

## CAPITALSTACKERS

## TERMS AND CONDITIONS FOR BORROWERS (EDITION 6 – FEBRUARY 2021)

## 1. INTRODUCTION

- 1.1 These Terms and Conditions explain:
- 1.1.1 how CapitalStackers works;
  - 1.1.2 how to become a Borrower on the CapitalStackers Network; and
  - 1.1.3 how you may use the Website.
- 1.2 CapitalStackers is authorised by the Financial Conduct Authority. Click [here](#) for full details.
- 1.3 If you decide you want to become a Borrower using the CapitalStackers Network, you must comply with these Terms and Conditions, which should be read alongside, and are in addition to the Policies and any Finance Documents ultimately entered into. Please read these Terms and Conditions carefully and print a copy for your future reference.
- 1.4 By registering on and using the Website and the services provided via the Website, you confirm that you have read, understood and agree to these Terms and Conditions and the Policies (as each may be amended from time to time). Furthermore, if you are acting on behalf of any other person, limited liability partnership or limited company, you confirm that such person or organisation is authorised to enter into the type of transactions set out on the Website and that such person or organisation agrees to these Terms and Conditions and the Policies.
- 1.5 References herein and in the Policies to “CapitalStackers”, “we”, “us” and “our” are to CapitalStackers Ltd (a company registered in England and Wales with company number 07361691) whose registered office is at Riverside House, Kings Reach Business Park, Yew Street, Stockport, SK4 2HD.
- 1.6 References to “you” and “your” means a user of the Website and the services provided via that Website.
- 1.7 CapitalStackers will perform an administrative role in relation to the Website to bring together prospective Borrowers and Lenders through the operation of that Website. In addition to each transaction entered into with a Borrower via the Website, CapitalStackers Trustees Limited (a company limited by guarantee) will act as agent and attorney of the Lending Members in making funding available to Borrowers and will co-ordinate the draw-down process, including the monitoring of the legal documentation relating to the Loans. CapitalStackers will, via your Platform Account, administer the collection of funds from Lending Members and the payment of Loan monies to Borrowers. CapitalStackers will monitor the payment by Borrowers of interest and capital for onward payments to Lending Members and will take steps as instructed by the Trustee upon a default by a Borrower.

## 2. DEFINITIONS AND INTERPRETATION

- 2.1 The following definitions and rules of interpretation apply in these Terms and Conditions, unless the context otherwise requires:
- 2.1.1 **“Accepted Bid”** means a Bid which has been accepted by us in writing;
  - 2.1.2 **“Accepted Secondary Market Bid”** means a Secondary Market Bid, which has been accepted by the Seller.
  - 2.1.3 **“Active Bid”** means a Bid which has been made and which has not (a) expired or (b) been rejected by us in writing;
  - 2.1.4 **“Agreed Bid”** means a Bid by a Lending Member at a defined discounted rate of interest acceptable at the outset to the Borrower;
  - 2.1.5 **“Auction”** means the process described in paragraph 6 by which we will seek to find Lending Members willing to fund a Facility to Borrowers;
  - 2.1.6 **“Auction Closing Date”** means the date on which an Auction closes for new Bids, as specified on the Website;

- 2.1.7 **“Auction Particulars”** means the information and documentation described in paragraph 5.7 available in relation to each request for funding for review in respect of each opportunity on the Website;
- 2.1.8 **“Bid”** means an offer by a Lending Member to lend a specified sum of money to a prospective Borrower at a specified rate of interest in an Auction;
- 2.1.9 **“Borrower”** means the entity to whom monies are lent via the Network;
- 2.1.10 **“Business Day”** means a day (other than a Saturday or a Sunday) on which commercial banks are generally open for normal banking business in London.
- 2.1.11 **“Deposit”** means, in respect of the sale of a Loan in the Secondary Market, a fixed percentage of the Loan (or part of the Loan) to be sold as set by us from time to time;
- 2.1.12 **“Facility”** means, in aggregate, all Loans to be provided by Lending Members to a Borrower pursuant to the Finance Documents.
- 2.1.13 **“Facility Documents”** means the facility agreement between a Borrower and the Trustee setting out the terms of a Facility and any ancillary documents thereto executed at the time the Facility is granted to the Borrower;
- 2.1.14 **“Finance Documents”** means the Facility Documents, the Security Documents and any ancillary documents thereto;
- 2.1.15 **“Goji”** means Goji Financial Services Ltd, a private limited company incorporated in England with registration number 10234133 and a registered office at 133 Whitechapel High Street, London, England, E1 7QA. Goji is authorised and regulated by the FCA under firm reference number 805323.
- 2.1.16 **“Hallidays”** means Hallidays Group Ltd of Riverside House, Kings Reach Business Park, Yew Street, Stockport SK4 2HD;
- 2.1.17 **“Layer”** means a portion of a Facility between particular interest rate parameters;
- 2.1.18 **“Lender”, “Lending Member” or “Member”** means a person who is registered and recognised by us as Lending Member of the Network; and “Lending Membership” shall be construed accordingly;
- 2.1.19 **“Loan”** means a loan made to a Borrower by a Lending Member using the Network forming part of the Facility and made pursuant to the Finance Documents;
- 2.1.20 **“Modulr”** means Modulr FS Limited, a company incorporated in England and Wales under company number 09897919 and Modulr Finance Limited, a company incorporated in England and Wales under company number 09897957, both having their registered office at One Hammersmith Broadway, London W6 9DL. Modulr FS Limited will supply you with an electronic wallet and Modulr Finance Limited will supply you with payment services in connection with the operation of the e-wallet.
- 2.1.21 **“Network”** means the peer to peer lending network established by the Website;
- 2.1.22 **“Non-Agreed Bid”** means a Bid at a rate of interest specified by a Lending Member;
- 2.1.23 **“Platform Account”** has the meaning set out in clause 16;
- 2.1.24 **“the Policies”** means the CapitalStackers Privacy Policy, Cookie Policy, Acceptable Use Policy and Website Terms of Use;
- 2.1.25 **“Purchaser”** means, in respect of the sale of a Loan (or part thereof) in the Secondary Market, the Lending Member that has made an Accepted Secondary Market Bid.
- 2.1.26 **“Sales Commission”** means the commission to be paid by the Seller to us on completion of the sale of a Loan (or part thereof) in the Secondary Market as set by us as published on the Website from time to time.
- 2.1.27 **“the Secondary Market”** means the ability of Lending Members and, in certain circumstances, of Borrowers to sell a Loan (or part thereof) to another Member via the Network;

- 2.1.28 **“Secondary Market Bid”** means a bid, by a Lending Member to purchase a Loan (or part thereof) offered for sale on the Secondary Market.
- 2.1.29 **“the Security Documents”** means any security documents entered into by a Borrower and any security documents created by any person guaranteeing or creating security for the liabilities of a Borrower;
- 2.1.30 **“the Seller”** means, in respect of the sale of a Loan (or part thereof) in the Secondary Market, the Lending Member that is selling such Loan (or part thereof);
- 2.1.31 **“the Term Sheet”** means in relation to any prospective Facility, any document signed on behalf of both CapitalStackers and the prospective Borrower detailing the principal terms in relation to that Facility and the fees, costs and expenses payable by the prospective Borrower to CapitalStackers and/or the Trustee;
- 2.1.32 **“the Trustee”** means CapitalStackers Trustees Limited;
- 2.1.33 **“the Website”** means the website operated by CapitalStackers at [www.capitalstackers.com](http://www.capitalstackers.com).

2.2 In these Terms and Conditions:

- 2.2.1 neither the section headings nor the relative order of the sections shall affect the interpretation of these Terms and Conditions;
- 2.2.2 reference to a person shall include a reference to an individual, firm, company, corporation, unincorporated body of persons or any state or any agency of any person;
- 2.2.3 reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts;
- 2.2.4 reference to “writing” or “written” includes faxes and email;
- 2.2.5 reference to “these Terms and Conditions” (or any provision of them) or any other document shall be construed as a reference to these Terms and Conditions, that provision or that document as it is in force for the time being and as amended, varied or supplemented in accordance with these Terms or the agreement of the relevant parties.

