



# damex.io

September 2022

## **Damex.io UAB Retail Application**

### **TERMS AND CONDITIONS**

Version 1.0

Last updated: 27th September 2022

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These terms and conditions govern the relationship between you and your use of the Damex application. These terms and conditions set out the rights and obligations, as well as risk notices, of your use of Damex's application utility which include but are not limited to digital asset receipt, withdrawal and exchange as well as fiat receipt, exchange and spending either digitally or using the Damex debit card.

If you are resident in the United Kingdom or the European Economic Area, services and products relating to Digital Assets within the Damex.io application are subject to services being provided by Damex.io UAB and the terms of such a relationship are set out below.

If you are resident in Gibraltar or the United Kingdom, services and products relating to fiat within the Damex.io application are subject to services to be provided by Damex.io via Digital Asset Management Limited, a company registered in Gibraltar with incorporation number 116618 and registered address at Suite 1, Burns House, 19 Town Range, Gibraltar as a distributor of a registered electronic money institution provider, Modulr FS Limited ("Modulr"). Digital Asset Management Limited is registered with the Gibraltar Financial Services Commission as an agent of Modulr FS Limited.

If you are resident in the European Economic Area, services and products relating to fiat within the Damex.io application are subject to services being provided by Damex.io UAB as a distributor of a registered electronic money institution provider to be confirmed prior to provision of these services.

These terms and conditions relate to your use of the Damex application in its test environment which is intended to operate for a limited period and have limited utility. The test environment is effectively a minimum viable product version of the Damex application to enable Damex to test various aspects of the application. As a result you agree to these terms and conditions as a test user and the specific provisions in relation to the Test Environment as set out herein.

PLEASE READ THESE TERMS AND CONDITIONS (THE “**TERMS**”) CAREFULLY AND THOROUGHLY. IT IS ESSENTIAL THAT YOU UNDERSTAND THESE TERMS PRIOR TO ACCESSING OR USING OUR SERVICES (AS DEFINED HEREIN). WHEN INSTALLING THE APP, YOU ARE INVITED TO AGREE WITH THESE TERMS. BY CLICKING ACCEPT, OR BY ACCESSING OR USING OUR SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS IN THEIR ENTIRETY AND ALL TERMS INCORPORATED BY REFERENCE.

DAMEX DOES NOT PROVIDE ADVICE ON THE LEGAL IMPLICATIONS OF ACCEPTING THESE TERMS.

## **DIGITAL ASSET TERMS AND CONDITIONS**

### **THE COMPANY**

1. Damex.io UAB (referred to as “Damex”, “Damex.io”, “us”, “we”, “our” or “ourselves”) is incorporated in Lithuania, registered number 306148560 and has its registered office at Žygimanto Liauksmo g. 3, Vilnius, Lithuania.

### **RISK WARNING**

2. Purchasing and investing in Digital Assets is a high-risk activity which incurs risks which are not inherent in managing traditional financial instruments and other assets. The value of Digital Assets can be subject to aggressive volatility and previous performance of Digital Assets valued against other Digital Assets or fiat currencies is not indicative of future performance.
3. Please refer to our Risk Notice document included on our website <https://www.damex.io/web/risk-notice> . Our Risk Notice is updated from time to time for your benefit.
4. By using the App and our Services, you acknowledge and agree that:
  - (a) You are aware of the risks associated with transacting in Digital Assets;
  - (b) You assume all risks with respect to your use of the Services; and
  - (c) Damex is not responsible for or liable for any such risks or adverse outcomes.

### **DEFINITIONS**

6. For the purpose of these Terms, the capitalised terms are defined in Schedule 1.

### **MODIFICATION OF TERMS**

7. We reserve the right to alter these Terms and any other documents relevant to the Services we offer at any time. Damex will provide you with notice of changes to these Terms by publishing the updated Terms on the App and Website and changing the “Last updated” date above. It remains your responsibility to refer to and read these Terms from time to time.
8. You shall accept any amendment before being able to continue using the App. Your continuous use of the App and/or any Order placed after the amendment will require prior acceptance of the amended Terms.

## **TERMS**

### Legal agreement

9. Upon download of the App from the Google Play Store or the Apple Store, you are invited to agree to these Terms, the Privacy Policy before completing the registration process.
10. When you click on “I agree to the Terms and Conditions, and I have read the Privacy Policy” or similar prompt when registering a User Account:
  - (a) These Terms become a legally binding agreement between you and Damex and any third parties referred to herein, including but not limited to Digital Asset Management Limited and Modulr FS Limited.
  - (b) You confirm that your knowledge of English is sufficient to understand the meaning of the Terms, the Privacy Policy and the Risk Notice. You hereby consent that you will not hold Damex liable for any losses or damages resulting from a misunderstanding of the Terms, the Privacy Policy and/or the Risk Notice originating in your linguistic limitations of the English language.
  - (c) By subsequently using the App and benefitting from the Services, you further acknowledge that you have read, understood and agree to be bound by and comply with these Terms, the Privacy Policy and the Risk Notice in their latest version, as they may be amended from time to time by Damex, as well as with all applicable laws and regulations. If you do not agree with these Terms, the Privacy Policy and/or the Risk Notice you should refrain from using the App and/or benefitting from the Services.
11. By registering as a User, you represent and warrant that:
  - (a) you have read, understood and accept these Terms, the Privacy Policy and the Risk Notice;
  - (b) you are 18 years of age or older or have the legal capacity to enter legally binding agreements under applicable laws. Misrepresentation of your age to gain access to the App and the Services is a breach of these Terms;
  - (c) registering as a User, using the App and benefitting from the Services are not actions prohibited or otherwise in violation of the laws and regulations of the country, state, province, or other jurisdiction in which you reside or of which you are a citizen, and that your dealing will comply with all relevant laws and regulations affecting you. You agree to cease using the App and the Services should these actions become prohibited or otherwise in violation of the laws and regulations after your registration as a User; and
  - (d) you are not using the App on behalf of any third party.

12. You may not use the App or the Services to engage in the following categories of activity (“**Prohibited Uses**”). The specific types of use below are representative, but not exhaustive. If you are uncertain as to whether your use of our Services involves a Prohibited Use, or have questions about how these requirements apply to you, please contact our team. By agreeing to these Terms you agree that you will not use your User Account to do any of the following:
- a. *Unlawful Activity* - Activity which would violate, or assist in violation of, any law, statute, ordinance, or regulation, sanctions programs or which would involve proceeds of any lawful activity; publish, distribute or disseminate any unlawful material or information. This includes market abuse activity and market manipulation;
  - b. *Abusive Activity* - Actions which impose an unreasonable or disproportionately large load on our infrastructure, or detrimentally interfere with, intercept or expropriate any system or information; transmit or upload any material to Damex that contains viruses, worms or any other harmful or deleterious programs; attempt to gain unauthorised access to Damex systems; or transfer your account or rights to a third party, unless by operation of law or with the express permission of Damex;
  - c. *Fraud* - activity which operates to defraud Damex, Damex clients, or any other person; provide any false, inaccurate, or misleading information to Damex.

### Scope

13. These Terms govern your access to and the use of the App and of the Services.
14. You understand that any documentation and publication made available on the App, as well as any notifications made on or through the App or on or through the Website with regards to the Services provided by Damex are also binding with regards to your activity on the App.
15. The Personal Data collected on or through the App that we may need to process to provide you with our Services shall be processed in accordance with our Privacy Policy, which can be found on the App, on our website <https://www.damex.io/privacy> and also from us directly by emailing [info@damex.io](mailto:info@damex.io), and in observance with any rule, law, and regulation as may be applicable to us from time to time when carrying out such processing. Our Privacy Policy is updated from time to time for your benefit.
16. You agree that we may also use this information within Damex for marketing purposes. If you do not wish to receive marketing information or if your details change, please notify us in writing.
17. In case of any discrepancy between the Terms, the Privacy Policy and/or the Risk Notice, the Terms shall prevail over all other documents related thereto.

## **USER ACCOUNT**

### Registration & Verification

18. You will need to register as a User in order to access the App and benefit from the Services. Once you have successfully finished the onboarding process, you become a User and gain access to the App and the Services.

19. As part of the onboarding process, you will be required to provide us with the following Personal Data:

- (a) Valid email address;
  - (b) Full legal name;
  - (c) Date of birth;
  - (d) Valid current residential address;
  - (e) Valid mobile phone number.
- (f) Through the registration process, or later, you agree to share certain information and documentation requested and you authorise Damex to use any Personal Data or other information for the purposes of identity verification and other screening procedures (including any updated personal information). If you fail to reply promptly to any request from us, or if your responses are unsatisfactory, we may close or suspend your User Account and/or you may be unable to use App and the Services.
- (g) You authorise Damex, or a third-party service provider, to take any measures deemed necessary to verify and authenticate your identity, confirm the information you submit and to take any action we deem necessary based on the results of our investigations.
- (h) If you provide any information that is, or that we have reasonable grounds to suspect to be inaccurate, misleading, outdated or incomplete, we reserve the right to, in our sole and absolute discretion, but subject to applicable laws, block access to or to suspend, close or terminate your User Account, refuse to let you purchase or withdraw Assets, and freeze Assets or your User Account, at any time, with or without advance notice. The same measures can be undertaken should you fail to notify Damex of changes to your Personal Data promptly.
- (i) To the fullest extent permitted by law, we shall not be liable to make any compensation, monetary or otherwise, following such suspension, freeze, termination or inability to use your User Account.
- (j) You are responsible for any fees that we incur with respect to your User Account as a result of any of the foregoing. Such fees will be charged as Service Fees.
- (k) By registering on the App, you hereby agree to:
- (i) provide true, accurate and complete information when opening a User Account;
  - (ii) maintain and promptly update the information you have provided to ensure it remains true, accurate, actual and complete at all times whilst you are a User.
  - (iii) maintain the security and confidentiality of your User Account by protecting your login credentials from unauthorised access or use;
  - (iv) promptly notify Damex if you discover or suspect any unauthorised access or use of your User Account or any security breaches related to your User Account;
  - (v) be fully responsible for all activities that occur under your User Account and for any action that takes place through your User Account, and accept all risks of any authorised or unauthorised access to your User Account;
  - (vi) not impersonate anybody by opening a false User Account;

- (vii) not exploit the App, any of Damex's servers or any other vulnerabilities relating to the App that may result in the extraction of value directly from Damex, any User or any of Damex's associated third parties; and
- (viii) not use robots, scrapers or other tools to open a User Account or extract Personal Data or information from the App.

#### Registration Refusal

- (l) Damex reserves the right to reject any registration and to refuse Services to anyone for any reason, at its sole and absolute discretion, and without any obligation to indemnify the concerned person or User.
25. In the event that Damex does not accept you as a User and/or should you fail to provide the information required by Damex to onboard you as a User, the Assets sent to your Wallet(s) or Account(s) will be sent back to the Bank Account or the public address from which they originate or in the case this address does not support funds back, a new one given by the User. All fees applicable to such transfer (including but not limited to Service Fees, bank fees for Fiat Assets or Network Fees for Digital Assets) will be charged to you as a liability towards Damex which will be set-off and withdrawn from your Assets.

