

Terms and Conditions

The parties to this agreement are: The Foremost Currency Group (“FCG”) of Level 45, One Canada Square, Canary Wharf, London, E14 5AA (registered in England and Wales with company registration number 5544575) and the client (the “Client”) named in the account opening form attached to these terms or on the relevant part of FCG’s website (the “Account Opening Form”)

1. INTRODUCTION

- 1.1 FCG is authorised by the Financial Conduct Authority (“FCA”) as an electronic money institution under the registration number 900204
- 1.2 The Client wishes to enter into a contract or contracts with FCG for the purchase and redemption of Electronic Money, the purchase, sale and delivery of currency and for payments. The Client agrees with FCG that all transactions shall be carried out on the terms and conditions set out below (the “Terms”). The Terms shall come into force as soon as the Client signs the Account Opening Form or accepts the Terms online, and shall continue until terminated in accordance with the Terms.
- 1.3 It is important that the Client reads and understands these Terms, which will apply to all dealings between the Client and FCG. If there are any terms that the Client does not understand or does not wish to agree to, the Client should discuss it with FCG before signing the Account Opening Form or accepting the Terms online. The Client should only sign the Account Opening Form or accept the Terms online if the Client agrees to be bound by these Terms.
- 1.4 Please note that foreign currency exchange rates are subject to fluctuations outside the control of FCG. Historical prices are not a reliable indicator of future prices.
- 1.5 A reference to the Terms shall include any addendum(s) to the Terms.

2. FCG’S SERVICES

- 2.1 FCG may in its absolute discretion provide, or continue to provide, the following services to the Client:
 - (a) **Electronic Money Services:** FCG may enter into transactions for the issuance and redemption of electronically stored monetary value as represented by a claim against FCG (“Electronic Money”) with the Client (“Electronic Money Contracts”) in accordance with an instruction by the Client (such an instruction being an “Electronic Money Order”). Electronic Money Contracts include Uploads and Withdrawals (as such terms are defined in Clause 4.2);
 - (b) **Foreign Exchange Services:** FCG may enter into transactions for the sale, purchase and delivery of currency with the Client (“FX Contracts”) in accordance with an instruction by the Client (such instruction being an “FX Order”). FX Contracts include spot contracts and forward contracts (including both fixed forward contracts and open forward contracts).
 - (c) **Payment Services:** FCG may transfer Electronic Money or money, following the redemption of Electronic Money, to the account of the Client or a third party (the “Payee”)

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in accordance with an instruction by the Client (such instruction being a “Payment Instruction” and the onward transfer being an “Onward Payment”).

- (d) Collection Account Service: Pursuant to the Collection Account Service, the Client can receive money into specific Electronic Money Accounts (such accounts are referred to as Collection Accounts) and place Rules on such Collection Accounts, the details of which are set out in clauses 23 to 27 (the “Collection Account Services”).
- 2.2 FCG will always contract as principal with the Client and deal with the Client on an execution only basis.
- 2.3 FX Contracts are deliverable. This means that on maturity of an FX Contract, the Client’s stored value account for holding Electronic Money (“Electronic Money Account”) will be credited with the full amount of Electronic Money in the currency purchased pursuant to the FX Contract.
- 2.4 FCG provides facilities for the Client to enter into FX Contracts. If the FX Contract:
- (a) is to be concluded within 2 Business Days of the Client entering into the FX Contract, then that FX Contract can be for any purpose;
 - (b) is to be concluded more than 2 Business Days after the Client entering into the FX Contract, then the FX Contract must be for the purpose of:
 - (i) facilitating a means for the Client to pay for identifiable goods and/or services;
or
 - (ii) facilitating direct investment by the Client.
- 2.5 The Client confirms that:
- (a) if it places an FX Order with FCG to enter into an FX Contract, of the type described in clause 2.4(b) above, its purpose is for facilitating payment for identifiable goods and/or services or direct investment,
 - (b) it is acting on its own account and not on behalf of any other person.
- 2.6 FCG may provide information about foreign exchange markets and related matters from time to time. However, FCG does not provide advice and will not provide advice to the Client upon the merits of a proposed Electronic Money Contract, FX Contract or Payment Service, or provide taxation or other advice to the Client. In entering into an FX Contract and/or issuing a Payment Instruction the Client must not treat any information or comments by FCG as advice and the Client must rely only on its own judgement (or the judgement of the Client’s third party adviser).
- 3. INSTRUCTIONS AND COMMUNICATIONS**
- 3.1 The Client may provide instructions, including Electronic Money Orders, FX Orders and Payment Instructions (together referred to as “Orders”) and other communications to FCG:
- (a) in person at a FCG office at the address and during the opening hours listed on the FCG website;
 - (b) by telephone through the FCG helpline +44 (0)1442 892060;
 - (c) by email via your designated account manager or info@fcgworld.co.uk; or

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- (d) using the online system provided by FCG (the “Online System”) in accordance with Clause 36;
- (e) via the application programme interface provided by FCG (the “API”) in accordance with Clause 37;
- (f) , for Payment Instructions only, using a payment initiation service provider where the Client has Electronic Money held with FCG which it can view using the Online System;
- (g) automatically, by entering into a Market Order Contract, as set out in Clause 10.10; or
- (h) automatically, by setting a Rule (as defined in clause 25.1) on Collection Accounts pursuant to the Collection Account Services.

Unless a Clause provides otherwise, if instructions are required to be provided by the Client “in writing”, then the Client must provide such instructions either by fax, email or, where made available to the Client, using the Online System.

- 3.2 The Client may authorise another named person (an “Authorised Person”) to give Electronic Money Orders and / or FX Orders and/or Payment Instructions to FCG and/or set a Rule on behalf of the Client by providing written instructions to FCG in the form of a letter or in accordance with Clause 3.1.
- 3.3 FCG is entitled (but not obliged) to act upon instructions which are or reasonably appear to be from the Client or any Authorised Person. In particular, an Order received from an e-mail address or fax number or telephone number, set out by the Client in the Account Opening Form or otherwise used by the Client or an Authorised Person to communicate with FCG, shall be sufficient to authenticate an Order as being from the Client and shall be deemed authorised by the Client pursuant to these Terms and the Payment Services Regulations 2017 (the “PS Regulations”). In addition, FCG shall be entitled to act upon Orders and instructions received from communication channels used by the Client or an Authorised Person to communicate with FCG.
- 3.4 FCG may contact the Client and its Authorised Person(s) by telephone, fax, email or by post using the contact details provided by the Client in the Account Opening Form as such details are updated from time to time or, where made available to the Client, by using the Online System or the API. It is the Client’s responsibility to inform FCG of any changes to the Client’s or any Authorised Person’s contact details.
- 3.5 All communications between FCG and the Client (including information and notifications which FCG is required to provide to the Client in relation to the Payment Services) shall be in English.

TERMS APPLYING TO ELECTRONIC MONEY SERVICES

4. INITIATING AN ELECTRONIC MONEY TRANSACTION

- 4.1 The Client and Authorised Person(s) may from time to time provide an Electronic Money Order to FCG in accordance with Clause 3. Following receipt of an Electronic Money Order, FCG shall, if it is willing to accept the Electronic Money Order, agree with the Client the terms on which it is willing to enter into the Electronic Money Contract.
- 4.2 An Electronic Money Order and an Electronic Money Contract may consist of:

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- (a) the Client or a third party which wants to send the Client money, sending FCG money in exchange for FCG issuing Electronic Money to the Client (“Upload”); or
- (b) Electronic Money in the Client’s Electronic Money Account being used (“Withdrawal”) either for an FX Contract or an Onward Payment.

5. PAYMENTS IN RELATION TO UPLOADS

- 5.1 If FCG accepts the Electronic Money Order for an Upload, the Client or a third party shall pay FCG the full amount by electronic transmission (or by such other means as agreed with FCG in any particular case) in cleared funds into a bank account nominated by FCG for this purpose and FCG shall issue Electronic Money to the Client to be held in the appropriate Electronic Money Account. FCG does not accept payments in physical cash (coins and banknotes) from any Client.

6. ELECTRONIC MONEY ACCOUNTS

- 6.1 When the Client has been issued with Electronic Money by FCG, it will be held in an Electronic Money Account of the same currency as the funds which were sent to FCG. The Client can hold Electronic Money Accounts in different currencies. The currencies of Electronic Money Accounts available will vary from time to time. The Client should contact FCG if it would like an up to date list of the currencies which it can hold Electronic Money in.
- 6.2 The Client and each Authorised Person can find out the amount of Electronic Money it holds in each of its Electronic Money Accounts at any time by logging onto the Online System, using the API or through the FCG helpline at 01442 892060;

7. WITHDRAWALS

The Client can enter into a Withdrawal and receive the corresponding funds when it holds Electronic Money, by issuing a Payment Instruction to FCG in accordance with Clause 18 and selecting its own Bank Account as the Payee Bank Account.

