

## CAPITALSTACKERS

## TERMS AND CONDITIONS FOR LENDERS (EDITION 8 – FEBRUARY 2021)

## 1. INTRODUCTION

- 1.1 These Terms and Conditions explain:
- 1.1.1 how CapitalStackers works;
  - 1.1.2 how to become a Member of CapitalStackers as a Lending Member; and
  - 1.1.3 how you may use the Website.
- 1.2 CapitalStackers does not offer any investment advice or recommendation in relation to lending proposals appearing on the Website. CapitalStackers accepts no responsibility and disclaims all liability for any information about a Borrower made available to Lenders through the Website or otherwise.
- 1.3 CapitalStackers is authorised by the Financial Conduct Authority. Click [here](#) for full details. Loans to Borrowers made via the Website will be for amounts which may be in excess of £25,000 and will be made wholly or predominantly for the purposes of a business. We shall not be involved in consumer credit activities.
- 1.4 If you decide to become a Member of CapitalStackers as a Lending Member, you must comply with these Terms and Conditions, which should be read alongside, and are in addition to the Policies. Please read these Terms and Conditions carefully and print a copy for your future reference.
- 1.5 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, limited company, pension fund or trust, 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.
- 1.6 References herein and in the Policies to “CapitalStackers”, “we”, “us” and “our” are to CapitalStackers Limited (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.
- 1.7 References to “you” and “your” means a user of the Website and the services provided via that Website.
- 1.8 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 (“Trustees” a company limited by guarantee) will act as agent and attorney of the Lending Members in relation to the making of Loans available to Borrowers. CapitalStackers will collect the payment by Borrowers of interest and capital for onward payments to Lending Members, monitor a Borrower’s performance in respect of its Loans and will take steps on behalf of Lenders, upon a default by a Borrower.
- 1.9 These terms and conditions shall be binding on, and endure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party’s personal representatives, successors and permitted assigns.

## 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 “**Active Bid**” means a Bid which has been made and which has not (a) expired (b) been outbid in accordance with these Terms and Conditions or (c) been rejected by us in writing;
  - 2.1.3 “**Active Sale**” means the sale of a specific Loan by a Lender on the Secondary Market in accordance with paragraph 12;

- 2.1.4 **“Agreed Bid”** means a Bid by the prospective Lending Member at a defined discounted rate of interest acceptable at the outset to the Borrower;
- 2.1.5 **“Auction”** means an auction run via the Website involving the advertising on the Website of a Borrower’s application for a Facility involving the live tracking of Bids;
- 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 5.3 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 **“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.
- 2.1.11 **“Facility”** means, in aggregate, all Loans to be provided by Lending Members to a Borrower pursuant to the Finance Documents.
- 2.1.12 **“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;
- 2.1.13 **“Finance Documents”** means the Facility Documents, the Security Documents and any ancillary documents thereto;
- 2.1.14 **“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.
- 2.1.15 **“Hallidays”** means Hallidays Group Ltd of Riverside House, Kings Reach Business Park, Yew Street, Stockport SK4 2HD.
- 2.1.16 **“IFISA Account”** means the account in which your cash and investments which are within an IFISA wrapper are held.
- 2.1.17 **“ISA Regulations”** means the Individual Savings Account Regulations 1998 (as amended or replaced from time to time).
- 2.1.18 **“Layer”** means a portion of a Facility between particular interest rate parameters;
- 2.1.19 **“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;
- 2.1.20 **“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;
- 2.1.21 **“Membership Number”** means the unique number issued to each Member upon successful registration as a Member of the Network;
- 2.1.22 **“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.
- 2.1.23 **“Network”** means the peer to peer lending network established by the Website;
- 2.1.24 **“Non-Agreed Bid”** means a Bid at a rate of interest specified by the prospective Lending Member;

- 2.1.25 **“Passive Sale”** means the process in which **all** a Lender’s Loans are listed for sale on the Secondary Market in accordance with the terms specified pursuant to paragraph 12.1.3
- 2.1.26 **“Platform Accounts”** has the meaning set out in clause 16;
- 2.1.27 **“the Policies”** means the CapitalStackers Privacy Policy, Cookie Policy, Acceptable Use Policy and Website Terms of Use;
- 2.1.28 **“Proposal”** means a proposal, by a Borrower, for a Facility to be provided using the Network.
- 2.1.29 **“Purchaser”** means, in respect of the sale of a Secondary Market Sale Loan, the Lending Member that acquires such Secondary Market Sale Loan in accordance with paragraph 12.1.3.
- 2.1.30 **“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.
- 2.1.31 **“the Secondary Market”** means the ability of Lending Members and, in certain circumstances, of Borrowers to sell a Loan (or a part thereof) to another Member via the Network.
- 2.1.32 **“Secondary Market Bid”** means a bid, by a Lending Member to purchase a Loan (or part thereof) offered for sale on the Secondary Market.
- 2.1.33 **“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;
- 2.1.34 **“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).
- 2.1.35 **“Standard Account”** means the account in which your cash and investments which are not within an IFISA wrapper are held.
- 2.1.36 **“the Trustee”** means CapitalStackers Trustees Limited;
- 2.1.37 **“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 LENDER

### 3.1 You will not be permitted to make bids to lend via the Website unless you meet the following criteria:

- 3.1.1 you are not subject to any restriction affecting your ability to lend on the Website under the laws and regulations of any jurisdiction.

