lift the suspension and/or the restriction as soon as practicable after the reasons for the suspension and/or restriction have ceased to exist.

## **16 Your use of a Third Party Provider**

- 16.1 You have the right, to the extent permitted by Applicable Laws, with respect to all or any of your Segregated Client Accounts, to make use of a Third Party Provider. If you are using a Third Party Provider, you shall provide us prior written notice.
- 16.2 You acknowledge and agree that if you do make use of a Third Party Provider, such Third Party Provider shall:
- (a) in the case of an AISP, have access to your nominated Segregated Client Account(s) and all the transactions, data and other information contained therein (which may include sensitive personal information);
  - (b) in the case of a PISP, be able to give Payment Orders as if it were you or an Authorised Party acting on your behalf; and
  - (c) in the case of a CBPIL, be able to request confirmation of funds availability within your nominated Segregated Client Account(s),

and you agree that we shall act on such access, instructions and requests as if they were provided to or given by you and shall be effective as if yours, whether or not authorised. You expressly waive any confidentiality, data protection, banking secrecy or professional secrecy obligations with respect to any such access.

16.3 We may deny a Third Party Provider access to your Segregated Client Account(s) for any reasons relating to unauthorised or fraudulent access to your Segregated Client Account(s) by that Third Party Provider, including the unauthorised or fraudulent initiation of a Payment Order or Order. Unless we are excused by Applicable Laws from giving such notification, we will notify you in the manner in which we consider most appropriate in the circumstances of the denial of access and, unless we are excused by Applicable Laws from providing such reasons, the reasons for the denial before such denial of access, unless it is not reasonably practicable to do so, in which case we will notify you as soon as reasonably practicable afterwards. You acknowledge that we may be required to report the incident to the relevant competent authority with details of the case and the reasons for taking action.

16.4 You acknowledge and agree that it is your responsibility, and not the responsibility of the relevant Third Party Provider, to notify us of any unauthorised or incorrectly executed Payment Order and/or Order or any non-executed or defective funds transfer in accordance with this Agreement, notwithstanding that the Payment Orders and/or Order and/or relevant funds transfer was initiated through a Third Party Provider, and further that we may disregard such notification received from a Third Party Provider.

## **17 Receiving payments and using account details in your name**

17.1 Subject to this Clause 17 and any restrictions set out in this Agreement, you can ask us for details of any of your Segregated Client Accounts which you can then give to third parties so that they can send funds to your Segregated Client Account(s) in a given currency. We may charge a fee for this service; and the provision of such service is subject to our discretion and Applicable Laws. It is important that you or the third party (as applicable) enter the correct account details when executing the payment for the incoming transfer. The details of your Segregated Client Account(s) that we give you will be details for an account owned by us and funds that are credited to the Segregated Client Accounts will be transferred to us as payee. Upon receipt of the funds by us, we will issue the corresponding value of the funds to credit the relevant Segregated Client Account. For certain incoming payments, we may ask you to provide additional information (in line with our obligations under Applicable Laws): for example, we may ask you for copies of invoices for one or more incoming payments. If you or the third party enter incorrect account details in regards to the payment and, as a result, we do not receive the funds, we are not responsible for any Losses you or the third party incur. Please note that we will not in any way receive or provide physical notes or coins.

17.2 Subject to the terms of Clause 17.1 and our agreement (in writing), you can receive payments from the following third parties:

- (a) your clients;
- (b) vendors or other commercial partners; and/or
- (c) your subsidiaries or other legal entities within your corporate group.

17.3 You cannot use your Segregated Client Account(s) details to set up direct debits or receive payments from short-term lenders, unless otherwise agreed by us in writing.

17.4 Please note that the currencies supported are subject to change and may be subject to further restrictions.. You must consult with an Ebury Representative to confirm if the currency you expect to receive is supported. Please visit our website for further information about your Segregated Client Account(s). If you receive funds in a currency different from the relevant Segregated Client Account, these funds will be converted into the relevant currency at our relevant currency conversion rate. Ebury and its Affiliates will not be responsible for any Losses you may incur as a result of this exchange. If you receive funds in an unsupported currency the payment might be declined and Ebury and its Affiliates will not be responsible for any Losses you may incur.

17.5 You are responsible for paying all taxes and related charges which you may be required to pay (in any jurisdiction) as a result of you receiving funds using your Segregated Client Account(s). If you are unclear as to your obligations, you should seek independent advice from a tax professional.



