

## Ebury Partners Australia Pty Limited - Relationship Agreement - Eligible Clients (v.3.ii, 06/2024)

These Terms apply to you if you are a private individual or a small business which employs fewer than 100 persons, or if you have an annual turnover of less than AUD \$10,000,000.00 ("**Eligible Client**"). Should your status as an Eligible Client change, you are required to notify us immediately.

### 1 OUR RELATIONSHIP WITH YOU

- 1.1 The use of the Online System, including the Payment Account, and the provision of the Services by Ebury ("we", "our" or "us") to the person referenced in the Application Form ("Customer", "you" or "your") is governed by and subject to these terms and conditions (the "Terms") and the Site Terms, which form part of these Terms. These Terms prevail in the event of any inconsistency. These Terms are intended to be legally binding. Please read them carefully.
- 1.2 By registering for a Payment Account and/or using our Services, you agree that you have read, understood and agree to be bound by these Terms (as amended from time to time in accordance with Clause 34). You also agree to our Privacy Notice. If you disagree with these Terms or the Privacy Notice, you must not use the Online System or otherwise ask us to provide Services to you.
- 1.3 These Terms do not vary or affect the operation or meaning of any agreement that you have in place with a third party in any way. For example, these Terms do not impact any contract that you have in place with your bank or any other third-party service provider.

### 2 DEFINITIONS AND INTERPRETATIONS

The following terms have the following meanings when used in these Terms, unless the context requires otherwise:

**"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;

**"AFSL"** means Australian Financial Services Licence;

**"Amazon"** means Amazon.com, Inc. and/or its affiliates;

**"Amazon Agreement"** means any agreement or policy that you have entered into or accepted with Amazon;

**"App"** means the Ebury mobile application software, any data supplied with the software and the associated media, which may be made available to you (at Ebury's sole discretion);

**"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;

**"Application Form"** means the application form completed by you for the purposes of entering into these Terms;

**"AUD"** means the Australian Dollar;

**"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 Instruction;

**"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 Sydney, Australia;

**"Client Money"** means money that is received by us from you or someone is acting on your behalf in connection with a financial product held by you or the provision of a financial service;

**"Client Money Rules"** means the rules set out in Subdivision A of Division 2 of Part 7.8 of the Corporations Act 2001 (Cth) for the handling of Client Money;

**"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 into or performing these Terms which relate to (i) the negotiations leading up to, and the provisions or subject matter of, these Terms 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 ownership of securities, by contract or otherwise;

**“Controller”** means the party who controls the collection, holding, processing or use of data, including a party who instructs another person, agency, entity, or organisation to collect, hold, process, use, transfer or disclose personal information on his or her behalf.

**“Credit and Margin Addendum”** means the credit and margin addendum that is agreed between you and Ebury;

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

**“Ebury”** means Ebury Partners Australia Pty Ltd ACN 632 570 702 AFSL 520548 and also registered in New Zealand as an overseas ASIC company with NZBN: 9429050428649;

**“Expiration Date”** means the date upon which the FX Option Product terminates, which date will be noted in the Transaction Receipt or will otherwise be agreed between you and Ebury;

**“Fees”** means any fee payable by you to Ebury in relation to a Service as set out in the Financial Services Guide;

**“Financial Services Guide”** means the financial services guide published on our website ([https://www.ebury.au/wp-content/uploads/sites/14/2021/02/AU\\_Financial-Services-Guide-FSG-19-01-2021\\_low.pdf](https://www.ebury.au/wp-content/uploads/sites/14/2021/02/AU_Financial-Services-Guide-FSG-19-01-2021_low.pdf)), as amended from time to time with 5 Business Days written notice to you;

**“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, postal or other strikes or similar industrial action, acts or regulations of any governmental or international bodies or authorities or markets, 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;

**“Funding Source”** means the bank account provided by you to fund a Payment Instruction, Trade or Margin or any other transaction by you or to pay Fees;

**“FX Option Contract”** means an agreement between us and you where one party (the buyer) pays a Premium to the other party (the seller). In return, the buyer receives the right, but not the obligation, to exchange a specified amount of one currency for another currency, at a prescribed exchange rate, and on a specified date and time. The seller receives the premium for offering these rights to the buyer, and is assigned the obligation to fulfil the terms of the agreement if the buyer exercises their rights;

**“FX Option Order”** means an order placed by you to acquire an FX Option Product;

**“FX Option Product”** means a Vanilla Option or a Structured Option;

**“FX Option Services”** means the issue of the FX Option Products;

**“FX Option Terms”** has the meaning given to it in Clause 9.1;

**“Important Information Page”** means the page of the Information Sheet titled “Important Information”;

**“Information Sheet”** means the document titled “Ebury FX Options Contracts Information Sheet” that is provided to you by Ebury, either upon entering into these Terms, the provision of any FX Option Services or from time to time upon variation;

**“Insolvency Event”** means the happening of any of these events in relation to a person or a corporation:

- (a) they are (or state they are) insolvent under administration or insolvency (as defined in the Corporations Act 2001 (Cth));
- (b) they have had a controller appointed, are in liquidation, in a provisional liquidation, under administration or wound up or have had a receiver and manager appointed to any part of their property;
- (c) they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by a lender);

- (d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above;
- (e) they are taken (under paragraph 459F of the Corporations Act 2001 (Cth)) to have failed to comply with a statutory demand;
- (f) they are the subject of any event described in section 459C (2)(b) or section 585 of the Corporations Act 2001 (Cth) (or they make a statement from which we reasonably deduce they are so subject);
- (g) they are otherwise unable to pay their debts when they fall due; or
- (h) something having a substantially similar effect to any of the things referred to above happens in connection with them under the law of any jurisdiction;

**"Interest Rate"** means the annual rate of interest equal to the sum issued by the Reserve Bank of Australia plus 5% per annum;

**"KYC Procedures"** means the "know your client" identification and verification procedures that we undertake;

**"Limit Order"** means an Order to exchange money at a specified exchange rate and within a specified time period;

**"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"** are 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, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish zloty and Romanian leu;

**"Margin"** means such amount in any currency 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 these Terms 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 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 for Ebury to enter a Trade or a transfer/payment, including a FX Option Order;

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

**"Payment Account"** means each payment account provided to you and operated pursuant to the terms of these Terms;

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

**"Payment Instruction"** means an instruction by you to us to make a Transfer, make a Payment or pay Margin;

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

**"Platform"** means any electronic system, software, application, interface or portal owned, operated or hosted by you or a third party that enables you to access, view, submit, order, execute, confirm or settle any Payment or Trade with us, either directly or indirectly, through an application programming interface or other means of communication;

**"Premium"** means a non-refundable premium paid by the buyer in respect of an FX Option Contract, but which may not be payable by you for some Structured Options;

**"Privacy Notice"** means the Ebury privacy notice available on our Site, as varied from time to time;

**"Product Descriptions"** means the description of the FX Option Products that Ebury offers, including the specific features and characteristics of each FX Option Product, contained in the Information Sheet. The Product Descriptions form part of these Terms

and are legally binding. The Product Descriptions are flagged as legally binding in the body of the Information Sheet for clarity. For the avoidance of doubt, Ebury is not restricted to offering the FX Option Products that meet the Product Descriptions, and FX Options Products with specific features and characteristics that vary from the Product Descriptions may be offered by Ebury and agreed to by you from time to time;

