

## EBURY PARTNERS AUSTRALIA PTY LTD - RELATIONSHIP AGREEMENT (V.2, 06/2022)

### OUR RELATIONSHIP WITH YOU

The website [www.ebury.com.au](http://www.ebury.com.au) is operated and controlled by Ebury Partners Australia Pty Ltd ACN 632 570 702 AFSL 520548 (Ebury, we, our or us).

The use of the Site, including your E-Money Account, and the provision of our Services to you (Customer, you or your) is governed by and subject to these terms and conditions (Terms) and the general Site Terms, which form part of these Terms. These Terms prevail to the extent of any inconsistency. These Terms are intended to be legally binding. Please read them carefully.

By registering for an E-Money Account and/or using our Services, you agree that you have read, understood and agree to be bound by these Terms. You also agree to our Privacy Policy. If you disagree with these Terms or the Privacy Policy, you must not use the Site or the Services to place any Orders or otherwise ask us to provide a Trade or provide Services to you.

These Terms do not vary or affect the operation or meaning of any agreement that you have in place with a third party in any way. For example, these Terms do not impact any contract that you have in place with your bank or any other third-party service provider.

### DEFINITIONS AND INTERPRETATIONS

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

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

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

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

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

**"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.

**"AUD"** means the Australian Dollar.

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

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

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

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

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

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

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

**"E-Money Account"** means your online account with Ebury which enables you to use the Site and access the Services.

**"Fees"** means any fee payable by you to Ebury in relation to a Service as set out in the Financial Services Guide, as varied from time to time.

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

**"Forward Contract"** means a foreign exchange contract under which we agree, on a specific date or specified range of dates in the future (and which may, if agreed, be contingent on a specific event or circumstances occurring) to physically exchange money with you at

an agreed exchange rate and at an agreed time.

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

**"FX Options Services"** means the issue of the FX Option Products in accordance with and as defined in the FX Option Terms. The FX Option Terms are included as an Appendix to this Agreement. The FX Options Services are only available to Wholesale Clients.

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

- (a) they are (or state they are) insolvent under administration or insolvency (as defined in the *Corporations Act 2001* (Cth));
- (b) they have had a controller appointed, are in liquidation, in a provisional liquidation, under administration or wound up or have had a receiver and manager appointed to any part of their property;
- (c) they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by a lender);
- (d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above;
- (e) they are taken (under section 459F of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand;
- (f) they are the subject of any event described in section 459C (2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or they make a statement from which we reasonably deduce they are so subject);
- (g) they are otherwise unable to pay their debts when they fall due; or
- (h) something having a substantially similar effect to any of the things referred to above happens in connection with them under the law of any jurisdiction.

**"Interest Rate"** means the annual interest rate(s) published on our site (<https://www.ebury.com.au/wp-content/uploads/sites/14/2020/02/interest-rate-en.pdf>).

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

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

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

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

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

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

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

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

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

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

**"Order"** means a request by you for Ebury to enter a Trade or a transfer/payment.

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

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

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

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

**"Privacy Policy"** means the Ebury privacy policy available on our website, as varied from time to time.

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

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

**"Sanctions"** has the meaning set out in Clause 92(c).

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

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

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

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

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

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

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

**"Termination Date"** means the date on which the agreement you have entered with us under these Terms is terminated.

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

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

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

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

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

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

## OUR SERVICES

- 1 Ebury provides the Services which enable you to:
  - (a) create an E-Money Account and load funds onto your E-Money Account;
  - (b) make payments to third parties using funds loaded onto your E-Money Account; or
  - (c) enter into Trades, including a Spot Contract, Forward Contract or any other transaction, the **"Services"**.
- 2 Ebury may provide other services to you from time to time, including, but not limited to, the FX Options Services, depending on its service offering and your eligibility. Additional services may be subject to additional terms and conditions.
- 3 The Site cannot be used for gambling, adult entertainment, pornography, drugs and drug paraphernalia, arms and ammunition, sexual encounter and related services provided by sexual encounter firms, unlicensed money transmission and financial service, escort services, government grants, home based charities, pay day loans, tobacco sales or any other product or any other purpose that may increase the risk of our Services or Site being used to launder money or finance terrorism.

## CUSTOMER ELIGIBILITY

- 4 To be eligible for an E-Money Account and to use Site, you must:
  - (a) be at least 18 years old;
  - (b) register for an E-Money Account in accordance with the instructions, including indicating your agreement to be bound by these Terms and the Privacy Policy;
  - (c) not be in breach of any of these Terms;
  - (d) not to be a holder of an existing operational E-Money Account;

- (e) not be a holder of an E-Money Account that is blocked, suspended, or was previously cancelled by us;
- (f) not be a resident of any country to which we do not provide the Services; and
- (g) have full capacity to enter into, agree to and comply with these Terms.

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

#### **YOUR E-MONEY ACCOUNT**

6 To use one or more of the Services, you must register to create an E-Money Account. Your E-Money Account is an electronic money account and can be used to:

- (a) store funds in one or more currencies nominated by you;
- (b) make Transfers (alone or in combination with a Trade);
- (c) make Payments in connection with one or more obligations hereunder (including in respect of Trades); and
- (d) pay Margin.

7 You can register for an E-Money Account using our Online System by clicking "Open Account" and following the instructions and signing the online application form. You must not apply for more than one E-Money Account.

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

9 We will review your application to register for an E-Money Account as soon as possible after you have completed the application form. It remains in our sole discretion whether we issue an E-Money Account to you. We will notify you if your application is approved.

10 We will credit any funds received from you, or on behalf of you from third parties, to your E-Money Account.

11 You can check the balance held in your E-Money Account by logging into the Online System. Key information relating to payments made using the E-Money Account, including Fees and any other charges applied to your E-Money Account and transaction history, will be available by logging into the Online System.

12 You must inform us immediately in writing of any changes including but not limited to; incorporation details, beneficial ownership, address, delivery information, Client financial institution or designated account.

13 The E-Money Account represents software owned by Ebury, and you are provided with a limited non-exclusive licence to use the software for the purposes of using the Site in accordance with these Terms.