3. **HOW TO BECOME A BORROWER**

- 3.1 You will not be permitted to apply to borrow via the Website unless you meet the following criteria:
  - 3.1.1 you are a limited liability company registered in the United Kingdom;
  - 3.1.2 you are a limited liability partnership registered in the United Kingdom;
  - 3.1.3 you are not subject to any restriction affecting your ability to borrow on the Website under the laws and regulations of any jurisdiction;
  - 3.1.4 you must have a valid UK bank or building society account to facilitate Facility repayments;
  - 3.1.5 you must have a permanent place of business in the United Kingdom;
  - 3.1.6 you and your directors or members (if you are an LLP) must meet minimum credit and fraud risk criteria which will include obtaining a minimum score from a credit reference bureau;
  - 3.1.7 you must be able to satisfy all due diligence enquiries as to project and/or your financial covenant as requested;
  - 3.1.8 you agree to certain warranties as will be set out in the Term Sheet and the Finance Documents following the completion of due diligence; and
  - 3.1.9 you must submit all details of your business as may be requested by us, some of which may be published on the Website for Lending Members to view.

- 3.2 CapitalStackers retains the right to refuse to accept applications to borrow without giving a reason.
- 3.3 You must register your details on the Website, although you will not be permitted to borrow using the Website until we have carried out identity and fraud checks on you and, if appropriate, your members, directors and shareholders. We use our own internal guidelines and policies when assessing applications but have complete discretion as to whether to allow you to be a Borrower (or continue to be a Borrower) on the Website.
- 3.4 In addition to our own guidelines and policies we may authenticate your identity using identity and verification service providers. We may require you to send us copies of relevant identification documents, including relevant passports plus a utility bill and anything else we may require. If you do not provide all appropriate identification documents, you will not be able to borrow on the Website (for more details on about how we use your information, please refer to our [Privacy Policy](#)).
- 3.5 Only once we have satisfied ourselves as to your identity and suitability to be a Borrower on the Website, will you be able to borrow via the Website.
- 3.6 If at any time, and for any reason whatsoever, we cease to be satisfied as to your identity and/or your suitability to be a Borrower, we shall be entitled to suspend and/or terminate your right to borrow using the Website.
- 3.7 You warrant to us that all of the information provided to us by you or any person on your behalf in the course of the registration and borrowing process is true and accurate in all respects and not rendered misleading by any omission. You will inform us immediately in writing if any of the information you have provided to us changes.

#### **4. USERNAME AND PASSWORD**

- 4.1 On registering with us as a Borrower, you will be asked to provide a username, email address and a password. Your unique username and password will be used in order to access parts of the Website. Each time you wish to access your borrower account or check the progress of Facility applications, you will need to enter your username and password. Your username and password are personal to you and are not transferable.
- 4.2 You must keep your username and password secure at all times and you are responsible for all information and activity on the Website by anyone using your username and password. If you authorise an employee, sub-contractor or agent to use your CapitalStackers account, you will be responsible for their activity on the Website. Any breach of security, loss, theft or unauthorised use of a username, password or other security information must be notified to us immediately. We reserve the right not to act on your purported instructions where we suspect that the person logged into your CapitalStackers account is not you or we suspect illegal or fraudulent activity or unauthorised use.

#### **5. THE BORROWING PROCESS**

- 5.1 Once you have registered on the Website, you may at any time apply to borrow money via the Website.
- 5.2 You must firstly complete all details of the Facility required on the Facility request page of the Website and confirm the application (the "Facility Request") by clicking the "Confirm" button on that page.
- 5.3 When a fully and correctly completed Facility Request is received by us, we will review the same and contact you either to inform you that we believe that you do not meet the outline deal criteria for borrowing via the Website, or to inform you that you do appear to meet our criteria.
- 5.4 In the event that we inform you that you do meet the outline criteria we will ask for further information from you and at your cost including, but not limited to the security to be offered in respect of any such Facility, any prior ranking debt, the term of the Facility required and other material terms applicable to the Facility, details of the property upon which the Facility will be secured, a valuation report and reports on title relating to that property and other professional reports, together with (if applicable) copies of lease documentation relating to that property and/or a summary of that documentation.
- 5.5 Having reviewed such material and concluding that all criteria appear to be met, we will then endeavour to agree with you the principal terms of the proposed Facility for inclusion in the Term Sheet. Whilst many of the terms of the Term Sheet will not be legally binding, signature by you of the Term Sheet will, among things, commit you to pay to us certain fees and expenses, as detailed in the Term Sheet.
- 5.6 On agreement of the Term Sheet we will carry out, or arrange to have carried out, at your cost detailed due diligence in relation to you, the purpose for which you have applied for the Facility and the assets that you will provide as security

for the Facility. We will further prepare reports in relation to the documents provided to us in 5.4 above and facilitate the preparation of the Finance Documents between you and the Trustee as specified in the Term Sheet.

- 5.7 On agreement of the terms of the Finance Documents (other than the interest rate) we shall prepare a draft of the Auction Particulars to be uploaded to the Website setting out what we, in our absolute discretion, consider to be all relevant information relating to the Facility requested by you, including details about yourself, the amount, term, security, headline terms of the Finance Documents and any due diligence reports prepared pursuant to 5.6 above. Our Privacy Policy sets out what information is provided to Lending Members.
- 5.8 We will provide you with copies of the Auction Particulars before publication for your approval. You will be responsible for checking the accuracy and completeness of this information and must notify us in writing of any errors or omissions in relation to such information within two Business Days of receipt by you of the Auction Particulars. If we do not hear from you within that period you will be deemed to have accepted the contents of the Auction Particulars and approved the same.
- 5.9 Following your approval (or deemed approval) we will be authorised by you to post the Auction Particulars on the Website and commence the Auction and Lending Members may start to bid to lend you monies. Once the Auction has commenced the information about you in the Auction Particulars may not be amended.
- 5.10 Lending Members will be able to ask specific questions or request further information about the Auction Particulars by posting them on the Website. Normally any such communication will be available to all Lending Members to view. Responses to such questions may be provided by you and/or us.
- 5.11 Although Lending Members and other authorised visitors to the Website are subject to confidentiality undertakings, we are unable to guarantee observance thereof. Therefore, prior to us publishing Auction Particulars you should take all steps necessary to protect your commercial position.

## 6. THE AUCTION PROCESS

- 6.1 Each Lending Member will be able to read the Auction Particulars, and all other particulars from other prospective Borrowers, before deciding whether or not to make a Bid.
- 6.2 Prior to the Auction Process you may agree with us that certain bids at an agreed rate of interest may be Agreed Bids that cannot be outbid
- 6.3 Facilities made through the Network may be at different rates of interest for defined portions of that Facility (each portion being a "Layer" and each Facility subject to Layers being "Layered"), and, for the avoidance of doubt, rates within each Layer may also vary. Examples of how Layering works can be found on the Website.
- 6.4 Once a Lending Member has selected an opportunity on which it wishes to make a bid it will be asked to:
- 6.4.1 state the amount of money that it is prepared to make available to a Borrower;
  - 6.4.2 the Layer(s) (if the Facility is Layered) in which it wishes to participate;
  - 6.4.3 the type of bid it wishes to make (Agreed Bid or Non-Agreed Bid), or a combination of both; and
  - 6.4.4 in the case of Non-Agreed Bids the annual interest rate required by the Lending Member for participation in that Layer.
- 6.5 The minimum Bid which a Lender may make in relation to each Facility and Layer thereof will be specified for each separate Auction. A Lender may at any time during the Auction process enter a further Bid(s) for a different amount(s) at a different interest rate in respect of the same Auction.
- 6.6 By entering the Bid in respect of a proposed Facility, that Bid becomes an "Active Bid" and is entered into the Auction for that particular Facility.
- 6.7 An Agreed Bid, made in isolation, becomes an Accepted Bid on it being entered into the relevant Auction.
- 6.8 If two Lending Members bid the same amount at the same interest rate then, in the event of competition, priority will be given to the Lending Member whose Bid is received (or is deemed to have been received) by us first.