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

**"Reserve Bank of Australia"** means Australia's central bank;

**"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 Zaporizhia 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 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;

**"Retail Client"** means a customer or a potential customer of Ebury who is not a Wholesale Client or a Sophisticated Investor;

**"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 these Terms. In the event of a conflict between Ebury's obligations herein and any applicable Sanctions, the applicable Sanctions shall prevail;

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

**"Service"** and **"Services"** shall have the meaning set out in Clause 3.1;

**"Site"** means the website [www.ebury.com.au](http://www.ebury.com.au), [www.ebury.co.nz](http://www.ebury.co.nz);

**"Site Terms"** means the terms of use which govern the use of the Site, as published on the Site and varied from time to time;

**"Sophisticated Investor"** means a person who would be a Wholesale Client only through the application of section 761GA of the Corporations Act 2001 (Cth). This requires the person to sign a special Sophisticated Investor letter;

**"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;

**"Strike Rate"** means the price that the buyer of a Vanilla Option has the right to exchange a currency and the seller has the obligation to exchange the currency. It applies to a Structured Option to the extent that a Vanilla Option is part of the Structured Option;

**"Structured Option"** means the bundled purchase and sale of one or more Vanilla Options, and may also bundle other Trades or non-standard features that affect the possible costs and outcomes at or before expiry. See the Information Sheet for more information;

**"Termination Date"** means the date on which these Terms are terminated in accordance with Clause 18;

**"Trade"** means a Spot Contract, Forward Contract, FX Option Product or any other transaction we enter into with you under or in connection to these Terms;

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

**"Transaction ID"** means the unique transaction ID given by us to each Trade;

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

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

**"Wholesale Client"** has the same meaning as in section 761G of the Corporations Act 2001 (Cth) but does not include a Sophisticated Investor or, if you are a company registered in New Zealand, clause 4 of Schedule 5 to the Financial Markets Conduct Act 2013 (NZ) (as applicable); and

**"Vanilla Option"** means a single FX Option Contract that gives the buyer the right but not an obligation to buy (call) or sell (put) a specified amount of one currency for another currency by a specified date and time from the seller at a rate of exchange that is quoted by us when you enter into the contract. See the Information Sheet for more information.

### 3 OUR SERVICES

3.1 Ebury provides services which enable you to:

- (a) create a Payment Account and load funds onto your Payment Account;
- (b) make payments to third parties using funds loaded onto your Payment Account; and
- (c) enter into Trades, including a Spot Contract, Forward Contract or any other transaction (subject to your eligibility),
- (d) each a "Service" and collectively, the "Services".

Ebury may provide other services to you from time to time depending on its service offering and your eligibility. Additional services may be subject to additional terms and conditions and shall form part of the definition of "Service" and "Services".

3.2 The Services cannot be used for gambling, adult entertainment, pornography, drugs and drug paraphernalia, arms and ammunition, sexual encounter and related services provided by sexual encounter firms, unlicensed money transmission and financial service, escort services, government grants, home based charities, payday loans, tobacco sales or any other product or any other purpose that may increase the risk of our Services or Site being used to launder money or finance terrorism.

### 4 HOW TO ACCESS OUR SERVICES

4.1 To be eligible for a Payment Account and to use our Services, you must:

- (a) be at least 18 years old;
- (b) register for a Payment Account in accordance with the instructions in these Terms, including indicating your agreement to be bound by these Terms and the Privacy Notice;
- (c) not be in breach of any of these Terms;
- (d) not to be a holder of an existing operational Payment Account;
- (e) not be a holder of a Payment Account that is blocked, suspended, or was previously cancelled by us;
- (f) not be a resident of any country to which we do not provide the Services; and
- (g) have full capacity to enter into, agree to and comply with these Terms.

4.2 You must register to create a Payment Account by completing and signing the Application Form and returning it to us in accordance with its instructions.

4.3 You will not be issued a Payment Account or be able to access the Services until we have completed our KYC Procedures and you have provided all the information we request. You agree to provide Ebury with any information and other documents requested by us in accordance with the KYC Procedures so that we can verify your identity. You permit us to keep a record of such information and share it with third parties for the purpose of verifying your identity.

4.4 We will review your application to register for a Payment Account as soon as practicable after you have completed the Application Form. It remains in our sole discretion whether we issue a Payment Account to you. We will notify you if your application is approved or if we require additional information in order to consider your application.

4.5 You must inform us immediately in writing of any changes to the information you have previously provided, including but not limited to a change of name, registered address, directors, country of incorporation, Authorised Parties, shareholders or beneficial owners or a change of your client designation or status under the Corporations Act 2001 (Cth).

4.6 Ebury reserves the right in its absolute discretion to refuse to issue a Payment Account to a Customer and to refuse to provide Services to a Customer at any time, and retains the right to ask for further information or to impose further requirements that Ebury deems, in its sole discretion, to be reasonably necessary to protect Ebury's interests.

## **5 YOUR PAYMENT ACCOUNT**

5.1 Your Payment Account can be used to:

- (a) hold funds in one or more currencies nominated by you until you use them for a Transfer, a Trade or a Payment;
- (b) make Transfers (alone or in combination with a Trade);
- (c) make Payments in connection with one or more obligations hereunder (including in respect of Trades); and
- (d) pay Margin.

5.2 We will credit any funds received from you, or on behalf of you from third parties, to your Payment Account.

5.3 You can check the balance held in your Payment Account digitally, including by logging into the Online System (in each case, to the extent that such Service is enabled). Key information relating to payments made using the Payment Account, including Fees and any other charges applied to your Payment Account and transaction history, will be available (in accordance with Applicable Laws) digitally, including by logging into the Online System.

5.4 The Online System and App are the exclusive property of Ebury and its Affiliates, and you are provided with a limited non-exclusive licence to use the Online System and App for the purposes of using the Services in accordance with these Terms.

## **6 HOW TO USE YOUR PAYMENT ACCOUNT**

6.1 You can place a Payment Instruction and/or an Order from your Payment Account:

- (a) digitally, by logging on to the Online System or other digital platform (using your password and log-in details) and following the instructions to submit your Payment Instruction and/or an Order (in each case, to the extent the relevant Service(s) are enabled);
- (b) via telephone, by calling us on the contact number provided on the Online System and specifying your Payment Instruction and/or Order, together with such other information as we may reasonably request; or
- (c) via email, by emailing us and specifying your Payment Instruction and/or Order.

6.2 When placing a Payment Instruction and/or Order you will be required to provide us with the requisite details (including any unique identifier and other information which we may reasonably request). You are solely responsible for the provision and confirmation of correct payment details. We will not be liable for any payment made in accordance with the details provided by you in the Payment Instruction and/or Order.

6.3 A Payment Instruction and/or Order will be deemed to have been authorised by you if the relevant instruction has been given in accordance with this Clause 6.

