



## GCEN Terms and Conditions of Service

### 1 Definitions

1.1 This agreement employs the following defined terms:

**GCEN** - Global Currency Exchange Network Limited

**Client** - GCEN's client who has executed relevant account opening forms and agreed to be bound by this agreement

**FCA** - the UK Financial Conduct Authority, which regulates GCEN in its capacity as an authorised payment institution (or a successor regulator)

**FSMA** - the Financial Services and Markets Act 2000, as amended

**PS Regulations** - the Payment Services Regulations 2017, as amended

**RA Order** - the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, as amended

**the Services** - the totality of the services which GCEN agrees to provide to the client (on an as required basis), and which comprise the Payment Services and the FOREX Services

**FOREX Services** - any services specifically related to the conversion for a client of a sum received in one currency into one or more sums in one or more different currencies (and more specifically addressed in clause 5.1.1 below)

**Payment Services** - any services specifically related to the making of payments for or on behalf of the client in the same currency as that which the client provides to GCEN to fund the making thereof

**Contract** - refers to each and every specific transaction undertaken by GCEN for the client in performance of the Services

1.2 The terms "framework contract" and "payment account" bear the meanings given to them in the PS Regulations.

1.3 References to "written" or "in writing" shall include communication by electronic mail (including attachments to electronic mail).

### 2 General

2.1 The terms and conditions set out in this agreement (as amended by GCEN and notified to the client from time to time) shall apply as between GCEN and the applicant named above, and shall regulate the provision of the Services to the client or (on the client's instructions and subject to GCEN's acceptance of the same) to any third party named in any order received by GCEN for the entry into and performance of one or more contacts.

2.2 For the purposes of the PS Regulations, this agreement (together with any customer agreement entered into between the client, GCEN and Global Custodial Services Limited (the "Customer Agreement") constitutes a framework contract.

2.3 This agreement shall come into force on the earlier of the date set out above and the date that it is communicated to the client (whether by post, fax or email or by reference to the GCEN website).

2.4 Any reference to GCEN or the client in this agreement shall be deemed to include that party's officers, employees and/or agents.

2.5 References to clauses are to the clauses of this agreement and the headings in this agreement are for convenience only and shall not affect its interpretation.

2.6 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

2.7 In accordance with regulation 49 of the PS Regulations, GCEN will provide the client on request with a copy of this agreement.

### **3 Regulatory status**

3.1 GCEN is authorised and regulated by the FCA as an authorised payment institution (reference number 504346) and discharges its obligations to the client subject to the relevant provisions of the PS Regulations, as from time to time amended.

3.2 For avoidance of doubt, GCEN is not authorised or regulated by the FCA in relation to any other matters which are subject to the jurisdiction of the FCA.

3.3 GCEN provides the Services from its head office, the full address of which is The Old Barn, Oasts Business Village, Red Hill, Watlington, Kent ME18 5NN.

### **4 Information prior to provision of Services**

4.1 In accordance with the PS Regulations (and in particular Schedule 4 thereto), GCEN is required to give various items of information to its clients prior to providing them with payment services.

4.2 The parties confirm that such information is deemed to be provided in these terms (or in this agreement), or has been separately provided to the client in writing by GCEN.

### **5 The services**

5.1 The Services shall be limited to:

5.1.1 FOREX Services, namely providing facilities for the sale, purchase and physical delivery of foreign currencies for use in connection with a trade or business or for other commercial (but not, for the avoidance of doubt, investment) purposes only; and

5.1.2 Payment Services, namely providing any or all other services comprised within the permitted remit of an authorised payment institution under the PS Regulations); Services falling within clause 5.1.1 include, without limitation, arranging or entering into forward contracts, forward time option contracts and limit orders (but shall not include any form of transaction regulated by the FCA within limb (b) of the definition of a "contractually-based investment" in article 3(1) of the RA Order). Services falling within clause 5.1.2 include, without limitation, arranging or entering into contracts or arrangements for the making of payments on the client's behalf in the same currency as that provided to GCEN by or on behalf of the client.

5.2 GCEN shall record in writing the details of each contract entered into in the course of providing the Services, and send a copy to the client at the time the contract is performed.

5.3 GCEN shall unless otherwise agreed, contract as principal with the client for the delivery of the currency or payment in question and deal with the client on an execution only basis.