14 You agree that we may place other limits on your E-Money Account, including placing limits on the amount of payments that you can instruct us to make.

#### **HOW TO USE YOUR E-MONEY ACCOUNT**

15 You can place a Payment Instruction and/or an Order from your E-Money Account:

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

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

17 A Payment Instruction and/or an Order will be deemed to have been authorised by you if the relevant instruction has been given in accordance with these Terms.

18 We will not allow you to make any Transfer or Payment out of your E-Money Account where this would put your E-Money Account into a negative balance. You should therefore ensure that you have sufficient funds, including for the purposes

of satisfying any Margin Call which may be made from time-to-time, in your E-Money Account before placing a Payment Instruction or Order.

- 19 Each transaction made using the E-Money Account will be given a unique Transaction ID which will be set out in the transaction history.
- 20 The Beneficiary's Account shall be credited by no later than the end of the Business Day following the Business Day on which the relevant Payment Instruction was received by us. If a Payment Instruction is received by us after 4 pm (AEST) on any Business Day, it shall be deemed to have been received by us on the next following Business Day.
- 21 Where you make a Payment using your E-Money Account, the amount of the payment will be deducted by us from your E-Money Account balance. You must ensure that you have sufficient funds in your E-Money Account to cover the amount of Payment Instruction or Order you want to make using your E-Money Account. If you do not have sufficient funds in your E-Money Account, we reserve the right to postpone the execution of such Payment Instruction or Order, and we may impose a charge to cover the costs of us doing so.
- 22 You acknowledge that any amount remitted by us in accordance with a Payment Instruction is done on your behalf. Once a Payment Instruction has been processed, you are responsible for recovering any amount that you wish to recover from a Beneficiary that has been remitted by us. Any Fees paid by you in relation to a recovered payment are not refundable under any circumstances.
- 23 We reserve the right to refuse or postpone any Payment Instruction or Order for any reason and at any stage of the transaction process, in our absolute discretion. If payment has been initiated from you or a third party before we refuse to complete the relevant instruction, we will refund the amount, less any applicable Fees. You agree that we will not be liable in respect of any refusal or postponement. If we refuse or postpone a Payment Instruction and/or Order, we will contact you to advise you of the refusal or postponement but are not required to provide you with any reason. We are not liable to you for any such refusal.

#### **PLACING A TRADE**

- 24 Once we have received your Order using one of the methods set out above in clause 14, we will confirm (as relevant):
- (a) the purpose for the transaction;
  - (b) the amount of money you wish to exchange;
  - (c) the two currencies involved;
  - (d) which currency you would like to buy or sell;
  - (e) the Value Date you would like the payment made; and
  - (f) any other information that we require as notified to you.
- 25 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.
- 26 You must carefully review the Transaction Receipt and the Payment Instruction Confirmation and tell us before making a Payment if you think any of the details are incorrect. If you are placing an order by telephone or by email, you must tell us within one hour of receipt of your Transaction Receipt and Payment Instruction Confirmation, if we have made any errors in such Transaction Receipt and/or Payment Instruction Confirmation. We will provide you with a revised Transaction Receipt and/or Payment Instruction Confirmation as soon as possible.
- 27 Except in the case of Limit Orders, we will execute the Trade upon receipt of Payment.
- 28 To the extent permitted by the law, you may not cancel a Trade which you have placed with us. However, if we have not yet processed the Trade:
- (a) you can correct any incorrect Beneficiary Account details (though we may charge a Fee for this); and
  - (b) we may at our sole discretion permit you to cancel the Trade.
- 29 If we permit you to cancel an Order:
- (a) if we have already received the Payment Amount, we will return it to the account from where it came. However, if the Sale and Purchase Currencies are different, we will convert the Purchase Currency back to the Sale Currency using an agreed exchange rate at the time of cancellation, which means the amount we return to you may be more or less than the original Payment Amount;
  - (b) we will not refund any Fees you have paid us; and

(c) we may require you to pay us an additional fee that we agree with you at the time of permitting cancellation.

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

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

- (a) if, in our sole discretion, the Order is unclear;
- (b) if, in our sole discretion, we suspect that the Order was not authorised by you;
- (c) an Insolvency Event arises;
- (d) you breach any material representation or warranty or are otherwise in breach of these Terms;
- (e) we may otherwise breach Applicable Law or face action from a regulator or other authority;
- (f) the Trade may be linked to activity that breaches Applicable Law;
- (g) you have failed to make Payment when due or are otherwise in breach of these Terms;
- (h) you fail to provide us with sufficient information to allow us to fulfil the Trade; or
- (i) the Trade is outside our compliance risk appetite.

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

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

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

- (a) refuse to fulfil the Trade; or
- (b) Close Out the Trade in accordance with these Terms. Failure to make Payment in accordance with this clause 31 will be a material breach of these Terms.

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

#### **FORWARD CONTRACTS**

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

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

36 If you are a Wholesale Client you agree that we can deal with money paid by you as Margin in accordance with clauses 36 to 39 instead of in accordance with the Client Money Rules and that the provisions in clauses 52 to 56 do not apply.

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

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

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

40 We will owe you a debt equal to the amount of Margin received by us, subject to any set-off rights under, or other terms of, these Terms, or under general law. We shall pay to you all or part of any amount of Margin owed to us by you under this clause to the extent that we consider, in our discretion, that the amount of Margin you have transferred to us exceeds the amount required by us to secure or cover all your present or future, actual or contingent, or prospective obligations to us under these Terms or otherwise.

41 You may ask us to bring forward or to extend the Delivery Date in relation to the whole or only part of your Forward Contract. We may agree to such a request at our sole discretion. If we agree, you acknowledge that we may adjust the Payment Amount to reflect the new Delivery Date.

#### **LIMIT ORDERS**

42 We will execute a Limit Order when we achieve the rate nominated by you within the agreed time period.

43 If the last day of the agreed time period falls on a non-Business Day, your Limit Order will expire on the preceding Business Day.

44 You may cancel a Limit Order at any time (by telephone or by email which has been acknowledged by us), up until the agreed exchange rate is achieved by us.

