



Deliverable FX Service Agreement
Elite Crescent Capital
February 2022



Elite Crescent Capital

Deliverable FX Service Agreement

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following definitions apply.

Account has the meaning given to it in Term 5 (*Your Account*).

Agreement has the meaning given to it in Term 2.2 (*Our Agreement*).

Approved Bank means a central bank, a CRD credit institution or a bank authorised in a third country.

Account Balance means the sum of your cash balance on your Elite Crescent FX User Accountaccount.

Base Currency means pounds sterling (£), unless otherwise agreed with you.

Default Interest Rate means a rate of 4% per annum simple above the base rate of the Bank of England or, if the sums are due in a currency other than sterling, 4% per annum simple above the base rate of the central bank for that currency, provided that if the relevant base rate cannot be established for any reason, we shall acting reasonably at all times set the Default Interest Rate by reference to the base rate of an alternative central bank.

Deliverable FX Contract means a physically settled spot or forward FX contract referencing particular currency pairs.

Event of Default has the meaning given to it in Term 13 (*Events of Default*).

FCA means the United Kingdom's Financial Conduct Authority or any successor entities.

FCA Rules means all rules, requirements, directions and guidance issued by the FCA, as amended from time to time.

FOS means the Financial Ombudsman Service.

FSMA means the Financial Services and Markets Act 2000.

GUI or **Elite Crescent FX User Account** means the graphical user interface as we make available to you from time to time which gives you access to an online trading account in order to submit and order in a Deliverable FX Contract.

Instrument means a Deliverable FX Contract.

Instrument Information means the information provided for each Instrument on the GUI.

Maximum Trade Size means

Order means an order or instruction submitted to us.

PSR 2017 means the Payment Services Regulations 2017.

Trading App means our trading application downloaded by you to supported mobile devices and which provides mobile access to our trading services.

Trading Hours means the hours that ELITE CRESCENT is open for business to accept Orders.

Website means our website at www.elitecrescent.com and the GUI we make available to you.

1.2 In this Agreement:

- i. a Clause is a reference to a Clause of this Agreement;
- ii. references to ELITE CRESCENT, we, us, our and ours (as appropriate) are references to us, ELITE CRESCENT;
- iii. references to you, your and yours (as appropriate) are references to you, our client;
- iv. any reference to a rule, enactment, statute or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated, re-enacted or replaced and to any statutory instruments, orders or regulations made thereunder or under any such re-enactment;
- v. words or phrases importing the singular include the plural and vice versa;
- vi. words or phrases importing the masculine include the feminine and vice versa;
- vii. references to the words includes or including are to be construed without limitation; and
- viii. a word or expression related to a defined term has a consistent meaning to the defined term.

Unless otherwise stated, all dates and times stated herein are references to the date or time of the United Kingdom, taking account of changes between Greenwich Mean Time and British Summer Time.

2. INTRODUCTION

2.1 **About us.**[here] ELITE CRESCENT Capital Limited, trading as ELITE CRESCENT, is authorised and regulated by the Financial Conduct Authority with registration number 13617006 The FCA's registered address is 12-14 Endsleigh Gardens, London, City of, WC1H 0EH. Our company number is 13617006 and our registered address is 382 KENTON ROAD, HARROW, MIDDLESEX, HA3 8DP. You may communicate with us by email (admin@elitecrescent.com), by telephone (+44 7700 166444) or otherwise as set out in Term 1 (Communications and Notices) below.

2.2 **Our Agreement.** This ELITE CRESCENT Deliverable FX Service Agreement (the "DFX Agreement") shall be entered by you for the purpose of utilising the ELITE CRESCENT Deliverable FX service which allows you to submit an order to us ("a DFX Order") to

purchase one currency with another and receive such purchased currency, and to remit purchased currency to you or a third-party beneficiary designated by you. This DFX Agreement will apply in conjunction with the Terms of Business and will form part of our agreement (**Agreement**) with you, also comprising the following documents, as amended by us from time to time:

- the completed account opening documentation you provided to us;
- Instrument Information;
- Privacy Policy;
- Cookie Policy;
- Summary Conflicts of Interest Policy; and
- any further or separate arrangement that may be entered into between us, such as an API Agreement.