- 3.1.2 if you are an individual, you are over 18 years of age;
- 3.1.3 you must have a valid and current account which is in your name with a bank or a building society authorised in the United Kingdom, as all transfers made by you in respect of successful bids to fund on the Website must be made from this account;
- 3.2 CapitalStackers retains the right to refuse membership without giving a reason.
- 3.3 You must register your details on the Website, although you will not be permitted to lend using the Website until we have carried out identity and fraud checks on you and, if appropriate, your members, directors, shareholders or other stakeholders. We use our own internal guidelines and policies when assessing applications but have complete discretion as to whether to allow you to be a Lender (or continue to be a Lender) on the Website.
- 3.4 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 make offers to lend on the Website (for more details on about how we use your information, please refer to our [Privacy Policy](#)).
- 3.5 Once we have satisfied ourselves as to your identity and suitability to be a Lender on the Website, you will be able to participate in Loans 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 Lender, we shall be entitled to suspend and/or terminate your right to make any further Bids to lend 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 lending 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, PASSWORD AND MEMBERSHIP NUMBER**

- 4.1 On registering with us as a Lender, 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 make a Bid or check the progress of Bids, you will need to enter your username and password. Bidding will be conducted through your Membership Number in order to keep your identity confidential. Your username and password are personal to you and are not transferable. Borrowers and other Lenders will be able to review statistics about your bidding history and Loans that you have made through the Website by reference only to your Membership Number.
- 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 LENDING PROCESS**

- 5.1 Lending opportunities will be offered in the form of an Auction conducted through the Website. Information regarding available opportunities will be available on the Website. We may also notify you by email when new lending opportunities become available. However, we accept no responsibility if you do not receive such notification.
- 5.2 Borrowers whose applications for funding are accepted for inclusion on the Website will be required to provide details of the proposed transactions specific to that Borrower, including the maximum amount it wishes to raise via the Auction on our Website, the security to be offered in respect of any such Facility, any prior ranking debt, the length of the Facility required and other material terms applicable to the Facility.
- 5.3 The information and documentation contained in the Auction Particulars may (amongst other things) include 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.

## 6. MAKING A BID

- 6.1 You should read the Auction Particulars in relation to any Proposal carefully and in detail and should, where appropriate, seek your own independent professional advice in relation to the content of those Auction Particulars, before deciding whether or not to make a Bid.
- 6.2 By making a Bid, you confirm to us that you have read and understood the Auction Particulars in respect of the corresponding Loan opportunity and that such Bid or Bids, should it be an Accepted Bid may not be withdrawn and is an irrevocable commitment by you to provide the Loan in question.
- 6.3 Each Facility 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 you have selected an opportunity on which you have decided that you wish to make a Bid, you will be asked to:
- 6.4.1 state the amount of money that you are prepared to make available to the Borrower;
  - 6.4.2 the Layer(s) (if the Facility is Layered) in which you wish to participate;
  - 6.4.3 the type of bid you wish to make (Agreed Bid or Non-Agreed Bid), or, if permitted by the Auction in question, a combination of both; and
  - 6.4.4 in the case of Non-Agreed bids the annual interest rate you wish to charge for that participation in that Layer.
- 6.5 Your offer to lend or each “Bid” becomes an “Active Bid” when it is entered into the Auction on the relevant Borrower’s page.
- 6.6 The minimum Bid which may be made will be specified for each separate Facility and (if appropriate) Layer thereof. You may increase your Active Bid at any time during the Auction process or enter a further Bid(s) for a different amount(s) at a different interest rate(s) in respect of the same Auction.
- 6.7 In addition to being asked whether in respect of a Layered Facility you wish to make an Agreed Bid or a Non-Agreed Bid you will have the option of combining multiple Agreed and Non-Agreed Bids in different Layers of the proposed Facility. Should any one component of a Bid fail for whatever reason, all other components of that Bid in relation to the Facility in question will be cancelled and you will be given the reason why and prompted to bid again.
- 6.8 An Agreed Bid, made in isolation, becomes an Accepted Bid on it being entered into the Auction on the relevant Borrower’s page.
- 6.9 During the progress of the Auction, you will be able to view the progress via our Website and see whether other Members have outbid you. 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 bidder whose Bid is received first by us.
- 6.10 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.
- 6.11 At the Auction Closing Date, if sufficient Bids have been made to fund the Facility, Loans shall be made between the Borrower and:
- 6.11.1 such Lending Members who have Agreed Bids, pursuant to those Agreed Bids; and
  - 6.11.2 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.
- 6.12 If by the Auction Closing Date for a particular Auction insufficient Bids have been received to fulfil a Borrower’s requirements for the Facility, the Borrower has the option of either:
- 6.12.1 extending the Auction Closing Date; or
  - 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 the Borrower 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, the Borrower shall 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 Loan so made good by him for sale to Members on the Secondary Market. If the Borrower does not make good the shortfall as envisaged by this paragraph 6.12.3 paragraph 6.14 shall be deemed to have applied.
- 6.13 The Borrower will be entitled at any time during the Auction to notify us that they do not wish to complete the Facility.
- 6.14 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.
- 6.15 On the Auction Closing Date, you will be informed whether or not your Bid has become an Accepted Bid by us by email, which will contain details of the amount to be lent and the interest rate applicable and you must honour the commitment to make the Loan(s).
- 6.16 Following notification that your Bid is an Accepted Bid, you need to ensure that your Platform Account is in credit for a sufficient amount to cover the Loan(s) that you have committed to making. Your Platform Account must be credited in accordance with the payment request instructions issued by us.
- 6.17 All deposits to your Platform Account must be made from the bank account that you originally registered on the Website or such other bank account which, subject to our prior approval, you notify us of. Payments from any other account may be automatically rejected by your Platform Account.

