

Ver. AFEX Legal GBR.LTD.BUS.2021.03

Client enters into this Account Application and Agreement ("Agreement") with AFEX UK as of the date this document is executed by Client.

## 1. DEFINITIONS

Whenever used in this Agreement, unless inconsistent with the subject matter or context, the following terms shall have the following meanings:

- 1.1. "AFEX" means the AFEX group of related companies, including parents, subsidiaries and affiliates, including, without limitation, AFEX UK, AFEX Markets and AFEX Inc.
  - 1.2. "AFEX Inc." means Associated Foreign Exchange, Inc., a U.S. corporation formed in the state of California.
  - 1.3. "AFEX Markets" means AFEX Markets Plc, a public limited company registered in England and Wales with registration number 07061516 whose registered address is at 4th Floor, 40 Strand, London, England WC2N 5RW. AFEX Markets is authorised and regulated by the Financial Conduct Authority (Firm Reference Number 526034).
  - 1.4. "AFEX UK" means Associated Foreign Exchange Limited, a private limited company registered in England and Wales with registration number 04848033 whose registered office is at 4th Floor, 40 Strand, London WC2N 5RW. Associated Foreign Exchange Limited is a payment institution authorised and regulated by the Financial Conduct Authority in the United Kingdom (Firm Reference Number 502593).
  - 1.5. "AFEX Local Time" means Greenwich Mean Time or British Summer Time (UTC 00:00 and UTC +01:00, as the case may be).
  - 1.6. "Balance Due" means the amount of funds sold to AFEX by Client less any Initial Margin already paid.
  - 1.7. "Balance Due Date" means the date on which payment of the Balance Due must be received by AFEX. The Balance Due Date must be a Business Day.
  - 1.8. "Beneficiary" means any payee so designated by Client.
  - 1.9. "Business Day" means a day on which commercial banks are open for ordinary banking business in both the jurisdiction in which an Order is initiated and the one in which such an Order is executed.
  - 1.10. "Client" means the party entering into this Agreement with AFEX.
  - 1.11. "Confirmation" means the communication sent by AFEX to Client setting out material details of an Order.
  - 1.12. "Corporate" means a Client other than a natural person, a Micro-Enterprise or a Small Charity.
  - 1.13. "Delivery Date" means the date on which funds are available for disposition upon receipt of Client's Beneficiary payment instructions, provided Client has fully paid for the purchased funds and complied with this Agreement. The Delivery Date must be a Business Day.
  - 1.14. "Delivery Instructions" means all information required by AFEX to be provided by Client to AFEX whereby AFEX is directed to deliver Client's funds to a Beneficiary, including without limitation information required to be collected by applicable law.
  - 1.15. "Delivery Window" means the period of time prior to Value Date during which Client may settle, either partially or fully, a Window Forward Contract.
  - 1.16. "Facility" means any trading limit, settlement limit, Foreign Currency exposure limit, or credit facility that AFEX has expressly granted to Client.
  - 1.17. "Foreign Currency" means any fiat currency other than Pounds Sterling.
  - 1.18. "Forward Contract" means either a Window Forward Contract or Outright Forward Contract for the purchase of Foreign Currency for delivery on a specified future maturity date or dates or during a specified period, for a specified future payment need, which is not within the scope of UK MiFID.
  - 1.19. "Initial Margin" means an amount required by AFEX, either in the form of funds held by AFEX for a Client, or in the form of a Payment by Client, to be applied in partial payment for the sale, purchase, and delivery of currency.
  - 1.20. "Insolvent" means that an entity is insolvent or otherwise unable to pay its debts as they become due, or is subject to any proceeding, whether voluntary or involuntary, for bankruptcy, liquidation, administration or relief from creditors.
  - 1.21. "Loss" or "Losses" means direct and consequential financial losses, damages, costs, judgments, penalties, fines, expenses, legal and accounting fees and expenses, costs of investigation, settlements, court costs and other expenses of litigation, as well as fees and expenses and losses not related to litigation or legal process and lost profits.
  - 1.22. "Margin Call" means any notice of demand issued by AFEX to Client that either Initial Margin or Variation Margin is due and payable.
  - 1.23. "Micro-Enterprise" means any entity, irrespective of legal form, which at the time of entering into this Agreement: (a) has a balance sheet reflecting a net worth of less than, or generates less than, two million (2,000,000) euros (or its equivalent in pounds sterling); and (b) employees fewer than 10 full time employees.
  - 1.24. "Online System" means any secure Internet or cloud-based electronic system, which allows users to access AFEX Services through an interface or protocol or application program interface, including any proprietary AFEX application program interface product and service related to such proprietary application program interface.
  - 1.25. "Online System Access Method" means a unique user identification and unique password for each User required to access the Online System.
  - 1.26. "Order" means a request by Client to AFEX to provide Services, including any request for Services made by mail, electronic mail, facsimile, telephone, Online System or other means.
  - 1.27. "Outright Forward Contract" means a binding agreement in which Client agrees to purchase from or sell to AFEX a specific amount of funds in one currency and to settle, on an agreed future date, in a specific amount of funds in another currency.
  - 1.28. "Party" or "Parties" mean individually or collectively, Client and AFEX.
  - 1.29. "Payment" means good cleared funds received by AFEX from, or on behalf of, Client.
  - 1.30. "Payment Account" means an account opened by AFEX in the name the Client which is used for the execution of Payment Transactions.
  - 1.31. "Payment Transaction" means any money remittance or execution of payment transaction (as defined in the Regulations) carried out by AFEX for the Client.
  - 1.32. "Regulations" means the Payment Services Regulations 2017 (SI 2017/752) (as amended from time to time). The Regulations are a set of rules governing how payments must be transmitted and provide protection for clients of payment institutions.
  - 1.33. "Safeguarded Funds" means Client funds held in a Payment Account, which are held by AFEX UK in one or more segregated bank accounts in accordance with the Regulations, as set out in Clause 6.3.
  - 1.34. "Services" means AFEX's provision of various foreign exchange, settlement and delivery products and services, including without limitation, an electronic transaction platform; risk management and hedging services.
  - 1.35. "Settlement" means the total amount, including the cost of currency acquisition and any fees and charges, Client owes to AFEX, less any Initial Margin held by AFEX.
  - 1.36. "Settlement Instructions" means instructions given by Client to AFEX whereby Client indicates the means by which it will pay to AFEX the Settlement for an Order.
  - 1.37. "Small Charity" means any enterprise which is engaged in conducting charitable or non-profit activities in accordance with applicable law and which generates income of less than one million (1,000,000) pounds sterling.
  - 1.38. "Termination Event" means, subject to the Regulations, if the Client:
    - 1.38.1. fails to deliver to AFEX Payment, Settlement, Initial Margin or Variation Margin or, communicates to AFEX an intent not to provide to AFEX the foregoing in relation to any Order;
    - 1.38.2. disputes the validity or existence of an Order;
    - 1.38.3. defaults, or communicates its intent to default, on any of its obligations described in this Agreement including any of the representations or warranties set out in this Agreement or elsewhere;
    - 1.38.4. is or is reasonably likely in AFEX's opinion to become Insolvent;
    - 1.38.5. ceases or threatens to cease to carry on business or sells all, or substantially all of the assets of the business;
    - 1.38.6. receives notice of, or becomes subject to a regulatory or enforcement action or investigation which, in the reasonable judgment of AFEX, will materially impair the terms of this Agreement, the expected economic value of this Agreement, or the business reputation of AFEX;
    - 1.38.7. breaches this Agreement or any terms of an Order;
    - 1.38.8. places an Order reasonably deemed by AFEX, to represent a regulatory, compliance or business risk; or
    - 1.38.9. is, or is suspected of, regulatory non-compliance or breach of any laws or regulations.
  - 1.39. "UK MiFID" means the equivalent domestic United Kingdom legislation and regulation transposing the EU Markets in Financial Instruments Directive 2014/65/EU, enacted in the United Kingdom in connection with the United Kingdom's withdrawal from the European Union, as amended from time to time.
  - 1.40. "User" means an individual authorised by Client to access the Services and place and/or enter into Orders on behalf of Client in accordance with this Agreement.
  - 1.41. "Value Date" means the date on which an Order becomes due for delivery and Settlement.
  - 1.42. "Variation Margin" means cash funds required when the net marked to market value of all open Orders exceeds 10%, or an alternative percentage or fixed amount as AFEX may advise in its absolute discretion, of the notional value of all open Orders.
  - 1.43. "Window Forward Contract" means a binding agreement in which Client agrees to purchase from or sell to AFEX a specific amount of funds in one currency and to settle, on any date during the Delivery Window, in a specific amount of funds in another currency.
2. As a result of the United Kingdom's withdrawal from the European Union, any reference to a regulation or other applicable legislation of the European Union will, be construed as reference to the equivalent domestic legislation enacted by the United Kingdom in connection with the United Kingdom's withdrawal from the European Union.
- ## 3. CONDUCTING BUSINESS WITH AFEX
- 3.1. **Agreement.** This Agreement shall apply to any and all Orders. The specific transactional details of each Order will be agreed upon and will be as set out in a Confirmation. For the avoidance of doubt, each order for which AFEX issues a Confirmation