- 6.9 Once sufficient Bids have been received to fully fund a Facility, further Bids entered in relation to that Facility reduce the interest rate if they are successful and entered before the Auction Closing Date.
- 6.10 At the Auction Closing Date, if sufficient Bids have been made to fund the Facility, Loans shall be made between the Borrower and:
- 6.10.1 such Lending Members who have Agreed Bids, pursuant to those Agreed Bids; and
  - 6.10.2 such Lending Members who have Non-Agreed Bids with the lowest interest rates which are sufficient to fund the Facility, pursuant to those Non-Agreed Bids.
- 6.11 For the avoidance of doubt, if a Lending Member makes multiple Bids at differing interest rates and/or in differing Layers, all or some of which become Accepted Bids, each such Accepted Bid shall constitute a Loan between the Lending Member and the Borrower.
- 6.12 If by the Auction Closing Date of a particular Auction insufficient Bids have been received to fulfil your requirements for the Facility, you will have the option of either:
- 6.12.1 extending the Auction Closing Date;
  - 6.12.2 not proceeding any further with the Auction; or
  - 6.12.3 proceeding on the basis of the Bids made at the Auction Closing Date subject to you making good the shortfall in any funds required. For the avoidance of doubt and so as not to prejudice the rights of committed Lending Members, in the event that any shortfall is so made good, you will participate as a Lending Member, shall rank pari passu in the normal way and may, during the term of the Facility, offer all or any part of the Facility so made good by you for sale to Members on the Secondary Market. If you do not make good the shortfall as envisaged in this paragraph 6.12.3 you will be deemed to have elected not to complete the Loan and paragraph 6.14 shall be deemed to apply
- 6.13 At the end of an Auction Period and the Facility becoming fully funded at an aggregate interest rate no greater than that included in the Auction Particulars or as agreed with you pursuant to 6.12 above you may elect not to complete the Facility by Notice to us in writing within 48 hours of written receipt of notification of the Facility being fully funded or funded to the amount agreed pursuant to 6.12 above.
- 6.14 In the event that a Facility is not made or you elect not to complete a Facility, you will still be liable to us for the payment of any costs and expenses as set out in the Term Sheet, but for no other costs and expenses.
- 6.15 We make no warranty or representation that sufficient Lending Members will offer to lend monies in respect of any Facility which you apply to borrow.

## 7. COMPLETION OF THE FACILITY

As soon as reasonably practicable after notification that the Facility is fully funded and the solicitors acting for the Trustee, as agent and attorney for the Lending Members, confirming that they are satisfied with the documentation provided under 5.4 above and the Finance Documents referred to at 5.6 above, whichever is the later, the Facility will be available for drawdown.

## 8. THE ROLE OF CAPITALSTACKERS

8.1 CapitalStackers performs an administrative role in matching Borrowers and Lenders and in facilitating payments, the collection of monies due and onward distribution of funds. We are not a party to any Finance Documents, although we will negotiate the term sheet and will in addition facilitate the preparation and negotiation of the Finance Documents and hold monies received from Lending Members to facilitate Loans or repayments received from Borrowers in the Borrower's Platform Account.

## 9. ROLE OF THE SECURITY TRUSTEE ATTORNEY AND AGENT

9.1 Because of the way in which the Auction process operates and the possibility of the Facility comprising many Lending Members, it is not practicable for each Lending Member to sign the Finance Documents. We have therefore made arrangements for the Trustee to act as attorney and agent on behalf of each Lending Member.

- 9.2 The use of the Trustee is not only to safeguard the interests of Lending Members but also to fulfil instructions arising from the voting process if ever a decision is needed in connection with the Facility or taking legal action, but also has the effect of keeping the identity of the Lending Members confidential.
- 9.3 The Trustee has 4 directors, 1 being a non-Hallidays director of CapitalStackers and 3 being Hallidays directors.
- 9.4 The Trustee's duties under the Finance Documents are solely administrative in nature. The Trustee has no obligations of any kind to any party and/or in connection with the Finance Documents.
- 9.5 The Trustee is authorised by each Lending Member to exercise the rights, powers, authorities and discretions specifically given to the Trustee under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- 9.6 The Trustee will hold the benefit of any security created on trust for the Lending Members involved in the relevant Facility.
- 9.7 The Trustee may act in relation to the Finance Documents through its own personnel and agents.

## 10. ADMINISTRATION OF LOANS

- 10.1 CapitalStackers shall be entitled to engage, pay for and rely on the advice or services of any lawyers, accountants, valuers, surveyors or other experts in relation to any Facility or any Security Document. Any fees payable in relation to any such advice or services shall be for the account of the Borrower.
- 10.2 CapitalStackers may undertake the following administrative tasks:
- 10.2.1 receiving Compliance Certificates and management information from the Borrower;
  - 10.2.2 discussing performance issues with the Borrower;
  - 10.2.3 issuing chasing letters and demands; and
  - 10.2.4 amending the terms of the Finance Documents, provided that such amendments do not affect the interest rate payable, the terms of the Facility, the capital repayment schedule or the security.
- 10.3 We will provide regular information to Lending Members through the Website on the status of the Loan(s) made by them, including amounts outstanding, capital and interest received and any problems experienced with collecting amounts that are due from Borrowers.
- 10.4 Subject to any matters upon which the Trustee is required to consult with Lending Members, the Trustee shall have discretion in the exercise of any authority vested in it as agent, attorney and security trustee respectively in accordance with the terms of the Finance Documents.

## 11. REPAYMENT AND INTEREST

- 11.1 Payments made by you and received by us in cleared funds later than 12:00 shall be deemed to have been received on the following Business Day for interest calculation purposes. This is to allow sufficient time for us to process payments to each of your Lenders.
- 11.2 Terms relating to repayment of principal and interest of each Facility will be documented in the Finance Agreements.

## 12. DEFAULT PROCEDURES

- 12.1 If we become aware of a default in the payment of any principal, interest or fee payable under any Finance Document, or if we otherwise receive notification of an event of default under the terms of any Finance Document, we shall promptly:
- 12.1.1 enter into dialogue with you with a view to the remedying of the default without delay;
  - 12.1.2 notify the relevant Lending Members of the relevant circumstances; and
  - 12.1.3 if appropriate, put together a suitably qualified default management team, comprising a lawyer, an insolvency practitioner and any other professional deemed by us to be required, whose task it shall be to produce a report on the default situation and a recommended course of action.

- 12.2 The Trustee shall not implement any of the following proposed courses of action without having the consent or deemed consent of the relevant Lending Members in relation to the proposal:
- 12.2.1 the commencement of any enforcement action or legal process against a Borrower;
  - 12.2.2 the release of any security (save where the relevant Facility has been repaid in full);
  - 12.2.3 the issue of any waiver letter; or
  - 12.2.4 the restructuring of the Facility or security.
- 12.3 In relation to a proposed course of action, each relevant Lending Member shall be deemed to have given its consent to such proposal if the Trustee shall have arranged a poll of the relevant Lending Members and it shall have been approved by the majority who vote in that poll as provided for in the Lenders' Terms and Conditions.
- 12.4 Save as may be specified in any applicable inter-creditor or priority document to the contrary, all money arising from the enforcement of any Security Documents will be paid in the following order:
- 12.4.1 first, to meet any costs incurred in respect of any enforcement action by the Trustee and/or any manager, receiver or administrator appointed by it;
  - 12.4.2 second, to meet the payment of any outstanding fees due to the Trustee in respect of the relevant Facility;
  - 12.4.3 third, to meet the payment of outstanding interest on the relevant Loans due to each Lending Member; and
  - 12.4.4 fourth, to repay the capital amount of the Loans to Lending Members on a proportional basis by reference to the amount of the Loan(s) held by each Lending Member in each respective Layer, being in the order that the Layers with the lowest interest rates take priority.

### 13. SECONDARY MARKET

- 13.1 In the event that a Borrower has elected to make good a shortfall in funding of a Facility in accordance with 6.12.3 (such portion of the Facility being a "**Shortfall Loan**"), at any time after the completion of a Facility, such a Borrower may offer a Shortfall Loan (or parts thereof) for sale to other Lending Members on the Secondary Market, subject always to the following terms:
- 13.1.1 each of the Seller and the Purchaser acknowledges that the sale of a Shortfall Loan shall be completed as an assignment of such Shortfall Loan from the Seller to the Purchaser;
  - 13.1.2 the Seller acknowledges that all his right, title and interest in the Shortfall Loan including, for the avoidance of doubt, the Seller's rights with regard to decision making under clause 7 of the Lenders Terms and Conditions shall be transferred to the Purchaser;
  - 13.1.3 the Purchaser acknowledges that, following the completion of the sale of the Shortfall Loan, they shall be bound by the Lender's Terms and Conditions as if they were the Seller with regard to the Shortfall Loan.
  - 13.1.4 to offer a Shortfall Loan for sale on the Secondary Market, the Seller must specify:
    - (a) the amount of the Shortfall Loan to be sold;
    - (b) the price which the Seller is offering the Shortfall Loan for sale ("the **Offer Price**"); and
    - (c) the date by which the sale of the Shortfall Loan must complete, which shall not be more than 2 weeks from the date of the offer for sale ("the **Offer Closing Date**").
  - 13.1.5 once offered for sale, other Lending Members may place Secondary Market Bids by specifying:
    - (a) the date on which you will complete the sale, which must be on or before the date specified by the Seller ("the **Proposed Completion Date**"); and
    - (b) the price which you are willing to pay for the Shortfall Loan, which, for the avoidance of doubt, need not be greater than or equal to the Offer Price.