The latest published versions of these documents (excluding any further or separate arrangement that we may have entered into with you) are available from our Website.

- 2.3 This DFX Agreement will apply in conjunction with the [Terms of Business](#) and will form part of our agreement with you. All relevant Terms from the Terms of Business including but not limited to our relationship, indemnity and liability, representations and warranties, communications and notices, website, conflicts of interest, force majeure events, governing law, data protection and privacy, and confidentiality, will apply to the DFX Agreement. It is important that you familiarise yourself with all applicable Terms before you place a DFX Order.
- 2.4 This DFX Agreement will come into effect on the date that we open your Account. Any new version of this Agreement will supersede any earlier versions and we will notify you of the date that any new version will come into effect. The new version will apply to all trades entered into with us after that new version comes into effect. By submitting Orders to us after the date of the new version, you agree to the terms of such new version.
- 2.5 Unless separately defined in this DFX Agreement, words and expressions have the same meaning as in the [Terms of Business](#). If there is an inconsistency between the DFX Agreement and the [Terms of Business](#), the terms of the [Terms of Business](#) will prevail except where expressed specified otherwise in this Agreement.
- 2.6 **FCA Rules.** For the purposes of these Terms, applicable laws and regulations shall include the FCA Rules, the rules of any other relevant regulatory authority or exchange and any applicable laws, rules, procedures, guidance, codes, standards and regulations (including, without limitation, accounting rules and anti-money laundering or sanctions legislation) in force from time to time. Nothing in this Agreement will exclude or restrict any duty or liability owed by us or any Related Persons to you under FSMA, PSR 2017 or the FCA Rules.

- 2.7 **English.** The Terms of Business are supplied to you in English and we will communicate with you in English for the duration of these Terms of Business. If there is any conflict between the English version of this document and any other language version, the English version will prevail.

3. OUR RELATIONSHIP

- 3.1 **Your capacity.** You will trade with us as principal and not as agent for any person. You will be directly and personally responsible for performing your obligations under this Agreement, whether you are dealing with us directly or through an agent. Notwithstanding any assertion that you act in connection with or on behalf of any other person, we will not accept that person as a client of ours and neither we nor our Related Persons will accept any obligation or liability to them.

4. OUR SERVICES

- 4.1 **Trading services.** We provide trade execution services in respect of certain Instruments. When executing Orders, we will do so in accordance with FCA Rules and the PSR 2017.
- 4.2 **Execution only dealings.** Dealings with you will be carried out by us on an execution only basis.
- 4.3 **Remittance services.** We also provide remittance services on behalf of you to third-party recipients, in accordance with your instructions. The details of our remittance services are set out in Clause 8 herein.
- 4.4 **No personal recommendations or advice.** We do not make any personal recommendation to you nor advise you on the merits of any particular transaction or any aspect of your trading with us. We give you no warranty as to the suitability of any transactions or any aspect of your trading with us.
- 4.5 **No tax advice.** We will not provide you with tax advice.
- 4.6 **Compliance with rules.** We may take or omit to take any action we consider necessary to ensure compliance with FCA Rules.

5. YOUR ACCOUNT

- 5.1 **Account information.** Upon an ELITE CRESCENT Deliverable FX account being opened for you (your **Account**), you will be given a unique account number. We will ask you to choose a username, password and other security information for your Account. We will rely on this information to identify you and you agree that you will not disclose these details to any person not duly authorised by you.

6. ORDERS

- 6.1 **How to open or close a trade.** To open or close a trade to buy or sell an Instrument, you must first submit an Order to us. You may submit an Order:

- (a) online via the GUI;
- (b) via a Software Bridge;
- (c) via the Software Trading Tools; or
- (d) by speaking to us on the telephone during our Helpdesk Hours.

You cannot submit an Order by leaving a message on any automated voicemail or answering service or through a live chat system service. We shall not accept and shall not be under any obligation to execute any Order submitted by these means.

- (a) **Accepting Orders.** We are under no obligation to accept or execute any Order you submit. However, we shall normally do so, provided:
 - (b) your Account contains sufficient resources to cover any Order;
 - (c) you are not otherwise in breach of our Terms of Business and/or this Agreement; and
 - (d) it is possible to execute such Order.

Factors such as the size of your Order and liquidity available in the Instrument you wish to trade will impact whether and when it is possible to execute your Order. It may not be possible to execute your Order immediately.