8. FCG’S RIGHT TO DEBIT OR REDEEM ELECTRONIC MONEY

- 8.1 FCG will debit Electronic Money from the Client’s Electronic Money Account to pay for:
- (a) any sums owing to FCG under any FX Contract including, without limitation, the amount required to be paid as set out in any Deal Confirmation (as defined in clause 10.3), any Security Payment and/or Margin Call;
 - (b) any other fees, costs, taxation liabilities, Margin Calls, or charges payable to or incurred by FCG in relation to the Client or for the payment of interest in accordance with Clause 29; and
 - (c) any sums required to make any Onward Payment where the Onward Payment is to an Electronic Money Account held by the Payee with FCG.
- 8.2 FCG will redeem Electronic Money and use the corresponding funds to make an Onward Payment, where the Onward Payment is to an account held by the Payee which is not an Electronic Money Account held with FCG.

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9. TERMS OF FCG HOLDING ELECTRONIC MONEY

- 9.1 When the Client holds Electronic Money with FCG, this is not the same as a Bank holding the Client's money in that: (a) FCG cannot and will not use funds corresponding to Electronic Money to invest or lend to other persons or entities; (b) the Electronic Money will not accrue interest; and (c) the Electronic Money is not covered by the Financial Services Compensation Scheme.
- 9.2 FCG may hold the Client's Electronic Money indefinitely. However, if FCG holds Electronic Money for a Client for more than two years, FCG shall use reasonable endeavours to contact the Client to redeem the Electronic Money and return the corresponding funds to the Client. If FCG is unable to contact the Client, it may redeem the Electronic Money and send the corresponding funds, less any of its costs incurred, to the last known bank account FCG has on file for the Client.

TERMS APPLYING TO FOREIGN EXCHANGE SERVICES

10. INITIATING A FOREIGN EXCHANGE TRANSACTION

- 10.1 The Client and its Authorised Person(s) may from time to time provide an FX Order to FCG in accordance with Clause 3.
- 10.2 Following receipt of an FX Order, FCG shall, if it is willing to accept the FX Order, agree with the Client the terms on which it is willing to enter into the FX Contract.
- 10.3 If FCG accepts the FX Order, FCG shall subsequently provide a Deal Confirmation to the Client confirming the details of the FX Order (the "Deal Confirmation") either by fax or email, or (where the Client has not advised FCG of its fax or email contact details) by post. The Deal Confirmation shall include details of:
- (a) the FX Order and the exchange rate applying;
 - (b) the date or dates (if the FX Contract is not a spot contract) that the Client is required to hold enough Electronic Money in its Electronic Money Account to pay FCG pursuant to the FX Contract;
 - (c) the currency of the Electronic Money the Client is required to hold to pay FCG pursuant to the FX Contract;
 - (d) the date for delivery of the currency the Client has purchased (the "Maturity Date");
 - (e) FCG's charges in relation to the FX Contract; and
 - (f) FCG's charges in relation to any Payment Service associated with the FX Contract.
- 10.4 Upon receipt by the Client of the Deal Confirmation, the Client should check the Deal Confirmation for any omissions and/or errors. In the event of any omission and/or error, the Client must provide immediate notice in writing to FCG in accordance with Clause 3 setting out full details of the omission and/or error. Subject to Clause 10.5, notwithstanding any omission and/or error in the Deal Confirmation, the FX Contract relating to the FX Order detailed in the Deal Confirmation will be binding on the Client and FCG, and FCG's and the Client's rights under these Terms in respect of the FX Contract shall apply with full effect.
- 10.5 FCG will not be bound by any FX Contract where it is reasonably determined by FCG that there is a Manifest Error in the purchase or sale price quoted in the Deal Confirmation. In these Terms,

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- a “Manifest Error” refers to a manifest or obvious misquote of the purchase or sale price quoted to the Client, including a misquote based on a published price source on which FCG has relied in connection with the FX Contract, having regard to the market conditions at the time the FX Order was received.
- 10.6 Once FCG has transmitted a Deal Confirmation confirming an FX Order in writing, the Client may only amend or cancel the Deal Confirmation if FCG expressly agrees (and any such amendment or cancellation shall be on the conditions specified by FCG) or otherwise in accordance with the provisions of Clause 10.9.
- 10.7 FCG may at its absolute discretion refuse any FX Order or instructions given by the Client without giving any reason or being liable for any loss the Client suffers as a result of such refusal.
- 10.8 FCG may (but shall not be obliged to) require further confirmation or information from the Client or an Authorised Person of any FX Order or instruction if:
- (a) FCG considers that such confirmation or information is desirable or that an FX Order or instruction is ambiguous;
 - (b) FCG has not satisfied itself that the person giving the FX Order is the Client or an Authorised Person; or
 - (c) the instruction is to close the Client’s account or to remit the Client’s funds to a third party.
- 10.9 The Client does not have any right under the Financial Services (Distance Marketing) Regulations 2004 to cancel any FX Contract. However the Client may terminate an FX Contract entered into under these Terms prior to the Maturity Date of such FX Contract by giving notice in writing to FCG in accordance with Clause 3 subject to the following conditions:
- (a) Each party will remain liable to perform accrued but unperformed obligations which have fallen due before termination, but all other rights will cease upon such termination.
 - (b) The Client will be liable for all of the costs, expenses and losses (and interest at the rate referred to in Clause 29 on any such sums) that FCG may incur (including any action it may take or have taken to cover or reduce its exposure) as a result of FCG entering into such FX Contract with the Client (including the actual or hypothetical costs of unwinding any hedging arrangements which are referable to such FX Contract). Any excess amount held by FCG in respect of an FX Contract shall be credited to the Client’s Electronic Money Account or sent to the Client after deducting all other sums due to FCG.
- 10.10 Market Order Contracts
- (a) “Market Order Contracts” include:
 - (i) “Limit Order Contracts” which are contracts entered into between FCG and the Client whereby the Client is deemed to have issued FCG with an FX Order for an amount agreed between FCG and the Client at the time of entering into the Limit Order Contract, upon FCG being able to provide the Client with a target exchange rate agreed between the Client and FCG;

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- (ii) “Stop Loss Order Contracts” which are contracts entered into between FCG and the Client whereby the Client is deemed to have issued FCG with an FX Order for an amount agreed between FCG and the Client at the time of entering into the Stop Loss Order Contract, upon the exchange rate which FCG is able to provide to the Client reaching a lower limit which the Client does not want the exchange rate to drop below;
- (iii) “One Cancels the Other Contracts” or “OCO Contract” which are contracts entered into between FCG and the Client whereby the Client is deemed to have issued FCG with an FX Order for an amount agreed between FCG and the Client at the time of entering into the OCO Contract, upon the earlier of:
 - (A) FCG being able to provide the Client with a target exchange rate agreed between the Client and FCG;
 - (B) the exchange rate which FCG is able to provide to the Client reaching a lower limit which the Client does not want the exchange rate to drop below.
- (b) Market Order Contracts can either be entered into for a specified period of time (referred to as the “Validity Period”) or indefinitely.
- (c) The Market Order Contract may be entered into either by email, telephone (using the details set out in Clause 3.1(b)) or by using the Online System or the API, between the hours of 9am and 5pm on a “Business Day” (being a day, other than a Saturday or Sunday, on which banks are open for business in London and any other geographic locations required to complete the transaction). Should the Client place an order to enter into a Market Order Contract outside these hours, the order will only be considered on the next Business Day. FCG will send a confirmation of the details of the Market Order Contract immediately after the Market Order Contract has been agreed. If the Client notices any error or discrepancy, it must inform FCG as soon as reasonably possible.
- (d) Upon entering into a Market Order Contract, the Client and FCG shall agree:
 - (i) the relevant exchange rate(s);
 - (ii) the currencies which the Client wishes to purchase and sell under the associated FX Contract;
 - (iii) the amount of the currencies which the Client wishes to purchase and sell under the associated FX Contract;
 - (iv) the Validity Period, if any.
- (e) The terms of the FX Order and FX Contract resulting from a Market Order Contract shall be those agreed in the Market Order Contract.
- (f) If the Market Order Contract has been entered into:

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- (i) for a Validity Period and FCG is unable to offer the Client the relevant exchange rate or the exchange rate FCG is able to offer has not dropped below the Client's lower limit during the Validity Period, then no FX Order will be deemed to have been sent from the Client to FCG and the Market Order Contract will expire and be null and void at 11.59 pm (London time) on the last Business Day of the Validity Period;
 - (ii) for a Validity Period, then the Client may terminate the Market Order Contract prior to the expiry of the Validity Period in accordance with Clause 10.10(g); and
 - (iii) for an indefinite period, then the Market Order Contract will only become null and void upon termination in accordance with Clause 10.10(g).
- (g) The Client may terminate a Market Order Contract either by phone during business hours or by sending a notice in writing to FCG. If the written notice is sent to FCG on a day which is not a Business Day or outside the hours of 9 am and 5 pm on a Business Day, then the notice of termination will not be deemed to have been received by FCG until the following Business Day.
- (h) For the avoidance of doubt, the termination of a Market Order Contract will not be effective if the associated FX Order has already been deemed to have been sent to FCG and the FX Contract entered into. If the Client wishes to cancel the FX Contract, the terms of Clause 10.9 shall apply.