5.4 Where providing FOREX Services, GCEN may provide the client with information concerning the foreign exchange markets, but will not at any time offer advice to the client on taxation, investment products or markets or the merits or otherwise of any currency or payment transaction.

5.4.1 The client accepts that any such information does not constitute advice and does not form part of the Services and agrees that it shall rely purely on its own judgement when entering into any contract.

5.4.2 In providing the information referred to above, GCEN makes no warranty or representation as to its accuracy, and is not liable to the client in relation to the use made of such information.

5.5 Each order shall stand as a separate contract. Where FOREX Services are provided, the client will take physical delivery of the purchased currency upon payment of the full amount of the sold currency as dictated by GCEN on the occasion of each contract.

## **6 Instructions and communications**

6.1 All communications between the client and GCEN, in either direction, shall be in English.

6.2 GCEN may, at its absolute discretion, accept or refuse (without attributing any reason or being liable for any claims, loss of profits, depletion of goodwill or damage, and whether direct, consequential or anticipated) any order for services or any instruction relating to services from any officer, employee or agent of the client. Where only certain named personnel are authorised by the client to place orders and give instructions to GCEN, an "authorised personnel" list shall be annexed to this agreement, and where such a list is annexed, GCEN shall only deal with those authorised persons.

6.3 Orders may be placed, and instructions may be given orally or in writing, save that in the case of an oral order or instruction, GCEN is entitled to require the client to confirm such order or instruction in writing prior to executing the same. Alternatively, GCEN may itself confirm in writing any orally communicated order or instruction, and if so, this shall be final and conclusive evidence of the order or the instruction in question.

6.4 In accordance with regulation 67 of the PS Regulations, a client may withdraw his consent to a payment transaction in certain circumstances, but time limits will apply to such revocation (for instance, a direct debit cannot be revoked after the end of the business day preceding the day agreed for debiting the funds).

6.5 In accordance with schedule 4 to the PS Regulations, in relation to any contract instructed by the client to GCEN (and prior to execution of the same) GCEN will provide the client with details of the maximum execution time for the contract, the applicable charges and (if relevant) how such charges are broken down

6.6 In accordance with schedule 4 to the PS Regulations, GCEN will provide the client, in relation to each transaction executed in the provision of the Services, with:

6.6.1 A reference enabling the client to identify the transaction;

6.6.2 For a Payment Service, the amount debited to the payment account, and for a FOREX Service, the amount or value of the relevant foreign currency transferred;

6.6.3 The amount of charges (and if relevant, interest) due from the client in relation to the transaction;

6.6.4 In relation to FOREX Services, the exchange rate or rates used; and

6.6.5 The debit value date, or the receipt date, in relation to the payment made.

6.7 The information referred to in clause 6.6 will be provided on a monthly basis by GCEN in respect of all contracts entered into during the month in question (unless the client and GCEN agree to provision of such information on a more frequent basis). Unless the client notifies GCEN of any error or omission in relation to such information within 24 hours of receipt, the client shall be deemed to have agreed and accepted the accuracy of all such reported information and it will be legally binding on the client.

6.8 If the client considers that GCEN has executed an instruction in its name which it has not originated, it shall notify GCEN forthwith. In accordance with the PS Regulations, there are certain circumstances in which GCEN will be liable to the client where a payment transaction has been incorrectly executed and in those circumstances GCEN will without delay refund the amount of the non-executed or defective payment transaction and where applicable restore the client's payment account to the state it would have been in had the defective payment transaction not taken place. Further details can be obtained from GCEN.

6.9 In certain circumstances (broadly, when the payment transaction is unusually large and not authorised specifically in advance) the client will be entitled to a refund by GCEN for payment transactions initiated by or through the payee, as set out in regulations 79 and 80 of the PS Regulations. Requests for refunds must be made within eight (8) weeks from the date on which the funds were debited by GCEN. GCEN may require the client to provide further information and refuse the refund until such information is received.

6.10 A client is entitled to redress from GCEN for unauthorised transactions, non-execution or defective or late execution of transactions, but only if the client has not acted fraudulently, has used the payment instrument in accordance with the terms and conditions governing its use, has taken all reasonable steps to keep safe personalised security credentials relating to a payment instrument, such as the log-in details and password referred to in clause [13.2], and notifies GCEN without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument, or of incorrectly executed payment transactions (and within 13 months of the debit date in any event). Notification must be made in writing to info@gcen.co.uk.

