

UNIVERSAL PARTNERS FX LTD ACCOUNT TERMS AND CONDITIONS

Last updated: 25/02/2022

1. INTRODUCTION

- 1.1. These terms and conditions set out the basis on which UPFX provides foreign currency exchange services and payment services to the Client (the "Terms").
- 1.2. The Client should read the Application Form (as defined below) and these Terms carefully before signing and submitting the Application Form. The Client's signature and submission of the Application Form confirms that the Client has accurately completed the Application Form and that the Client has read and accepted everything in these Terms which the Client understands are legally binding.
- 1.3. If the Client is unsure about anything in the Application Form or these Terms (together the "Agreement") then please contact UPFX or if appropriate seek independent legal advice.

2. INTERPRETATION

2.1. Definitions

2.1.1. In these Terms:

"Application Form" means the Client Account opening documentation which must have been completed by the Client either (i) online via the Web Portal; or (ii) using the paper version where UPFX has provided a hard copy of the required documentation to the Client.

"Authorised Person" means a person authorised by a director of the Client (or a person of equivalent seniority within the Client's organisation) to access the Online Platform and place Orders by any permitted means on behalf of the Client.

"Balance" means the remainder of monies which the Client is required to pay UPFX after the Initial Margin (and where relevant any Variation Margin) has been paid in respect of any Forward Trade.

"Balance Due Date" means the date on which payment of the Balance must be received by UPFX. The Balance Due Date must be a Business Day.

"Business Day" means a day, other than a Saturday, Sunday or a public or bank holiday in England.

"Business Hours" means the hours from 9 am to 5 pm in the United Kingdom on any Business Day.

"Credit Limit" means a foreign currency exposure limit or credit facility that the UPFX Treasury Department has agreed with the Client in writing or by telephone which UPFX has recorded in writing.

"Client" means the party entering into the Agreement with UPFX.

"Client Account" means the electronic money account which the Client opens and holds with UPFX.

"Force Majeure Event" means any circumstances not within a party's control including epidemic or pandemic, any law or any action taken by a government or public authority, terrorist attack, cybercrime, war, riot, any strikes or other labour dispute, fire, flood or other natural disaster, collapse of buildings, explosion or any interruption or failure of utility service or malfunction of any telecommunications or other IT equipment or systems.

"Forward Trade" means a trade for the sale or purchase of a specific quantity of a foreign currency where the Value Date is more than two (2) Business Days in the future.

"Initial Margin" means an amount of money required either in the form of funds held by UPFX for the Client, or in the form of a payment by the Client, to be applied as partial payment in respect of a Forward Trade.

"Losses" means all losses, liabilities, damages, fines, interest, costs and expenses.

"Manifest Error" means an obvious mistake or error and includes where the proposed exchange rate of a Trade is not at a commercially reasonable rate.

"Margin Call" means a written notice issued by UPFX to the Client stating that either an Initial Margin or a Variation Margin is due and payable.

"Market Order Trade" has the meaning given in clause 7.1.

"Online Platform" means the money transfer platform accessible via the Web Portal which enables the Client to place Orders online.

"Order" means any order or instruction for UPFX to execute or amend a Trade, make a Payment or take any action in relation to a Trade or Payment whether such order or instruction is submitted via telephone, email or the Online Platform.

"Password" has the meaning given in clause 9.1.

"Parties" or **"party"** means collectively or individually, UPFX and/or the Client.

"Payment" means any execution of payment transaction carried out by UPFX for the Client as further defined in the PSR 2017.

"Payment Date" means the date on which UPFX has agreed to make a Payment (if the Client has requested for a Payment to be made as soon as possible, this shall be the earliest date that UPFX can make the Payment using reasonable endeavours).

"Pre-Trade Information" means the information provided to the Client prior to entering into a Trade and/or making a Payment as set out in clause 12.1.

"Privacy Notice" means the UPFX privacy notice available at <https://www.upfx.co.uk/privacy>.

"PSR 2017" means the Payment Services Regulations 2017 (SI 2017/752).

"Recipient" means the person which the Client has designated as the payee.

"Recipient Account" means the bank account or other account of the Recipient where the monies will be sent pursuant to a Payment.

"Recipient Account Details" means (a) the name of Recipient; and (b) if the Recipient Account is not an account operated by UPFX, the BIC and SWIFT code or the account number and sort code or any other information that UPFX requests from the Client.

"Second Trade" has the meaning given in clause 13.11.2.

"Specified Exchange Rate" has the meaning given in clause 7.1.

"Spot Trade" means a trade for the sale or purchase of a specific quantity of a foreign currency where the Value Date is within two (2) Business Days.

"Trade" means a binding contract between UPFX and the Client relating to a Forward Trade, Market Order Trade, Spot Trade and any other trade as such other trade may be agreed between the parties in writing from time to time.

"Trade Confirmation" means a written notice which confirms the details of a Trade.

"Trading Limit" means a trading limit that UPFX may specify to the Client in writing and apply to the Client Account with respect to Orders for Spot Trades.

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

"UPFX" means Universal Partners FX Ltd a private limited company registered in England and Wales with company number 10674030 whose registered office address is at The South Quay Building 77 Marsh Wall, Canary Wharf, London, United Kingdom, E14 9SH. UPFX is a payment institution authorised and regulated by the Financial Conduct Authority with firm reference number 820037.

"UPFX IP" has the meaning given in clause 27.1.

"Value Date" means the date on which foreign currency is deliverable in accordance with the terms of a Trade.

"Variation Margin" means an additional sum of money that UPFX may require to be paid by the Client at any stage in a particular Trade at UPFX's sole discretion.

"Web Portal" means the webpage available at www.upfx.co.uk which enables the Client to directly access the Application Form and the Online Platform.

2.1.2. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

2.1.3. Any words following the terms "including", "include", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2.1.4. A reference to legislation, a legislative provision or regulation is a reference to it as amended, extended or replaced from time to time.

3. REGULATIONS

3.1. UPFX is an authorised payment institution registered with the Financial Conduct Authority (registration number 820037) and is subject to the PSR 2017 which regulates how Payments must be transmitted.

3.2. UPFX may be liable to the Client under the PSR 2017 where UPFX fails to perform or incorrectly performs any Payment that the Client authorises UPFX to perform. In that instance the Client shall notify UPFX within the applicable time period set out in clause 14.2.1.

