

STANDARD TERMS AND CONDITIONS
2000 Edition

1. INTERPRETATION

1.1 Definitions

“Authorised Signatories” means the authorised signatories of Client as set out in the Business Service Application Form

“Banking Day” means a day on which banks and other financial institutions are open for business for foreign exchange

“Business Service Application Form” means the Business Service Application Form signed by Intellex and Client

“Client” means the Client or its authorised agent who receives the Services

“Conditions” means these standard terms and conditions or such other replacement standard terms and conditions that are notified by Intellex to Client from time to time

“Contract” means each FX Transaction incorporating the Business Service Application Form, these Conditions and any special terms and conditions agreed in writing between Client and Intellex.

“Foreign Liability” means a liability to pay a debt expressed in a foreign currency

“FX Gains” means the foreign exchange gains (if any) arising from a FX Transaction in respect of GBP Liability calculated by Intellex taking into account the reduction of gains by currency transaction charges

“FX Transaction” means the particular individual transaction for the supply of the Services

“FX Transaction Date” means the date on which Client instructs Intellex to carry out the FX Transaction

“GBP Liability” means a liability to pay a debt expressed in pounds sterling but payable in a foreign currency

“Nominated Bank Account” means such bank account as shall be notified by Intellex to Client from time to time

“Intellex” means Intellex plc

“Service” means the X-Border Payment [Solution/ Service], which shall have the meaning set out in clause 2.

1.2 Interpretation

The headings of these Conditions are for convenience only and shall not affect the interpretation of these Conditions

2. THE SERVICE

2.1 These Conditions are for use where Client has either a GBP Liability or a Foreign Liability. Upon Client performing its obligations pursuant to clause 6, Intellex shall buy foreign currency to the value of the GBP Liability or Foreign Liability, as appropriate, and shall transmit the foreign currency to a named beneficiary in accordance with Client’s instructions and these Conditions.

2.2 Intellex shall exercise all due care and skill in performing the Service. Intellex shall purchase the required currency from various bank and currency brokerages which Intellex has selected with reasonable care.

2.3 Any conversions from one currency or another required for the purpose of performing the FX Transaction shall be effected by Intellex by reference to the then current market rate in such a manner as Intellex shall think fit and shall be conclusively binding on Client in all respects.

2.4 Client hereby agrees to Intellex transmitting funds to the instructed beneficiary at the rate determined by Intellex. Intellex responsibility is limited to delivering a draft or transmitting telegraphic transfer instructions through financial institutions, including correspondents and agents, in accordance with the order as acknowledged by Intellex. Intellex cannot and does not guarantee payment to the beneficiary after the payment has left Intellex’ control.

3. FX GAINS

In consideration of Client entering into a Contract with Intellex, Intellex hereby agrees to pay Client fifty percent [50%] of any FX Gain.

4. ACKNOWLEDGEMENTS AND REPRESENTATIONS

4.1 Any information provided by Intellex concerning Intellex and/or the Service is provided in good faith. In particular, Intellex does not guarantee any FX Gain. Neither does Intellex hold itself out as offering any foreign exchange investment advice.

4.2 Client acknowledges and agrees that it enters into all FX Transactions at its own risk and that it has not relied upon any advice from Intellex.

4.3 Client acknowledges that it has not relied upon any oral or written representations made by or on behalf of Intellex save as set forth in writing and expressly included in the Contract and waives any claim for any breach of any representations which are not so incorporated, unless fraudulent.

4.4 Client warrants that the representations made in the Business Service Application Form and in these Conditions (hereafter referred to as “the Representations”) are true. Client shall be under a duty to maintain procedures to ensure compliance with the representations and to notify Intellex of any change in circumstances as soon as possible.

4.5 **Client** represents that it shall use the Service to perform part of its normal business activities and only in connection with legal, bona fide transactions conducted on an arms length basis. **Client** further represents that these activities do not include speculation, investment or any activities that could be construed as being illegal under English law

4.6 **Client** agrees to fully indemnify **Intellex** in respect of all losses, claims, fines, costs or expenses suffered or incurred by **Intellex** arising out of or in connection with **Intellex** performing its obligations under the Contract in reliance of the Representations which are untrue.