- 17.6 Payments made to any of your Segregated Client Accounts may be subject to reversal (for example, if one of your clients exercises its cancellation rights). If we receive any such request, we may deduct the relevant amount from the relevant Segregated Client Account and pay it back to the payer or the payer's payment service provider. Ebury and its Affiliates will not be responsible for any Losses you may incur as a result.
- 17.7 We will not make details of any of your Segregated Client Accounts available to businesses or provide any Service to support transactions which involve directly or indirectly or relate to online gambling, pornography, firearms, illegal drugs and paraphernalia, prescription drugs from unlicensed or online pharmacies, forged documents, products infringing copyrights or counterfeit goods, payday loans and pawn shops, cryptocurrencies, or any activity that Ebury deems is illegal or contrary to Applicable Laws.
- 17.8 At our discretion, we may assign you one or more account details in your name, which consist of an account number and other necessary information to accept or make payments in a given currency. These account details are a routing address for your Segregated Client Account(s). This means that payments sent using such account details will be reconciled to the relevant Segregated Client Account balance. Funds received by us which reference account details in your name will be treated in exactly the same way as any other funds you hold with us (see Clause 11.2).
- 17.9 Eligibility to use account details in your name is subject to change, and is dependent on certain country restrictions and Applicable Laws. We reserve the right to refuse to provide account details in your name. Before we provide you with account details in your name, we may request additional information or documentation to comply with our obligations to our regulators or otherwise under Applicable Laws. You must provide us with this requested information within a reasonable timeframe.

## **18 How to Place and Confirm a Trade**

- 18.1 You can place an Order online or via the Platform (to the extent the relevant Service(s) are enabled), as further described in Clause 13.7. You understand and agree that the decision as to whether or not we decide to enter a Trade with you following the receipt of your Order is subject to our full discretion.
- 18.1.1 Once we have received your Order, we will confirm:
- (a) the amount of the Sale Currency and/or the Purchase Currency;
  - (b) the foreign exchange rate and/or spread which we intend to apply;
  - (c) any Payment to be made in respect of such Order;
  - (d) any Margin payable by you as consequence of such Order (which we may later request at our discretion); and
  - (e) any additional terms which we intend to apply to the relevant Trade.
- 18.2 Upon receipt of an Order, we will provide you with a Transaction Receipt and a Payment Instruction Confirmation, which we may provide in a single communication.
- 18.3 You must carefully review the Transaction Receipt and the Payment Instruction Confirmation and tell us (i) before Payment and (ii) within one (1) hour of receipt of your Transaction Receipt and/or Payment Instruction Confirmation, if you think that we have made an error in such Transaction Receipt or Payment Instruction Confirmation. We will provide you with a revised Transaction Receipt and/or Payment Instruction Confirmation as soon as possible. If we do not hear from you within the timeframe above or if you make the relevant Payment, you understand and agree that you will be deemed to have agreed with the Transaction Receipt and/or the Payment Instruction.
- 18.4 If you confirm your Order (and make Payment in accordance with Clause 20) on a non-Business Day (or after our cut-off times (details of which can be made available to you upon request by you to an Ebury Representative)), we will process your Order on the next Business Day in accordance with your instructions.

## **19 Trade Suspension, Amendment or Cancellation**

- 19.1 You may not cancel a Trade which you have placed with us. However, if we have not yet processed the Trade:

- (a) you can correct any incorrect Beneficiary Account details (though we may charge a fee for this); or
- (b) we may at our discretion permit you to cancel the Trade.

19.2 We may reject, suspend, delay, amend, decline, disregard or cancel an Order and/or Trade, or refuse to issue a Transaction Receipt in our sole discretion (including as may be required by Applicable Laws). Where we may reject, suspend, delay, amend, decline, disregard or cancel an Order and/or Trade we shall notify you as soon as reasonably practicable and, to the extent permitted by Applicable Laws, use all reasonable efforts to notify you of the reasons for such refusal.

19.3 We may amend a Trade if a Force Majeure Event occurs, where in our sole discretion reasonable steps are required to avoid Losses being incurred. Such amendment shall not alter the parties' rights and obligations under this Agreement.