## **7. ROLE OF THE SECURITY TRUSTEE, ATTORNEY AND AGENT**

- 7.1 Because of the way in which the Auction process operates and the possibility that there may be 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 on behalf of each Lending Member when Loans are made. Each Lending Member irrevocably agrees to appoint the Trustee as its attorney to execute all documents which may be required to complete the Facility to be entered into with the Borrower. Each Lending Member agrees that it will not take any enforcement action or commence any process against any Borrower (or any professional appointed by the Trustee including, without limitation, any lawyers, accountants, valuers, surveyors or other experts) in its own name but will act only through the Trustee in accordance with these Terms.
- 7.2 The use of the Trustee is not only to represent the Lending Members and to take whatever action is required if ever a decision in relation to the making a Facility or taking legal action, but also has the effect of keeping the identity of the Lending Members confidential.
- 7.3 The Trustee has been established as a company limited by guarantee in order to preserve its independence from CapitalStackers.
- 7.4 The Trustee has 4 directors, 1 being a non-Hallidays director of CapitalStackers and 3 being Hallidays directors.
- 7.5 Each Lending Member appoints the Trustee to act as its agent in connection with any Loan made including any Finance Documents, including to execute (whether under seal or under hand) and to deliver any Finance Documents to be executed and delivered on its behalf. Each Lending Member confirms and agrees that:
- 7.5.1 it does not wish to be registered as the joint proprietor of any mortgage or charge created pursuant to any Finance Document and accordingly authorises the Trustee to hold such mortgage or charge in its sole name as trustee for the Lending Member; and
- 7.5.2 it will not take any action or commence any process against any Borrower in its own name but will only act through the Trustee who should be entitled to act as set out herein.
- 7.6 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.

- 7.7 Each Lending Member authorises the Trustee pursuant to instructions given by us 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.
- 7.8 Each Lending Member agrees that the Trustee will hold the benefit of the Finance Documents and of any security created thereunder on trust for the Lending Members involved in respect of the relevant Facility.
- 7.9 In following the instructions of CapitalStackers or the Lending Members the Trustee may act in relation to the Finance Documents through its own personnel and agents.
- 7.10 Subject to the provisions herein the Trustee shall have absolute discretion in the exercise of any right, power or authority vested in it as security trustee and agent in accordance with the terms of the Finance Documents.
- 7.11 In respect of any matter decided on by the Lending Members pursuant to the provisions of paragraph 10 below, the Trustee shall:
- 7.11.1 act in accordance with the instructions given to it by us or the Lending Members (or if so instructed by us or the Lending Members refrain from acting or exercising any right, power, authority or discretion vested in it as security trustee); and
  - 7.11.2 not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with the instructions of the Lending Members.
- 7.12 The Trustee may seek clarification from us or the Lending Members of any instructions received from us or the Lending Members and may elect not to act pending receipt of such clarification to its reasonable satisfaction.
- 7.13 In the absence of instructions from us or the Lending Members, the Trustee will take instructions as to any action or the refraining from taking action, as the case may be, from CapitalStackers.
- 7.14 The Trustee will not be liable for any action taken by it (or any omission to take action) under or in connection with any Finance Document unless directly caused by its gross negligence or wilful misconduct.
- 7.15 No Lending Member may take proceedings against any officer, employee or agent of the Trustee in respect of any claim it may have against the Trustee or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Trustee may rely on this paragraph.
- 7.16 By way of supplement to the Trustee Act 1925 and the Trustee Act 2000 (to the extent not inconsistent with the terms hereof), it is expressly declared that the Trustee:
- 7.16.1 may rely on any representation, notice, instruction or document believed by it to be genuine, correct and appropriately authorised;
  - 7.16.2 may rely on any statement made by a director, authorised signatory or employee of any person regarding any matter which may reasonably be assumed to be within his knowledge or within his power to verify;
  - 7.16.3 shall not be bound to account to any Lending Member for any sum or the profit element of any sum received by it on its own account;
  - 7.16.4 may engage, pay for and/or rely on the advice or services of any lawyers, accountants, surveyors or other experts;
  - 7.16.5 may act through its personnel and agents;
  - 7.16.6 may delegate by power of attorney or otherwise, to any person and for any period all or any of the trusts, powers and authorities vested in the Trustee by any Finance Document and such delegation may be made on such terms and subject to such conditions, including power to sub-delegate, as the Trustee may specify and provided that the Trustee shall have exercised reasonable care in the selection of such delegate, the Trustee shall not be responsible for any loss incurred by reason of any misconduct or default on the part of such delegate or sub-delegate and shall not be bound to supervise the actions and conduct of such delegate or sub-delegate;