- will constitute an independent contract, governed by the terms of the Agreement.
- 3.2. Provision of Services. Where any of the Services involve the conversion of amounts from one currency into another currency and the remittance of funds to the designated Beneficiary, AFEX will provide such Services as principal.
- 3.3. Applicability of the Regulations to Corporates that are not Micro-Enterprises or Small Charities.
- 3.3.1. This Clause only applies to Corporates that are not Micro-Enterprises or Small Charities.
- 3.3.2. The Parties acknowledge and agree that Part 6 and regulations 66(1), 67(3) and 67(4), 75, 77, 79, 80, 83, 91, 92 and 94 of the Regulations do not apply to this Agreement.
- 3.3.3. In the event that the Client becomes either a Micro-Enterprise or a Small Charity, the Client shall notify AFEX immediately.
- 3.4. Execution of Order. Any Order received from Client will be acted upon on a commercially reasonable efforts basis only. There is no guarantee by AFEX that an Order can or will be filled or that instructions provided can or will be acted upon. Without prejudice to the foregoing, AFEX may reject any Order if:
- 3.4.1. AFEX determines, in good faith and in its sole discretion, that such Order was not authorised by Client or a User;
- 3.4.2. AFEX determines, in its sole discretion, that the Order may be contrary to law, contrary to prudent business practices, outside AFEX's risk profile, or would require AFEX to exceed the Facility granted to Client;
- 3.4.3. Client is Insolvent or in default of the Agreement or AFEX determines, in its sole discretion, that it may not receive payment from Client in Settlement of the related Order; or
- 3.4.4. the Order is unclear, incorrect, incomplete or unsatisfactory to AFEX for any reason.
- 3.5. Reliance on Instruction. AFEX is hereby authorised by Client to accept, act and rely upon any instruction, whether oral or written, that AFEX reasonably believes to have been made by, or on behalf of Client. AFEX and its representatives are not liable for any Losses Client may suffer as a result of the misconduct of User(s) or any other person purporting to act on behalf of Client.
- 3.6. Audio Recording. An audio record of any or all oral Orders, and any other oral communications between the Parties, including Users, may be taken and maintained by AFEX, and Client hereby expressly authorises and agrees to the taking and maintaining of such records. All audio recordings are AFEX's sole property, subject to applicable law. Client agrees that such recordings may be relied upon by AFEX in the event of any dispute.
- 3.7. No Advice. Client represents that each Order entered into by Client will be based upon Client's own judgment and that Client is not relying on any communication of AFEX or its representatives as investment advice, as a recommendation to enter into a transaction or as an assurance of expected results. Client acknowledges that AFEX is not acting as a fiduciary or advisor to Client in respect of any Order.
- 3.8. Information Sources. Market information may, from time to time, be provided to Client through AFEX. This information may be obtained from various information providers through sources believed to be reliable. AFEX does not guarantee the timeliness, sequence, accuracy, completeness, or fitness for a particular purpose of any market information provided through AFEX. Such information may include opinions and recommendations of individuals or organisations and Client understands that AFEX may not endorse such recommendations or opinions, and that AFEX is not providing any investment, tax, accounting or legal advice to Client by including or making available such market information.
- 3.9. Orders Binding. An Order becomes binding on Client upon receipt by AFEX and creates an obligation on Client to settle the Order. Any Losses in connection with Client's failure to settle an Order are the sole responsibility of Client.
- 3.10. Confirmations. Upon AFEX's acceptance of an Order, AFEX may issue a Confirmation to Client. The Confirmation is evidence of certain material terms of the Order. An Order will not be invalidated if for any reason the Confirmation is not issued to Client by AFEX. In such circumstances, the records of AFEX with respect to that Order will constitute conclusive evidence of the terms of the Order. If there are any discrepancies between the Order and the Confirmation, Client must notify AFEX of such discrepancy within one (1) clear Business Day of the day that AFEX sends a Confirmation, otherwise the Confirmation will constitute conclusive proof and agreement of the Parties of the details of the Order.
- 3.11. Interest. No interest is paid by AFEX on any funds held on behalf of Client, except as may be agreed and separately documented.
- 3.12. Means of Processing Transactions. AFEX may use whatever intermediary banks, payments systems or methods AFEX deems commercially reasonable and appropriate for processing an Order. Client agrees to be bound by applicable law, regulations, clearing house rules or other rules or procedures of any funds transfer or communications system that is used. While AFEX will make every commercially reasonable effort to ensure the timely fulfilment of each Order, AFEX is not responsible for the speed and timing of payment processing by financial institutions or systems beyond the control of AFEX. AFEX is not responsible for any errors or omissions or for any actions that may be taken or not taken, or fees that may be deducted, by any intermediary or correspondent financial institution or by the Beneficiary's financial institution in association with any Order, including any cancellation or rejection.
- 3.13. Payment Instructions. Provided that Client has fully paid for the funds purchased from AFEX and complied with this Agreement, AFEX will hold those funds in Client's Payment Account until AFEX's receipt of payment instructions from Client. AFEX will accept an instruction from Client to perform a Payment Transaction by mail, electronic mail, facsimile, telephone or Online System and instructions must include, but not limited to, date, amount in the applicable currency and Beneficiary details, including Beneficiary's bank details. The Client's instruction will be treated by AFEX as the Client's consent to execute that Payment Transaction.
- 3.14. Inaccuracy or Incomplete Instruction. Client agrees that AFEX may rely on information provided by Client in processing an Order (including a Payment Transaction). If Client fails to provide a timely, complete, accurate or legible instruction, AFEX shall place the funds in Client's Payment Account pending receipt from Client of the information necessary to fulfil a Payment Transaction. AFEX and its representatives shall not be liable for any Loss as a result of any such delay. Furthermore, Client agrees that any error or omission in such information, including, but not limited to, incorrect Beneficiary account number or name, Beneficiary financial institution name, or other account, international bank account number or routing number, or transit numbers, are Client's sole responsibility and liability.
- 3.15. Processing times for Payment Transactions.
- 3.15.1. This Clause 3.15 and its sub-clauses apply only to Micro-Enterprises and Small Charities.
- 3.15.2. AFEX agrees to process Payment Transactions for the Client in accordance with the Client's instructions on the same day the instructions are received by AFEX, if the Instruction is received before 15.00 AFEX Local Time. Instructions received after 15.00 AFEX Local Time or on a day other than a Business Day will be deemed to have been received on the next Business Day.
- 3.15.3. AFEX will provide the Client with the maximum execution time of the payment by AFEX and a breakdown of charges payable by Client where applicable. AFEX cannot be responsible for any delays due to the processing of the Payment Transaction by the Beneficiary's payment service provider. The delivery of the payment can be affected by public holiday or working hours of foreign payment service providers in other jurisdictions to which the Payment Transaction has been remitted. AFEX reserves the right to reject or stop processing any Order that is incorrect or incomplete, or where AFEX has a right or obligation to do so pursuant to applicable law or regulation.
- 3.16. Cancellation and Correction.
- 3.16.1. **This Clause 3.16.1 applies only to Micro-Enterprises and Small Charities.** Once AFEX has received the Client's instruction to perform a Payment Transaction, the Client may only cancel the Payment Transaction where the Client provides AFEX clear written notice not to proceed with the Payment Transaction which is received by AFEX no later than the end of the last Business Day before the Payment Transaction was due to take place. For the avoidance of doubt, if the instructions in the Client's notice are unclear, AFEX will not treat the Client's consent to the Payment Transaction as being withdrawn and will proceed with the Payment Transaction.
- 3.16.2. **This Clause 3.16.2 applies to Clients who are not Micro-Enterprises or Small Charities.** Without prejudice to Clause 3.16.1, once AFEX accepts an Order, the Client may not cancel the Order and is liable for all amounts owed as result. As set out above, Client may correct Order details if the Confirmation does not reflect the Order details agreed upon. If Client otherwise wishes to cancel or amend an Order, AFEX shall use commercially reasonable efforts only to do so. There is no assurance that AFEX will be able to cancel or amend an Order.
- 3.17. Fees. Client understands that AFEX will charge certain fees for the Services, as set forth in a fee schedule made available to Client. Client agrees and acknowledges that Client has agreed to the relevant fee for the Service before placing an Order. AFEX may change the fees charged for the Services in its sole discretion at any time upon notice to Client, effective from the date of the notice, or as soon as permitted by applicable law. Client further agrees and acknowledges that all fees payable under this Agreement are exclusive of any legally applicable value added tax or similar sales or turnover tax in any relevant jurisdiction.
- ## 4. SETTLEMENT
- 4.1. Payment. To fund payments that Client initiates through AFEX, Client authorises AFEX to transfer funds from the bank account indicated in any agreement between the Parties whereby Client authorises AFEX to electronically debit a bank account designated by the Client. This authority is to remain in full force and effect until AFEX has received written notification from Client of its termination in such time and manner, which shall be no less than five (5) Business Days, as to afford AFEX a reasonable opportunity to act on such notification after completing all open Orders at the time of such notification.
- 4.2. Settlement. Unless otherwise provided in the Agreement or agreed in writing between the Parties, Client agrees to promptly deliver the total amount of the cost to Client of an Order, including the cost of currency acquisition as well as any fees and charges related to the execution of the Delivery Instructions, to AFEX's nominated bank account in immediately available funds on or before the Value Date.
- 4.2.1. If Settlement is paid to AFEX electronically, Client agrees that Settlement shall not be recallable by Client without AFEX's prior written consent.
- 4.2.2. If Client fails to make immediate payment in full Settlement for an Order, AFEX has the right to suspend the Agreement; terminate the Agreement; terminate, close or unwind any Order; initiate any proceedings and take