3.3. UPFX shall provide the Client with the information which the Client is entitled to receive under the PSR 2017. If the Client is a corporate customer (i.e. not a consumer, a micro-enterprise or a charity as defined in the PSR 2017) then to the fullest extent permitted by law:

3.3.1. the whole of Part 6 of the PSR 2017 shall not apply to this Agreement;

3.3.2. regulations 66(1), 67(3) and 67(4), 75, 77, 79, 80, 83, 91, 92 and 94 of the PSR 2017 shall not apply to this Agreement; and

3.3.3. a different time period applies for the purpose of regulation 74(1) of the PSR 2017, as set out in clause 14.2.1.

4. COMMENCEMENT AND DURATION

4.1. This Agreement shall come into force on the date on which UPFX sends the Client an account activation email following acceptance of the Client's completed and signed Application Form. A Credit Limit or Trading Limit may be introduced by UPFX at any time during the term of this Agreement.

4.2. UPFX shall notify the Client by email if its Application Form is rejected and UPFX shall not be required to provide any explanation for such rejection.

4.3. If as part of the registration process, UPFX requires any supplementary information from the Client in addition to the Application Form then the Client shall promptly provide such details or material to UPFX.

4.4. This Agreement shall remain in force until terminated in accordance with these Terms.

5. NO ADVICE

5.1. UPFX deals on an execution only basis and does not advise the Client on the merits of or make any recommendation in relation to any particular Trade. The Client must assess whether it is appropriate for it to enter into a Trade based on its own judgment and taking account of advice from such advisers as the Client considers necessary.

5.2. The Client confirms that although UPFX may provide information in relation to foreign exchange markets, this does not amount to investment advice or a personal recommendation. Information is provided solely to enable the Client to make its own foreign exchange decisions.

5.3. Foreign currency exchange rates are subject to fluctuations outside the control of UPFX or any broker. Past trends in the movement of foreign currency exchange rates should not be taken as an indicator of future movements in such exchange rates.

6. FORWARD TRADES CAN ONLY BE USED FOR SPECIFIC PURPOSES

6.1. UPFX is only permitted to enter into a Forward Trade with the Client:

6.1.1. where the full amount of foreign currency is delivered to the Client; and

6.1.2. which is for the purpose of:

a) facilitating payment for identifiable goods and/or services; or

b) direct investment.

6.2. UPFX cannot enter into a Forward Trade with the Client where the purpose of the Trade is profit seeking through speculation on foreign exchange movements.

6.3. UPFX shall have absolute discretion to decide whether the purpose of a Forward Trade is for facilitating payment for identifiable goods and/or services or direct investment.

6.4. The Client shall promptly make available any information that UPFX requests to verify the financial standing of the Client for the purpose of satisfying applicable legal and regulatory requirements as well as to make decisions as to whether or not to accept or progress an Order including:

6.4.1. in respect of a Forward Trade relating to identifiable goods and/or services, copies of supply agreements, purchase

orders, sale invoices, accounts and other information relevant to the Client's requirements to purchase goods and services; and

6.4.2. in respect of a Forward Trade relating to a direct investment, details of the beneficiary of the investment including such person's interest in the investment and their level of management control and business objectives.

7. MARKET ORDER TRADES

7.1. If requested by the Client, UPFX may enter into a Trade and/or a Payment to be executed in the future when an exchange rate specified by the Client ("**Specified Exchange Rate**") becomes available (a "**Market Order Trade**").

7.2. UPFX will use reasonable endeavours to achieve the Specified Exchange Rate. The Client acknowledges that UPFX may not be able to enter into the Market Order Trade at the Specified Exchange Rate because:

7.2.1. the Specified Exchange Rate is not available in the market that UPFX operates in; or

7.2.2. UPFX is unwilling to enter into the Market Order Trade due to volatile market conditions even if the interest charged on short term loans made between financial institutions has achieved a rate that UPFX would otherwise require to match the Specified Exchange Rate.

7.3. Subject to clause 7.2, UPFX will place the Order for the Market Order Trade as soon as possible once the Specified Exchange Rate becomes available.

8. PLACING ORDERS

8.1. The Client may place Orders for Trades and/or Payments on the basis of the indicative prices that UPFX quotes it being understood however that UPFX may not always be able to deal at the prices indicated.

8.2. UPFX gives no warranties or representations in relation to the indicative prices or exchange rates it provides for any Order and is under no obligation to provide the best or most competitive prices or exchange rates available.

8.3. The Client can place an Order with UPFX via:

8.3.1. email by writing to its account manager, details of which UPFX will provide from time to time;

8.3.2. telephone by calling a telephone number which is provided by a member of staff from UPFX or verified to be a telephone number owned by UPFX; or

8.3.3. the Online Platform, if available to the Client.

8.4. UPFX does not accept Orders submitted by post.

8.5. If the Client posts a letter to UPFX with the details of any Order that it wishes to place then a telephone number on which the Client is instantly contactable must be provided (if different to the telephone number entered in the Application Form). UPFX may then telephone the Client and arrange for the Order to be placed in accordance with any of methods set out in clause 8.3.

9. ONLINE PLATFORM ACCESS AND SECURITY

9.1. Once UPFX has received the completed Application Form from the Client, UPFX may send the Client an activation email for the Client Account, following which the Client (or where applicable, each Authorised Person) will be required to create a username and secure password in order to access the Online Platform ("**Password**") and provide a mobile phone number and two items of memorable information for each Authorised Person as well as any other information that UPFX may request in respect of such persons for security purposes.

9.2. The Client shall (and shall procure that each Authorised Person shall) take all reasonable precautions to prevent unauthorised access to the Online Platform including through:

9.2.1. keeping the Password confidential (UPFX will never ask the Client or an Authorised Person for the Password whether via email, telephone or otherwise);

9.2.2. informing UPFX via telephone or email immediately if the Client suspects the Password has been lost, stolen or compromised in any way;

9.2.3. using premium anti-virus software on any devices used to log in to the Online Platform;

9.2.4. logging out of any device used to access the Online Platform;

9.2.5. not recording the Password or other security information on any software which automatically retains it; and

9.2.6. ensuring that its Authorised Persons list is kept up to date and ensuring that rights to access the Online Platform are immediately cancelled for all Authorised Persons that are no longer employed or engaged by the Client.

9.3. The Client shall ensure that:

9.3.1. no Authorised Person transfers its username and/or Password to another person without the prior written consent of UPFX in each instance

9.3.2. any Authorised Person shall change its username and/or Password immediately following a request from UPFX for any reason.