#### Account Access

26. In order to log into your User Account, you will be required to enter your login ID and password and comply with such other security procedures as we may implement from time to time such as, without limitation, 2FA.
27. You hereby agree to consider your access credentials as confidential information on any electronic device you use, and you understand to not disclose such information to any third party.
28. You are responsible for all transactions on your account where the correct security information has been provided, notwithstanding that such activities were not authorised by you.
29. You are solely responsible for maintaining the security and confidentiality of your login credentials, and 2FA. You agree to notify us immediately of any unauthorised use of your login credentials as well as of any other breach of security.
30. You can use your User Account on multiple electronic devices. It is therefore your sole responsibility to ensure that all the electronic devices used are properly secured and that unauthorised access to the App is not permitted. Any unauthorised access to the App on any electronic device by third parties could result in the loss or theft of Assets held in your Wallet(s), including but not limited to your linked Bank Account(s). You hereby indemnify and hold us harmless against all costs, claims, expenses and damages arising in connection with the use or access to your User Account by or with any third party.
31. You may not transfer, lease, licence, assign or sell your User Account (or any use thereof) to a third party without the consent of Damex. If, as permitted by Damex, you grant express permission to a third party to access or connect to your User Account, you acknowledge and agree that granting such permission to a third party to take specific actions on your behalf does not relieve you of any of your responsibilities under these Terms. Any action of such third party shall be considered to be an action

authorised by you. Further, you acknowledge and agree that you will not hold Damex responsible for, and will indemnify Damex from, any liability arising out of or related to any act or omission of any third party.

32. To the fullest extent permitted by applicable law, we will not be liable for any loss that you may incur as a result of a third party accessing your User Account, either with or without your knowledge. Damex disclaims any and all liability arising from fraudulent entry and use of your User Account and/or the Services. Damex will take such action as we determine warranted, including without limitation, terminating your access, freezing your User Account, closing the User Account, and taking all necessary and appropriate actions under applicable laws, should a third party fraudulently obtain access to your User Account.

#### Types of Account

33. Upon registration, the User holds by default a standard account.

#### Closing a User Account

34. You may close your User Account by providing written notice to Damex, and upon receipt of such notice, a hold will be placed on your User Account to allow any then pending transactions to clear. After notifying us of your desire to close your User Account, we may terminate your ability to transact in your User Account and only permit you to request a withdrawal in respect of the remaining available Assets associated with your User Account. Closing your User Account will not affect any rights and obligations incurred prior to the date of User Account closure. All Assets must be withdrawn before the closing of your User Account will be finalised.

### **SERVICES**

#### Commencement

35. This agreement will commence on the date that you accept the Terms when registering as a User on the App. Please note that Damex has the right to withhold Services subject to required documentation being provided by you in respect of its due diligence processes.

#### Communication

36. This agreement is in English and all future communications will also be in English. We may, where you have opted to receive it, communicate with you via email or other electronic means in relation to matters arising under these Terms.



## Fiat Services

37. By agreeing to these Terms when registering a User Account through our App, you agree to the agreement with Digital Asset Management Limited and Modulr including the Modulr Fiat Payment Terms, the Modulr Client Terms of Business, and the Modulr Account Terms and Conditions set out in Schedule 2.

## Digital Asset Custodian

38. Damex will act as Digital Asset Custodian of your Digital Assets subject to the following for the provision of Services in relation to holding, transacting and storing the Digital Assets in relation to the transactions that we undertake for you on these Terms ("**Digital Asset Custodian**"). Should we no longer choose to act on your behalf as custodian of Digital Assets, we may enter into an agreement with other legal entities to act as a Digital Asset Custodian and you will thereafter have a legally binding agreement with any future possible custodian. You will be notified prior to us outsourcing any aspects of our custodianship services.
39. Through the App, we allow you to place Digital Assets with us as Digital Asset Custodian. The Digital Assets shall appear on your Digital Assets Wallet within your User Account.

## Withdrawals and Deposits

40. You may withdraw Assets that are available on your Account by submitting a request through the App. As part of the request to Withdraw you will be prompted to provide us with any such information as we may need in order to fulfil the specific request to Withdraw including, amongst other things:
- (a) the relevant type of Assets that you intend to Withdraw;
  - (b) the specific amount to be Withdraw;
  - (c) the cryptocurrency address to which you intend to send the withdrawn value in Digital Assets or Bank Account details to which you intend to send the withdrawn value in Fiat Assets; and
  - (d) any such other information as we may need from time to time in order to provide you with this Service.
41. As part of our Wallet services we provide you with dedicated wallet addresses for depositing Digital Assets and account details for depositing Fiat Assets ("**Deposit**") that you intend to hold in your User Account on the App. Assets will be automatically credited to your User Account and displayed under the relevant Wallet on the App upon receipt, subject to the AML Requirements.
42. You acknowledge and agree that we may hold all Assets received from our Users in an omnibus wallet or account owned by us and that we shall, in our sole and absolute discretion, determine how, where, and the manner in which Assets deposited by you and other Users is held.
43. You agree that all of the information and data provided by you in respect of any Withdrawals or Deposits is correct and accurate and that you will hold Damex harmless and free from any liability in relation to any incorrect information or data entered on your User Account. Further or alternatively you also agree that wallet address details you have entered and provided are correct and appropriate for the given digital asset selected and that Damex will not be held responsible for any incorrect

information and/or data provided by you should you provide wallet information relating to a blockchain or distributed ledger not supported by the App. You also agree to Damex's [Risk Notice](#) and acknowledge, without limitation, that assets sent to an incorrect address or on the wrong blockchain are not recoverable.

### Transaction Price

44. The Transaction Price for the Execution of each Order shall be disclosed to the User prior to execution. The Transaction Price quoted to the User shall be valid for a limited period of time as indicated in the App. The Transaction Price will also give a clear indication and breakdown of the Transaction Fee related to the Execution of each Order. By accepting these Terms, you hereby agree to instruct and to authorise Damex to solicit the Market Prices available on the App in order to calculate a Transaction Price before allowing the User to instruct the Execution of the Order.
45. The calculation of the Transaction Price is based on the Market Price displayed by Damex. All information on which the Transaction Price is based, including the Market Prices are provided by the Application Programming Interface (the "API") of Exchanges that Damex may use. Damex has no influence on this information and does not assume any responsibility for the accuracy or completeness thereof. Damex is not responsible and will not be held responsible by you for any false or misleading information presented on the App which arises from the direct or indirect responsibility of the Exchanges except to where such information is as a result of the negligence or wilful misconduct by Damex.

### Network Fees

46. We may charge Network Fees to process Digital Asset transactions on your behalf. We will calculate the Network Fees at our discretion, although we will notify you of the Network Fees prior to executing any Order.
47. Particularly during periods of high volume, illiquidity, fast movement or volatility in the Exchange of the Assets, the Network Fee at which an Order is Executed may be different from the prevailing Network Fee indicated by the App at the time of your Order.
48. If there's a significant increase or a decrease in the Network Fees that are subject to the Order, which would have an effect on the Transaction Price, the Transaction will be Executed provided that the percentage margin of the increase or decrease of the Transaction Price shall not exceed the safety threshold defined by Damex of the price at the time when the Order was made by you. If the change in the Transaction Price is higher than the threshold margin defined by Damex at its sole discretion, the transaction will likely be cancelled and not be processed and in such an event you shall be informed that the Transaction was not Executed on your screen.
49. At this point, we do not accept any returns or give Refunds for your purchase of Digital Assets, except as otherwise provided in these Terms. You will not hold Damex liable for any damages and losses which result from the change in Market Price.

### Order Execution

50. Should you wish to proceed with an Execution of an Order following the display of a Market Price to you in the App you shall click “Confirm” or similar prompt. By clicking such a prompt you instruct and give Order to Damex to use the Fiat Assets and/or Digital Assets in your Wallet to Execute the Order on your behalf. You are aware and agree that Damex merely Executes the Order and is under no obligation to verify whether the Order is adequate and appropriate.
51. When Damex Executes a Transaction based on your Orders we are not able to assess whether the Transactions you make are compatible with your necessities, and therefore, you are responsible for your use of the Assets in your User Account.
52. An Order placed through the App will be Executed, and the Transaction will appear in our User Account, under the concerned Wallet.
53. The User is solely responsible for determining whether any Transaction or Order placed through the App is appropriate, suitable, adapted to his/her financial situation, personal objectives, financial circumstances, and risk tolerance. The User should consult a legal, financial or tax professional regarding his/her specific situation before placing an Order through the App.
54. Should a User have an insufficient amount of Assets in their User Account to Execute an Order, the Transaction will be cancelled.

#### Fees

55. Outgoing Transactions from your User Account to another Damex User Account are not subject to any processing fee. Outgoing Transactions from your User Account to an address or Bank Account outside Damex are subject to a processing fee. For a complete overview of our services and the applicable fees please refer to <https://assets.damex.io/fees> .
56. Any and all Transaction Fees resulting from the exchange and/or Withdrawal from the User Account are clearly displayed amongst the transaction details prior to the Execution of an Order.
57. By clicking “Confirm” or similar prompt, you are giving your consent for Transaction Fees to be deducted by Damex for the Execution of an Order.
58. Damex may modify the Transaction Fees at any time, as displayed within the App and/or the Website, without prior notice to you.

#### Order Cancellation and Refunds

59. Once an Order has been placed through the App and subsequently Executed, the User is not entitled to cancellations or Refunds. However, Damex reserves the right, at its sole discretion, to provide User(s) with refunds or permit cancellations.
60. Orders may be cancelled, interrupted, disrupted and/or prevented from being Executed if instructed to do so by a relevant authority that a Transaction is being made with the intention to circumvent Anti-Money Laundering Legislation.

61. Distributed ledger technology does not allow for the reversal, deletion, removal or amendment of any Transactions which will be recorded. You understand and accept that any Transactions involving Digital Assets are not reversible.

### Statistics

62. To provide you with a better understanding of your Assets, Withdrawals, profit/loss and the Transaction Fees which are or may be charged, you will be provided with statistics in your User Account. These statistics are provided for information purposes only and Damex may discontinue showing such information at any time without notice.
63. We make no warranties, express or implied, or representations to the accuracy, completeness or the reliability of content of such information provided. We assume no liability or responsibility for any error or omissions in the information contained therein.
64. Any advertising material (including social media posts, video content, articles, blog posts, and any further content produced by Damex) is purely informative and shall not serve as investment advice, marketing of financial products or as personal recommendations to you.

### Statement of Account

65. A statement of your User Account may be accessed in electronic format for viewing within the App. Damex uses commercially reasonable efforts to ensure such information contained in your User Account statements is accurate and reliable; however, errors may occur.
66. If you believe that your statement of your User Account contains any errors, please contact us immediately of such error at [support@damex.io](mailto:support@damex.io).

### Negative Balance

67. You undertake to always have a zero or positive balance in your User Account. If for any reason your User Account goes into a negative balance, you agree to repay the negative balance immediately without any notice from us by adding funds to your User Account. Your failure to do so shall constitute a breach of these Terms.
68. You authorise Damex, in its sole discretion, to debit your other payment methods that you have made available to us, including from other balances held in your User Account or other linked accounts, in any amount necessary to remedy a negative balance.
69. Without prejudice to our right to set-off in these Terms, if you fail to remedy a negative balance we may block your User Account and suspend your access to and/or use of our Services, send you reminders or take such other reasonable actions to recover the negative balance from you, for example, we may use our right to set-off, a debt collection service or take further legal action. We will charge you for any costs we may incur as a result of these additional collection efforts.