any other steps necessary to recover any Balance Due. Such steps shall be in the sole discretion of AFEX.

- 4.2.3. The Client acknowledges and agrees: (i) that AFEX and its representatives shall have no liability to Client, and Client waives any claim or action against AFEX and its representatives for any and all Losses incurred by Client resulting from Client's failure to pay; (ii) to indemnify and hold AFEX and its representatives harmless from any and all Losses incurred by AFEX and its representatives resulting from Client's failure to pay and AFEX's effort to collect any Balance Due, including any costs associated with terminating and unwinding any Order; (iii) AFEX may recover interest upon any unpaid amounts calculated at the daily rate of the indicator lending rate for business overdrafts as periodically announced by the local central bank, reserve bank, or monetary authority plus 2%.
- 4.2.4. AFEX reserves the right to deduct interest, and any fees charged and costs incurred pursuant to this Agreement, from Initial Margins and Variation Margins AFEX may hold for Client. Client acknowledges that AFEX will be entitled to notify a credit reporting body of non-payment by Client, in accordance with any applicable privacy legislation.
- 4.3. **Right of Set-off and Netting.** AFEX may, without prior notice, set-off any amount owing by Client to AFEX against any other amount owing by AFEX to Client, including amounts held as Initial Margin and/or Variation Margin. In the event that any Initial Margin and/or Variation Margin is used to set-off any amounts owed by Client, Client shall immediately restore the Initial Margin and Variation Margin requirements for all Forward Contracts, as required by AFEX, failing which AFEX may terminate any or all unfulfilled Orders and Client shall be responsible for all of AFEX's Losses as a result of such termination(s). For the avoidance of doubt where Client also transacts with AFEX Markets to carry out UK MIFID business, Client acknowledges and agrees that the right of set-off in this Clause 4.3 shall apply to amounts owing to AFEX Markets by Client and amounts owing to Client by AFEX Markets and that margin held by AFEX Markets may be used to satisfy this set-off right.
- 4.4. Client acknowledges and consents to AFEX netting Orders for the purpose of satisfying any Margin Call issued by AFEX and/or for satisfying any shortfall incurred by AFEX on the liquidation of any or all Orders, including, for the avoidance of doubt, Orders entered into with AFEX Markets. Client acknowledges and agrees that AFEX is not obliged to net Orders for such purposes but that AFEX may do so in its sole discretion.
- 4.5. **Limitation on Rights.** Nothing in this Agreement shall be interpreted as creating any security interest or right of set-off or netting to the extent that the creation or existence of such right or interest would be contrary to any applicable laws to which AFEX is subject (including, without limitation, the Regulations).
- 4.6. **Electronic debits.** If Client has authorised AFEX to initiate debit entries to Client's bank or other financial institution account by direct debits, Client agrees that in the case of debit instructions transmitted through the Online System, the usage of the Online System Access Method is a security procedure which constitutes a commercially reasonable method of protecting against unauthorised debits. Client agrees to be bound by any debit instructions, whether authorised or not, issued in its name and acted upon by AFEX. In the event Client elects not to use or adhere to the security procedures described herein, Client will remain liable for any debit instructions issued in its name, whether authorised or not, and acted upon by AFEX. Client agrees that AFEX and Client's financial institution(s) are authorised to credit Client's account from time to time in the event that credit adjustments become necessary. Client

agrees to indemnify AFEX and hold it harmless from any Losses incurred by any of them in connection with the execution of debit instructions believed by any of them to have been issued by a User.

- 4.7. **Rejected Settlement.** In the event any funds transfer of any kind authorised by Client is rejected by Client's financial institution or not completed for any reason, including, without limitation, where a funds transfer is cancelled or otherwise stopped by Client, AFEX will charge and Client agrees, unless otherwise restricted by law or regulation, to pay all processing costs, fees, penalties and liabilities incurred by AFEX as a result of such incomplete funds transfer.
- 4.8. **Settlement Extension.** In the event AFEX fails to receive Settlement on or before Value Date, AFEX may, without the consent of Client, amend the originally agreed upon Value Date to the immediately subsequent Business Day ("**Settlement Extension**"). Client shall pay AFEX any Losses incurred as a result of a difference between the value of the Order on the originally agreed upon Value Date and the prevailing market rate on the subsequent Business Day. AFEX reserves the right to extend the settlement date of an Order as often as needed prior to its receipt of past due Settlement. At any time prior to the Value Date, Client may request AFEX to extend the Value Date to a future Business Day ("**Settlement Extension Request**"). Client must have an underlying business purpose for each Settlement Extension Request. All Settlement Extension Requests are subject to the approval of AFEX. AFEX may decline a Settlement Extension Request in its sole discretion for any reason. In the event of AFEX's acceptance of a Settlement Extension Request, Client agrees to pay to AFEX on demand within one (1) clear Business Day the amount of any and all Losses incurred by AFEX and any fee assessed by AFEX to Client in connection with its fulfilment of the Settlement Extension Request.

## 5. DIRECT DEBIT PAYMENT

- 5.1. **Direct Debit Payment.** AFEX may, with the consent of Client, initiate debit entries to a specified deposit account held by Client at a commercial banking institution ("**Direct Debit Payment**").
- 5.2. **Deposit Account Information.** Client shall furnish certain deposit account information, including, without limitation, bank account number and bank sort code for each Direct Debit Payment election. Client represents that all deposit account information provided to AFEX is accurate. Client further represents that Client is the sole owner of the deposit account whose number or bank sort code is provided for the Direct Debit Payment and that Client possesses the authority to withdraw funds from the deposit account without the approval or participation of other person(s).
- 5.3. **Sufficient Funds.** When Client elects to make Payment for Services by Direct Debit Payment, Client warrants that the deposit account maintains sufficient funds to fully cover the value of the Order.
- 5.4. **Losses.** Client agrees to pay to AFEX on demand within one (1) clear Business Day the amount of any and all Losses and expenses incurred by AFEX in connection with a failed Direct Debit Payment. AFEX and its representatives are not liable for any fees assessed by Client's commercial banking institution for the Direct Debit Payment.
- 5.5. **Notice.** Client shall provide immediate written notice to AFEX in the event that it closes the deposit account used for Direct Debit Payment.

## 6. CLIENT FUNDS

- 6.1. **Funds Applied to Client's Payment Account.** AFEX will credit all funds purchased by Client or paid to it by Client in relation to an Order, with the exception of Initial Margin or Variation Margin, to a Payment Account.
- 6.2. **Payment Account Limits.** Funds may be maintained in Client's Payment Account for a maximum of ninety (90) days. Client shall be responsible for all risks, including, without limitation, volatility of

the Foreign Currency market, associated with maintaining Payment Account in one or more Foreign Currency.