19.4 You must ensure that you have sufficient funds in the relevant Segregated Client Account from which the Order was made to cover the amount of any Trade you want to make using that Segregated Client Account. If you do not have sufficient funds in the relevant Segregated Client Account, we may postpone the execution date of the Trade and we may impose a charge to cover the costs of us doing so.

19.5 You understand and agree that, in the event that a Trade is cancelled:

- (a) if we have already received the Payment Amount, we will return and credit such amount to the originating account, provided that in the event that we determine (in our sole and absolute discretion) that the foreign exchange rate and/or spread at the time of return is different from that which applied at the time of the relevant Order or as set out in the Transaction Receipt, the amount returned will be subject to the then subsisting foreign exchange rate and/or spread (which may result in such returned amount being more or less than the original Payment Amount);
- (b) we will not refund any fees that you have paid to us in respect of such Trade/Order; and
- (c) we may require you to pay an additional fee (as agreed with you at such time) for the purposes of effecting the relevant cancellation.

## **20 Payment**

20.1 You must pay the full Payment Amount to us (either from the relevant Segregated Client Account or otherwise) on or before the Delivery Date. If we have not received the Payment Amount by such date (or any agreed change to the Delivery Date agreed pursuant to Clause 21.7), we may:

- (a) refuse to fulfil the Transfer or Trade; and/or
- (b) Close Out the Trade; and/or
- (c) cancel the Transfer.

20.2 Failure to make Payment in accordance with this Clause 20 will be a material breach of this Agreement and you shall be fully liable for any Loss we or our Affiliates suffer as a result of such breach (including, but not limited to, any Loss we or our Affiliates suffer as a result of a Close Out).

20.3 Without prejudice to any other rights and remedies available to us under Applicable Laws or pursuant to this Agreement, we may charge interest on any unpaid sum due to us under this Agreement at the Interest Rate. This interest will accrue daily from (and including) the original due date for payment to (but excluding) the actual date of payment in cleared funds.

## **21 Forward Contracts**

21.1 From time to time we may agree to enter into a Forward Contract with you. You understand and agree that:

- (a) we buy and sell currency for non-speculative purposes only and will not trade with you if you are seeking to enter into Forward Contract(s) as an investment or to profit by pure speculation on foreign exchange rate movements;

- (b) we will only enter a Forward Contract with you if we are satisfied that you are entering such Trade (i) for non-speculative reasons and (ii) to facilitate the payment by you of goods, services and/or direct investments; and
  - (c) you will immediately notify us if the purpose of your Forward Contract (i) has ceased to become one to facilitate payment of identifiable goods, services and/or direct investment or (ii) could be considered as being for speculative reasons.
- 21.2 At any time and from time to time, we may, in our sole discretion, notify you of a Margin Call. You understand and agree that in the event we consider (in our sole discretion) from time to time, that the amount of Margin you have transferred to us hereunder is insufficient to secure or otherwise collateralise your obligations and liabilities to us, we may make additional Margin Calls to you.
- 21.3 In the event of a Margin Call, you must transfer the relevant Margin amount (or additional Margin amount, as the case may be) to our Nominated Account by the later of (i) twenty-four (24) hours of us notifying you of a Margin Call or (ii) the due date stipulated in the Margin Call Receipt (if applicable).
- 21.4 In providing us with Margin, you agree that such monies (i) will become the absolute property of ours, free from any equity, right, title or interest of yours; (ii) may be used by us in the ordinary course of our business, including without limitation to cover any exposure we may have to a third party liquidity provider with whom we have entered into transactions to hedge our exposure; (iii) will not be maintained by us in a segregated account; (iv) shall not be subject to a trust, deemed or otherwise, in your favour and (v) represents an unsecured claim against us for an amount equal to such amount and does not represent a claim, by way of trust or otherwise to the Margin or any assets of or under the control of Ebury.
- 21.5 If at any time and from time to time we determine that the Margin you have transferred to us is in excess of the amount we require for the purposes of securing or otherwise collateralising your obligations and liabilities to us hereunder, we will notify you of the existence of such excess Margin. At any time following such notification by us to you:
  - (a) you may request the return of any excess Margin; and
  - (b) subject to us determining that there continues to be excess Margin on the day on which you make such request, we will return to you as soon as reasonably practicable the relevant excess (if any).
- 21.6 You are not entitled to receive any interest on Margin delivered to us.
- 21.7 You may ask us to bring forward (pre-deliver) the Delivery Date or to extend (roll over) the Delivery Date in relation to the whole or only part of your Forward Contract. If we in our discretion agree to do so, you acknowledge that we may adjust the Payment Amount to reflect the new Delivery Date.
- 21.8 If you request and we agree to Close-Out a Forward Contract in advance of its original maturity or termination date, there may be a delay in us returning Margin (subject to any deductions we may make from such Margin pursuant to the terms of this Agreement) to you whilst we close out or otherwise terminate any transaction(s) which we have entered into with our liquidity providers and such liquidity providers return the margin related to such transaction(s) to us.