- 13.1.6 once a Secondary Market Bid has been placed, the Seller shall be entitled (but not obliged) to accept the Secondary Market Bid, which, on acceptance, shall become an Accepted Secondary Market Bid;
- 13.1.7 in the event that the Purchaser does not already have a Loan participation within the Facility to which the Shortfall Loan relates, we reserve the right to require the Purchaser to pay a Deposit to us prior to allowing the Purchaser access to the Facility's dataroom;
- 13.1.8 once a Purchaser has an Agreed Secondary Market Bid and subject always to 13.1.7, above, the Purchaser shall be entitled to review the Facility's dataroom containing, inter alia:
- (a) the Finance Documents;
  - (b) the Auction Particulars; and
  - (c) any updated reports from us; the Trustee; professional advisors; or the Borrower.
- 13.1.9 on or before the Proposed Completion Date, the Purchaser shall confirm whether they wish to confirm or cancel the Agreed Secondary Market Bid. In the event that the Purchaser has not confirmed or cancelled the Agreed Secondary Market Bid by the Proposed Completion Date, the Agreed Secondary Market Bid shall automatically be cancelled.
- 13.1.10 in the event that the Purchaser withdraws the Agreed Secondary Market Bid prior to confirmation and such Purchaser has paid a Deposit to us, we shall, subject to 13.1.12, return such Deposit to the Purchaser.
- 13.1.11 once confirmed, an Agreed Secondary Market Bid may not be withdrawn and the Purchaser shall be bound to complete on the sale. Immediately on confirmation of the Agreed Secondary Market Bid, the Purchaser shall be required to transfer the agreed sale price (less, if applicable, any Deposit) to our client account immediately.
- 13.1.12 in the event that either the Seller or the Purchaser withdraw from the sale of the Shortfall Loan following the confirmation of an Agreed Secondary Market Bid (which for the avoidance of doubt, can only be agreed with the consent of the other party), then we reserve the right to levy an administration fee against one, or both of the Seller and Purchaser and reserve the right to deduct such fees from any monies to be returned to either the Seller or the Purchaser.
- 13.1.13 if, by the Offer Closing Date, there are no Agreed Secondary Market Bids, the Seller shall be entitled, at their election, to either:
- (a) extend the Offer Closing Date for a period of up to 2 weeks; or
  - (b) withdraw from the sale of the Shortfall Loan, whereupon such withdrawal may incur an administration fee from us.
- 13.1.14 on completion of the sale of the Shortfall Loan:
- (a) the Seller and the Purchaser undertake to execute all such documentation as necessary to perfect the sale and/or assignment of the Shortfall Loan; and
  - (b) we shall deduct our Sales Commission (together with any unpaid fees or charges owing by the Seller) prior to transmitting the balance of the Sale Proceeds to the Seller.
- 13.1.15 immediately following the sale of any Loan (or part thereof) on the Secondary Market the Purchaser must own a participation greater than, or equal to the minimum participation specified for that Facility (or Layer as the case may be);
- 13.1.16 immediately following the sale of any part of a Loan, the part of the Loan retained by the Seller must be greater than or equal to the minimum participation specified for that Facility (or Layer as the case may be).

#### 14. **BORROWERS' AGREEMENTS WITH CAPITALSTACKERS**

- 14.1 You acknowledge and agree that CapitalStackers makes no warranty or representation as to the availability of any Facility or Loan from our Lending Members.

- 14.2 Calculations provided on the Website regarding interest rates are for guidance purposes only and are not warranted or guaranteed.
- 14.3 The information on the Website does not constitute advice or recommendations to participate in the Network.
- 14.4 You are responsible for the accuracy of the information and documentation displayed on or via the Auction Particulars, and for ensuring that such information and/or documentation is up to date and error-free.
15. **CONFIDENTIALITY**

- 15.1 Each Borrower is responsible for maintaining the security of its username and password for use on the Website.
- 15.2 You must notify us immediately if there is any unauthorised use of your password or username or any other security breach of which you become aware.
- 15.3 Each Borrower is responsible for all use of the Website through its username and password.
- 15.4 CapitalStackers is registered under the Data Protection Act 1998 with registration number Z3093424.

16. **YOUR E-MONEY WALLET**

- 16.1 The Network enables you to receive and repay money from and into an e-money account (your “**Platform Account**”) operated by a third party payments provider (the “**Payments Provider**”) which have been appointed by Goji.
- 16.2 Your Platform Account and any funds in it will be owned by you, and you are appointing us as your agent to open and operate the account on your behalf. Investors’ funds will be transferred into your Platform Account when your loan completes and you authorise us, as your agent, to deduct our fees and any other deductibles before transferring you the net loan amount.
- 16.3 The Payments Provider will hold your money separately from its own money in accordance with its terms and conditions and it will exercise due skill, care and diligence in the selection, appointment and periodic review of any credit institution or bank where your money is deposited and for the arrangements for holding your money, but neither we nor it shall be otherwise responsible for any acts, omissions or default of any such credit institution or bank.
- 16.4 No interest is payable on money held in your Platform Account and no fees are charged in respect of establishing the account.
- 16.5 You authorise us to instruct Goji to transfer any monies it holds for you in the Platform Account to any replacement Payments Provider without seeking your express instruction to do so, provided the new Payments Provider has the appropriate regulatory permissions.
- 16.6 At present, the Payments Provider is Modulr and Goji is the registered agent of Modulr for the provision of payment services.
- 16.7 By accepting these Terms and Conditions you also agree to:
- 16.7.1 Modulr’s terms which are attached to this agreement; and
- 16.7.2 the use of your personal data by Goji and Modulr as set out in the [Goji Privacy Policy](#).

17. **TERMINATION OF MEMBERSHIP**

- 17.1 A Borrower may terminate its Membership, provided no Facilities are outstanding, with immediate effect by sending us written notice of termination.
- 17.2 We may terminate a Membership at any time and for any reason with immediate effect by sending written notice of termination to the Member. In both cases, complete termination will only be possible if that Member in question does not have any current outstanding Facility.
- 17.3 Termination of Membership will not affect any outstanding Facility or other Finance Documents to which you are a party at that time.

**18. LIABILITY**

- 18.1 You shall be liable to us for any loss or damage suffered by us a result of any breach of these terms and conditions, any Term Sheet or any Finance Document.
- 18.2 We do not provide any investment advice and nothing appearing on the Website is intended to constitute advice or a recommendation to enter into a Facility via the Website.
- 18.3 Neither we nor the Trustee or Goji will be liable to you for any loss or damage which you may suffer as a result of being a Borrower or using the Website, except where such loss or damage was caused by our gross negligence, wilful misconduct or fraud by us or our employees. We are not responsible for any breach of these terms and conditions arising from circumstances outside of our reasonable control. In any event, our entire financial liability to you (howsoever arising) arising as a result of or in connection with your use of the Website shall not exceed the aggregate amount of your outstanding Facilities.

**19. COMPLAINTS PROCEDURE**

- 19.1 If you have a complaint, it should be communicated to the Managing Director of CapitalStackers by email at [complaints@capitalstackers.com](mailto:complaints@capitalstackers.com).
- 19.2 One or more officers of CapitalStackers will investigate the complaint and recommend appropriate actions to address or resolve the problem within 28 days.
- 19.3 In the event that the proposed resolution is not acceptable to the complainant, the Hallidays directors of the Trustee will be asked to decide on the appropriate action and their decision shall be final.