- 6.3. **Safeguarding Funds.** As a payment institution, AFEX UK is required to ensure that customer funds are appropriately safeguarded under the Regulations. Where AFEX UK holds funds for Client in the Payment Account, these funds will, where required, be held by AFEX UK in one or more segregated bank accounts, separate from AFEX UK's own funds, in accordance with the Regulations. In the event of AFEX UK's insolvency, the Safeguarded Funds will form an asset pool which is separate from AFEX UK's insolvent estate and an administrator will be entitled to reimburse Client from this pool (in priority to other creditors). An administrator's or insolvency practitioner's costs will be paid from the Safeguarded Funds in priority to other claims.
- 6.4. **Repayment on Termination.** In the event that the Agreement is terminated for any reason, or in the event that funds are maintained in Client's Payment Account beyond the maximum ninety (90) day period permitted above, AFEX may convert funds that are held in Client's Payment Account into Client's base currency at the then-prevailing exchange rate(s) and return such funds to Client. In the event that the Agreement is terminated for any reason, AFEX may convert funds that are held for Client as Safeguarded Funds into Client's base currency at the then-prevailing exchange rate(s) and return such funds to Client.
- 6.5. **Unclaimed Payment Account Balance.** Dependent on the jurisdiction of Client, legislation or regulation may set out obligations and processes where a Payment Account balance may be considered abandoned. AFEX will be bound by any applicable legislation or regulation governing the treatment of an abandoned Payment Account balance. Unless prohibited, AFEX may charge all costs and expenses of any notice, advertisement, payment and delivery of the Payment Account balance to the applicable governing agency, against the Payment Account balance prior to remitting in accordance with the legislation or regulation. If AFEX has remitted the Payment Account balance in accordance with the legislative or regulatory requirements, AFEX has no further liability to Client and Client must apply to the appropriate governing agency to reclaim the Payment Account balance.

## 7. FORWARD CONTRACTS

- 7.1. **Risks Involved.** Client acknowledges and agrees that the Foreign Currency markets are volatile. Client expressly accepts the risk that the value of the currencies in a Forward Contract may change between the date of the Order and the Balance Due Date.
- 7.2. **Delivery of Funds.** Once Settlement has been received by AFEX with respect to a Forward Contract, AFEX will deliver the funds in accordance with the Order or, if no such Delivery Instruction is provided, will credit Client's Payment Account.
- 7.3. **Drawdown.** Subject to the Agreement, Client may draw down against a Window Forward Contract during the Delivery Window provided that AFEX has received Settlement in immediately available funds corresponding to the amount of the drawdown. Notwithstanding any drawdown, Client is required to provide full Settlement, or any remaining balance, to AFEX in good cleared funds in connection with a Forward Contract on or before the end of the Value Date. AFEX may, in its discretion, apply to any drawdown any rate of exchange that it deems reasonably appropriate.
- 7.4. **Termination of a Forward Contract.** In the event of a Termination Event, AFEX may, without notice, immediately terminate the relevant Forward Contract and/or any other outstanding Forward Contract(s) agreed to between the Parties without any liability to AFEX or its representatives and/or take any other steps AFEX deems appropriate, including any actions contemplated in this Agreement to mitigate the potential Loss(es). In the event of such a Termination Event, Client agrees to pay to

AFEX on demand within five (5) clear Business Days the amount of any and all Losses incurred by AFEX in connection with the termination and Forward Contract(s). Where a Forward Contract has been terminated, Client agrees that AFEX's sole liability to Client is to return any amounts Client paid to AFEX that remain after deducting all amounts owed to AFEX. Client understands and agrees that Client cannot terminate a Forward Contract, except as contemplated in this clause.

## MARGIN

- 7.5. **Initial Margin Requirement.** AFEX may, in its sole discretion, require Client: (i) to provide Initial Margin in relation to any Forward Contract within twenty-four (24) hours of Client's instructions to enter into an Forward Contract; and/or (ii) to provide Initial Margin, if not already provided, within one (1) clear Business Day at any time during the term of an Forward Contract.
- 7.6. **Variation Margin Requirement.** If AFEX determines, in its sole discretion, that the net market value of all of Client's open Orders has declined and the unrealised loss when marked to market exceeds 10% or an alternative percentage or fixed amount as AFEX may advise, of the notional value of the open Orders, Client is required to post with AFEX Variation Margin as stated in the Margin Call issued by AFEX. Each time the net market value of all of Client's open Orders declines and the unrealised loss when marked to market further increases, AFEX may issue a Margin Call whereby Client is required to post additional Variation Margin in the amount stated in the Margin Call within one (1) clear Business Day. Payment of Variation Margin is due on or before the close of business on the next Business Day after the day AFEX issues Margin Call to Client.
- 7.7. **Valuation of Orders.** Forward Contracts are marked to market using prevailing market rates provided from a reputable financial data provider. AFEX reserves the right to change the financial data provider at any time without notice to Client.
- 7.8. **Acknowledgement.** In providing Initial Margin and Variation Margin to AFEX, Client agrees that such monies: (i) may be used by AFEX in the ordinary course of AFEX's business; (ii) will not be maintained by AFEX in a segregated account in the same way as Safeguarded Funds; and (iii) shall not be subject to a trust, deemed or otherwise, in Client's favour, and that Client's right to have the amount of the Initial Margin and Variation Margin, credited in Client's favour on maturity date of Client's Forward Contract represents an unsecured claim against AFEX and does not represent a claim, by way of trust or otherwise, to the Initial Margin or Variation Margin amounts or to any assets of or under the control of AFEX. Where Client also transacts with AFEX Markets to carry out UK MiFID business, Client acknowledges that Initial Margin and Variation Margin may also be held by AFEX Markets in accordance with Client's agreement with AFEX Markets and that a Margin Call may be made by either AFEX Markets or AFEX UK. Client acknowledges and agrees that where Initial Margin or Variation Margin is held by AFEX Markets, such Initial Margin or Variation Margin shall be treated as being held in connection with AFEX Markets' UK MiFID business.
- 7.9. **Return of Variation Margin.** If the unrealised loss of all open Forward Contracts with AFEX by Client falls below the Variation Margin requirements established elsewhere in this Agreement, based on AFEX's computation on any Business Day and as notified to Client, then Client may request that AFEX return to it the difference between the unrealised loss of all open Forward Contracts and the Variation Margin held by AFEX on that Business Day. Any such request must be made, in writing, before 12.00, AFEX Local Time, on the same Business Day, and AFEX will process the request on the Business Day on which it was made and the surplus Variation Margin will be returned in a timely manner. Any request made after 12.00 AFEX Local Time, will be processed by AFEX the

following Business Day and the Variation Margin will be returned to Client in a timely manner.

- 7.10. **Purpose of Initial Margin.** Initial Margin is intended to maintain the relative value of the funds to be purchased from or sold to AFEX pursuant to a Forward Contract or to address, in AFEX's sole discretion, an adverse change in Client's financial standing and/or credit worthiness or an adverse change in the external economic environment. Client acknowledges and agrees that the amount of Initial Margin will be determined by AFEX in its sole and reasonable discretion, subject to the total of any such payments being less than or equal to the total payment obligation owed to AFEX with respect to the relevant Forward Contract, and that AFEX may require Initial Margin to be made even if AFEX has provided Client with a Facility. Any Initial Margin delivered by Client and received by AFEX is non-refundable and will be applied to satisfy Client's total payment obligation owed to AFEX with respect to the relevant Forward Contract on the Value Date or on the date of any final drawdown or any other amount permitted by the Agreement.
- 7.11. **Remedy for Failure to Honour Initial Margin or Variation Margin Requirements.** If AFEX does not receive Initial Margin or Variation Margin when due, AFEX, at its option and in its sole discretion, may close out any or all of Client's open Orders and apply the proceeds first to reimburse AFEX for the amounts due under the Orders, including all Losses, and remit the balance of the proceeds, if any, to Client. If the proceeds of disposition are insufficient to fully satisfy the amount owing to AFEX, then Client shall pay to AFEX the difference within one (1) clear Business Day.

## 8. INCOMING PAYMENT AND RETURNED CHEQUES AND DRAFTS

- 8.1. **Incoming Payment.**
- 8.1.1. AFEX may receive domestic or Foreign Currency from a third party for payment on behalf of Client ("Incoming Payment") or for further credit to Client's Payment Account, in the form of an incoming draft, wire or cheque. Cash cannot and will not be accepted from any source.
- 8.1.2. AFEX reserves the right to withhold credit for any Incoming Payment until cleared funds have been received. In the event that any Incoming Payment is subsequently recalled, returned to AFEX as non-negotiable or for insufficient funds or is otherwise not accepted by AFEX's depository financial institution, such Incoming Payment will be returned to the payer. The Client agrees to indemnify AFEX and its representatives in respect of Losses incurred by AFEX, including any foreign exchange Losses, charges and fees in handling the returned, unaccepted or recalled Incoming Payment. Client acknowledges and agrees that AFEX is relying upon this indemnity in providing value in exchange for any Foreign Currency draft or cheque.
- 8.1.3. AFEX shall credit all Incoming Payments to Client's Payment Account.
- 8.1.4. Client shall require that the third party payer specify Client's full legal name and account number, as designated by AFEX, in the memo or reference line of any such Incoming Payment. AFEX may in its sole discretion, attempt to contact the third party sender to secure any additional information that may be needed to ensure accurate processing of the Incoming Payment.