## **22 Close Out**

- 22.1 Without prejudice to and in addition to the rights of the parties pursuant to Clause 19 above, we may Close Out any or all Trades that you have with us, without notice to you:
  - (a) if you fail to make any Payment to us when due (including, without limitation, the payment of Margin);
  - (b) if you fail to provide us with any information we have requested from you;
  - (c) any warranty, representation or undertaking you have given us is or becomes, in our opinion, materially inaccurate, incorrect or misleading;
  - (d) in the event that you are subject to an Act of Insolvency;

- (e) if you take any action (or refrain from taking any action) which places us or you in breach of Applicable Laws;
- (f) if the performance of our obligations under this Agreement become illegal or contrary to Applicable Laws;
- (g) if you breach any term of this Agreement;
- (h) the Trade is outside our risk appetite;
- (i) if we decide in our sole discretion that our relationship with you presents a business risk to us or any of our Affiliates;  
or
- (j) if at any time during the term of a Forward Contract, you notify us or we otherwise become aware that the purpose of such Forward Contract (i) is no longer to facilitate your payment for identifiable goods, services and/or direct investment or (ii) could be considered to have been entered, or otherwise continue to be held by you, for speculative reasons.

22.2 If we Close Out one or more Trades pursuant to this Clause 22, or we agree to Close Out a particular Trade(s) following a request by you:

- (a) where we have elected to Close Out any or all current Trades following the occurrence of any of the events/circumstances specified in Clause 22.1, we shall cancel any pending Orders and we will not be required to accept any further instructions or Orders from you;
- (b) we will buy-back/sell the currency that we have sold/bought for you in connection to the relevant Trade(s) at any market rate that is available to us. If we incur any Loss you will be liable to us for the amount of that Loss (as well as any costs incurred by us);
- (c) where permitted by Applicable Laws, we will not pay you any profit arising from the Close Out;
- (d) you acknowledge that the amount of any Loss of ours realised on the Close Out of a Trade is a debt payable by you to us and agree that we may immediately deduct the total amount of any Loss (together with any costs) from the relevant Segregated Client Account(s) (if funds are available to do so);
- (e) if the amount we are seeking to recover from you exceeds the amount of any Margin or funds available in the Segregated Client Account from which the Trade was made, you must immediately pay the remaining balance to us upon being notified by us of the total amount due; and
- (f) we may charge you interest on any sum that remains payable to us after we Close Out at the Interest Rate for the period from (and including) the original due date to (but excluding) the actual date of payment.

## **23 API and Platform**

23.1 You may, with our prior written consent, use a Platform to access a Service.

23.2 If you use a Platform, you acknowledge and agree that:

- (a) The provider of the Platform may have, depending on the Service(s) enabled on the Platform, access to your Segregated Client Account(s) and all transactions, data and other information contained therein (which may include sensitive personal information).
- (b) We are not responsible for the Platform, its content, functionality, availability, security, accuracy, reliability, performance, quality, suitability or any other aspect of the Platform. We make no representations, warranties or endorsements of any kind regarding the Platform or any products, services, information or materials available on or through the Platform.
- (c) If you are using a Platform of a Third Party Platform Provider, we are not a party to, and have no control over, any agreement or arrangement between you and the Third Party Platform Provider. You are solely responsible for complying with the terms and conditions of use, privacy policy and any other policies or rules of the Third Party Platform

Provider, and for paying any fees, charges or costs associated with your use of the Platform. We are not liable for any loss, damage, claim, liability, expense or cost arising from or relating to your use of the Platform or any breach of your obligations to the Third Party Platform Provider.