6.2 **Acknowledging receipt.** We shall acknowledge receipt of each Order we receive and accept from you via the methods listed in Term 6.1 (How to open or close a trade).

6.3 **Trading Hours.** We shall act on Orders only during Trading Hours and we shall deal with any Orders received outside Trading Hours as soon as reasonably practicable after Trading Hours resume.

6.4 **Maximum Trade Size.** We have the right in our absolute discretion to set a Maximum Trade Size.

6.5 **Cancelling or amending Orders.** You may, with our consent, cancel or amend all or any part of your Orders so long as we have not acted upon it or the relevant part. Notwithstanding this, if your Order is an opening order you may amend any related contingent Orders.

7. TRADES AND OBLIGATIONS

7.1 You may submit a DFX Order through our deliverable FX Platform or by speaking to us on the telephone during our helpdesk hours or at our discretion in writing via email.

7.2 Your Dfx Order Will Be Filled At The Best Available Price Which Will Be Inclusive Of A Commission Paid To Us.

7.3 Where you execute a DFX order by the telephone we shall send a contract note to you to confirm the details of your successfully executed trade on the date your DFX Order is filled. You agree that any contract notes will be delivered to you electronically in writing to the

email address we hold for you.

- 7.4 Where you execute a DFX order via our Deliverable FX Platform you will receive details of the executed trade on the platform immediately after you trade. You may also receive a contract note delivered to you electronically in writing to the email address we hold for you.
- 7.5 In The Case Of Discrepancies, Errors Or Omissions In A Contract Note Or Where Trading On The Elite Crescent Fx User Account, The Contract Note Shown On Your Screen Immediately After Executing A Trade You Must Contact Us Immediately But In Any Event No Later Than 24 Hours After The Trade. You Agree That Failure To Notify Us About Any Such Discrepancies, Errors Or Omissions Shall Not (A) Invalidate The Trade And (B) Allow You To Amend Such Trade At A Later Date.
- 7.6 You Will From Time To Time Submit A Dfx Order To Us Which Will Result In The Delivery Of Foreign Currency To Your Specified Bank Account Subject To This Dfx Agreement.
- 7.7 Every Time You Place A Dfx Order, Unless Otherwise Agreed, Sufficient Funds Should Be Available On Your Account To Cover The Full Amount Of Currency That You Wish To Buy Which Shall Include The Commission Paid To Us. On Condition That There Are Sufficient Funds Available On Your Account, The Purchased Currency Will Be Sent To Your Specified Bank Account On The Relevant Settlement Date. The "Settlement Date" Shall Mean The Date On Which The Currency You Have Bought And Specified In The Contract Note Shall Be Delivered By Us.
- 7.8 In The Event Insufficient Funds Are Available In Your Account At The Time Of The Trade Or On The Settlement Date We Reserve The Right To Refuse To Execute Your Dfx Order Or If Already Executed Either (I) Reverse The Trade At The Current Market Price And Debit Your Account With Any Losses Incurred, Or (Ii) Roll The Trade To Extend The Settlement Date And Allow You To Send The Residual Funds Required To Settle The Trade.
- 7.9 We Will Pay To You The Amount Due And Agreed In The Relevant Contract Note On The Settlement Date Providing Sufficient Funds Are Available On Your Account. You Agree That Banks Have Designated Working Hours, After Which They Will Not Accept Same-Day Payment Instructions. It Is Your Responsibility To Be Aware Of And Where Necessary Comply With Such Designated Working Hours. All Payments You Make To Us In Respect Of Any Trades Pursuant To This Dfx Agreement Are To Be Made In Full Without Set-Off, Counterclaim Or Deduction Whatsoever.
- 7.10 We May Set-Off Against Any Positive Cash Balance In Your Account, Or Against Any Other Sums Due To You, Any Sums Due To Us By You In Accordance With Term 16.4 Of The Terms Of Business.

8. REMITTANCE

- 8.1 **Setting up your payment order.** You can set up your payment order either from your ELITE CRESCENT Deliverable FX Account or in writing by email to us. You can only set up a Payment Order in the Base Currency of your ELITE CRESCENT Deliverable FX Account.
- 8.2 **Payment order information.** To set up a payment order via your Account, you need to provide certain information to us including (a) the full name of your recipient, (b) your

recipient's bank account details or their ELITE CRESCENT Deliverable FX Account details and (c) amount to be transferred.

