



## Ebury Markets Agreement (v.5, 07/2025)

### 1 Our Relationship With You

1.1 This agreement and any schedules, annex and/or appendix hereto (the **"Ebury Markets Agreement"**) (as such may be amended or supplemented from time to time) sets out the terms and conditions governing the relationship between you and Ebury Partners Markets Ltd (**"Ebury Markets"**, **"us"**, **"we"**, **"our"**) that apply to certain of our products and services. The Ebury Markets Agreement supersedes and replaces any master agreement entered into between Ebury Markets and you.

1.2 This Ebury Markets Agreement allows you (subject to the terms set out in this Ebury Markets Agreement), on an execution only basis, to:

- (a) enter into foreign exchange transactions involving products that constitute financial instruments within the scope of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, SI 2017/701, and/or the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 or 2001, SI 2017/488 or 2001/544, as applicable, (together, **"MiFID"**) including, Forward Trades, Options and NDFs) or such other products as the parties may agree from time to time (**"FX Trades"**);
- (b) make payments through Ebury Partners to a Beneficiary, in connection with the transactions referred to in Clause 1.2 (a) (Our Relationship With You); and
- (c) enter into any other investment services agreed between you and us from time to time and as provided herein and/or in any other applicable document,

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

1.3 By using our Ebury Markets Services, you confirm that you accept and agree to this Agreement in its most current form as posted on our website. If you do not agree, please do not use our Ebury Markets Services.

1.4 You hereby consent to the provision by Ebury Markets to you of the following information by means of a publication on a website or other means of communication (that Ebury Markets may determine in its sole discretion):

- (a) general information about Ebury Markets and its services;
- (b) information about the nature and risks of FX Trades;
- (c) information concerning the holding of Client Money;
- (d) information concerning costs and associated charges;
- (e) information about Ebury Markets' Best Execution Policy, the Risk Disclosure Notice, the EMIR Reporting Schedule, conflicts of interest policy and other policies of Ebury Markets; and
- (f) where permissible under Applicable Laws, any other information required to be provided to you under Applicable Laws or other regulation.

1.5 Any exclusion or limitation of any duties or liability that we owe to you under this Ebury Markets Agreement is subject to the provisions of any Applicable Laws that prohibit or restrict such exclusion or limitation. We do not exclude or limit any duties or liabilities that we owe to you in breach of any Applicable Laws.

1.6 This Ebury Markets Agreement and the documents referenced herein may be updated and/or amended by Ebury Markets from time to time and at any time. Subject to Clause 8 (Changes to this Ebury Markets Agreement) of this Ebury Markets Agreement, you understand, acknowledge and agree that you will be bound by the latest version of this Ebury Markets Agreement (and any documents referred to herein) as is published on our website from time to time (<http://www.ebury.com>). You may request a copy of the latest version of this Ebury Markets Agreement by contacting an Ebury Representative.

## 2 Definitions and interpretation

2.1 As used in this Ebury Markets Agreement:

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

- (a) you (i) are unable or admit your inability to pay your debts as they fall due; (ii) suspend making payments on any of your debts; or (iii) by reason of actual or anticipated financial difficulties, commence negotiations with one or more of your creditors with a view to rescheduling any of your indebtedness;
- (b) any corporate action, legal proceedings or other procedure or step is taken in relation to you, including: (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation; (ii) a composition, compromise, assignment or arrangement with any creditor; (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of you or any of your assets; (iv) enforcement of any security over any of your assets, or (v) any analogous procedure or step is taken in any jurisdiction;
- (c) you suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of your business; or
- (d) the insolvent party is or becomes a bank or investment firm and is or becomes subject to any resolution action, resolution power, bail-in, write-down, conversion, transfer, bridge institution, asset separation, public interest assessment, resolution plan, resolution fund, resolution authority or any analogous procedure or measure under any Applicable Laws.

**"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.

**"App"** means the Ebury Markets mobile application software, any data supplied with the software and the associated media, which may be made available to you (at Ebury Market'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 (including, but not limited to, Sanctions).

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

**"Base Currency"** means GBP.

**"Beneficiary"** means you or any third-party payee nominated by you.

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

**"Best Execution Policy"** has the meaning set out in Clause 28.1 (Best Execution) of this Ebury Markets Agreement.

**"Best Execution Policy Disclosure"** means the summary of the Best Execution Policy as set out in Schedule 2 hereto and which we may update from time to time in accordance with Clause 28 (Best Execution) of this Ebury Markets Agreement.

**"Business Day"** means a day on which banks are open for general banking business in London, England.

**"Client Categorisation"** means your classification as a Retail Client, Professional Client or Eligible Counterparty in accordance with FCA Rules.

**"Client Margin Balance"** means at any time, an amount in the Base Currency equal to the aggregate market value of all Eligible Collateral which has been transferred by us to you in accordance with Clause 17.2(c) (EMIR Variation Margining) and has not been returned to you in accordance with Clause 17.2(d) (EMIR Variation Margining).

**"Client Money"** means all client money held in accordance with the Client Money Rules.

**"Client Money Account"** means an account held with a banking institution for the purposes of holding Client Money in the name of Ebury Markets and which is designated as a client account.

**"Client Money Rules"** means the rules relating to client money set out in the FCA's Client Assets Sourcebook and any other FCA Rules that govern the holding of Client Money.

**"Client Money Shortfall"** the amount by which the cash recorded as on the Client Money Account is insufficient to satisfy your claim in respect of that cash, or not immediately available to satisfy such claim.

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

**"Confirmation"** means a document delivered by us to you under Clause 20 (Timely Confirmation) detailing the terms of a Covered Transaction.

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

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

**"Credit and Margin Addendum"** means an addendum to this Ebury Markets Agreement governing matters relating to credit and Ebury Markets Margin.

**"Custody Rules"** means the rules relating to the holding of customer assets in custody set out in the FCA's Client Assets Sourcebook and any other FCA Rules that govern the holding of customer assets.

**"Customer Liabilities"** means at any time and as determined by us, all present or future, actual or contingent, or prospective, obligations and liabilities owed by you to Ebury Markets and our Affiliates.

**"Data Delivery Date"** means each date agreed by us and you, provided that, in the absence of such agreement, the Data Delivery Date will be the Business Day immediately prior to the PR Deadline Date.

**"Data Reconciliation"** means, in respect of a party receiving Portfolio Data, a comparison of the Portfolio Data provided by the other party against such party's own books and records of all outstanding Relevant Transactions between the parties in order to identify promptly any misunderstandings of Key Terms.

**"Delivery Date"** means, in respect of a FX Trade, the Business Day on which we will transfer funds to the Beneficiary Account.

**"Dispute Resolution Risk Mitigation Techniques"** means the dispute resolution risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("**EMIR**") as supplemented by Article 15 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 and as such provisions have been incorporated into and form part of the domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (as amended from time to time) ("**UK EMIR**"), together with any further implementing or delegated regulations, technical standards, or official guidance related thereto, as amended from time to time.

**"Ebury Margin Balance"** means at any time, an amount in the Base Currency equal to the aggregate market value of all Eligible Collateral which has been transferred by you to us in accordance with Clause 17.2(a) (EMIR Variation Margining) and not returned by us to you in accordance with Clause 17.2(b) (EMIR Variation Margining).

**"Ebury Markets Effective Date"** has the meaning set out in Clause 3.1 (Your relationship with us) of this Ebury Markets Agreement.

**"Ebury Markets Initial Margin"** means the Eligible Collateral that has been transferred by you to us pursuant to Clause 15 (FX Trade) of this Ebury Markets Agreement on or about the date the relevant FX Trade is entered into.

**"Ebury Markets Margin"** means Ebury Markets Initial Margin and/or Ebury Markets Variation Margin as applicable.

**"Ebury Markets Margin Call"** means a request by us to you for Ebury Markets Margin.

**"Ebury Markets Variation Margin"** means the Eligible Collateral that has been transferred by you to us pursuant to Clause 15 (FX Trade) of this Ebury Markets Agreement after the date the relevant FX Trade is entered into.

**"Ebury Partners"** means Ebury Partners UK Limited.

**"Ebury Representative"** means any Ebury Markets representative who you may contact in respect of the Ebury Markets Services.

**"Eligible Collateral"** means:

- (a) cash in the Base Currency and such other currency that we may specify from time to time; and
- (b) such financial instruments as we may specify from time to time, in each case, for the purposes of satisfying obligations in respect of an Ebury Delivery Amount, Client Delivery Amount or Ebury Markets Margin Call.

**"Eligible Counterparty"** means an elective eligible counterparty or per se eligible counterparty as defined in the FCA Rules.

**"Eligible Currency"** means GBP.

**"EMIR"** means, as applicable:

- (a) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central;
- (b) counterparties and trade repositories, as amended from time to time; and/or Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it forms part of the current domestic law of the United Kingdom by virtue of the European (Withdrawal) Act 2018 and secondary legislation made under it, in each case, as amended, including by the European Union (Withdrawal Agreement) Act 2020; and/or
- (c) in relation to each of (a) and/or (b) any further implementing and/or delegated regulation, technical standards and/or official guidance related thereto, as amended from time to time.

**"EMIR Initial Margin"** means the amount of initial margin that either you or us would be required to post to the other to cover current and potential future exposures in respect of Covered Transactions in accordance with the EMIR Margin Regulation.

**"EMIR Margin Regulation"** means, as applicable:

- (a) Commission Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, as amended from time to time; and/or
- (b) Commission Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, as it forms part of the current domestic law of the United Kingdom by virtue of the European (Withdrawal) Act 2018 and secondary legislation made under it, in each case, as amended, including by the European Union (Withdrawal Agreement) Act 2020; and/or

- (c) in relation to each of (a) and/or (b) any further implementing and/or delegated regulation, technical standards and/or official guidance related thereto, as amended from time to time.

**"Equivalent Eligible Collateral"** means, in respect of any Ebury Return Amount or Client Return Amount, cash in the same currency and amount as the Eligible Collateral transferred as a Ebury Delivery Amount or Client Delivery Amount respectively.

**"FCA"** means the UK's Financial Conduct Authority.

**"FCA Handbook"** means the handbook of rules and guidance as published by the FCA, as amended from time to time.

**"FCA Rules"** means the rules and regulations imposed by the FCA and set out in the FCA Handbook.

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

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

**"Forward Trade"** means a foreign exchange transaction 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 exchange money with you at an agreed exchange rate and at an agreed time (and settled either on a physical or cash basis).

**"General Client Account"** means each payment account provided to you and operated pursuant to the terms of this Agreement.

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

**"Investment Fund"** means any legal entity whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.

**"Investment Management Agreement"** means the agreement between you and your Investment Manager under which the Investment Manager agrees to provide you with certain investment advisory and management services.

**"Investment Manager"** means the investment manager appointed by, or on behalf of, you who is responsible for providing you with certain investment advisory and management services.

**"Key Terms"** means, with respect to a Relevant Transaction and a party, the valuation of such Relevant Transaction and such other details the relevant party deems relevant from time to time which may include the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the contract and currency of the Relevant Transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates of the Relevant Transaction. For the avoidance of doubt, Key Terms does not include details of the calculations or methodologies underlying any term.

**"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.

**"MiFID II"** means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, as amended, and any delegated legislation or regulations issued under that Directive and MiFIR, together with all relevant UK domestic legislation and regulatory provisions implementing, supplementing, or amending MiFID II following the United Kingdom's withdrawal from the European Union. This includes, without limitation, the Financial Services and

Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017, the Financial Services and Markets Act 2000 (Qualifying EU Provisions) (Amendment), the Data Reporting Services Regulations 2017, and the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, as each may be amended, supplemented, or replaced from time to time.

**"MiFID Org Regulation"** means Regulation (EU) No 2017/565 of 25 April 2016 supplementing MiFID II, as amended, and as it forms part of the domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018, the European Union (Withdrawal Agreement) Act 2020, and any secondary or implementing legislation made under them, including, without limitation, the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, together with any further implementing and/or delegated regulations, technical standards, or official guidance related thereto, as amended from time to time.

**"MiFIR"** means, as applicable:

- (a) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 and may include where relevant any delegated legislation or regulations issued under thereunder; and/or
- (b) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as it forms part of the current domestic law of the United Kingdom by virtue of the European (Withdrawal) Act 2018 and secondary legislation made under it, in each case, as amended, including by the European Union (Withdrawal Agreement) Act 2020; and/or
- (c) in relation to each of (a) and/or (b) any further implementing and/or delegated regulation, technical standards and/or official guidance related thereto, as amended from time to time.