10. ORDERS

10.1. Non-acceptance of Orders

10.1.1. UPFX may, in its absolute discretion, refuse an Order and there is no guarantee that an Order will be placed. For example, UPFX may refuse an Order if:

a) it suspects that the Order was not authorised by the Client;

b) the Client is insolvent or has failed to pay any sums owed to UPFX;

c) it determines that the Order would breach applicable law;

d) the Client has failed to provide all due diligence information requested by UPFX;

e) it considers that the Order would require UPFX to exceed a Credit Limit or a Trading Limit; or

- f) it views the instructions for the Order as being unclear, inaccurate or incomplete.
- 10.1.2. UPFX reserves the right to require further written confirmation of any Order, for example where an instruction for a Payment appears to be unclear, inaccurate or incomplete.
- 10.2. **Orders placed by telephone**
- 10.2.1. When an Order is placed by telephone, UPFX will provide the Client with the Pre-Trade Information on the telephone. Orders placed on the telephone will usually be accepted over the telephone.
- 10.2.2. UPFX reserves the right to require written confirmation of an Order placed by telephone to be provided by the Client before such Order is accepted however the Client giving written confirmation of an Order placed by telephone is not a prerequisite for UPFX to accept a such Order where UPFX has not requested written confirmation.
- 10.2.3. Once UPFX has accepted an Order a binding contract is entered into between the parties and the Client will be obliged to settle such Trade in relation to the Trade created by such Order.
- 10.2.4. The Client shall be liable for any Losses suffered or incurred by UPFX arising out of or in connection with the Client's failure to settle a Trade.
- 10.3. **Reliance on instructions**
- 10.3.1. The Client authorises UPFX to accept and act on any Order that UPFX believes to have been made by the Client (or an Authorised Person in respect of a corporate client), an Order received from an email address or telephone number, set out by the Client in the Application Form or otherwise used by the Client to communicate with UPFX shall be sufficient to authenticate an Order as being from the Client and shall be deemed to have been authorised by the Client pursuant to these Terms as well as the PSR 2017.
- 10.3.3. The Client shall maintain an up to date list of all Authorised Persons and shall provide a copy of such list to UPFX promptly on request. UPFX will not be liable to the Client for any Orders placed by a person that is no longer an Authorised Person where the Client has not informed UPFX in writing about the relevant change.
- 10.3.4. If the Client fails to provide complete, accurate and clear instructions in a timely manner, UPFX shall hold the funds in the Client Account pending receipt from the Client of the information necessary for UPFX to accept an Order.
- 10.3.5. The Client will be solely responsible for ensuring that the details it supplies to UPFX to enable UPFX to execute an Order are true and accurate and the Client will not withhold or omit any information that would render those details false or inaccurate. The Client agrees to notify UPFX immediately if it becomes aware of any error or change in the details it has supplied to UPFX.
- 10.3.6. UPFX shall not be liable for any Losses suffered or incurred by the Client in connection with any delay in an Order being placed for the reasons set out in clause 10.1.1 or 10.3.5.
- 10.4. **Audio recordings**
- 10.4.1. UPFX may record or monitor any telephone conversations with the Client without prior warning.
- 10.4.2. All recordings (including audio and written notes) are the property of UPFX and the Client agrees that UPFX may rely on such recordings to resolve any disputes as well as use the same for the purposes of quality assurance, staff training, fraud prevention and compliance with applicable legal or regulatory obligations.
- 10.4.3. UPFX does not guarantee that such recordings will be maintained or made available to the Client.
- 10.5. **Orders placed via the Online Platform**
- 10.5.1. When an Order is placed via the Online Platform, the Client will have an opportunity to review the instructions that it has entered.
- 10.5.2. The Client is solely responsible for ensuring that all information is entered correctly when placing an Order using the Online Platform.
- 10.5.3. Unless there has been a Manifest Error, once the Order has been submitted to and received by UPFX, a binding contract will have been entered into between the parties.
- 10.6. **Consent for a Payment Order**
- 10.6.1. The placement of an Order for a Payment is deemed under these Terms to be the Client's consent for UPFX to execute the Payment in accordance with regulation 67 of the PSR 2017.
- 10.7. **Deemed receipt of an Order for Payment**
- 10.7.1. An Order for a Payment shall be deemed to be received at the time at which it is received except that:
- a) where the Order for the Payment would otherwise be deemed to be received on a day which is not a Business Day or is received after 12 noon (UK time) on a Business Day, UPFX has the right to treat the Order for the Payment as having been received on the next Business Day; and
- b) if the Payment is to be made on:
- a specified day; and/or
 - the last day of a specified period; or
 - the day on which the Client holds enough funds in the Client Account in the required currency and subject to such funds being held by 2.30 pm (UK time) on that day;
- then the Order for Payment shall be deemed to be received on the last of such days or, if that is not a Business Day, on the Business Day immediately following that date.
- 11.1. Upon UPFX's acceptance of an Order, UPFX will endeavour to send a Trade Confirmation to the Client by email as soon as possible. A failure to send a Trade Confirmation, or the non-receipt by the Client of same for any reason, in respect of a particular Trade does not in any way invalidate any Trade entered into between the parties and will not prejudice the rights and obligations of either party under that Trade.
- 11.2. The Client shall inform UPFX within one (1) hour of becoming aware of an error in the Trade Confirmation or any discrepancy between the Pre-Trade Information and the Trade Confirmation. Failure to notify UPFX of any errors will not entitle the Client to treat the Trade as void and UPFX will presume that the Client agrees with the terms of the Trade.
- 11.3. The Client shall notify UPFX as soon as possible if a Trade Confirmation has not been received within one (1) hour of an Order being placed and accepted by UPFX.
12. **PRE-TRADE INFORMATION AND CONTENTS OF TRADE CONFIRMATIONS**
- 12.1. Unless deemed unnecessary by UPFX based on its relationship with the Client (for example where the Client is a longstanding customer or frequently places Orders), the Pre-Trade Information and the Trade Confirmation will convey and confirm the following information:
- the amount and currency of funds that must be held in the Client Account for the Client to receive the amount of foreign currency requested;
 - the amount of foreign currency that the Client will receive upon completion of a Trade;
 - the material terms of the Trade;
 - the exchange rate applicable to the Trade;
 - details of the Initial Margin and Balance;
 - a breakdown of any applicable charges relating to the Trade; and
 - the due date and time by which sufficient funds must be held in the Client Account for the Trade to be executed.
13. **TRADE MARGINS**
- 13.1. **Initial Margins**
- 13.1.1. UPFX may, in its absolute discretion, require the Client to pay an Initial Margin in relation to any Forward Trade. The Client shall pay the required Initial Margin:
- within twenty-four (24) hours of the Client's instructions to enter into a Forward Trade; and/or
 - where a Margin Call is issued more than twenty-four (24) hours after the Client's instructions to enter into a Forward Trade, by close of business on the Business Day on which the Margin Call is issued to the Client which may be at any time during the course of a Forward Trade prior to the Balance Due Date.