## 9. DRAFTS AND CHEQUES

- 9.1. **Foreign Currency Drafts and Cheque Purchase.** AFEX may agree to purchase and convert a Foreign Currency draft(s) and cheque(s) that Client has received in its name and delivered to AFEX. AFEX may request additional information satisfactory to AFEX, in its sole discretion, that Client has the authority to deliver the Foreign Currency draft and cheque to AFEX for purposes of Foreign Currency conversion and negotiation.

- 9.2. **Endorsement.** Any Foreign Currency draft(s) and cheque(s) delivered to AFEX for the purpose of purchase and conversion must be endorsed to AFEX, without restriction or qualification, by an authorised representative of Client.

## 10. RATE ORDER

- 10.1. **Rate Order.** If Client instructs AFEX to execute an Order when a particular exchange rate is at a specified or better rate (a "Rate Order"), Client authorises AFEX to act in accordance with the instructions and to purchase or sell currencies on behalf of Client. Each Rate Order will only be effective after AFEX has had a commercially reasonable opportunity to act upon it. The effective period of the Rate Order ("Effective Period"), as communicated to AFEX in the Order, and accepted by AFEX in an Order, shall be deemed to be good until cancelled unless Client provided a fixed ascertainable date for the end of the Effective Period.
- 10.2. **Rate Order Purchase or Termination.** AFEX will provide Client with a summary of the material terms of each Rate Order. If the terms of the Rate Order are met during the Effective Period, AFEX will issue Client a Confirmation. If the terms of the Rate Order are not met by the end of the Effective Period, the Rate Order will expire. Client agrees to promptly review each summary and Confirmation for accuracy and immediately notify AFEX of any error or discrepancy.
- 10.3. **Cancellation of a Rate Order.** To cancel a Rate Order, AFEX must receive an instruction directing cancellation and have had a commercially reasonable opportunity to act upon such instruction. In the absence of such instruction, AFEX will attempt to fill the Rate Order and Client will be liable for Settlement.
- 10.4. **Target Rate.** If the exchange rate specified in the Rate Order ("Target Rate") does not become sustainable and purchasable during the Effective Period, the Rate Order will automatically expire at the end of the Effective Period. The Target Rate must be traded in the market with volume sufficient to sustain that rate level for a commercially reasonable timeframe. Unless otherwise stated by AFEX, Rate Orders will remain in force until 7.59 a.m. AFEX Local Time on the last day of the Effective Period.

## 11. ERRORS AND DISCREPANCIES

- 11.1. Client must promptly review each Confirmation, report, or other reporting or advisory communication regarding Orders or transaction history sent by AFEX and promptly notify AFEX of any error, discrepancy, irregularity or unauthorised activity.
- 11.2. Client may not assert any claim against AFEX or its representatives in connection with any errors, discrepancies or irregularities if Client did not exercise reasonable care in examining any such communication which reflected such errors, discrepancies or irregularities, or if Client did not notify AFEX in writing and in a reasonably prompt manner that Client disputes any information contained in, or missing from, any communication.
- 11.3. Client shall provide AFEX with all information necessary for AFEX to investigate the error, discrepancy or irregularity.
- 11.4. **Conclusive Evidence.** For the avoidance of doubt, without prejudice to Clause 11.1 above and AFEX's liability under Clause 20 regarding Payment Transactions and the Payment Account, AFEX shall be entitled to rely on its own record of any information or data relating to the Client as conclusive evidence of the fact against that Client for all purposes save for manifest error.

## 12. ONLINE SYSTEM

- 12.1. **Online System Licence.** If Client uses the Services, Client agrees to abide by the Agreement. In consideration of Client's agreement to be so bound, Client shall be granted, for so long as the Agreement remains in effect, for a period of time not to exceed one (1) year of continuous non-use of the Services by Client, a non-exclusive, non-

- transferable, and non-sublicensable licence to use the Online System for the sole purpose of facilitating Client's use of Services.
- 12.2. **Online Payment System Prohibitions.** Client agrees that the Online System is and shall remain the exclusive property of AFEX. Accordingly, Client represents, warrants and covenants that it and its User(s), employees, directors, officers, agents, or affiliates shall not:
- 12.2.1. distribute or disclose the Online System, or any component of it, to, or permit use of the Online System by, any third party;
  - 12.2.2. decompile, disassemble, reverse engineer, or otherwise attempt to derive or discern the source code or internal workings of the Online System except to the extent that any reduction of software in the Online System to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Online System with the operation of other software or systems used by Client;
  - 12.2.3. use the Online System for any purpose that is illegal or prohibited under the Agreement;
  - 12.2.4. use any automated means or interface to access the Services or extract other users' information;
  - 12.2.5. use the Online System to communicate with other users or for any commercial purpose;
  - 12.2.6. use the Services in a way that could interfere with, disrupt, negatively affect, or inhibit other users from using the Services, or that could damage, disable, overburden, or impair the functioning of the Services;
  - 12.2.7. use or attempt to use another user's Online System Access Method without their permission;
  - 12.2.8. upload viruses or other malicious code that otherwise compromises the security of the Services;
  - 12.2.9. attempt to circumvent any content-filtering techniques AFEX uses, or attempt to access areas or features of the Services that Client is not authorised to access;
  - 12.2.10. probe, scan, or test the vulnerability of the Services, or any related system or network; or
  - 12.2.11. encourage or promote any activity that violates the Agreement.
- 12.3. **Intellectual Property Indemnity.** AFEX shall indemnify and hold Client harmless of any damages and costs awarded by a court of competent jurisdiction against Client, which relate directly to a finding by such court that Client's use of the Online System in accordance with the Agreement infringed any copyright, patent, trade secret or other intellectual property right of a third party; provided, however, Client must provide AFEX with prompt notice of any actual or potential third party claim, and agree to allow AFEX, to the extent it chooses, to defend and direct all activities relating to the defence and/or settlement of any such third party claim.
- 13. ONLINE SYSTEM SECURITY**
- 13.1. **Use of Online System.** In order to use the Online System, Client will be required to create an electronic account and agrees to provide AFEX with a written list of Users that Client would like to access and use Online System on Client's behalf. Upon AFEX's approval of such Users, AFEX grants such Users a non-exclusive, non-transferable licence to use Online System for the sole purpose of accessing the Services in accordance with the Agreement. Users may have full or limited access to the Online System, in AFEX's sole discretion. If Client wishes AFEX to terminate a User's access to the Online System, Client agrees to issue such request in writing, to be confirmed by AFEX in writing. Without limiting this Section, until such time as AFEX confirms such User's access has been terminated, such User may remain authorised and Client will remain responsible for any transactions placed and other activity by such User.
- 13.2. **Access.** AFEX will provide each User with a username and temporary password to access the Online System. It is the sole responsibility of Client and the User(s) to safeguard the security of the User(s)' password, and Client and User(s) agree that User(s) will change the temporary password to a unique password promptly upon issuance, and periodically change the User's password thereafter to ensure security. Client agrees that its User(s) will not use the electronic account of another User without permission and will provide accurate and complete information to AFEX in all circumstances. Client and each User expressly acknowledge and agree that such use is made in accordance with this Agreement and any additional User Agreement or manual provided by AFEX, including maintaining any minimum operating and Internet browser requirements. AFEX may suspend, limit or terminate a User's access or Client's access to the Online System, without notice, at any time for any reason whatsoever.
- 13.3. **Client's Responsibility for Use of Online System.** Client and its User(s) are solely responsible for all activity on Client's electronic account, and each agrees to notify AFEX immediately upon becoming aware of any unauthorised use of Client's electronic account. Subject to Clause 20, AFEX will have no responsibility for any Losses incurred by reason of any use, whether authorised or unauthorised. The Client agrees to hold AFEX harmless from any Losses AFEX may incur by reason of the use of Client's electronic account. Nothing in this Clause shall limit AFEX's liability in accordance with Clause 20.
- 13.4. **Exchange Rate.** Once a User submits an Order, either by clicking "Yes" or otherwise, Client shall be deemed responsible for the resulting Order as if Client had placed the Order. The exchange rate visible on the screen at the time the User submits an Order through the Online System will be the exchange rate applicable to the Order.
- 13.5. **Electronic Communications from AFEX.** Client acknowledges and agrees that the Online System may include certain communications from AFEX or its partners, such as service announcements and administrative messages, and that these communications are considered part of the Online System and Client may not be able to opt out of receiving them. Unless explicitly stated otherwise, any new features that augment or enhance the Services, including any new service, shall be subject to the Agreement.
- 13.6. **Online System Provided "As Is".** The Online System, and all other related Services, are provided "as is" with no representations, warranties or conditions of any kind, either express or implied. AFEX shall have no responsibility for transmission errors, faulty or unreliable Internet connections or website downtime. All disclaimers, limitation of liability and indemnity terms set forth in the Agreement shall apply fully to Client's and its User(s)' use of the Online System, as well as any other means of accessing such Services.
- 13.7. **Multi-Factor Authentication ("MFA") Service.** AFEX will utilise an MFA service to safeguard User access to the Online System. The MFA service will require each User to provide certain contact information to AFEX. Client authorises AFEX to transmit a unique authentication identifier to the contact information provided by the User. Client shall be solely responsible for any third party fees incurred by Client or Users, including, but not limited to those assessed by telecommunication service providers, as a result of use of the MFA service.
- 13.8. **Security of the Online System Access Method.** The confidentiality and security of the Online System Access Methods will at all times be the sole responsibility of Client. Client hereby acknowledges that:
- 13.8.1. Client agrees that there are inherent risks of using online financial services such as the Online System if the security of the Online System Access Methods are not strictly maintained.
  - 13.8.2. Client shall make reasonable efforts to:
    - 13.8.2.1. take appropriate security measures to protect their devices and computer systems;
    - 13.8.2.2. protect the Online System Access Methods, personal details and other confidential data;
    - 13.8.2.3. use unique Online System Access Methods for different websites, applications or services. Online System Access Methods should not be based on common or typical passwords or password routines, and/or personal information; and
    - 13.8.2.4. implement security protocols and policies, and install or acquire security products and protections including up-to-date anti-virus, anti-spyware, firewall software and operating systems on devices and computers, removal of file and print sharing options, regular and frequent back up of critical data; encryption technology, terminating online sessions when complete, clearance of browser cache after each login; prohibition on software and programs of unknown origin; prohibition on using websites that have not been reviewed for security and veracity, and prohibition on use of a computer or a device which is not owned or authorised for use by the User or which is on a public network to access the Online System.
- 13.9. **Changes.** AFEX may modify, or discontinue, the Online System at any time or change its domain, without prior notice and without Client's consent.
- 13.10. **Availability of Online System.** AFEX shall in no circumstances be liable to Client for any losses or unrealised profits resulting from the unavailability or suboptimal functioning of the Online System.
- 14. INTELLECTUAL PROPERTY**
- 14.1. Client acknowledges and agrees that all AFEX intellectual property, including but not limited to, service marks, logos, trademarks, applications, processes, websites, systems ("**AFEX Intellectual Property**"), are the property of AFEX and are protected by copyright law and/or other intellectual property laws.
- 14.2. **Intellectual Property Rights.** All copyright, trademarks, service marks, trade secrets, registered and unregistered design rights and all other intellectual property and other rights in and to the AFEX Intellectual Property, shall remain at all times the sole and exclusive property of AFEX and, where applicable, its licensors. Client shall have no right or interest in or to any such intellectual property or other rights, except the right to access and use the Service as provided for in the Agreement. All rights not expressly granted to Client are reserved by AFEX.
- 15. FORCE MAJEURE**
- 15.1. **Force Majeure.** In the event that AFEX or its representatives are unable to provide the Services due to abnormal and unforeseeable circumstances which would have been beyond AFEX's or its representatives' control the consequence of which would have been unavoidable despite all efforts to the contrary, including but not limited to government acts, wars, acts of terrorism, cybercrimes, strikes, riots, other civil disturbances, legal process, health epidemic or pandemic, electronic failure or mechanical failure, AFEX and its representatives shall have no liability for direct, indirect, special, incidental or consequential damages, including, but not limited to, loss of profits or expenses, arising in connection with any Order entered into with Client pursuant to the Agreement, any Forward Contract or any Confirmation.
- 16. TERM AND TERMINATION**
- 16.1. This Clause 16.1. applies only to a Client that is either a Micro-Enterprise or a Small Charity.
- 16.1.1. The Client may terminate this Agreement at any time without notice subject to the