**"Minimum Transfer Amount"** means EUR 500,000.

**"MTM Amount"** means in relation to a Covered Transaction, the total cost, loss or, as the case may be gain (including any loss of bargain, cost of funding or, without duplication, cost, loss or gain as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position) as a result of the closing out, unwinding, cancelling, termination or otherwise of each Covered Transaction (having due regard to, if appropriate, in the sole and absolute discretion of Ebury Markets, such market quotations published on, or official settlement prices set by, a relevant exchange or clearing house as may be available on, or immediately preceding, the date of calculation).

**"NDF"** means a cash-settled foreign exchange contract where the profit or loss at the settlement date is calculated by taking the difference between the agreed upon exchange rate and the spot rate provided by an agreed source on an agreed date, for an agreed upon notional amount of funds.

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

**"Online System"** means the electronic platform and interface (hosted by us) through which you can access most (but not all) of the Ebury Markets Services.

**"Option"** means a contract giving the purchaser or seller the right or the obligation (as the case may be and whether contingent or otherwise) to purchase or sell a specific amount of currency at a specific price on (a) a specific date or (b) within a specified range of dates in the future as set out in the relevant Transaction Receipt. The option may be subject to certain conditions or events that may affect its exercise, including but not limited to: knock-out, knock-in, barrier, bonus, extra and target amount features, if specified in the Transaction Receipt. The option may also be part of a combination or a structured product that involves other options or derivatives.

**"Order"** means a request by you to us to enter into an FX Trade.

**"Over the Counter" or "OTC"** means not traded on a Trading Venue.

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

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



**"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.

**"Portfolio Data"** means, in respect of a party providing or required to provide such data, the Key Terms in relation to all outstanding Relevant Transactions between the parties in a form and standard that is capable of being reconciled, with a scope and level of detail that would be reasonable to the party sending the Portfolio Data if it were the receiving party. Unless otherwise agreed between the parties, the information comprising the Portfolio Data to be provided by a party on a Data Delivery Date will be prepared as at the close of business on the immediately preceding Business Day of, and as specified in writing by, the party providing the Portfolio Data.

**"Portfolio Reconciliation Requirements"** means the requirements one or both parties are subject to in accordance with the Portfolio Reconciliation Risk Mitigation Techniques.

**"Portfolio Reconciliation Risk Mitigation Techniques"** means the portfolio reconciliation risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of EMIR as supplemented by Article 13 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 and published on 23 February 2013 in the Official Journal of the European Union.

**"PR Deadline Date"** means the last Business Day of a PR Period.

**"PR Period"** means each period from (but excluding) a PR Deadline Date to (and including):

- (a) if the Portfolio Reconciliation Requirements require daily portfolio reconciliation, the immediately following Business Day;
- (b) if the Portfolio Reconciliation Requirements require weekly portfolio reconciliations, the day which occurs five (5) Business Days following such PR Deadline Date;
- (c) if the Portfolio Reconciliation Requirements require quarterly portfolio reconciliations, the day which occurs sixty (60) Business Days following such PR Deadline Date; and
- (d) if the Portfolio Reconciliation Requirements require annual portfolio reconciliation, the day which occurs two hundred and forty (240) Business Days following such PR Deadline Date.

**"Professional Client"** means a professional client or an elective professional client as defined in the FCA Rules.

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

**"Regulated Activities Order"** means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) (SI 2001, No. 544).

**"Relevant Transaction"** means any transaction which is subject to the Portfolio Reconciliation Risk Mitigation Techniques and/or the Dispute Resolution Risk Mitigation Techniques.

**"Resolution Amount"** shall have the meaning given in Clause 26.3 (Your Money) of this Ebury Markets Agreement.

**"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 of any country or territory subject to comprehensive territorial Sanctions (at present, applicable for 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, applicable to 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.

"**Resolution Excess Amount**" means an amount in the Base Currency equal to the difference between:

- (a) the Resolution Amount; and
- (b) the cash value of the current outstanding Client Money Shortfall.

"**Retail Client**" means a client who is not an Eligible Counterparty or a Professional Client.

"**Relationship Agreement**" means, if applicable, the agreement entered into between you and Ebury Partners (as may be amended and/or supplemented from time to time).

"**Risk Mitigation Techniques**" means the risk mitigation techniques for OTC derivative transactions set out in Article 11(1) (b) of UK EMIR as supplemented by Article 13 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 and published on 23 February 2013 in the Official Journal of the European Union as it forms part of 'retained EU law' as defined in the European Union (Withdrawal) Act 2018 (as amended from time to time).

"**Risk Disclosure Notice**" means the risk disclosure notice set out in Schedule 1 hereto (as may be updated from time to time).

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

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

"**Termination Date**" means the date on which this Ebury Markets Agreement is terminated in accordance with Clause 9 (Termination).

"**Trading Venue**" has the meaning given in MiFID II and/or MiFIR (as applicable), being, in summary, a Regulated Market, Multilateral Trading Facility or an Organised Trading Facility as defined in MiFID II and/or MiFIR (as applicable).

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

"**UK EMIR**" means EMIR as it forms of 'retained EU law' as defined in the European Union (Withdrawal) Act 2018 (as amended from time to time).

## 2.2 In this Ebury Markets Agreement:

- (a) when we refer to a person, this could mean any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity;
- (b) any references to the singular include the plural and vice versa;
- (c) any references to a time of day are to United Kingdom time;
- (d) any words following the words include, includes, including, in particular or any similar words or expressions are for illustration or emphasis only and are not intended to limit the meaning of the words preceding them;
- (e) any references to a party or to the parties means you and/or us as the context requires; and



- (f) headings and Clause numbering herein are for guidance only and shall not affect the interpretation of the Agreement.

### 3 Your relationship with us

- 3.1 This Ebury Markets Agreement shall take effect between you and Ebury Markets on the earlier to occur of: (a) signing and returning to Ebury Markets a copy of this Ebury Markets Agreement (by email or post); or (b) you registering via our Online System and clicking to accept/sign the Ebury Markets Agreement, each the **"Ebury Markets Effective Date"**.
- 3.2 This Ebury Markets Agreement shall take effect on the Ebury Markets Effective Date and shall continue in full force and effect until the Ebury Markets Agreement is terminated by you or us in accordance with its terms.
- 3.3 The functionalities of the General Client Account will only be made available once the registration steps, as further described under Clause 3.1, or any other registration process that would be deemed necessary by us have been fully fulfilled.
- 3.4 We have categorised you as a **"Professional Client"** or **"Eligible Counterparty"** under the FCA Rules. You have the right to request a different Client Categorisation either generally, or in respect of a particular service, type of transaction or product. If we receive such a request, we will inform you of whether or not we accept it and, if we do accept it, of any such limitations that such re-categorisation will entail. We may require additional information from you so that we can consider any such request and satisfy ourselves that a different Client Categorisation or the provision of a particular service, transaction or product is suitable for you. However, until we receive such a request and inform you of our acceptance of it, we shall deal with you on the basis of the original Client Categorisation.
- 3.5 You agree and acknowledge that you are responsible for keeping us informed about any change that could affect your Client Categorisation. Should your circumstances change in a way that means you will no longer be capable of being categorised as a Professional Client or Eligible Counterparty, you understand and agree that we may decide not to continue to provide the Ebury Markets Services to you under this Ebury Markets Agreement.
- 3.6 Your Client Categorisation will determine the level of protection afforded to you under Applicable Laws. We will notify you in writing about your entitlement to certain regulatory protection(s) prior to agreeing to a re-categorisation request.
- 3.7 We may review your Client Categorisation at any time, in accordance with Applicable Laws. We may request additional information from you as part of any such review. You will be notified in writing in the event of any change which may affect you.
- 3.8 You must tell us immediately if any of the information you have previously provided to us changes, including:
- (a) a change of name, registered address, directors, country of incorporation, Authorised Parties, shareholders or beneficial owners;
  - (b) a material change to your business activities or operations; or
  - (c) a material change to your Financial Position.
- 3.9 You understand and agree that if any time prior to the occurrence of a Termination Date, we consider (in our sole and absolute discretion) that one or more of the events set out in Clause 9.2 (Termination) below has occurred and is continuing in respect of you, we may suspend:
- (a) the provision of all or any Ebury Markets Services to you under this Ebury Markets Agreement; and/or
  - (b) the payment of any amount which has become due and payable from us to you.

### 4 Your representations, warranties and undertakings

- 4.1 You represent, warrant and undertake to us that as at the Ebury Markets Effective Date and on an ongoing basis:
- (a) you will at all times comply with all Applicable Laws, any provision of your constitutional documents and any order or judgment of any court or other agency applicable to you;

- (b) neither you nor any of your parent, subsidiary, ultimate beneficial owner (holding at least 25% of interest), or Affiliate, as relevant, or any agent or service provider (including a financing or processing bank), in each case deployed or used in the performance of this Ebury Markets Agreement:
- (i) are a Restricted Party;
  - (ii) in the past five years, have breached any Sanctions;
  - (iii) will transfer or receive any funds directly or indirectly to or from a Restricted Party, using a third party based outside of a Sanctioned Country which is or is connected to a Restricted Party, or otherwise in breach of Sanctions applicable to you or us;
  - (iv) will at all times in connection with the activities envisaged under this Ebury Markets Agreement, comply with Sanctions and you will not use the Services and/or the General Client Account for any activity which may breach Sanctions or expose us to breaching or other adverse or enforcement action under Sanctions, including without limiting the foregoing any activity or transaction with a Sanctioned Country or a Restricted Party;
  - (v) 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;
  - (vi) have had any transactions or services declined by any bank or other service provider in the last five years on the grounds that to perform such transaction or provide such services would breach or create exposure to enforcement or other adverse action under Sanctions; and
  - (vii) to the extent you enter into any NDF or Option with us, you are not a financial counterparty or a non financial counterparty above the clearing threshold as defined in UK EMIR.
- (c) you will immediately notify Ebury in the event that any of the representations and warranties in Clause 4.1(b) (Your representations, warranties and undertakings) are or become incorrect providing such information as we may reasonably request to understand the nature of implications of such matters;
- (d) you will not use the Ebury Markets Services for the purposes of money laundering, tax evasion, terrorist financing or any other illegal activities and will immediately notify Ebury Markets of any breach of the above;
- (e) you and each Authorised Party have and will maintain all required rights, powers, authority, permits, licences, consents, permissions and authorisations to enter into this Ebury Markets Agreement, make use of the Ebury Markets Services and to perform your obligations under this Ebury Markets Agreement, you shall be liable for any instructions and actions carried out by an Authorised Party pursuant to this Agreement (acting within the limits of their authority as you have notified to us in accordance with the Application Form or this Agreement) 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;
- (f) you shall provide us with such accurately completed forms, documentation or other information as we may require from time to time to (i) fulfil or assist us with fulfilling our obligations under Applicable Law; or (ii) determine whether we have any tax related obligations under Applicable Laws, you shall be liable for any instructions and actions carried out by an Authorised Party pursuant to this Ebury Markets Agreement (acting within the limits of their authority as you have notified to us in accordance with this Ebury Markets Agreement) 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 not restricted by your constitutional documents or otherwise from using an electronic signature to confirm your acceptance to this Ebury Markets Agreement and/or any terms for additional accounts, products and services;
- (h) that any FX Trade entered into by you is only for non-speculative reasons;
- (i) if you are a partnership, each partner shall be jointly and severally liable under this Ebury Markets Agreement;

- (j) you have not been coerced, or otherwise persuaded to enter into this Ebury Markets Agreement, nor have you entered into this Ebury Markets Agreement based on any warranty or representation other than what is included herein;
- (k) all of the information provided to us from time to time is as of the date of the information was provided, true, accurate and complete in every material respects;
- (l) you will (i) provide to us on request such information as we may reasonably require in order to comply with our obligations under the FCA Rules and Applicable Laws, (ii) not omit or withhold any information which would render the information so supplied to be false or inaccurate in any material respect and (iii) keep any information so provided updated during the term of this Ebury Markets Agreement;
- (m) you shall be liable as a principal in respect of all FX Trades (and other transactions) entered into with Ebury Markets;
- (n) you have the necessary experience and knowledge to understand the risks involved in relation to any FX Trade (and any other transaction) entered into hereunder; and
- (o) you have read and understood the Risk Disclosure Notice.