45 Upon successful execution of a Limit Order, we will provide you with a Transaction Receipt setting out the details of the Trade.

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

#### **CLOSE OUT**

47 We may Close Out a particular Trade or all current Trades that you have with us, without notice to you, for any event set out above at clause 29 or if you terminate your relationship with us or cancel your E-Money Account in accordance with these Terms.

48 You may ask us to Close Out a particular Trade or all current Trades by giving us notice in writing. If we permit you to Close Out:

- (a) we will buy back the currency that we have bought for you when you entered into the Trades at prevailing market rates. If the value of the Purchase Currency has strengthened, this means that a Loss will be incurred on the Trade and you will be liable to us for the amount of that Loss (as well as any costs incurred by us);
- (b) we will not pay you any profit arising from the Close Out;
- (c) you acknowledge that the amount of any Loss realised on the Closing Out of a Trade is a debt payable by you and agree that we may immediately deduct the total amount of any Loss (together with any costs) from your E-Money Account;
- (d) if the amount we are seeking to recover exceeds the amount of any Margin or funds available in your E-Money Account, you must pay the balance upon being notified by us of the total amount due;
- (e) we may charge you interest on any sum that remains payable to us after we Close Out at the Interest Rate. Interest will accrue and will be calculated daily and be compounded monthly from the date payment was due until the date full payment is made by you; and
- (f) we will send you a written statement explaining the amount of any sums that may be payable to us and the amount of any sums being withheld by us.

#### **FEES AND FOREIGN EXCHANGE RATE**

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

50 We will let you know the amount of any fees we charge when you place or we process a Trade, an Order or a Payment Instruction (as applicable).

51 Without prejudice to any other rights and remedies available to us under Applicable Laws, we may charge interest on any overdue sum owed to us under these Terms for the period from (and including) the original due date to (but excluding) the actual date of payment, at the Interest Rate.

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

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

53 Subject to clause 35 the funds in your E-Money Account will be held in a trust account until you enter into a Trade or withdraw your funds. We segregate Client Money from Ebury's money and hold Client Money in a pooled trust account in accordance with Australian law.



- 54 By the Services, you relinquish the right to any interest on funds deposited in your E-Money Account. The money allocated to your E-Money Account is not held separately to other Customers' money but is pooled together. Client Money allocated to your E-Money Account is held on trust for you until it is withdrawn or you otherwise provide us with a legal right to that Client Money in accordance with these Terms.
- 55 If you are a Retail Client or a Sophisticated Investor, we cannot use your Client Money for our own capital purposes, or to hedge with our liquidity providers. We use our own funds. We may use Wholesale Client funds for these purposes. We typically hold the equity balance displayed in your E-Money Account in our client money account.
- 56 You can ask us for records about money we have received from you, on your behalf, or for your benefit, if that money is Client Money. We will provide you with the records within 5 Business Days or such longer period as we may agree to in writing with you.
- 57 There is a counterparty risk that you may lose some or all of your Client Money if there is a deficiency in the designated segregated account.

#### **SECURITY, UNAUTHORISED AND INCORRECTLY EXECUTED TRANSACTIONS**

- 58 You are responsible for protecting and maintaining the security of your E-Money Account, including your E-Money Account login and password and your data against any theft, fraud or illegal activity. If another person gains access to your E-Money Account by passing all identification and security validation and verification checks, we may be entitled to treat any transaction conducted by that person as valid and authorised by you and may not be responsible for any loss or damage you may incur as a result.
- 59 If you have any indication or suspicion that your E-Money Account, password, or other security details are lost, stolen, misappropriated, used without authorisation or otherwise compromised, you must change your password and contact us immediately. Any delay in notifying us may result in you being liable for any Loss.
- 60 In the case of a Payment Instruction that has been agreed to be improperly executed due to our mistake, we shall at your request refund the amount to your E-Money Account. In the event that you identify an error in a Payment Instruction, you have up to 5 Business Days from the date you become aware of the error to notify us of it, after which time we will have no obligation to investigate or act upon your notification or provide a refund.
- 61 In the case of an unauthorised payment from your E-Money Account, at your written request we shall refund the unauthorised payment amount to your E-Money Account. We will not however be required to refund such a payment if you directly or indirectly contributed to the unauthorised payment being made from your E-Money Account, including due to your failure to keep your E-Money Account log-in, password or other security details safe. We will not refund any unauthorised payment that we have not been notified within the timeframes dictated by these Terms.
- 62 If our investigations show that a transaction reported by you as unauthorised or incorrectly executed was in fact authorised by you, or you have acted fraudulently or with negligence, for example by failing to keep your security information secure, we may reverse any refund made and you may be liable for any and all loss we suffer from your use of the E-Money Account.

#### **SERVICE RESTRICTIONS**

- 63 We may impose limits on the Payment Instructions and/or Orders that you can place, and the use of your E-Money Account.
- 64 We may refuse to process a Payment Instruction and/or Order, or any other transaction, in our sole discretion, including but not limited to if:
- (a) there are insufficient funds in your E-Money Account to effect a Payment Instruction and/or Order;
  - (b) we have reasonable grounds to believe that you are acting in breach of these Terms;
  - (c) we believe that your Payment Instruction and/or Order, or a Beneficiary, is suspicious or potentially illegal (for example, if we believe that your transaction is being made fraudulently); or
  - (d) because of errors, failures (whether mechanical, internet-related or otherwise) or refusals by a Beneficiary.

#### **SUSPENSION AND TERMINATION OF YOUR E-MONEY ACCOUNT**

- 65 Your E-Money Account will remain valid until cancelled by either you or us.
- 66 We may cancel your E-Money Account and terminate these Terms upon notice to you given via email or over the phone:
- (a) immediately if you breach an important part of these Terms, or repeatedly breach these Terms and fail to resolve the matter in a timely manner;



- (b) that you are using our Services fraudulently, inappropriately or for illegal purposes;
- (c) immediately if you act in a manner that is threatening or abusive to our staff, or any of our representatives;
- (d) by giving 5 days' notice by email or post for any reason;
- (e) if you fail to make a Payment when due;
- (f) we have any material concern over the adequacy of the information you have provided to us;
- (g) in our view (acting reasonably), we must do so to fulfil our legal or regulatory obligations;
- (h) if we must do so to fulfil our obligations pursuant to any Applicable Law or will cause Ebury or its Affiliates to breach Applicable Laws (including, without limitation, Applicable Laws relating to fraud, anti-money laundering, Sanctions or terrorist financing);
- (i) that our relationship with you presents a business risk to us or any of our Affiliates; or
- (j) without notice if your E-Money Account stays inactive for 12 consecutive months.