**20. HOW WE MAY USE YOUR PERSONAL INFORMATION**

- 20.1 We will only use your personal information in accordance with our [Privacy Policy](#). In connection with your borrowing activity we will retain this information for a minimum period of six years post repayment of any Facility. Such information will be retained for the purpose of satisfying regulatory audit trail requirements and HM Revenue & Customs reporting obligations.

**21. GENERAL TERMS**

- 21.1 The information provided on the Website is directed solely at and is for use solely by the persons and organisations that meet the criteria set out at 3 above and the equivalent criteria set out in the Terms and Conditions applying to prospective Lenders.
- 21.2 You confirm you have read and understand the Terms and Conditions applying to prospective Lenders.
- 21.3 The Website and its content is not intended for distribution to, or use by, any person or entity in any jurisdiction where such distribution or issue will be contrary to applicable law or regulation.
- 21.4 We are not responsible for content downloaded or posted by other users on the Website. We do not accept any responsibility for editing any content downloaded or posted on the Website by any person other than us.
- 21.5 You agree to use the Website only for lawful purposes and in a way which does not infringe the rights of anyone else or restrict or inhibit anyone else's use and enjoyment of the Website.
- 21.6 You warrant that you have taken all reasonable precautions to ensure that any data you upload or otherwise submit to the Website is free from viruses and anything else which may have a contaminating or destructive effect on a part of the Website or any other technology.
- 21.7 The content and material available on the Website is for information purposes only and should not be regarded as an offer, solicitation, invitation, advice or recommendation to buy or sell investments, securities or any other financial services or banking products. If you are unsure about whether a product is suitable for you, you should contact an independent financial adviser.
- 21.8 We accept no responsibility or liability for your use of content on the Website and such use is entirely at your own risk. While we take reasonable precautions to prevent the existence of computer viruses or other malicious programs on the

Website, we accept no liability for them if they do exist. It is your responsibility to use, update and maintain anti-virus software on your computer.

## **22. AMENDMENTS TO THESE TERMS AND CONDITIONS**

22.1 We may update or amend these Terms and Conditions and/or the Facility conditions from time to time to comply with law or to meet our changing business requirements. We may not always be able to give you advance notice of such updates or amendments but will post them on the Website. By continuing to use the Website, we agree to be bound by these Terms and Conditions as updated or amended from time to time.

22.2 The date upon which these Terms and Conditions were last updated or amended will be set out at the beginning hereof.

## **23. OTHER IMPORTANT TERMS**

23.1 If any of these Terms and Conditions is found to be illegal, invalid or unenforceable by any Court of competent jurisdiction, the remainder shall continue in full force and effect.

23.2 All disclaimers, indemnities and exclusions in these Terms and Conditions shall survive termination of the Agreement between us for any reason.

23.3 We may, in whole or in part, release, compound, compromise, waive or postpone, in our absolute discretion, any liability owed to us or right granted to us in these Terms and Conditions without in any way prejudicing or affecting our rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.

23.4 No single or partial exercise, or failure or delay in exercising any right, power or remedy by us, shall constitute a waiver by us of, or impair or preclude any further exercise of, that or any right, power or remedy arising under these Terms and Conditions or otherwise.

23.5 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms.

23.6 These Terms and Conditions are governed by English law. In the event of any matter or dispute arising out of or in connection with these Terms and Conditions, you and we irrevocably and unconditionally submit to the non-exclusive jurisdiction of the English Courts.

## Modulr e-Wallet General Terms and Conditions

### 1. BACKGROUND

- 1.1. You have entered into an agreement with CapitalStackers Ltd (the “Platform”), a company registered in England and Wales under company number 07361691, whose registered office is at Riverside House Kings Reach Business Park, Yew Street, Stockport, Cheshire, SK4 2HD for the provision of services (the “Platform Agreement”).
- 1.2. Goji Financial Services Limited (“Goji”), a company registered in England and Wales under company number 10234133, whose registered office is at 133 Whitechapel High Street, London, England, E1 7QA is the registered agent of Modulr for the provision of payment services.
- 1.3. Under the terms of the Platform Agreement, you are required to open and maintain an Account with Us (defined below) to be used for the purpose and in accordance with the terms set out in the Platform Agreement, and you authorise the Platform to provide certain information and instructions to Us on your behalf.
- 1.4. We are a provider of Payment Products, which includes the provision of an e-money account and the issue of e-money by Us. These e-Wallet Terms and Conditions (these “Terms and Conditions”) govern the Payment Products that We agree to provide to you.
- 1.5. Your Account is an e-money account and the electronic money associated with it is issued to you by Us. Your rights and obligations relating to the use of this Account are subject to these Terms and Conditions between you and Us.
- 1.6. These Terms and Conditions set out the terms on which the Payment Products are provided and constitute the entire agreement between Us and you.
- 1.7. By agreeing to open an Account and/or using Our services, you accept these Terms and Conditions.
- 1.8. These Terms and Conditions are written and available only in English and We undertake to communicate with you in English regarding any aspect of your Account.
- 1.9. You agree that We or the Platform may communicate with you by e-mail or telephone for issuing any notices or information about your Account and therefore it is important that you ensure you keep your e-mail address and mobile phone number updated.

### 2. DEFINITIONS AND INTERPRETATION

- 2.1. In these Terms and Conditions, the following capitalised terms shall bear the meanings set out below.
  - 2.1.1. **Account** - the electronic account, also known as e-Wallet Account provided by Us in accordance with these Terms and Conditions.
  - 2.1.2. **Account Information Service Provider** – a third party payment service provider who is authorised by or registered with the Financial Conduct Authority to provide online account information services, who, with your permission will be able to access certain online account information on one or more payment accounts held by you to give you a consolidated view of your payment accounts.
  - 2.1.3. **Account Limits** – maximum limits you can have in relation to your Account, such as account maximum balance, and limits on receiving and sending payments from your Account.
  - 2.1.4. **Account Manager** – the Platform and any other individual person or persons authorised by you to be responsible for the management of the Account.
  - 2.1.5. **Application Programming Interface (API)** – the interface(s) provided by Us to you (and the Platform to provide information and instructions on your behalf).
  - 2.1.6. **Available Balance** - the value of funds available on your Account.
  - 2.1.7. **Business Days** - Monday to Friday between the hours of 9am-5pm but does not include bank holidays, or public holidays in the United Kingdom.
  - 2.1.8. **Customer Services** – the contact centre provided by Goji for dealing with your and your Account Manager’s queries about your Account – email: [customersupport@goji.investments](mailto:customersupport@goji.investments) – telephone: 02038655243 – address: Goji Customer

Services, 133 Whitechapel High Street, London E1 7QA.

- 2.1.9. **Due Diligence Procedure** - Our procedures for carrying out due diligence on you in order to comply with Our policies and regulatory obligations.
- 2.1.10. **Faster Payment** – a service allowing you to make and receive electronic payments in the UK which is received by the recipient bank within 2 hours provided that the receiving organisation or bank is part of Faster Payments Scheme.
- 2.1.11. **Goji** - shall bear the meaning in clause 1.2.
- 2.1.12. **Intellectual Property Rights** – all patents, trademarks, service marks, trade names, domain names, business names, copyrights, design rights, database rights, rights to or in computer software, know-how, trade secrets, rights to or in confidential information and all other intellectual property rights and rights or forms of protection of a similar nature or effect which may subsist anywhere in the world whether or not registered or capable of registration, together with all applications for registration of, and any licence to use, any of the foregoing;
- 2.1.13. **Online Portal** – the website provided by Us for Platform, acting as your Account Manager, to access via the public internet and to provide instructions to us.
- 2.1.14. **Payment Products** – those products, including but not limited to the Account, referred to in these Terms and Conditions.
- 2.1.15. **Payment Initiation Service Provider** – a third party payment service provider authorised by or registered with by the Financial Conduct Authority to provide an online service to initiate a Transaction at your request on your Account.
- 2.1.16. **Platform** – shall bear the meaning in clause 1.1.
- 2.1.17. **Platform Agreement** – shall bear the meaning in clause 1.1.
- 2.1.18. **Services** - electronic money and/or payment services pursuant to these Terms and Conditions.
- 2.1.19. **Transaction** – any debit, credit or other adjustment to an Account that affects the balance of monies held in it.
- 2.1.20. **TPP (Third Party Provider)** – means an Account Information Service Provider or a Payment Initiation Service Provider.
- 2.1.21. **We, Us, Our** – means, as the context demands, the provider of Payment Products and/or the provider of e-wallet Accounts.
  - 2.1.21.1. **Modulr Finance Limited** is the provider of the Payment Products and Modulr FS Limited is the provider of the e-Wallet Accounts.
  - 2.1.21.2. **Modulr Finance Limited** is a private limited company incorporated in England registered with the Registrar of Companies for England and Wales under company number 09897957 with its registered office at 1 Hammersmith Broadway, London, W6 9DL.
  - 2.1.21.3. **Modulr FS Limited** is a private limited company incorporated in England registered with the Registrar of Companies for England and Wales under company number 09897919 with its registered office at 1 Hammersmith Broadway, London, W6 9DL.
- 2.1.22. **Website** – means the customer portal that you can login to in order to use the Payment Products.
- 2.2. In these Terms and Conditions:
  - 2.2.1. a reference to a clause is a reference to a clause in these Terms and Conditions;
  - 2.2.2. headings are for reference only and shall not affect the interpretation of these Terms and Conditions;
  - 2.2.3. the singular shall include the plural and vice versa;
  - 2.2.4. a reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