6.4 Each transaction made using the Payment Account will be given a unique Transaction ID which will be set out in the transaction history.

6.5 Where you make a Payment using your Payment Account, the amount of the payment will be deducted by us from your Payment Account balance. You must ensure that you have sufficient funds in your Payment Account to cover the amount of Payment Instruction or Order you want to make using your Payment Account. We will not allow you to make any Transfer or Payment out of your Payment Account where this would put your Payment Account into a negative balance. If you do not have sufficient funds in your Payment Account, we reserve the right to postpone the execution of such Payment Instruction or Order, and we may impose a charge to cover the costs of us doing so.

6.6 The Beneficiary Account shall be credited by no later than the end of the Business Day following the Business Day on which the relevant Payment Instruction was received by us. If a Payment Instruction is received by us after 4 pm (AEST) on any Business Day, it shall be deemed to have been received by us on the next following Business Day.

6.7 You acknowledge that any amount remitted by us in accordance with a Payment Instruction is done on your behalf. Once a Payment Instruction has been processed, you are responsible for recovering any amount that you wish to recover from a Beneficiary that has been remitted by us. Any Fees paid by you in relation to a recovered payment which was made in accordance with a Payment Instruction are not refundable.

6.8 We reserve the right to refuse or postpone any Payment Instruction or Order at any stage of the transaction process, in our absolute discretion. If payment has been initiated from you or a third party before we refuse to complete the relevant instruction, we will refund that amount. You agree that we will not be liable in respect of any refusal or postponement. If we refuse or postpone a Payment Instruction and/or Order, we will contact you to advise you of the refusal or postponement but are not required to provide you with any reason. We are not liable to you for any such refusal.

## **7 PLACING A TRADE**

7.1 Once we have received your Order using one of the methods set out above in Clause 6.1, we will confirm (as relevant):

- (a) the purpose for the transaction;
- (b) the amount of money you wish to exchange;
- (c) the two currencies involved;
- (d) which currency you would like to buy or sell;
- (e) the date you would like the payment made; and
- (f) any other information that we require as notified to you.

7.2 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.

7.3 Other than as set out in Clause 9.10 for FX Option Orders, you must carefully review the Transaction Receipt and the Payment Instruction Confirmation and tell us before making a Payment if you think any of the details are incorrect. If you are placing an order by telephone or by email, you must tell us within one hour of receipt of your Transaction Receipt and Payment Instruction Confirmation if we have made any errors in such Transaction Receipt and/or Payment Instruction Confirmation. We will provide you with a revised Transaction Receipt and/or Payment Instruction Confirmation as soon as possible.

7.4 Except in the case of Limit Orders, we will execute the Trade upon receipt of Payment.

7.5 To the extent permitted by Applicable Laws, 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); and
- (b) we may at our sole discretion permit you to cancel the Trade.

7.6 If we permit you to cancel a Trade:

- (a) if we have already received the Payment Amount, we will return it to the account from where it came. However, if the Sale and Purchase Currencies are different, we will convert the Purchase Currency back to the Sale Currency using an agreed exchange rate at the time of cancellation, which means the amount we return to you may be more or less than the original Payment Amount;
- (b) we will not refund any Fees you have paid us; and
- (c) we may require you to pay us an additional fee that we agree with you at the time of permitting cancellation.

## **8 ADDITIONAL TERMS FOR FORWARD CONTRACTS**

8.1 If you enter into a Forward Contract, we may require you to make an initial Margin payment within twenty-four (24) hours of you receiving the Transaction Receipt.

8.2 From time to time during the term of the Forward Contract, we may require you to pay us additional Margin to maintain the relative value of the Purchase Currency. We will make a Margin Call if we require you to pay an additional Margin.

8.3 If we make a Margin Call, you must pay the required additional Margin to our Nominated Account by the later of (i) within twenty-four (24) hours of our demand from your Payment Account or (ii) by the due date stipulated in the Margin Call Receipt (if applicable). Margin Call amounts will vary depending on, but not limited to, notional value, currency pair and market volatility.

8.4 If you do not satisfy the Margin Call, we may cancel the Forward Contract with immediate effect or Close Out.

8.5 If you are a Wholesale Client you agree that we can deal with money paid by you as Margin in accordance with Clauses 8.6 to 8.7 instead of in accordance with the Client Money Rules and that the provisions in Clause 15 do not apply.

8.6 Any Margin paid by you or on your behalf will be paid to us for the purpose of securing or covering all your present or future, actual or contingent, or prospective, obligations to us under these Terms or otherwise. Any Margin paid by you in respect of a Forward Contract is our property. We do not hold such Margin on your behalf, whether on trust or otherwise, and we can deal with it as our own to the extent that it is necessary to cover our obligations or Losses.

- 8.7 We will owe you a debt equal to the amount of Margin received by us, subject to any set-off rights under these Terms or Applicable Law. We shall pay to you all or part of any amount of Margin owed to us by you under this Clause 8 to the extent that we consider, in our reasonable opinion, that the amount of Margin you have transferred to us exceeds the amount required by us to secure or cover all your present or future, actual or contingent, or prospective obligations to us under these Terms or otherwise.
- 8.8 You may ask us to bring forward or to extend the Delivery Date in relation to the whole or only part of your Forward Contract. We may agree to such a request at our sole discretion. If we agree, you acknowledge that we may adjust the Payment Amount to reflect the new Delivery Date.
- 8.9 We may require you to enter into a Credit and Margin Addendum for Forward Contracts. To the extent you enter into such Credit and Margin Addendum, you will be required to comply with any terms therein.

## **9 ADDITIONAL TERMS FOR FX OPTION SERVICES**

- 9.1 The provision of the FX Option Services shall be governed in accordance with these Terms, including this Clause 9, the Product Descriptions and the Important Information Page (the "FX Option Terms") (in that order of priority).
- 9.2 To be eligible to use the FX Option Services, you must:
- (a) have a Payment Account;
  - (b) be a Wholesale Client and/or Sophisticated Investor;
  - (c) not be a resident of any country to which we do not provide the FX Option Services;
  - (d) not be in breach of these Terms or any Applicable Laws.
- 9.3 You agree to provide us with any information and other documents that we request to enable us to determine whether you meet the necessary criteria. You permit us to keep a record of such information and share it with third parties for the purpose of providing the FX Options Services.
- 9.4 You acknowledge, represent and agree that:
- (a) you will use the FX Option Services in accordance with the FX Option Terms;
  - (b) you will not act as agent or representative of another person unless we agree in writing;
  - (c) you are a Wholesale Client and/or Sophisticated Investor;
  - (d) we are not required to hold moneys deposited by you in accordance with the Client Money Rules;
  - (e) you understand that you will not have any rights of ownership or otherwise in any underlying currencies as a result of an FX Option Product;
  - (f) you have the necessary experience and knowledge to understand the risks involved in relation to the FX Option Products entered into under or in connection with these FX Option Terms;
  - (g) you are relying solely upon your own judgement in using the FX Options Services;
  - (h) you will disclose any matters to us that may affect the operation of the FX Options Terms, or your ability to comply with them;
  - (i) you will not use the FX Options Services if it infringes the rights of any third party or breaches any Applicable Law; and
  - (j) you will not use the FX Options Services for any illegal or improper purpose, including money laundering, tax evasion or the financing of terrorist activities.
- 9.5 You acknowledge and agree that you are solely responsible for notifying Ebury in writing as soon as possible if there is any change in your circumstances or financial position that may or has already affected your eligibility to be a Wholesale Client and/or a Sophisticated Investor, or if you become aware of any fact or matter that may invalidate or contradict any of your representations or warranties under this Clause 9. You further acknowledge and agree that we may terminate or suspend any FX Option Product and/or the provision of any FX Options Services to you, or take any other action that we consider appropriate, in our sole discretion, if we reasonably believe that you are no longer a Wholesale Client and/or a Sophisticated Investor, or that you have breached any of your representations or warranties under this Clause 9.
- 9.6 We are not obliged to provide you with the FX Option Services. If we do agree to provide the FX Option Services to you, we may at any time terminate or otherwise restrict your use of the FX Option Services. We will incur no liability if we do so. For example, we may refuse a transaction if:
- (a) you fail to make a Payment in accordance with a contract for an FX Option Product;
  - (b) we believe in our sole discretion that you are otherwise in breach of the FX Option Terms; or