11. UPLOADS RELATING TO FX CONTRACTS AND DEDUCTIONS

- 11.1 Where FCG and the Client enter into a spot contract, the Client must make sure that it holds enough Electronic Money, in the currency specified in the Deal Confirmation, on or before the Maturity Date.
- 11.2 If an FX Contract is not a spot contract, then the Client will need to hold enough Electronic Money, in the currency specified in the Deal Confirmation, on or before the times specified in the Deal Confirmation and/or subsequently notified to the Client from time to time.
- 11.3 Failure by the Client to hold the correct amount and currency of Electronic Money on the date(s) (a) specified in the Deal Confirmation; and/or (b) (if applicable) as notified to the Client from time to time, shall relieve FCG of any obligation to complete the FX Contract or make a linked Onward Payment.

12. DEBITING OF ELECTRONIC MONEY FROM ELECTRONIC MONEY ACCOUNTS TO FULFIL AMOUNTS OWING UNDER FX CONTRACTS AND DEDUCTIONS

- 12.1 After FCG and the Client have entered into an FX Contract and subject to Clause 12.2, FCG shall debit Electronic Money from the Client's Electronic Money Account to pay for monies owing to FCG under the FX Contract including, without limitation, any Security Payment or Margin Call (as defined below).

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12.2 The Client accepts that, prior to undertaking an FX Contract, FCG will debit from the Client's Electronic Money Account those costs and charges which FCG is entitled to pursuant to these Terms including any advance or instalment payments, transfer charges, deal profit and interest.

13. FOREIGN EXCHANGE CHARGES

FCG's charges in relation to Foreign Exchange Services will be as set out in the Deal Confirmation. The Client understands that because FCG deals as principal the exchange rate it offers the Client will not be the same as the rate FCG obtains itself.

14. ADDITIONAL CONDITIONS FOR FORWARD FX CONTRACTS

14.1 This Clause 14 applies in respect of any forward FX Contract, meaning an FX Contract under which currency is bought and sold for delivery at a future time.

14.2 Subject to any facility, FCG will require an agreed security payment ("Security Payment") from the Client for each order for a forward FX Contract and FCG will be entitled to request from the Client immediate additional security payments in amounts notified by FCG to the Client in the event of exchange rate fluctuations at any time prior to the Maturity Date ("Margin Call"). The Client agrees that it is the Client's responsibility to ensure that it is contactable and has provided sufficient contact details so that FCG can contact the Client in the event of a Margin Call. If FCG is unable to contact the Client by the end of the day in which a Margin Call occurs FCG will be entitled to terminate the FX Contract in accordance with Clause 16. FCG may debit Electronic Money from the Client's Electronic Money Account to pay for any Margin Call.

14.3 With FCG's agreement the Client may draw down against an open forward FX Contract at any time up until its Maturity Date.

15. FOREIGN CURRENCY CHEQUE OR BANK DRAFT PURCHASE

15.1 FCG may agree in writing to purchase and exchange into Sterling or another currency a non-Sterling cheque or a non-Sterling bank draft (a "Draft") which the Client has received in the name of the Client and this Clause 15 applies to all such purchases and exchanges.

15.2 The Client must forward a request for each foreign currency cheque or Draft purchase together with the relevant cheques and/or Drafts to FCG.

15.3 All cheques and Drafts presented to FCG by the Client may be examined by FCG for validity and negotiability (transferability) and any item FCG considers may not be valid or negotiable will be returned to the Client as soon as reasonably practicable at the Client's risk.

15.4 All cheques and Drafts must be endorsed by the Client as "payable to The Foremost Currency Group" and be signed by the Client or an Authorised Person.

15.5 FCG agrees to pay the Client in Sterling or another agreed currency the value of the cheque or Draft in accordance with FCG's value dating policy and subject to the charges notified to the Client by FCG from time to time.

15.6 Any cheque or Draft returned to FCG as not able to be negotiated or cleared following presentation by FCG will be returned to the Client, at which time the Client agrees to immediately reimburse

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FCG any monies paid to the Client, or on the instruction of the Client, together with any charges imposed by the returning institution.

- 15.7 Any item lost, stolen, or destroyed in transit during the clearing process will be reported to the Client within a reasonable period of FCG receiving notification of this. FCG will supply the Client with a letter confirming that FCG has not received value for the item from any bank involved in the clearing and/or paying of the item.

16. DEFAULT, CLOSE OUT & REFUSAL TO PERFORM FX CONTRACTS

- 16.1 FCG may refuse to perform or may close out all or any part of any FX Contract, without incurring any liability to the Client for losses that may be sustained as a result and without giving notice to the Client or receiving any instructions from it, upon or at any time after the happening of any of the following events:

- (a) The Client fails to hold the correct amount of Electronic Money in the correct currency at the stipulated time or otherwise is unable to make any payment when due under these Terms or any FX Contract.
- (b) FCG has been unable to contact the Client by the end of the day in which a Margin Call occurs.
- (c) For a Client who is an individual, the Client:
 - (i) dies or, in FCG's reasonable suspicion, becomes of unsound mind; or
 - (ii) suspends payment of its debts, makes or takes steps with a view to making any moratorium, assignment, composition or similar arrangement with creditors, has a receiver appointed in respect of some or all assets, takes or has any proceedings taken against them in bankruptcy, or has anything similar to any of the events described in this Clause 16.1(c) happen to the Client anywhere in the world.
- (d) For a Client who is not an individual, the Client:
 - (i) suspends payment of its debts;
 - (ii) makes or takes steps with a view to making any moratorium, assignment, composition or similar arrangement with its creditors;
 - (iii) has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed in respect of some or all of its assets;
 - (iv) is the subject of a winding up, administration or dissolution;
 - (v) any person takes any steps, or the Client allows any steps to be taken, for its winding up, administration or dissolution (except for a solvent amalgamation or reconstruction approved in advance in writing by FCG) or gives notice to FCG of an intention to appoint an administrator;

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- (vi) is the subject of a meeting of its shareholders, directors or other officers, which meeting was convened for the purpose of considering any resolution for, to petition for or to make application to or to file documents with a court or any registrar for, its winding up, administration or dissolution or if any such resolution is passed;
 - (vii) is subject to a request from its shareholders, directors or other officers for the appointment of, or giving notice of their intention to appoint, a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
 - (viii) suffers anything similar to the events described in this Clause 16.1(d) anywhere in the world.
- (e) The Client fails in any respect to fully and promptly comply with any obligations to FCG under these Terms.
 - (f) If any of the representations made or information supplied by the Client are or become materially inaccurate or materially changed.
 - (g) If it becomes or may become unlawful for FCG to maintain or give effect to all or any of the obligations under these Terms or otherwise to carry on its business.
 - (h) If FCG or the Client is requested not to perform or to close out an FX Contract (or any part thereof) by any governmental or regulatory authority whether or not that request is legally binding.
 - (i) FCG considers it necessary to do so for its own protection including (without limitation) in the following circumstances: (i) protection from fraud or money laundering; (ii) protection from Client default; (iii) protection from market failure; (iv) protection from adverse or volatile market conditions; and (v) protection from loss by FCG.
- 16.2 If the Client becomes aware of the occurrence or likely occurrence of any event referred to in Clauses 16.1(a) to 16.1(h) above, it shall notify FCG immediately.
- 16.3 If any event referred to in Clause 16.1 above takes place FCG shall at its discretion be entitled to cancel any FX Contract then outstanding and charge the Client with all of the costs, expenses and losses (and interest at the rate referred to in Clause 29 on any such sums) that FCG may incur (including any action it may take to cover or reduce its exposure) as a result of FCG cancelling FX Contracts with the Client (including the actual or hypothetical costs of unwinding any hedging arrangements which are referable to the FX Contracts). Any excess amount held by FCG in respect of the FX Contracts shall either be credited to the Client's Electronic Money Account or sent to the Client after deducting all other sums due to FCG.
- 16.4 If for any reason an FX Contract is closed out or does not proceed to completion, FCG will credit the Client's Electronic Money Account or send to the Client any sum due to the Client or a notice setting out the sum due from the Client (as appropriate). The Client shall bear all the losses/expenses of FCG whatsoever that may arise on account of such close out or cancellation, and FCG

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shall have the right to use any monies of the Client held by it to offset such amounts as are owed by the Client to FCG. For such purpose, FCG shall be entitled to convert any currency held by it and such conversion shall be at the rate of exchange available to it. Any fee or charge which FCG incurs as a result of such conversion shall be paid for by the Client.