## INTELLECTUAL PROPERTY

### Ownership of Intellectual Property Rights

70. Damex retains all right, title and interest in all Intellectual Property Rights in and to the App, the material published on the App, and/or the Services.
71. The trademarks used on the App are the property of Damex and its licensors. The trademarks should not be copied, reproduced, modified, republished, uploaded, posted, transmitted, scraped, collected or distributed in any form or by any means, whether manual or automated. The use of any trademarks without our express consent in writing is strictly prohibited.
72. All information and opinions on the App are protected by copyright and other intellectual property laws. They may be displayed and printed for your personal non-commercial use only. You agree not to reproduce, transmit or distribute them to anyone (including, but not limited to, bulletin boards, mailing lists or newsgroups) without prior written consent.

### Reviews, Feedback & Comments

73. You may voluntarily post, submit or otherwise communicate to us any questions, comments, ideas, reviews or feedback relating to the App and/or the Services ("**Feedback**"). You grant Damex the right to use such Feedback for any purpose without restriction, acknowledgement or compensation to you, including, without limitation, to develop, copy or publish the Feedback.
74. You agree to fully indemnify and hold harmless Damex (including its respective employees, directors and representatives) against any claim or action brought by a third party, arising out of or in connection with any of the Feedback left by you. Should you have any claim against any other User, you shall address such dispute directly to such User.

### Licence

75. To the extent that you agree to these Terms and for the purpose of using the App and benefitting from the Services, Damex grants you a limited, non-transferable, non-exclusive, non-sublicensable, revocable licence to:
  - (a) download, install and use one copy of the App in object code only on a mobile device that you own or control;
  - (b) use and display the App Content on your company screen or mobile devices;
  - (c) place Assets onto your Wallets(s);
  - (d) access your User Account and/or to your Wallet(s);
  - (e) use the App for placing Order(s);
  - (f) use the App and benefit from the Services in accordance with intended purposes, subject to your strict compliance of these Terms, any and all applicable laws and any of our policies,

Together, the "**Licence**".

76. We may at any time introduce new features, modify existing features, or remove features from the App and/or Services at any time and without notice to you. The Licence granted to you by Damex will automatically extend to any new feature or Service available on or through the App. The Licence is granted to you subject to the payment of any fees which Damex may impose whenever a Transaction is carried out by you. In the event that Damex, at its sole discretion, suspends or terminates the possibility of a User to make use of the App or Services, the Licence granted by Damex is immediately revoked without any reservation and the User Account shall be closed with immediate effect.

### Complaints

77. We have a written complaints procedure, a copy of which is available on request. If you are dissatisfied with any of our Services or feel you have suffered a loss through any actions of Damex, its directors, employees or agents, then you should write in the first instance to us. Please see further information on our complaints policy at [www.damex.io/complaints](http://www.damex.io/complaints). Please write to the Compliance Officer Digital Asset Management Limited detailing the nature of your complaint and the redress you are seeking.

### Governing Law and Jurisdiction

78. These Terms are governed by the laws of Gibraltar and each party submits to the exclusive jurisdiction of the Gibraltar Courts for the resolution of disputes.

### Invalidity of Terms

79. If any provision or term of the Terms is declared to be illegal, invalid or unenforceable for any reason, that term or provision shall be treated as though it had never been part of the agreement and will be ineffective without prejudice to the remainder of the term or any other term or provision thereof. Any deletion shall be considered not to materially affect the agreement.

### Suspension & Termination of a User Account

80. Without limiting other remedies that may be available to us, Damex reserves the right in its sole and absolute discretion, but subject to applicable laws, to block access to or to suspect, close or terminate your User Account, refuse to let your purchase or Withdraw Assets, and freeze Assets or your User Account, at any time, with (termination) or without (suspension prior notice), if:

- (a) we are required by legislation, court order, binding regulatory or governmental order;
- (b) we, in our sole and absolute discretion, reasonably suspect your User Account is being used for or to facilitate a Prohibited Use;
- (c) you breach these Terms; and
- (d) at our sole discretion.

### Taxation

81. Damex may withhold sums on account of tax if it deems it necessary to do so or if it is required by law to do so. You agree to provide us with all such information and documentation as is reasonably

required by us to enable Damex to make any such withholdings. Damex shall not offer a tax reclaim service and accordingly you will be responsible for reclaiming any recoverable tax, if any, on your investments.

82. Neither we nor any of our employees, officers, directors or agents hold ourselves out as having any tax expertise whatsoever, nor do we accept any liability or responsibility for any kind of loss or damage incurred or suffered by you as a result of or in conjunction with the tax consequences of any transaction. You should always contact a suitably qualified person for taxation advice and receive suitable advice. We may request to receive a copy of your tax advice.
83. The jurisdictions in which Damex operates hold intergovernmental agreements with various countries with the aim of improving international tax compliance. As a result of this, financial institutions are required to pass on details of any customers they believe may be foreign tax residents to the relevant competent authority. Information on holding Digital Assets may be information we may have to disclose under our obligations under law. The information to be released includes (but is not limited to) the User Account holder's (and anyone connected to the account) name, address, date of birth, tax number, account value at year end, interest received and proceeds from any sales. These details do not breach any data protection laws. Once the competent authority has your details, they will report to the relevant tax authority. As it is not certain whether Damex may be obliged to provide all of this information, Damex is retaining this information for the avoidance of doubt in the event of a future need for compliance subject to record retention. By accepting these Terms and using Damex's Services you explicitly agree and authorise Damex, should we be required, to provide the competent authority with this data and hold Damex free from any liability and/or damages in relation to any such disclosure.

#### Anti-Money Laundering Legislation

84. Damex is obliged under proceeds of crime legislation to verify the identity of our customers and carry out due diligence to combat financial crime, money laundering and terrorist financing ("**AML Requirements**"). As a result, we will need to make certain enquiries and to obtain information from you for this purpose. In providing this information you declare and affirm to us that such assets and/or cash introduced to us by you will be from lawful sources and not deemed to be unlawful, illegal or immoral, either in their country of origin or in Lithuania.

#### Security

85. It is your responsibility to have secure access to the internet when transferring Digital Assets to Damex. It is your responsibility to ensure that you securely store the private keys for any Digital Assets which you hold for your own account and you will not rely on our assistance in this regard and you will indemnify Damex for any losses which may be incurred in your transferring of Digital Assets to Damex and you agree to hold Damex not liable for any assistance provided to you with executing transfers from your Digital Asset public key wallet address.

#### Fraud Detection

86. You must notify us immediately if you suspect or become aware of any fraud or unauthorised use of your User Account or any other breach of security by contacting support or emailing [support@damex.io](mailto:support@damex.io).
87. Upon receipt of such written notice, Damex shall take reasonable steps to protect your User Account. Damex is entitled to accept and rely on Orders, authorisations, instructions and any other actions coming from your User Account prior to receiving notice that a User Account has been compromised.

88. If you share your mobile device with any third party, Damex will not be liable for any loss that you may incur as a result of a third party using your User Account with or without your knowledge.

#### No Protections Under Compensation Scheme

89. The Digital Assets held by us are not protected by any investor compensation scheme under Lithuania law as we are not trading, offering or holding ourselves out as providing assistance in relation to financial instruments.

90. Fiat Assets deposited to the App via Modulr FS Limited are not protected by the Financial Services Compensation Scheme. However, Fiat Assets deposited with Modulr FS Limited are safeguarded on funds received. For further information on safeguarding please refer to clause 15.7 of Schedule 5 and visit [Modulr Finance](#).

#### Account Recovery

91. If you lose access to your User Account, Damex may be able under certain conditions to regain access to your User Account. The procedures outlined in the "Forgot Password?" or similar prompt will need to be followed by the User in order to regain access to the User Account.

#### Dormant Account

92. In the event that your User Account is deemed a Dormant Account by us, Damex shall provide you with notice of such decision.

93. If you fail to respond to such notice within 30 days of receipt, the date required to respond as indicated on the notice, or as otherwise required by law (whichever the earliest), Damex reserves the right to deduct a monthly dormancy fee or other administrative charges from unclaimed Assets it is holding in your custody.

#### Death of Account Holder

94. In the event that a User dies or is otherwise legally incapacitated, Damex will cooperate with duly authorised representatives in accordance with applicable laws and regulation.

95. Upon notice of the death of a User, Damex will suspend activity in such User Account, pending verification or resolution of such notice. Notwithstanding the foregoing, Damex reserves the right to require that the recipient or ultimate beneficiary of any transfer of assets from a User Account:

- (a) provides evidence reasonably satisfactory to Damex that demonstrates entitlement to a transfer;
- (b) indemnifies and holds Damex harmless to the extent and in the form required by Damex, including, but not limited to, claims of negligence; and
- (c) provides Damex with any other information, evidence, documentation, confirmation or any other details or verification that we may reasonably require in order to allow us to process such a request.



96. Subject to Damex's requirements, remaining Assets to be withdrawn from a User Account that is deceased or legally incapacitated may only be withdrawn in full and no outstanding balances of Digital Assets or Fiat Assets are allowed to remain on the User Account.

97. Damex reserves the right to charge fees in relation to intensive administrative work that Damex may need to perform for your authorised representative.

#### Successors and Assigns

98. For the avoidance of doubt, we may in our absolute discretion and in order to ensure continued compliance with any rules or regulations, transfer our rights and obligations hereunder to any assigns and successors legally appointed. Your rights and obligations hereunder may not be transferred or assigned to any third party without our prior written agreement although they shall subsist and endure to the benefit of your successors.

#### Set-Off

99. If any money you owe us is overdue for payment, or if you fail to remedy a negative balance on your User Account, with or without our prior notice, we may exercise our right to set-off. This means that we have the right to debit any amount necessary from other payment methods that you have made available to us, including from any other balances held in your User Account or other linked accounts, to reduce or repay what you owe us or to remedy a negative balance.

100. Where applicable, if the amount to be set-off is expressed in different currencies we reserve the right to convert available balances in your User Account at a market rate of exchange for the purpose of set-off. Any exercise by Damex of its right to set-off shall not limit or affect any other rights or remedies available to it under these Terms or otherwise.

101. Damex will only do this if we consider it reasonable to do so, taking into account your circumstances and any regulatory requirements.

102. You have no right to set-off any claims that you may have against Damex against any liability that you may have to Damex.

103. Our right to set-off also applies to any other balances held in your User Account or other linked accounts.

#### Events Beyond Our Control (Force Majeure)

104. In the event of any failure, interruption or delay in the performance of our obligations, resulting from acts, events or circumstances outside our reasonable control (which circumstances shall include, but not be limited to unanticipated dealing volumes, market liquidity issues, industrial disputes, acts or regulations of any governmental or supranational bodies or authorities, act of god, pandemic, threats or acts of terrorism, fire, war, civil commotion, insurrection, embargo, breakdown, failure, malfunction or delay caused by any public utility, telecommunications or computer service or systems) we shall not be liable for any loss or damage incurred or suffered by you.