- 7.16.7 shall not be responsible for the adequacy, accuracy and/or completeness of any information whatsoever supplied to any person in connection with any Finance Document;
- 7.16.8 shall not be responsible for the legality, validity, effectiveness, adequacy, enforceability or priority afforded by any Finance Document;
- 7.16.9 shall not be liable for any failure to perfect the security created or constituted by any Finance Document;
- 7.16.10 may store any of the Finance Documents and any other documents delivered to it with any bank or building society within the United Kingdom, any company whose business includes the safe custody of documents or any firm of lawyers, or, in respect of any insurance policies, may place the policy documents with any insurance broker, in each case without being bound to enquire as to the existence or adequacy of any insurance held by any such person;
- 7.16.11 shall not be obliged to disclose to any person any information if the disclosure would or might in its reasonable opinion constitute a breach of law or a breach of fiduciary duty;
- 7.16.12 may refrain from doing anything which would or might in its reasonable opinion constitute a breach of law and may do anything which in its opinion is necessary to comply with law; and
- 7.16.13 shall have full power to determine all questions and doubts arising in relation to the interpretation or application of any of the provisions of any of the Finance Documents as it affects the Trustee and every such determination (whether made upon a question actually raised or implied in the acts or proceedings of the Trustee) shall be conclusive and binding.

## **8. ADMINISTRATION OF LOANS**

- 8.1 CapitalStackers and the Trustee shall be entitled to rely on any instruction, notice or document that it believes to be genuine given to it by any Lending Member or any person on its behalf.
- 8.2 CapitalStackers and the Trustee shall be entitled to negotiate (in its sole discretion and without recourse to or the approval of Lending Members) the engagement terms of, 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.
- 8.3 Subject to 10 below, each Lending Member hereby permits us to undertake the following administrative tasks:
  - 8.3.1 receiving compliance certificates and management information from the Borrower;
  - 8.3.2 discussing performance issues with the Borrower;
  - 8.3.3 issuing chasing letters and demands; and
  - 8.3.4 amending the terms of the Facility Agreement or the Security Documents, provided that such amendments do not affect the interest rate payable, the terms of the Facility, the capital repayment schedule or the security.
- 8.4 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.
- 8.5 Subject to paragraph 10, the Trustee shall have discretion in the exercise of any authority vested in it as agent and security trustee respectively in accordance with the terms of the Finance Documents.

## **9. REPAYMENT AND INTEREST**

- 9.1 When and how you receive interest and are repaid capital on your Loan(s) depend on the terms of the particular Loan and the purpose of the Loan, each of which will be set out in the particular Auction Particulars. However, without prejudice to specific Auction Particulars the key principles to be adhered to are as follows:
  - 9.1.1 Development Loans – interest will be rolled up and paid out with principal at Facility maturity;



- 9.1.2 Investment Loans – interest will be paid quarterly with net income being applied first to the lowest Layers and if there is insufficient income to meet the entire interest payment due, the interest not paid will be rolled up and paid out with principal at Facility maturity.

In respect of all Loans, at their maturity, principal (and any rolled up interest) will be paid in priority of their Layer, with lower Layers taking priority over higher Layers. In the event that there are insufficient funds to fully redeem any layer then Lenders in that Layer will receive monies pro-rata to their principal. Where an external party has provided senior debt, all Lending Member Loans are subordinated to and repaid only after such third party senior debt provider has been fully repaid.

- 9.2 In the event that any Lending Member has any unpaid fees or charges owing to us when interest and/or capital is due to be repaid in respect of any Loan, we reserve the right to deduct such unpaid fees or charges from the sums due to the Lending Member prior to payment.

**10. PROCEDURES FOR VOTING**

- 10.1 Whilst certain decisions relating to a Facility may be made without reference to the Lending Members of the relevant Facility there are certain matters which will require the consent of Lending Members.

- 10.2 Any communication from us which requires a Lending Member to vote on a particular course of action must be responded to within 5 Business Days. If the Lending Member does not vote within such time period, then that Lending Member will be deemed to have waived their voting rights and be disregarded for that particular vote and will not be included in any quorum required for a majority or unanimous decision to be made.

- 10.3 References to requirement for a unanimous decision relate to unanimity in respect of votes actually cast. If a member chooses not to vote he will be treated as having waived his voting right and not included in the calculation of the result of the vote.

- 10.4 Where there are more than two courses of action on which to vote, we shall endeavour to devise a poll that will result in a clear decision for one of those courses of action where that is appropriate. We shall have absolute discretion in designing such a poll and interpreting its outcome.

- 10.5 If we receive votes from Lending Members that account for below 35 per cent of the amount of the voting rights, we shall first satisfy ourselves that the method used to communicate with Lending Members has operated to our satisfaction and, if not, we shall repeat the voting procedure after taking all practical steps to correct or overcome the errors in transmission of messages.

- 10.6 The voting rights of each Lending Member will be weighted having regards to the amount of the outstanding Loan(s) made by that Lending Member in respect of the Facility in question and the applicable interest rate thereon and will be calculated using the following formula:

$$\text{Layer Amount} \times \text{Layer Weighted Rate} \div \text{Facility Amount} \div \text{Facility Weighted Rate}$$

where:

- (a) Layer Amount is the aggregate amount of Loan participations within each Layer;
- (b) Layer Weighted Rate is the weighted average rate of all Loan participations in each Layer;
- (c) Facility Amount is the aggregate of all Loan participations; and
- (d) Facility Weighted Rate is the weighted average rate of all Loan participations.

Where a Lending Member is invested in multiple Layers their voting rights shall be the sum of the above calculation for each Layer. We and the Trustee will act in accordance with the majority vote of those Lending Members who have voted taking into account any minimum poll and majority threshold requirements. Examples of how this formula works can be found on the Website.