4.2 To the extent that you are an Investment Fund, in addition to the representations, warranties and undertakings you make to us under Clause 4.1, you separately represent warrant and undertake to us that as at the Ebury Markets Effective Date and on an ongoing basis:

- (a) Investment Manager is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (b) Investment Manager is the true and lawful agent of you and Investment Manager is authorized to sign and perform all other documents, instruments, assurances, acts, matters and things which are necessary or desirable in relation to, and on behalf of, you and any such document, confirmation or instrument will constitute legal, valid and binding obligations of you, enforceable against you in accordance with its terms;
- (c) we shall be under no duty to determine whether the giving of any notice or instruction, or the entry into any of the transactions (including without limitation its nature and its amount) by Investment Manager on behalf of you, is within the authority of the relevant personnel of Investment Manager, provided that such instruction or notice is given or is reasonably believed to have been given by any authorised person;
- (d) execution of documents and performance of obligations under the Ebury Markets Agreement by Investment Manager on your behalf do not violate or conflict with any law applicable to Investment Manager, as applicable, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (e) all governmental and other consents that are required to have been obtained by Investment Manager with respect to acting in the capacity as investment manager of you have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- (f) there is no pending or, to its knowledge, threatened against Investment Manager, any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against you of any transactions under the Ebury Markets Agreement or the ability of Investment Manager on your behalf, to perform its obligations under the Ebury Markets Agreement and any associated transactions; and
- (g) the assets that are used in connection with the execution, delivery and performance of the Ebury Markets Agreement, FX Trades, Ebury Markets Services or any other agreement, service or transaction contemplated hereunder are not the assets of an employee benefit or other plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), a plan described in Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), an entity whose underlying assets include "plan assets" by reason of

ERISA section 3(42) and Department of Labor (DOL) regulation section 2510.3-101, or a governmental plan that is subject to any federal, state, or local law that is substantially similar to the provisions of Section 406 of ERISA or Section 4975 of the Code.

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

## 5 Liability

- 5.1 You understand and agree that we shall not be liable for, and provide no representation or warranty (to you or any other person) in connection with any Ebury Markets Services provided to you hereunder. In the absence of fraud, no oral or written information or advice given by us or our Affiliates (or our, or our Affiliates', respective directors, officers, employees, agents, representatives and subcontractors) shall create any representation or warranty or give rise to any other liability other than as expressly set out in this Ebury Markets Agreement.
- 5.2 Save as expressly provided in this Ebury Markets Agreement, the Online System, the App and any manuals or other materials provided to you are provided on an "as is" and "as available" basis and you agree that the express obligations and warranties made by us in this Ebury Markets Agreement are in lieu of and to the exclusion of any warranty, condition or representation of any kind, express or implied, statutory or otherwise, relating to the Online System, the App or any manuals or other materials provided to you under or in connection with this Ebury Markets Agreement; including, without limitation, as to reliability, availability, accuracy, completeness, performance, functionality, conformance with any description, satisfactory quality, fitness for purpose of freedom from errors or defects.
- 5.3 You agree that the Online System and App is and shall remain the exclusive property of Ebury Markets and/or Ebury Partners and you are granted a non-exclusive, non-transferable and non-sub-licensable licence to access the Online System and/or App solely in connection with this Ebury Markets Agreement. All intellectual property rights in the Online System and App remain vested with Ebury Markets and/or Ebury Partners or the third parties that licenced them to Ebury Markets and/or Ebury Partners. You are not permitted to recreate, copy, modify, reproduce or distribute the Online System and App or create derivative works from it or permit its reverse engineering, disassembly, decompilation or otherwise attempt to ascertain the source code or internal workings of the Online System and App.
- 5.4 You acknowledge and agree that data transmitted via an Online System or App and/or electronically may not be encrypted and that it is possible, even if encrypted, that such data could be accessed or tampered with by unauthorised parties, may not arrive in the form transmitted (or at all) and/or may become corrupted and/or may contain harmful code; and you agree to assume all risk of Loss arising out of or in connection therewith.
- 5.5 Without prejudice to Clause 5.6 (Liability) below, neither Ebury Markets nor any of our Affiliates shall be liable to you or any of your Affiliates for any indirect, special, consequential or incidental loss of profits, business, contracts, goodwill, reputation, opportunity, revenue production, or anticipated savings howsoever caused, arising out of, or in connection with, any supply, failure to supply or delay in supplying any of the Ebury Markets Services, Online System, App or otherwise in connection with this Ebury Markets Agreement.
- 5.6 We shall not be liable to you nor any of your Affiliates for any Losses (including, without limitation, loss of business profits, revenue or of data) incurred:
- (a) if we are prevented by Applicable Law from fulfilling any of our obligations under this Ebury Markets Agreement;
  - (b) arising out of or in connection with a Force Majeure Event;
  - (b) arising from your failure to comply with the terms of this Ebury Markets Agreement; or
  - (c) arising out of or in connection with any Ebury Markets Service provided to you (including, without limitation, an FX Trade or Order) where we have acted on instructions which we reasonably believed were provided by you or an Authorised Party, unless such Loss arises as a result of our negligence, fraud or wilful default.
- 5.7 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 FX Trade is made on your own judgment. It is your responsibility to familiarise yourself with foreign exchange products and services.

- 5.8 We shall not provide you any Service and/or shall not provide you with access to the General Client Account to the extent that to do so would expose us or any of our Affiliates, agents or service providers (including correspondent banks that may be US persons) to breaching any Sanctions or any other enforcement or adverse action under Sanctions.
- 6 **Indemnities**
- 6.1 You undertake to indemnify and hold harmless Ebury Markets and our Affiliates (and our and their respective directors, officers, employees, agents, representatives and subcontractors) (each an **"Indemnified Person"** and together the **"Indemnified Persons"**) from and against any and all Losses suffered or incurred by any of them in the course of or as a result of anything done or omitted to be done for the purposes of carrying out any of the Ebury Markets Services for you or otherwise acting upon your instructions in accordance with this Ebury Markets Agreement, or otherwise caused by a failure by you to comply with your obligations or representations and warranties hereunder, save to the extent that such Losses flow directly from the wilful default, fraud or negligence on the part of the Indemnified Person concerned.
- 6.2 The benefit of Clause 6.1 (Indemnities) shall apply severally to each Indemnified Person and, without prejudice to Clause 32.2 (Other Important Terms) shall also be enforceable by us on behalf of ourselves and on behalf of any other Indemnified Person. You waive any right you may have of first requiring us (or any other Indemnified Person) to proceed against or enforce any other rights or security or claim or payment from any person before claiming from you under this Clause 6 (Indemnities). This waiver applies irrespective of any Applicable Laws or any provision of this Ebury Markets Agreement to the contrary. Further, you expressly confirm that you intend that this indemnity shall extend from time to time to any and all variations to this Ebury Markets Agreement.
- 6.3 For the avoidance of doubt, if a claim is brought against the Indemnified Persons by a Beneficiary or any other third party, we shall be entitled to settle or otherwise deal with the claim in our sole discretion. Further, if any discharge, release or arrangement (whether in respect of your obligations or any security for those obligations or otherwise) is made by us in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then your liability under this Clause 6 (Indemnities) will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 7 **Combination and consolidation of accounts and set-off rights**
- 7.1 You acknowledge and agree that, subject to any Applicable 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 General Client Account (if applicable) and Client Money Account against any Payments, Ebury Markets Margin, claims, costs, charges, penalties, expenses or other liabilities which you owe to us in connection with any Ebury Markets Services.
- 7.2 At any time and from time to time, we may, without prior notice, set off any amount owing by you to us (or to any of our Affiliates) against any other amount owing by us to you, including amounts transferred to us as Ebury Markets Margin. In the event that any Ebury Markets Margin is used to set-off any amounts owed by you, you shall immediately restore such Ebury Markets Margin, as requested by us; failing which we may terminate any or all unfulfilled Orders or Close Out any FX Trade or pending FX Trade, and you shall be responsible for any Losses suffered by us as a result of such termination. You acknowledge and consent to us netting Orders for the purpose of satisfying any Ebury Markets Margin Call and/ or satisfying any shortfall incurred by us on the (i) liquidation, termination or cancellation of any or all Orders and/or (ii) Close Out of any FX Trades or pending FX Trades. You acknowledge that we are not obliged to net Orders but may do so at our sole discretion.
- 7.3 All amounts due to us by you under this Ebury Markets Agreement shall be paid by you to us in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Applicable Laws).
- 7.4 Any exercise by us of our rights under this Clause 7 (Combination and Consolidation of Accounts and Set-Off Rights) shall be without prejudice to, and shall not limit or affect, any other rights or remedies available to us under this Ebury Markets Agreement or otherwise.
- 7.5 Without prejudice to any other rights and remedies available to us under Applicable Laws, we may charge interest on any overdue sum owed to us under this Ebury Markets Agreement for the period from (and including) the original due date to (but excluding) the actual date of payment, at the Interest Rate.

7.6 You understand and agree that we may from time to time prevent you from withdrawing funds from any Client Money Account and/or General Client Account (if applicable) where any sums (including any Payment, Ebury Markets Margin, Ebury Delivery Amount and/or Client Return Amount) are due but unpaid by you to us under the terms of this Ebury Markets Agreement.

## 8 Changes to this ebury markets agreement

8.1 This Ebury Markets Agreement and the documents referenced herein may be updated and/or amended by us at any time and from time to time for any reason, including, without limitation:

- (a) to reflect a change in Applicable Laws or market practice;
- (b) if we determine in our sole discretion that the change is for the benefit of customers;
- (c) where new Ebury Markets Services are provided by us to you;
- (d) to reflect a change in the way we charge for Ebury Markets Services; or
- (e) to respond to any other change that affects us.

8.2 Any updates and/or amendments we make to this Ebury Markets Agreement and the documents referenced herein will be communicated to you in writing (including your Authorised Contacts) (by email or displaying a notice either on our website ([www.ebury.com](http://www.ebury.com)), Online System, App and/or any other Platform, at least two (2) weeks before such updates and/or amendments are due to take effect; unless such updates and/or amendments are in our reasonable determination:

- (a) required by Applicable Law;
- (b) to your advantage; or
- (c) represents a change to an external reference exchange rate to which your exchange rate is linked, and, in such circumstances, we may make the necessary updates and/or amendments immediately and inform you of the same subsequent to the updates and/or amendments taking effect.

8.3 If you disagree with the updates and/or amendments, you have the right to terminate this Ebury Markets Agreement by notice to us before the updates and/or amendments are due to take effect. If you fail to notify us of your termination before such time, you will be deemed to have accepted the updates and/or amendments.

## 9 Termination

9.1 Subject to Clauses 9.2, 9.3 and 9.5 (Termination) either party may terminate this Ebury Markets Agreement at any time without reason by giving at least five (5) Business Days' prior written notice to the other.

9.2 We may terminate this Ebury Markets Agreement on any day with immediate effect, without giving notice to you if we consider (in our sole and absolute discretion):

- (a) that you become a Restricted Party;
- (b) that you are using our Ebury Markets Services fraudulently, inappropriately or for illegal purposes;
- (c) that we must do so to fulfil our obligations pursuant to any Applicable Laws or to avoid any enforcement action or other adverse measures thereunder;
- (d) that you have breached Applicable Laws or have caused Ebury or its Affiliates or our agents or service providers (including correspondent banks) to breach Applicable Laws (including, without limitation, Applicable Laws relating to fraud, anti-money laundering, 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;



- (e) that you have breached the terms of this Ebury Markets Agreement (including, but not limited to, any (i) representation, warranty or undertaking or (ii) obligation) or any other agreement with us or our Affiliates, including any letter of undertaking as to Sanctions compliance entered into by you and us in connection with this Ebury Markets Agreement;
- (f) that you have failed to make a Payment when due;
- (g) we have any material concerns over the adequacy of the information you have provided to us;
- (h) that you are subject to an Act of Insolvency;
- (i) that an applicable regulatory or law enforcement authority has initiated, or has announced that it will initiate, a regulatory or enforcement action, or investigation against you;
- (j) that your conduct is disreputable or is capable of damaging our reputation (or the reputation of our Affiliates) by association;
- (k) that there is a change in your circumstances (including, without limitation, a deterioration in or change to your Financial Position) or in the nature of your business which we consider materially adverse to us being able to continue providing Ebury Markets Services to you hereunder;
- (l) that a Force Majeure Event has occurred and as a consequence of such we are prevented from, or it becomes impossible or impracticable for us to provide Ebury Markets Services to you;
- (m) that you are no longer suitable to receive the Ebury Markets Services;
- (n) that there has been the occurrence of a default, event of default, termination or other similar condition or event in respect of you or any of your Affiliates under one or more agreements with us or any of our Affiliates (a “**Cross Default**”);
- (o) that our relationship with you presents a business risk to us or any of our Affiliates;
- (p) we determine in our sole discretion that, with respect to the outstanding Covered Transactions the Initial Margin Threshold has been exceeded and you or us would be required to transfer to the other an amount of EMIR Initial Margin; or
- (q) we determine in our sole discretion that you or us are required to transfer Eligible Collateral with a market value at least equal to the Ebury Delivery Amount or Client Delivery Amount, as applicable, in accordance with Clause 17 (EMIR Variation Margining) of this Ebury Markets Agreement.