#### Liability and Indemnity

105. Damex shall not be liable for any loss arising other than as a result of its own negligence, or wilful

default, if any, and, in any event, will not be liable for any direct or any indirect consequential loss (including loss or profit). Damex shall have no liability for any market or trading losses you may incur.

106. You agree to indemnify, defend and hold us, our shareholders, officers, directors, employees, agents, consultants, subsidiaries, partners, affiliates, and licensors, harmless against any and all claims, actions, costs, losses, damages, penalties, fines, liabilities, judgments and expenses (including reasonable legal costs) arising out of, relating to or resulting from or in any way related to your use of our Services or any breach by you of these Terms.
107. Advice given by either ourselves or our employees in relation to transactions carried out on your behalf is given in good faith. Damex shall not be liable for any financial loss suffered by you unless this results from the negligence, fraud or wilful default of Damex or from breach by Damex of applicable laws and regulations. We reserve the right to decline to Execute any Order for you, for any reason whatsoever. The value of your investments and the income arising therefrom may decrease as well as increase. We shall not be held liable for any loss incurred by you arising from changes in market conditions or market fluctuations. If any provision of these Terms is or becomes invalid or contravenes any rules or regulations, the remaining provisions shall not be invalidated.
108. The indemnity set out in these Terms is in addition to, and not in lieu of, any other remedies that may be available to Damex under applicable law.

#### Test Environment

109. By agreeing to these Terms, the User agrees that it is using the App as a test user that is subject to various limitations, which include but are not limited to the App becoming unavailable for use without prior notice, features of the App becoming unavailable and other bugs and errors.
110. By agreeing to these Terms, the User agrees that your use of the App is to assist Damex in understanding issues and errors within the App to improve the App and that you will hold Damex free from any liability for loss, damage (including loss of profit) that may result from the inactivity or downtime of the App.
111. The App is offered on an as is basis on a limited basis and subject to the following limitations ("**Test Environment**"):
- (a) The App is only available to selected users who have been given a personal invitation by Damex;
  - (b) Only GBP and/or EUR fiat currencies are available in the App. Only BTC, ETH, USDT and USDC are offered in the App. Damex.io reserves the right to include or remove such assets as it sees fit in its sole discretion subject to providing the User with notice;
  - (c) Only Users geographically resident in the European Union are able to use the App;
  - (d) The App will only be offered from the date of this Agreement to the 30th January 2023, or such further date that Damex may notify in writing ("**End Date**").
112. On the End Date, and subject to regulatory permissions, Users may be required to migrate to a live version of the App outside of the Test Environment or invited to close their accounts within a given notice period.

## Schedule 1 - Definitions

**"2FA"** means any form of two-factor authentication security system that Damex may implement in the App where the User is required to present any two or more pieces of evidence to authenticate that they are the User.

**"App"** means the Android and/or iOS mobile application software, the data supplied with the software and the associated media, as updated from time to time, that allows you to access your User Account and our Services from a supported mobile device.

**"App Content"** means any and all content available on the App which is also accessible on the App.

**"Anti-Money Laundering Legislation"** means all applicable anti-money laundering laws and regulations as may be applicable to Damex in Lithuania.

**"Assets"** means Digital Assets and Fiat Assets held in your User Account.

**"Bank Account"** means an account opened by a regulated bank, financial institution or custodian which is registered in User's name.

**"Digital Assets"** means a digital representation of value that can be digitally traded as functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status (i.e., when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction. It is not issued or guaranteed by any jurisdiction, and fulfils the above functions only by using distributed ledger technologies and agreement within the community of users of the virtual currency or tokens. These assets are distinct from fiat currencies. Digital Assets do not include any services or products including (a) shares or equity in companies or other legal entities; (b) debt instruments; (c) unit trusts, mutual funds and other collective investment schemes; (d) warrants to subscribe for investments under (a) and (b); (e) depositary receipts or other types of instruments relating to investments under (a), (b) and (c); (f) futures and options; (g) securitised derivatives; (h) hedge funds; (i) contracts for difference (j); or electronic money. Digital Assets include Tokens.

**"Digital Asset Wallet"** means the Wallet designated to support the holding of Digital Assets.

**"Dormant Account"** means a User Account that has been closed or deactivated or where a User has not logged into their User Account for a period of at least 12 months.

**"Execution"** or "Executed" or "Executing" of an Order and/or Transaction on behalf of Users means acting to conclude agreements to buy or sell one or more Asset(s) on behalf of Users.

**"Exchange"** means trading venues interfaced with the App to which Damex has access to in order to Execute Order(s) placed by User(s) on their behalf.

**"Fiat Assets"** means centralised issued currency which is not backed by a physical commodity or financial instrument and established as a currency by governmental regulations or law.

**"Intellectual Property Rights"** means without limitation, all patents (including models and inventions), 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 and "Intellectual Property" shall be construed accordingly.

**“Market Price”** means the price of Digital Assets which is displayed on the Exchanges.

**“Network Fee”** means the cost of processing a transaction on a Digital Asset network, also known as miner fees.

**“Order(s)”** means the instruction transmitted by a User through the App to carry out a Transaction pursuant to these Terms.

**“Outgoing Transaction”** means any transaction which would concern the transfer of Assets from a User Account to any other User Account, third party Digital Asset Wallet or Bank Account.

**“Personal Data”** means any information about an individual from which that person can be identified. It does not include data where the identity has been removed (anonymous data).

**“User(s)”** means any natural person who successfully completes the onboarding process and gains access to the App. The User is referred to as “You” and/or “you” and/or as “Your” and/or “your” when indicating the possession of something within the Terms.

**“User Account(s)”** means the digital account created upon the User’s registration with the App.

**“Refunds”** means a (partial) reversal of a particular Transaction, whereby the funds are reimbursed to the User on the request of Damex.

**“Service Fees”** shall mean any fees which may be charged by Damex for the Services, including but not limited to Transaction Fees, processing fees charged for Withdrawals and dormancy fees.

**“Services”** means all products, services, content, features, technologies, functions offered by us from time to time on or through the App.

**“Terms”** means these Terms and Conditions as may be amended from time to time, including all schedules referred to herein.

**“Token”** means digital utility tokens that are issued using distributed ledger technologies which provide users with access to a product or service though do not allow or enable users to own any equity in the product of the issuer or any issuing party or any equity in the service provider, its subsidiary or affiliates.

**“Transaction”** means the Execution of an Order on or through the App.

**“Transaction Fees”** means the amount that Damex will charge in order to carry out a Transaction, including rates, fees and charges.

**“Transaction Price”** means the cost per Digital Asset or Fiat Asset or the cost of Executing an Order at the time when it was Executed.

**“Wallet”** means digital wallets available to Users on their User Account, including Fiat Asset and/or Digital Asset Wallets.

**“Withdraw” or “Withdrawal”** means to remove any amount of Digital Asset and/or Fiat Assets from the Wallet, thereby instructing Damex to return Assets to you in the cryptocurrency address and/or Bank Account you intend to send the withdrawn value.

**“Website”** means the website available at [www.damex.io](http://www.damex.io)

## Schedule 2 - Fiat Payment Services

### **MODULR FIAT PAYMENT TERMS**

#### **1. BACKGROUND**

- 1.1. The Introduced Client (being a customer of Damex.io) has entered into an agreement with Digital Asset Management Limited trading as Damex (referred to as "**Damex**") where the Client wishes to open an Account with Modulr (defined below) to be used for the purpose of, among other things to provide the Introduced Client with Fiat Asset services, and in accordance with the terms set out in the Terms .
- 1.2. By agreeing to these Terms the Introduced Client confirms enters into an agreement with **Modulr Finance Limited**, a company registered in England and Wales under company number 09897957, whose registered office is at 1 Hammersmith Broadway, London, W6 9DL ("**Modulr**") for purposes of using the Modulr Products described in clause 3 below in accordance with the terms set out in this Agreement.
- 1.3. The Modulr Accounts issued under this Agreement are provided to the Introduced Client by Modulr FS Limited, a company registered in England and Wales under company number 09807919, whose registered office is at 1 Hammersmith Broadway, London, W6 9DL and who is regulated by the Financial Conduct Authority for issuance of electronic money under FRN 900573 ("**Modulr FS**").

#### **2. DOCUMENTS FORMING THE AGREEMENT**

- 2.1. The Modulr Fiat Payment Terms, together with the Introduced Client Terms of Business (including all Schedules attached to it) and the Modulr Account Terms and Conditions constitute the entire agreement between Modulr and the Introduced Client (collectively referred to as the "parties" and individually a "party") (together the "**Agreement**").
- 2.2. The parties agree that to the extent there is any inconsistency between the terms in the documents that comprise the Agreement:
  - (a) The Modulr Fiat Payment Terms shall be the primary source used to determine any disputes between the parties in respect of services to be provided by Modulr and any Fees payable under this Agreement and shall prevail over the Introduced Client Terms of Business and the Modulr Account Terms and Conditions and any Schedule;
  - (b) Subject to 2.2(a) above, in the case of any inconsistency between the Introduced Client Terms of Business and the Modulr Account Terms and Conditions then the Modulr Account Terms and Conditions shall prevail over the Introduced Client Terms of Business.
- 2.3. Unless expressly stated otherwise in the Modulr Fiat Payment Terms, the definitions and rules of interpretation contained in the Modulr Account Terms and Conditions apply to the Modulr Fiat Payment Terms and the Introduced Client Terms of Business.

#### **3. MODULR PRODUCTS**

- 3.1. Modulr 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. The Account allows operation including the making of Transactions in accordance with the Modulr Account Terms and Conditions.
- 3.3. These payment types and services included and to be provided as part of Modulr Products are as selected below, and may be updated from time to time:
  - Intra-account transfers (so called on-us payments)
  - Inbound deposits (GBP) using FasterPayment or BACS scheme.
  - Outbound credit transfers (GBP) using FasterPayment or BACS scheme.
  - Inbound deposits (EUR) using SEPA or instantSEPA scheme.
  - Outbound credit transfers (EUR) using SEPA or instantSEPA scheme.
  - Card payments at Visa accepting merchants.
- 3.4. The Introduced Client's rights and obligations with respect to each of the payment types listed above and forming part of the Modulr Products are subject to and governed by the terms and conditions set out in the other parts of the Agreement. The terms of this Agreement applicable to payment types and services which are not selected above or otherwise enabled for the Introduced Client shall not apply, but only to the extent that such terms concern the unavailable payment types.

#### 4. CUSTOMER SERVICES DETAILS

<b>Telephone:</b>	Digital Asset Management Limited
<b>Post:</b>	Suite 2.4 & 2.5, Waterport Place, Gibraltar, GX11 1AA
<b>Email:</b>	<a href="mailto:support@damex.io">support@damex.io</a>

Please note that customer support will be provided primarily through the App.

#### 5. FEES

- 5.1. All applicable fees shall be paid for by Damex. No further fees are payable by the Introduced Client.

#### 6. ACKNOWLEDGMENT

- 6.1. The Introduced Client agrees to Damex providing all such information to Modulr (who on behalf of Modulr FS) for checking and verifying the identity of the Introduced Client, its directors, beneficial owners and Authorised Users as required by law.
- 6.2. The Introduced Client acknowledges that a full electoral roll search may take place on the individuals noted in clause 6.1 above for anti-money laundering purposes.
- 6.3. The Introduced Client acknowledges that a "soft footprint" search may be placed on the electronic files of the individuals noted in clause 6.1 above 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.