- 10.7 If no requisite majority for a particular course of action is achieved, then we shall instruct the Trustee to take whatever action we think fit in its absolute discretion. In all circumstances, we shall communicate the decision made to all Lending Members as soon as reasonably practicable.

## 11. DEFAULT PROCEDURES

11.1 If we become aware of a default in the payment of any principal, interest or fee payable under any Finance Document, or if it otherwise receives notification of an event of default under the terms of any Finance Document, we shall promptly:

11.1.1 enter into dialogue with the Borrower with a view to the remedying of the default without delay;

11.1.2 notify the relevant Lending Members of the relevant circumstances; and

11.1.3 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.

11.2 We shall not implement any of the following proposed courses of action without having the consent or deemed consent of the relevant Lending Members in accordance with paragraph 10 in relation to the proposal:

11.2.1 the commencement of any enforcement action or legal process against a Borrower;

11.2.2 the release of any security (save where the relevant Facility has been repaid in full);

11.2.3 the issue of any waiver letter; or

11.2.4 the restructuring of the Facility or security.

11.3 Each Lending Member agrees:

11.3.1 that it will keep all user email accounts from which the email address details provided to us when the CapitalStackers account was created current and (if necessary) paid up; and

11.3.2 that it is responsible for checking messages on a sufficiently regular basis.

11.4 In relation to a proposed course of action, each relevant Lending Member shall be deemed to have given its consent to such proposal if we shall have arranged a poll of the relevant Lending Members as provided for in paragraph 10 above and it shall have been approved by the majority who vote in that poll as provided for above.

11.5 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:

11.5.1 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;

11.5.2 second, to meet the payment of any outstanding fees due to the Trustee in respect of the relevant Facility; and

11.5.3 third, to meet the payment of outstanding interest on the relevant Loans and to repay the capital amount of the Loans to Lending Members on a proportional basis by reference to the amount of the Loans made by each Lending Member in each respective Layer, being in the order of priority that the Layers with the lowest interest rates take priority.

11.6 For the avoidance of doubt it is the intention that Trustees will never be deemed to be a mortgagee in possession following any default under any Finance Document.

## 12. SECONDARY MARKET

12.1 At any time after the completion of a Facility, a Lending Member may offer any Loan(s) (or parts thereof) ("**Secondary Market Sale Loan**") which they have in a Facility for sale to other Lending Members on the Secondary Market, subject always to the following terms:

12.1.1 each of the Seller and the Purchaser acknowledges that the sale of a Secondary Market Sale Loan shall be completed as an assignment of such Secondary Market Sale Loan from the Seller to the Purchaser;

- (i) the Seller acknowledges that all his right, title and interest in the Secondary Market Sale Loan including, for the avoidance of doubt, the Seller's rights with regard to decision making under clause 7, above, shall be transferred to the Purchaser;

12.1.2 the Purchaser acknowledges that, following the completion of the sale of the Secondary Market Sale Loan, they shall be bound by these terms and conditions as if they were the Seller with regard to the Secondary Market Sale Loan.

12.1.3 to offer a Secondary Market Sale Loan for sale on the Secondary Market, the Seller must specify:

(a) For Passive Sales:

- (i) the difference between the return being offered to a buyer and the Seller's return ("the **Seller Arbitrage**");
- (ii) the period in months which the Seller wishes to hold the investment before it is automatically offered on the Secondary Market (minimum 1 month).

(b) For Active Sales:

- (i) The amount of the Secondary Market Sale Loan being offered;
- (ii) The return offered to the buyer in the Secondary Market.

once offered for sale, other Lending Members may purchase immediately in the Secondary Market subject to having pre-funded their Platform Account. Purchases may be for part or all of the Secondary Market Sale Loan, are immediate, cannot be withdrawn and are binding on both parties.

12.1.4 the Seller shall be entitled, at their election and at any time prior to a sale to delist the Secondary Market Sale Loan(s) without charge.

12.1.5 on completion of the sale of the Secondary Market Sale Loan:

- (a) the Seller and the Purchaser undertake to execute all such documentation as necessary to perfect the sale and/or assignment of the Secondary Market Sale Loan; and
- (b) we shall deduct our Sales Commission (together with any unpaid fees or charges owing by the Seller) prior to transferring the balance of the Sale Proceeds to the Seller.

12.1.6 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);

12.1.7 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).

### 13. THE ROLE OF CAPITALSTACKERS

13.1 CapitalStackers performs an administrative role in matching Borrowers and Lenders and in facilitating payments, the collection of monies due and onward distribution of funds to and from Platform Accounts. We are not a party to any Finance Documents, although we will negotiate the term sheet, facilitate the preparation and negotiation of the Finance Documents and engage in enforcement of the Lending Members rights under the Finance Documents as referred to above.

### 14. LENDERS' AGREEMENTS WITH CAPITALSTACKERS

14.1 You acknowledge and agree that CapitalStackers makes no warranty or representation as to either the ability of Borrowers to meet their obligations in relation to any Facility or Loan or their credit risk and we are in no way liable for any default by a Borrower.

