

# Cube Treasury Services Limited – Client Terms & Conditions

The Client acknowledges that Cube has specifically advised the Client that Cube is not required to maintain a licence to provide advice regarding Investments (as defined in the Isle of Man's Investment Order 2004) and that Cube does not give Investment advice. Therefore, the Client should consider each of Cube's Services as an information and/or a data source regarding Cash Products only (as defined below). When using any Cube Service, the Client retains full discretion and remains fully responsible for any decisions that it may make in relation to any Cash Product or other financial product or service.

The Client's attention is drawn to the provisions of clause 8.

## 1. Background & Priority

1.1 These Client Terms & Conditions together with each Client Order Form (along with any Service Guides attached thereto) entered into between Cube and a Client (each term as defined below) shall provide the terms and conditions upon which Cube shall deliver the Services to each Client.

1.2 In the event of any conflict or inconsistency between the provisions of any of the documents relevant to a particular Service, then the order of precedence of the documents shall be: (1) each Service Guide relevant to a particular Service; (2) each Client Order Form relevant to a particular Service; and (3) these Client Terms & Conditions.

## 2. Definitions

2.1 The following expressions shall have the meanings provided below and cognate expressions shall bear corresponding meanings herein and in any Service Documentation (as defined below):

"**Applicable Rate**" means the base rate of interest quoted publicly from time to time by Isle of Man Bank Limited plus three per cent;

"**Business Day**" shall mean any day which is not a Saturday or a Sunday or any public holiday or bank holiday recognised in the Isle of Man.

"**Cash Product**" means any cash or near-cash financial product or service or any foreign exchange activity that is not an Investment;

"**Confidential Information**" means any Service Documentation or any documentation or any other information that is generated by Cube in connection with the provision of any Service, all financial, commercial, technical, operational, organisational, legal, management and other information, data and know-how relating to the disclosing Party which may be supplied orally or in writing or in any other form by the disclosing Party;

"**Cube**" means Cube Treasury Services Limited, an Isle of Man company (120409C) and registered office 24, Hope Street, Douglas, IM1 1AP;

"**Client**" means the customer details of which are set out on the relevant Client Order Form;

"**Client Order Form**" means each Client Order Form entered into by the Parties;

"**Client Terms & Conditions**" means these client terms & conditions that Cube may modify from time-to-time by providing 30 days prior email notice to the Client;

"**Fees**" means the fees as provided in more detail on each of the Client Order Forms;

"**Introducer Payment**" means any payment made or any discounts or reductions in commissions made available to Cube by a product or service provider as a result of Cube providing the Services to the Client;

"**Investment**" means any financial product that falls with the definition of investments contained within the Isle of Man's Investment Business Order 2004 and "Investments" shall be defined accordingly;

"**Parties**" means Cube and the Client, and a "Party" shall mean either of them;

"**Service Commencement Date**" means the date that Cube is to commence providing the Services to the Client, which shall either be the date of the relevant Client Order Form, or any other date that both Cube and the Client mutually agree in writing;

"**Service Guide**" means any Service Guide that provides information on a particular Service or Services which is attached to any Client Order Form;

"**Services**" means the services, details of which are provided in each of the Client Order Forms;

"**Service Documentation**" means the Client Order Form and any Service Guide related thereto and these Client Terms & Conditions that together provide the terms and conditions upon which Cube will provide the Services to the Client; and

"**Term**" means the term of a Client Order Form that shall come into effect on the Service Commencement Date and continue in force until terminated in accordance with the terms hereof.

2.2 An expression defined in these Client Terms & Conditions shall bear the same meaning when used in all other Service Documentation unless expressly provided for otherwise therein.

2.3 The Services shall be provided to the Client by Cube on the terms and conditions provided by the relevant Service Documentation to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document).

## 3. Services

3.1 Cube shall deliver the Services to the Client from the Service Commencement Date until the expiration of the Term, subject to termination and suspension rights as set forth in the Service Documentation.

3.2 If the Client requests Cube to provide services that Cube is not licensed to provide (such as in relation to Investments or other non-Cash Products), then the Client acknowledges and accepts that such services will be provided to the Client by an entity that is licensed to provide such services.

## 4. Client's Obligations

4.1 In consideration of the delivery of the Services to the Client by Cube, the Client shall pay Cube the Fees in accordance with the terms of the relevant Service Documentation, except in relation to the Services provided by Cube free of charge to the Client (as indicated on the Client Order Form) in relation to which Services the Client acknowledges that Cube may be entitled to receive Introducer Payments.

4.2 If, as a result of receiving the Services, the Client deposits funds into a Cash Product that entitles Cube to receive an Introducer Payment, then the Client undertakes not to take any action or make any omission that may impact upon Cube's entitlement to such Introducer Payment or to any future Introducer Payments to which Cube would have become entitled but for the Client's acts or omissions.

4.3 The Client indemnifies Cube in relation to any loss of any Introducer Payment that Cube may suffer as a result of the Client's acts or omissions or if the Client breaches the provisions of Clause 4.2.