- 6.4. The Introduced Client confirms that it has read, understood and accepts that the terms set out in the documents that form the Agreement between the Introduced Client, Modulr and Modulr FS and hereby gives its acknowledgement.
- 6.5. The Introduced Client agrees to be bound by the terms comprising the Agreement.

**By agreeing to these Terms when registering a User Account through our App, you agree to the Agreement with Modulr including the Modulr Fiat Payment Terms, the Modulr Client Terms of Business, and the Modulr Account Terms and Conditions below.**



## **Schedule 3 - Modulr introduced client terms of business**

### **BACKGROUND**

Modulr is a provider of Modulr Products (as described to you by Damex), which includes the provision of an electronic money account for businesses and associated payment services. The electronic money account is provided by Modulr FS. These Introduced Client Terms of Business govern the Modulr Products that Modulr agrees to provide to the Introduced Client.

These Introduced Client Terms of Business (including all the attached Schedules), together with the Modulr Account Terms and Conditions set out the terms on which the Modulr Products are provided and constitute the Agreement between Modulr, Modulr FS and the Introduced Client.

### **THE PARTIES AGREE AS FOLLOWS:**

#### **1. Interpretation**

1.1. In these Introduced Client Terms of Business: (a) a reference to a clause is a reference to a clause in these Introduced Client Terms of Business; (b) headings are for reference only and shall not affect the interpretation of these Introduced Client Terms of Business; (c) the singular shall include the plural and vice versa; (d) 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; (e) a reference to a party shall include its personal representatives, successors and permitted assigns; (f) reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

#### **2. Modulr Products**

2.1. Modulr will make available to the Introduced Client such products that are provided to Damex and, as described by Partner Platform in the application process.

2.2. The Introduced Client agrees to Damex providing all such information to Modulr who will check and verify the identity of the Introduced Client, its directors, beneficial owners and Authorised Users as required by law.

2.3. The Introduced Client acknowledges that a search of the electoral register may take place for anti-money laundering purposes on the individuals listed in clause 2.2 above.

2.4. The Introduced Client acknowledges that a "soft footprint" search may be placed on the electronic files of the individuals noted in clause 2.2 above by the credit reference agencies and their personal details may be accessed by third parties for the specific purpose of anti-money laundering and countering the financing of terrorism (AML/CFT), identity verification and fraud prevention.

2.5. The Account and Cards (where applicable) are provided by Modulr FS to the Introduced Client in accordance with the Modulr Account Terms and Conditions. Modulr Products provided to the Introduced Client under this Agreement are for the sole use by the Introduced Client.

2.6. The Introduced Client can use the Account and Cards (where applicable) to make Transactions on the terms and conditions set out in the Modulr Account Terms and Conditions. A record of all Transactions relating to the Account can viewed via Damex (as applicable).

2.7. The Introduced Client shall promptly notify Customer Services as soon as it becomes aware login and security information enabling access to its Modulr Products have been lost, stolen or compromised.

2.8. From time to time Modulr may carry out additional checks on the Introduced Client, including the identity of its directors, beneficial owners and the nature of its business in accordance with its Due Diligence Procedure and as required by law. Modulr may contact the Introduced Client or Damex (as applicable) for such purposes. The Introduced Client agrees to provide such information as necessary.

2.9. The Introduced Client shall comply with all legislation and regulation as it applies to the Introduced Client. Any failure to comply with relevant legislation or regulation shall be considered a material breach of the Agreement and may result in Modulr discontinuing the provision of the Modulr Products as set out in clause 6.4.

2.10. The Introduced Client shall implement as appropriate Modulr's reasonable security recommendations it notifies to the Introduced Client from time to time.

### **3. Authorised Users**

3.1. Access to the Modulr Products is restricted to individuals that have been designated by the Introduced Client as Authorised Users.

3.2. The Introduced Client must notify Modulr of all individuals it wishes to be an Authorised User.

3.3. Each Authorised User is permitted to access and use the Modulr Products in accordance with these Introduced Client Terms of Business.

3.4. The Introduced Client will be responsible for training its Authorised Users in the appropriate use of Modulr Products.

3.5. The Introduced Client shall ensure its Authorised Users;

3.5.1 take all reasonable care to ensure Modulr Product access credentials, including login details to the Website, where applicable, are kept confidential to each Authorised User; and

3.5.2 do not share any information that would enable another party to access the Introduced Client's Account.

3.6. The Introduced Client acknowledges and agrees that each Authorised User is authorised by the Introduced Client to act on its behalf. Modulr shall deem any instruction given by an Authorised User is an instruction given by the Introduced Client.

3.7. The Introduced Client will be responsible for timely notification to Modulr of any revocation of Authorised User access and will be liable for Transactions made, Fees incurred and use of Modulr Products by an Authorised User until Modulr has had one full Business Day to act on any received notice. This clause shall not apply to Introduced Clients accessing Modulr Products via Damex.

3.8. Where the Introduced Client accesses Modulr Products through a Partner Platform, such Partner Platform will be considered the Authorised User. In this instance if additional Authorised Users are required they must be requested by Damex. The use of a Partner Platform to access the Modulr Products by the Introduced Client are set out in further detail below.

### **4. Accessing Modulr Products through a Partner Platform**

4.1. In the event the Introduced Client utilizes a Partner Platform to access Modulr Products, the Introduced Client agrees and authorises Damex to instruct Modulr to access and use the Modulr

Products on behalf of the Introduced Client, which shall include but not be limited to making Transactions, viewing and retrieving Transaction data, initiating Refunds and closing the Account.

4.2. The Introduced Client acknowledges and agrees that Modulr shall have no liability whatsoever with respect to the performance, availability or quality of any Partner Platform.

4.3. The Introduced Client acknowledges and agrees to the following:

4.3.1. it must satisfy itself that its Platform Partner Agreement grants Damex all permission necessary to operate the Account on the Introduced Client's behalf;

4.3.2. the Platform Partner will be granted full access to operate the Introduced Client's Account as an Authorised User of the Introduced Client;

4.3.3. it is responsible for monitoring Partner Platform activities on its Account. Any queries relating to such activities will be raised with Damex directly and settled between Partner Platform and the Introduced Client;

4.3.4. the Introduced Client has no recourse against Modulr for any act or omission of Damex with respect to its Account;

4.3.5. the Introduced Client understands it can only access its Account to make Transactions, review Transactions made or otherwise use Modulr Products through the service provided by Damex; and

4.3.6. it will only use the Account for the purpose set out in Damex Agreement.

4.4. On receipt of notification by Modulr from Damex that it wishes to terminate this Agreement, this Agreement shall terminate. Any funds in the Introduced Client's Account will be returned in accordance with the terms of the Modulr Account Terms and Conditions.

4.5. If the Introduced Client has any complaint or concern relating to the Account or other Modulr Products, such complaint or concern shall be raised directly to Damex, who shall deal with it in accordance with Modulr's Complaints Policy, a copy of which is available on request from Damex and on the Website.

## **5. Customer Services**

5.1. The Introduced Client can contact Damex' Customer Services if it has any queries about the Modulr Products. Information may be requested from the Introduced Client, including but not limited to, its Authorised Users, Cardholders or Transaction information so that it can verify the identity of an Authorised User, the Cardholder and/or the Modulr Products provided to such Introduced Client.

5.2. Any information shared by the Introduced Client will be kept strictly confidential. Where such information is provided in connection to a service provided by a third party, for example, the Account, then the Introduced Client's information will only be used in accordance with instructions of such third party and only for the purpose of providing Customer Services to the Introduced Client on behalf of such third party.

5.3. As part of Modulr's commitment to providing a quality customer service, its managers periodically monitor telephone communications between its employees and Introduced Clients to ensure that Modulr's high quality service standards are maintained. The Introduced Client consents to such

monitoring and recording of telephone communications and agrees to make its Authorised Users aware of such practice.

## **6. Term and Termination**

- 6.1. This Agreement shall commence on the date the Introduced Client receives confirmation from Modulr or Damex (where applicable) of its successful application for Modulr Products and shall continue until terminated by the Introduced Client, Partner Platform (if acting on behalf of the Introduced Client) or Modulr.
- 6.2. The Introduced Client or Damex (where applicable) may terminate this Agreement immediately by notifying Customer Services in writing by post or email.
- 6.3. Modulr may terminate this Agreement and close the Introduced Client's Account(s) by providing the Introduced Client with at least two months' notice.
- 6.4. Modulr may suspend or terminate this Agreement immediately if, for any reason, the Introduced Client (i) is unable to satisfy the Due Diligence Procedures, (ii) for breach of this Agreement, (iii) has provided false, incomplete or misleading information, (iv) has engaged in fraudulent, money laundering, terrorism financing or other illegal activity or we have reasonable suspicions in respect of same or (v) we are required to do so under any applicable law or regulation or at the direction of any regulatory, law enforcement or other competent authority. Modulr shall notify you as soon as possible, unless prohibited by law, of such suspension or termination of the Agreement.
- 6.5. This Agreement will automatically terminate when all Accounts of the Introduced Client are closed (for any reason).
- 6.6. Modulr may terminate or suspend this Agreement in whole or in part immediately by giving written notice to the Introduced Client if Modulr ceases to provide Cards pursuant to the provisions of Schedule 1.
- 6.7. On termination of this Agreement for any reason, any balance remaining in the Introduced Client's Account(s) shall be returned to the Introduced Client in accordance with the Modulr Account Terms and Conditions. The Introduced Client shall pay immediately all outstanding Fees due (where applicable) under this Agreement and in the event of a negative balance in an Account, shall reimburse Modulr FS such amount equal to the negative balance.

## **7. Intellectual Property**

- 7.1. The Introduced Client acknowledges all Intellectual Property Rights in the Modulr Products are owned by or provided under licence to Modulr. Modulr grants the Introduced Client a non-exclusive, royalty-free licence for the duration of this Agreement to access and use the Modulr Products only for the purpose contemplated by this Agreement.
- 7.2. Nothing in this Agreement shall operate to create or transfer any Intellectual Property Right to the Introduced Client.

## **8. Force Majeure**

- 8.1. Modulr and/or Modulr FS will not be liable for the non-performance or failure to provide any part of the Modulr Products occurring as a result of any events that are beyond the reasonable control of Modulr, 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 lightning damage, or other causes over which Modulr and/or Modulr FS has no reasonable control.

## **9. Assignment Transfer and Subcontracting**

- 9.1. The Modulr Products provided to the Introduced Client are personal to the Introduced Client. The Introduced Client may not novate, assign or otherwise transfer this Agreement, any interest or right under this Agreement (in whole or in part) without the prior written consent of Modulr.
- 9.2. The Introduced Client agrees Modulr may, in its 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 this Agreement. Modulr may subcontract any of its obligations under this Agreement.
- 9.3. In the event of any transfer of this Agreement by Modulr to another service provider; if the Introduced Client does not want to transfer to the new provider, the Introduced Client must notify Modulr of its objection in writing to Customer Services. On receipt of such notification, Modulr it will terminate this Agreement. Any balance remaining in the Introduced Client's Account(s) will be returned to the Introduced Client in accordance with the redemption procedure set out in the Modulr Account Terms and Conditions.
- 9.4. It is acknowledged by the Introduced Client that Modulr enters into this Agreement on its own behalf and as agent for and on behalf of Modulr FS with respect only to clauses 10 and 14 of these Introduced Client Terms of Business.