Regulations.

- 16.1.2. AFEX may terminate this Agreement upon the occurrence of a Termination Event, without further notice to Client. In all other circumstances, AFEX may terminate this Agreement with 60 days' notice to Client.
- 16.2. This Clause 16.2 applies only to a Client that is not a Micro-Enterprises or a Small Charity.
- 16.2.1. AFEX may terminate the Agreement upon the occurrence of a Termination Event, without further notice to Client. In all other circumstances, AFEX may terminate this Agreement with 30 days' notice to Client.
- 16.3. This Agreement has no fixed term.
- 16.4. In the event of termination, all debts and obligations that the Client owes AFEX will become immediately due and payable. The Client agrees that AFEX may take any action it is entitled to take under the Agreement or under applicable law, including to set-off the whole or any part of any amount owing to the Client against any or all amounts payable by the Client to AFEX.
- 16.5. In the event of termination, all obligations and rights of a continuing nature shall survive termination of the Agreement.

## 17. REPRESENTATIONS AND WARRANTIES

- 17.1. Client represents, warrants and covenants that:
- 17.1.1. All statements contained in the Agreement, and any other information contained in documentation submitted in support of the Agreement, are true and correct and that Client will notify AFEX immediately if any of such information is no longer true.
- 17.1.2. Client is responsible for ensuring the accuracy and completeness of instructions in respect of each and every Order.
- 17.1.3. Client has initiated each Order solely based on its analysis and/or third party advice and has not received or relied upon any advice from AFEX with respect to the suitability or appropriateness of such Order for Client.
- 17.1.4. Client shall maintain security systems, procedures and controls to prevent and detect the theft of funds; forged, fraudulent and unauthorised instructions and electronic transfer of funds by anyone who is not Client or a User; losses due to fraud or unauthorised access to the service by anyone who is not Client or a User.
- 17.1.5. Client shall make its own arrangements to provide the equipment and software it needs to meet its desired levels of service, security and reliability. Equipment includes computer systems and telecommunication devices. All equipment and software must meet AFEX's requirements and specifications for the Services AFEX is providing. All purchase, installation and maintenance costs will be at Client's expense. AFEX may, if it chooses, specify security procedures for a Service, which Client must follow.
- 17.1.6. Client shall keep any keys, access codes, security devices and verification procedures safe and confidential, and change them at least as often as the Service materials specify. AFEX may establish a routine to verify the source and authenticity of instructions Client gives AFEX and may verify an instruction before acting on it. AFEX may act on instructions that contain the verification routine without checking authority.
- 17.2. Limitation on Services.
- 17.2.1. Client represents that the Services are being used for business or commercial purposes only and in the course of effecting genuine business transactions and not for the purpose of speculation and/or investment.
- 17.2.2. Client further represents, warrants and confirms that all Orders will be placed pursuant to and in accordance with the Agreement.
- 17.2.3. Client agrees not to use the Services to make payments for any illegal purpose. In addition, Client certifies that it will not use the Services

to make any payments relating to online gambling, pornography, firearms and other purposes, as notified by AFEX.

- 17.2.4. Client acknowledges that any Order accepted by AFEX will be binding upon and enforceable against Client and does not violate the terms of any other agreement to which Client is bound.
- 17.3. Client Funds.
- 17.3.1. Client represents and warrants that it is acting as a principal and has legal title to all funds used in connection with the Orders, and that any Order is being undertaken in accordance with applicable law.
- 17.3.2. Client further represents and warrants that each use of the Services by Client is for the sole purpose of hedging or mitigating commercial risk, is exercised in connection with Client's line of business and that each Forward Contract entered into by the Client is for the sole purpose of facilitating a means of payment for identifiable goods and services or direct investment.