- 8.3 **Payment order limits.** We may place limits on the amount you may send per transfer.
- 8.4 **Payment order receipt and confirmation.** If your payment order is received by us after 5pm on a Business Day or not on a Business Day, your payment order will be deemed received on the following Business Day. Once we have received your payment order, we will send you a confirmation by email. Each payment order is given a unique transfer number and is shown in the transaction history on your Account. You should quote this transfer number when communicating with us about a particular payment order. We will notify you in writing by email once your payment order has been processed.
- 8.5 **Third-party due diligence and verification.** We reserve the right to perform due diligence and/or verification checks on a recipient of your payment order, as may be legally required of us. Such checks may increase the time for processing your payment order. We cannot be responsible or held liable for any delays as a result of carrying out such checks. You agree to comply at all times with our requests in relation to any such checks we undertake.
- 8.6 **Rejecting your payment order.** If we are unable to complete your payment order, we will let you know and, if possible, the reasons for rejecting your payment order and an explanation of how to correct any factual errors, unless prohibited from notifying you by any applicable laws or regulation.
- 8.7 **Cancelling your payment order.** You cannot cancel your payment order once we have confirmed that your order has been processed in accordance with Clause 8.4 herein.
- 8.8 **Incorrect information.** You must make sure that the information you provide when setting up a payment order is accurate and correct. If we have processed your order in accordance with the information you have provided to us it will be considered correctly completed even if you have made a mistake. If you provide incorrect information with your payment order, we will use reasonable efforts to recover the funds for you and may levy a fee on you .

9. ACCOUNT BALANCE

- 9.1 **Base Currency.** Your Available to Trade Balance will be displayed in your Base Currency. All payments due to us will be notified to you in your Base Currency. If you make a payment in a different currency to that of your Base Currency it shall be converted to your Base Currency by our third-party payment provider at the time the payment is received.
- 9.2 Where you open a trade in an Instrument that is not in your Base Currency, we shall during Trading Hours notionally convert:
- (a) the amount required to execute your order; and
 - (b) any charges including commission

for that trade to your Base Currency using our prevailing exchange rate for that purpose. Your Account Balance and its components will therefore be valued in your Base Currency at all times during Trading Hours.

10. COSTS AND CHARGES

- 10.1 **Commission.** We shall debit your Account with the commission payable by you upon your opening or closing a trade as the case may be. Unless otherwise agreed commission and charges such as transfer charges due in respect of a Transaction shall be included in the price of the trade specified in the contract note.
- 10.2 In the event insufficient funds are available on the Settlement Date additional charges may apply which will be required to either reverse the trade at the current market price or roll the trade to extend the Settlement Date in accordance with clause 4.5 of the DFX Agreement.

11. PAYMENT AND SET-OFF

- 11.1 **Remittance of cleared funds.** You may request that the whole or part of any cleared funds that form part of your cash balance be remitted to you. However, we will be under no obligation to pay any money to you if doing so would infringe or contravene any legal or regulatory obligation upon us.
- 11.2 **Interest.** You agree to pay interest to us on any sums due to us that you fail to pay when due. Interest will accrue on a daily basis from the due date until the date on which payment is received in full, at the Default Interest Rate.
- 11.3 **Payment by debit or credit card.** Subject to Term 1.1 (Source of funds) above, we shall credit your Account for any sums you pay to us by credit or debit card in your name upon such payment being authorised by your credit or debit card provider. However, we reserve the right to charge you interest at the Default Interest Rate on these sums from the date of authorisation to the date when we receive these sums as cleared funds from your credit or debit card provider.
- 11.4 **Errors.** If we credit or debit a payment to your Account in error, we shall immediately upon discovering the error, reverse any such credit or debit and your Balance will be adjusted accordingly. In the case of an incorrect credit on your Account, if there are insufficient funds on the Account to enable us to recover the incorrect credit we may cancel any or all of your working Orders.
- 11.5 We may also take steps to recover the sum due to us and until such time as the sum has been paid refuse to accept future Orders from you.