- (c) providing you with the FX Option Services may breach any Applicable Law.
- 9.7 We will notify you of the FX Option Products available to you (if any), and may also tell you the Strike Rate, the Expiration Date, the currencies and amount that may be nominated by you before you place an FX Option Order.
- 9.8 In order to comply with the ASIC Derivative Transaction Rules (Reporting) 2013, we must obtain a Legal Entity Identifier ("LEI") from you. If you are an entity and do not have an LEI, by opening a Payment Account with us, you consent to Ebury obtaining a LEI on your behalf. You acknowledge that this Clause 9.8 gives Ebury the option, but not the obligation, to obtain an LEI on your behalf in its sole discretion. We will charge you and pass on the cost of obtaining a LEI to you, together with our reasonable administration costs.
- 9.9 The submission of an FX Option Order or instruction to us does not automatically give rise to a binding contract for the FX Option Product between you and us. Any FX Option Order is subject to us accepting it and communicating our acceptance to you, which will either be done verbally or in writing. The moment we communicate our acceptance to you, the FX Option Product is binding on both parties. We will then provide you with a Transaction Receipt confirming the details of the FX Option Order. If we accept your FX Option Order, you will enter into the contract for an FX Option Product as principal, and we will be the counterparty.
- 9.10 You must carefully review the Transaction Receipt and tell us immediately, and in any event within 24 hours of receipt of the Transaction Receipt, if you identify a mistake in the Transaction Receipt which you believe is a mistake on Ebury's part. If you inform us of such a mistake within 24 hours, and we agree in our reasonable opinion that we have made a mistake as described in the Transaction Receipt, we will reissue a Transaction Receipt with the updated details and make any necessary amendments to the content and processing of the FX Option Order. We take no responsibility for any error that is not a mistake on our part, or which is not brought to our attention in accordance with this Clause 9.9.
- 9.11 Your FX Option Product will expire based on the terms in the Transaction Receipt, unless it is extended or otherwise varied in writing with our consent.
- 9.12 You may pay the applicable fees, including a Premium, to Ebury for the option contract itself, as well as pay Margin towards settlement which will occur at a future date, regardless of whether or not you exercise the option on the Expiration Date.
- 9.13 Any Premium shall be notified to you in accordance with Clause 14, and payable within two Business Days of us accepting the FX Option Order.
- 9.14 Any payment due and payable to you in respect of an FX Option Product will be paid into your Payment Account within two Business Days of the payment being due and payable.
- 9.15 The amount of any Margin may be expressed as a percentage of the value of the FX Option Product, the amount of which is determined by us. This will be assessed by us on a case-by-case basis, and we will consider your credit rating and history with us in deciding whether or not Margin will be required in accordance with the Credit and Margin Addendum. If we require a Margin on an FX Option Product, we will require you to enter into a Credit and Margin Addendum, which will set out (among other things) the payment terms and the consequences of failing to satisfy a Margin Call or make an additional Payments.
- 9.16 You agree that we can deal with money paid by you as Margin pursuant to this Clause 9.16 instead of in accordance with the Client Money Rules and that the provisions in Clause 15 do not apply. Any Margin paid by you or on your behalf will be paid to us for the purpose of securing or covering all your present or future, actual or contingent, or prospective, obligations to us under these Terms or otherwise. Any Margin paid by you in respect of a FX Option Product is our property. We do not hold such Margin on your behalf, whether on trust or otherwise, and we can deal with it as our own.
- 9.17 All FX Option Products will be acquired at your own risk and to the maximum extent permitted by law, we will not in any way be liable for any claims, damages, losses (including consequential losses) or injury suffered or incurred by you as a result of or arising out of:
- (a) any statement, information or communication provided by, or on behalf of, us relating to an FX Option Product entered into or proposed to be entered into by you under the FX Option Terms; or
  - (b) any statement, information or communication provided by, or on behalf of, us in relation to the FX Options Services.

## **10 ADDITIONAL TERMS FOR LIMIT ORDERS**

- 10.1 We will execute a Limit Order when we achieve the rate nominated by you within the agreed time period.
- 10.2 If the last day of the agreed time period falls on a non-Business Day, your Limit Order will expire on the preceding Business Day.
- 10.3 You may cancel a Limit Order at any time (by telephone or by email which has been acknowledged by us), up until the agreed exchange rate is achieved by us.
- 10.4 Upon successful execution of a Limit Order, we will provide you with a Transaction Receipt setting out the details of the Trade.

10.5 You acknowledge that although we will try to achieve the agreed exchange rate within the agreed period, we cannot guarantee that the agreed exchange rate will be met.

## **11 PAYMENT FOR TRADES AND CONSEQUENCES OF NON-PAYMENT**

11.1 You must pay the full Payment Amount to us from your Payment Account on or before the Delivery Date. If we have not received the Payment Amount by the Delivery Date, we may:

- (a) refuse to fulfil the Trade; or
- (b) Close Out the Trade in accordance with these Terms.

Failure to make Payment in accordance with this Clause 11 will be a material breach of these Terms.

11.2 Without prejudice to any other rights and remedies available to us under Applicable Laws, we may charge interest on any sum due to us under these Terms after they become due and payable at the Interest Rate. This interest will accrue and will be calculated daily and be compounded monthly from the due date until we receive payment of the overdue amount in full.

## **12 SUSPENSION OR CANCELLATION OF A TRADE**

12.1 We may reject, suspend, disregard or cancel a Trade, or refuse to issue a Transaction Receipt in our sole discretion for any of the following reasons:

- (a) if we have reasonable grounds to believe the Order is unclear;
- (b) if we have reasonable grounds to, suspect that the Order was not authorised by you;
- (c) an Insolvency Event arises;
- (d) you breach any material representation or warranty or are otherwise in breach of these Terms;
- (e) we may otherwise breach Applicable Law or face action from a regulator or other authority;
- (f) if we have reasonable grounds to believe that the Trade may be linked to activity that breaches Applicable Law;
- (g) you have failed to make Payment when due or are otherwise in breach of these Terms;
- (h) you fail to provide us with sufficient information to allow us to fulfil the Trade; or
- (i) the Trade is outside our compliance risk appetite. This includes, but is not limited to, where a Trade is associated with industries related to recreational drugs or drug paraphernalia, adult film, web content and entertainment, gambling, or any other activities that Ebury may consider illegal or unethical. For further details, please request additional information from your relationship manager.