9.3 To the extent you are an Investment Fund:

- (a) In addition to the termination rights outlined in Clause 9.2, we may terminate this Ebury Markets Agreement on any day with immediate effect, without giving notice to you if we consider (in our sole and absolute discretion):
  - (i) that your Investment Manager is subject to an Act of Insolvency;
  - (ii) that an applicable regulatory or law enforcement authority has initiated, or has announced that it will initiate, a regulatory or enforcement action, or investigation against your Investment Manager;
  - (iii) that the conduct of Investment Manager is disreputable or is capable of damaging our reputation (or the reputation of our Affiliates) by association;
  - (iv) that your Investment Manager ceases to be your Investment Manager;
  - (v) that you have changed or modified your investment policies or guidelines, or the nature of your business and we reasonably determine that such action has had, or will have, an adverse effect on you, your creditworthiness, or the ability of you to perform your obligations under any agreement in place between you and us or our Affiliates; and

- (vi) that Investment Manager's license and/or authority to carry out the functions of investment management and/or investment advice is suspended, revoked, or cancelled.
- 9.4 You will notify us immediately upon becoming aware of the occurrence of any of the events referred to in Clause 9.2 and 9.3 (Termination) above.
- 9.5 We may terminate this Ebury Markets Agreement at any time without reason by giving no less than 60 days' prior written notice to you.
- 10 **Consequences of termination**
- 10.1 On or as soon as reasonably possible following a Termination Date all FX Trades shall be Closed Out, pending Orders shall be cancelled and we shall determine (in our sole discretion):
- (a) the amount recorded as being held in your Client Money Account 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 FX Trade that is subject to the Ebury Markets Agreement);
  - (c) the market value of all Ebury Markets Margin being held by us as at the Termination Date;
  - (d) the market value of any Ebury Margin Balance or Client Margin Balance as at the Termination Date; and
  - (e) the total balance of any amounts, other Losses, Payments, fees and/or commissions payable by you as a result of the provision of Ebury Markets Services by us pursuant to this Ebury Markets Agreement or otherwise and which remain unpaid.
- 10.2 Based on the sums so established pursuant to Clause 10.1 (Consequences of Termination), we shall determine the balance due from each party to the other (each a "**Due Balance**"). Following such determination and subject to Applicable Laws, a party's Due Balance shall be set-off against the other party's Due Balance, and the net balance of such set-off shall be calculated; with the resulting balance being the "**Termination Amount**". Subject to Applicable Laws, if the Due Balance due to us by you is greater than the Due balance due to you, the Termination Amount shall be payable by you to us; and if the Due Balance due to you by us is greater than the Due balance due to us, the Termination Amount shall be payable by us to you. For the purposes of this calculation, all sums not denominated in the Base Currency can be converted into the Base Currency at the spot rate prevailing at such dates and times determined by us, acting reasonably.
- 10.3 The parties understand and agree that following a Termination Date:
- (a) we will not be required to accept any further instructions or Orders from you;
  - (b) we will not be required to:
    - (i) take into account for the purposes of the determination of the Termination Amount; or
    - (ii) pay or otherwise account to you, any profit made by us in respect of and following a Close Out; and
  - (c) in the event that all or any part of the Termination Amount owed by you to us is not paid when due, such unpaid amount will accrue interest for the period from (and including) the original due date to (but excluding) the actual date of payment, at the Interest Rate.
- 10.4 Subject to Applicable Laws, if the Termination Amount is payable by:
- (a) you to us, such amount shall be immediately due and payable to our Nominated Account; or
  - (b) us to you, such amount shall be immediately due and payable to your nominated bank account (but in all cases, subject to our rights to set-off such Termination Amount in accordance with the terms of this Ebury Markets Agreement).
- 10.5 Upon or following the occurrence of a Termination Date and subject to Applicable Law, we shall have the right without prior notice to you or any other person to:

- (a) set-off any Termination Amount owed by us to you against any obligation owed by you (or any of your Affiliates) to us (or any of our Affiliates), whether or not arising under this Ebury Markets Agreement, the Relationship Agreement, matured or contingent and irrespective of the currency, place of payment or booking office of the obligation, or
- (b) set-off any Termination Amount owed by you to us against any obligation owed by us (or any of our Affiliates) to you (or any of your Affiliates), whether or not arising under this Ebury Markets Agreement, the Relationship Agreement, matured or contingent and irrespective of the currency, place of payment or booking office of the obligation) (the "Other Amounts"),
- (c) To the extent that any Other Amounts are so set-off, those Other Amounts will be discharged promptly and in all respects. For the purpose of cross-currency set-off, we may convert either obligation at the applicable market exchange rate selected by us on the relevant date. If an amount of an obligation is unascertained, we may estimate that amount and set off in respect of the estimate, subject to the relevant party accounting to the other when the amount of the obligation is ascertained. Nothing in this Clause 10.5 (Consequences of Termination) will be effective to create a charge or other security interest. This Clause 10.5 (Consequences of Termination) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirements to which a party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

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

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

## 11 Contacting us/Complaints

11.1 If you wish to contact us regarding any of the Ebury Markets Services you can do so (unless we say otherwise) through an Ebury Representative.

11.2 If you are unhappy with any of our Ebury Markets Services, you can contact an Ebury Representative by using any of the following details: Post: Compliance Department Ebury Partners Markets Ltd

Ebury Partners UK Limited

100 Victoria Street

London

SW1E 5JL

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

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

11.4 If your complaint remains unresolved, you may be entitled to refer it to the Financial Ombudsman Service ("FOS"). Further information, contact details and the eligibility requirements can be located on [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk) or contact the FOS: Telephone: 0800 023 4567 or 0300 123 9123

Post: Financial Ombudsman Service

Exchange Tower

London

E14 9SR

Email: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

In certain circumstances you may also be able to submit your complaint to the FCA who will use your complaint to inform their regulatory activities. For further details please contact the FCA on 0800 111 6768 (freephone).

- 11.5 Ebury Markets Services are not covered by the UK Financial Services Compensation Scheme (FSCS). In the unlikely event that we are unable to meet our obligations, you will not be entitled to compensation from the FSCS. You can access further up-to-date information regarding this scheme on request to us or from the FSCS website ([www.fscs.org.uk](http://www.fscs.org.uk)).

## 12 How to place and confirm an FX Trade

- 12.1 You can place an Order online (to the extent the relevant Service(s) are enabled), by telephone or by email:
- (a) Online – You must log on to the Online System or other digital platform (using your password and log-in details) and follow the instructions to submit your Order.
  - (b) Telephone – You must call an Ebury Representative and specify your Order, together with such other information as we may reasonably request.
  - (c) Email – You must email us and specify your Order.
- 12.2 You understand and agree that the decision as to whether or not we decide to enter into an FX Trade with you following the receipt of your Order is subject to our full discretion.
- 12.3 Once we have received your Order, we will confirm:
- (a) the amount of the Sale Currency and/or the Purchase Currency;
  - (b) the foreign exchange rate and/or spread which we intend to apply;
  - (c) any Payment to be made in respect of such Order;
  - (d) any Ebury Markets Margin payable by you as consequence of such Order (which we may later request at our discretion); and
  - (e) any additional terms which we intend to apply to the relevant FX Trade.
- 12.4 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.
- 12.5 If you confirm your Order (and make Payment in accordance with Clause 14 (Trade Suspension, Amendment, or Cancellation)) on a non-Business Day (or after our cut-off times (details of which can be made available to you upon request by you to an Ebury Representative)), we will process your Order on the next Business Day.
- ## 13 Trade suspension, amendment or cancellation
- 13.1 You may not cancel a Trade which you have placed with us. However, if we have not yet processed the Trade: (a) you can correct any incorrect Beneficiary Account details (though we may charge a fee for this); or (b) we may at our discretion permit you to cancel the Trade.
- 13.2 We may reject, suspend, delay, amend, decline, disregard or cancel an Order and/or Trade, or refuse to issue a Transaction Receipt in our sole discretion (including as may be required by Applicable Laws). Where we may reject, suspend, delay, amend, decline, disregard or cancel an Order and/or Trade we shall notify you as soon as reasonably practicable and, to the extent permitted by Applicable Law, use all reasonable efforts to notify you of the reasons for such refusal.
- 13.3 We may amend a Trade if a Force Majeure Event occurs, where in our sole discretion reasonable steps are required to avoid Losses being incurred. Such amendment shall not alter the parties' rights and obligations under this Ebury Markets Agreement.
- 13.4 Notwithstanding our rights pursuant to Clause 27.12(b) (Your Money), you must ensure that you have sufficient funds in your Client Money Account to cover the amount of any FX Trade you want to make using your Client Money Account. If you do not have sufficient funds in your Client Money Account, we may postpone the execution date of the FX Trade and we may impose a charge to cover the cost of us doing so.

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

## 14 Payment

- 14.1 You must pay the full Payment Amount to us on or before the Delivery Date. If we have not received the Payment Amount by the Delivery Date (or any agreed change to the Delivery Date agreed pursuant to Clause 15.6 (FX Trade)), we may:
- (a) refuse to fulfil the FX Trade; and/or
  - (b) Close Out the FX Trade.
- 14.2 You must pay any applicable fees in connection with our Ebury Markets Services. We may impose fees or charges for our Ebury Markets Services, including a fee on a per FX Trade or Order basis, at our discretion. We will let you know the amount of any fees we charge when you place or we process a FX Trade or an Order (as applicable). All fees payable to us under or in connection with this Ebury Markets Agreement are exclusive of any taxes (including any applicable value added tax or other relevant sales tax).
- 14.3 Failure to make Payment in accordance with this Clause 14 (Payment) will be a material breach of this Ebury Markets Agreement and you shall be fully liable for any Loss we or our Affiliates suffer as a result of such breach (including, but not limited to, any Loss we or our Affiliates suffer as a result of a Close Out).
- 14.4 Without prejudice to any other rights and remedies available to us under Applicable Laws or pursuant to this Ebury Markets Agreement, we may charge interest on any unpaid sum due to us under this Ebury Markets Agreement at the Interest Rate. This interest will accrue daily from (and including) the original due date for payment to (but excluding) the actual date of payment in cleared funds.

## 15 FX Trade

- 15.1 From time to time, we may agree to enter into a FX Trade with you. You understand and agree that we buy and sell currency for non-speculative purposes only and will not trade with you if you are seeking to enter into FX Trade(s) as an investment or to profit by pure speculation on foreign exchange rate movements.
- 15.2 We run processes to determine the levels of exposure that we have to our clients such as you. With respect to any FX Trades that do not constitute Covered Transactions or a deliverable Forward Transaction, we may determine that as a result of our exposure from time to time, we require you to transfer:
- (a) at the time you enter into an FX Trade, Ebury Markets Initial Margin; and
  - (b) as a result of our exposures from time to time, Ebury Markets Variation Margin.

to us for the purposes of securing or otherwise collateralising your obligations and liabilities to us. As such and at any time and from time to time, we may, in our sole discretion, notify you of a Ebury Markets Margin Call. You understand and agree that in the event we consider (in our sole discretion) from time to time, that the amount of Ebury Markets Margin you have transferred to us hereunder is insufficient to secure or otherwise collateralise your obligations and liabilities to us, we may make additional Ebury Markets Margin Calls on you. Further information as to the way in which we may hold and return Ebury Markets Margin is set out in Clause 32 (Title Transfer Collateral Arrangement) below.