- 16.5 If the Client's cheque, or any other method of payment, is dishonoured, returned, not met on first presentation or stopped for whatever reason, FCG shall levy an administrative charge. This administrative charge will become payable by the Client in addition to any other sums due under these Terms.

17. LIMITATION OF LIABILITY AND INDEMNITY FOR FOREIGN EXCHANGE SERVICES

- 17.1 In addition to any limitation on liability under Clause 20 below which may apply to the Foreign Exchange Services, FCG shall not be liable to the Client:

- (a) for any delay or failure to perform its obligations under these Terms relating to Foreign Exchange Services or any FX Contract by reason of any cause beyond the reasonable control of FCG, but FCG shall try to perform those obligations as soon as it reasonably can in any event;
- (b) for any loss resulting from the determination of Manifest Error by FCG;
- (c) FCG acting on a written, oral, telephone, fax or electronic FX Order which reasonably appeared to FCG to be from the Client or an Authorised Person; or
- (d) for any consequential or indirect loss (such as loss of profits, loss of contract or opportunity) the Client may incur as a result of FCG failing to perform its duties under an FX Contract; or
- (e) for an amount greater than the maxima stated in Clauses 17.3 and 17.4.

- 17.2 Without prejudice to Clause 17.1 above, FCG shall not be responsible in any way for any delay in payment by it under these Terms relating to the Foreign Exchange Services which is caused by the Client or any other third party, including but not limited to bank delay, postal delay, payment network delay, the failure or delay of any fax or electronic transmission, or delay caused by accident, emergency or act of god. For the avoidance of doubt the Client accepts that the Client is solely responsible for ensuring that all payments which the Client is required to make under any FX Contract are made promptly and within the time limits specified by the particular FX Contract and these Terms.

- 17.3 The maximum liability of FCG under a particular FX Contract, whether arising in contract, tort or otherwise, shall in no circumstances exceed an amount equal to the value (expressed in sterling) of the currency sold by FCG under that FX Contract as at the due date of settlement of that FX Contract.

- 17.4 The maximum aggregate liability of FCG to a Client in respect of Foreign Exchange Services provided under these Terms, whether arising in contract, tort or otherwise, shall in no circumstances exceed an amount equal to the aggregate value of currency sold by FCG to the Client under FX

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Contracts issued in accordance with these Terms expressed in Sterling as at the due date of settlement of each FX Contract less any amounts previously settled.

- 17.5 The Client shall, on demand by FCG, compensate FCG from and against all liabilities, damages, losses and costs (including reasonable legal costs), duties, taxes, charges, commissions or other expenses incurred by FCG in the proper performance of Foreign Exchange Services or the enforcement of its rights under these Terms relating to Foreign Exchange Services and, in particular, but without limitation, against all amounts which FCG may certify to be necessary to compensate it for all liabilities, damages, losses and costs (including reasonable legal costs), duties, taxes, charges, commissions or other expenses incurred by FCG (including loss of profit and losses and expenses from any action FCG takes to seek to cover or reduce its exposure under any FX Contracts) as a result of:
- (a) the Client breaching any provision of these Terms relating to Foreign Exchange Services or any FX Contract;
 - (b) FCG acting on a written, oral, telephone, fax or electronic FX Order which reasonably appeared to FCG to be from the Client or an Authorised Person; or
 - (c) FCG or the Client exercising its rights under these Terms to close out all or any part of any FX Contract before its applicable Maturity Date.
- 17.6 Any certificate given by FCG under Clause 17.5 shall, unless it is manifestly inaccurate, be conclusive evidence of any amounts payable under that provision. The provision in this Clause 17 shall survive termination of any FX Contract or other agreement under these Terms relating to the Foreign Exchange Services.

TERMS APPLYING TO PAYMENT SERVICES

18. PAYMENT INSTRUCTIONS

- 18.1 The Client and its Authorised Person may from time to time provide a Payment Instruction to FCG in accordance with Clause 3. Such Payment Instruction must confirm the details of the proposed Payee including:
- (a) the Client identification number or mobile phone number of the Payee, where the Payment Instruction is for the transfer of Electronic Money;
 - (b) the full name and account details for payment and any unique identifier confirmed to the Client by the Payee, where the Payment Instruction is not for the transfer of Electronic Money.
- The provision of a Payment Instruction by the Client to FCG in accordance with Clause 3 is deemed, under these Terms, to be the Client's consent for FCG to execute the corresponding Onward Payment in accordance with Regulation 67 of the PS Regulations.
- 18.2 The Payment Instruction shall be deemed to be received at the time at which it is received except that:
- (a) where the Payment Instruction would otherwise be deemed to be received on a day which is not a Business Day or is received after 2.30 pm, London time (the "Cut-Off Time") on

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a Business Day, FCG has the right to treat the Client's Payment Instruction as having been received on the next Business Day; and

- (b) if the Onward Payment is to be made on a specified day or on the last day of a specified period and such specified day or last day of a specified period shall be on or after whichever is the later in time of:
 - (i) the Maturity Date;
 - (ii) the Business Day on which Electronic Money is available in the relevant currency for the full amount required and subject to the Electronic Money being available by 2.30pm,

the Client's Payment Instruction shall be deemed to be received on the day stated for the making of that Onward Payment or, if that is not a Business Day, on the Business Day immediately following that date.

18.3 Following receipt of a Payment Instruction, FCG may:

- (a) refuse that Payment Instruction and if it does so, FCG shall (unless it would be unlawful for FCG to do so) notify the Client of that refusal, the reasons for that refusal (if possible), and the procedure for rectifying any factual errors that lead to that refusal. Such notification shall be given to the Client as soon as practicable following the refusal and FCG may charge the Client for such notification where the refusal is reasonably justified. A Payment Instruction which is refused by FCG shall be deemed not to have been received for the purposes of Clause 18.2; and/or
- (b) request further confirmation or information from the Client or Authorised Person of any Payment Instruction, including if FCG considers that such confirmation or information is desirable or that a Payment Instruction is ambiguous; and/or
- (c) stop the use of all passwords, PINs, access tokens, credentials, keys and authentication details used by the Client or an Authorised Person to access the Online System and/or the API ("Personalised Security Credentials"), any foreign currency or Sterling Draft and information or other payment procedure or instrument in accordance with Clause 19.2.

18.4 The Client does not have any right under the Financial Services (Distance Marketing) Regulations 2004 to cancel any Payment Instruction once given.

18.5 The Client may not revoke:

- (a) a Payment Instruction initiated through a payment initiation service provider;
- (b) a Payment Instruction initiated in any way, other than through a payment initiation service provider, after it has been received by FCG except:
 - (i) if Clause 19.5 applies and the Onward Payment has not been debited from FCG's Electronic Money Account before the Client notifies FCG; or
 - (ii) if the Client has agreed with FCG that the Onward Payment is to be made on a specific day or on the last day of a certain period and the revocation is received

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by FCG prior to the Cut-Off Time on the Business Day preceding the specified day for the making of the Onward Payment.

Any revocation of a Payment Instruction in accordance with this Clause 18.5 must be received in writing to FCG by email in accordance with Clause 3, such email to include an image of the relevant Payment Instruction. Such a revocation is deemed to be a withdrawal of consent under Regulation 67 of the PS Regulations.