6.11 Where clause [6.10] applies, GCEN may require the client to pay up to £35 for any losses incurred in respect of unauthorised payment transactions arising from a lost or stolen payment instrument, or from the misappropriation of a payment instrument, unless the loss, theft or misappropriation was not detectable by the client prior to the payment, or the loss was caused by acts or omissions of an employee or agent of GCEN, or of an entity which carried out activities on behalf of GCEN.

## **7 Payment accounts, payment process etc.**

7.1 On accepting the first order from a new client, GCEN will set up a payment account for that client.

7.2 GCEN will determine whether the nature of the relationship with the client requires it to set up further separate payment accounts for separate contracts for better provision of the Services.

7.3 For avoidance of doubt, each and every payment account maintained by GCEN shall be held at a regulated credit institution selected by GCEN and shall have the status of a client money account, whereby all sums from time to time credited to the payment account are treated as wholly separate from GCEN's own money.

7.4 In relation to each contract instructed by the client, the client shall facilitate payment of cleared funds into the payment account (or if there is more than one such established under clause 7.2 above, into the payment account directed by GCEN). It shall be the client's responsibility to ensure that prior to the intended date and time of the relevant transaction or transactions, the relevant payment account is in funds to the value of the currency to be transferred (if a Payment Service) or sold (if a FOREX Service) by GCEN on behalf of the client (the "sale currency") in order to secure payment.

7.5 GCEN shall not be required to settle any contract or to pay to the client, or to the client's order, any amount in respect of such contract without first having received from the credit institution where the relevant payment account is held or from any broker or dealer with or through whom GCEN executes currency transactions notice to the effect that the amount of sale currency due and payable by the client to GCEN in respect of the contract, has in fact been received.

7.6 Without limiting its rights set out in clause 7 below, where GCEN has not received payment of any amount of sale currency due from the client, GCEN may delay the execution of an instructed contract on behalf of the client until GCEN has received the sale currency. If so, in the case of a FOREX Service, the client is warned that GCEN may sell such sale currency at the rate of exchange then prevailing (without regard to its having provided details to the client of a different rate at the time of the instruction).

7.7 Banks have specified times of cut-off for the receipt and dispatch of electronic payments. GCEN accepts no responsibility for any delay in onward payment attributable to the late arrival of funds or instruction of payment relative to the cut-off times of the bank at which the client's payment account is maintained.

7.8 In the event of any significant exchange rate fluctuations occurring between the date on which a particular contract is executed and (if different) the value date for the transaction to which such contract relates, GCEN may require the client to provide additional funds to be credited to the payment account to maintain the value and level thereof at the stipulated percentage rate on the original contract note. Such funds shall be paid by the client immediately and in full.

7.9 [GCEN has the right at its discretion to refuse to act for a client and stop the use of a payment instrument on reasonable grounds relating to the security of the payment instrument or the suspected unauthorised or fraudulent use of the payment instrument [or a significantly increased risk that the client may be unable to fulfil its liability to pay]. In such circumstances, and subject to the next sentence, GCEN will give the client prior warning (verbal or in writing, at GCEN's discretion) giving its reasons for stopping the use of the payment instrument, unless circumstances are such that it is unable to do so, in which case it will inform the client immediately after it has taken action to stop the use of the payment instrument. However, the client will not be informed in advance of GCEN's actions or given the reasons for them if that would be unlawful or GCEN believes that this would compromise reasonable security measures.]

## **8 GCEN's fees and charges**

8.1 The basis for GCEN's charges is subject to such further details, contained in this agreement or provided as an annexure hereto, as GCEN may notify to the client. GCEN reserves the right to modify the charges made for the Services from time to time, giving the client written notice of not less than 7 days before introducing any such modifications.

8.2 In addition, GCEN is entitled to be reimbursed at the client's expense with such expenses and fees as it incurs in performing the Services as are notified to the client in this agreement or in an annexure hereto, and to modify such fees or rates from time to time, giving the client written notice of not less than 7 days before introducing any such modifications.

8.3 For the avoidance of doubt, GCEN is entitled to debit its fees and charges referred to in this clause 8 to the payment account.