5. AUTHORITY

5.1 **Intellex** shall only be obliged to act on the instructions of or to negotiate variations to the Contract with an Authorised Signatory. In the event that **Client** wishes to replace an Authorised Signatory or appoint another Authorised Signatory it shall notify **Intellex** in writing and provide **Intellex** with a specimen signature of the replacement or additional Authorised Signatory.

5.2 **Client** hereby authorises **Intellex** to act in accordance with all instructions that **Intellex** may receive from time to time which in the opinion of **Intellex** purports to be from an Authorised Signatory.

5.3 **Client** agrees to fully indemnify **Intellex** in respect of all losses, claims, costs or expenses suffered or incurred by **Intellex** arising out of or in connection with **Intellex** acting in accordance with any instructions which (in the opinion of **Intellex**) purport to be or are from the **Client**, where it is subsequently alleged that such instructions have been given to **Intellex** without due authorisation.

6. CLIENT OBLIGATIONS

6.1 **Client** shall wherever possible notify **Intellex** in advance of its provisional requirements for the Service.

6.2 **Client** shall provide details of the amount of the GBP Liability or Foreign Liability, as applicable, the FX Transaction Date (which must be on a Banking Day), the foreign currency to be purchased and the name of the beneficiary and the beneficiary's bank account.

6.3 **Client** shall confirm an order for the Service and the details set out in clause 16.2 above, not later than the day before the FX Transaction Date

6.4 **Client** shall deliver to or for the credit of **Intellex** Nominated Bank Account, payment in accordance with clause 7.

7. PAYMENT

7.1 **Intellex** shall be entitled to submit an invoice or, in the event of orders being placed and there being insufficient time for **Intellex** to issue an invoice, a request for payment, to **Client** at any time after receipt of the confirmed order. The amount of the invoice shall be calculated in pounds sterling as follows:

7.1.1 GBP Liability - the amount shall be equal to the GBP Liability

7.1.2 Foreign Liability - subject to the proviso in sub-clauses (a) and (b) below, the amount shall be an amount equivalent to the Foreign Liability, based on indication rates of exchange

(a) if at the time the transaction is entered into, the actual value of the Foreign Liability is greater than the amount of the invoice by an amount not exceeding 1%, **Client** hereby authorises **Intellex** to collect the balance by Direct Debit

(b) if at the time the transaction is entered into, the actual value of the Foreign Liability is greater than the amount of the invoice by an amount exceeding 1%, and **Client** having been notified of this fact by **Intellex** instructs **Intellex** to proceed with the FX Transaction, **Client** hereby authorises **Intellex** to collect the balance by Direct Debit

7.2 **Client** shall pay the invoice or request for payment on **and not before** the FX Transaction Date by cleared funds, such funds to be received in **Intellex** Nominated Bank Account by one o'clock in the afternoon on the FX Transaction Date. Unless otherwise agreed, payment shall be made in pounds sterling. **Intellex** shall accept payment of the invoice or request for payment by CHAPS, Direct Debit or such other method that **Intellex** may notify to **Client**.

8. FORMATION OF THE CONTRACT

8.1 **Paysys** is prepared to receive **Client**'s provisional and confirmed order by:-

8.1.1 letter or facsimile; or

8.1.2 electronic data, including e-mail, Internet communication and file transfer; or

8.1.3 telephone provided that where **Client** confirms an order by telephone that **Client** re-confirms the order by letter or facsimile

8.2 A Contract shall not be binding unless and until an order by **Client** is accepted and acknowledged by **Intellex** and payment is received in accordance with clause 7.2.

8.3 **Intellex** shall be deemed to have acknowledged **Client**'s order when it issues an invoice or request for payment

8.4 **Client** shall be responsible for verifying that the details contained in the invoice or request for payment are correct and shall immediately notify **Intellex** of any errors

8.5 **Intellex** shall not be liable for any loss or damage, costs or expenses suffered or incurred by **Client** due to **Intellex** non-performance of an order or incorrect performance of a Contract which results from any error or omission by **Client** in connection with the placing of the order or in the wording of the order, a failure in transmission of the order, any error or omission of **Client** in transmitting payment, or a failure in transmission of the payment.