- 18.6 FCG may charge the Client for any revocation by the Client of a Payment Instruction. In particular, but not by way of limitation:
- (a) the Client shall bear all costs, expenses and losses of FCG whatsoever that may arise on account of the revocation; and
 - (b) FCG may charge interest at the rate referred to in Clause 29.1 on any sums due to FCG pursuant to this Clause 18.6.
- 18.7 FCG may either use:
- (a) Electronic Money; or
 - (b) monies from the redemption of Electronic Money, to fund an Onward Payment.
- 18.8 FCG shall:
- (a) if the Client requests, make available to the Client prior to making the Onward Payment details of the maximum execution time for that Onward Payment and details of any charges payable by the Client (including a breakdown of those charges where applicable); and
 - (b) as soon as reasonably practicable after the amount of the Onward Payment is debited from its Electronic Money Account, make available to the Client:
 - (i) a reference enabling the Client to identify the Onward Payment made;
 - (ii) information on the Payee;
 - (iii) the amount of the payment, shown in the currency of the Onward Payment; and
 - (iv) a breakdown of charges and/or interest payable by the Client.
- 18.9 Where the Onward Payment is for money (and not Electronic Money) and is denominated in:
- (a) Euro or Sterling, FCG shall ensure that the amount of the Onward Payment is credited to the Payee's payment service provider's account by the end of the Business Day following that on which the Client's Payment Instruction was deemed to be received;
 - (b) a currency other than Euro or Sterling but the account of the Payee's payment service provider is located within the European Economic Area ("EEA"), FCG shall ensure that the amount of the Onward Payment is credited to that account by the end of the fourth Business Day following that on which the Client's Payment Instruction was deemed to be received; and

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- (c) a currency other than Euro or Sterling and the account of the Payee's payment service provider is located outside the EEA, FCG shall endeavour to ensure that it actions the Onward Payment as soon as is reasonably practicable.
- 18.10 Where the Onward Payment is for Electronic Money then the amount of that Onward Payment shall be credited to the Payee's Electronic Money Account with FCG instantaneously.
- 18.11 FCG's charges for Onward Payments will be set out in a separate document made available to the Client, as same can be amended by FCG from time to time in accordance with clause 30.2.

19. SAFEGUARDS AND SECURITY

19.1 The Client must take all reasonable precautions to prevent fraudulent or unauthorised use of Payment Services. In particular, it is essential that the Client, among other security measures:

- (a) takes all reasonable steps to ensure that the Online System and the API are kept safe. This includes each Authorised Person and the Client:
 - (i) keeping the Personalised Security Credentials secure;
 - (ii) not telling anyone their Personalised Security Credentials (not relating to the API) as these are personal;
 - (iii) ensuring that only persons which the Client wants to be able to access the API and use its functionality (including issuing FX Orders and Payment Instructions) on behalf of the Client are able to access the API on the Client's behalf
 - (iv) not telling any person, which is not the Client or an Authorised Person, the Personalised Security Credentials for the API;
 - (v) notifying FCG using the contact details set out in clause 3.1(b) or Clause 3.1(c) as soon as it suspects or knows that someone other than themselves knows their Personalised Security Credentials or can otherwise gain access to the Online System and/or the API or if a virus is found on the computer or other device the Client or any Authorised Person uses to obtain access to the Online System and/or the API;
 - (vi) logging off the Online System and/or the API every time the computer (or other device used to gain access to the Online System and/or the API) is left by the Client or the relevant Authorised Person;
 - (vii) always ensuring that Personalised Security Credentials are not stored by the browser or cached or otherwise recorded by the computer or other device used to gain access to the Online System and/or the API;
 - (viii) maintain the security of the computer systems, including having recognised anti-virus software, on the computer or other device the Client and Authorised Persons use to gain access to the Online System and the API;

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- (ix) ensuring that the e-mail account(s), phone number, mobile phone number, computer and other network used to communicate with FCG are secure and only accessed by the relevant Client or Authorised Person as these may be used to reset the Personalised Security Credentials;
 - (x) regularly checking the Client's and each Authorised Person's emails so that the Client is aware if there are unauthorised changes to the Client's account such as new or amended Payee details or new Payment Instructions.
- (b) takes all reasonable steps to keep safe its Drafts and other documentary payment methods it receives;
 - (c) uses the Payment Services provided by FCG in accordance with the terms and conditions for their use as indicated in these Terms and on the FCG website (and in the event of any conflict, these Terms shall prevail);
 - (d) notifies FCG in accordance with Clause 3.1(b) or Clause 3.1(c) without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of any Personalised Security Credentials or the misappropriation of the Online System and/or the API;
 - (e) notifies FCG in accordance with Clause 3 without undue delay on becoming aware of any other unauthorised use of the Payment Service;
 - (f) where FCG communicates with and accepts written instructions from the Client's e-mail address the Client must ensure that its e-mail account is secure.
- 19.2 FCG may stop or suspend any Onward Payment (in whole or in part) and/or the Client's use of the Payment Services and the Online System and/or the API including cancelling all Personalised Security Credentials if it has reasonable grounds for doing so relating to:
- (a) the security of the Online System, the API, the Payment Service or an Onward Payment;
 - (b) the suspected unauthorised or fraudulent use of the Online System, the API, the Personalised Security Credentials or an Onward Payment; and/or
 - (c) where the Onward Payment is being made in connection with a credit line, if FCG believes that there is a significantly increased risk that the Client may be unable to fulfil its liability to pay.
- Unless doing so would compromise reasonable security measures or be unlawful, before stopping or suspending any Onward Payment (in whole or in part) or the Client's use of the Payment Service (as appropriate) or immediately after doing so, FCG must inform the Client and give its reasons for doing so. As soon as practicable after the reason for stopping or suspending any Onward Payment (in whole or in part) or the Client's use of the Payment Service (as appropriate) has ceased to exist, FCG must allow the outstanding element of the Onward Payment or the resumption of the Client's use of the Payment Service (as appropriate).
- 19.3 FCG may stop or suspend the ability of the Client to use an account information service provider or a payment initiation service provider if FCG has reasonably justified and duly evidenced reasons for same relating to unauthorised or fraudulent access to the Client's Electronic Money information

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by that account information service provider or payment initiation service provider and/or the risk of unauthorised or fraudulent initiation of an Onward Payment. If FCG does deny access to an account information service provider or payment initiation service provider in accordance with this Clause 19.3, unless doing so would compromise security or is unlawful, FCG shall notify the Client as soon as possible using one of the methods set out in Clause 3.4.

19.4 FCG shall contact the Client either:

- (a) via email to the email account it holds on record as belonging to the Client; and/or
- (b) via one or more of the Online System and/or the API if the Client has access to same, in the event of suspected or actual fraud or security threats.

19.5 If the Client believes that a Payment Instruction has been given, or an Onward Payment made, in error and/ or was unauthorised by it, the Client must notify FCG as soon as possible via the helpline or e-mail address listed in Clause 3. Failure to notify FCG immediately on becoming aware of within the relevant timescale set out in clause 20.1 could result in the Client losing its entitlement to have the matter corrected.

20. LIABILITY AND INDEMNITY FOR PAYMENT SERVICES

20.1 Subject to the remainder of this clause 20, where it is established that an Onward Payment was not authorised by the Client in accordance with Clauses 3 and 18.1 or that an Onward Payment was not correctly executed by FCG and that Client has notified FCG using the contact details set out in Clause 3.1(b) or Clause 3.1(c) in a timely manner:

- (a) within 13 months of the monies being debited from its accounts, if the Client is a consumer, a micro-enterprise or a charity (using the meanings given to same in the PS Regulations); or
- (b) within 6 months of the monies being debited from its accounts, if the Client is not a consumer, a micro-enterprise or a charity (using the meanings given to same in the PS Regulations),

FCG shall refund to the Client the full amount debited erroneously or without authorisation as soon as practicable and in any event no later than the end of the Business Day following the day on which FCG became aware of the unauthorised or incorrectly executed Onward Payment, unless FCG has reasonable grounds to suspect fraud and notifies the appropriate authorities.

20.2 The Client will be liable for:

- (a) all payments made by FCG pursuant to a particular unauthorised Onward Payment if the Client has acted fraudulently, or has intentionally or with gross negligence not complied with its obligations under Clause 19.1(a); and
- (b) subject to Clause 20.3 and where Clause 20.2(a) does not apply, up to £35 of any monies paid by FCG pursuant to a particular unauthorised Onward Payment where the Online System and/or the API have been misappropriated except where:
 - (i) the misappropriation of the Online System and/or the API (as applicable) was not detectable by the Client prior to the Onward Payment, except where the Client has acted fraudulently; or