## 18. LEGAL AND REGULATORY COMPLIANCE

- 18.1. Transaction Processing. Client understands, acknowledges and agrees that all Orders, wherever originated, may be processed by AFEX, an entity of which may be located outside the country of Client. As such, all Orders, wherever originated, will be processed in accordance with the laws and regulations of the jurisdiction where the transaction is being processed, including but not limited to, those laws and regulations relating to anti-money laundering, anti-terrorism financing and foreign asset control.
- 18.2. Freezing or Blocking Transactions. In certain circumstances, AFEX may be obliged to freeze or block an Order to comply with applicable laws. Freezing or blocking can arise for a number of reasons, including as a result of the account monitoring that AFEX conducts as required by relevant laws or where the name of a sender or Beneficiary of an Order matches a name on a relevant government list of prohibited persons or where the Order is being sent to a country that has been subjected to relevant government asset control or sanctions. If this occurs, AFEX and its representatives are not liable to Client for any resulting Losses whatsoever and Client agrees to indemnify AFEX and its representatives to the extent that AFEX and its representatives incur any Losses in connection with the freezing or blocking of Client's account.
- 18.3. Refusal or Delay of Services. AFEX may refuse or delay the provision of Services if AFEX reasonably determines that doing so is necessary to avoid or mitigate Losses to AFEX; to comply with AFEX policies; to adhere to laws or regulations; if an Order is not or does not appear to be related to Client's line of business, or to reduce risk to AFEX. This includes, but is not limited to, events where AFEX reasonably suspects that the Service is being used or accessed to perpetrate financial fraud or exploitation, even if Client or User has authorised the Service.
- 18.4. Disclosure. Client understands that AFEX takes measures to ensure that it is not participating or assisting in money laundering or terrorist financing. Client agrees that AFEX, in its sole discretion, may disclose any transaction-related information including but not limited to confidential information of Client or information about a Beneficiary in order to satisfy AFEX's legal obligations under applicable law, including, but not limited to, anti-money laundering, trade and economic sanctions laws and/or regulations, or as may otherwise be required by law or court order. Furthermore, such disclosure may be made to any governmental agency, body or department that exercises regulatory or supervisory authority with respect to AFEX's operations, where such disclosure is made to satisfy governmental audit or examination requirements or as part of information required to be submitted to such governmental entities in the

ordinary course of business.

- 18.5. Additional Information. Upon request, Client agrees to provide any additional information that AFEX may need, including with respect to Client, third party payers or payees, authorised representatives, beneficial owners, employees and directors, to satisfy its ongoing legal and regulatory obligations. Failure or delay in providing additional information may result in a delay or failure to provide Services. In addition, Client authorises AFEX to make any inquiries it may deem necessary or appropriate in accordance with applicable law, including, without limitation, inquiries into Client's business profile, solvency or credit history, to assess Client's suitability for a business relationship with AFEX as well as ongoing maintenance of that relationship. Such information may extend to Client's authorised representatives and directors.

## 19. USE OF INFORMATION, PRIVACY AND DISCLOSURE

- 19.1. Personal Data. AFEX shall collect, use and disclose personal data received from Client in accordance with the Data Processing Addendum. The Data Processing Addendum is available at <https://www.afex.com/unitedkingdom/dpa.php>. AFEX may transfer personal data to affiliates in countries other than the country in which the information was originally collected or created, including to affiliates in the United States. AFEX's complete Privacy Notice is available on its website at [https://www.afex.com/unitedkingdom/privacy\\_policy.php](https://www.afex.com/unitedkingdom/privacy_policy.php).
- 19.2. The Client shall indemnify AFEX and its representatives and hold AFEX and its representatives harmless from and against any and all Losses resulting from AFEX's non-compliance with applicable privacy and data governance laws which are a direct consequence of the actions or omissions of Client.
- 19.3. New Products and Services. Under a valid consent, AFEX may contact Client, by telephone, mail, or other means, with information about the products and services available which AFEX believes may be of interest to Client.

## 20. LIMITATION OF LIABILITY; INDEMNITY

- 20.1. Nothing in this Agreement limits or excludes liability for death or personal injury caused by AFEX gross negligence or the gross negligence of AFEX employees, agents or subcontractors; for fraud or fraudulent misrepresentation or any other liability that cannot be excluded or limited by law including the Regulations.
- 20.2. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES SHALL AFEX AND ITS REPRESENTATIVES BE LIABLE TO CLIENT OR TO ANY OTHER PARTY FOR LOST REVENUE, PROFITS OR FOR ANY OTHER SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, EVEN IF AFEX OR ITS REPRESENTATIVES HAVE BEEN INFORMED OF SUCH POTENTIAL LOSS OR DAMAGE AS A RESULT OF OR ARISING OUT OF THE RELATIONSHIP BETWEEN THE PARTIES OR IN ANY WAY CONNECTED TO THE AGREEMENT. THE PARTIES AGREE THIS LIMITATION REPRESENTS A REASONABLE ALLOCATION OF RISK, WITHOUT WHICH AFEX WOULD NOT HAVE ENTERED INTO THE AGREEMENT. THE LIMITATIONS OF LIABILITY STATED IN THE AGREEMENT SHALL HAVE EFFECT TO THE EXTENT PERMITTED BY APPLICABLE LAW.
- 20.3. AFEX's Liability. Without prejudice to Clause 20.5 and 20.6 below, AFEX's and its representatives' liability under the Agreement for any breach by it shall be limited to the currency value of the impugned Order as at the Order date only.
- 20.4. Limited Liability. Without prejudice to Clause 20.5 and 20.6 below, in the event AFEX or its representatives are found to be liable to Client for the misdirection or misappropriation of funds, their liability shall be limited to the original amount of such funds misdirected or misappropriated. In the event AFEX or its representatives are found to be

liable to Client for any other reason in respect of an Order, such liability shall be limited to the market movement in foreign exchange rates for that Order from the Order date.

20.5. **Indemnity.** Client will indemnify, defend, and hold AFEX and its representatives harmless from and against any and all claims, Losses, damages, judgments, tax assessments, penalties, and interest arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to: (a) any actual or alleged breach of Client's representations, warranties, or obligations set forth in the Agreement; (b) Client's wrongful or improper use of the Services; (c) Client's violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (d) Client's violation of any law, rule or regulation of any country; and (e) any other party's use of the Services or access to the Online System through any User's Online System Access Method. **These indemnities will survive the termination of this Agreement.**

20.6. **This Clause 20.6 only applies to a Client that is a Micro-Enterprise or a Small Charity.**

20.6.1. In the event that the Client discovers an unauthorised Payment Transaction or unauthorised transaction on the Payment Account (both an "Unauthorised Transaction") the Client must notify AFEX without undue delay and in any event no later than thirteen (13) months from the date of that Unauthorised Transaction in order to be entitled to redress.

20.6.2. In the event that an Unauthorised Transaction was not authorised by the Client, AFEX will refund the amount of the transaction to the Client and the Client's maximum liability in respect of the Unauthorised Transaction will be £35 unless the Client has acted fraudulently or negligently or allowed another person to use its Account.

20.6.3. AFEX UK may be liable to the Client under the Regulations where AFEX UK fails to perform or incorrectly performs any Payment Transaction that the Client authorises AFEX UK to perform.

20.6.4. Where the Client believes that AFEX UK may have failed to perform or incorrectly performed a Payment Transaction, the Client must notify AFEX UK without undue delay and in any event no later than thirteen (13) months from the date of debit of that Payment Transaction. AFEX UK will make immediate efforts to investigate and where AFEX UK has failed to perform or incorrectly performed such payment transactions, AFEX UK will without undue delay make good and correct the error.

20.7. **This Clause 20.7 only applies to Corporate Clients and not Micro-Enterprises or a Small Charities:**

20.7.1. In the event that the Client discovers an unauthorised Payment Transaction, unauthorised transaction on the Payment Account (both an "Unauthorised Transaction") or incorrectly executed Payment Transaction the Client must notify AFEX UK without undue delay and in any event no later than seven (7) days from the date of debit of that Unauthorised Transaction or incorrectly executed Payment Transaction in order to be entitled to redress. Where the Client is able to demonstrate to AFEX's reasonable satisfaction (including, but not limited to, providing such documentation as AFEX may reasonably require from the Client) that the Payment Transaction was incorrectly executed or was an Unauthorised Transaction, it will refund any money paid to AFEX and any transaction fees and charges paid to AFEX in connection with that Unauthorised Transaction or incorrectly executed Payment Transaction. AFEX shall not be liable for any charges or other loss, including any special or punitive damages, suffered by the Client as a result of that incorrectly executed Payment Transaction or Unauthorised Transaction.

## 21. COMMUNICATIONS AND NOTICES

21.1. Client agrees that AFEX may communicate with and give notice to Client in writing, by facsimile and electronically, via electronic mail to User(s) or via Online System. All such communications will be considered to have been provided in accordance with the terms of the Agreement. Client agrees that it is Client's responsibility to access all such communications.

21.2. All communications sent by regular mail will be deemed received five (5) clear Business Days after the date of the mailing. All communications sent by personal delivery will be deemed received on the day of actual delivery, if a Business Day, and if not a Business Day, on the next Business Day after the day of actual delivery. Facsimile communications will be deemed to have been received on the day of transmission if a Business Day, and if not a Business Day, on the next Business Day after the day of transmission. All electronic communications will be deemed to be received on the day the electronic communication is sent, if a Business Day, and if not a Business Day, on the next Business Day after the date on which the electronic communication is sent.