12. TREATMENT OF YOUR MONEY

- 12.1 **Approved Bank.** We will deposit money received from you in a bank account held with an Approved Bank.
- 12.2 **Safeguarding Requirements.** If you have set up a payment order to remit funds to a recipient in accordance with Term 8 above, and we continue to hold funds on your behalf at the end of the business day following the day on which your DFX transaction has been completed we will, as required by PSR 2017, place them in the Safeguarding Account we hold with an Approved bank, segregated from any other funds that we may hold. Such an

account will be to show that it is an account which is held for and only for the purpose of safeguarding your funds in accordance with PSR 2017.

- 12.3 **Payments.** Any monies sent by you to us by debit or credit card will be transmitted through a regulated payment service provider. Accordingly, any online payment by you will result in your funds being transferred first to the payment service provider and subsequently to us.
- 12.4 **Settlements.** We may debit any amounts credited to your Account to settle any fees outstanding in relation to such trades. You acknowledge and confirm that any such debited amounts will cease to be funds under our safeguarding requirements and you will have no rights, title or interest in any such amounts.
- 12.5 **Interest.** We shall not pay interest to you on any of your money that we hold and by entering into this Agreement you acknowledge that you are therefore waiving any entitlement you may have an interest to the safeguarded funds.

13. EVENTS OF DEFAULT

- 13.1 This clause 14 shall apply in addition to Term 23 of the ToBs (*Events of Default*). You agree that the Events of Default as defined in *Term 22* of the Terms of Business will apply to the DFX Agreement and that we have the right to take all steps and actions defined therein.
- 13.2 In addition to clause 7.1, we have the right to cancel any or all of your DFX Orders, terminate this DFX Agreement and/or close your Account(s) if:
- a. you fail to make any payment in respect to a DFX Order, when due and in accordance with the DFX Agreement; or
 - b. you materially breach any of the terms and conditions of the DFX Agreement, or fail to comply with your obligations to us or breach any applicable statute or regulation; or
 - c. it becomes or may become unlawful for us to maintain or give effect to all or any of the obligations under the DFX Agreement or otherwise to carry on its business or if we are requested to close out a trade (or any part thereof) by any regulatory authority whether or not the request is legally binding or we in our absolute discretion consider it desirable or necessary to do so for our own protection; or
 - d. any of the events specified above or anything comparable thereto occurs under the laws of any applicable jurisdiction.
- 13.3 If you become aware of the occurrence of any event referred to in clauses 14.1 and 14.2 above, you shall notify us of such event forthwith.
- 13.4 You agree to pay interest to us on any amount due that you fail to pay when due as specified in *Term 16.8* of the Terms of Business.
- 13.5 Notwithstanding the foregoing, we shall reasonably endeavour to notify you of any action or step that we may take pursuant to our rights under this clause.

14. REPRESENTATIONS AND WARRANTIES

14.1 **Representations and warranties.** In additional Term 25 of the ToBs (*Representations and warranties*), you further represent and warrant to us that:

- you (i) are acting as principal when you are placing a DFX Order, (ii) have full power and authority to place a DFX Order, and (iii) are the beneficial owner of all monies paid or to be paid to us which are free from any charge or encumbrance; and
- a DFX Order is submitted for commercial purposes only and not investment purposes (as contemplated by the Financial Services and Markets Act (Regulated Activities) Order 2001); and
- You undertake to provide us, upon request, any and all information that we may require, or consider necessary or desirable, to provide to any relevant governmental or regulatory authority in relation to anti- money laundering laws and regulations.

14.2 **Repetition and Event of Default.** You agree that each of the representations and warranties in this Clause 15 and in Term 14.1 (*Representations and Warranties*) of the Terms of Business shall be deemed repeated each time you submit an Order to us. **You must advise us immediately if you cannot give such representations and warranties at any time.** A failure to so advise us and breach of any one or more of the representations and warranties set out above is an Event of Default under Term 22.11 (*Event of Default*) of the Terms of Business.

15. FORCE MAJEURE EVENTS

15.1 **Determination.** If we determine that a Force Majeure Event has occurred, we may, without notice, acting reasonably at all times,

- (a) suspend or modify the application of all or any of the Terms of these Terms of Business to the extent that the Force Majeure Event makes it impossible or impracticable for us to comply with the Term or Terms in question; and/or
- (b) close or reverse any or all of your working Orders.