- 2.2.5. a reference to a party shall include its personal representatives, successors and permitted assigns;
- 2.2.6. reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

### **3. PAYMENT PRODUCTS**

- 3.1. Payment Products are made up of the Account and related payment services which enable funds to be sent to the Account and paid out from the Account.
- 3.2. These payment services include receipts via Bacs, plus receipts and outgoing payments via Faster Payments and inter-Account transfers, and other payment services in and out of the Account which may be enabled from time to time.
- 3.3. The Account allows operation including the making of Transactions in accordance with these Terms and Conditions.

### **4. ROLE OF THE PLATFORM AS YOUR ACCOUNT MANAGER**

- 4.1. Under the Platform Agreement, you authorise the Platform to access your Account and provide certain information and instructions to Us, which shall include but not be limited to making Transactions, viewing and retrieving Transaction data, initiating refunds and closing the Account.
- 4.2. You acknowledge and agree that We shall have no liability whatsoever with respect to the performance, availability or quality of services provided by the Platform.
- 4.3. You acknowledge and agree to the following:
  - 4.3.1. The Platform will be granted full access to operate your Account as an Account Manager;
  - 4.3.2. you are responsible for monitoring the Platform's activities on your Account and its use of the authority under the Platform Agreement.
  - 4.3.3. you have no recourse against Us for any act or omission of the Platform with respect to your Account; and
  - 4.3.4. you will only use the Account and instruct the Platform to use the Account for the purpose set out in the Platform Terms and Conditions.
  - 4.3.5. The Platform, Goji and We may transfer your personal data between ourselves for the purposes of delivering the Services.
- 4.4. On receipt of notification by Us from the Platform on your behalf that you wish to terminate these Terms and Conditions, these Terms and Conditions shall be terminated. Any funds in your Account will be returned in accordance with these Terms and Conditions.

### **5. ACCOUNT LIMITS**

- 5.1. Limits may apply to the maximum value of an individual payment Transaction, the maximum aggregate value of all payment Transactions made from your Account in a particular time period e.g. during any one Business Day and the maximum number of payment Transactions made from your Account over a particular timeframe.
- 5.2. The limits that apply to your Account will be communicated to you during the Account set-up process. These limits may also change over time based on your Account usage; any such change will be communicated to you. You can check the limits at any time by contacting Customer Services. Any payment Transaction request which exceeds such limits will be rejected.
- 5.3. To manage Our risk, particularly with respect to money laundering, fraud or security concerns, We also apply internal controls, including limits, to certain types of payment. We change these as necessary but for security purposes, We do not disclose them.

### **6. OPENING YOUR ACCOUNT**

- 6.1. Your Account will be opened on your behalf by the Platform. You may only hold an Account so long as you remain an approved client of the Platform that provided you with your account details.

## **7. USING THE ACCOUNT**

- 7.1. Your Account can receive bank transfers and other payment types as added and notified to you by Us from time to time. Subject to clause 7.3, We will credit your Account when We receive the funds which could be up to three Business Days after the payment being instructed, depending on how the payment was sent.
- 7.2. Your Account can also receive internal transfers from other Accounts, which apply immediately.
- 7.3. An incoming payment will not be credited to your Account if:
  - 7.3.1. the Account has reached the Account Maximum Balance or Account Limits; or
  - 7.3.2. the Account is inactive or blocked or terminated; or
  - 7.3.3. the sender has provided incorrect/invalid Account Details for your Account; or
  - 7.3.4. We suspect the payment to be fraudulent.
- 7.4. If We are unable to credit your Account for any of the reasons in clause 7.3 then the funds may be sent back to the sender without a prior notification to you.
- 7.5. Your Account will be configured and operated by the Platform as your Account Manager. You agree that We may take instructions from the Platform in that capacity regarding the operation of your Account, including the creation of beneficiaries and instruction of payments, on your behalf. We have no liability for actions taken by the Platform. If you disagree with any actions taken by the Platform these should be discussed with the Platform.
- 7.6. Your Account can make payments out to your designated external bank account via Faster Payments and other methods as added and notified to you from time to time.
- 7.7. A Transaction is deemed to be authorised by you, when you or your Account Manager enters the security information on Our Online Portal to confirm a Transaction is authorised, or when it is instructed via Our API with the relevant security credentials. Once the Transaction is confirmed, We cannot revoke the Transaction save for in those circumstances set out in clause 7.11 below.
- 7.8. The following Transactions may be withdrawn:
  - 7.8.1. any Transaction which is agreed to take place on a date later than the date you authorised it, provided that notice is given no later than close of business on the business day before the Transaction was due to take place; and/or
  - 7.8.2. Transactions due to take place on a future date.
- 7.9. If We refuse to execute a payment order to or to initiate a Transaction, We will, without undue delay and provided We are legally permitted to do so, notify you or your Account Manager of the refusal. If possible, We will provide the reasons for the refusal and where it is possible to provide reasons for the refusal and those reasons relate to factual matters, the procedure of rectifying any factual errors that led to the refusal.
- 7.10. The Available Balance on your Account will not earn any interest.
- 7.11. You or your Account Manager (as the case may be) can check the balance and Transaction history of your Account at any time.
- 7.12. You will be provided with a monthly statement via your Account Manager (using the details We have associated with your Account).

## **8. THIRD PARTY ACCESS**

- 8.1. You can instruct a TPP to access information on your Account or initiate certain Transactions from your Account provided such TPP has identified itself to Us and it has acted in accordance with the relevant regulatory requirements. We will treat any instruction from an TPP as if it was from you or an Account Manager.
- 8.2. We may deny a TPP access to your Account if We are concerned about unauthorised or fraudulent access by that TPP. setting out the reason for such denial. Before doing so, We will tell you that We intend to deny access and give Our reasons for doing so, unless it is not reasonably practicable, in which case We will immediately inform you afterwards. In either case, We will tell you in the manner in which We consider most appropriate in the circumstances. We will not tell you if doing so would compromise Our security



measures or would otherwise be unlawful.

- 8.3. If you have provided consent to a TPP to access the data in your Account to enable them to provide account information services to you or initiate Transactions on your behalf, you consent to Us sharing your information with the TPP as is reasonably required for them to provide their services to you. You must let Us know if you withdraw this permission and We recommend you let the TPP know. On notification from you, We will not provide such TPP access to your Account or the data in it.

## **9. CLOSING YOUR ACCOUNT**

- 9.1. You or your Account Manager (as the case may be) may close your Account and terminate these Terms and Conditions by contacting Customer Services. Please refer to the Platform Agreement for any terms relating to your need to maintain your Account.
- 9.2. The Account will be closed if your Account Manager or Goji instructs Us to close your Account.
- 9.3. Any Available Balance remaining on the Account after Account closure and termination of these Terms and Conditions will be transferred to your nominated bank account via Faster Payments based on instructions to Us from you, your Account Manager or Goji (as the case may be). If for any reason this is not possible, such Available Balance will remain yours for a period of six years from the date of termination of these Terms and Conditions. Within this period, you may at any time request a refund by contacting Customer Services. You will not have any access to your Account and We will not return any funds remaining on the Account after six years from the date of termination of these Terms and Conditions.