- (d) We do not guarantee that the Platform will be compatible, interoperable, accessible or functional with our Online System, or with any other systems, devices, software or hardware that you may use. We are not liable for any loss, damage, claim, liability, expense or cost arising from or relating to any technical issues, errors, interruptions, delays, malfunctions, defects, viruses, bugs, hacks, breaches or other problems affecting the Platform or your access to or use of the Platform.
- (e) We reserve the right to suspend, terminate, modify or withdraw your access to or use of the Platform at any time, without notice or liability, for any reason or no reason, including but not limited to if Ebury believes that your use of the Platform violates any applicable law, regulation, rule, Ebury's terms and conditions, or Ebury's policies or procedures, or if Ebury ceases to have a contractual relationship with the Platform Provider.

## **24 Duty of Confidentiality**

24.1 Subject to Clauses 24.2 and 24.3, each party must:

- (a) keep all Confidential Information confidential and not disclose it to any person; and
- (b) ensure that all the following do the same:
  - (i) its representatives;
  - (ii) each person connected with it;
  - (iii) the representatives of each connected person.

24.2 A party may disclose or allow disclosure of Confidential Information:

- (a) to its Affiliates and its and its Affiliates' representatives, officers, auditors, insurers, employees or professional advisers to the extent necessary to enable the party to perform or enforce of any of its duties or rights under this Agreement;
- (b) to any of its permitted transferees;
- (c) when disclosure is required by (i) law, (ii) the rules or any order of any court, tribunal or agency of competent jurisdiction; or (iii) regulatory or governmental body which has jurisdiction over it or any of its Affiliates (including, without limitation, where disclosure of information is required for the purposes of complying with any mandatory reporting obligations);
- (d) to the extent the Confidential Information has become publicly available or generally known to the public at the time of the disclosure other than as a result of a breach of this Clause 24; or
- (e) to a relevant tax authority to the extent necessary for the proper management of the taxation affairs of that party or any of its Affiliates; or
- (f) if it has the prior written approval of the other party to the disclosure.

24.3 We may also disclose or allow disclosure of your Confidential Information to (i) our Affiliates, (ii) business partners, suppliers and subcontractors for the performance of any contract we enter into with them or you, (iii) credit referencing agencies, identity checking agencies and other third parties in order to prevent fraud or help to verify your credit rating and identity, in each case, on the understanding that they keep it confidential.

24.4 If a party intends to disclose Confidential Information in a way allowed by Clause 24.2(c), it must to the extent reasonably practicable:

- (a) give the other party advance notice of the fact and a copy of the information which it intends to disclose;
- (b) allow the other party to make representations or objections about the disclosure; and
- (c) take into account the reasonable representations and objections the other party makes.

24.5 The duties in this Clause 24 shall continue to apply after this Agreement ends without limit in time.

## **25 Data Protection**

25.1 We will observe the requirements of the DIFC Data Protection Laws in the performance of our obligations under this Agreement and will comply with any reasonable request made or direction given by the Customer, which is directly due to the requirements of the relevant DIFC Data Protection Laws. The personal data Ebury holds in relation to you may include, without limitation, identification information, contact information and financial information. This personal data may come from (i) the way you interact with Ebury, for example, your use of the Services; (ii) the way you use the Segregated Client Account(s), including information about payments you make and receive, such as amount, currency and the details of the beneficiary; (iii) people appointed to act on your behalf, credit reference agencies or fraud prevention agencies. If you download any mobile applications or use any online platforms, these may contain additional requests for your consent to use your information or personal data. If you give Ebury information about other persons which Ebury uses to provide the Services, you confirm you have obtained these persons' consent to provide the information to Ebury. Ebury collects and uses personal data to allow us (and, where relevant, our Affiliates) to (i) provide the Services to you; (ii) assess our risks in providing those Services; (iii) develop new and improved products and services, including conducting market and product analysis; (iv) carry out regulatory checks and meet our obligations to our regulators; (v) prevent and detect fraud, money laundering, identity theft and other crime; (vi) analyse, assess and improve its services to our clients, and for training and quality purposes; (vii) comply with Applicable Laws and (viii) enable Ebury to enforce its rights under this Agreement if necessary. Ebury may pass personal data to third-party service providers, our Affiliates, or Ebury's agents and advisers (including their subcontractors), on the understanding that they keep it confidential. Ebury may also pass personal data to third parties in order to prevent fraud (including fraud prevention agencies), DIFC and overseas regulators and authorities in connection with their duties (such as crime prevention or as otherwise required by Applicable Laws), credit referencing agencies and identity checking agencies (and other sources of information that help to verify your credit rating and identity). A record of this process may be kept by third parties and may be used to help other companies verify your credit rating and identity, and to prevent fraud. Ebury may also need to give its auditors, professional advisers, agents or subcontractors access to personal data or anyone who is interested in Ebury's business. Ebury may send personal data outside the DIFC to jurisdictions which may not have an equivalent standard of data privacy laws as that in the DIFC. Where Ebury does this, Ebury will take appropriate steps to protect personal data. If you have any questions about our processing of your Personal Data, please contact [dpo@ebury.com](mailto:dpo@ebury.com).