67 You may cancel your E-Money Account at any time by giving us a 5 days' notice in writing via email or post. If you cancel your E-Money Account you will no longer be able to use any of the functionality of the E-Money Account.

68 We may suspend or otherwise restrict the functionality of your E-Money Account on any reasonable grounds relating to the security of the E-Money Account or any of its security features or if we reasonably suspect that an unauthorised or fraudulent use of your E-Money Account has occurred or that any of its security features have been compromised or where a Force Majeure Event occurs and is continuing. We may increase or otherwise enhance our security checks in relation to your E-Money Account and/or any Order made by you at any time and in our sole discretion. We may also suspend your E-Money Account, restrict its functionality and/or reduce your trading limit to nil if any Payments are outstanding.

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

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

#### **SET OFF RIGHTS**

71 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 E-Money Account against any Payments, claims, costs, charges, penalties, expenses or other liabilities which you owe to us (or any of our Affiliates), save where it has been agreed between us that your E-Money Account will not be subject to the provisions of this clause 69.

72 At any time and from time to time, we may, without prior notice, set off any amount owing by you to us (or to any of our Affiliates) against any other amount owing by us to you, including amounts transferred to us as Margin. If any Margin is used to set-off any amounts owed by you, you must immediately restore the Margin upon request.

73 Close Out any Trade or pending Trade, and you shall be responsible for any Losses suffered by us as a result of such termination. You acknowledge and consent to us netting Orders for the purpose of satisfying any Margin Call and/or satisfying any shortfall incurred by us on the:

- (a) liquidation, termination or cancellation of any or all Orders
- (b) Close Out of any Trades or pending Trades.

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

#### **CONSEQUENCES OF TERMINATION**

75 On or as soon as reasonably possible following a Termination Date all Trades will be Closed Out, pending Orders will be cancelled and we will determine, in our sole discretion:

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

- (c) the market value of all Margin being held by us as at the Termination Date; and
- (d) the total balance of any amounts, other Losses, Payments, fees and/or commissions payable by you as a result of the provision of Services by us pursuant to these Terms which remain unpaid.

76 Based on the amounts calculated in accordance with clause 73, we will determine the balance due from each party to the other ("**Due Balance**"). Following such determination, Ebury's Due Balance will be set-off against your Due Balance, and the net balance of such set-off will be calculated, with the resulting balance being the Termination Amount. If the Due Balance due to us by you is greater than the Due Balance due to you, the Termination Amount will be payable by you to us. If the Due Balance due to you by us is greater than the Due Balance due to us, the Termination Amount is payable by us to you.

77 You agree and acknowledge that following a Termination Date:

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

78 If the Termination Amount is payable by:

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

79 Upon or following the occurrence of a Termination Date and subject to Applicable Law, we will have the right without prior notice to you or any other person to set-off any Termination Amount owed by you to us against any obligation owed by us (or any of our Affiliates) to you (or any of your Affiliates), whether or not arising under these Terms, matured or contingent and irrespective of the currency, place of payment or booking office of the obligation.

80 To the extent that an amount is set-off, such amount will be discharged promptly and in all respects. For the purpose of cross-currency set-off, we may convert either obligation at the applicable market exchange rate selected by us in our sole discretion on the relevant date. If an amount of an obligation is unascertained, we may estimate that amount and set off in respect of the estimate, subject to the relevant party accounting to the other when the amount of the obligation is ascertained. This clause 79 is without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirements to which a party is at any time otherwise entitled or subject.

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

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

#### **YOUR FUNDING SOURCE**

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

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

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

#### **THIRD PARTIES**

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

87 We are not responsible for fees or any other charges applied by any third party arising from your use of the Site, E-Money Account or Services, regardless of why the fee was applied.

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

including but not limited to our merchant facility or the issuer of your Funding Source.

#### **NO ADVICE**

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

#### **CUSTOMER REPRESENTATIONS**

90 You represent and warrant that:

- (a) you will use the Site in accordance with these Terms;
- (b) you are capable of entering into a legally binding agreement;
- (c) you are not subject to sanctions (howsoever described) issued by the European Union, United Kingdom, United Nations, United States of America or any other relevant government, country or other body ("**Sanctions**"), you are not directly or indirectly owned by a person or entity which is subject to Sanctions, you have not breached any Sanctions and you will not transfer or receive any funds using a third party based outside of a sanctioned jurisdiction which is connected to a party based in a sanctioned jurisdiction) and will immediately notify Ebury of any breach of the above;
- (d) you are liable as a principal in respect of your obligations under these Terms, including but not limited to your obligations in respect of any Trades entered into with us;
- (e) you understand that our principal role in relation to the Services is to process Payment Instructions and/or Orders and that Ebury is not a bank and is not acting as trustee on your behalf in relation to the E-Money Account;
- (f) if you are a partnership, each partner shall be jointly and severally liable under these Terms;
- (g) you are not using an anonymous network to access the Site;
- (h) you have the necessary experience and knowledge to understand the risks involved in relation to any Trade entered into under or in connection with these Terms and in relation to foreign exchange;
- (i) any Forward Contract entered into by you is only for non-speculative reasons;
- (j) you will disclose any matters to us that may affect the operation of these Terms, or your ability to comply with them;
- (k) all information you have provided to us is correct, current and complete at the date provided, and you will promptly notify us of any changes to such information;
- (m) you have complied and will continue to comply with all applicable laws, statutes, ordinances, and regulations (including without limitation anti-money laundering and counter-terrorism financing laws and any relevant data protection or privacy laws);
- (m) your use of the Site, your E-Money Account and/or submission of Payment Instruction and/or Order does not infringe the rights of any third party or breach any applicable law;
- (n) you will not use the Site or your E-Money Account for any illegal or improper purpose, including (but not limited to) money laundering, tax evasion or the financing of terrorist activities;
- (o) you are responsible for paying all taxes and related charges which you may be required to pay (in any jurisdiction) as a result of you receiving funds using your account details. If you are unclear as to your obligations, you should seek independent advice from a tax professional;
- (p) whilst we may provide you with information about foreign exchange markets and related matters, we do not provide advice. Any decision you make to enter into a Trade or request a Transfer is made on your own judgement. It is your responsibility to familiarise yourself with foreign exchange products and services;
- (q) you will use all reasonable efforts to prevent your E-Money Account being used for illegal trade, illegal financial transactions, or legalisation of illegal proceeds; and
- (r) you have regular access to the internet and consent to us providing you any information, including notice, via the Site. We may also contact you at the email address that you provide to us. It is your responsibility to ensure your contact details are current at all times, and to check for communications and information from us.