## **10. YOUR LIABILITY AND AUTHORISATIONS**

- 10.1. You are responsible for understanding and complying with these Terms and Conditions.
- 10.2. We may restrict or refuse to authorise any use of your Account if using your Account is causing or could cause a breach of these Terms and Conditions or if We have reasonable grounds for suspecting that you or a third party has committed or is about to commit a crime with your Account.
- 10.3. You or the Account Manager must not:
  - 10.3.1. allow another person to use security information related to the Account,
  - 10.3.2. write down password(s) or any security information unless this is done in a way that would make it impossible for anyone else to recognise any of that information, or
  - 10.3.3. disclose passwords or any security information, or otherwise make them available to any other person, whether verbally or by entering them in a way that allows them to be observed by others.
- 10.4. You will be liable for all Transactions that take place as a result of you or the Account Manager acting fraudulently or failing to comply with these Terms and Conditions with intent or negligence. Any such Transactions and any fees and charges relating to such Transactions will be deducted from the Available Balance on your Account.
- 10.5. You will be liable for all Transactions that the Platform or any other Account Manager makes on your behalf as per these Terms and Conditions, along with those made by a TPP authorised by you to initiate a Transaction.
- 10.6. You will be liable for all unauthorised Transactions that arise from the use of lost or stolen Account security information such as but not limited to the Online Portal log in details and API security details, if you or the Account Manager have failed to keep the security features of the Account safe.
- 10.7. It is your responsibility to keep Us updated of changes to any information you have supplied to Us, including e-mail address and mobile numbers. Failure to do so may result in Us being unable to contact you regarding your Account or to let you know about changes to these Terms and Conditions.
- 10.8. If you request to recall a Transaction due to an error or mistake caused other than by Us, We reserve the right to charge you (i) a handling fee of £25 per recall and (ii) any fee payable by Us to a third-party bank or institution for handling the recall.
- 10.9. You agree to indemnify and hold harmless, Us and Our distributors, partners, agents, sponsors, and service providers and their group companies from and against the costs of any legal action taken to enforce these Terms and Conditions, in the event of your breach of these Terms and Conditions.

## **11. OUR LIABILITY**

- 11.1. We make no warranty that access to and use of the Payment Products will be uninterrupted or error free.
- 11.2. We are not liable to you for any loss, liability or damages you suffer which result from, are related to, or in any way are connected with any fraud control or restriction measures implemented from time to time, unless such loss, liability or damage is a direct result of Our fraud, gross negligence or wilful misconduct in procuring the implementation of fraud control or purchase restriction measures that We have expressly agreed in writing to procure for you.
- 11.3. We shall not be liable to you for any loss or damage you may suffer as a result of any act or omission of an Account Manager or an Account Manager's use or inability to use of the Payment Products.
- 11.4. You agree to indemnify Us against any and all actions, claims, costs, damages, demands, expenses, liabilities, losses and proceedings We directly or indirectly incurs or which are brought against Us if you, or an Account Manager, has acted fraudulently, been negligent or has misused a Payment Product or any of the services provided under these Terms and Conditions.
- 11.5. We shall not be responsible in any way for any interest or claims of any third parties in respect of the Payment Products, except as required by law or regulation.
- 11.6. Our liability in connection with this these Terms and Conditions (whether arising in contract, tort (including negligence, breach of statutory duty or otherwise) shall, unless otherwise stated, be subject to the following exclusions and limitations:
  - 11.6.1. We shall not be liable for any default resulting directly or indirectly from any cause beyond Our control, including but not limited to, a lack of funds;
  - 11.6.2. We shall not be liable for any loss of profits, loss of business, or any indirect, consequential, special or punitive losses;
  - 11.6.3. where sums are incorrectly deducted from your Available Balance due to Our default, Our liability shall be limited to payment to you of an equivalent amount to that which was incorrectly deducted from your Available Balance;
  - 11.6.4. in all other circumstances of Our default, but without prejudice to clauses 11.8 and 12, Our liability will be limited to transferring any Available Balance to your nominated bank account.
- 11.7. In circumstances where sums are incorrectly deducted from your Available Balance due to Our fault, if We require your support to enable Us to recover the incorrect deduction, you agree to provide Us with all assistance that We reasonably require.
- 11.8. Nothing in these Terms and Conditions shall exclude or limit either party's liability for death or personal injury resulting from negligence or fraud by the other party or any liability that cannot be excluded or limited by law.
- 11.9. To the extent permitted by law, all conditions or warranties implied by law, statute or otherwise are expressly excluded.
- 11.10. The above exclusions and limitations set out in this paragraph shall apply to any liability of Our affiliates and other suppliers, contractors, agents or distributors and any of their respective affiliates (if any), to you, which may arise in connection with these Terms and Conditions.
- 11.11. We will not be liable for the non-performance or failure to provide any part of the Payment Products occurring as a result of any events that are beyond Our reasonable control, for example, but not limited to, fire, telecommunications or internet failure, utility failure, power failure, equipment failure, employment strife, riot, war, terrorist attack, non- performance of third party suppliers, acts of God such as storm or lightening damage, or other causes over which We have no reasonable control.

## **12. DISPUTING INCORRECT TRANSACTIONS**

- 12.1. If you have a reason to believe that a Transaction on your Account was unauthorised or was made incorrectly, you must inform Us immediately by contacting Customer Services, but in any event within 13 months of the date of the relevant Transaction.
- 12.2. If you dispute a Transaction:
  - 12.2.1. subject to clauses 12.6.2 and 12.6.3, We will immediately refund the amount to your Account to the position it would have been in if the unauthorised Transaction had not taken place. We will

have no further liability to you. If We subsequently discover that you were not entitled to a refund, We shall treat the refund as a mistake and be entitled to reapply the Transaction.

- 12.2.2. if there are reasonable grounds for thinking that you may not be entitled to a refund (based on the evidence available to Us at the time you report the unauthorised Transaction), We may investigate before giving you a refund and We will provide you with Our supporting evidence if We believe you are not entitled to the refund.
  - 12.2.3. if the Transaction was initiated through a TPP, it is for the TPP to prove that the Transaction was authenticated, accurately recorded and not affected by a technical breakdown or other deficiency linked to the TPP's payment initiation service.
- 12.3. If an incorrect Transaction is paid into your Account that should not have, We will, where possible, immediately send the funds back to the bank acting for the person from whose account the Transaction was made. In such circumstance you agree to return the funds to Us and provide such assistance that We require in recovering the amount from you. If We cannot recover the funds, We are required to provide sufficient details about you and the incorrect payment to the bank or institution that sent the payment to enable them to recover the funds.
- 12.4. You will be liable for all Transactions made from your Account to the extent that you have acted fraudulently.

### **13. VARIATION**

- 13.1. We may change these Terms and Conditions by providing you with at least two months' prior notice by e-mail (provided you have supplied Us with an up-to-date e-mail address).
- 13.2. If you do not agree with the changes to the Terms and Conditions, you may at any time within the two months' notice period notify Us and these Terms and Conditions will be terminated and your Account closed. If you do not notify Us to the contrary during this period then you will be deemed to have accepted the change and it will apply to you when it comes into force.
- 13.3. If any part of these Terms and Conditions are inconsistent with any legal requirements then We will not rely on that part but treat it as if it did actually reflect the relevant legal requirement. If We need to make operational changes before We can fully comply with the new regulatory requirement, We will make those changes as soon as reasonably practical.

### **14. TERMINATION OR SUSPENSION**

- 14.1. These Terms and Conditions shall commence on the date you receive confirmation from Us or the Platform (where applicable) of your successful application for Payment Products and shall continue until terminated in accordance with this clause 14.
- 14.2. We can terminate your Account at any time if We give you two months' notice and transfer any Available Balance at the time to your nominated bank account without a charge, or
- 14.3. We can suspend or terminate your Account at any time with immediate effect (and until your default has been remedied or these Terms and Conditions have been terminated) without any prior notice to you if:
  - 14.3.1. We discover any of the information that We hold for you is materially incorrect; or
  - 14.3.2. if We have reason to believe that you, the Account Manager or a third party has committed or is about to commit a crime in connection with your Account; or
  - 14.3.3. if you have breached your Account Limit; or
  - 14.3.4. you or the Account Manager have materially breached these Terms and Conditions.
- 14.4. In the event that We do suspend or terminate your Account then if We are able to do so, We will tell you in advance otherwise We will let you know immediately afterwards (to the extent the We are permitted by law). We will reinstate your access to the Account or execute any suspended Transaction as soon as practicable after the reasons pursuant to Clause 14.3 no longer apply or exist.
- 14.5. You, your Account Manager on your behalf (as the case may be) may terminate these Terms and Conditions immediately by notifying Us via email.
- 14.6. We may terminate these Terms and Conditions and close your Account(s) by providing you with at least two months' notice.