- 13.1.2. UPFX may require an Initial Margin from the Client to maintain the relative value of the foreign currency to be purchased from or sold to UPFX pursuant to a Forward Trade or to address either a detrimental change in the Client's financial position (as determined by UPFX in its absolute discretion) or an adverse change in market conditions. The Client agrees that the amount of Initial Margin will be determined by UPFX (in its absolute discretion), provided that the total of any such payments shall not exceed the total payment obligation owed to UPFX under the relevant Forward Trade, and that UPFX may require the Initial Margin to be paid even if UPFX has expressly granted a credit facility to the Client.
- 13.1.3. The Client acknowledges that any Initial Margin may be (at UPFX's sole discretion) retained by UPFX rather than being refunded to the Client so that it may be applied to satisfy the Client's total payment obligation to UPFX in relation to the relevant Forward Trade on the Value Date or on the date of any final drawdown or applied as otherwise permitted in this Agreement including as set out in clause 13.6.1.
- 13.2. **Variation Margins**
- 13.2.1. The Client shall be required to pay a Variation Margin as stated in a Margin Call in order to protect UPFX against financial risk if UPFX determines, in its absolute discretion, that:
- The market value of the Client's open Trades has decreased and that the marked to market value exceeds a Credit Limit the Client shall be required to pay a Variation Margin as stated in a Margin Call in order to protect UPFX against financial risk;
 - the Client will be unable to pay the Balance; or
 - there are other circumstances that necessitate a Variation Margin to be paid.
- 13.2.2. Each time the market value of all the Client's open Trades decreases and the unrealised loss when marked to market value further increases, UPFX may issue Margin Calls which require the Client to provide funds in the amount stated in the relevant Margin Call. The Client shall pay the amount stated in such Margin Call no later than close of business on the Business Day on which UPFX issues the Margin Call to the Client.
- 13.3. **Valuation of Trades**
- 13.3.1. Forward Trades are marked to market value using market rates supplied by a prominent financial data provider. UPFX may change the financial data provider at any time without notice to the Client.
- 13.4. **Client acknowledgments**
- 13.4.1. The Client agrees that any Initial Margin or Variation Margin:
- may be used by UPFX in the ordinary course of its business;
 - will not be treated by UPFX as safeguarded funds as described in clause 15.2.3;
- c) shall not be subject to a trust in the Client's favour, and that the Client's right to have the amount of the Initial Margin and Variation Margin, credited in Client's favour on the maturity date of the relevant Forward Trade would be an unsecured claim against UPFX and would not be a claim, by way of trust or otherwise, to the Initial Margin or Variation Margin amounts or to any assets which belong to or are controlled by UPFX; and
- d) may be used by UPFX in relation to a separate Order for the Client where UPFX considers that the market value of one of the Client's open Trades has decreased.
- 13.5. **Return of Variation Margin**
- 13.5.1. If the unrealised loss of all open Forward Trades falls below the Variation Margin required by UPFX, UPFX may in its sole discretion notify the Client, and the Client may then request that UPFX returns the difference between the unrealised loss of all open Forward Trades and the Variation Margin held by UPFX on that Business Day. Such request must be made in writing before 12 noon (UK time) on the same Business Day. UPFX will process the request on the Business Day on which it was made and the excess Variation Margin will be returned to the Client without undue delay. Requests made after 12 noon (UK time), will be processed by UPFX the following Business Day and the Variation Margin will be returned to the Client without undue delay.
- 13.6. **Retention of trade margins**
- 13.6.1. Any Initial Margins or Variation Margins shall belong to UPFX and the Client accepts that UPFX may use such monies towards (a) the recovery of any Losses suffered or incurred by UPFX arising out of or in connection with any action or omission of the Client; and/or (b) as set out in clauses 15.2.3 (non-safeguarded funds), 20.3.(c) (cancellation or amendment of a Trade) and 23.1.2 (debts owed to UPFX).
- 13.7. **Interest**
- 13.7.1. The Client will not be entitled to any interest on any Initial Margin or Variation Margin or any funds held by UPFX on behalf of the Client.
- 13.8. **Currency of trade margins**
- 13.8.1. Unless otherwise agreed in writing, the Initial Margin and the Variation Margin must be paid to UPFX in the currency set out in the relevant Trade Confirmation.
- 13.9. **Funds received from third parties**
- 13.9.1. The Client may arrange for third parties to transfer funds to the Client Account so that UPFX can book a Trade or make a Payment.
- 13.9.2. Any funds transferred to the Client Account by a third party on behalf of the Client will not be treated as having been received by UPFX until all due diligence required for UPFX to comply with its statutory, regulatory or legal obligations has been carried out on such third party. The due diligence will include identifying such third party as well as verifying the reason why they are transferring funds on behalf of the Client.
- 13.9.3. UPFX shall not be liable to the Client for any Losses suffered or incurred by the Client as a result of a delay in crediting any third party funds to the Client Account in the event that the Client or the relevant third party fails to satisfy UPFX's due diligence requirements.
- 13.10. **Payments for Trades received from the Client or a third party on the Client's behalf**
- 13.10.1. All funds transferred to the Client Account by the Client or a third party, shall be made in same day cleared funds, in such currency as is required for the settlement of a Trade as follows:
- in relation to Spot Trades and Market Order Trades, unless otherwise stated in the Trade Confirmation, the Client shall pay the amount due by no later than 12 noon (UK time) on the Value Date (or the following day if the Value Date is not a Business Day); and
 - in relation to a Forward Trade, unless stipulated otherwise in the Trade Confirmation, the Client shall pay the amount due by no later than one (1) Business Day prior to the Value Date.
- 13.10.2. UPFX may, in its absolute discretion, refuse to:
 - receive payments from a third party bank account; and
 - make payments other than in accordance with standard payment instructions given by a person authorised by the Client to a bank account in the Client's name.
- 13.10.3. UPFX does not accept payment by cash or cheque. Any cash or cheques sent to UPFX will be returned to the remitting bank account after the source of funds has been verified. If the Client sends cash to UPFX, the payments will be deemed not to be received and the relevant Trade will be cancelled or extended unless payment is made in an acceptable manner by the required date.
- 13.10.4. UPFX shall not be liable to the Client in respect of a payment being rejected or any Losses suffered or incurred as a result of funds being transferred to the Client Account in the wrong amount or currency. The Client acknowledges that any funds that UPFX receives via an intermediary are net of any charges or exchange rates that they apply.
- 13.11. **What happens if there are insufficient funds in the Client Account at the time of a Trade?**
- 13.11.1. UPFX may book a Trade for the Client even if there are no funds in the Client Account. If the Client has insufficient funds in the relevant currency to pay for any Initial Margin, Variation Margin or any Balance by 10 am (UK time) on the relevant due date set out in the Pre-Trade Information or Trade Confirmation then it may not be possible for the Trade to happen on such date. In that instance UPFX may, in its sole discretion, decide to either:

- a) extend the time for the Client or third party to pay UPFX (or have its due diligence completed) by a day or more; or
- b) cancel the Trade.
- 13.11.2. If UPFX extends the time for the Client or a third party to make a payment (or have its due diligence completed) or cancels the Trade, UPFX may need to enter into a second currency trade ("Second Trade") to close out its position in the market. In that event, UPFX will charge the Client for the reasonable costs incurred for the Second Trade and for any Losses incurred as a result of closing out the initial Trade or otherwise. UPFX shall inform the Client in writing of any Losses arising under this clause 13.11.2. In the event that the Trade is being extended, UPFX has the right to pass on any charges applicable to the Client and UPFX may also issue a Margin Call for a Variation Margin to be paid.
- 13.11.3. In the event that UPFX extends the time for the Client or a third party to make a payment, the Pre-Trade Information and the Trade Confirmation shall be taken to have been amended to reflect the additional charges, the date the funds are to be deposited in full into the relevant account and the due date.
- 14. PAYMENTS**
- 14.1. Orders for Payments**
- 14.1.1. The Client (and in the context of a corporate Client, an Authorised Person) may instruct UPFX to place an Order for a Payment at any time.
- 14.1.2. Before a Payment is made the Client must ensure that:
- a) there is the correct amount of funds in the Client Account; and
- b) accurate and complete Recipient Account Details are provided to UPFX before 4 pm (UK time) on the day before the intended Payment Date.
- 14.1.3. If the criteria set out in clause 14.1.2 above are fulfilled then UPFX shall make the Payment on the Payment Date specified in the relevant Order it being understood that if UPFX is unwilling or unable to make the Payment on the Payment Date then UPFX will notify the Client as soon as possible and provide an explanation for this unless it would be unlawful to do so.
- 14.1.4. The Client shall not place an Order for UPFX to make a Payment for any illegal purpose or relating to online gambling, pornography, firearms or such other prohibited purposes that are notified to the Client by UPFX from time to time.
- 14.2. Notice of incorrect or unauthorised Payments**
- 14.2.1. The Client shall inform UPFX without undue delay (either verbally or in writing) if it becomes aware of UPFX making an incorrect or unauthorised Payment and in any event where the Client is a consumer, a micro-enterprise or a charity (as defined in the PSR 2017), the Client must inform UPFX at the latest, within thirteen (13) months of the Payment Date and in all other cases, the Client must inform UPFX within seven (7) days of the Payment Date. The Client accepts that failure to comply with the time limits set out in clause 14.2.1 will constitute a waiver of any right to make a legal claim against UPFX in respect of any Payments that have been made incorrectly or without authorisation.
- 14.2.2. The Client accepts that failure to comply with the time limits set out in clause 14.2.1 will constitute a waiver of any right to make a legal claim against UPFX in respect of any Payments that have been made incorrectly or without authorisation.
- 14.3. Refunds for incorrect or unauthorised Payments**
- 14.3.1. Save as otherwise set out in clause 14, where it is proven to UPFX's reasonable satisfaction (including via the provision of such documentation as UPFX may reasonably require) that UPFX has made an incorrect or unauthorised Payment then UPFX shall:
- a) for an incorrect Payment, promptly refund to the Client the full amount that has been debited incorrectly (including applicable charges such as transaction fees) as long as the requisite notice of the error has been received in accordance with clause 14.2.1; or
- b) for an unauthorised Payment, refund to the Client the full amount debited (including applicable charges such as transaction fees) without authorisation as soon as possible, unless UPFX has reasonable grounds to suspect fraud and notifies the relevant authorities.
- 14.3.2. The Client will be liable for all unauthorised Payments made via the Online Platform:
- a) if the Client has acted fraudulently, or has wilfully or negligently failed to comply with its access security obligations under clause 9; or
- b) before the Client notified UPFX in accordance with clause 9.2.2.
- 14.4. Incorrect Payments**
- 14.4.1. UPFX shall not be liable for any Losses suffered or incurred by the Client arising out of or in connection with an erroneous Payment where the Client has provided incorrect Recipient Account Details.
- 14.5. Payment Date**
- 14.5.1. If the agreed Payment Date is not a Business Day, then the Payment will take place on the Business Day following the Payment Date.
- 14.6. Payment withdrawals**
- 14.6.1. The Client cannot withdraw an Order for a Payment after it has been received except:
- a) if the withdrawal request is received before 5 pm (UK time) on the Business Day before the Payment Date; or
- b) if the Client believes that an Order for a Payment has been placed or a Payment made incorrectly or without authorisation.
- 14.6.2. If the Payment has already been credited to the Recipient Account then a withdrawal may only be possible with the consent of the Recipient. UPFX will use all reasonable endeavours to effect the withdrawal of a Payment. However,
- the Client acknowledges that it shall be responsible for recovering the funds in the event that UPFX is unable to achieve the requested withdrawal of the Payment for any reason.
- 14.6.3. Where the Payment is successfully withdrawn the funds will be held in the Client Account in the currency received. UPFX shall not be liable for any Losses incurred due to the cancellation or withdrawal of a Payment. The Client shall be responsible for any Losses suffered or incurred by UPFX in withdrawing a Payment and UPFX shall inform the Client of such Losses in writing.
- 14.7. Timeframes for Payments**
- 14.7.1. Payments will be credited to a Recipient Account operated by UPFX as soon as the Payment is made.
- 14.7.2. UPFX may use such intermediary banks or payment service providers that UPFX considers appropriate for processing an Order. The Client agrees to be bound by applicable laws, regulations and any clearing house rules or procedures for any funds transfer system that is used. UPFX will use reasonable endeavours to ensure the timely fulfilment of each Order but shall not be responsible for the timing of payment processing by intermediary banks or fund transfer systems beyond its control. UPFX shall not be liable for any actions, omissions or errors, or any charges that may be deducted, by any intermediary bank or by the Recipient's bank in connection with any Order, including in respect of any cancellation or rejection.
- 14.7.3. Where the Recipient Account is operated by a third party, and the Payment is denominated in:
- a) Euro or Pounds Sterling and the Recipient Account is located within the European Economic Area (EEA), the amount of the Payment will be credited to the Recipient Account by the end of the Business Day following that on which the Order for the Payment was deemed to be received by UPFX;
- b) a currency other than Euro or Pounds Sterling but the Recipient Account is located within the EEA, the Payment will be credited to the Recipient Account by the end of the fourth Business Day following the date upon which the Order for the Payment was deemed to be received by UPFX; and
- c) a currency other than Euro or Pounds Sterling and the Recipient Account is located outside the EEA, the Payment will be credited to the Recipient Account as soon as is reasonably practicable.
- 14.8. Responsibility for Payment**
- 14.8.1. UPFX shall be liable to the Client for making the correct execution of a Payment unless UPFX can prove to the Client that the Recipient's payment service provider received the Payment within the appropriate time frame set out in clause 14.7.