## **26 Other important terms**

26.1 Except where expressly provided otherwise, no express term of this Agreement (nor any term implied under it) is enforceable by any person who is not a party to it.

26.2 We may agree to communicate with you in one or more languages depending on the location of the Ebury Representative which provides Services to you. The primary business language used by Ebury is English, and so if we have not expressly agreed otherwise, communications from you to us (in particular legal notices, correspondence and documentation) should be in the English language.

26.3 Any notice or other information required by this Agreement shall be given to the other, by delivering it by hand; sending it by prepaid registered post; or sending it by email or comparable means of communication to the other party. Any notice or information given by post in the manner provided by this Clause 26.3, which is not returned to the sender as undelivered shall be deemed to have been given five (5) UAE Business Days after the envelope containing it was posted. Any notice or information sent by email or comparable means of communication shall be deemed to have been duly given on the date of transmission (unless such notice or information is returned to the sender as undelivered). Service of any document for the purposes of any legal proceedings concerning or arising out of this Agreement shall be effected by either party by causing it to be delivered to the other party at its registered office or at its last known address, as applicable.

26.4 We may listen in to or record phone calls with you (or any of your Authorised Parties) to:

- (a) check we are carrying out your instructions correctly and that we are meeting our regulatory obligations;

- (b) help detect or prevent fraud or other crimes;
- (c) improve our Services; and/or
- (d) to the extent permitted by Applicable Laws, use in any dispute or legal proceedings.

- 26.5 Should any provision of this Agreement be deemed unenforceable, illegal or ineffective, in whole or in part, the remaining (part of the) provision(s) will nevertheless remain in full force and effect.
- 26.6 You understand and agree that we may, at any time, and from time to time, and without any further consent from you, transfer (whether by novation, assignment, security or otherwise) all or any part of our rights and/or obligations under this Agreement and/or any Trade (including, without limitation, any rights and/or obligations in respect of any Margin being held by us).
- 26.7 You may not assign, charge, transfer or grant security over any of your rights or obligations under this Agreement without our prior written and express consent.
- 26.8 No failure or delay by either party in exercising any of its rights under this Agreement or pursuant to Applicable Laws shall be deemed to constitute a waiver of that or any other remedy or right, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 26.9 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation, interpretation, performance and/or termination (including non-contractual disputes or claims) shall be exclusively governed by and construed in accordance with the laws of the DIFC.
- 26.10 Each party irrevocably agrees that the courts of the DIFC shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). For such purposes each party irrevocably submits to the jurisdiction of the courts of the DIFC and waives any objection to the exercise of such jurisdiction. Each party also irrevocably waives any objection to the recognition or enforcement in the courts of any other country of a judgement delivered by a DIFC court exercising jurisdiction pursuant to this Clause 26.10.

## Schedule 2 - Fee Appendix: Information about fees and charges

In this Schedule 2, you can see a description of the fees and charges that we may charge in relation to our Services.

In some instances, we may use a fee structure which differs from the fees and charges described below which will be agreed on a case by case basis. This includes, without limitation, bulk payment services, bespoke solutions, or services which require a special framework or implementation, among others.

Description	Our fees and charges
Implementation - including Workshops, Training & Support	
Platform User Access	
Access to the Online System	Free
Onboarding Beneficiary Data	
Exchange rate margin applied	
Fee per Payment without currency conversion	
Payment traces	Free
MT 103 transaction reports	Free
Penny tests	Free
Ongoing pre- and post- transaction support from dedicated Account Manager and commercial support from Account Director	Free



**Schedule 3 - Special Conditions**