4.4 The Client undertakes to limit distribution of hard copies of any reports or documentation related to the Services to employees of the Client.

4.5 The Client is responsible for the acts and omissions of any of its employees or advisors and is liable for any failure by any of its employees or advisors to perform or observe the terms and conditions of all relevant Service Documentation.

4.6 As soon as possible after the date hereof, the Client shall nominate a suitably authorised individual (the "**Authorised Individual**") to be responsible for:

(a) issuing written instructions (by email or otherwise) to Cube in relation to any action that the Client requires Cube to take in relation to the provision of the Services; and/or

(b) authorising Cube in writing (by email or otherwise) to take an action on behalf of the Client in relation to any Cash Product in which the Client has deposited funds;

4.7 If any party other than the Authorised Individual issues instructions or grants authority to Cube, then Cube shall not be in breach of any Service Documentation if Cube does not act on such instructions or grant of authority.

## 5. Payment & Taxes

5.1 All sums payable under any Client Order Form are exclusive of any Value Added Tax ("VAT") or other taxes or duties levied on such sums and, subject to receipt of a valid VAT invoice, the Client undertakes to pay and indemnify Cube in respect of any such VAT or other tax or duty properly chargeable to the Client by Cube.

5.2 At the end of each calendar month (or part thereof), the Client will (if relevant) receive an invoice from Cube detailing the Services that the Client has used during that calendar month and the Fees payable by the Client to Cube, which shall be payable within seven days of receipt or as otherwise provided on the invoice.

5.3 Cube may claim interest on any amount overdue at the Applicable Rate from the due date until date of payment, both days inclusive, which interest shall be calculated on a daily basis.

5.4 Payment of all sums due under each Client Order Form shall be made by wire, BACS, cheque or such other method as Cube may reasonably specify from time to time, and payment of all such sums shall be made in full (without any set-off, deduction or withholding whatsoever).

5.5 The Client acknowledges and accepts that Cube may receive Introducer Payments as a result of the Client choosing to deposit funds with certain product or service providers and the Client hereby waives all rights to object to Cube receiving such Introducer Payments.

## 6. Intellectual Property Rights

6.1 Neither Party may use the names, service marks, trademarks, logos or other corporate identifications of the other Party, without the prior consent of the other Party.

6.2 All intellectual property rights shall remain the property of the party devising, creating, first recording or owning the same and nothing in any Service Documentation shall be deemed to confer any assignment, right or title of any intellectual property rights of one party to another party.

6.3 All intellectual property rights and all other rights in the Services, and any reports and documentation produced in relation thereto shall be owned by Cube to the extent that they are not already owned by a third party.

6.4 Nothing contained in any Service Documentation shall restrict Cube's use of configurations, ideas, concepts, know-how, methods or techniques developed in relation to any services or otherwise.

## 7. Confidentiality & Data Protection

7.1 Each Party undertakes that it shall not at any time disclose to any person any Confidential Information except as permitted by Clause 7.2.

7.2 Each Party may disclose the other Party's Confidential Information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Service Documentation. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this Clause 8; and

(b) as may be required by law, court order or any governmental or regulatory authority.

7.3 No Party shall use any other Party's Confidential Information for any purpose other than to perform its obligations under the Documentation.

7.4 Both Parties shall, in the performance of their obligations under the Service Documentation, comply with the requirements of the Data Protection Act 2002 and all regulations and orders made there under.

## 8. Limitation of Liability

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE.**

8.1 The liability of Cube in respect of each of the Services shall be as stated in these Client Terms & Conditions.

8.2 This Clause 8 sets out the entire financial liability of Cube to the Client in respect of any breach of any Service Documentation or any representation, statement or tortious act or omission (including negligence) arising under or in connection with any Service Documentation and the Client waives any right to claim against Cube other than in accordance with this Clause 8.

8.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from any Service Documentation.

8.4 Cube shall not be liable for loss of profit or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

8.5 The annual aggregate liability of Cube to the Client in relation to any and all claims, losses, damages or expenses from any cause whatsoever shall be limited in relation to all Services to an amount equal to any Fees paid by the Client during the course of the calendar year prior to the relevant claim.

8.6 If the Client instructs Cube other than in compliance with Clause 4.6 of these Terms & Conditions, then Cube shall not be liable to the Client for any acts or omissions following the receipt of such instructions.

8.7 Each provision of these Client Terms & Conditions, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

**8.8 THE CLIENT ACKNOWLEDGES AND ACCEPTS THE LIMITATION ON CUBE'S LIABILITY PROVIDED IN THIS CLAUSE 8 AS BEING A FAIR AND REASONABLE APPORTIONMENT OF THE POTENTIAL EXPOSURE THAT COULD ARISE IN RELATION TO THE LIABILITIES EXPECTED UNDER THE SERVICE DOCUMENTATION; IF THE CLIENT VIEWS CUBE'S PROPOSED LIMITATION ON LIABILITY TO BE INSUFFICIENT FOR ITS POTENTIAL EXPOSURE SHOULD CUBE BREACH ANY SERVICE AGREEMENT, THEN THE CLIENT HEREBY AGREES TO OBTAIN RELEVANT INSURANCE COVER REGARDING SUCH POTENTIAL EXPOSURE.**