12.2 If we cancel a Trade after receiving the Payment, we will return the relevant amount and any related Fees we have received (less our reasonable costs) to the account from which it was sent.

## **13 CLOSE OUT**

13.1 We may Close Out a particular Trade or all current Trades that you have with us, without notice to you, for any event set out above at Clause 12.1 or if you terminate your relationship with us or cancel your Payment Account in accordance with these Terms.

13.2 You may ask us to Close Out a particular Trade or all current Trades by giving us notice in writing. We may permit you to Close Out if it is reasonably practicable for us to do so.

13.3 If we Close Out:

- (a) we will buy back the currency that we have bought for you when you entered into the Trades at prevailing market rates. If the value of the Purchase Currency has strengthened, this means that a Loss will be incurred on the Trade and you will be liable to us for the amount of that Loss (as well as any costs incurred by us);
- (b) we will pay you profit arising from the Close Out, provided that we are closing out all Trades (not a particular Trade) and the Close Out was requested by you due to a legitimate change in underlying commercial purpose (to be determined by Ebury, acting reasonably);
- (c) we will not pay you any profit arising from the Close Out, in the event that the Close Out occurred due to your failure to comply with your obligations under these Terms, or in the case that any of the events set out in Clause 12.1 have occurred or are occurring;
- (d) you acknowledge that the amount of any Loss realised on the Closing Out of a Trade is a debt payable by you and agree that we may immediately deduct the total amount of any Loss (together with any costs) from your Payment Account;

- (e) if the amount we are seeking to recover exceeds the amount of any Margin or funds available in your Payment Account, you must pay the balance upon being notified by us of the total amount due;
- (f) if the amount we are seeking to recover is less than the amount of any Margin or funds available in your Payment Account, we will make the balance available to you;
- (g) we may charge you interest on any sum that remains payable to us after we Close Out at the Interest Rate. Interest will accrue and will be calculated daily and be compounded monthly from the date payment was due until the date full payment is made by you; and
- (h) we will send you a written statement explaining the amount of any sums that may be payable to us and the amount of any sums being withheld by us.

#### **14 FEES**

14.1 You agree that you will pay the applicable Fees and charges in connection with our Services, which may include a Fee for the use of a Payment Account and/or on a per Trade, Order or Payment Instruction basis, as set out in the Financial Services Guide.

14.2 We will let you know the amount of any fees we charge you when you place an Order or a Payment Instruction.

14.3 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 these Terms for the period from (and including) the original due date to (but excluding) the actual date of payment, at the Interest Rate.

14.4 There may be other costs, taxes, fees or charges that apply in relation to the use of your Payment Account, a Payment Instruction, Order, and/or Trade which are not charged by us. We are not responsible for any fees or charges imposed by a third party in connection with your use of the Services. You are responsible for paying such costs, taxes, fees or charges where these apply.

#### **15 HOW WE HANDLE YOUR MONEY**

15.1 Subject to Clauses 8 and 9, the funds in your Payment Account will be held in a trust account until you enter into a Trade or withdraw your funds. We segregate Client Money from Ebury's money and hold Client Money in a pooled trust account in accordance with Australian law.

15.2 By using the Services, you relinquish the right to any interest on funds deposited in your Payment Account. The money allocated to your Payment Account is not held separately to other Customers' money but is pooled together. Client Money allocated to your Payment Account is held on trust for you until it is withdrawn or you otherwise provide us with a legal right to that Client Money in accordance with these Terms.

15.3 If you are a Retail Client or a Sophisticated Investor, we cannot use your Client Money for our own capital purposes, or to hedge with our liquidity providers. We use our own funds. We may use Wholesale Client funds for these purposes. We typically hold the equity balance displayed in your Payment Account in our client money account.

15.4 You can ask us for records about money we have received from you, on your behalf, or for your benefit, if that money is Client Money. We will provide you with the records within 5 Business Days or such longer period as we may agree to in writing with you.

15.5 You acknowledge and agree that the funds held in your Payment Account are not covered by the Financial Claims Scheme.

#### **16 SECURITY, UNAUTHORISED OR INCORRECTLY EXECUTED TRANSACTIONS**

16.1 When using the Online System or the App, you are responsible for protecting and maintaining the security of your Payment Account, including your Payment Account login and password and your data against any theft, fraud or illegal activity. If another person gains access to your Payment Account by passing all identification and security validation and verification checks, we may be entitled to treat any transaction conducted by that person as valid and authorised by you and may not be responsible for any loss or damage you may incur as a result.

16.2 If you have any indication or suspicion that your Payment Account, password, or other security details are lost, stolen, misappropriated, used without authorisation or otherwise compromised, you must change your password and contact us immediately. Any delay in notifying us may result in you being liable for any Loss.

16.3 In the case of a Payment Instruction that has been improperly executed due to our mistake, we shall at your request refund the amount to your Payment Account, provided that you have notified us within 2 months of becoming aware of the error. In the event that you identify an error in a Payment Instruction, caused by you, you have up to 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.

16.4 In the case of an unauthorised payment from your Payment Account, at your written request we shall refund the unauthorised payment amount to your Payment Account. We will not however be required to refund such a payment if you directly or indirectly

contributed to the unauthorised payment being made from your Payment Account, including due to your failure to keep your Payment Account log-in, password or other security details safe. We will not refund any unauthorised payment that we have not been notified within the timeframes dictated by these Terms.

16.5 If our investigations show that a transaction reported by you as unauthorised or incorrectly executed was in fact authorised by you, or you have acted fraudulently or with negligence, for example by failing to keep your security information secure, we may reverse any refund made and you may be liable for any and all loss we suffer from your use of the Payment Account.

## **17 SERVICE RESTRICTIONS**

17.1 We may impose limits on the Payment Instructions and/or Orders that you can place, and the use of your Payment Account, with 5 Business Days' written notice to you and, to the extent permitted by law, our written reasons for doing so.

17.2 We may refuse to process a Payment Instruction and/or Order, or any other transaction, in our sole discretion, including if:

- (a) there are insufficient funds in your Payment Account to effect a Payment Instruction and/or Order;
- (b) we have reasonable grounds to believe that you are acting in breach of these Terms;
- (c) we have reasonable grounds to believe that your Payment Instruction, Order, or Beneficiary is suspicious or potentially illegal (for example, if we believe that your transaction is being made fraudulently); or
- (d) there are errors, failures (whether mechanical, internet-related or otherwise) or refusals by a Beneficiary.