- 15.3 In the event of an Ebury Markets Margin Call, you must transfer the relevant Ebury Markets Margin amount (or additional Ebury Markets Margin amount, as the case may be) to our Nominated Account within twenty-four (24) hours of us notifying you of the Ebury Markets Margin Call (or such other period as notified by us to you in writing).
- 15.4 In providing us with Ebury Markets Margin, you agree that such monies
- (a) will become the absolute property of ours, free from any equity, right, title or interest of yours;
  - (b) may be used by us in the ordinary course of our business, including without limitation to cover any exposure we may have to a third party liquidity provider with whom we have entered into transactions to hedge our exposure;
  - (c) will not be maintained by us in a segregated account;
  - (d) shall not be subject to a trust, deemed or otherwise, in your favour and
  - (e) represents an unsecured claim against us for an amount equal to such amount and does not represent a claim, by way of trust or otherwise to the Ebury Markets Margin or any assets of or under the control of Ebury Markets.
- 15.5 You may ask us to bring forward (pre-deliver) the Delivery Date or to extend (roll over) the Delivery Date in relation to the whole or only part of your FX Trade. If we in our discretion agree to do so, you acknowledge that we may adjust the Payment Amount to reflect the new Delivery Date.
- 15.6 If you request and we agree to Close-Out a FX Trade in advance of its original maturity or termination date, there may be a delay in us returning Ebury Markets Margin (subject to any deductions we may make from such Ebury Markets Margin pursuant to the terms of this Ebury Markets Agreement) to you whilst we close out or otherwise terminate any transaction(s) which we have entered into with our liquidity providers and such liquidity providers return the margin related to such transaction(s) to us.
- 16 **EMIR General**
- 16.1 Clauses 17 (EMIR Variation Margining), 18 (EMIR Initial Margining), 19 (EMIR Portfolio Reconciliation), 20 (Timely Confirmation) and 21 (Trade Reporting and Confidentiality) will be applicable where:
- (a) each of you and us are subject to the requirements of UK EMIR; and
  - (b) an FX Trade has been entered into by you and us which constitutes a non-centrally cleared OTC derivative contract for the purposes of UK EMIR (each such FX Trade, a Covered Transaction).
- 16.2 For the purposes of determining if the Minimum Transfer Amount referred to in Clause 17 (EMIR Variation Margining) or the Initial Margin Threshold referred to in Clause 18 (EMIR Initial Margining) has been exceeded, any sums not denominated in the EUR be converted into EUR at the spot rate prevailing at such dates and times determined by us, acting reasonably.
- 17 **EMIR Variation margining**
- 17.1 From time to time on each Business Day (each a "Valuation Date") we will determine the MTM Amount and, by no later than 5.00p.m. (London time) on such Valuation Date, notify you in writing (each a "MTM Notification") of such amount.
- 17.2 If the MTM Amount specified in a MTM Notification for a Valuation Date:
- (a) is a positive amount and exceeds the Ebury Margin Balance by an amount at least equal to the Minimum Transfer Amount (any such excess, the "Ebury Delivery Amount"), then upon demand by us on you on or promptly following the Valuation Date, you will transfer to us Eligible Collateral with a market value at least equal to the Ebury Delivery Amount;
  - (b) is a positive amount but is less than the Ebury Margin Balance by an amount at least equal to the Minimum Transfer Amount (such difference, the "Ebury Return Amount"), then upon demand by you on us on or promptly following the Valuation Date, we will transfer to you Equivalent Eligible Collateral with a market value at least equal to the Ebury Return Amount;



- (c) is a negative amount and the absolute value of such amount exceeds the Client Margin Balance by an amount at least equal to the Minimum Transfer Amount (any such excess the "Client Delivery Amount"), then upon demand by you on us, on or promptly following the Valuation Date, we will transfer to you Eligible Collateral with a market value at least equal to the Client Delivery Amount; and
- (d) is a negative amount but the absolute value of such amount is less than the Client Margin Balance by an amount at least equal to the Minimum Transfer Amount (such difference, the "Client Return Amount"), then upon demand by us on you, on or promptly following the Valuation Date, you will transfer to us Equivalent Eligible Collateral with a Market value at least equal to the Client Return Amount.

17.3 For the purposes of Clause 17.2 (EMIR Variation Margining), if a demand for the transfer of Eligible Collateral or Equivalent Eligible Collateral, as applicable:

- (a) is received on or prior to 11.00 a.m. (London time) on a Business Day, then the relevant transfer will be initiated on the relevant date of demand; and
- (b) is received after 11.00 a.m. (London time) on a Business Day, then the relevant transfer will be initiated promptly following such demand, and in any event not later than the Business Day following the relevant date of demand.

17.4 The parties understand and agree that:

- (a) in the event that you demand from us an Ebury Return Amount or a Client Delivery Amount pursuant to Clause 17.2 (EMIR Variation Margining), we shall take one or more of the following measures for the purposes of satisfying our obligations in respect of such demand:
  - (i) reduce by set-off all or any part of the amount owed by us to you against any other amounts that we determine are owed by you to us at such time (whether pursuant to this Ebury Markets Agreement or otherwise); and/or
  - (ii) credit to one or more of the General Client Accounts, the Ebury Return Amount or a Client Delivery Amount (or the outstanding Ebury Return Amount or a Client Delivery Amount, as the case may be).
- (b) In the event that we make or are permitted to make a demand for a Ebury Delivery Amount or a Client Return Amount pursuant to Clause 17.2 (EMIR Variation Margining), we shall take one or more of the following measures for the purposes of satisfying your obligations in respect of such demand:
  - (i) debit, as far as is possible, from one or more of the General Client Accounts, Eligible Collateral which has a market value no greater than the Ebury Delivery Amount or Client Return Amount, as applicable, and credit such amount to our proprietary accounts; and/or
  - (ii) make a demand on you to transfer to us an amount in a Eligible Currency equal to the Ebury Delivery Amount or Client
  - (iii) Return Amount (or the outstanding amount thereof as the case may be).

17.5 The parties understand and agree that if a Close Out occurs pursuant to Clause 10 (Consequences of Termination) or Clause 24 (Close Out) of this Ebury Markets Agreement, then:

- (a) the market value of any Ebury Margin Balance shall be deemed to be an amount due by us to you; and (b) the market value of any Client Margin Balance shall be deemed to be an amount due by you to us.

## 18 EMIR Initial margining

18.1 If on any Business Day we determine that, in respect of the outstanding Covered Transactions, and assuming an initial margin threshold of zero, you or us would be required to transfer to the other EMIR Initial Margin in an amount which is:

- (a) greater than EUR 20,000,000, then the parties agree to commence and take all necessary steps to agree and execute all required documentation to facilitate the exchange and/or collection of such EMIR Initial Margin; and

- (b) greater than EUR 40,000,000, then we shall be entitled in our sole and absolute discretion to cease transacting with you until all necessary documents to facilitate the exchange and or collection of EMIR Initial Margin have been executed by the parties.

18.2 For the avoidance of doubt, in no circumstances will we be required to transfer EMIR Initial Margin to you unless an initial margin threshold of EUR 50,000,000 (the "Initial Margin Threshold") has been exceeded.

## 19 EMIR Portfolio reconciliation

19.1 The parties agree to reconcile portfolios as required by the Risk Mitigation Techniques. The parties understand and agree that:

- (a) on each Data Delivery Date, we will provide you with the Portfolio Data:
- (b) on or as soon as reasonably practicable following the receipt of the Portfolio Data (but no later than the PR Deadline Date immediately following such Data Delivery Date) you will perform a Data Reconciliation;
- (c) if you identify one or more discrepancies which you determine, acting reasonably and in good faith, are material to the rights and obligations of the parties in respect of one or more Covered Transaction(s), you will notify us in writing as soon as reasonably practicable and we will then consult with you in an attempt to resolve such discrepancies in a timely fashion for so long as such discrepancies remain outstanding, using, without limitation, any applicable updated reconciliation data produced during the period in which such discrepancy remains outstanding; and
- (d) if you do not notify us that the Portfolio Data contains discrepancies by 4p.m. (London time) on the fifth Business Day following the later of the date on which we provided you with the Portfolio Data, you will be deemed to have affirmed such Portfolio Data.

## 20 Timely confirmation

20.1 As soon as reasonably practicable following the entry of a Covered Transaction, we will deliver to you a Confirmation evidencing the terms of such Covered Transaction. By no later than 5 p.m. (London time) on the day on which the Confirmation was delivered to you (the "Confirmation Deadline"), you will confirm to us your agreement to the Confirmation.

20.2 In the event that you do not confirm to us your agreement to the Confirmation by the Confirmation Deadline, you will be deemed to have agreed to the terms of the Confirmation sent by us to you and to have confirmed the Confirmation at the Confirmation Deadline.

## 21 Trade reporting and confidentiality

21.1 In accordance with UK EMIR, we are required to report to a trade repository Covered Transactions entered into with you under this Ebury Markets Agreement ("Trade Reporting Obligation"). You agree to provide such information (the "Counterparty Data") as we may reasonably request from time to time (including, without limitation, your legal entity identifier (LEI) number and any updates to such information already provided) as we consider necessary for the purposes of complying with the Trade Reporting Obligation. It is your responsibility to obtain and maintain an LEI in respect of your activities for the duration of each FX Trade.

21.2 You hereby acknowledge and agree that we may use the Counterparty Data to comply with our Trade Reporting Obligation and rely on the Counterparty Data without investigation, unless and until you inform us otherwise.

21.3 Unless otherwise agreed, Ebury Markets will submit any trade reports on your behalf in accordance with the terms set out in Schedule 3 (EMIR Reporting Schedule).

21.4 Where it has been agreed that Ebury Markets will not submit EMIR trade/transactions reports on your behalf, you acknowledge and agree that we are not required to report trades on your behalf and we shall comply only with any FX Trade Reporting Obligations under UK EMIR as it applies to us.

21.5 Notwithstanding anything to the contrary in this Ebury Markets Agreement or in any non-disclosure, confidentiality or other agreement between the parties, each party hereby consents to the disclosure of information:

- (a) to the extent required or permitted under, or made in accordance with, the provisions of EMIR, UK EMIR or Applicable Laws which mandate the reporting and/or retention of transaction and similar information or to the extent required or permitted under, or made in accordance with, any order or directive in relation to (and including) EMIR, UK EMIR or Applicable Laws regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency in accordance with which the other party is required or accustomed to act ("Reporting Requirements"); or
- (b) to and between the other party's head office, branches or Affiliates, or any persons or entities who provide services to such other party or its head office, branches or Affiliates, in each case, in connection with such Reporting Requirements.

21.6 Each party further acknowledges that disclosures made pursuant hereto may include, without limitation, the disclosure of trade information including a party's identity (by name, address, corporate affiliation, identifier or otherwise) to a trade repository or one or more systems or services operated by any such trade repository ("TR") and any relevant regulators and that such disclosures could result in certain anonymous transaction and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, a party may use a third-party service provider to transfer trade information into a TR and that a TR may engage the services of a global trade repository regulated by one or more governmental regulators. Each party also acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing party or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal data as the counterparty's home jurisdiction. For the avoidance of doubt:

- (a) to the extent that applicable nondisclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such law;
- (b) any agreement between the parties to maintain confidentiality of information contained in this Ebury Markets Agreement or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Reporting Requirements as set out herein; and
- (c) nothing herein is intended to limit the scope of any other consent to disclosure separately given by each party to the other party.

## 22 Ebury App

22.1 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 this Agreement.

22.2 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.

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

## 23 Limit orders

23.1 Where we agree to accept a Limit Order from you, whilst we shall use reasonable endeavours to exchange money at the specified exchange rate within the agreed time period (which may be unlimited), Ebury Markets does not guarantee that we will be able to effect an exchange at the specified rate relating to such Limit Order and you agree that we may have to effect the conversion at a rate which is different to the relevant specified exchange rate. Where we are unable to execute a Limit Order for you within the agreed time period, we shall seek to notify you where Applicable Law allows.

- 23.2 If the last day of the agreed time period falls on a non-Business Day (to the extent there is one), your Limit Order will expire on the following Business Day.
- 23.3 You may cancel a Limit Order at any time (by telephone or by email), up until the point in time at which we commence the relevant conversion/transaction relating to such Limit Order.
- 23.4 Upon successful execution of a Limit Order, we will provide you with a Transaction Receipt setting out the details of the FX Trade.