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- (ii) the loss was caused by acts or omissions of any employee, agent or branch of FCG or of an entity which carries out activities on behalf of FCG.
 - (c) all unauthorised Onward Payments made by FCG before it notified FCG in accordance with clause 19.1(d).
- 20.3 Except where the Client has acted fraudulently, the Client shall not be liable for unauthorised Onward Payments:
 - (a) executed by FCG after the Client has notified FCG in accordance with Clause 19.1(d), if the corresponding losses are directly related to the notification; and/or
 - (b) where FCG has failed at any time to provide the Client with appropriate means to notify FCG of the misappropriation or unauthorised use the Online System and/or the API and this failure led to the unauthorised Onward Payment; and/or
 - (c) where FCG was required by regulation 100 of the PS Regulations to apply strong customer authentication (as such term is defined in the PS Regulations) but failed to do so and this failure led to the unauthorised Onward Payment.
- 20.4 FCG shall not be liable for non-execution or defective execution in relation to an Onward Payment which it has made in accordance with a unique identifier given to it by the Client which proves to be incorrect. However, FCG shall make efforts to trace funds involved in that transaction and notify the Client of the outcome.
- 20.5 FCG is liable to the Client for the correct execution of a Payment Instruction unless:
 - (a) Clause 20.4 applies; or
 - (b) FCG can prove to the Client (and where relevant, to the Payee's payment services provider) that the Payee's payment services provider received the Onward Payment within the appropriate time period described in Clause 18.9.
- 20.6 FCG shall not be liable to the Client for any:
 - (a) delay or failure to perform its obligations under these Terms or any FX Contract (including any delay in payment) by reason of any cause beyond the reasonable control of FCG including but not limited to any action or inaction of the Client or any third party, bank delay, postal delay, failure or delay of any fax or electronic transmission, any accident, emergency, act of god or any abnormal or unforeseeable circumstances; or
 - (b) consequential or indirect loss (such as loss of profits or opportunity) the Client may incur as a result of FCG failing to perform its duties under an FX Contract; or
 - (c) contravention of a requirement imposed on FCG by the PS Regulations where that contravention is due to FCG complying with its obligations under the laws of any EEA state or other jurisdiction.
- 20.7 Under Regulation 92 of the PS Regulations, the Client may be entitled to a refund in certain circumstances where an Onward Payment is initiated by the Payee. It is not anticipated that any Onward Payment will be initiated by a Payee under any Payment Services provided by FCG and the Client represents and undertakes to that effect in Clause 32.1(i). However, details of the circumstances in which a refund may apply are available on FCG's website.

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20.8 The provisions in this Clause 20 shall survive termination of these Terms or any agreement under these Terms.

21. LOST DRAFTS

21.1 The provisions of this Clause 21 shall supplement the provisions of Clauses 19 and 20 as regards lost Drafts.

21.2 FCG shall be under no obligation to issue a replacement Draft or a refund where it is established by FCG that the original Draft has been encashed or was issued and sent as instructed.

21.3 FCG agrees to issue the Client with a replacement Draft or issue a refund at an appropriate rate where the Client has placed a stop on the original Draft provided that the Client indemnifies FCG against any loss resulting from the Draft being encashed fraudulently, and in the event that the original Draft comes into possession of either the Client or the Payee, the Client undertakes to take all reasonable steps to ensure that no attempt is made to encash the original Draft and that it is returned to FCG at the earliest opportunity and, pending its receipt by FCG, is held in trust for FCG.

21.4 Where a replacement Draft or refund is issued and the original Draft is subsequently encashed by the beneficiary of the Draft and FCG is unable to obtain reimbursement from the paying bank FCG shall be entitled to stop any replacement issued or seek immediate reimbursement from the Client.

22. OTHER TERMS RELATING TO PAYMENT SERVICES

22.1 FCG will send the full amount of the Onward Payment to the Payee in accordance with the Payment Instruction. However FCG cannot guarantee the Payee's payment service provider or an intermediary payment service provider will not deduct a charge for receiving any Onward Payment. It is the responsibility of the Client to confirm with the Payee's payment service provider the details of any charges. FCG shall if it is able to, upon request from the Client, provide an estimation of any intermediary payment service provider charges which may be deducted. The Client is solely responsible for ensuring that the amount of any Onward Payment is sufficient to fulfil any obligations that the Client has to the relevant Payee.

22.2 FCG shall make available to the Client the information which the Client is entitled to receive under the PS Regulations. That information shall be provided to the Client by email or made available via FCG's website or (where made available to the Client) via the Online System. In addition, the Client may at any time request from FCG a copy of:

- (a) the then-current Terms applying between the Client and FCG in relation to Payment Services; and/or
- (b) any information to which the Client is entitled under the PS Regulations.

22.3 The Client may terminate these Terms in relation to Payment Services at any time by giving notice to FCG in accordance with Clause 3. Any such termination shall be subject to Clause 30.4.

COLLECTION ACCOUNT SERVICES

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23. AVAILABILITY OF THE COLLECTION ACCOUNT SERVICE

23.1 Before the Client is able to make use of the Collection Account Services, the Client has to be accepted by FCG for same. Once the Client has been accepted for the Collection Account Services, it will be able to:

- (a) log onto the relevant part of the Online System;
- (b) open Electronic Money Accounts which can be used by the Client for the issuance of Electronic Money once FCG has received money on its behalf (the “**Collection Accounts**”);
- (c) receive money, including for example the online proceeds of sale and other monies agreed by FCG from time to time (“**Collection Monies**”) into a bank account belonging to FCG in return for the issuance of Electronic Money into the Collection Accounts; and
- (d) set, amend, pause and cancel Rules (as defined below) on the Collection Accounts and consequently automatically place FX Orders and Payment Instructions with FCG.

24. COLLECTION ACCOUNT

24.1 If the Client has been approved for the Collection Account Service in accordance with clause 23 above, then:

- (a) FCG can receive Collection Monies on behalf of the Client in exchange for FCG issuing the Client with the equivalent amount and currency of Electronic Money. This Electronic Money will be stored in the Client’s Collection Account; and
- (b) Rules over the Collection Accounts can be set, amended, paused and cancelled.

24.2 The Client is responsible for providing FCG with clear instructions on which Collection Account is to be credited with Electronic Money upon receipt of Collection Monies. Collection Monies sent to FCG will be subject to a 0.1% receipt charge upon issuance of Electronic Money into the relevant Electronic Money Account.

24.3 The Client can ascertain how much money is held in each Collection Account either via telephone using the contact details set out in Clause 3 or by logging onto and accessing the relevant part of the Online System.

25. SETTING RULES ON COLLECTION ACCOUNTS

25.1 The Client is able to set rules (“**Rules**”) on each of its Collection Accounts. When a Rule is set and the condition (the “**Condition**”) in that Rule is satisfied, then an automatic Payment Instruction and/or an automatic FX Order (depending on whether the relevant Collection Account and the Destination Account (defined below) are the same currency or not) will be placed by the Client with FCG.

25.2 There are two Rules which may be set on a Collection Account, namely the Immediate AutoWithdraw Rule and the Exchange Rate AutoWithdraw Rule. Only one Rule may be set on a Collection Account at a time.

25.3 If the Immediate AutoWithdraw Rule applies to a Collection Account, then the Condition which, when satisfied, triggers the automatic placing of a Payment Instruction and/or the automatic placing

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- of an FX Order, is that any amount of Electronic Money is received by the Collection Account (the **“Immediate AutoWithdraw Condition”**).
- 25.4 If the Exchange Rate AutoWithdraw Rule applies to a Collection Account, then the Condition which, when satisfied, triggers the automatic placing of a Payment Instruction and the automatic placing of an FX Order, is that the exchange rate which the Client can obtain from FCG to use the Electronic Money to purchase the currency the Client chooses when setting the Rule, is the same as or more beneficial to the Client than the exchange rate which the Client determined (the **“Threshold Exchange Rate”**) when setting the Rule (the **“Exchange Rate AutoWithdraw Rule”**).
- 25.5 The following information is required in order to set a Rule:
- (a) the details of the Collection Account the Rule is to apply to;
 - (b) the details of the bank account which the monies, subject to the Payment Instruction, are to be sent to (the **“Destination Account”**) and the currency of same;
 - (c) whether the Immediate AutoWithdraw Rule or the Exchange Rate AutoWithdraw Rule is to apply to the Collection Account;
 - (d) , if the Exchange Rate AutoWithdraw Rule is to apply to the Collection Account, the relevant Threshold Exchange Rate.
- 25.6 The Client is able to set, amend, pause or cancel Rules applying to each of its Collection Accounts either via telephone using the contact details set out in Clause 3 or via the Online System or via the API. For the avoidance of doubt, the Client setting and pausing or cancelling a Rule on a Collection Account is the Client consenting and withdrawing consent to the execution the payment instruction in accordance with regulation 67 of the PS Regulations.
- 25.7 The Client will receive notifications from FCG when it sets, amends or cancels a Rule or when the Condition of a Rule set on a Collection Account has been satisfied. If the Client receives a notification which it, or an Authorised Person did not action or which it otherwise should not have received, then the Client must inform FCG as soon as it becomes aware by using the contact details set out in Clause 3.
- 26. TERMS OF AN FX ORDER AUTOMATICALLY PLACED**
- 26.1 If:
- (a) the Conditions of a Rule applying to a Collection Account are satisfied; and
 - (b) in that Rule the currency of the Collection Account is different to the currency of the Destination Account,
- then an FX Order will automatically be placed by the Client with FCG.
- 26.2 The terms of an FX Order, which is automatically placed with FCG, will be as follows:
- (a) the foreign exchange contract is to be a spot contract using all of the Electronic Money in the relevant Collection Account to purchase Electronic Money in the currency of the Destination Account;
 - (b) the exchange rate is the sum of:

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- (i) the margin agreed between FCG and the Client for the purchase of the currency of the Destination Account using the currency of the Collection Account; and
- (ii) the exchange rate which FCG believes, acting reasonably, that it would be able to obtain if it were to purchase the currency of the Destination Account using the currency of the Collection Account on the wholesale markets at the time the FX Order is accepted by FCG.