- 14.2 You acknowledge that any Bid you make and any Loan you make as a consequence of an Accepted Bid is made entirely at your own risk.
- 14.3 Calculations provided on the Website of the likely rate of return on Loans are for guidance purposes only and are not warranted or guaranteed.
- 14.4 The information on the Website does not constitute advice, recommendations or an endorsement of Loan requests from Borrowers. The information is not intended to be relied upon as a sole basis for deciding whether or not to participate in Loan(s) to any particular Borrower.
- 14.5 We make no representation or warranty as to the accuracy of the information and documentation displayed on or via the Auction Particulars, nor whether such information and/or documentation is up to date and error-free.
- 14.6 You acknowledge that any representation and warranties in relation to such information and documentation will be set out in the Facility Agreement and Finance Documents relating to the Facility, that such representations and warranties are given to the Trustee as trustee for Lending Members.
- 14.7 We do not warrant or represent that there will be sufficient Bids for any Facility to be fully funded or that there will be sufficient prospective Loans for Lending Members to participate in.

## 15. CONFIDENTIALITY

- 15.1 Each Lending Member 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 Lending Member is responsible for all use of the Website through its username and password.
- 15.4 Each Lending Member accepts that it owes a duty of confidentiality to us with regard to:
  - 15.4.1 the Finance Documents; and
  - 15.4.2 any information provided in relation to potential or actual Borrowers.
- 15.5 CapitalStackers is registered under the Data Protection Act 1998 with registration number Z3093424.

## 16. YOUR MONEY

- 16.1 We will provide you with account details into which you can transfer money to fund loans. These accounts are administered by Goji as follows:
  - 16.1.1 your Standard Account is provided through the use of an e-money account operated by a third-party payments provider (the “**Payments Provider**”) which have been appointed by Goji. At present, the Payments Provider is Modulr and Goji is the registered agent of Modulr for the provision of payment services, and
  - 16.1.2 if and when we offer to facilitate your Loans being held in an IFISA wrapper, your IFISA Account will be provided through a client money account operated by a regulated “**Custodian**”. At present, the Custodian is Goji, who will be the manager of your ISA and is authorised by HM Revenue & Customs to do so,together, these are your “**Platform Accounts**”.
- 16.2 Transfers into your Platform Accounts must be made by electronic transfer from a bank account in your name, details of which you provide, or any replacement account owned by you which you notify us of in future (your “**Nominated Account**”). Withdrawals from your Platform Accounts will only be made to your Nominated Account.
- 16.3 You authorise us to instruct Goji and/or the Payments Provider to transfer any money it holds for you in the Platform Accounts to another provider without seeking your express instruction to do so, provided the new provider has the appropriate regulatory permissions.

- 16.4 No interest is payable on money held in your Platform Accounts and no fees are charged in respect of establishing the accounts.
- 16.5 By accepting these Terms and Conditions, you appoint the Custodian to hold any monies paid into your IFISA Account, including funds deposited by you to fund loans and money paid to you by the borrower.
- 16.6 The Custodian will treat you as its client and will treat money in your IFISA Account as “**Client Money**” in an approved bank account in accordance with the FCA’s client money rules. The Custodian will use reasonable skill and care for the selection, use and monitoring of any approved bank with which Client Money is held, but will not be liable for their acts or their insolvency.
- 16.7 The Client Money will be held in a pooled account and will not be separately identifiable from Client Money of other clients of the Custodian or its associates on the relevant bank’s books and records. Accordingly, should the Custodian default on its obligations to its clients, any shortfall in Client Money held by the relevant bank may be shared pro-rata among all clients whose money is held in the pooled client money account.
- 16.8 If a bank with which the Custodian holds Client Money fails (including the appointment of a liquidator, receiver, administrator, or trustee in bankruptcy, or any equivalent), this will constitute a secondary pooling event under the FCA Rules, which may result in a shortfall in the funds held for you.
- 16.9 In the event of our insolvency, the Custodian will continue to hold your money, but will not facilitate the funding of any new loans. The Custodian will notify you of changes to reporting requirements in such an event.
- 16.10 In the event of the Custodian’s insolvency, we will attempt to find an alternative services provider to enable the Network to continue to function.
- 16.11 If a Client Money balance remains unclaimed and there has been no movement on the balance for a period of at least six years (ignoring any payments or receipts of charges, interest or similar items), provided the Custodian has taken reasonable steps to trace the client and return the balance, the Custodian may cease to treat the money as Client Money and pay the Client Money to a registered charity of the Custodian’s choice.
- 16.12 Your Standard Account will be an e-money account and any funds in it will be owned by you and will therefore not be treated as Client Money. You are appointing us as your agent to open and operate the account on your behalf.
- 16.13 The Payments Provider will hold money in your Standard Account 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.
- 16.14 Where your account with us is held in joint names, the first named party will be the “**Primary Account Holder**”. Each subsequent account holder shall be a “**Secondary Account Holder**”.
- 16.15 Your Platform Accounts shall be held in the name of the Primary Account Holder only and the Primary Account Holder shall hold the balance of such Platform Account(s) on trust for all Primary Account Holders and Secondary Account Holders.
- 16.16 In the event of the death (or incapacity of) of the Primary Account Holder, the first named Secondary Account Holder shall become the Primary Account Holder and both the personal representative(s) and/or lawful attorneys (in the event of incapacity) of the former Primary Account Holder and the first named Secondary Account Holder shall comply with all requests and execute all such documents as required by us or the Payment Provider to transfer your Platform Account(s) into the name of the new Primary Account Holder.