## **18 SUSPENSION AND TERMINATION OF YOUR PAYMENT ACCOUNT**

18.1 Your Payment Account will remain valid until cancelled by either you or us.

18.2 We may cancel your Payment Account and terminate these Terms upon notice to you given via email or over the phone:

- (a) immediately if you breach an important part of these Terms 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 these Terms, or repeatedly breach these Terms or such other agreements and fail to resolve the matter in a timely manner;
- (b) that you become a Restricted Party;
- (c) 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, Sanctions 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;
- (d) that you are using our Services fraudulently, inappropriately or for illegal purposes;
- (e) immediately if you act in a manner that is threatening or abusive to our staff, or any of our representatives;
- (f) by giving 10 Business Days' notice by email or post for any reason;
- (g) if you fail to make a Payment when due;
- (h) we have any material concern over the adequacy of the information you have provided to us;
- (i) in our view (acting reasonably), we must do so to fulfil our legal or regulatory obligations;
- (j) if we must do so to fulfil our obligations pursuant to any Applicable Law or to avoid any enforcement action or other adverse measures thereunder;
- (k) that our relationship with you presents a business risk to us or any of our Affiliates;
- (l) by giving 5 Business Days' notice if your Payment Account stays inactive for 12 consecutive months.

18.3 You may cancel your Payment Account and terminate these terms at any time by giving us a 5 days' notice in writing via email or post. If you cancel your Payment Account and terminate these Terms you will no longer be able to use any of the functionality of the Payment Account.

18.4 We may suspend or otherwise restrict the functionality of your Payment Account or the provision of any Services on any reasonable grounds relating to the security of the Payment Account or any of its security features, or if we reasonably suspect that an unauthorised or fraudulent use of your Payment Account has occurred, or where a Force Majeure Event occurs and is continuing, or to comply with or as required by Applicable Law. We may increase or otherwise enhance our security checks in relation to your Payment

Account and/or any Order made by you at any time and in our sole discretion. We may also suspend your Payment Account, restrict its functionality and/or reduce your trading limit to nil if any Payments are outstanding.

18.5 When your Payment Account is suspended or cancelled, we will immediately block your Payment Account so it cannot be used. You will remain liable for all obligations relating to your Payment Account even after your Payment Account has been cancelled. We may reactivate your Payment Account or replace it with a new one without undue delay after the reasons we suspended, restricted or cancelled its use cease to exist.

18.6 Closing your Payment Account does not mean that we delete the personal information that we hold about you and we will continue to store such data, including the history of your transactions for a minimum period of 7 years as required by law.

## **19 SET OFF RIGHTS**

19.1 You acknowledge and agree that, subject to any Applicable Law, 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 any Payment Account against any Payments, Margin, claims, costs, charges, penalties, expenses or other liabilities which you owe to us (or any of our Affiliates), save where it has been agreed between us that your Payment Account will not be subject to the provisions of this Clause 19.

19.2 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. If any Margin is used to set-off any amounts owed by you, you must immediately restore the Margin upon request. If additional Margin is required, we will provide as much notice as is reasonably practicable for you to restore the Margin, but we may act without notice if we consider it necessary or desirable to protect our interests or to comply with any Applicable Laws.

19.3 All amounts due to us by you under these Terms shall be paid by you to us in full without any set-off, counterclaim, deduction or withholding.

## **20 CONSEQUENCES OF TERMINATION**

20.1 On or as soon as reasonably possible following a Termination Date all Trades will be Closed Out, pending Orders will be cancelled and we will determine, acting reasonably:

- (a) the amount recorded as being held in your Payment Accounts on the Termination Date;
- (b) the total Losses incurred by us in respect of and following a Close Out including, for the avoidance of doubt, the Close Out of any Trade that is subject to the agreement between you and Ebury;
- (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 these Terms which remain unpaid.

20.2 Based on the amounts calculated in accordance with Clause 20.1, we will determine the balance due from each party to the other ("Due Balance"). Following such determination, our Due Balance will be set-off against your Due Balance, and the net balance of such set-off will be calculated, with the resulting balance being the "Termination Amount". If the Due Balance due to us by you is greater than the Due Balance due to you, the Termination Amount will be payable by you to us. If the Due Balance due to you by us is greater than the Due Balance due to us, the Termination Amount is payable by us to you.

20.3 You agree and acknowledge that following a Termination Date:

- (a) we will not be required to accept any further instructions or Orders from you;
- (b) subject to Clause 13.4, we may not be required to take any profit made by us in respect of and following a Close Out into account for the purpose of calculating the Termination Amount, or pay or otherwise account to you for such profit; and
- (c) if 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.

20.4 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 these Terms).

20.5 Upon or following the occurrence of a Termination Date and subject to Applicable Law, we will have the right without prior notice to you or any other person to 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), whether or not arising under these Terms, matured or contingent and irrespective of the currency, place of payment or booking office of the obligation.

20.6 To the extent that an amount is set-off, such amount 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, acting reasonably, 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. This Clause 20.6 is 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.

20.7 Following the payment of the Termination Amount in full and any applicable set-off in accordance with these Terms, we may cancel your Payment Account.

20.8 The termination of these Terms shall not affect any provisions of these Terms that are expressly or by necessary implication intended to survive such termination.

20.9 On termination of these Terms, all rights granted to you in connection with the App shall cease and you must immediately delete or remove the App from your device.

## **21 YOUR FUNDING SOURCE**

21.1 We do not have access to your Funding Source and do not provide any services related to establishment, maintenance, and/or support of your Funding Source, including those related to your transaction(s).

21.2 You are responsible for ensuring that the entity issuing your Funding Source will fulfil payments required to complete any Transfer or Trade authorised by you.

21.3 We are not liable for any failure by any entity issuing your Funding Source. You acknowledge that the entity issuing the Funding Source may not permit the use of the Site to process payments.

## **22 THIRD PARTIES**

22.1 We are not liable for any third-party service provider, including the issuer of your Funding Source, and do not warrant their performance.

22.2 We may use third-party merchant facilities to process transactions. We have no control over third-party providers we engage and are not responsible for any delay in processing a Payment Instruction or Order that is caused by a third-party provider, except to the extent that we have caused or contributed to the delay.

## **23 NO ADVICE**

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 judgment. It is your responsibility to familiarize yourself with foreign exchange products and services.