## NO GUARANTEE

- 91 We take reasonable steps to ensure we can deliver the Site, Online System, Services and your E-Money Account effectively, reliably and securely. However, we do not warrant, guarantee or represent that:
- (a) your E-Money Account, the Site, the Online System or the Services, or any information or other material accessible through our Site, will be uninterrupted, timely, reliable, secure, error-free or is free of any virus, worm, trojan horse or other harmful component;
  - (b) any Payment Instruction or Order will be executed, accepted or recorded;
  - (c) there will be operational stability, availability or continuation of your E-Money Account, the Site, Online System or the Services;
  - (d) your E-Money Account, the Site, the Online System or our computer systems are safe from hacking; or
  - (e) your use of your E-Money Account, the Site, the Online System and the provision of the Services will not infringe the rights of any third party.
- 92 In addition, your E-Money Account, the Site, the Online System and/or the Services may be suspended or discontinued in our sole discretion, or may be inaccessible at times, due to:
- (a) down-time and/or maintenance of the Site and its functions;
  - (b) outages to the internet, networks or servers;
  - (c) equipment failure, including the failure of third-party systems; or
  - (d) a Force Majeure Event.
- 93 You acknowledge that we have not made any warranty that your E-Money Account, the Site, the Online System and/or the Services will be error free. We are not required to notify you of any malfunction, or if a Service is limited, restricted or ceases.

## LIMITATION OF LIABILITY

- 94 Any liability on our part in connection with these Terms is subject to the exclusions and limitations set out in these Terms.
- 95 You agree that we will only be liable to you for Loss or damage that is reasonably foreseeable and caused directly by our breach of these Terms, and that any liability (however arising) we may have to you is limited in accordance with these Terms.
- 96 Our entire liability to you for any Loss or otherwise:
- (a) arising from any failure by us to process a Transfer or Trade in accordance with these Terms is limited to the cost of reprocessing such Transfer or Trade less any applicable fees payable to us
  - (b) whether for negligence, breach of contract, misrepresentation or otherwise arising out of or in connection with these Terms is limited to the, aggregate Fees paid by you for our Services in accordance with these Terms in the 12-month period immediately prior to the date on which the relevant negligence, breach of contract, misrepresentation or other action allegedly resulting in Loss first occurred.
- 97 We are not liable for any damage or interruptions caused by any computer viruses, spyware, scareware, Trojan horses, worms or other malware that may affect your computer or other equipment, or any phishing, spoofing or other attack. We advise the regular use of a reputable and readily available virus screening and prevention software.
- 98 We are not liable for any breach of these Terms where the breach is due to a Force Majeure Event, including any abnormal and unforeseeable or regulatory circumstances beyond our control, or where the breach is due to legal requirements.
- 99 The limitation of liability in these Terms is subject to any obligations that we have under Applicable Law that we cannot exclude, including our obligation to exercise reasonable care and skill in our provision of the Site and the Services.

## INDEMNITY

- 100 You indemnify Ebury and each of its directors, officers, shareholders, advisers, consultants, agents, employees and contractors (each an "Indemnitee") against all Losses which may be incurred or suffered by the Indemnitees directly or indirectly arising out of your failure to comply with these Terms. You agree to indemnify Ebury for any Loss we incur due to a person's unauthorised use of your information. Losses may include consequential losses and any legal fees incurred in defending or responding to Losses. This indemnity will apply regardless of whether a Payment Instruction and/or Order was provided in error but will not apply to the extent that Losses were incurred or suffered by an Indemnitee due to the fraud or willful default of Ebury.
- 101 We are not required to seek recovery or enforce any right against any other person or incur expense, loss, or damage or make

any payment before enforcing a right of indemnity conferred by these Terms.

#### **PRIVACY**

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

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

#### **AMAZON TERMS**

104 This Clause 106 shall apply to the extent that you register your General Client Account to receive disbursements with Amazon.

105 You shall immediately inform Ebury if you have registered your General Client Account to receive disbursements with Amazon.

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

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

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

108 Ebury will share certain information about you and your General Client Account with Amazon as further detailed in the Privacy Policy.. We may continue to share your information with Amazon after the termination of the Agreement.

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

110 Ebury shall not be liable to you for:

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

111 You agree to indemnify us for any Losses which arise due the use of your General Client Account with Amazon.

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

#### **CONTACTING US**

113 If you have any feedback, questions, or complaints, contact us via the Site or by emailing [complaints@ebury.com](mailto:complaints@ebury.com). We will try and resolve your complaint quickly, fairly and in a timely manner.

114 When you contact us please provide us with your name, address, and any other information we may need to identify you, your E-Money Account, and the transaction on which you have feedback, questions, or complaints.