16. COMPLAINTS PROCEDURE

16.1 **How to make a complaint.** If you wish to make a complaint against us, you should advise us of the complaint immediately. In order to allow us to investigate your complaint promptly and effectively, please provide us with full details of the circumstances giving rise to your complaint including, if applicable, details of the time and date of any relevant actual or purported trade. We reserve the right not to commence investigations until such details are provided. We will investigate the complaint promptly and fully in accordance with our complaints handling procedure. A copy of our complaints handling procedure can be found on the Website and a paper copy is available on request.

16.2 **Timeframe.** the reply must be provided to the complainant within an adequate timeframe and at the latest 15 business days after the day on which the payment service provider

received the complaint. In exceptional situations, if a full reply cannot be given for reasons beyond our control, we will send you a holding response, clearly indicating the reasons for the delay in providing a full response to the complaint and specifying the deadline by which you will receive a full reply. This deadline shall be no later than 35 business days after the day on which we received your complaint.

- 16.3 **Financial Ombudsman Service.** If you are dissatisfied with our resolution of your complaint you have the right to refer the matter to the FOS.

Address: Harbour Exchange Square, London E14 9SR

Telephone: +44 20 7964 0500

Email: complaint.info@financial-ombudsman.org.uk

Website: www.financial-ombudsman.org.uk

17. DATA PROTECTION AND PRIVACY

- 17.1 **Privacy Policy and Cookie Policy.** We shall process any data we receive from you or about you in accordance with our Terms of Business, Privacy Policy and Cookie Policy. Our **Privacy Policy** sets out the terms on which we process any personal data we collect from you, or that you provide to us, and our **Cookie Policy** provides information on the cookies we use and the purposes for which we use them. Our **Privacy Policy** and **Cookie Policy** are available on our Website. By using our Website you consent to such processing of personal data and use of cookies, and you warrant that all data provided by you is accurate.

- 17.2 **Contact.** You authorise us to contact you by email, telephone or post in order to discuss any aspect of our business. If you do not wish us to so contact you for any direct marketing activities, you must inform in writing either by email or post. Our email address and postal address (which is also our registered address) is at the back of our Terms of Business.

18. AMENDMENTS

The version of the Deliverable FX Agreement posted on the Website is the version in force at any given time. We may amend any of the terms of this Agreement at any time. Any amendment will be made by posting the amended version of this Agreement on the Website. Any amendment will be effective as from the effective date as published on the Website and it will apply to all working Orders and all new and existing trades as from the effective date. The effective date will, where reasonably practicable, be at least 10 Business Days after the date of posting. We will inform you of the posting on the Website of any amended version of this Agreement, and the date upon which it becomes effective. We will not send you a paper copy of any new version unless you request that we do so. You must make sure that, before submitting an Order, you are happy for such Order and any subsequent trade to be governed by the latest version of this Agreement.

19. TERMINATION

- 19.1 This Agreement may be terminated by either party upon giving the other party written notice of termination, which will take effect immediately, unless otherwise specified in the notice. Any such termination will not affect any obligation that may already have been incurred by either party in respect of any outstanding trade or any legal rights or obligations that may already have arisen under this Agreement, in the Terms of Business or any dealings made thereunder. Upon termination, all pending orders will be closed unless otherwise agreed by us, and all sums due from you to us will become immediately payable.
- 19.2 A termination of the Terms of Business by either party in accordance with Term 34.1 therein shall also have the effect of terminating this Agreement.
- 19.3 ELITE CRESCENT is likely to terminate this Agreement immediately by written notice where:
- (c) you have materially and seriously breached any term of these Terms of Business; or
 - (d) we have terminated the Terms of Business with immediate effect in accordance with Term 34.3 therein.

20. GOVERNING LAW

This Agreement and each trade entered into with you is in all respects governed by English law and the courts of England and Wales will have the non-exclusive jurisdiction to settle any disputes arising out of or in connection with this Agreement (including a dispute or claim relating to any non-contractual obligation arising out of or in connection with it). Each party agrees to waive any objection to the English courts, whether on the grounds of venue or that the forum is not appropriate. Nothing in this Agreement will prevent us from bringing proceedings against you in any other jurisdiction.