## **24 CUSTOMER REPRESENTATIONS**

24.1 You represent, warrant and undertake that:

- (a) you will use the Services in accordance with these Terms;
- (b) you are capable of entering into a legally binding agreement;
- (c) 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 these Terms:
  - (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 adverse action under sanctions;
- (d) you:
  - (i) will at all times in connection with the activities envisaged under these Terms, comply with Sanctions and you will not use the Services or the Payment 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;

- (ii) 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;
- (e) you will immediately notify Ebury in the event that any of the representations and warranties in Clauses 24.1(c) and (d) are or become incorrect providing such information as we may reasonably request to understand the nature of implications of such matters;
- (f) you and your Authorised Parties have and will maintain all required rights, powers, authority, permits, licences, consents, permissions and authorisations to enter into these Terms, make use of the Services and to perform your obligations under these Terms, you shall be liable for any instructions and actions carried out by an Authorised Party pursuant (acting within the limits of their authority as you have notified to us in accordance with the Application Form or these Terms) 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;
- (g) you are liable as a principal in respect of your obligations under these Terms, including your obligations in respect of any Trades entered into with us;
- (h) you understand that our principal role in relation to the Services is to process Payment Instructions and/or Orders and that Ebury is not a bank;
- (i) if you are a partnership, each partner shall be jointly and severally liable under these Terms;
- (j) you are not using an anonymous network to access the Site;
- (k) you have the necessary experience and knowledge to understand the risks involved in relation to any Trade entered into under or in connection with these Terms and in relation to foreign exchange;
- (l) any Trade entered into by you is only for non-speculative reasons;
- (m) you will disclose any matters to us that may affect the operation of these Terms, or your ability to comply with them;
- (n) all information you have provided to us is correct, current and complete at the date provided, and you will promptly notify us of any changes to such information;
- (o) you have complied and will continue to comply with all applicable laws, statutes, ordinances, and regulations (including anti-money laundering and counter-terrorism financing laws and any relevant data protection or privacy laws);
- (p) your use of the Site and Services does not infringe the rights of any third party or breach any applicable law;
- (q) you will not use the Site and Services for any illegal or improper purpose, including money laundering, tax evasion or the financing of terrorist activities;
- (r) 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 account details. If you are unclear as to your obligations, you should seek independent advice from a tax professional;
- (s) 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;
- (t) you will use all reasonable efforts to prevent your Payment Account being used for illegal trade, illegal financial transactions, or legalisation of illegal proceeds; and
- (u) you have regular access to the internet and consent to us providing you any information, including notice, via the Site. We will also contact you at the email address that you provide to us. It is your responsibility to ensure your contact details are current at all times, and to check for communications and information from us.

24.2 You acknowledge that we may rely on the representations, warranties and undertakings set out in these Terms, including this Clause 24.

## 25 NO GUARANTEE

25.1 We take reasonable steps to ensure we can deliver the Site, Online System, App, Services and your Payment Account effectively, reliably and securely. However, we do not warrant, guarantee or represent that:

- (a) your Payment Account, the Site, the Online System, the App or the Services, or any information or other material accessible through our Site, will be uninterrupted, timely, reliable, secure, error-free or is free of any virus, worm, trojan horse or other harmful component;
- (b) any Payment Instruction or Order will be executed, accepted or recorded;

- (c) there will be operational stability, availability or continuation of your Payment Account, the Site, Online System, App or the Services;
- (d) your Payment Account, the Site, the Online System, App or our computer systems are safe from hacking; or
- (e) your use of your Payment Account, the Site, the Online System, the App and the provision of the Services will not infringe the rights of any third party.

25.2 In addition, your Payment Account, the Site, the Online System and/or the Services may be suspended or discontinued in our sole discretion, or may be inaccessible at times, due to:

- (a) down-time and/or maintenance of the Site, the Online System and the App, and any of their respective functions;
- (b) outages to the internet, networks or servers;
- (c) equipment failure, including the failure of third-party systems; or
- (d) a Force Majeure Event.

25.3 You acknowledge that we have not given any warranty that your Payment Account, the Site, the Online System, the App and/or the Services will be error free.

## **26 LIMITATION OF LIABILITY**

26.1 Any liability on our part in connection with these Terms is subject to the exclusions and limitations set out in these Terms.

26.2 You agree that we will only be liable to you for Loss or damage that is reasonably foreseeable and caused directly by our breach of these Terms, and that any liability (however arising) we may have to you is limited in accordance with these Terms.

26.3 Our entire liability to you for any Loss or otherwise arising from any failure by us to process a Transfer or Trade in accordance with these Terms is limited to the cost of reprocessing such Transfer or Trade less any applicable fees payable to us.

26.4 Each party's liability to the other party for any Loss or otherwise arising from any confidentiality or data breach or similar scenario shall not exceed AUD \$250,000.00 for any one event or any series of connected events. Notwithstanding any provision to the contrary within these Terms, your obligation to comply with your payment obligations shall not be subject to any limitation on liability. The liability cap stated herein shall not apply to your duty to fulfil any payment obligations under these Terms.

26.5 We are not liable for any damage or interruptions caused by any computer viruses, spyware, scareware, Trojan horses, worms or other malware that may affect your computer or other equipment, or any phishing, spoofing or other attack, to the extent that we implement reasonable preventative and incident response measures. We advise the regular use of a reputable and readily available virus screening and prevention software.

26.6 We are not liable for any breach of these Terms where the breach is due to a Force Majeure Event, including any abnormal and unforeseeable or regulatory circumstances beyond our control, or where the breach is due to legal requirements.

26.7 The limitation of liability in these Terms is subject to any obligations that we have under Applicable Law that we cannot exclude, including our obligation to exercise reasonable care and skill in our provision of the Site and the Services.

26.8 Neither party to these Terms, nor its Affiliates, shall be liable to the other party or any of its 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 these Terms (including any supply, failure to supply or delay in supplying any of the Service or Online System).

## **27 INDEMNITY**

27.1 You indemnify Ebury and our Affiliates and each of its and their Affiliates' directors, officers, shareholders, advisers, consultants, agents, employees and contractors (each an "Indemnitee") against all Losses which may be incurred or suffered by the Indemnitees directly or indirectly arising out of your failure to make a Payment when due. Losses may include any legal fees incurred in defending or responding to Losses. This indemnity will apply regardless of whether a Payment Instruction and/or Order was provided in error but will not apply to the extent that Losses were incurred or suffered by an Indemnitee due to the fraud or wilful default of Ebury.

27.2 We are not required to seek recovery or enforce any right against any other person or incur expense, loss, or damage or make any payment before enforcing a right of indemnity conferred by these Terms.

## **28 DUTY OF CONFIDENTIALITY**

28.1 Subject to Clauses 28.2 and 28.3, 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.

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

- (a) to its representative, officers, employees auditors, insurers or professional advisers to the extent necessary to enable the party to perform or enforce any of its duties or rights under these Terms;
- (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 to this Clause 28.2; 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.

28.3 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, and (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. We partner with certain third parties from time to time to refer clients to us in return for a revenue share. If you have been referred to us by a partner, you acknowledge and agree that we may disclose your Confidential Information to such partner for the purposes of providing a status of your activity levels and calculating their revenue share. Any disclosure is made on the basis that such partner is bound by confidentiality obligations.

28.4 If a party intends to disclose Confidential Information in a way allowed by Clause 28.2(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.

28.5 The duties in this Clause 28 shall continue to apply after these Terms ends without limit in time.

## **29 PRIVACY**

29.1 We will collect, use and store your personal information in accordance with our Privacy Notice (as varied from time to time).

29.2 Without limiting our Privacy Notice, you acknowledge that you expressly authorise us to disclose any of your personal information to any third party required for us to process and complete your instruction in relation a Payment Instruction and/or Order, to provide the Services and to operate the Site, Online System, the App and your Payment Account.