- 14.8.2. UPFX shall, on request, make immediate efforts to trace any non-executed or defective Payments and notify the Client of the outcome.
- 14.9. Charges for Payments**
- 14.9.1. The Client accepts that some intermediary or correspondent banks, particularly in relation to international payments, may impose a receiving or routing charge on any payment made to the Client or to a third party beneficiary on behalf of the Client. UPFX may require the Client to pay such charges and the Client acknowledges that UPFX accepts no liability for any Losses that may arise as a result of such charges being imposed.
- 15. HOLDING FUNDS AND SAFEGUARDING**
- 15.1. Terms for holding funds in the Client Account**
- 15.1.1. In the event that UPFX holds funds in the Client Account for more than thirty (30) days and the Client does not use same, UPFX will use reasonable endeavours to contact the Client to return the funds. In the event that UPFX is unable to contact the Client, UPFX may convert funds that are held in the Client Account into the Client's base currency at the then prevailing exchange rate and return such funds to the last known account held on record for the Client.
- 15.1.2. The Client (or an Authorised Person on behalf of the Client) can check the amount of funds held in the Client Account:
- a) at any time by using the Online Platform, provided there is no maintenance being carried out; and/or
- b) via telephone during Business Hours. The Client may request that the funds in the Client Account are sent to the Client's separate bank account at any time by requesting a Payment and selecting the Client's own bank account as the Recipient Account.
- 15.2. Safeguarding funds**
- 15.2.1. As a payment institution, UPFX is required to ensure that client funds are appropriately safeguarded under the PSR 2017.
- 15.2.2. Where UPFX holds funds for the Client in the Client Account, these funds will, where required, be held by UPFX in one or more segregated bank accounts, separate from UPFX's own funds, in accordance with the PSR 2017. In the unlikely event that UPFX gets into financial difficulties, the funds that are safeguarded will be protected against creditor claims and will be reimbursed to the Client.
- 15.2.3. The Client's funds will not be safeguarded to the extent that UPFX needs to deduct monies (as determined by UPFX in its sole discretion) in order to:
- a) pay sums owed by the Client under a Trade (including the Initial Margin, Variation Margin and the Balance in the case of a Forward Trade and the full amount of the required sums in the case of a Spot Trade);
- b) pay fees which are due and owing; or
- c) execute a Payment.
- 15.2.4. When a Trade is being completed there may be a period of time, of usually no more than four (4) Business Hours, between the Balance or full amount of the funds for that Trade being sent to UPFX and the Client Account being credited. UPFX will not safeguard funds relating to the Trade during this period of time. In the unlikely event that UPFX gets into financial difficulties during this period of time and the Trade is not completed, the Client can make a claim as one of a creditor of UPFX (rather than claim from the funds in the safeguarded account) in which case the Client understands it is less likely that it will be compensated in full.
- 16. CLIENT IDENTIFICATION**
- 16.1. Under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, UPFX is required to verify the identity of each client and the nature of each client's business.
- 16.2. The Client agrees to promptly provide UPFX with all the information requested as part of its client due diligence procedures including up to date information with respect to the Client, third party payers or payees, authorised representatives, beneficial owners, employees and directors, in order to satisfy UPFX's on-going legal and regulatory obligations.
- 16.3. The Client agrees that UPFX may withhold any monies due to the Client until all requested client due diligence documents have been received.
- 16.4. The Client hereby authorises UPFX or any person acting on behalf of UPFX to verify the Client's identity (and if appropriate carry out a credit check) as well as the identity of the persons listed in clause 16.2 above and to contact such banks, financial institutions and credit agencies as UPFX or its representatives shall deem appropriate for the purposes of anti-money laundering requirements or other applicable law.
- 17. REPRESENTATIONS AND WARRANTIES**
- 17.1. The Client hereby represents and warrants:
- 17.1.1. that the details entered in the Application Form are true, accurate and complete and that the Client will inform UPFX without undue delay after such details change;
- 17.1.2. that it has the power and authority to place the Orders;
- 17.1.3. that it shall place all Orders in accordance with the terms of this Agreement;
- 17.1.4. that in placing an Order the Client will not breach any applicable laws;
- 17.1.5. if the Client is entering into a Forward Trade, it is for the purpose of facilitating a means of payment for identifiable goods and/or services or direct investment;
- 17.1.6. that the Client consents to UPFX including the Client's full name, address and any other details required by law on the payment details to be sent to the Recipient's payment service provider;
- 17.1.7. that funds held in the Client Account are not and shall not become subject to any charge or other security or encumbrance (other than in favour of UPFX); and
- 17.1.8. that the Client contracts as principal and not as agent, unless the Client is acting through a power of attorney.
- 17.2. If the Client is unable to make the representations and warranties set out in clause 17.1 the Client will inform UPFX prior to making an Order.
- 17.3. Each representation and warranty under clause 17.1 shall be considered as repeated each time the Client places an Order.
- 17.4. The Client agrees to reimburse UPFX on demand in full for any Losses that UPFX has suffered or incurred arising from a breach of the Client's representations and warranties set out in these Terms.
- 18. CLIENT AVAILABILITY**
- 18.1. UPFX may telephone the Client at any reasonable time on a Business Day to confirm the details of any Order which UPFX believes the Client has placed or entered into.
- 18.2. The Client shall ensure that it is capable of being contacted at any reasonable time on a Business Day on the telephone numbers set out in the Application Form or otherwise notified to UPFX from time to time. The Client accepts that if UPFX is unable to contact the Client on these telephone numbers for any reason, UPFX will not be able to process the relevant Order and will not be liable for any Losses which the Client incurs as a result.
- 19. ADDITIONAL SECURITY**
- 19.1. UPFX may stop any Payment and/or suspend the Client's access to the Online Platform if UPFX has concerns over:
- 19.1.1. the security of the Online Platform or a Payment;
- 19.1.2. the suspected unauthorised or fraudulent use of the Password; or
- 19.1.3. where the Payment is being made in connection with a credit line, if UPFX believes that there is a significantly increased risk that the Client may be unable to fulfil its liability to UPFX. In that instance, unless it is unlawful to do so, UPFX shall inform the Client by telephone or email of the suspension of the relevant service and the reason for the suspension as soon as possible.
- 19.2. In the event that UPFX suspends the Client's access to the Online Platform, unless it is unlawful to do so, after the event that resulted in the suspension is over, UPFX may provide the Client with a new Password and access to the Online Platform.
- 19.3. In the event of suspected or actual fraud or security threats, UPFX will normally inform the Client (or the Authorised Person) and verify their identity by asking certain security questions,