## 24 **Close out**

- 24.1 Without prejudice to and in addition to the rights of the parties pursuant to Clause 9 (Termination) above, we may Close Out any or all FX Trades that you have with us, without notice to you:
- (a) if you fail to make any Payment to us when due (including, without limitation, the payment of Ebury Markets Margin);
  - (b) if you fail to provide us with any information we have requested from you;
  - (c) any warranty, representation or undertaking you have given us is or becomes, in our opinion, materially inaccurate, incorrect or misleading;
  - (d) in the event that you are subject to an Act of Insolvency;
  - (e) if you take any action (or refrain from taking any action) which places us or you in breach of Applicable Laws;
  - (f) if the performance of our obligations under this Ebury Markets Agreement become illegal or contrary to Applicable Laws;
  - (g) if you breach any term of this Ebury Markets Agreement;
  - (h) the FX Trade is outside our risk appetite;
  - (i) if we decide in our sole discretion that our relationship with you presents a business risk to us or any of our Affiliates;
  - (j) if at any time during the term of a FX Trade, you notify us or we otherwise become aware that the purpose of such FX Trade could be considered to have been entered, or otherwise continue to be held by you, for speculative reasons;
  - (k) we determine in our sole discretion that, with respect to the outstanding Covered Transactions the Initial Margin Threshold has been exceeded and you or us would be required to transfer to the other an amount of EMIR Initial Margin; or
  - (l) we determine in our sole discretion that you or us are required to transfer Eligible Collateral with a market value at least equal to the Ebury Delivery Amount or Client Delivery Amount, as applicable, in accordance with Clause 17 (EMIR Variation Margining) of this Ebury Markets Agreement.
- 24.2 If we Close Out one or more FX Trades pursuant to this Clause 24 (Close Out), or we agree to Close Out a particular FX Trade(s) following a request by you:
- (a) where we have elected to Close Out any or all current FX Trades following the occurrence of any of the events/circumstances specified in Clause 24.1, we shall cancel any pending Orders and we will not be required to accept any further instructions or Orders from you;
  - (b) we will buy-back/sell the currency that we have sold/bought for you in connection to the relevant FX Trade(s) at any market rate that is available to us. If we incur any Loss you will be liable to us for the amount of that Loss (as well as any costs incurred by us);
  - (c) where permitted by Applicable Law, we will not pay you any profit arising from the Close Out;

- (d) you acknowledge that the amount of any Loss of ours realised on the Close Out of a FX Trade is a debt payable by you to us and agree that we may immediately deduct the total amount of any Loss (together with any costs) from your Client Money Account (if funds are available to do so);
- (e) if the amount we are seeking to recover from you exceeds the amount of any Ebury Markets Margin, Ebury Margin Balance or funds available in your Client Money Account, you must immediately pay the remaining balance to us upon being notified by us of the total amount due; and
- (f) we may charge you interest on any sum that remains payable to us after we Close Out at the Interest Rate for the period from (and including) the original due date to (but excluding) the actual date of payment.

## 25 Duty of confidentiality

25.1 Subject to Clause 21 (Trade Reporting and Confidentiality) and Clauses 25.2 and 25.3 (Duty of Confidentiality), 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:
  - (c) its representatives;
  - (d) each person connected with it; and
  - (e) the representatives of each connected person.

25.2 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 this Ebury Markets Agreement;
- (b) to any of its permitted transferees;
- (c) when disclosure is required by (i) law, (ii) the rules or any order of any court, tribunal or agency of competent jurisdiction; or (iii) regulatory or governmental body which has jurisdiction over it or any of its Affiliates (including, without limitation, where disclosure of information is required for the purposes of complying with any mandatory reporting obligations);
- (d) to the extent the Confidential Information has become publicly available or generally known to the public at the time of the disclosure other than as a result of a breach of this Clause 24.2; 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.

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

25.4 If a party intends to disclose Confidential Information in a way allowed by Clause 24.2(c) (Duty of Confidentiality), 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.

25.5 The duties in this Clause shall continue to apply after this Ebury Markets Agreement ends without limit in time.

## 26 Conflicts of interest

- 26.1 Ebury Markets may have an interest, relationship or arrangement that is or may be in conflict with, or otherwise material in relation to, the Ebury Markets Services it provides to you. Subject to Applicable Law, you agree that no such conflict of interest or potential conflict of interest shall prevent us from carrying out any Ebury Markets Services for you (or for any other person) and we shall not be liable to account to you for any benefit made or received by us in any such circumstances.
- 26.2 Ebury Markets is required to and does maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of our clients.
- 26.3 Ebury Markets has put in place a conflict of interest policy which:
- (a) identifies the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of its clients, which include where an Ebury Markets trader has connections to the client, or to a peer group competitor of the client;
  - (b) specifies the procedures or measures which should be followed or adopted by Ebury Markets in order to prevent or manage those conflicts of interest;
  - (c) identifies risks relating to gifts and inducements and implements procedures to manage these risks; and
  - (d) is available and updated from time to time by means of a publication on a website or by other means of communication (that Ebury
  - (e) Markets may determine in its sole discretion) (the Conflict of Interest Policy).

## 27 Your money

- 27.1 Subject to Clause 32 (Title Transfer Collateral Arrangement) of this Ebury Markets Agreement, your money held with Ebury Markets in the Client Money Accounts shall be treated as Client Money in accordance with the Client Money Rules.
- 27.2 Unless otherwise indicated, we will deposit your Client Money in one or more Client Money Account(s) held with banking institutions. Your Client Money will be held in an account or accounts identified separately from any accounts used to hold money belonging to the firm. We may transfer client money to an intermediate broker, settlement agent or OTC counterparty that may be located outside of the UK in accordance with the Client Money Rules. You understand and agree that where Client Money is deposited with another person, they may have a security interest or lien over, or right of set-off in relation to, such Client Money, to the extent we are permitted to grant such rights under the Client Money Rules.
- 27.3 If, as at close of business (London time) on any Business Day, we have identified a discrepancy as a result of, or that reveals a Client Money Shortfall that we consider we are required to account to you for that shortfall pursuant to the Client Money Rules, we shall, unless otherwise agreed with you, transfer an amount of our own cash (a "Resolution Amount"), equal to the value of such Client Money Shortfall (as applicable) (the "Shortfall Amount"), to the Client Money Account. A Resolution Amount may comprise cash in the Base Currency or such other currency as we in our sole discretion determine, and shall be treated as client money in accordance with the Client Money Rules once credited to the Client Money Account.
- 27.4 If at any time and from time to time on any Business Day following a Resolution Amount being credited to the Client Money Account the associated Shortfall Amount decreases or is reduced to zero (other than where such decrease or reduction occurs solely as a result of the Resolution Amount being credited to the Client Money Account), the Resolution Excess Amount shall become immediately due and payable by you to us.
- 27.5 You understand and agree that for the purposes of satisfying your obligation to pay to us any Resolution Excess Amount we will be entitled, and you authorise us, from time to time to debit such amount from the Client Money Account. You further understand and agree that any Resolution Excess Amount debited from the Client Money Account may be credited to a proprietary account of ours.
- 27.6 We will not pay any interest on any Client Money held on your behalf.



- 27.7 We shall accept no liability for the acts, failures to act or the insolvency of any third party with whom we place Client Money. In the event of the insolvency or any other analogous proceedings of a third party holding Client Money, we may only have an unsecured claim against the third party on your behalf and you will be exposed to the risk that the securities, cash or any other property received by us from the third party is insufficient to satisfy your claim and the claims of all other relevant clients.
- 27.8 Where we hold Client Money with a bank, or transfer your money to an intermediate broker, settlement agent or OTC counterparty, in each case located outside of the UK, the legal and regulatory regime applying to such person may differ from that of the UK. In the event of the failure of such person, Client Money may be treated in a different manner from that which would apply if the money were held by a person located in the UK.
- 27.9 Where we hold Client Money for you, in the event that there is no movement on an account for a period of six (6) years in relation to your money and we are unable to contact you having made reasonable attempts to do so in accordance with the FCA Rules, we may transfer the money to a registered charity of our choice. In these circumstances we will still be liable to pay these balances to you on presentation of a valid claim.
- 27.10 We may transfer client money to an Affiliate or to a third party as part of a sale or transfer of all or part of our business, where that Client Money relates to the business being transferred. In such case, either the sums transferred will be held for you by the Affiliate or third party to whom they are transferred in accordance with the Client Money Rules or, if the sums will not be held in accordance with the Client Money Rules, we will exercise due skill, care and diligence in assessing whether that Affiliate or third party to whom Client Money is transferred will apply adequate measures to protect such Client Money.
- 27.11 We will provide you with a statement of Client Money held on a quarterly basis.
- 27.12 You understand and agree that:
- (a) in advance of executing any FX Trade hereunder, you must have sufficient funds in your Client Money Account (as determined by us) to cover the amount of such FX Trade;
  - (b) in the event that we consider that there is insufficient funds in your Client Money Account to cover the amount of a FX Trade you want to enter into, you must instruct a third party to transfer the relevant amount for the purposes of covering such FX Trade;
  - (c) notwithstanding Clause 27.12(b) (Your Money) above, we may reject, suspend, decline, disregard or cancel an Order and/or FX Trade in our sole discretion (including, without limitation, where we consider there is insufficient funds in your Client Money Account to cover the amount of any FX Trade); and
  - (d) if on the settlement of a FX Trade entered into hereunder a profit is released in your favour, the amount of such profit will be credited to your Client Money Account.

## 28 **Best execution**

- 28.1 Unless you are an Eligible Counterparty:
- (a) FX Trades (or other transactions) entered into under this Ebury Markets Agreement will be handled by us in accordance with our best execution policy which is available and updated from time to time through our website at the following webpage: <https://ebury.com/legal/> (the "Best Execution Policy");
  - (b) you acknowledge and agree that you have read and understood the Best Execution Policy Disclosure and agree that the FX Trades (or other transactions) entered into by you under this Ebury Markets Agreement will be handled in accordance with the Best Execution Policy; and
  - (c) you acknowledge and agree that Ebury Markets may from time to time make amendments to the Best Execution Policy and that you are responsible for checking any changes thereto which are published from time to time at the following webpage: <https://ebury.com/legal/>.

28.2 You accept that Ebury Markets is the only execution venue in relation to your trading activity under this Ebury Market Agreement and agree that where we execute FX Trades (or other transactions) for you, you consent to us doing so outside of a Trading Venue.

## 29 Our charges

29.1 We will report to you on the costs you will incur when trading with us in accordance with Applicable Laws. 28.2 You agree to read the costs and charges disclosure that Ebury Markets will provide before opening your account.

29.2 You acknowledge and agree that where we have categorised you as a Professional Client, we may, as permitted under Applicable Laws, provide you with a more limited costs and charges disclosure which may be less detailed than we would be required to provide to you in the absence of such agreement.

29.3 We will seek to ensure that we provide you with all relevant disclosures, which may sometimes include details of minor monetary or non-monetary benefits we pay to, or receive from, any affiliate or a third party in respect of any FX Trade (or other transaction) entered into hereunder. We will disclose these payments or benefits to you at least once a year.

## 30 Regular reports

30.1 When you execute a transaction with us under this Ebury Markets Agreement, we will provide you a Transaction Receipt (confirming the essential information relating to the relevant transaction) as soon as possible and you will notify us if:

- (a) you agree with the contents of the Transaction Receipt by no later than 5:00 p.m. London time on the Business Day on which we provide you with a Transaction Receipt; or
- (b) you have noted an error in the contents of Transaction Receipt which does not accurately reflect the terms of the relevant FX Trade (or other transaction), in which case both parties will each use reasonable efforts to resolve the issue and agree the Transaction Receipt by no later than 5:00 p.m. London time on the Business Day on which we provide you with a Transaction Receipt and, failing agreement, you understand and agree that information set out in our records will be deemed to have been agreed by the parties.

30.2 In the event that you do not provide any notification in accordance with Clause 30.1 (Regular Reports) above, you understand and agree that you will be deemed to have agreed with the terms set out in the Transaction Receipt.

30.3 Unless we notify you otherwise, we will provide you on a quarterly basis with a report detailing any open transactions that you have with us.

## 31 Single agreement

31.1 Each transaction entered into hereunder is in reliance on the fact that this Ebury Markets Agreement and all Transaction Receipts form a single agreement between the parties, and the parties would not otherwise enter into any transaction hereunder.

## 32 Title transfer collateral arrangement

32.1 Any Eligible Collateral transferred to us by you or on your behalf will be for the purpose of securing or otherwise covering all Customer Liabilities (the "Title Transfer Collateral Agreement"). You acknowledge and agree that in the event of our insolvency, you will be a general, unsecured creditor of Ebury Markets and any Eligible Collateral transferred to us pursuant to this Title Transfer Collateral Agreement may not be available to be returned to you.

32.2 Where we accept cash as Eligible Collateral under this Title Transfer Collateral Agreement, you will transfer to us full ownership of such cash so that all rights, title and interest in and to such cash will pass to us outright and we will acquire full ownership of such Eligible Collateral. You acknowledge, understand and agree that we will not hold any Eligible Collateral on your behalf under the Client Money Rules or other similar provisions relating to holding of client assets. You also agree that we can deal with any cash provided to us as Eligible Collateral as our own.

32.3 You understand and agree that if on the settlement of a FX Trade entered pursuant to the terms of this Ebury Markets Agreement a profit is realised in your favour, the amount of such profit will constitute Ebury Markets Margin for purposes of, and in accordance with, Clause 32.1 and 32.2 (Title Transfer Collateral Arrangement).