## **9 Netting and set-off**

9.1 GCEN will operate the payment account (or, where the client has more than one, all payment accounts) on a net basis. On any given day while this agreement remains in force, GCEN will be entitled to treat all obligations of the client to pay money from the payment account in settlement of contracts where the client is the payer as netted against all entitlements of the client to receive money into the payment account in settlement of contracts where the client is the payee.

9.2 Further to clause 9.1, it is clarified that:

9.2.1 The netting and set-off therein described shall take into consideration sums of money due and receivable even if not yet received, and due and payable even if not yet paid;

9.2.2 Where FOREX Services are involved, the calculation of the net obligations of the client and the net position of the payment account or accounts shall be reconciled in Sterling, GCEN first having performed the necessary calculations of conversion from the foreign currency or currencies involved to Sterling; and

9.2.3 All fees due to GCEN and remaining unpaid, together with all bank, brokerage and other charges which the client is obliged to bear but which have not yet been debited, shall be treated as due and payable as part of the netting process.

## **10 Client's warranties**

10.1 The client hereby warrants and represents to GCEN as follows:

10.1.1 The client has full capacity to enter into this agreement and to provide instructions to GCEN to enter into contracts, whether as part of Payment Services or FOREX Services;

10.1.2 all orders will be placed in pursuance of the client's usual trade or business;

10.1.3 the client is not acting for any third party;

10.1.4 all transactions instructed to GCEN are to be entered into either for the client's commercial purposes (in accordance with article 84(2) of the RA Order) or for its private purposes, but shall in any event not be or represent contracts for investment purposes;

10.1.5 all funds to be provided by the client will be beneficially owned by the client (or will be held subject to a constitution that entitles the client to dispose of such funds as if fully beneficially entitled) and will not be subject to any charge, lien or other encumbrance, and the client will not create or permit the creation of any charge, lien or other encumbrance over any funds so provided.

10.2 The warranties in clause 10.1 are deemed to be repeated at every point at which the client provides an instruction to GCEN to undertake a transaction involving the payment account.

## **11 Limitation of liability**

11.1 Nothing in this clause 11 seeks to limit GCEN's liability to the client for death or personal injury resulting from the negligence of GCEN, its employees, agents or sub-contractors, or in any way which is not permitted in accordance with the PS Regulations.

11.2 Subject to clause 11.1 above, GCEN's total liability to the client arising in connection with any contract or the performance of the Services generally shall be limited to damages of an amount equal to the direct loss incurred, provided that in relation to any specific contract GCEN's liability shall in no circumstances exceed:

11.2.1 In the case of FOREX Services, the value of currency as at the contract date to be purchased by GCEN from the client; and

11.2.2 In the case of Payment Services, the value of the money intended to be paid or, as the case may be, received on the client's behalf.

11.3 GCEN shall not under any circumstances be liable to the client for loss of profits or goodwill, anticipated savings, or any type of special indirect or consequential loss (including loss or damage suffered by the client as a result of an action brought by a third party) arising in connection with any contract, or with the provision of Services generally, even if such loss was reasonably foreseeable.

11.4 The client will, on demand by GCEN, indemnify GCEN and keep it indemnified against all losses, damages and costs of any nature suffered by GCEN including any costs suffered by GCEN in covering, reducing or eliminating its risk, arising as a result of any breach by the client of these terms.

## **12 Data processing**

12.1 References in this clause 12 to "data controller", "data processor", "processing", "data protection officer" and "personal data" shall have the same meaning as defined in Data Protection Legislation.

12.2 The parties acknowledge and agree that in order to provide the Services or otherwise to fulfil its regulatory requirements, GCEN may process personal data. The type of personal data that may be processed under this agreement includes categories of data such as the Customer's name, address, other contact information, identification documents, other personal information, and payment data.

12.3 GCEN and the client agree that in respect of any personal data processed in connection with this agreement:

- (a) GCEN may, in some instances, be acting as a data processor on behalf of the client; and
- (b) GCEN may, in other instances, be acting as a data controller in common with the client.

12.4 The client shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of any personal data it provides to GCEN and hereby warrants and undertakes that it has all necessary rights to provide such personal data to GCEN. Each party acknowledges and agrees that each party has respective rights and obligations under applicable Data Protection Legislation.