29.3 Relationship of the parties: The parties acknowledge that they will each act as a separate and independent controller of personal data, which they process in the course of fulfilling their obligations under these Terms. The data exporter (Customer) should be considered as the data Controller in relation to the data that is transferred to the data importer (Ebury) under the terms of these Terms. As soon as the data has been transferred to the data importer, the data importer shall become Controller in its own right in relation to its copy of such data. None of the provisions of this clause can be interpreted as indicating the intent of the parties to act as joint Controllers. The parties shall each comply with their respective obligations under the applicable data protection laws. If necessary the parties can agree to sign a data sharing agreement to further describe the processing of the personal data that will take place.

## **30 AMAZON TERMS**

30.1 This Clause 30 shall apply to the extent that you register your Payment Account to receive disbursements with Amazon.

30.2 You shall immediately inform Ebury if you have registered your Payment Account to receive disbursements with Amazon.

30.3 You shall immediately provide to Ebury details of all depositary bank accounts and/or Beneficiary Account (a "BBA") which you use for the purposes of exiting or settling funds from your Payment Account including:

- (a) bank code (if applicable);
- (b) secondary bank code (if applicable);

- (c) bank country;
- (d) bank account type;
- (e) bank name;
- (f) account number; and
- (g) confirmation that you have control of and access to each BBA.

30.4 Ebury may request further information from you from time to time as requested from us by Amazon and you shall cooperate fully with any such request.

30.5 Ebury will share certain information about you and your Payment Account with Amazon as further detailed in the Privacy Notice. We may continue to share your information with Amazon after the termination of the Agreement.

30.6 You authorise Ebury to debit or recall any amounts from your Payment Account that Amazon determines that you owe to Amazon (in its sole discretion) in accordance with your Amazon Agreement.

30.7 Ebury shall not be liable to you for:

- (a) any act or omission of Amazon including those resulting from your entry into these Terms; and
- (b) any amount that Ebury recalls or debits from your Payment Account when acting on the instructions of Amazon.

30.8 You agree to indemnify us for any Losses which arise due the use of your Payment Account with Amazon.

30.9 Any issues or disputes in connection with the use of your Payment Account with Amazon shall be resolved directly between you and Amazon.

## **31 EBURY APP**

31.1 To the extent the App is available in your location, you may only download and install the App for use on the device of an Authorised Party. We will treat any instructions or actions made on the App as an instruction or action made by your Authorised Party. We will not be responsible for any Losses by you incurred in connection with any misuse of the App in contravention of these Terms.

31.2 From time to time, we may update the App to improve the performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively, we may ask you to update the App (or your phone's operating system to the latest version available) for these reasons. If you choose not to install such updates or if you opt out of automatic updates, you may not be able to continue using the App.

31.3 Your use of the App is subject to any rules and policies applied by the relevant app store provider or operator.

## **32 PLATFORM**

32.1 You may, with our prior written consent (unless prohibited by Applicable Laws), use a Platform to access a Service.

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

- (a) the provider of the Platform (the "Platform Provider") may have, depending on the Service(s) enabled on the Platform, access to your Payment Account and all transactions, data and other information contained therein (which may include sensitive personal information). You expressly waive any confidentiality, data protection, banking secrecy or professional secrecy obligations with respect to any such access;
- (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) we are not a party to, and have no control over, any agreement or arrangement between you and the Platform Provider. You are solely responsible for complying with the terms and conditions of use, privacy notice and any other policies or rules of the 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 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.

### **33 CONTACTING US**

- 33.1 If you wish to contact us regarding your Payment Account or any of the Services, you can do so (unless we say otherwise) through an Ebury Representative or otherwise by contacting help@ebury.com.
- 33.2 If you have any feedback, questions, or complaints, contact us via the Site or by emailing complaints@ebury.com. We will try and resolve your complaint quickly, fairly and in a timely manner.
- 33.3 When you contact us please provide us with your name, address, and any other information we may need to identify you, your Payment Account, and the transaction on which you have feedback, questions, or complaints.
- 33.4 If the complaint cannot be resolved to your satisfaction within 45 days, you have the right to refer the matter to the Australian Financial Complaints Authority ("AFCA") of which we are a member (member number 79707). AFCA provides fair and independent financial services complaint resolution that is free to consumers. AFCA's contact details are:

Website: [www.afca.org.au](http://www.afca.org.au)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Telephone: 1800 931 678 (free call)

Mail: GPO Box 3, Melbourne, VIC, 3001.

### **34 VARIATION**

- 34.1 We may vary these Terms by providing 10 Business Days' advance notice at any time. You will be taken to have accepted any changes to the Terms by continuing to use the Site and Services 10 Business Days' after that notice is provided.
- 34.2 You acknowledge that we may vary these Terms immediately without advance notice if it is necessary to protect Ebury's business interests, including to protect the security or integrity of the Site, the Online System, your Payment Account, the App or the Services, to manage a technical or system fault or error or to comply with Applicable Law. We will provide you with notice of such immediate changes as soon as possible.

### **35 NOTICE**

- 35.1 Any notice or other information required by these Terms shall be given to the other, by delivering it by hand; sending it by pre-paid 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 35.1 shall be deemed to have been given 5 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).
- 35.2 Unless otherwise agreed by the parties in writing, service of any document for the purposes of any legal proceedings concerning or arising out of these Terms shall be effected by delivering it by hand or sending it by pre-paid registered post to the other party at its registered office or at its last known address, as applicable.
- 35.3 Any document which is to be delivered by hand in the manner provided for by Clause 35.2 shall be deemed to have been served on the earlier of (i) the date on which the documents are delivered to the relevant address; or (ii) if the documents cannot be left at the relevant address, five (5) Business Days after the date on which details of how the recipient may collect the documents are either left at the relevant address or otherwise provided to the recipient in writing. Any document which is to be served by pre-paid registered post in the manner provided for by Clause 35.2, shall be deemed to have been served not later than five (5) Business Days after the envelope containing the document was posted.

### **36 MISCELLANEOUS**

- 36.1 These Terms, together with the Site Terms and the Privacy Notice comprise the entire Terms between you and us in relation to your use of the Services, and supersede any prior Terms between you and us.
- 36.2 Nothing in these Terms or the Site is intended to be, or should be taken as, financial, legal, taxation or accounting advice. Customers should seek their own financial, legal, taxation or accounting advice as needed, and before using a Payment Account, the Site or receiving the Services.
- 36.3 Nothing published or communicated by way of the Site should be considered an offer or solicitation to buy or sell any service or product to any person in any jurisdiction where such offer or solicitation would be unlawful.
- 36.4 In the provision of Services under these Terms we may use the services of our Affiliates. You authorise us to use the services of such Affiliates in the provision of such services without your further consent and on such terms as we may determine.
- 36.5 We may assign all or part of these Terms to an Affiliate, on 5 Business Days' written notice to you.

36.6 You may not assign, charge, transfer or grant security over any of your rights or obligations under these Terms without our prior written and express consent.

36.7 These Terms are governed by the laws of New South Wales, Australia. You and we submit to the exclusive jurisdiction of the courts of New South Wales for resolution of disputes arising in relation to these Terms.

36.8 If any provision of these Terms becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the remainder of these terms will not be affected.

36.9 We reserve any rights not expressly granted in these Terms.