- 32.4 Where we agree with you in advance that financial instruments which are acceptable to us may be posted to us as Eligible Collateral, you acknowledge and agree to transfer such financial instruments with full title guarantee free from any security interest, lien, claims, charges, encumbrances or other restriction (other than a lien routinely imposed on all financial instruments in a clearing system in which such financial instruments may be held). Any Eligible Collateral transferred to us as financial instruments will not be held in accordance with the Custody Rules and will not be held in your name and your claim in respect of such Eligible Collateral will be a contractual right to the return of equivalent financial instruments (being financial instruments of the same type, nominal value, description and amount).
- 32.5 You may make a request in writing to terminate this Title Transfer Collateral Agreement. Any such request will not take effect until we have given prior written notice that we agree to terminate this Title Transfer Collateral Agreement and we have informed you when the termination of the Title Transfer Collateral Agreement will take effect. In the event that we agree to the termination of a Title Transfer Collateral Arrangement, your money will be treated as client money by the firm from the termination date. If we do not agree with the termination of a Title Transfer Collateral Arrangement, we will notify you in writing. In addition, the transfer of any Eligible Collateral pursuant to the Title Transfer Collateral Agreement will constitute a "Title Transfer Financial Collateral Arrangement" pursuant to the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226).
- 32.6 If at any time and from time to time we determine that the Ebury Markets Initial Margin you have transferred to us under this Title Transfer Collateral Agreement is in excess of the amount we require for the purposes of securing or otherwise collateralising your obligations and liabilities to us hereunder, we will generally return the excess Ebury Markets Initial Margin to your Client Money Account. However, Ebury Markets reserves the right to continue to hold the Ebury Markets Initial Margin until the expiry date of the FX Trade. We are not required to notify you where we return excess Ebury Markets Initial Margin to you. Notwithstanding the above, where you provide us with Ebury Markets Initial Margin that is less than the amount that we advised to you as being required, then we only need to return Ebury Markets Initial Margin to you on request.
- 32.7 If at any time and from time to time we determine that the Ebury Markets Variation Margin you have transferred to us under this Title Transfer Collateral Agreement is in excess of the amount we require for the purposes of securing or otherwise collateralising your obligations and liabilities to us hereunder, we will notify you of the excess Ebury Markets Variation Margin. Once you receive the notification you may with respect to the excess margin only, elect for it to be returned to your Client Money Account. Following you notifying us of such election, subject to us determining that there continues to be excess Ebury Markets Variation Margin on the day on which you make such request, we will return to you as soon as reasonably practicable the relevant excess (if any). If you do not elect for the excess Ebury Markets Variation Margin to be returned to you following notification of the excess margin by us to you, it will automatically be returned to your Client Money Account following:
- (a) if you are subject to classic credit conditions (as determined by Ebury Markets in its sole discretion) at the expiration of the FX Trade; or
  - (b) if you are subject to dynamic / net credit conditions (as determined by Ebury Markets in its sole discretion) once you no longer have any active trades with Ebury Markets.
- 32.8 Where we return Eligible Collateral in the form of cash back to you in accordance with Clause 32.6 or Clause 32.7, we transfer to you full ownership of such cash so that all rights, title and interest in and to such cash will pass to you outright and you will acquire full ownership of such cash.
- 32.9 Where we return Eligible Collateral in the form of a financial instrument back to you in accordance with Clause 32.6 or Clause 32.7, we transfer to you full title in such financial instruments.
- 32.10 You understand and agree that neither party is entitled to receive any interest on any Eligible Collateral (whether forming part of the Ebury Markets Margin, Ebury Margin Balance or Client Margin Balance).
- 32.11 If you wish to enter into a FX Trade in respect of an Option, we may in our sole discretion require you to enter into a Credit and Margin Addendum, as may be amended and supplemented from time to time in accordance with its terms.

### 33 Other important terms

- 33.1 We are required by FCA Rules to make and retain records of telephone conversations and electronic communications which relate to the reception, transmission and execution of your FX Trades (and other transactions) under this Ebury Markets Agreement for seven years or such other timeframe as relevant rules may require. Ebury Markets will retain a copy of the recording of such conversations and communications with you, and these will be available to you on request, for a period of five years. We may provide copies of such records to regulatory authorities upon their request in order to comply with our regulatory obligations, without your consent.
- 33.2 Except where expressly provided otherwise, no express term of this Ebury Markets Agreement (nor any term implied under it) is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person who is not a party to it.
- 33.3 We may agree to communicate with you in one or more languages depending on the location of the Ebury Representative which provides Services to you. The primary business language used by Ebury Markets is English, and so if we have not expressly agreed otherwise, communications from you to us (in particular legal notices, correspondence and documentation) should be in the English language.
- 33.4 Any notice or other information required by this Ebury Markets Agreement 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 33.4 (Other Important Terms), which is not returned to the sender as undelivered shall be deemed to have been given five (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). Service of any document for the purposes of any legal proceedings concerning or arising out of this Ebury Markets Agreement shall be effected by either party by causing it to be delivered to the other party at its registered office or at its last known address, as applicable.
- 33.5 Unless otherwise agreed by the parties in writing, service of any document for the purposes of any legal proceedings concerning or arising out of this Agreement 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.
- 33.6 Any document which is to be delivered by hand in the manner provided for by Clause 33.5, 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.
- 33.7 Any document which is to be served by pre-paid registered post in the manner provided for by Clause 33.5, shall be deemed to have been served not later than five (5) Business Days after the envelope containing the document was posted.
- 33.8 We may listen in to or record phone calls with you (or any of your Authorised Parties) to:
- (a) check we are carrying out your instructions correctly and that we are meeting our regulatory obligations;
  - (b) help detect or prevent fraud or other crimes;
  - (c) improve our Ebury Markets Services; and/or
  - (d) to the extent permitted by Applicable Law, use in any dispute or legal proceedings.
- 33.9 Should any provision of this Ebury Markets Agreement be deemed unenforceable, illegal or ineffective, the remaining provisions will nevertheless remain in full force and effect.
- 33.10 We may:
- (a) assign any or all of our rights under this Ebury Markets Agreement to any Affiliates or third parties; and

(b) transfer (by novation or otherwise) all or any of our obligations under this Ebury Markets Agreement to any person (a Transferee) provided that no transfer of our obligations will be effective until the Transferee has confirmed to you in writing that it is bound by the terms of this Ebury Markets Agreement.

33.11 You may not transfer any of your rights or obligations under this Ebury Markets Agreement without our prior written consent.

33.12 No failure or delay by either party in exercising any of its rights under this Ebury Markets Agreement or pursuant to Applicable Laws shall be deemed to constitute a waiver of that or any other remedy or right, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

33.13 This Ebury Markets Agreement shall apply to each FX Trade (or other transaction) which is outstanding as at the date of this Ebury Markets Agreement which is subject to an agreement that you have previously entered into with Ebury Markets. Each such FX Trade (or other transaction) shall be treated as if it had been entered into under this Ebury Markets Agreement and the terms of each such FX Trade (or other transaction) shall be amended accordingly with effect from and including the date of this Ebury Markets Agreement.

## 34 Data protection

34.1 This Clause needs to be read in conjunction with our privacy notice referred to in this Clause. We will observe the requirements of the Data Protection Act 1998 (as amended and supplemented) and the EU General Data Protection Regulation and/or the EU General Data Protection Regulation (as amended, supplemented and superseded) as it forms part of the current domestic law of the United Kingdom by virtue of the European (Withdrawal) Act 2018 and secondary legislation made under it, in each case, as amended, including by the European Union (Withdrawal Agreement) Act 2020 (as amended, supplemented and superseded) in the performance of our obligations under this Ebury Markets Agreement and will comply with any reasonable request made or direction given by you, which is directly due to the requirements of the relevant data protection legislation. The personal data Ebury Markets holds in relation to you may include, without limitation, identification information, contact information and financial information. This personal data may come from (i) the way you interact with Ebury Markets, for example, your use of the Ebury Markets Services; (ii) information about payments you make and receive, such as amount, currency and the details of the beneficiary; (iii) people appointed to act on your behalf, credit reference agencies or fraud prevention agencies. If you download any mobile applications or use any online platforms, these may contain additional requests for your consent to use your information or personal data. If you give Ebury Markets information about other persons which Ebury Markets uses to provide the Ebury Markets Services, you confirm you have obtained these persons' consent to provide the information to Ebury Markets. Ebury Markets collects and uses personal data to allow us (and, where relevant, our Affiliates) to (i) provide the Ebury Markets Services to you; (ii) assess our risks in providing those Ebury Markets Services; (iii) develop new and improved products and services, including conducting market and product analysis; (iv) carry out regulatory checks and meet our obligations to our regulators; (v) prevent and detect fraud, money laundering, identity theft and other crime; (vi) analyse, assess and improve its services to our clients, and for training and quality purposes; (vii) comply with Applicable Laws and (viii) enable Ebury Markets to enforce its rights under this Ebury Markets Agreement if necessary. Ebury Markets may pass personal data to third-party service providers, our Affiliates, or Ebury Markets' agents and advisers (including their subcontractors), on the understanding that they keep it confidential. Ebury Markets may also pass personal data to third parties in order to prevent fraud (including fraud prevention agencies), UK and overseas regulators and authorities in connection with their duties (such as crime prevention or as otherwise required by Applicable Laws), credit referencing agencies and identity checking agencies (and other sources of information that help to verify your credit rating and identity). A record of this process may be kept by third parties and may be used to help other companies verify your credit rating and identity, and to prevent fraud. Ebury Markets may also need to give its auditors, professional advisers, agents or subcontractors access to personal data or anyone who is interested in Ebury Markets' business. Ebury Markets may send personal data outside the European Economic Area ("EEA") to jurisdictions which may not have an equivalent standard of data privacy laws as that in Europe or the EEA. Where Ebury Markets does this, Ebury Markets will take appropriate measures to protect personal data. For further information on our privacy notice, please see <https://privacy.ebury.com/>.

## 35 Relationship of the parties

- 35.1 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 this Agreement. The data exporter should be considered as data controller in relation to the personal data that is transferred to the data importer (Ebury) under the terms of this Agreement. As soon as the personal 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 personal 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.
- 35.2 This Ebury Markets Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be exclusively governed by and construed in accordance with the law of England and Wales.
- 35.3 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Ebury Markets Agreement or its subject matter or formation (including non contractual disputes or claims). For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction. Each party also irrevocably waives any objection to the recognition or enforcement in the courts of any other country of a judgment delivered by an English court exercising jurisdiction pursuant to this Clause 35.3 (Relationship of the Parties).
- 35.4 If you do not have a permanent place of business in England or Wales, you shall at all times maintain, and notify us of, an agent for service of process in England or Wales and, in any event, any claim form, order, petition, judgment or other notice of legal process shall be sufficiently served on you if delivered to any member of your group at its permanent place of business in England or Wales. Nothing in this Ebury Markets Agreement shall affect the right to serve process in any other manner permitted by law.
- 35.5 Ebury Partners Markets Ltd is a company incorporated in England & Wales (Company No. 10841975), whose registered office is at 100 Victoria Street, London, SW1E 5JL, which is authorised by the Financial Conduct Authority (FRN: 784063).