## **10. Liability**

- 10.1. Nothing in this Agreement will operate to limit either party or its agent's liability with respect to fraud or for death or personal injury resulting from negligence, in either case whether committed by that party or its employees, agents or subcontractors.
- 10.2. Modulr and Modulr FS makes no warranty that access to and use of the Modulr Products will be uninterrupted or error free.
- 10.3. The Introduced Client acknowledges and agrees that Modulr and/or Modulr FS are not liable to the Introduced Client for any loss, liability or damages the Introduced Client suffers which result from, are related to, or in any way are connected with any fraud control, restriction measures or other measures implemented from time to time including as require, unless such loss, liability or damage is a direct result of Modulr and/or Modulr FS's fraud, gross negligence or willful misconduct in procuring the implementation of fraud control or purchase restriction measures that Modulr has expressly agreed in writing to procure for the Introduced Client.
- 10.4. Modulr and Modulr FS shall not be liable to the Introduced Client for any loss or damage the Introduced Client may suffer as a result of any act or omission of an Authorised User or Cardholder or an Authorised User's or Cardholder's use of or inability to use of the Modulr Products.
- 10.5. The Introduced Client agrees to indemnify Modulr and Modulr FS against any and all actions, claims, costs, damages, demands, expenses, liabilities, losses and proceedings Modulr and/or Modulr FS directly or indirectly incurs or which are brought against Modulr if the Introduced Client, or an Authorised User, or a Cardholder has acted fraudulently, been negligent or has misused a Modulr Product or any of the services provided under this Agreement.
- 10.6. Modulr and/or Modulr FS shall not be responsible in any way for any interest or claims of any third parties in respect of the Modulr Products, except as required by law or regulation.

## **11. Reports**

- 11.1. Modulr may make available certain management or other reporting or business administration functionality via the Website.
- 11.2. Modulr may from time to time amend, modify, replace or withdraw in whole or in part such reporting it provides without further notice.

## **12. Data Privacy**

- 12.1. Modulr will collect and retain personal information about the Introduced Client and each Authorised User and Cardholder to enable Modulr to deliver the Modulr Products, the services linked to it and deal with any enquiries that the Introduced Client may have about it. Modulr is the data controller of the personal information gathered by Modulr for such purpose. If Modulr uses a third party to provide a part of the Modulr 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. Modulr will, at such third-party provider's direction, process personal data on its behalf, for example, to enable Modulr to provide Customer Services to the Introduced Client.
- 12.2. Modulr processes personal information in accordance with relevant laws on the protection of personal data.
- 12.3. If Modulr transfers the Introduced Client's information to a third party in a country outside of the European Economic Area Modulr will ensure that the third party agrees to apply the same levels of protection that Modulr is legally obliged to have in place when Modulr processes personal data.
- 12.4. Further information about how Modulr uses personal information can be found in Modulr's Privacy Policy; please contact Customer Services for a copy of this.

## **13. Changes to the Agreement**

- 13.1. Modulr may amend or modify this Agreement by giving no less than two (2) months' notice to the Introduced Client unless Modulr is required to make such a change sooner by law. All proposed changes will be posted on the Website and communicated to the Introduced Client by such other means that Modulr agreed with the Introduced Client, for example by email. If the Introduced Client is accessing Modulr Products via a Partner Platform, all notifications will be communicated via such Partner Platform.
- 13.2. The Introduced Client has no obligation to accept such amendments proposed by Modulr.
- 13.3. The Introduced Client will be taken to have accepted any change to this Agreement that Modulr notifies to the Introduced Client unless the Introduced Client tells Modulr otherwise before the relevant change takes effect. In such circumstance, Modulr will treat notice of objection by the Introduced Client as notification that the Introduced Client wishes to terminate this Agreement and the use of all Modulr Products immediately. All Accounts of the Introduced Client will be closed and any balance remaining in the Introduced Client's Account will be returned to the Introduced Client in accordance with the redemption procedure set out in the Modulr Account Terms and Conditions. In this circumstance the Introduced Client will not be charged a fee for the Account closure and return of any balance.

## **14. General**

- 14.1. In these Introduced Client Terms of Business, headings are for convenience only and shall not affect the interpretation of these Introduced Client Terms of Business.
- 14.2. Any delay or failure by Modulr to exercise any right or remedy under this Agreement shall not be interpreted as a waiver of that right or remedy or stop Modulr from exercising its rights at any subsequent time.
- 14.3. In the event that any part of this Agreement is held not to be enforceable, this shall not affect the remainder of the Agreement which shall remain in full force and effect.
- 14.4. The Introduced Client shall remain responsible for complying with this Agreement until its Account(s) are closed (for whatever reason) and all sums due under this Agreement have been paid in full.
- 14.5. This Agreement is written and available only in English and all correspondence with the Introduced Client shall be in English.
- 14.6. This Agreement is governed by the laws of England and the Introduced Client agrees to the non-exclusive jurisdiction of the English courts.

## Schedule 4 - Card Obligations

### 1. Introduction

1.1. The terms of Schedule 1 shall apply where Virtual Cards, and/or Physical Cards are included within the Modur Products.

### 2. Transactions Disputes and Chargebacks

2.1. For the purposes of these Introduced Client Terms of Business, a “**Chargeback**” means a refund of a Card Transaction after the Introduced Client (or Modur FS on its behalf) successfully disputes the Card Transaction as permitted by the Card Scheme rules.

2.2. The Introduced Client shall provide Modur all relevant information in relation to Virtual Card Transaction as may be required by Modur to resolve the dispute in accordance with applicable law and, where applicable, to raise a Chargeback in accordance with Card Scheme rules.

2.3. The Introduced Client agrees that Card Scheme’s decision on the validity of the Chargeback is final and binding and that in the event a Chargeback is not successful or is subsequently reversed the Introduced Client will be liable for the amount of the disputed Card Transaction.

2.4. Modur shall at its discretion not refund a Chargeback to the Introduced Client until the relevant challenge periods have passed under the relevant Card Scheme rules unless it is required to do under relevant law or regulation.

### 3. Cardholders

3.1. The Introduced Client must notify Modur of all individuals it wishes to be Cardholders and shall not permit any other person to use the Cards.

3.2. The Introduced Client shall be responsible for ensuring that each Cardholder is informed of the Modur Account Terms and Conditions as they apply to the Cards and the Introduced Client shall ensure that the Cardholder complies with them.

3.3. In addition to clause 3.2 above, Introduced Client shall be responsible for ensuring that each Cardholder reads and accepts the Modur Corporate Cardholder Terms and Conditions, which shall be made available to the Cardholder by the Introduced Client. Introduced Client shall keep a record of each Cardholder’s confirmation given in accordance with this clause and shall promptly make such records available to Modur on request.

3.4. The Introduced Client shall ensure its Cardholders take all reasonable care to keep any security credentials relating to the use of Cards, such as PIN or any access or similar codes, where applicable, confidential and in accordance with the Modur Account Terms and Conditions and Corporate Cardholder Terms and Conditions.

3.5. The Introduced Client acknowledges and agrees that each Cardholder is authorised by the Introduced Client to act on its behalf. Modur shall deem any instruction given by a Cardholder with respect to Card Transactions as an instruction given by the Introduced Client and the Introduced Client shall be responsible for all actions and the use of Physical Cards by any Cardholder.

3.6. In the event of any changes to this Agreement, Modur Account Terms and Conditions and/or the Modur Corporate Cardholder Terms and Conditions, or if the Introduced Client’s Account and/or Card is suspended, cancelled or terminated, it is the Introduced Client’s responsibility to communicate any such changes and/or any information regarding the suspension, cancellation or termination to each Cardholder.



#### **4. Withdrawal of Cards; Change of Card Scheme**

4.1. Modulr reserves the right to:

- 4.1.1. cease providing Cards as part of Modulr Products for any reason;
- 4.1.2. provide Cards issued under a different Card Scheme.

# Schedule 5 - The Modulr Account Terms and Conditions

## Important information you need to know

The Modulr Account Terms and Conditions

Please read these Terms and Conditions carefully before you agree to use an Account or any related services provided by or through us.

These Terms and Conditions, together with the Introduced Client Terms of Business constitute the entire agreement between Modulr and you.

By signing the Modulr Account Terms and Conditions you accept the terms of the Agreement, or by agreeing to open an Account and/or using our services, you accept these Terms and Conditions. If there is anything you do not understand, please contact Customer Services using the contact details provided to you by Partner Platform.

### 1. DEFINITIONS

**Account** - The electronic money account, also known as Modulr Account provided by us in accordance with these Terms and Conditions.

**Account Information Service Provider** – means a third party payment service provider who is authorised by or registered with the Financial Conduct Authority or another European regulator 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.

**Account Limit** – any limit that applies in relation to your Account and/or Card, such as account maximum balance, and limits on receiving and sending payments from your Account as referred in paragraph 2.

**Account Manager** - The individuals elected by the Account Owner to be responsible for the management of the Account, also known as an “Authorised User”.

**Account Owner** – The entity legally responsible for an Account.

**Agreement** - The agreement for your Account made up of these Terms and Conditions, together with the Introduced Client Terms of Business which constitute the entire agreement between you and Modulr.

**Application Programming Interface (API)** – means the interfaces provided by Modulr to the Introduced Client (and Damex on the Introduced Client’s behalf) to directly instruct Accounts via the Introduced Client’s or Damex’s own application.

**AML Policy** - Modulr’s written policy on anti-money laundering and counter terrorist financing as may be amended from time to time by Modulr.

**Applicant** – A customer of Damex who applies for Modulr Products but is yet to be accepted by the Modulr as an Introduced Client.

**Available Balance** - The value of funds available on your Account.

**Bacs Credit** – Means Bacs Direct Credit. A service enabling organisations to make payments to an account which takes 3 Business Days for the funds to be cleared.

**Business Days** - Monday to Friday between the hours of 9am-5pm but does not include bank holidays, or public holidays in the United Kingdom.

**Card** – means a Virtual Card or a Physical Card.

**Cardholder** - means the individual authorised to use the Physical Card issued to you.

**Card Scheme** - Mastercard and/or Visa or such other payment network through which Card Transactions are processed as may be made available to you from time to time.

**Card Transaction** – means a Virtual Card Transaction or a Physical Card Transaction.

**CHAPS** – the Clearing House Automated Payment System, a service enabling organisations to make same-day payments to an account within the UK, within the CHAPS operating days and times.

**Chargeback** has the meaning given to it in Schedule 1 of the Introduced Client Terms of Business.

**Confidential Information** - any information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) relating to: the business, products, affairs, strategy, contracts, customer relationships, commercial pipelines, business contacts, prospective customers, existing customers, business models, customer pricing, management systems, business methods, corporate plans, maturing new business opportunities, research and development projects, marketing and sales information, sales targets and statistics, discount structures, suppliers and potential suppliers, source codes, computer programs inventions, know-how, technical specifications and other technical information relating to products and services.