115 If the complaint cannot be resolved to your satisfaction within 45 days, you have the right to refer the matter to the Australian Financial Complaints Authority (AFCA) of which we are a member (member number 79707). AFCA provides fair and independent financial services complaint resolution that is free to consumers. AFCA's contact details are:

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

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

Telephone: 1800 931 678 (free call)

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

## **VARIATION**

- 116 We may vary these Terms by providing 10 days advance notice at any time. You will be taken to have accepted any changes to the Terms by continuing to use the Site and Services 10 days after that notice is provided.
- 117 You acknowledge that we may vary these Terms immediately without advance notice if it is necessary to protection Ebury's business interests, including to protect the security or integrity of the Site, the Online System, your E-Money Account or the Services, to manage a technical or system fault or error or to comply with law.

## **MISCELLANEOUS**

- 118 These Terms, together with the Privacy Policy, comprise the entire Terms between you and us in relation to your use of your E-Money Account, the Site and the Services, and supersede any prior Terms between you and us.
- 119 Any and all communications and notices by either party under these Terms by e-mail shall be deemed given on the day the message is sent, unless the sending party receives an electronic indication that the message was not delivered.
- 120 Nothing in the Site is intended to be, or should be taken as, financial, legal, taxation or accounting advice. Customers should seek their own financial, legal, taxation or accounting advice as needed, and before using an E-Money Account, the Site or receiving the Services.
- 121 Nothing published or communicated by way of the Site should be considered an offer or solicitation to buy or sell any service or product to any person in any jurisdiction where such offer or solicitation would be unlawful.
- 122 In the provision of services under this Agreement we may use the services of our Affiliates. You authorise us to use the services of such Affiliates in the provision of such services without your further consent and on such terms as we may determine.
- 123 We may assign all or part of these Terms without notice to you. We are then released from all liability.
- 124 You may not assign, charge, transfer or grant security over any of your rights or obligations under this Agreement without our prior written and express consent.
- 125 These Terms are governed by the laws of Sydney, Australia. You and we submit to the exclusive jurisdiction of the courts of Sydney for resolution of disputes arising in relation to these Terms.
- 126 If any provision of these Terms becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the remainder of these terms will not be affected.
- 127 We reserve any rights not expressly granted in these Terms.

## Ebury FX Option Products Addendum

This Addendum is part of the agreement between Ebury Partners Australia Pty Ltd ACN 632 570 702 AFSL 520548 (Ebury, we, our or us) and the Customer (you or your). It sets out the terms on which we provide, and you can use, the FX Options Services, and incorporates the Terms, the Product Descriptions and the Important Information Page (together, the FX Option Terms). By entering into a FX Option Product, you will be deemed to have accepted the FX Option Terms.

Ebury only offers the FX Options Services to Wholesale Clients. If you are not a Wholesale Client, you must not attempt to use the FX Options Services.

For more information about the FX Option Products that Ebury offers and our FX Options Services, including any benefits and risks, see the Information Sheet.

### DEFINITIONS AND INTERPRETATION

1. In this Addendum:

- Addendum means this addendum.
- Client Money Rules refers to Subdivision A of Division 2 of Part 7.8 of the Corporations Act 2001. For the avoidance of doubt, Client Money Rules does not refer to the ASIC Client Money Reporting Rules.
- Credit and Margin Addendum means the Ebury Credit and Margin Addendum that is agreed between you and Ebury, as varied from time to time.
- Expiration Date means the date upon which the FX Option Product terminates, which date will be noted in the Transaction Receipt or will otherwise be agreed between you and Ebury.
- FX means foreign exchange.
- FX Option Contract means an agreement between us and you where one party (the buyer) pays a Premium to the other party (the seller). In return, the buyer receives the right, but not the obligation, to exchange a specified amount of one currency for another currency, at a prescribed exchange rate, and on a specified date and time. The seller receives the premium for offering these rights to the buyer, and is assigned the obligation to fulfil the terms of the agreement if the buyer exercises their rights.
- FX Option Order means an order placed by you to acquire an FX Option Product.
- FX Option Product means a Vanilla Option or a Structured Option.
- FX Options Services means the issue of the FX Option Products to you.
- Important Information Page means the page of the Information Sheet titled "Important Information".
- Information Sheet means the document titled Ebury FX Options Contracts Information Sheet that is provided to you by Ebury, either upon entering into these Terms or from time to time upon variation.
- Premium means a non-refundable premium paid by the buyer in respect of an FX Option Contract, but which may not be payable by you for some Structured Options.
- Product Descriptions means the description of the FX Option Products that Ebury offers, including the specific features and characteristics of each FX Option Product, contained in the Information Sheet as varied from time to time. The Product Descriptions form part of these Terms and are legally binding. The Product Descriptions are flagged as legally binding in the body of the Information Sheet for clarity. For the avoidance of doubt, Ebury is not restricted to offering the FX Option Products that meet the Product Descriptions, and FX Options Products with specific features and characteristics that vary from the Product Descriptions may be offered by Ebury and agreed to by you from time to time.
- Strike Rate means the price that the buyer of a Vanilla Option has the right to exchange a currency and the seller has the obligation to exchange the currency. It applies to a Structured Option to the extent that a Vanilla Option is part of the Structured Option.
- Structured Option means the bundled purchase and sale of one or more Vanilla Options, and may also bundle other Trades or non-standard features that affect the possible costs and outcomes at or before expiry. See the Information Sheet for more information.
- Terms means the Ebury Australia Terms and Conditions set out above this Addendum and available on the Site.
- Vanilla Option means a single FX Option Contract that gives the buyer the right but not an obligation to buy (call) or sell (put)



a specified amount of one currency for another currency by a specified date and time from the seller at a rate of exchange that is quoted by us when you enter into the contract. See the Information Sheet for more information.

2. If a term is capitalized in this Addendum but not included in clause 1 above, it has the meaning given to that term in the Terms.
3. In the event of inconsistency between:
  - a. this Addendum and the Terms, this Addendum will prevail; and
  - b. the FX Option Terms and the Information Sheet, the FX Option Terms will prevail.

#### **FX OPTIONS SERVICES**

4. Ebury may provide FX Options Services to you. In return, you pay a Premium, sell an FX Options Contract or otherwise have obligations to us as part of the FX Options Product.
5. We provide the FX Options Services via telephone or email.
6. Payments made by you in relation to the FX Option Services must be made in currency agreed with you and confirmed in the Transaction Receipt.