21.3. Client must inform AFEX immediately in writing of any change of beneficial ownership, address, delivery information, Client financial institution or designated account(s) or its bank/financial institution from which AFEX has been granted the authority to initiate electronic debits. Any changes directed by a notice will be taken into effect by AFEX within five (5) days after AFEX's receipt of such notice. If Client has failed to inform AFEX of any change in address or contact information in accordance with this clause or has otherwise provided incorrect address or contact information and AFEX is unable to deliver any communications due to such failure or the provision of incorrect address or contact information, Client is in breach of the Agreement and AFEX will have no further obligation to seek out correct contact information to continue to attempt to deliver. AFEX is not responsible for Client's failure to receive any communication if sent in accordance with contact information as provided by Client.

21.4. If Client uses electronic mail to initiate payment requests or other instructions or otherwise communicate with AFEX, Client agrees to bear the risk that such electronic mail may be corrupted, modified, incomplete, hacked, compromised or be undelivered with or without notice to the sender or receiver. Client agrees to bear the risk of these events and agrees to hold AFEX harmless from acting or failing to act on any and all electronic communications purporting to be sent by Client.

## 22. DISPUTE RESOLUTION

22.1. The Parties will use their best efforts to resolve any disputes arising hereunder without formal litigation. If a dispute arises out of, or in connection with, the Agreement or the performance, validity or enforceability of it and the Parties do not resolve some or all of the dispute through normal internal discussions, then the Parties shall follow the procedure set out in this clause:

22.1.1. At first instance, the matter in dispute will be escalated to a senior manager within each Party; and

22.1.2. At second instance, if the Parties do not resolve some or all of the issues in dispute within fifteen (15) business days after the first day that the matter has been escalated at first instance, then the Parties agree to attempt to resolve the dispute through mediation, in accordance with the Terms of Mediation set out in this Agreement.

22.2. The Parties agree that the representatives selected to participate at all instances in the dispute resolution process will have the authority required to settle the dispute, whether by virtue of the authority of their office, or by virtue of delegated authority.

22.3. Any discussions between the Parties at the first and second instances shall be regarded as

"without prejudice" for the purpose of settlement negotiations and shall be treated as confidential by the Parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the negotiations.

22.4. The Parties agree that this Section shall not prevent AFEX UK from seeking payment for unsettled Orders through the use of a duly registered collection agency. Should recovery not be successful through the collection agency process, the Parties shall subsequently attorn to the process set out in Section 22.

22.5. **Complaints.** Should the Client have any complaints regarding the Payment Transaction, the Client must contact their AFEX account executive in the first instance for details of AFEX's complaints procedure. Clients that are still dissatisfied following AFEX's response to any complaint, may have a right to refer a complaint to the Financial Ombudsman Service, Exchange Tower, London, E14 9SR. While Client is pursuing a resolution to the dispute pursuant to the Financial Ombudsman Service procedure, the processes set out in sections 22 and 23 will be suspended.

## 23. TERMS OF MEDIATION

23.1. **Notice.**

23.1.1. If a dispute arises and the Parties do not resolve some or all of that dispute through first instance and second instance negotiations, as set out above, AFEX, at its sole discretion, may elect to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. To initiate the mediation AFEX may promptly submit to the other Party a notice of intent to mediate. A copy of the notice should be sent to CEDR.

23.1.2. This notice shall be in writing and shall specify the issues in dispute.

23.1.3. The general notice provisions of the Agreement apply equally to the documents referred to in this Section.

23.2. **Selection of Mediator.** The mediator can be chosen by joint agreement of the Parties, or if unable to agree within fourteen (14) calendar days of the date of delivery of the notice of intent to mediate, or if the Parties agree, by the CEDR.

23.3. **Schedule.** The Parties shall jointly select a date for the mediation that is no later than ninety (90) calendar days from the date of the notice of intent to mediate.

23.4. **Location.** The mediation shall be held in London, United Kingdom, or such other location as the Parties agree.

23.5. **Exchange of information.** The Parties agree to an exchange of all information upon which they intend to rely in any oral or written presentation during the mediation. This exchange shall be complete no later than fourteen (14) calendar days prior to the date set for the mediation.

23.6. **Costs.** The Parties agree that they will each be responsible for their own costs of mediation, including travel. Fees and expenses of the mediator and all administrative costs of the mediation, if any, shall be shared equally by the Parties.

23.7. **Confidentiality.** Any discussions between the Parties during the mediation shall be regarded as "without prejudice" for the purpose of settlement negotiations and shall be treated as confidential by the Parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the mediation.

23.8. **Caucusing.** The mediator is free to caucus with the Parties individually, as the mediator sees fit to improve the chances of a mediated settlement. Any confidential information revealed to the mediator by one Party during such caucusing may only be disclosed to the other Party with the former Party's express permission.

23.9. **Prohibition against Future Assistance.** It is agreed

that the mediator will neither represent nor testify on behalf of any of the Parties in any subsequent legal or administrative proceeding between the Parties or where they are opposed in interest. It is further agreed that the personal notes and written opinions of the mediator made in relation to this mediation are confidential and may not be used in any subsequent proceeding between the Parties

23.10. **Termination.** The mediation may be terminated by any means described in the CEDR Model Mediation Procedure.

23.11. **Mediator's Report.** In the event that no agreement is reached, or is reached on some issues only, the mediator shall promptly provide a report to the Parties stating that no agreement was reached on some or all of the outstanding issues.

23.12. **Other Proceedings.** AFEX may elect to proceed by mediation. The Client may not commence any court proceedings in relation to any Dispute arising out of the Agreement if AFEX has indicated it wishes to settle the Dispute by mediation and unless either the mediation has terminated or AFEX has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

## 24. GENERAL TERMS AND CONDITIONS

24.1. **Third Parties.** The Agreement is not intended to, and shall not, confer upon anyone other than the Parties and their lawful successors nor assigns any legal or equitable rights, benefits, claims or remedies of any nature.

24.2. **No Waiver.** AFEX's failure to exercise any of its rights under the Agreement shall not be deemed a waiver of such rights or remedies at a later time.

24.3. **Information and notifications concerning Payment Transactions.** In accordance with the Regulations, AFEX must provide or make available certain information to the Client when carrying out a Payment Transaction. Such information will be provided to the Client in English using a method of

communication which AFEX reasonably considers to be appropriate, including by phone, email or in writing and as often as AFEX reasonably consider necessary to comply with its obligations.

24.4. **Severability.** If any provision of this Agreement shall be held to be unenforceable by a court of competent jurisdiction, the remainder of the provisions shall remain in effect and shall be binding upon the Parties.

24.5. **Governing Law; Jurisdiction.** The Agreement shall be construed and interpreted in accordance with the laws of England and Wales. Each of the Parties shall attorn to the jurisdiction of the Courts within England and Wales having jurisdiction over the subject matter of the Agreement. The Parties agree that London, United Kingdom is a convenient forum to bring any action.

24.6. **Assignment.** Client shall not assign the Agreement nor any rights or obligations hereunder without AFEX's written consent. If AFEX provides its written consent to any assignment of the Agreement, the Agreement shall be binding upon the successors, heirs, and assigns of Client. AFEX UK shall be permitted to consolidate or amalgamate with, or merge with or into, any other institution and any reference in this Agreement to AFEX UK shall be construed as a reference to the successor entity. The Client's obligations in respect of any account will not be affected by any takeover, absorption or merger by or of AFEX UK, nor will it be in any way affected by any change in the name or constitution of AFEX UK or any successor, assignee or transferee.

24.7. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, understandings, negotiations and discussions between the parties, whether oral or written. The terms of this Agreement may not be changed, modified or supplemented except as provided for by this Agreement.

## 24.8. Changes to Agreement.

24.8.1. This Clause 24.8.1 only applies to Corporate Clients and **not** Micro-Enterprises or Small Charities: AFEX reserves the right, in its sole discretion, to change, amend, or otherwise modify this Agreement at any time upon written notice to Client. Any changes, amendments, or modifications so conveyed to Client shall be effective from the date such change, amendment or modification goes into effect, unless otherwise stated.

24.8.2. This Clause **24.8.2 only applies to a Client that is a Micro-Enterprise or a Small Charity:** Any changes to this Agreement will be communicated to the Client at least two months before such changes are due to take effect unless such a change is to the Client's advantage, as reasonably determined by AFEX, or represents a change to an external reference exchange rate to which the Client's exchange rate is linked. In these circumstances AFEX may make the change immediately and inform the Client forthwith. If the Client disagrees with a change, the Client has the right to terminate this Agreement without penalty by giving AFEX notice before the changes are due to take effect. The Client shall be deemed to have accepted any changes to this Agreement if the Client fails to notify AFEX of any disagreement before this time.

24.9. **Miscellaneous.** In the event that the Client requires any further information in relation to the Regulations or has any questions regarding the impact of the Regulations on this Agreement, such questions should be directed to AFEX's Compliance Team (compliance.uk@afex.com).