26.3 The Client acknowledges that, even if the Exchange Rate AutoWithdraw Rule applies, the exchange rate applied will still be as set out in clause 26.2(b). Accordingly, in rare cases, the exchange rate which applies to the Client's FX Contract might be less beneficial to the Client than the Threshold Exchange Rate.

27. TERMS OF A PAYMENT INSTRUCTION AUTOMATICALLY PLACED

27.1 The terms of a Payment Instruction, which is automatically placed with FCG, will be as follows:

- (a) the Electronic Money or money, from the redemption of Electronic Money, to be sent is:
 - (i) all of the Electronic Money or money (from the redemption of Electronic Money) in the relevant Collection Account less any charges, in the event that no FX Order has automatically been placed with FCG;
 - (ii) all of the Electronic Money or money (from the redemption of Electronic Money) held by the Client which was purchased pursuant to an FX Contract using the money in the relevant Collection Account (less any charges), in the event that an FX Order was automatically placed at the same time the Payment Instruction was automatically placed.
- (b) the details of the Payee will be the details of the Destination Account supplied when creating or amending the relevant Rule.

TERMS APPLYING GENERALLY

28. SAFEGUARDING

28.1 "Safeguard" and "Safeguarding" means that FCG shall either:

- (a) keep the Client's money in a specific bank account for this purpose, separate from its own business bank account; or
- (b) use an appropriate insurance policy, which will protect the Client's money, so that in the unlikely event that FCG goes insolvent, the money which is Safeguarded will be protected from the claims of FCG's creditors and the money should be returned to the Client less the insolvency practitioner's costs of distributing the Safeguarded monies.

28.2 FCG Safeguards money on the Client's behalf:

- (a) upon issuing Electronic Money to the Client and during the period of time that the Client continues to hold Electronic Money with FCG; and

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- (b) upon an Onward Payment being executed, until the time that FCG believes, acting reasonably, that the Payee has received the amount of money sent via the Onward Payment.
- 28.3 In relation to a forward FX Contract, when Electronic Money is debited from the Client's Electronic Money Account to pay FCG a Security Payment or a Margin Call (if applicable), this money is not Safeguarded. FCG does not Safeguard this money as it is not deemed to be "Relevant Funds" in accordance with the Electronic Money Regulations 2011 and Safeguarding these funds would be in breach of FCG's obligations under the Electronic Money Regulations 2011. In the unlikely event that FCG becomes insolvent between the date that the forward FX Contract is entered into and the date the forward FX Contract is completed, to get any Security Payment or Margin Call (if applicable) back, the Client will need to add its name and details to the list of creditors in the insolvency. In this circumstance, the Client may not receive all of its Security Payment and Margin Call (if applicable) back.
- 28.4 On maturity of an FX Contract, at the same time as Electronic Money is debited to pay FCG:
- (a) the balance owing under a forward FX Contract (taking into account any Security Payment and/or Margin Call already paid); or
 - (b) the full amount owing under a spot FX Contract,
- the Client will be credited with Electronic Money in the amount and currency it has purchased through the FX Contract.
- 28.5 When Electronic Money is debited from the Client's Electronic Money Account, or otherwise redeemed, to pay FCG any other money the Client owes FCG, for example fees, this money will become FCG's money and will not be Safeguarded by FCG on the Client's behalf.
- 28.6 FCG checks several times each business day, that it is Safeguarding the correct amount of money in accordance with these Terms and the Electronic Money Regulations 2011.

29. INTEREST

- 29.1 If the Client fails to make any payment required under these Terms (including under any FX Contract or Payment Instruction) when it falls due, interest will be charged on the outstanding sum at a rate of three per cent per annum over the base rate of the Bank of England (or of such monetary authority as may replace it). Such interest shall accrue and be calculated daily from the date payment was due until the date the Client pays in full and shall be compounded monthly.
- 29.2 FCG may receive and retain or apply for its own benefit any interest which arises in respect of any money it Safeguards.

30. CHANGES TO THESE TERMS

- 30.1 FCG may amend these Terms insofar as they relate to Foreign Exchange Services by notice in writing or in accordance with Clause 3.4 to the Client at any time and such amendments shall take effect from the date specified by FCG but may not affect any rights or obligations that have already arisen and will not be retrospective.

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- 30.2 Subject to Clause 30.3, FCG may amend these Terms insofar as they relate to Payment Services by giving at least 2 months' notice in writing to the Client. If the Client objects to the proposed amendments, it has the right, subject to Clause 30.4, to terminate these Terms as regards Payment Services without charge before the date proposed by FCG for the entry into force of the changes. The Client will be deemed to accept the proposed amendments unless it notifies FCG and terminates these Terms insofar as they relate to Payment Services before the date proposed by FCG for the entry into force of the changes. If no objection is received from the Client, such amendments shall take effect from the date specified by FCG but may not affect any rights or obligations that have already arisen and will not be retrospective.
- 30.3 FCG does not need to provide any notice to the Client of:
- (a) any change to these Terms insofar as they relate to Payment Services which is more favourable to the Client; or
 - (b) a change to the standard interest rate applying pursuant to Clause 29.1, which in each case may be applied immediately.
- 30.4 For the avoidance of doubt, the termination of these Terms by the Client pursuant to Clause 22.3 or Clause 30.2 shall not affect any FX Contract nor any rights or obligations that have already arisen at the date of the termination. Following any such termination, any onward transfer of converted currency to a Payee shall be subject to such terms as FCG and the Client shall agree.
- 31. DISPUTES AND COMPLAINTS**
- 31.1 If a Client is dissatisfied with any aspect of the services provided by FCG, the Client may inform FCG. All complaints should in the first instance be made in writing to FCG in accordance with Clause 3 marked for the attention of the CEO. FCG will endeavour to review each complaint carefully and promptly.
- 31.2 If a complaint relates to the provision by FCG of Payment Services or the issuance or redemption of Electronic Money, if the Client is not satisfied with FCG's resolution of the complaint, the Client may be entitled to refer the matter to the Financial Ombudsman Service (FOS). The FOS provides an out-of-court redress mechanism. Please see their website (www.financial-ombudsman.org.uk/consumer/complaints.htm) for information about how to contact the FOS and how to bring a complaint.
- 31.3 If a dispute arises between FCG and the Client relating to the existence or terms of any FX Contract (a "Disputed FX Contract"), FCG may close out or take any other action it reasonably considers appropriate in relation to the Disputed FX Contract (which may include suspension of performance of the Disputed FX Contract) pending settlement of the dispute without previously notifying and/or without having received instruction from the Client. FCG will try to notify the Client (orally or in writing) what action it has taken, as soon afterwards as it practically can, but if it does not, the validity of its action shall not be affected.

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32. CLIENT'S REPRESENTATIONS AND UNDERTAKINGS

32.1 The Client represents to FCG that, at the date of acceptance by the Client of these Terms, at the time each Electronic Money Order, FX Order and each Payment Instruction is made, at the time each Electronic Money Contract and FX Contract is entered into and carried out and at the time each Onward Payment is made:

- (a) the Client is acting as principal for its own account;
- (b) the Client has full power, legal capacity and authority and has taken all necessary steps to enable it lawfully to enter into and perform these Terms and every FX Contract and Payment Instruction under these Terms;
- (c) for a Client who is not an individual, the person(s) entering into these Terms and executing the Account Opening Form on its behalf has been duly authorised to do so;
- (d) these Terms are binding upon the Client and enforceable against the Client (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and applicable principles of equity);
- (e) all sums paid to FCG by the Client under these Terms belong to the Client and are not subject to any charge or other rights of third parties;
- (f) all information supplied to FCG by the Client is, or at the time it is supplied will be, up to date, accurate in all material respects and the Client has not omitted or withheld any information which would make such information inaccurate in any material respect;
- (g) if the Client is entering into an FX Contract where the Maturity Date is more than 2 Business Days after the date the FX Contract is entered into, the purpose of same is to facilitate the payment of identifiable goods and/or services or direct investment;
- (h) the Client will take physical delivery of the currency bought; and
- (i) no Onward Payment has been or will be initiated by the Payee (save where the Client is the Payee).

32.2 The Client will promptly provide to FCG:

- (a) on request such information regarding its financial and business affairs and/or identity, as FCG may reasonably require (including without limitation any information required by FCG to be able to comply with its anti-money laundering obligations and policies); and
- (b) written confirmation of any changes to the Client's telephone and facsimile number(s) and email and postal address(es).