#### **CUSTOMER ELIGIBILITY**

7. To be eligible to use the FX Options Services, you must:
  - a. have an E-Money Account;
  - b. be a Wholesale Client;
  - c. not be a resident of any country to which we do not provide the FX Options Services;
  - d. agree to be bound by the FX Option Terms; and
  - e. not be in breach of the FX Option Terms or any Applicable Laws.
8. You agree to provide us with any information and other documents that we request to enable us to determine whether you meet the necessary criteria. You permit us to keep a record of such information and share it with third parties for the purpose of providing the FX Options Services.

#### **TRANSACTING WITH US**

9. You can place an FX Option Order for an FX Option Product via email or the telephone.
10. We will notify you of the FX Option Products available to you, and may also tell you the Strike Rate, the Expiration Date, the currencies and amount that may be nominated by you before you place an FX Option Order.
11. When placing an FX Option Order, you will be required to provide us with the requisite details (including any unique identifier and other information which we may request). In order to comply with the ASIC Derivative Transaction Rules (Reporting) 2013, we must obtain a Legal Entity Identifier (LEI) from you. If you are an entity and do not have an LEI, by opening an E-Money Account with us, you consent to Ebury obtaining a LEI on your behalf. You acknowledge that this clause gives Ebury the option, but not the obligation, to obtain an LEI on your behalf in its sole discretion. We will charge you and pass on the cost of obtaining a LEI to you, together with our reasonable administration costs. You are solely responsible for the provision and confirmation of correct payment details to us. We will not be liable for any incorrect payment if that payment was made on the basis of incorrect information provided by you in an FX Option Order.
12. The submission of an FX Option Order or instruction to us does not automatically give rise to a binding contract for the FX Option Product between you and us. Any FX Option Order is subject to us accepting it and communicating our acceptance to you, which will either be done verbally or in writing. The moment we communicate our acceptance to you, the FX Option Product is binding on both parties. We will then provide you with a Transaction Receipt confirming the details of the FX Option Order.
13. You must carefully review the Transaction Receipt and tell us immediately, and in any event within 24 hours of receipt of the Transaction Receipt, if you identify a mistake in the Transaction Receipt which you believe is a mistake on Ebury's part. If you inform us of such a mistake within 24 hours, and we agree in our reasonable opinion that we have made a mistake as described in the Transaction Receipt, we will reissue a Transaction Receipt with the updated details and make any necessary amendments to the content and processing of the FX Option Order. We take no responsibility for any error that is not a mistake on our part, or which is not brought to our attention in accordance with this clause 13.
14. An FX Option Order will be deemed to have been authorised by you if the relevant instruction has been given in accordance

with the FX Option Terms. If we accept your FX Option Order, you will enter into the contract for an FX Option Product as principal, and we will be the counterparty.

15. We reserve the right to refuse or postpone any FX Option Order for any reason and at any stage of the transaction process, in our absolute discretion. If Payment has been initiated from you or a third party to us before we refuse or accept an FX Option Order, we will refund the amount, less any applicable Fees, to you or the third party as relevant. You agree that we will not be liable in respect of any refusal or postponement of an FX Option Order. If we refuse or postpone an FX Option Order, we will contact you to advise you of the refusal or postponement but are not required to provide you with any reason.
16. You may pay a Premium payable to Ebury for the option contract itself, as well as paying Margin towards settlement which will occur at a future date, regardless of whether or not you exercise the option on the Expiration Date.
17. Negative balances and margin requirements are dealt with in accordance with the Terms and the Credit and Margin Addendum.

#### **PREMIUMS PAYABLE FOR FX OPTION PRODUCTS**

18. Any Premium paid in connection with an FX Option Product must be paid within two Business Days of us accepting the FX Option Order.
19. Any payment due and payable to you in respect of an FX Option Product under these FX Option Terms will be paid into your E-Money Account within two Business Days of the payment being due and payable.

#### **CREDIT AND MARGIN CALLS**

20. In addition to the Premium (if applicable) payable to us for an FX Option Product, we may also require you to put down a deposit (an initial Margin) towards settlement which will occur at a future date. If we require an initial Margin on an FX Option Product, it must be paid and received by us (where requested) in accordance with the Credit and Margin Addendum.
21. The amount of any Margin may be expressed as a percentage of the value of the FX Option Product, the amount of which is determined by us. This will be assessed by us on a case-by-case basis, and we will consider your credit rating and history with us in deciding whether or not Margin will be required in accordance with the Credit and Margin Addendum.
22. Terms in relation Margin Calls, the requirement for additional Payments, payment terms and the consequences of failing to satisfy a Margin Call or make an additional Payments are set out in the Credit and Margin Addendum.
23. Any Margin paid by you or on your behalf will be paid to us for the purpose of securing or covering all your present or future, actual or contingent, or prospective, obligations to us under the FX Option Terms. Any Margin paid by you in respect of an FX Option Product is our property. You agree that Payments made in respect of an FX Option Product, including any Premium or Margin, are not client moneys that we hold on trust for you under the Client Money Rules. We do not hold such Margin on your behalf, whether on trust or otherwise, and we can deal with it as our own.

#### **WHEN WILL WE CLOSE OUT YOUR POSITION?**

24. Your FX Option Product will expire based on the terms in the Transaction Receipt, unless it is extended or otherwise varied in writing with our consent.
25. We may Close Out a particular FX Option Product or an FX Option Contract that forms part of the FX Option Product without notice to you for any event that we may reject, suspend, disregard or cancel a Trade under the Terms, or if you terminate your relationship with us or cancel your E-Money Account in accordance with the Terms, or if you breach any material representation or warranty or are otherwise in breach of these FX Option Terms.
26. You may ask us to Close Out a particular FX Option Product or FX Option Contract by instructing us over the phone or via email. If we Close Out one or more Trades under these FX Options Terms or permit you to Close Out:
  - a. we will buy (or sell, as the case may be) the FX Option Product that we have entered into with you at prevailing market rates. You will be liable to us for the amount of that Loss (as well as any costs incurred by us) as a result of our action;
  - b. we will not pay you any profit arising from the Close Out;
  - c. you acknowledge that the amount of any Loss realised on the Close Out of the FX Option Product or FX Option Contract is a debt payable by you and agree that we may immediately deduct the total amount of any Loss (together with any costs) from your E-Money Account;
  - d. if the amount we are seeking to recover exceeds the amount of any Margin or funds available in your E-Money Account, you must pay the balance upon being notified by us of the total amount due;
  - e. we may charge you interest on any sum that remains payable to us after we Close Out at the Interest Rate. Interest will

accrue and will be calculated daily and be compounded monthly from the date Payment was due until the date full Payment is made by you; and