12.5 Without prejudice to its other rights or obligations, where GCEN acts as a data processor in respect of its processing of such personal data:

- (a) it shall process the data only to the extent, and in such a manner, as is necessary for the purposes of this agreement and in accordance with the client's lawful written instructions from time to time. If GCEN is unsure as to the parameters of the instructions issued by the client and/or believes that the client's instructions may conflict with the requirements of Data Protection Legislation or other applicable laws, GCEN may notify the client for clarification and provide reasonable details in support of any assertion that the client's instructions may not be lawful;
- (b) it shall ensure the reliability of all its personnel who have access to the data and shall in particular, having regard to the state of technological development and the cost of implementing any measures, take such technical and organisational measures against the unauthorised or unlawful processing of data and against the accidental loss or destruction of, or damage to data, to ensure a level of security appropriate to: 1) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage of the data; and 2) the nature of the data to be protected;
- (c) at the client's cost, it shall assist the client by using appropriate technical and organisational measures in responding to, and complying with, data subject requests;
- (d) at the client's cost, it shall provide the client with reasonable co-operation and assistance in relation to the client's obligations and rights under Data Protection Legislation, taking into account the nature of the processing and the information available to the processor, including providing the client and relevant Regulators (as applicable) with all information and assistance reasonably necessary to investigate security breaches, carry out privacy impact assessments or otherwise to demonstrate compliance by the parties with Data Protection Legislation;
- (e) at the client's cost, it shall provide such co-operation, assistance and information as the client may reasonably require if GCEN:
  - (i) receives any complaint, notice or communication which relates directly or indirectly to the processing of the personal data under this agreement or to either party's compliance with Data Protection Legislation; and/or
  - (ii) becomes aware of any Security Breach;
- (f) it shall keep a written record of any processing of the data carried out in the course of the Services ("Records");
- (g) it may engage a sub processor to process data (or otherwise sub-contract or outsource the processing of any data to a third party) (a "Sub processor"), provided that it:
  - (i) notifies the client of any new or replacement Sub processors (if the client objects to the appointment of a new or replacement Sub processor, it shall notify GCEN within five business days);

- (ii) enters into a written contract with the Sub processor that:
  - (1) provides protections or guarantees that Sub processor considers necessary to implement appropriate technical and organisation measures in compliance with the Data Protection Legislation; and
  - (2) terminates automatically on termination or expiry of this agreement for any reason; and
- (iii) remains liable for all acts or omissions of the Sub processors as if they were acts or omissions of GCEN (except to the extent caused or exacerbated by the client).
- (h) at the client's cost, it shall return or destroy (as directed in writing by the client) all such personal data it has in its possession and delete existing copies unless applicable law requires storage of the personal data.
- (i) to the extent that GCEN is required to transfer personal data pursuant to this agreement to a territory outside of the European Economic Area ("EEA") that does not have a finding of adequacy by the European Commission, the parties shall execute or procure the execution of the standard contractual clauses set out in Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC ("Model Clauses") unless the parties agree another more appropriate lawful data transfer mechanism exists. The parties agree that if the Model Clauses (or agreed alternative mechanisms) cease to exist or are no longer considered by both parties to be a lawful method of transferring personal data outside of the EEA, the parties shall have a good faith discussion and agree an alternative lawful transfer mechanism and GCEN may cease or procure that the relevant third party cease the processing of personal data until such time as the parties have agreed an alternative transfer mechanism to enable the personal data to be transferred outside of the EEA in a compliant manner.

12.6 The client agrees to comply with its obligations under applicable Data Protection Legislation in respect of the processing of personal data under or in connection with this agreement and shall in particular ensure that GCEN is lawfully permitted to process personal data on its behalf. The Customer shall indemnify GCEN on demand against all claims, liabilities, costs, expenses, damages and losses (including all interest, penalties and legal costs and all other professional costs and expenses) suffered or incurred by GCEN arising out of the client's breach of this clause 12.6. Each party acknowledges that Claims include any claim or action brought by a data subject arising from the client's breach of its obligations in this clause.

12.7 For the purpose of this clause 12:

**"Data Protection Legislation"** means Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the GDPR (when in force), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable, any guidance notes and codes of practice issued by the European Commission and applicable national Regulators including the UK Information Commissioner;

**"GDPR"** means the EC Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (when in force);

**"Regulator"** means any regulatory body with responsibility for ensuring compliance with Data Protection Legislation; and

**"Security Breach"** means accidental or deliberate, unauthorised or unlawful acquisition, destruction, loss, alteration, corruption, access, use or disclosure of personal data processed under to this Agreement or breach of GCEN's security obligations under this Agreement.