**Customer Services** - The contact centre for dealing with queries about your Account. Contact details for Customer Services can be obtained from Damex.

**Data Protection Laws** – the following, to the extent they are applicable to a party: the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy (as amended or replaced from time to time), including where applicable the guidance and codes of practice issued by the Information Commissioner (in the United Kingdom) or other applicable supervisory authority;

**Direct Debit** – a payment collected via UK Direct Debit scheme operated by Bacs from or to your Account.

**Direct Debit Collection** – a payment collected to your Account via UK Direct Debit scheme on the basis of an instruction given by you to the payer’s payment service provider.

**Direct Debit Guarantee** – means the refund terms applicable to Direct Debit Mandates as set out on the direct debit form or direct debit confirmation provided to you by the payment recipient.

**Direct Debit Mandate** – a payment collected from your Account via UK Direct Debit scheme on the basis of a mandate permitting someone else (recipient) to instruct us to transfer money from your Account to that recipient.

**Due Diligence Procedure** - Modulr's procedures for carrying out due diligence on Introduced Clients in order to comply with its policies and regulatory obligations.

**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.

**Fees** – where relevant, those fees payable by the Introduced Client.

**Information** – Means any information related to the organisation, and any personal information related to Account Manager or the Cardholder.

**Intellectual Property Rights** – means without limitation, all patents (including models and inventions), 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 and "Intellectual Property" shall be construed accordingly;

**Introduced Client** – Any client of Modulr which has been introduced by Damex and whose account is operated by Damex based on instructions Damex receives from the Introduced Client (where relevant).

**Introduced Client Terms of Business** - The terms on which Modulr provides Modulr Products to the Introduced Client.

**Merchant**- means a merchant authorised to accept Card Scheme-branded Cards.

**Modulr** – Modulr Finance Ltd, a company registered in England and Wales with number 09897957 and whose registered office is at Scale Space, 58 Wood Lane, London, W12 7RZ. Modulr Finance Ltd (FRN: 900699) is a registered agent of Modulr FS Ltd.

**Modulr Account Terms and Conditions** - This agreement, between Modulr FS and the Introduced Client which governs the terms on which the Introduced Client may use its Account.

**Modulr Products** – those products, including but not limited to the Account as described by Partner Platform in the application process.

**Online Portal** – means the interface provided by Modulr for the Introduced Client to access via the public internet, subject to applicability based on the Introduced Client's relationship with Damex.

**Payment Initiation Service Provider** – means a third party payment service provider authorised by or registered with by the Financial Conduct Authority or another European regulator to provide an online service to initiate a Transaction at your request on your Account.

**Partner Platform** – A third party that is permitted by Modulr and Modulr FS to introduce and act on behalf of Introduced Clients, and permitted by you to act as an Authorised User.

**Partner Platform Agreement** - an agreement between the Account Owner and Damex for the provision of various services, under the terms of which the Introduced Client wishes to open an Account with Modulr to be used for the purpose and in accordance with the terms set out in Damex Agreement.

**Physical Card** - means a physical card-based payment instrument issued by us to you which uses the Card Scheme payments network and may be used to make Physical Card Transactions.

**Physical Card Transaction** - means the use of a Physical Card to make a payment to a Merchant.

**Regulator** – the Financial Conduct Authority, located at 12 Endeavour Square, London, E20 1JN or any authority, body or person having, or who has had, responsibility for the supervision or regulation of any regulated activities or other financial services in the United Kingdom.

**SEPA** – Single Euro Payments Area scheme, which allows payments to be made in euros within the EEA.

**Transaction** – any debit, credit or other adjustment to an Account that affects the balance of monies held in it, including a Virtual Card Transaction.

**TPP (Third Party Provider)** – means an Account Information Service Provider or a Payment Initiation Service Provider.

**we, us, our or Modulr FS** - Modulr FS Ltd, a company registered in England and Wales with number 09897919 and whose registered office is at Scale Space, 58 Wood Lane, London, W12 7RZ and who is regulated by the Financial Conduct Authority for issuance of electronic money under FRN 900573, or Modulr acting on Modulr FS Ltd's behalf.

**Virtual Card** – means a virtual card-based payment instrument consisting of (amongst other things) a unique 16 digit account number issued to you by us which uses the Card Scheme payments network and may be used to make Virtual Card Transactions.

**Virtual Card Transaction** – means the use of a Virtual Card to make a payment to a Merchant.

**Website** – means the customer portal that Introduced Clients can login to in order to use the Modulr Products.

**you, your** - The Account Owner, also referred to as an Introduced Client.

## 2. ACCOUNT & CARD LIMITS

**2.1** Limits may apply to the balance on your Account at any time, the maximum value of an individual payment Transaction, maximum Virtual Transaction value per Card, the maximum aggregate value of all payment Transactions made from your Account or Cards 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. Your Cards may also have certain Card Transaction types disabled, such as cash withdrawals at an ATM.

**2.2** The limits and restrictions that apply to your Account and Card will be communicated to you during the Account set-up process and/or before the Card is issued to you (as applicable). These limits may also change over time based on your Account and/or Card usage; any such change will be communicated to you. You can check the limits at any time by contacting Customer Services. You should not make a payment Transaction request which exceeds such.

**2.3** From time to time a Card Transaction may be authorised which exceeds the limit or restriction applicable to your Account or Card, for example when it is used in an offline environment for example but not limited to payments for or on transport (purchases on a train, aeroplane, underground or toll payments). In such circumstance, a negative balance on your Account may occur. In this case the process in paragraphs 5.13 to 5.15 inclusive will apply.

**2.4** Certain Merchants may require verification that the funds held on your Account will cover the Card Transaction amount and will place a “pre-authorisation” on your Card. This amount will be unavailable to you until the Card Transaction is completed or released by the Merchant. The pre-authorisation allows the Merchant up to 30 days to claim and settle any funds owed to them from the Card. Examples include but are not limited to hotels and rental cars. If there are insufficient funds available on your Account, Modulr must still make this settlement, which may result in a negative balance on your Account. In this case the process in paragraphs 5.13 to 5.15 inclusive will apply.

**2.5** 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.

### **3. SCOPE OF THESE TERMS AND CONDITIONS**

**3.1** Your Account is an electronic money account and the electronic money and any Card associated with it is issued to you by us. We are regulated by the Financial Conduct Authority for the issuance of electronic money (FRN 900573). Your rights and obligations relating to the use of this Account are subject to these Terms and Conditions between you and us.

**3.2** The types of Transactions enabled for your Account will be explained to you by Damex, or as subsequently enabled by us. The terms of these Modulr Account Terms and Conditions applicable to specific Transactions or payment types (for example, Cards) apply only to the extent that such Transactions or payment types are enabled for your Account.

**3.3** This Agreement is written and available only in English and we undertake to communicate with you in English regarding any aspect of your Account.

**3.4** You agree that we or Damex 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.

**3.5** You can request a copy of these Terms and Conditions at any time by contacting Customer Services.

### **4. OPENING YOUR ACCOUNT**

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

### **5. USING THE ACCOUNT**

**5.1** Your Account can receive bank transfers and other payment types as added and notified to you by Modulr from time to time. Subject to paragraph 5.3, 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.

**5.2** Your Account can also receive internal transfers from other Accounts owned or controlled by Damex, which apply instantly.

**5.3** An incoming payment will not be credited to your Account if:

**5.3.1** the Account has reached the Account Limits; or

**5.3.2** the Account is inactive or blocked or terminated; or

**5.3.3** the sender has provided incorrect/invalid Account Details for your Account; or

**5.3.4** we suspect the payment to be fraudulent.

**5.4** If we are unable to credit your Account for any of the reasons in paragraph 5.3 then the funds may be sent back to the sender without a prior notification to you.

**5.5** Your Account can make payments out to external bank accounts via Faster Payments, SEPA and other methods as added and notified to you by Damex from time to time.

**5.6** Your Account will be configured and operated by Damex. You agree that Modulr and we may take instructions from Damex regarding the operation of your Account, including the creation of beneficiaries and instruction of payments, on your behalf. We and Modulr have no liability for actions taken by Damex. If you disagree with any actions taken by Damex these should be discussed with Damex. We are also authorised to take instructions from any other Account Manager (where different from Partner Platform) and, with respect to Physical Card Transactions, from the Cardholder. You are responsible for all actions of the Account Manager and any Cardholder in relation to the Account and/or Card(s).

**5.7** Where Cards are made available to you, your Account can be used to fund Card Transactions. You or your Account Manager or Partner Platform can request a Virtual Card or a Physical Card to be issued to you via the Online Portal or Modulr API. The value of the Virtual Card Transaction, together with any applicable fees and charges, will be deducted from your Account once we receive the authorisation request from the Merchant.

**5.8** If the Card Transaction is made in a currency other than the currency the Card is denominated in, the Card Transaction will be converted to the currency of the Card by the relevant Card Scheme at a rate set by it on the day we receive details of the Card Transaction. The exchange rate varies throughout the day and is not set by us. You can check the relevant Card Scheme rate as follows.

Mastercard Card Scheme rate at: <https://www.mastercard.co.uk/en-gb/consumers/get-support/convert-currency.html>;

VISA Card Scheme rate at: <https://www.visa.co.uk/support/consumer/travel-support/exchange-rate-calculator.html>.

**5.9** A Transaction is deemed to be authorised by you:

**5.9.1** when you or your Account Manager or Partner Platform enters the security information on the Modulr Online Portal to confirm a Transaction is authorised, or when it is instructed via the Modulr API with the relevant security credentials;

**5.9.2** when you or your Account Manager or Partner Platform submits a request for a creation of a Virtual Card via the Online Portal or Modulr API, you shall be deemed to have authorised any subsequent Virtual Card Transaction made using such Virtual Card up to the authorisation value specified when creating the request for creation of the Virtual Card;

**5.9.3** when you or the Cardholder (i) enter a PIN or provide any other security credentials; (ii) sign a sales voucher; (iii) provide the Physical Card details and/or provide any other details as requested; (iv) wave/swipe the Physical Card over a card reader; or (v) insert the Physical Card into a card device or an ATM;

**5.9.4** when you give instructions through a third party (such as the recipient of a Direct Debit Mandate or a Payment Initiation Service Provider).

Once the Transaction is confirmed, we cannot revoke the Transaction save for in those circumstances set out in paragraph 5.10 below.

**5.10** You can cancel any Transaction which is agreed to take place on a date later than the date you authorised it, provided that you give us notice to cancel no later than close of business on the Business Day before the Transaction was due to take place;

**5.11** Cancelling a Direct Debit Mandate with us will not cancel the agreement with the organisation you are paying. It is your responsibility to tell the organisation collecting the payment about the changes to your instructions.

**5.12** If for any reason whatsoever, a negative balance arises because a Transaction is completed when there are not enough funds on your Account for that Transaction, you shall reimburse the negative balance amount immediately, unless circumstances described in sections 5.13 and 5.14 apply. You agree that once we make this negative balance known to you, we will charge you the amount of negative balance and you must repay it immediately. We may charge the amount of the negative balance against any funds on your Account, including any subsequently loaded funds. Until we are reimbursed this negative balance amount, we may arrange for your Account, including Card(s) to be suspended. We may also report the negative balance to credit reference agencies.