such contact will be made (a) via email or telephone using the contact details entered into the Application Form or otherwise notified to UPFX from time to time; and/or (b) via the Online Platform.

20. CANCELLATION AND ALTERATION OF TRADES

20.1. Rights for UPFX to cancel a Trade on the occurrence of certain events

20.1.1. A Trade may be cancelled by UPFX at its sole discretion at any time without giving prior notice to or obtaining further instructions from the Client if any of the following events occur:

- a) the Client fails to make any payment when due under a Trade;
- b) UPFX discovers that the Client has given false or misleading information;
- c) UPFX discovers that the Client is in breach of applicable laws concerned with money laundering or terrorist financing or that the Client has otherwise failed to satisfy any information requests required by law;
- d) the Client becomes subject to a formal investigation by a law enforcement and/or regulatory agency;
- e) the Client is, or threatens to be, in material breach of any of these Terms or of any of its obligations under a Trade;
- f) the Client dies or no longer has mental capacity;
- g) the Client's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to these Terms is in jeopardy;
- h) it becomes or it appears that it may become unlawful for UPFX to maintain or give effect to all or any of the obligations under these Terms or any Trade or otherwise to carry on business with the Client;
- i) if UPFX or the Client is instructed or requested to close out a Trade by any regulatory or law enforcement authority. In such an event, UPFX may be required to retain any sum which would otherwise be due to the Client and/or to pay such monies to the relevant authority;
- j) UPFX, in its absolute discretion, considers it necessary to protect itself and the Client including in respect of:
 - i. fraud;
 - ii. the Client's default;
 - iii. market failures;
 - iv. volatile market conditions;
 - v. Losses; and
 - vi. where, at any time, UPFX reasonably believes that the Client has insufficient funds to fulfil a Trade;
- k) on the occurrence of a Force Majeure Event where continuation of the Trade would create liability for UPFX that it has no protection against. The Client agrees to give notice of any such events upon becoming aware of the same.

20.2. Cancellation or amendment of a Trade by the Client

20.2.1. The Client acknowledges that UPFX purchases foreign currency from a live market, so when a Trade is entered into UPFX takes on financial risk and incurs liability. On this basis, UPFX does not give the Client the right to cancel, alter or amend any Trade.

20.2.2. Notwithstanding clause 20.2.1, a Trade may be cancelled with UPFX's prior consent. If a Trade is so cancelled with UPFX's consent, the Client agrees to be liable for any Losses that the Client or UPFX may incur.

20.2.3. The Client shall reimburse UPFX on demand in full for any Losses (including for the avoidance of doubt loss of profits) suffered or incurred by UPFX arising out of the cancellation of such Trade pursuant to clause 20.2.2.

20.3. What happens when a Trade is cancelled or amended?

- 20.3.1. If a Trade is cancelled for any reason UPFX will or if a Trade is amended for any reason UPFX may:
 - a) close out any incomplete Trade and use any proceeds towards the payment of any amounts due to UPFX. The Client acknowledges that, in the event that UPFX is required to close a Trade in these circumstances, UPFX may need to enter into a Second Trade to close out its position in the market. In that instance, UPFX will charge the Client for the reasonable costs of the Second Trade and for any related Losses incurred. UPFX is not entitled to pay any gains to the Client due to the limitations of its regulatory permissions;
 - b) inform the Client in writing of any Losses that UPFX incurs due to the close out and the cancellation;
 - c) use any sum which the Client has paid UPFX, including any Initial Margin or Variation Margin, to settle any liability or compensate UPFX for the Losses incurred in connection with the close out and cancellation; and
 - d) return the balance of any sum remaining to the Client after the payment of Losses. Once a Trade has been closed out for any reason, UPFX will promptly send the Client an account statement which sets out the impact on the Client for closing out the Trade.

21. TERMINATION OF THIS AGREEMENT

- 21.1. This Agreement can be terminated by either party for convenience by giving not less than sixty (60) days' notice in writing to the other party.
- 21.2. The termination of this Agreement shall not affect any Trades entered into before the date on which the Agreement terminates.
- 21.3. Any outstanding liabilities and obligations in relation to any Trade entered into before the date on which the Agreement terminates shall continue to be enforceable on the terms of this Agreement.

22. LIMITATION OF LIABILITY

- 22.1. Nothing in these Terms limits any liability which cannot legally be limited.

22.2. UPFX shall not be liable to the Client for any loss or delay in or failure of any Payment arising from a late arrival of funds or from a late instruction.

22.3. UPFX will not be liable to the Client or a third party for any loss of profits, loss of business, loss of goodwill or any indirect or consequential losses however arising.

22.4. UPFX shall not be liable for any Losses suffered or incurred by the Client arising out of or in connection with the use of (or any unavailability or inability to use) the Online Platform including the inability to place Orders or access the Online Platform.

22.5. UPFX shall not be liable to the Client for any Losses arising from any delay or failure to place an Order caused by:

- 22.5.1. a Force Majeure Event;
- 22.5.2. the acts or omissions of any third party; or
- 22.5.3. UPFX or any intermediary bank making necessary enquiries as required by present or future applicable laws or regulations.

22.6. UPFX's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise arising out of or in connection with the performance of a Trade, shall be limited to the sums paid or payable by the Client for that particular Trade or the sum of £25,000.00 whichever is the lesser sum.

22.7. The Client shall reimburse UPFX on demand in full for any Losses suffered or incurred by UPFX in relation to any Trade or as a result of the Client's misrepresentation or breach of its obligations under this Agreement (including any Trade) or arising as a result of UPFX enforcing its rights under this Agreement.