### **13 Recurring payment facility and card transactions**

13.1 GCEN will enable the client to set up a recurring payment facility via the website [website address] (the "Facility").

13.2 In order to use the Facility, the client will be provided with log-in details and a password, via [separate] e-mail.

13.3 When logged in to the Facility, the client will be able to do the following:

- (a) view all payments that have been taken from the client's credit or debit card;
- (b) view all recurring payments made and each payment within a recurring payment authority;
- (c) edit the client's personal information, payment and card details, and password; and
- (d) upload client identification documentation to enable GCEN to perform statutory

identification checks.

13.4 GCEN cannot guarantee that the Facility will be available to the client all of the time. There may for instance be events outside the control of GCEN which prevent GCEN from making the Facility available, such as interruption of power, website malfunction, or other force majeure event which affects GCEN and/or its third party suppliers. In the event that the Facility is unavailable GCEN will have no liability whatsoever to the client.

13.5 In the event that a card transaction undertaken by the client is rejected or declined by a credit card issuer (regardless of whether the declined card transaction shall be a recurring card transaction or a single card transaction) and such rejection results in a chargeback being charged to GCEN, the client shall indemnify GCEN in respect of any chargebacks and any fees and/or losses arising from that chargeback incurred by GCEN, save where the chargeback arises as a result of fraud on the part of an employee of GCEN.

### **14 Force majeure**

14.1 GCEN shall not be deemed to be in breach of this agreement or otherwise have any liability to the client for any failure or delay on the part of GCEN in performing its obligations under this agreement arising from or attributable to any act, event, omission or accident beyond the reasonable control of GCEN ("force majeure event"). GCEN shall notify the client of the occurrence of a force majeure event as soon as is reasonably practicable following the occurrence of such force majeure event.

14.2 Where a force majeure event occurs, GCEN may (at its option), on the subsistence of such force majeure event for fourteen (14) consecutive days, and will, on the subsistence of such force majeure event for twenty-eight (28) consecutive days, cancel any as yet unexecuted contract and refund to the client's payment account any sale currency paid under that contract. The client shall not be entitled to compensation in respect of any force majeure event occurring.

### **15 Default**

15.1 In addition to the rights of GCEN in clause 7.6 above, GCEN shall have the right to close any contract by entering into an equal but opposite contract or, at its absolute discretion, by any other actions deemed necessary, or to terminate this agreement in its entirety, in each case without any further liability for any loss or otherwise in the event of any of the following:-

15.1.1 any default of payment by the client of any sum due to GCEN (or failure to promptly credit the payment account with such sums and in such currencies as GCEN may notify to the client);

15.1.2 any other breach by the client of this agreement;

15.1.3 if an individual, the client is declared bankrupt or enters into an arrangement with his creditors;

15.1.4 if a legal entity, the client enters into any form of insolvency or administration procedure (other than for the purposes of a reconstruction which has been agreed in advance with GCEN) or is unable to pay its debts as they fall due (as defined in section 123 of the Insolvency Act 1986);

15.1.5 it becomes unlawful for GCEN to give effect to any or all of its obligations to the client under this agreement or where GCEN or the client is ordered by any governmental or regulatory body to cease to perform this agreement; or

15.1.6 GCEN considers it desirable to do so for its own protection or for the protection of its other clients.

15.2 Where a contract is closed out by GCEN in accordance with clause 15.1, a contract note will be issued and dispatched to the client detailing the specifics of the closure and any loss suffered by GCEN as a result of such closure.

15.3 Where in accordance with clause 15.1 GCEN terminates this agreement, GCEN will produce a summary statement of the client's net position, calculated in accordance with clause 8.

15.4 Whether clause 15.2 or 15.3 applies, GCEN is entitled to:

15.4.1 A full indemnity from the client in relation to all costs incurred by GCEN in reversing or otherwise terminating all contracts still subject to execution; and

15.4.2 In furtherance thereto, to debit the payment account in settlement of such indemnity.

## **16 Duration, termination**

16.1 Subject as set out below, these terms shall continue in force until terminated by the client giving to GCEN written notice of one month or by GCEN giving the client two months' written notice .