# Schedule 1 – Risk Disclosure Notice

1. When you enter into OTC foreign exchange transactions (including, without limitation OTC Forward Trades or NDFs) (“OTC Contracts”) with Ebury Markets, you will be entering into a privately negotiated contract with Ebury Markets as principal. This means that Ebury Markets acts as the seller when you buy and the buyer when you sell.
2. OTC Contracts are not transferable to other third parties, and must be closed with Ebury Markets. OTC Contracts are not executed on an exchange and are not required to be cleared through a central counterparty or clearing system. OTC Contracts may not afford you with the same level of regulatory and financial protections offered by exchange-traded or cleared transactions. Both you and Ebury Markets are obliged to perform our respective obligations under each FX Trade / transaction in accordance with the terms set out in the Ebury Markets Agreement.
3. Ebury Markets establishes the prices at which it offers to trade with you based on prices that are made or quoted to Ebury Markets or its Affiliates by the banks, financial institutions, exchanges and counterparties with which we do business and which may not be the same as prices available from other sources. These prices depend on fluctuations in the financial markets which are outside Ebury Markets’ control. Financial markets in general, and these products in particular, are volatile and can move rapidly, particularly in response to news events.
4. In entering into OTC Contracts you should understand that Ebury Markets is acting solely in the capacity of an arm’s length contractual counterparty to you and not in the capacity of your financial advisor or fiduciary. Accordingly, you should not regard any information, proposal, suggested trade or trading strategy or other written materials or oral communications from Ebury Markets as investment recommendations or advice or as expressing Ebury Markets’ views as to whether a particular transaction is appropriate for you or meets your financial objectives.
5. Entering into OTC Contracts involves a degree of risk and some OTC Contracts are more risky than others. Prices can fall as well as rise and there is a risk you may lose some or all of your investment in an OTC Contract. You acknowledge and agree that the amount of Margin that you are required to pay in respect of an OTC Contract may be small relative to the value of the OTC Contracts so that transactions are “leveraged” or “geared”. A small market movement will have a proportionally larger impact on your position and this may work against you as well as for you. You further acknowledge and agree that before deciding to transact in any OTC Contract you will need to assess the risks inherent in those OTC Contract which include but are not limited to: credit risk; market risk and the impact of positive and negative market conditions; liquidity risk; risks relating to volatility; limitations on the available market; impediments or restrictions on divestment (including possible exit methods and their consequences, possible constraints on and the estimated timeframe for sale); tax risk; foreign exchange risk; business risk; operational risk; issuer risk; insolvency risk and related events such as bail-in; stabilisation risk; dividend risk; regulatory risk; legal risk; risks relating to leverage; margin requirements or similar obligations; the risks of “over the counter” trading, as opposed to on-exchange trading (such as the nature of clearing house “guarantees”, transparency of prices and ability to close out positions); and whether you may assume, as the result of the investment, financial commitments or other additional obligations, including contingent liabilities additional to the cost of acquiring the investment. You should also read any relevant documentation, for example term sheets, which may highlight a non-exhaustive set of additional risks particular to an OTC Contract. You should not rely on such highlighted risks as being the only risks in relation to an OTC Contract.
6. In view of the risks, you should trade in OTC Contracts only if you understand the contracts (and contractual relationships) into which you are entering. Trading in OTC Contracts is not appropriate for many members of the public. You should consider whether trading is appropriate for you in light of your experience, objectives, financial resources, risk tolerance and other relevant circumstances. Most importantly, do not invest money that you are not in a position to lose.
7. As detailed in paragraph 4 of Schedule 2 (Best Execution Policy Disclosure), when we enter an OTC Contract with you, we will cover off our exposure in relation to such OTC Contract by entering a similar transaction with our third-party liquidity providers. Accordingly, we may use some or all of the Margin you provide to us in accordance with Clause 32 (Title Transfer Collateral Arrangement) of the Ebury Markets Agreement to collateralise the FX Trade (or other transactions) we have entered with our liquidity providers.

8. You understand and agree that, notwithstanding Clause 32.6 (Title Transfer Collateral Arrangement) of the Ebury Markets Agreement, in the event you request and we agree to close or terminate a OTC Contract in advance of the originally scheduled maturity or termination date of such OTC Contract, there may be a delay in returning to you the Ebury Markets Margin relating to such OTC Contract whilst we close or otherwise terminate the corresponding transaction we entered with our liquidity providers and are returned the related margin from such liquidity provider.

## Schedule 2 – Best Execution Policy Disclosure

### 1 Background

This document summarises the Best Execution Policy for Ebury Markets as required by MiFID II and/or the FCA Handbook (as applicable) in respect of foreign exchange Trades and transactions (including, without limitation, OTC Forward Trades or NDFs) traded by us. Foreign exchange transactions are classified under MiFID II and/or MiFID Org Regulation and Part 1 of Schedule 2 of the Regulated Activities Order (as applicable) as investment products and therefore subject to those regulations. As set out in MiFID II and/or the FCA Handbook (as applicable), we are required to take all reasonable steps to obtain the best possible result for our clients.

### 2 Purpose

Ebury Markets has established and implemented policies and procedures, including a Best Execution Policy, which are designed to obtain the best possible results for your Orders/FX Trades, subject to and taking into account any specific instructions, the nature of your Orders/ FX Trades, the nature of the markets, price, costs, speed, likelihood of execution and settlement, size and the products concerned. This policy disclosure provides summarised information on our Best Execution Policy. If you have any questions about this disclosure or our Best Execution Policy, please contact an Ebury Representative.

### 3 Scope

- 3.1 The Best Execution Policy is addressed to those clients classified as Professional Clients who deal directly with Ebury Markets. The Best Execution Policy is not directed at Retail Clients and should not be relied upon if you are a Retail Client. The Best Execution Policy applies with respect to the FX Trades and transactions which Ebury Markets may enter into with you from time to time pursuant to the terms of the Ebury Markets Agreement.
- 3.2 If you provide a specific instruction to us we will enter into an FX Trade in accordance with any such instruction and accordingly we shall be deemed to have adhered to best execution obligations applicable to us with regard to such FX Trade.

### 4 Mode of operation

We operate a matched principal broker model, in which we will contract directly with you and then cover off the exposure created by our contract through a similar trade with one of our liquidity providers. From a best execution perspective, our obligation, all other execution factors being equal, is therefore to obtain the best 'wholesale' price from our list of available liquidity providers. (Note that we do not derive any commercial benefit from selecting one provider over another). In doing so we can offer you the best exchange rates available to us.

### 5 Execution factors

- 5.1 In assessing the delivery of our products to you, we are required to consider all aspects of service execution, including:
- (a) price;
  - (b) any costs and charges relevant to execution;

- (c) speed of execution;
- (d) market impact;
- (e) size and nature of any FX Trade;
- (f) likelihood of execution and settlement; and
- (g) any other relevant consideration with regard to execution of any FX Trade.

5.2 The key criterion will be the selection of the best available wholesale price offered by our liquidity providers maintaining the highest level of operational standards, such as speed of delivery and accuracy of settlement.

## 6 Consent

MiFID II and/or the FCA Handbook (as applicable) requires your consent to our Best Execution Policy. It is understood and agreed that the act of entering into the Ebury Markets Agreement with us constitutes your consent to the Best Execution Policy.

## 7 Review

As with all of our compliance procedures, we keep our Best Execution Policy under constant review, including the performance of our liquidity providers.

# Schedule 3 – EMIR Reporting Schedule

1. All reports will be made on a reasonable efforts basis and Ebury Markets will decide in its sole discretion whether a Trade Reporting Obligation has arisen, the characterisation of the relevant transaction, the data to be included in the report and a unique trade ID for each reportable transaction.
2. Ebury Markets may also utilise the services of a third party service provider, or any Affiliate of us, to facilitate the submission of the relevant data or other performance by us (including but not limited to any system, interface or other technology developed by such third party service providers for such purpose).
3. Ebury Markets will submit relevant FX Trade / transaction reports, which includes but is not limited to reporting, valuation and collateral reports (the “EMIR Transaction Reports”) to our chosen trade repository, who we may select at our sole discretion.
4. Ebury Markets will submit the EMIR Transaction Reports on a reasonable efforts basis and without liability for any Loss, cost, charge, fee, expense, damage or liability, including, for the avoidance of doubt, any regulatory penalty or fine, loss of profit, revenue, business or goodwill (whether direct or indirect) resulting from any act or omission made in connection with the submission of the EMIR Transaction Reports.
5. Ebury Markets shall not be liable for any partial or non-performance of the Trade Reporting Obligation by reason of any technical error, breakdown or failure of transmission, communication or computer facilities where such technical error, breakdown or failure is outside of our (and/or our Affiliates’ and/or agents’) control, provided that we shall use reasonable efforts to correct, repair or retransmit any such technical error, breakdown or failure as soon as reasonably practicable after having become aware of such technical error, breakdown or failure.
6. Ebury Markets is not acting as fiduciary for, or an adviser to you in respect of the Trade Reporting Obligation.
7. You agree to indemnify Ebury Markets on an ongoing basis against any Loss, cost, expense or liability (including reasonable legal fees) incurred by or awarded against us in connection with the Trade Reporting Obligation as it applies to you other than arising from our gross negligence, fraud or wilful default.

8. The basis on which Ebury Markets provides this delegated reporting service to you may be amended as needed from time to time as and when required by changes in reporting requirements, systems or processes or for any other similar reason. Ebury Markets will make any amendments or changes to this EMIR Reporting Schedule in accordance with Clause 1.3 (Our Relationship With You) of the Ebury Markets Agreement.
9. Ebury Markets may terminate the provision of this delegated reporting service at any time upon the giving of not less than six (6) weeks' prior written notice and you may terminate this appointment at any time on the giving of not less than five (5) business days' prior written notice or, in either case, sooner if pursuant to legal or regulatory requirement.
10. Ebury Markets will use reasonable endeavours to cease submission of EMIR Transaction Reports promptly on receipt of your written notice, however you accept that there may be some continuation (and hence possible duplication) of reporting for a limited period of time thereafter.

## Schedule 4 – Information Statement relating to Risks in connection with Title Transfer Collateral Arrangements (TTCAs)

This Information Statement is provided for information purposes only and does not create, amend or supersede the express terms of any FX Trade (or other transaction, product or service), collateral arrangement or any rights or obligations that Ebury Markets or you may have under applicable law.

In this Information Statement:

**"Financial instrument"** means the instruments set out in Section C of Annex I to Directive 2014/65/EU on markets in financial instruments, and includes without limitation Transferable securities, Money-market instruments and Units in collective investment undertakings; and

**"Title Transfer Collateral Arrangement"** or **"TTCA"** means an arrangement under which a collateral provider transfers full ownership of financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations (including Customer Liabilities as set out in this Ebury Markets Agreement).

### 1 Background

- 1.1 We are required pursuant to Directive 2014/65/EU (often referred to as the Markets in Financial Instruments Directive) to inform clients classified as Professional Clients and/or Eligible Counterparties which enter into a TTCA of the risks involved and the effects of a TTCA on cash (or financial instruments if applicable) that you may transfer to us.
- 1.2 This Information Statement is not intended to be, and should not be relied upon as, legal, financial, tax, accounting or any other type of advice, so clients should consult their own advisors for advice on consenting to a right of use of collateral provided under a TTCA or on concluding a TTCA, including on the possible impact on their business and the requirements of, and results of, entering into any FX Trade or other transaction, product or service.

### 2 Risks and consequences of a right of re-use

- 2.1 Where you (on behalf of yourself or a third party on whose behalf you act) provide cash (or any financial instruments) to us under a TTCA or if we exercise any right of use in relation to the same that you have provided to us by way of collateral, the following risks and consequences need to be considered:
  - (a) that cash (or those financial instruments) will not be held by us in accordance with client asset rules, and, if such financial instruments or cash had benefited from any client asset protection rights, those protection rights will not apply (for example, the financial instruments or cash will not be segregated from other assets of ours and will not be held subject to any trust arrangements);

- (b) in case we face insolvency or default under the relevant agreement, the rights of clients, including any proprietary rights that they may have had, in those financial instruments or cash will be replaced by an unsecured contractual claim for delivery of equivalent financial instruments or cash, subject to the terms of the relevant TTCA and applicable law and, accordingly, you may not receive such equivalent financial instruments (if applicable) or cash, or recover the full value of the financial instruments or cash (although your exposure may be reduced to the extent that you have a liability to us which can be set off or netted against or discharged by reference to our obligation to deliver equivalent financial instruments or cash to you);
- (c) in the event that we are not able to readily obtain equivalent financial instruments (if applicable) or cash to deliver to you at the time required, you may be unable to fulfil your settlement obligations under a hedging or other transaction that you may have entered into in relation to relevant financial instruments (if applicable) or cash; a counterparty, exchange or other person may exercise a right to buy-in the relevant financial instruments; and you may be unable to exercise rights or take other action in relation to such financial instruments (if applicable) or cash;
- (d) subject to any express agreement between us, we will have no obligation to inform you of any corporate events or actions in relation to any financial instruments (if applicable);
- (e) you will not be entitled to receive any dividend, coupon or other payment, interest or rights (including securities or property accruing or offered at any time) payable in relation to any financial instruments (if applicable) or cash, although the express written terms of this Ebury Markets Agreement or a FX Trade or other transaction, product or service may provide for you to receive or be credited with a payment by reference to such dividend, coupon or other payment;
- (f) the provision of title transfer collateral to us, the exercise of a right of use by us in respect of any financial collateral provided by you and the delivery by us to you of equivalent financial instruments (if applicable) or cash may give rise to tax consequences that differ from the tax consequences that would have otherwise applied in relation to the holding by you or us for your account; and
- (g) where applicable, if you receive or are credited with a manufactured payment, your tax treatment may differ in respect of the original dividend, coupon or other payment in relation to those financial instruments or cash (in each case as applicable).