**5.13** Where a negative balance arises because of an error on the part of a Merchant where the Card Transaction occurred, we will seek to recover the negative balance amount from the Merchant.

**5.14** Where a negative balance arises because of an error on the part of the recipient of the payment or us, we will seek to recover the negative balance amount from the person who made the error.

**5.15** The Available Balance on your Account will not earn any interest.

**5.16** You can check the balance and Transaction history of your Account at any time via the interface provided to you by Damex or by contacting Customer Services, or the Online Portal if you have relevant access details.

**5.17** You will be provided with a monthly statement free of charge setting out information relating to individual payment Transactions by Damex or us (using the details we have associated with your Account).

## **6. THIRD PARTY ACCESS**

**6.1** 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.

**6.2** 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.

**6.3** 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.

## **7. CLOSING YOUR ACCOUNT**

**7.1** You may close your Account by contacting Customer Services. Please refer to your contract with Damex for any terms relating to your need to maintain your Account.

**7.2** The Account will be closed if Damex instructs us to close your Account (in which case Damex will inform you of this instruction).

**7.3** On termination of the Agreement for any reason, these Terms and Conditions will automatically terminate, and your Account will be closed and any Cards issued to you will be cancelled.

**7.4** Any Available Balance remaining on the Account after Account closure will be transferred to your nominated bank account via Faster Payments or SEPA (as relevant) based on instructions to us from Damex. If for any reason this is not possible, such Available Balance will remain yours for a period of six years from the date of Account closure. 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 Account closure and this Agreement will terminate.

## **8. YOUR LIABILITY AND AUTHORISATIONS**

**8.1** You are responsible for understanding and complying with the Agreement including these Terms and Conditions.

**8.2** We may at any time suspend, restrict or refuse to authorise any use of your Account and/or Cards (including cancelling Card(s)) or refuse to process your instructions or authorise any particular Transaction where:

**8.2.1** we are concerned about the security of or access to your Account and/or your Card;

**8.2.2** we know or suspect that that your Account and/or Card is being used in an unauthorised or fraudulent manner;

**8.2.3** we need to do so in order to comply with the law or otherwise for regulatory or crime prevention purposes;

**8.2.4** the Transaction would breach the limits applicable to your Account and/or Card; **8.2.5** you, the Account Manager or the Cardholder breach an important part of these Terms and Conditions, or repeatedly breach any term in this Agreement and fail to resolve the matter in a timely manner.

**8.3** If we cancel, suspend or restrict your Account and/or Card(s), or otherwise 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 Damex of the refusal, suspension or cancellation (as applicable). If possible, we will provide the reasons for the refusal to execute the Transaction and/or suspending the use of your Account and/or Card and where those reasons relate to factual matters, the procedure of rectifying any factual errors that led to the refusal.

**8.4** You or the Account Manager or the Cardholder must not:

**8.4.1** allow another person to use security information related to the Account and/or Cards,

**8.4.2** 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

**8.4.3** 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.

**8.4** You must take all reasonable steps to keep your Account and password(s) and any other security-related details safe at all times. If you visit a website or receive a message that asks for your password, other than the Modulr website, this should be reported to us. If you are in doubt whether a website is genuine, you should contact Customer Services. If you have any indication that your Account, password or other security information has been compromised, you must immediately change your password and notify us as soon as possible.

**8.5** You will be liable for all Transactions that take place as a result of you, the Account Manager or the Cardholder acting fraudulently or failing to comply with these Terms and Conditions with intent or gross negligence. Any such Transactions and any fees and charges relating to such Transactions will be deducted from the Available Balance on your Account.

**8.6** You will be liable for all Transactions that Damex, any other Account Manager makes on your behalf or the Cardholder makes as per this Agreement, along with those made by a TPP authorised by you to initiate a Transaction.

**8.7** You will be liable for all unauthorised Transactions that arise from the use of lost or stolen Physical Cards, the Account or Card security information such as but not limited to the Online Portal log in details and API security details, Card number and CVV if you, the Account Manager, or the Cardholder fail to keep the security features of the Account and/or Cards safe.

**8.8** It is your responsibility to keep us updated of changes to your Information, 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.

**8.9** If you request to recall a Transaction due to an error or mistake caused other than by Modulr, we reserve the right to charge you (i) a handling fee of £25 per recall and (ii) any fee payable by Modulr to a third-party bank or institution for handling the recall.

**8.10** You agree to indemnify and hold harmless, us, Modulr 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 this Agreement, including these Terms and Conditions and/or any breach of these Terms and Conditions by you.

## **9. DISPUTES AND INCORRECT TRANSACTIONS**

**9.1** If you (or an Account Manager or Cardholder) have a reason to believe that (i) a Transaction on your Account was unauthorised or was made incorrectly, (ii) a Physical Card is lost or stolen; or (iii) someone else (other than TPP) knows the security credentials or otherwise has unauthorised access to your Account and/or Card, you must inform us immediately by contacting Customer Services. After you notify us, we will replace a lost, stolen or misappropriated Physical Card and/or security credentials, as appropriate.

**9.2** We will investigate your claim for a refund of unauthorised or incorrectly executed Transactions, provided at all times that you have notified us without undue delay of becoming aware of such incorrectly executed or unauthorised Transaction and in any case within the timeframes required by the Card Scheme rules if the incorrect Transaction relates to a Card Transaction and for all other Transactions within 13 months of the date of the relevant Transaction. We will not be liable for any unauthorised or incorrectly executed Transactions notified to us after this period.

**9.3** If you dispute a Transaction:

**9.3.1** subject to 9.3.2 and 9.3.3 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.

**9.3.2** 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;

**9.3.3** 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; and

**9.3.4** if we make an error on a Transaction made to someone else through the Direct Debit scheme, we will refund you in accordance with the Direct Debit Guarantee.

**9.4.** 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.

**9.5** You will be liable for all Transactions made from your Account if you (or the Account Manager or the Cardholder) have acted fraudulently or have failed with gross negligence:

**9.5.1** to keep the security credentials used to access or use your Account and/or Card safe and secure or otherwise failed to comply with these Terms and Conditions in relation to the safety of your Account and/or Card; or

**9.5.2** failed to notify us in accordance with 9.1 above.

**9.6** You may be entitled to a refund where a Transaction from your account which was initiated by payee provided that:

**9.6.1** the authorisation did not specify the exact amount;

**9.6.2** the amount of Transaction exceeded the amount you could reasonably have expected (taking into your previous spending pattern and other relevant circumstances). We may ask you to provide such information as is reasonably necessary for us to determine if this is correct; and

**9.6.3** you asked for a refund within 8 weeks of the date the Transaction was debited to your Account.

In such circumstances we will refund you within 10 Business Days of receiving your claim for a refund or, where applicable, within 10 Business Days of receiving any further information we requested - or we will provide you with reasons for refusing the refund.

**9.7** If you want a refund for a Transaction made using the Direct Debit scheme, the Direct Debit Guarantee will apply instead of the terms in 9.6 above.

## **10. VARIATION**

**10.1** 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).

**10.2** 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.

**10.3** 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.

## **11. TERMINATION OR SUSPENSION**

**11.1** 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.

**11.2** We can suspend or terminate your Account at any time with immediate effect (and until your default has been remedied or the Agreement terminated) without any prior notice to you if:

**11.2.1** we discover any of the Information that we hold for you is false, misleading or materially incorrect; or

**11.2.2** if you, the Account Manager, the Cardholder or a third party has engaged in fraudulent activity, money laundering, terrorism, terrorism financing or other illegal activity in connection with your Account or we have reasonable suspicions in respect of the same; or

**11.2.3** if you have reached your Account Limit;

**11.2.4** you or the Account Manager have breached these Terms and Conditions; or

**11.2.5** we are required to do so under any applicable law or regulation or at the direction of any regulatory, law enforcement or other competent authority.

**11.3** 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 we are permitted by law).

## **12. OUR LIABILITY**

**12.1** Our liability and the liability of our agents in connection with these Terms and Conditions (whether arising in contract, tort (including negligence), breach of statutory duty or otherwise) shall be subject to the following exclusions and limitations:

**12.1.1** Neither we, nor our agents shall be liable for any default resulting directly or indirectly from any cause beyond our control, including but not limited to, a lack of funds;

**12.1.2** Neither we, nor our agents shall be liable for any loss of profits, loss of business, or any indirect, consequential, special or punitive losses;

**12.1.3** where sums are incorrectly deducted from your Available Balance due to our default, our liability and that of our agents shall be limited to payment to you of an equivalent amount to that which was incorrectly deducted from your Available Balance;

**12.1.4** in all other circumstances of our default, our liability and that of our agents jointly will be limited to transferring any Available Balance to your nominated bank account.

**12.2** 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 and our agents with all assistance that we reasonably require.

**12.3** Nothing in these Terms and Conditions shall exclude or limit our liability or that of our agents for death or personal injury resulting from our negligence or fraud.

**12.4** To the extent permitted by law, all conditions or warranties implied by law, statute or otherwise are expressly excluded.

**12.5** 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.

### **13. YOUR INFORMATION**

**13.1** Some personal data will be necessary for us to provide you with the Account and services under this Agreement. Modulr FS is a Data Controller and shall only use your personal data for this purpose. Please see the Privacy Policy (please contact Customer Services for details of where to access this) for full details on the personal data that we and Modulr Finance Ltd hold, how we will use it and how we will keep it safe. Modulr will at all times comply with Data Protection Laws.

**13.2** We will retain details of individual transactions for six years from the date on which the particular transaction was completed. We will maintain all other records for six years from which we have ceased to provide you with any product or service

**13.3** You must update any changes to your Information by contacting Customer Services.

**13.4** 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.

**13.5** 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.

### **14. COMPLAINTS PROCEDURE**

**14.1** Complaints regarding any element of the service provided by us can be sent to Customer Services.

**14.2** 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.

**14.3** 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 Business Days of the date we received your complaint.

**14.4** 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).

### **15. GENERAL**

**15.1** 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.

**15.2** If any provision of these Terms and Conditions is deemed unenforceable or illegal, the remaining provisions will continue in full force and effect.

**15.3** You may not assign or transfer any of your rights and/or benefits under these Terms and Conditions and you shall be the sole party to the contract between us. You will remain liable until the Account issued to you is terminated. We may assign our rights and benefits at any time without prior written notice to you. We may subcontract any of our obligations under these Terms and Conditions.

**15.4** Save for Modulr, who acts on our behalf, no third party who is not a party to these Terms and Conditions has a right to enforce any of the provisions in these Terms and Conditions and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

**15.5** These Terms and Conditions contain the information set out in Schedule 2 of the Payment Service Regulations 2017 and you can obtain a copy of this Agreement at any time by contacting Customer Services.

**15.6** These Terms and Conditions are governed by English law and you agree to the exclusive jurisdiction of the courts of England and Wales.

**15.7** 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 safeguarded account in accordance with our legal obligations. In the event that we become insolvent funds that are safeguarded by us are protected against the claims made by our creditors.

### **16. CONTACTING CUSTOMER SERVICES**

**16.1** Customer Services are provided by Damex. The details shall be provided by Damex.