23. DEBTS OWED TO UPFX

23.1. In the event that the Client owes a debt to UPFX for any reason including on termination of this Agreement or any Trades, UPFX can pay such debts using:

- 23.1.1. any funds held in the Client Account; or
- 23.1.2. any Initial Margins, Variation Margins, Balance (if any) and any other funds that the Client has provided to UPFX (in which case the Client will owe further sums to UPFX to complete that Trade).

23.2. Alternatively UPFX may issue the Client with a demand for payment, in which case the Client shall pay UPFX within two (2) Business Days of the date of demand.

24. RIGHT OF SET-OFF

24.1. UPFX may, at any time, without notice to the Client, set off any amount owed by UPFX to the Client against any amount owed by the Client to UPFX, whether such amount is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the amounts to be set off are expressed in different currencies, UPFX may convert either amount at a rate of exchange which UPFX determines to be reasonable for the purpose of set off.

24.2. Any exercise by UPFX of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

25. DATA PROTECTION

25.1. UPFX is a data controller. Details of how UPFX collects, processes and safeguards personal data and information about the privacy rights of individuals are set out in the Privacy Notice.

25.2. Except where the Client uploads personal data (as defined in the UK GDPR) directly onto the Online Platform, UPFX does not accept any liability for any Losses suffered by the Client as a result of the transfer of any personal data to UPFX via the internet including by way of email. Any such transfer is executed entirely at the Client's own risk.

26. CONFIDENTIALITY

26.1. Each party undertakes that it shall, during this Agreement and for a period of five years after termination, keep confidential and not at any time disclose to any person, any confidential information concerning the affairs of the other party disclosed to it by, or obtained in relation to, the other party, except as permitted under clause 26.2 and the Privacy Notice.

26.2. Each party may disclose the other party's confidential information:

- 26.2.1. to the extent required for the purposes of carrying out the party's obligations under this Agreement, provided that the disclosing party takes all reasonable steps to ensure that the persons they are disclosing confidential information to comply with the confidentiality obligations contained in this clause. The disclosing party shall be responsible for the confidentiality obligations of the persons it discloses confidential information to; and
- 26.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

26.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

27. INTELLECTUAL PROPERTY RIGHTS

27.1. All rights in patents, copyrights, design rights, trade marks and any other intellectual property rights (whether registered or unregistered) relating to the Online Platform ("UPFX IP") remain vested in UPFX or where applicable its licensors. The Client shall not copy, modify, reverse engineer or otherwise attempt to extract the source code of the Online Platform except in so far as such acts are expressly permitted by law.

27.2. The Client shall have no right or interest in or to any UPFX IP except the right to access and use the Online Platform in connection with this Agreement.

28. COMPLAINTS

28.1. All complaints should, in the first instance, be addressed to Head of Compliance at The South Quay Building, 77 Marsh

Wall, Canary Wharf, London E14 9SH or sent by email to Complaints@upfx.co.uk. Complaints will be dealt with in accordance with the FCA rules. For the purposes of the PSR 2017, the Client agrees that UPFX may respond by email to any complaint raised.

28.2. UPFX will send the Client a complaint acknowledgement by post or by email within three (3) Business Days of receiving the complaint in accordance with the UPFX complaints policy. A copy of the UPFX complaints policy is available on request.

28.3. A Client that is a consumer, microenterprise or small charity (as defined in the PSR 2017) is entitled to raise a complaint with the Financial Ombudsman Service (FOS). Information about the FOS, including how to make a claim, eligibility criteria and the procedures involved, is available from: The Financial Ombudsman Service Exchange Tower Harbour Exchange Square London E14 9SR or www.financial-ombudsman.org.uk.

29. POWER OF ATTORNEY

29.1. The Client may grant a power of attorney authorising a third party to represent them in any business with UPFX (including placing Orders). If the Client appoints a third party as its attorney UPFX will take instructions from such person until notified of the termination of the power of attorney by the Client in writing. References to the "Client" in these Terms shall be deemed to include the attorney. If an attorney is appointed, UPFX may require satisfactory evidence of such appointment and evidence of identification of the attorney.

30. VARIATIONS

30.1. UPFX may amend these Terms by giving notice in writing to the Client at any time. Any such amendment shall take effect from the date specified by UPFX (which shall be at least two months after notification in the case of variations where the Client is a consumer, microenterprise or small charity (as defined in the PSR 2017), notwithstanding the foregoing if the Client is a corporate customer then the variation shall be effective from the date of the change unless otherwise stated by UPFX). The Client's continued use of the services will be deemed as acceptance of the variation.

30.2. The Client may terminate this Agreement immediately, prior to the amendments coming into force if it does not agree with the variations. Such termination and any variations shall not affect any Trades entered into prior to the termination or variation of the Agreement.

31. NO WAIVER

31.1. A waiver of any right or remedy under these Terms or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

31.2. A failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Terms or by law shall prevent or restrict the further exercise of that or any other right or remedy.

32. SEVERANCE

32.1. If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

33. ENTIRE AGREEMENT

33.1. The Agreement together with any Trade constitutes the entire agreement and understanding of the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

33.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

34. THIRD PARTY RIGHTS

34.1. These Terms do not intend to confer any benefit on any third party and no third party shall have the right to enforce these Terms or any Trade under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

35. NOTICES

35.1. Unless otherwise agreed all notices to be given by UPFX under this Agreement shall be sent to the Client at the postal or email address provided in the Application Form or such other postal or email address as the Client may provide to UPFX from time to time which UPFX in turn responds to acknowledge.

35.2. Any notice or communication given by either party shall be deemed to be received in the case of first class prepaid post, one (1) Business Day after posting, in the case of hand delivery to the business address, at the time it was left at that address and in the case of an email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 35.2, business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.

35.3. It is the Client's responsibility to immediately inform UPFX of any change to its postal address, email address or contact details.

36. DISPUTE RESOLUTION

- 36.1. If a dispute arises between UPFX and the Client at any time with respect to an Order, UPFX may close out such Order or take such other reasonable action that UPFX deems necessary and appropriate in the circumstances.
- 36.2. The Client accepts that evidence collated by UPFX during the course of this Agreement may be used by UPFX in resolving any dispute between them including for example, electronic correspondence, audio recordings and transcripts of those recordings and other material reflecting any conversations between the Client and UPFX.

37. GOVERNING LAW AND JURISDICTION

- 37.1. This Agreement (including any Trade or Payment) and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 37.2. The Client irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement (including any Trade or Payment), its subject matter or formation (including non-contractual disputes or claims).
- 37.3. Each party irrevocably agrees to waive any objection which it may have at any time to the venue of any proceedings being the courts in England and agrees not to claim that such proceedings have been brought in an inconvenient forum or that such court does not have jurisdiction over such proceedings.