## 9. Termination

9.1 All of the following shall be an "**Event of Default**":

(a) a failure by the Client to make timely payment to Cube of any amount due to Cube under the terms of any Client Order Form and which failure is not rectified by the Client (save in the case of a bona fide dispute regarding the same) within thirty days of receipt of written notice from Cube to the Client requiring the Client to make such payment; or

(b) any material breach by the Client of any term of any Service Documentation which cannot be remedied or which is not remedied by the Client to Cube's reasonable satisfaction within thirty days of receipt by the Client of written notice from Cube requiring the Client to do so; or

(c) making by the Client of an arrangement, composition with or a general assignment for the benefit of creditors; or

(d) the filing of an involuntary petition in bankruptcy or other insolvency protection against the Client which is not dismissed within thirty days of its filing or results in the issuance of an order for relief against the debtor; or

(e) the appointment of a receiver, liquidator or like person over the Client or presentation, resolution or petition to wind up the Client (other than for the purpose of reconstruction or amalgamation) or if the Client is no longer able to pay its debts as and when they become due; or

(f) if the Client is a licence holder at the date of this Agreement and it loses its licence or has its licence suspended for whatever reason during the Term of this Agreement; or

(g) if Cube (acting reasonably) deems that the Client has been undertaking or continues to take activities that could be deemed to be contrary to Isle of Man law or the law of any other jurisdiction.

9.2 If an Event of Default occurs in relation to the Client, then Cube may serve notice on the Client terminating any or all Service Documentation immediately or within such further period, not exceeding thirty days, as Cube provides for in the notice.

9.3 In the event of termination, both Parties shall return any Confidential Information of the other Party to the other Party forthwith.

9.4 If an Event of Default occurs, Cube shall be entitled, in addition to any other remedy to which Cube may be entitled, to immediately terminate the relevant Service Documentation and to claim compensation from the Client for all and any loss and damage suffered by Cube, together with all reasonable legal costs incurred, as a result of an Event of Default.

9.5 Any Service Documentation can be terminated on an anniversary of the Service Commencement Date by either Party by giving the other Party not less than ninety days prior written notice.

9.6 If a Client terminates any Client Order Form or Service Documentation, then the Client will remain liable for all Fees due prior to such termination and Cube shall remain entitled to receive any Introducer Payments that result from the Client's actions for up to twelve months following the termination of any Service Documentation.

9.7 The termination of any Service Documentation shall not affect any obligations or rights of the Parties which arose or accrued prior to, or which expressly survive, termination of any Service Documentation.

## 10. Dispute Resolution

10.1 Should any dispute, disagreement or claim concerning the Services or any of the Service Documentation arise between the Parties (hereinafter referred to as the "**dispute**"), the Parties shall attempt to resolve the dispute by negotiation. In such event and as and when the dispute arises, one Party may invite the other in writing to meet and to attempt to resolve the dispute within seven days from date of the written invitation.

10.2 Should the procedure as described in Clause 10.1 fail or should for any reason the dispute remain unresolved after the period of twenty one days after the said written invitation, the Parties may agree to submit the dispute for determination to the Chartered Institute of Arbitrators with each Party bearing its own costs, unless otherwise determined by an arbitrator. The determination shall be held in the Isle of Man and shall be subject to the Arbitration Act 1976 (as amended) save that the arbitrator shall act as an expert and not an arbitrator. Where the Parties do not agree to arbitration, the dispute shall be resolved in accordance with Clause 12.

10.3 The provisions of this Clause 10 are without prejudice to either Party's right to seek any form of injunctive relief from the courts where a Party deems it necessary to do so.

## 11. General

11.1 Any notice or other communication to be given under any Service Documentation shall be in writing, in English and signed by the Party giving it (or its representative) and shall be delivered by hand or sent by registered post to the address provided on the Client Order Form (or such other address as either party shall provide or the other party from time-to-time) and shall be deemed to have been received on the date delivered.

11.2 The Client authorises Cube to disclose the Client's use of the Services to third parties as part of Cube's marketing and promotion of the Services to such third parties.

11.3 The Service Documentation constitutes the whole and entire agreement between the Parties with regard to the terms upon which each of the Services are to be delivered to the Client by Cube.

11.4 The Parties shall act as independent contractors for all purposes under any Service Documentation. Nothing contained herein shall be deemed to constitute either Party as an agent or representative of the other Party, or the Parties as joint venturers or partners for any purpose.

11.5 A person who is not a party to the Service Documentation shall not have any rights under or in connection with it.

## 12. Governing Law & Jurisdiction

All Service Documentation shall be governed and construed in accordance with the laws of the Isle of Man and each Party irrevocably agrees to submit to the non-exclusive jurisdiction of the courts of the Isle of Man.

Cube has reduced its terms and conditions to one page so that they can be provided on the back this document - a larger print version of the above is available at [www.cubetresury.com](http://www.cubetresury.com) or from 01624 614330.