16.2 Either party shall be entitled to terminate this agreement forthwith by written notice to the other if:-

16.2.1 that other party commits any material breach of any of the provisions of these terms and, in the case of a breach capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

16.2.2 either party enters into any form of insolvency or administration procedure (other than for the purposes of a reconstruction which has been agreed in advance with the other party) or is unable to pay its debts as they fall due (as defined in section 123 of the Insolvency Act 1986); or

16.2.3 if GCEN ceases to be regulated by the FCA in accordance with the PS Regulations.

16.3 GCEN may terminate this agreement as provided for in clause 15.1 (default by the client) or in clause 19.3 (termination where modification is not agreed).

16.4 Any waiver by either party of a breach of any provision of these terms shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

16.5 The rights to terminate given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

16.6 In the event of termination, however arising, GCEN has the power and right to ensure that all contracts entered into for the client prior to termination taking effect shall be executed and settled for the client's account.

16.7 Subject as otherwise provided in the contract, upon the termination of these terms for any reason and following the conclusion of any foreign currency transacted under these terms, neither party shall have any further obligation to the other save for any rights, obligations and/or liabilities which have arisen under these terms but have not been discharged prior to termination.

## **17 Disputes**

17.1 The client shall provide GCEN with written notice if at any time it is dissatisfied with GCEN's performance of this agreement or otherwise disputes the validity or enforceability of it.

17.2 Without prejudice to their rights under this agreement, GCEN and the client shall attempt to resolve any dispute in good faith, save that where the dispute remains unresolved within 28 days of notice being served on GCEN, either party may take such further steps as it considers appropriate to resolve the dispute, including, without limitation, appointing a mediator or an arbitrator or initiating court proceedings.

## **18 Notice**

18.1 Any notice, document or other information ("notice") to be given by one party to the other under this agreement shall be in writing and shall be deemed to have been duly served if delivered by hand or by first class pre-paid recorded delivery post or sent by electronic transmission to the other party at such postal or electronic address or telecommunications number set out in this agreement or otherwise notified to the other party from time to time.

18.2 Notice shall be deemed to have been received by the recipient: if delivered personally, when left at the proper address for that party; if sent by first class pre-paid recorded delivery post, at 10.00am on the second Business Day after posting; or if sent by electronic transmission, simultaneously with effective transmission.

18.3 [In the event of suspected or actual fraud or security threats, GCEN will contact the client using a secure procedure, such as via a dedicated mailbox or text message. Details of the procedure will be communicated separately to the client once GCEN has set up the client's payment account in accordance with clause 7.1.]

## **19 Miscellaneous further provisions**

19.1 Nothing in these terms shall create, or be deemed to create, a partnership or the relationship of employer and employee between the parties.

19.2 This agreement, of which these terms form part, together with any documents referred to in these terms or annexed hereto, represents the entire agreement between the parties and supersedes all previous arrangements, agreements and understandings between the parties in respect of the Services

19.3 This agreement may be modified by GCEN providing written notice to the client, stating the date on which such modification takes effect, and in accordance with regulation 50(2) of the PS Regulations such modification applies automatically from the stated date unless beforehand the client has notified GCEN of an objection thereto in writing. Should the client so notify, GCEN has the option to terminate this agreement with immediate effect.

19.4 Each party acknowledges that, in entering into this agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether party to this agreement or not) except as expressly provided herein, and that all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

19.5 No person other than the parties is entitled to sue on any provision of this agreement.

19.6 It is intended that this agreement shall be reasonable as between GCEN and the client having regard to the nature of the respective parties, but if any term of this agreement (or any part of any term) is found to be invalid or unenforceable, that term or part term shall to the extent required be deemed to be severed from and not affect nor impair the validity or enforceability of any other section of this agreement and the parties shall use all reasonable endeavours to replace that term or part term with a valid and enforceable substitute term or part term that gives effect (in so far as possible) to the intended meaning behind the severed provision(s).

## **20 Governing Law and Jurisdiction**

This agreement shall be governed by and construed in accordance with the Laws of England, and (other than where clause 17.2 applies in relation to dispute resolution by alternative means) each party hereby submits to the exclusive jurisdiction of the English Courts.