## 17. **OPENING AN INNOVATIVE FINANCE ISA**

- 17.1 Your Individual Savings Account will be managed by Goji and will be an Innovative Finance ISA (IFISA). As the ISA manager, Goji undertakes to:
- 17.1.1 treat you as its client;
- 17.1.2 receive payments in respect of your loans and credit those payments to your [IFISA Account]; and

- 17.1.3 exercise, or facilitate the exercise of, your rights in respect of loans held in your [IFISA Account] if necessary, and you appoint Goji as your agent to do anything required on your behalf to enable it to fulfil those undertakings.
- 17.2 In normal circumstances, Goji does not charge any fees to you for opening and operating your IFISA Account, however if we do not pay fees due to Goji and you require the continued provision of the ISA management services, you agree to pay Goji's fees and charges and consent to Goji deducting amounts from your IFISA Account for the purposes of paying such fees.
- 17.3 The management of your IFISA Account will be subject to the ISA Regulations. Any changes made by HMRC to the ISA Regulations that affect these Terms and Conditions will apply as soon as they come into effect.
- 17.4 We will inform you if your IFISA Account has or will lose its tax exemption through any failure to meet the ISA Regulations. If an investment which was previously allowed under the ISA Regulations ceases to be allowed, we will notify you and make arrangements to transfer it out of the account.
- 17.5 You may subscribe to an ISA in any tax year (i.e. period starting on 6 April of one year and ending 5 April of the following year) for which you are either resident and ordinarily resident in the United Kingdom; or, although non-resident in the United Kingdom, perform duties of a Crown employee which are treated as being performed in the United Kingdom, or are the spouse or civil partner of such a person.
- 17.6 You must inform us immediately if you are no longer a UK resident or cease to perform duties of a Crown employee which are treated as being performed in the United Kingdom, or cease to be the spouse or civil partner of such a person.
- 17.7 When you open an IFISA Account we will ask you to make a declaration. Making this declaration will allow you to subscribe for an IFISA in the tax year that you make the declaration and for each subsequent tax year, provided you make a subscription to your IFISA every tax year. If you do not make a subscription to your IFISA one year then when you next want to subscribe to your IFISA, you will have to make a new declaration.
- 17.8 You must inform us if any declarations or confirmations you have made about your eligibility to hold an ISA no longer apply.
- 17.9 In accordance with the ISA Regulations, you are not eligible to apply if you have already subscribed to another IFISA in the same tax year, or if you have already subscribed the maximum available allowance to a Cash ISA and/or Stocks and Shares ISA, in the same tax year as you are applying for this IFISA. These restrictions do not apply if you are:
- 17.10 transferring an existing IFISA from another ISA Provider to the IFISA (in circumstances where this is permitted under the ISA Regulations), or
- 17.11 where you have already subscribed the maximum allowance to a cash and/or stocks and shares ISA and this is transferred to this Innovative Finance ISA.
- 17.12 All subscriptions to your IFISA must be in cash. You can transfer cash held in your Standard Account to your IFISA Account, but you cannot transfer loans which have already been funded.
- 17.13 If funds are subscribed into your IFISA Account which exceed the amount prescribed in the ISA Regulations, then the excess subscription will be transferred to your Standard Account.
- 17.14 Your IFISA will be flexible as defined in the ISA Regulations. This flexibility means cash which is withdrawn can be replaced, in whole or part, within the same tax year and this will not affect your ISA subscription limit for that year.
- 17.15 If you have any questions, doubts or issues relating to ISAs or your eligibility to hold an ISA, you should consult the HMRC website (<https://www.gov.uk/government/organisations/hm-revenue-customs>) or contact them directly.
- 18. TRANSFERS IN AND OUT OF YOUR IFISA**
- 18.1 You may transfer money into your IFISA from an existing ISA with another provider, in cash only. An online transfer-in form will need to be completed and then we will send you a transfer authority form to approve and sign. We can then arrange for the funds to be transferred from your existing ISA provider in accordance with your instructions.

18.2 The transfer-in process will begin on the date on the transfer authority form or the date you stipulate for us to begin the transfer process, whichever is later. We will then send your request for the transfer to your existing ISA Provider within 5 business days of receiving your transfer authority form.

18.3 You may transfer any cash in your current year's ISA subscriptions in whole, and/or you can transfer previous years subscriptions in whole or in part (together with interest) to another ISA provider in accordance with the ISA Regulations and these conditions. You will need to contact your other ISA provider to arrange the transfer and you can choose the date funds are transferred, subject to us being allowed a reasonable period to implement it.

## 19. CANCELLATION OR CLOSURE OF YOUR IFISA ACCOUNT

19.1 You have the right to cancel the opening of your IFISA Account within 14 calendar days of the date your account is opened. You can do this by emailing support@capitalstackers.com or by phoning 0161 979 0812.

19.2 If your IFISA account is cancelled, unless you provide us with specific instructions, we will transfer any investments and money credited to your IFISA Account to your Standard Account and you will lose the tax benefits associated with an ISA.

19.3 After the 14-day cancellation period, you can choose to close your IFISA Account at any time, provided you only have cash in the account. If you do not arrange with another ISA provider to transfer the money in your account to them, you will not be able to subscribe to another IFISA with another ISA provider in the same tax year.

19.4 We may close your account with immediate written notice to you if directed to do so by HM Revenue & Customs. You agree to reimburse us and/or Goji for any administrative fees, charges from HMRC or any tax authority incurred as a result of your failure to comply with ISA Regulations.

19.5 We will notify you, if by reason of any failure to satisfy the provisions of the ISA Regulations, all or part of your IFISA has or will become invalid. If the failure can be corrected, we will repair your IFISA.