32.3 For the avoidance of doubt, the Client will notify FCG immediately if it becomes aware of the occurrence, or likely occurrence, of any of the events specified at Clause 16.1 above.

32.4 The Client undertakes to FCG that it shall promptly perform in timely fashion its obligations under these Terms, each Electronic Money Contract, each FX Contract and each Payment Instruction.

33. RECORDING TELEPHONE CONVERSATIONS

33.1 FCG may record telephone conversations with the Client, including recording oral instructions given by telephone, but FCG is not obliged to do this. The parties agree to:

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- (a) the electronic recording by either party of telephone conversations between the parties with or without an automatic tone warning device; and
 - (b) the use of such recordings as evidence by either party in any dispute or anticipated dispute between the parties or relating to dealings between the parties.
- 33.2 If FCG makes any recordings or transcripts it may also destroy them in accordance with its normal procedures.

34. GENERAL

- 34.1 FCG is frequently recommended by partners whose clients have a requirement for FCG's services. In some cases the service may be branded under the partner's name, with all aspects of the service provided by FCG. Partners of FCG include professional service providers and financial institutions. If you have been referred to FCG by a partner, FCG is likely to share any revenue generated from your trading activity with the partner.
- 34.2 These Terms, the Account Opening Form and the Online User Guide (defined in Clause 36) and the API Documentation (defined in Clause 37) set out the entire agreement and understanding of the parties on their subject matter and supersede all previous oral and written communications on the same subject matter. In the event of any inconsistency, discrepancy or ambiguity between the Account Opening Form, the Online User Guide, the API Documentation and the provisions of these Terms (subject to Clause 36), then the provisions of these Terms shall prevail.
- 34.3 If at any time any provision of these Terms or any associated contract is or becomes illegal, invalid or unenforceable under the laws of any jurisdiction, neither the legality, validity or enforceability of such provision under the laws of any other jurisdiction nor the legality validity or enforceability of any other provision of these Terms or any associated contract shall in any way be affected as a result.
- 34.4 Where the Client comprises two or more people as named in the Account Opening Form each person named in the Account Opening Form will be jointly and severally liable to FCG in respect of all obligations contained in these Terms. Any reference to the "Client" in these Terms means all persons named in the Account Opening Form jointly and severally.
- 34.5 The Client must make all payments under these Terms in full without any deduction, set-off, counterclaim or withholding of any kind.
- 34.6 If a party fails to exercise or delays in exercising any right under these Terms, by doing so it does not waive such right. The rights provided in these Terms do not exclude other rights provided by law.
- 34.7 The Client acknowledges and agrees that FCG is permitted to carry out an electronic database search and search credit reference agencies in order to verify the Client's, or any shareholder or officer of the Client's, identity and credit standing. If such searches are carried out, FCG may keep records of the contents and results of such searches in accordance with all current and applicable laws.

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34.8 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms or to any FX Contract.

35. DATA PROTECTION

35.1 Information on how FCG processes its personal data and the individual's rights and obligations are set out in FCG's privacy policy, which can be found on the following weblink <https://www.currenciesdirect.com/en/info/privacy-policy>.

35.2 If the Client is not an individual or is an individual but acting as a business with staff, then the Client and FCG agree:

- (a) they are each independent controllers; and
- (b) that the Client will be required to disclose personal data collected by it to FCG for the purpose of FCG complying with its regulatory obligations, fulfilling its obligations under these Terms and for the other purposes set out in FCG's privacy policy;
- (c) that the Client and FCG shall each ensure that they have all necessary notices and consents in place to enable lawful transfer of personal data to the other party and the other party's employees and any third parties engaged to perform obligations in connection with these Terms;
- (d) that the Client shall give full information to any data subject whose personal data may be processed under these Terms of the nature of such processing including a copy of the other party's privacy policy;
- (e) that the Client and FCG shall ensure, where reasonably possible, that all persons who receive personal data belonging to the other party are subject to written contractual obligations concerning confidentiality and taking care of the shared personal data;
- (f) that the Client and FCG shall ensure that they have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
- (g) that the Client and FCG shall not transfer any personal data received from the other party outside the EEA unless the transferor ensures that the:
 - (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR;
 - (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or
 - (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

35.3 The personal data which FCG collects is set out in FCG's privacy policy and relates to the Client's employees, directors, partners, ultimate beneficial owners, representatives, consultants and Payees. FCG will disclose to the Client, the name, email addresses and telephone numbers of some of its employees.

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36. USE OF THE ONLINE SYSTEM (WHERE APPLICABLE)

- 36.1 The Client may be required to complete a user set up form providing details of any Authorised Person whom may use any Online System which FCG may make available to the Client. The Client will be required to confirm its agreement to any system restrictions and limits prior to the Client being granted access to access to the Online System. Such access will be on the terms and conditions as to the use of the Online System as may be made available by FCG to the Client (the “Online User Guide”), which shall form part of these Terms. This Clause 36 applies subject to the provisions of the Online User Guide in relation to the Online System, and if there are any inconsistencies between this Clause 36 and the Online User Guide, the provisions of the Online User Guide will prevail. Terms which are not defined in this Clause 36 will have the meaning (if any) given to them in the Online User Guide.
- 36.2 The Client agrees to use the Online System only in accordance with the Online User Guide and maintain any minimum operating and browser specifications as advised by FCG from time to time.
- 36.3 The Client agrees to be solely responsible for the protection of all passwords and the Client should notify FCG immediately of any actual or suspected compromise of any password.
- 36.4 If there are any interruptions in the Online System which result in the Client being unable to use the Online System the Client should fax or telephone FX Orders and Payment Instructions to FCG.

37. THE API

- 37.1 FCG may entirely at its own discretion provide the Client with access to the API and FCG’s integration and user guides (the “**API Documentation**”).
- 37.2 The API provides the Client with the ability to, from its own computer systems:
- (a) place FX Orders and Payment Instructions with FCG,
 - (b) set, amend, pause or cancel Rules on Collection Accounts;
 - (c) Upload and Withdraw Electronic Money; and
 - (d) view the balance of the Client’s Electronic Money Accounts including Collection Accounts (if applicable).
- 37.3 The Client:
- (a) may not use the API in any way which breaches the requirements and restrictions contained in the API Documentation; and
 - (b) must promptly comply with all reasonable requests from FCG in relation to the maintenance and operation of the API.
- 37.4 FCG must know who its end client is. Accordingly, the Client is prohibited from sharing its Personalised Security Credentials relating to the API with any third parties (other than its own employees), including group companies of the Client.
- 37.5 FCG is able to make changes to the API entirely at its discretion and FCG shall not be liable for any losses the Client shall incur as a result.

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38. APPLICABLE LAW

38.1 These Terms and any relationship between FCG and the Client shall be governed by English law and are subject to the exclusive jurisdiction of the English courts.

39. THE DIRECT DEBIT SCHEME GUARANTEE

39.1 This guarantee is offered by all banks and building societies that accept instructions to pay Direct Debits.

39.2 If there are any changes to the amount, date or frequency of the Client's Direct Debit, FCG will notify the Client 10 Business Days in advance of the Client's account being debited or as otherwise agreed. If the Client requests FCG to collect a payment, confirmation of the amount and date will be given to the Client at the time of the request.

39.3 If an error is made in the payment of the Client's Direct Debit, by FCG or the Client's bank or building society, the Client is entitled to a full and immediate refund of the amount paid from its bank or building society.

39.4 If the Client receives a refund it is not entitled to, the Client must pay it back when FCG asks it to.

39.5 The Client can cancel a Direct Debit at any time by simply contacting its bank or building society. Written confirmation may be required by that bank or building society. A copy of any written confirmation should be sent to FCG.

40. PAYMENT SERVICES REGULATIONS

40.1 Subject to Clause 40.2, but notwithstanding any other provision of these Terms:

- (a) to the fullest extent that is permitted by law, the provisions of the PS Regulations (as amended, restated or re-enacted from time to time) shall not apply to these Terms and any associated contract;
- (b) the provisions which shall not apply as set out in Clause 40.1(a) above shall include the whole of Part 6 of the PS Regulations and Regulations 66(1), 67(3) and (4), 75, 77, 79, 80, 83, 91, 92 and 94 of the PS Regulations (as amended, restated or re-enacted from time to time); and
- (c) a different time period applies for the purpose of Regulation 74(1) of the PS Regulations as set out in Clause 20.1(b).

40.2 The provisions of Clause 40.1 above shall not apply if (or at any time when) the Client is a consumer, micro enterprise (as defined in Commission Recommendation 2003/361/EC, as amended from time to time) or charity.