- 14.7. We may terminate these Terms and Conditions immediately if, for any reason, you are unable to satisfy the Due Diligence Procedures.
- 14.8. These Terms and Conditions will automatically terminate when all Accounts are closed (for any reason).
- 14.9. On termination of these Terms and Conditions for any reason, any balance remaining in your Account(s) shall be returned to the you in accordance with these Terms and Conditions. You will pay immediately all outstanding Fees due (where applicable) under these Terms and Conditions and in the event of a negative balance in an Account, you shall reimburse Us such amount equal to the negative balance.

## **15. INTELLECTUAL PROPERTY**

- 15.1. You acknowledge all Intellectual Property Rights in the Payment Products are owned by or provided under licence to Us as the Payment Product provider. We grant you a non-exclusive, royalty-free licence for the duration of these Terms and Conditions to access and use the Payment Products only for the purpose contemplated by these Terms and Conditions.
- 15.2. Nothing in these Terms and Conditions shall operate to create or transfer any Intellectual Property Rights to you.

## **16. ASSIGNMENT TRANSFER AND SUBCONTRACTING**

- 16.1. The Payment Products provided to you are personal to you. You may not novate, assign or otherwise transfer any interest or right under these Terms and Conditions (in whole or in part) without Our prior written consent.
- 16.2. We may, in Our sole discretion, assign, or transfer some or all of its rights and obligations or delegate any duty of performance set out in the documents forming these Terms and Conditions. We may subcontract any of our obligations under these Terms and Conditions.
- 16.3. In the event of any transfer of our rights and/or obligations under these Terms and Conditions by Us to another service provider; if you do not want to transfer to the new provider, you must notify Us of your objection in writing to Customer Services. On receipt of such notification, We will terminate these Terms and Conditions. Any balance remaining in your Account(s) will be returned to you.
- 16.4. We may amend or modify these Terms and Conditions by giving sixty (60) days' notice to you unless We are required to make such a change sooner by law. All proposed changes will be posted on the Website and communicated to you by such other means that We agreed with you, for example by email. If you are accessing Payment Products via an Account Manager, all notifications to you will be communicated to your Account Manager.
- 16.5. You have no obligation to accept such amendments proposed by Us.
- 16.6. You will be taken to have accepted any change to these Terms and Conditions that We notify to you by continuing to use our services unless you tell Us otherwise before the relevant change takes effect or as soon as reasonably practicable. In such circumstance, We will treat notice of objection by you as notification that you wish to terminate these Terms and Conditions and the use of all Payment Products immediately. All of your Accounts will be closed and any balance remaining will be returned to you. In this circumstance you will not be charged a fee for the Account closure and return of any balance.

## **17. DATA PRIVACY**

- 17.1. We will collect and retain personal information about you to enable Us to deliver the Payment Products, the services linked to it and deal with any enquiries that you may have about it. The provider of the Payment Product is the data controller of the personal information gathered by Us for such purpose. If We use a third party to provide a part of the Payment Product then that provider will be the owner and controller of the personal information they require to collect in order to operate the relevant service. The use of personal information by third-party service providers will be set out in their service terms and conditions of use. We will, at such third-party provider's direction, process personal data on its behalf, for example, to enable Us to provide Customer Services support to you.
- 17.2. We process personal information in accordance with relevant laws on the protection of personal data.
- 17.3. If We transfer your information to a third party in a country outside of the European Economic Area We will ensure that the third party agrees to apply the same levels of protection that We are legally obliged to have

in place when We process personal data.

- 17.4. You must update any changes to the information you have supplied to us by contacting Customer Services.
- 17.5. If We discover that the information We hold about you is incorrect, We may have to suspend or cancel your Account until We can establish the correct information, in order to protect Us both.
- 17.6. If you or the Account Manager allow or give consent to an Authorised Third Party Provider to access your Account to provide their services, you should know that We have no control over how an Authorised Third Party Provider will use your information nor will We be liable for any loss of information after an Authorised Third Party Provider have access to your information.
- 17.7. Further information about how We use personal information can be found in Our Privacy Policy (available at [www.goji.investments](http://www.goji.investments)).

## **18. COMPLAINTS PROCEDURE**

- 18.1. Complaints regarding any element of the Service provided by Us can be sent to Customer Services.
- 18.2. All complaints will be subject to Our complaints procedure. We will provide you with a copy of Our complaints procedure upon request and, if We receive a complaint from you, a copy of Our complaints procedure will automatically be posted or emailed to you.
- 18.3. In most cases We will provide a full response by email to your complaint within fifteen business days after the date We receive your complaint. In exceptional circumstances where We are unable to respond in full to your complaint, We will inform you of this giving Our reasons for the delay and the timeframe within which you will receive a full reply, which in any event shall be within thirty-five days of the date We received your complaint.
- 18.4. If We fail to resolve your complaint to your satisfaction you may refer your complaint to the Financial Ombudsman Service (Exchange Tower, London E14 9SR, phone 0800 023 4567). Details of the service offered by the Financial Ombudsman Service are available at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

## **19. FEES**

- 19.1. In ordinary circumstances, Fees shall be paid by the Platform and no further fees payable by you.
- 19.2. In the event that the Platform becomes insolvent or is otherwise unable to pay Fees to us, we may retain sums for our Fee payment from your Account. Details of the Fees payable are available by emailing [customersupport@goji.investments](mailto:customersupport@goji.investments).

## **20. ACKNOWLEDGEMENT**

- 20.1. You agree to, and authorise your Account Manager to, provide all information about you to Us for the purposes of checking and verifying your identity and the identity of Account Managers as required by law.
- 20.2. A Full Electoral Roll search may take place on you and any Account Manager for anti-money laundering purposes.
- 20.3. You acknowledge that a “soft footprint” search may be placed on the electronic files of you and your Account Manager(s) by the Credit Reference Agencies and their personal details may be accessed by third parties for the specific purpose of anti-money laundering, identity verification and fraud prevention.

## **21. GENERAL**

- 21.1. Any delay or failure to exercise any right or remedy under these Terms and Conditions by Us shall not be construed as a waiver of that right or remedy or preclude its exercise at any subsequent time.
- 21.2. If any provision of these Terms and Conditions is deemed unenforceable or illegal, the remaining provisions will continue in full force and effect.
- 21.3. Goji and your Account Manager may enforce the provisions of these Terms and Conditions on your behalf or on Our behalf. Nothing in this Agreement is intended to confer a benefit on any other person who is not a party to these Terms and Conditions and no such third party has a right to enforce any of the provisions in these Terms and Conditions and the Contracts (Rights of Third Parties) Act 1999.

- 21.4. These Terms and Conditions are governed by English law and you agree to the exclusive jurisdiction of the courts of England and Wales.
- 21.5. The Financial Services Compensation Scheme is not applicable for this Account. No other compensation schemes exist to cover losses claimed in connection with your Account. As a responsible e-money issuer, We will ensure that once We have received your funds they are deposited in a secure account, specifically for the purpose of redeeming Transactions made from your Account. In the event that We become insolvent funds that you have loaded which have arrived with and been deposited by Us are protected against the claims made by Our creditors.

## **22. NOTICES AND CONTACTING CUSTOMER SERVICES**

- 22.1. You can provide any notice to Us under these Terms and Conditions to Customer Services. We can provide any notice to you under these Terms and Conditions through Goji or your Account Manager. We will use your most recent contact details, as provided to us by Goji.
- 22.2. Any reference in these Terms and Conditions to Us providing instructions to you or your Account Manager, or to you or your Account Manager providing instructions to Us, shall include the provision of instructions either way through the intermediation of Goji.
- 22.3. You authorise your Account Manager(s) to contact Customer Services on your behalf regarding your queries about Us or the Payment Products.