9. CANCELLATION

9.1 **Client** may cancel an order at any time prior to the FX Transaction Date, without incurring any charges payable to **Intellex**.

9.2 If **Client** cancels an order on the FX Transaction Date, **Intellex** shall use its reasonable endeavours to stop the transaction but **Client** shall be responsible for any reasonable costs, expenses or charges suffered or incurred by **Intellex** or a third party, including the cost of reimbursing **Client** for any payment received pursuant to clause 7 and any foreign exchange charges.

10. NON-PERFORMANCE OR DELAY IN PERFORMANCE

10.1 For the purpose of this clause "Force Majeure" shall mean any event or circumstance beyond the reasonable control of either party and shall include natural physical disasters, legislation of any Government, (including orders or restrictions and legislation orders or restrictions of the European Union), industrial action or terrorism.

10.2 If **Intellex** is prevented from or delayed by reason of Force Majeure from performing its obligations under a Contract or is otherwise prevented either because it becomes unlawful or impossible or in the good faith judgment of **Intellex** may become unlawful or impossible for **Intellex** to perform its obligations, then **Intellex** may by notice to **Client**, and without liability to **Client** for such failure or delay, suspend or terminate the Contract.

10.3 In the event of **Intellex**:-

10.3.1 exercising its rights pursuant to clause 10.2 above; or

10.3.2 being unable to carry out a FX Transaction, for any other reason, howsoever caused on the FX Transaction Date;

Intellex shall return to **Client** any payment received pursuant to clause 7 [together with any reasonable bank charge **Client** has suffered in transmitting such to **Intellex**]

11. LIABILITY

11.1 The following provisions set out **Intellex** entire liability to **Client** under a Contract

11.2 In the event of a failure by **Intellex** to perform its obligations under a Contract or the sole negligence of **Intellex**, **Intellex** shall at its own expense correct any errors in the performance of its obligations by making corrections or re-transmitting the effected transaction at no additional cost to **Client**.

11.3 **Intellex** shall in no circumstances be liable to **Client** by reason of any representation (unless fraudulent) or any implied warranty condition or other term, or any duty at common law or under the express terms of the Contract for any fines, loss of business or anticipated profits or turnover, loss of goodwill or reputation, indirect or consequential loss (whether caused by the negligence of either Party, their employees or agents) which arises out of or in connection with the supply of the Service under a Contract.

11.4 Subject to clauses 11.1, 11.2 and 11.3 above, the entire liability of **Intellex** under or in connection with a Contract shall in any event be limited to the foreign currency value of each order at the FX Transaction Date plus the sterling value of **Intellex** fees and charges.

11.5 Notwithstanding anything to the contrary in these Conditions, the exclusion of liability referred to in this clause 11 does not apply so as to exclude or restrict **Intellex** liability for death or personal injury resulting from the negligence of **Intellex**, its sub-contractors or agents.

12. ASSIGNMENT

Client may not assign, transfer or charge or purport to assign, transfer or charge its rights or obligations under the Contract or any interest herein without the prior written consent of **Intellex**.

13. SEVERABILITY

If any provision of these Conditions is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall remain in full force and effect.

14. ADVERTISEMENT

Client shall not advertise or promote the Services without the prior written approval of **Intellex**.

15. GENERAL

15.1 The relationship between the parties will be that of **Client** and Service Provider. Nothing in these Conditions or in any Contract shall be deemed to constitute a partnership between any of the parties.

15.2 Every Contract shall be governed in all respects by these Conditions, unless otherwise expressly agreed in writing by **Client** and **Intellex**. The Contract supersedes all prior communications and arrangements or understandings whether oral or written between the parties.

15.3 The rights and remedies contained in these Conditions are cumulative and not exclusive of any rights or remedies provided by law or in equity unless expressly stated to be otherwise.

16. CHOICE OF LAW AND JURISDICTION

Every Contract to which these Conditions apply shall be construed and take effect in accordance with the laws of England and the parties shall accept the non-exclusive jurisdiction of the English courts.