19.6 If we or you close your IFISA and do not receive alternative transfer instructions from you within 1 month of trying to contact you, any investments and money credited to your IFISA Account will be transferred to your Standard Account.

19.7 If we receive notification of your death, we will suspend all transactions and investments in your IFISA. ISA tax exemptions will no longer apply from the date of death, and any interest or gains that arise after the date of death will not be exempt from tax.

19.8 Your IFISA will be valued for probate as at the date of death and dealt with as instructed by your executors. We may require a grant of probate or letters of administration before releasing any money in your IFISA to your executors.

19.9 We will support the setting up of an IFISA based on Additional Permitted Subscriptions ('APS') for your spouse.

19.10 If we receive notification of your bankruptcy, we will close your IFISA Account and any investments and money credited to your account will be transferred to your Standard Account. In the event of your bankruptcy, ISA tax exemptions will no longer apply from the date on which a trustee is appointed.

## 20. TERMINATION OF MEMBERSHIP

20.1 A Lending Member may terminate its Lending Membership with immediate effect by sending us written notice of termination.

20.2 We may terminate a Lending Membership at any time and for any reason with immediate effect by sending written notice of termination to the Lending Member. In both cases, complete termination will only be possible if that Member in question does not have any current Loans outstanding.

20.3 Termination of Lending Membership will not affect any outstanding Loans. If a Lending Member has outstanding Loans at the time Membership is terminated, access to the Website will be limited so that no new Bids can be made and only management of existing Loans is possible.

**21. LIABILITY**

- 21.1 Neither CapitalStackers, nor Goji provide any investment advice and nothing appearing on the Website is intended to constitute advice or a recommendation to enter into a Loan.
- 21.2 Lending Members are responsible for obtaining their own independent financial advice before making any lending decisions.
- 21.3 Neither we nor the Trustee or Goji will be liable to any Lending Member for any loss or damage which it may suffer as a result of being a Lending Member or using the Website, except where such loss or damage was caused by our gross negligence or wilful misconduct. In any event, our entire financial liability to you (howsoever arising) as a result of or in connection with your Lending Membership, shall be limited to the loss of funds belonging to you whilst they are under our control and specifically excluding any period when they have been loaned to a Borrower.

**22. COMPLAINTS PROCEDURE**

- 22.1 We and Goji have established procedures in accordance with the FCA rules for the effective consideration of complaints.
- 22.2 If a Lending Member has a complaint, it should be communicated to the Managing Director of CapitalStackers by email at [complaints@capitalstackers.com](mailto:complaints@capitalstackers.com). We will refer complaints relating to Goji to them on your behalf.
- 22.3 One or more officers of CapitalStackers will investigate the complaint and recommend appropriate actions to address or resolve the problem within 28 days.
- 22.4 In the event that the proposed resolution is not acceptable to the complainant, the Hallidays directors will be asked to decide on the appropriate action and their decision shall be final.
- 22.5 If you remain unsatisfied with the outcome of a complaint handled by us or Goji, you can write to the Financial Ombudsman Service at South Quay Plaza, 183 Marsh Wall, London E14 9SR. Telephone 0800 0234567 or email [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk).
- 22.6 If the bank with which your Platform Account is held becomes insolvent, this will not be our or the Custodian's responsibility. The maximum compensation available from the Financial Services Compensation Scheme (FSCS) in respect of money held in a bank account is £85,000.
- 22.7 If we or the Custodian become insolvent and owe you money in respect of the regulated services we have provided to you at the time of our insolvency, you may be entitled to compensation from the FSCS, up to a maximum of £85,000. For more information you can contact the FSCS in writing at 7th Floor, Lloyds Chambers, Portsoken Street, London, E1 8BN by telephone on 0800 678 1100, by email to [enquiries@fscs.org.uk](mailto:enquiries@fscs.org.uk) or by going to [www.fscs.org.uk](http://www.fscs.org.uk).

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

- 23.1 We will only use your personal information in accordance with our [Privacy Policy](#). In connection with your lending 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.

**24. GENERAL TERMS**

- 24.1 The information provided on the Website is directed solely at and is for the use solely by persons and organisations that meet the criteria set out at paragraph 3 above and the equivalent criteria set out in the Terms and Conditions applying to prospective Borrowers.
- 24.2 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.
- 24.3 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.



- 24.4 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.
- 24.5 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.
- 24.6 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.
- 24.7 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.

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

- 25.1 We may update or amend these Terms and Conditions and/or the Loan 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, you agree to be bound by these Terms and Conditions as updated or amended from time to time.
- 25.2 The date upon which these Terms and Conditions were last updated or amended will be set out at the beginning hereof.

## 26. **OTHER IMPORTANT TERMS**

- 26.1 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.
- 26.2 All disclaimers, indemnities and exclusions in these Terms and Conditions shall survive termination of the Agreement between us for any reason.
- 26.3 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.
- 26.4 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.
- 26.5 Other than Goji, which is a party to these Terms and Conditions in respect of the specific provisions that relate to it, no other person shall be entitled to exercise rights under these Terms and Conditions under the Contracts (Rights of Third Parties) Act 1999.
- 26.6 By accepting these Terms & Conditions you also agree to:
- 26.6.1 Modulr's terms which are attached to this agreement; and
- 26.6.2 the use of your personal data by Goji and Modulr as set out in the [Goji Privacy Policy](#).
- 26.7 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.