- f. we will send you a written statement explaining the amount of any sums that may be payable to us and the amount of any sums being withheld by us

#### **FEES**

27. You agree that you may be required to pay any applicable fees and charges in connection with the FX Option Services.
28. If applicable, we will disclose the amount of any fees we charge when we accept an FX Option Order and before you enter into a contract for an FX Option Product.
29. If we decided to charge fees in relation to the FX Services, we will notify you of any applicable fees, which may vary from time to time, before you place an FX Option Order. You can also obtain information about the fees relevant to the FX Option Products free of charge by requesting this information from us by phone or via email.
30. 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 the FX Option Terms for the period from (and including) the original due date to (but excluding) the actual date of payment, at the Interest Rate.
31. You may also be charged fees by other service providers or intermediaries. These fees are outside of our control. Where we know about these fees, we will make a reasonable attempt to tell you about them. However, we are not responsible for any fees or charges imposed by a third party in connection with your use of the FX Option Services. You are responsible for paying such costs, taxes, fees or charges where these apply.

#### **CANCELLATION OR SUSPENSION OF FX OPTION PRODUCTS**

32. To the extent permitted by law and subject to these FX Options Terms, you may not cancel an FX Option Order after we have communicated our acceptance of the FX Option Order. However, notwithstanding our acceptance, if we haven't yet processed the FX Option Order:
  - a. you can correct any incorrect Beneficiary Account details (though we may charge a Fee for this); and
  - b. we may at our discretion permit you to cancel the FX Option Order.
33. In addition to the provision of clause 28 of the Terms, if we permit you to cancel a FX Option Order, we will decide (in our sole discretion) whether to refund any Premium or Margin already paid for such FX Option Order.
34. We may reject, suspend, disregard or cancel an FX Option Order, or refuse to enter into a contract for an FX Option Product or FX Option Contract, in our sole discretion for any of the reasons set out in the Terms.
35. If your E-Money Account is terminated, we will terminate any outstanding FX Option Products.
36. We are not obliged to provide you with the FX Option Services or issue you with an FX Option Product when you request that we do so. If we do agree to provide the FX Option Services to you, or issue an FX Option Product to you, we may terminate or otherwise restrict your use of the FX Option Services. We will incur no liability if we do so. For example, we may refuse a transaction if:
  - a. you fail to make a Payment in accordance with a contract for an FX Option Product;
  - b. we believe in our sole discretion that you are otherwise in breach of the FX Option Terms; or
  - c. providing you with the FX Option Services may breach any Applicable Law.

#### **CLIENT ACKNOWLEDGEMENTS**

37. You acknowledge, represent and agree that:
  - a. you will use the FX Option Services in accordance with the FX Option Terms;
  - b. you will not act as agent or representative of another person unless we agree in writing;
  - c. you are a Wholesale Client;
  - d. you that we are not required to hold moneys deposited by you in accordance with the Client Money Rules;
  - e. you understand that you will not have any rights of ownership or otherwise in any underlying currencies as a result of an FX Option Product;
  - f. you have the necessary experience and knowledge to understand the risks involved in relation to the FX Option Products

entered into under or in connection with these FX Option Terms;

- g. you are relying solely upon your own judgement in using the FX Options Services;
- h. you will disclose any matters to us that may affect the operation of the FX Options Terms, or your ability to comply with them;
- i. you will not use the FX Options Services if it infringes the rights of any third party or breaches any Applicable Law; and
- j. you will not use the FX Options Services for any illegal or improper purpose, including (but not limited to) money laundering, tax evasion or the financing of terrorist activities.

#### **LIMITATION OF LIABILITY**

- 38. All FX Option Products will be acquired at your own risk and to the maximum extent permitted by law, we will not in any way be liable for any claims, damages, losses (including consequential losses) or injury suffered or incurred by you as a result of or arising out of:
  - a. any statement, information or communication provided by, or on behalf of, us relating to an FX Option Product entered into or proposed to be entered into by you under the FX Option Terms; or
  - b. any statement, information or communication provided by, or on behalf of, us in relation to the FX Options Services.

#### **THIRD PARTIES**

- 39. Ebury may use third parties to provide the FX Options Services, including liquidity providers.
- 40. We are not liable for any third-party service provider and do not warrant their performance.

#### **VARIATION**

- 41. We may vary the FX Option Terms, which include the Terms, including the FX Option Products that we offer and the Information Sheet, by providing 10 days advance notice at any time. You will be taken to have accepted any changes to the FX Option Terms by continuing to use the FX Options Services 10 days after that notice is provided.

#### **MISCELLANEOUS**

- 42. The FX Option Terms, which include the Terms, together with the Privacy Policy, terms included in a specific FX Option Product and the Product Descriptions comprise the entire understanding between you and us in relation to your use of the FX Option Services.
- 43. Any and all communications and notices by either party under this Addendum by e-mail shall be deemed given on the day the message is sent, unless the sending party receives an electronic indication that the message was not delivered.
- 44. Nothing in this Addendum, or published on the Site in relation to the FX Option Services, should be considered an offer or solicitation to buy or sell any service or product to any person in any jurisdiction where such offer or solicitation would be unlawful.
- 45. This Addendum is governed by the laws of New South Wales, Australia. You and we submit to the exclusive jurisdiction of the courts of New South Wales for resolution of disputes arising in relation to this Addendum.
- 46. If any provision of this Addendum becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the remainder of these terms will not be affected.
- 47. We reserve any rights not expressly granted in this Addendum.