

GCM PRIME LTD

TERMS AND CONDITIONS OF BUSINESS

**THIS DOCUMENT CONTAINS IMPORTANT
INFORMATION CONCERNING THE LEGALLY BINDING
TERMS AND CONDITIONS APPLICABLE TO YOU**

Review by Charles Russell Speechlys LLP (“**CRS**”)
Date: September 2015

Contents

Page

1.	Introduction.....	.....
2.	Services.....	.....
3.	Prices.....	.....
4.	Orders, Transactions and Open Positions.....	.....
5.	Online Facility.....	.....
6.	Transaction Confirmations and Account Statements.....	.....
7.	Consent to electronic communication.....	.....
8.	Margin.....	.....
9.	Settlement Date, Rollover and Offset Instructions.....	.....
10.	Client Money.....	.....
11.	Profits, Losses and Interest Charges on Open Positions.....	.....
12.	Fees and Charges.....	.....
13.	Conflicts of Interest.....	.....
14.	Liability and indemnity.....	.....
15.	Research and Recommendations.....	.....
16.	Representations and Warranties .....	.....
17.	Confidentiality and Data Protection.....	.....
18.	Default and Netting.....	.....
19.	Intellectual Property Rights.....	.....
20.	Links.....	.....
21.	Termination.....	.....
22.	Notices.....	.....
23.	Complaints.....	.....
24.	General.....	.....

25. Governing law and jurisdiction.....

1. INTRODUCTION

- 1.1** GCM Prime's online execution-only dealing services are provided by GCM Prime Ltd whose principal place of business is 6 Bevis Marks, London EC3A 7BA (GCM Prime, **we**, **us** or **our** as appropriate) on and subject to the following terms and conditions (as amended or extended from time to time) (**Terms**) and shall apply to all dealings between us and you in relation to our services.
- 1.2** GCM Prime Ltd is authorised and regulated by the Financial Conduct Authority (**FCA**) for the conduct of designated investment business in the UK (FCA Firm Reference Number 571881). The address of the FCA is 25 The North Colonnade, Canary Wharf, London E14 5HS.
- 1.3** Unless otherwise agreed with you in writing, we are treating you as a retail client for the purposes of the rules and guidance of the FCA (**FCA Rules**). We will always treat you as a Retail client unless you request and we agree to a different categorisation under FCA Conduct of Business rules.
- 1.4** The agreement between us comprises these Terms, the completed account opening documentation (**Account Opening Form**) both as updated or amended from time to time, together with such other documentation as we agree shall form part of such agreement, collectively the **Agreement**.
- 1.5** Your application to open an account with us or your use or continued use of our services will be taken as your agreement to be legally bound by the Agreement.
- 1.6** The Agreement shall supersede any previous agreement, arrangement or understanding between us as to the basis on which our services are provided to you. We may vary or amend the Agreement at any time upon notice to you, given or confirmed in writing (which variation or amendment shall be effective on the date specified in our notice or, if no date is specified, immediately) which may include displaying them on the Online Facility (as defined in clause [5](#)). Our services are provided subject to any disclosures or disclaimers found in the Agreement or within the Online Facility.
- 1.7** A current and definitive copy of these Terms (as revised from time to time) will be available to you on the Online Facility at all times.

- 1.8** You undertake to notify us immediately of any changes to any information you have provided to us in connection with the Agreement.
- 1.9** In agreeing to the Agreement you authorise us or our Associates or a Service Provider (each as defined in clause 5) acting on our behalf to investigate your credit standing and in connection therewith to contact such banks, financial institutions and credit agencies as we shall deem appropriate to verify such information. You further authorise us to investigate any current and past investment activity, and in connection therewith, to contact such exchanges, broker/dealers, banks, and others as we shall deem appropriate.
- 1.10** We will communicate with you in the English language and all transactions you enter into with or through us will be concluded in the English language. All references to time in the Agreement are to UK time
- 1.11** You may grant a power of attorney authorising a third party to represent you in any business with us. If you appoint a third party as your attorney we will take instructions exclusively from such person until you notify us in writing of the termination of the power of attorney. We will have no responsibility or liability for the acts and omissions of your attorney. References to “you” in these Terms shall be deemed to include your attorney.
- 1.12 Cancellation rights**
- 1.12.1** You have a right to cancel the Agreement within 14 days of the day we receive the completed Account Opening Form from you. If you would like to cancel the Agreement please let your contact at GCM Prime know or write to us at 6 Bevis Marks, London EC3A 7BA or email us using the contact details on our website www.gcmprime.com
- 1.12.2** If you do not exercise this right to cancel within the requisite time period, you will still be entitled to exercise your right under clause 22 of these Terms to terminate the Agreement.
- 1.12.3** The right to cancel and the right to terminate under the Agreement only relate to cancelling or terminating the Agreement. Cancellation or termination will not affect

your or our accrued rights, indemnities, existing commitments or any other contractual provision intended to survive termination of the Agreement.

1.12.4 No penalty will apply on cancellation. Cancellation or termination will not affect the completion of transactions initiated prior to us receiving your notice of cancellation or termination. In addition, you will pay any fees and charges incurred up to the date of cancellation and any additional expenses necessarily incurred by us (or a third party) in cancelling the Agreement and any losses necessarily realised in settling or concluding outstanding transactions and transferring your funds back to you.

2. SERVICES

2.1 We offer execution-only dealing services to you in relation to transactions in foreign exchange contracts and any other financial products we may offer through the Online Facility from time to time (collectively **Products**).

2.2 We will not advise you on the merits or suitability of any transaction entered into by you nor will we manage or monitor any open positions you may have in the Products. You acknowledge that our execution of any order on your behalf does not in any way imply that we have approved or recommended that transaction or Product. We have set out various risk disclosures in a separate risk warning for your information which is available on the Online Facility.

2.3 We are authorised to execute all or any of your orders to buy or sell Products with such counterparty as we may reasonably select (which may, subject to regulatory requirements, include us or any affiliate of ours).

2.4 Unless we have otherwise agreed in advance in writing, you will enter into each transaction as principal and not as agent on behalf of someone else. We shall be responsible to you alone and shall have no duties or obligations to your underlying customers (if any) and you alone will be responsible for the performance of your obligations to us.

2.5 All transactions we enter into with you or execute on your behalf will be placed and executed generally in accordance with the terms

of our order execution policy (as revised from time to time) full details of which are available on the Online Facility (**Order Execution Policy**). Our Order Execution Policy is a policy only, is not part of the Agreement, is not intended to be contractually binding and does not impose or seek to impose any obligations on us which we would not otherwise have whether under the Agreement or the FCA Rules.

2.6 We reserve the right to modify, suspend or discontinue, temporarily or permanently, all or any of our dealing services (or any part thereof) with or without notice. You agree that we will not be liable to you or to any third party (for whom you may be acting) for any modification, suspension or discontinuance of any of our dealing services.

3. PRICES

3.1 We will provide you with "bid" and "offer" prices in respect of each of the Products offered through the Online Facility or in case of emergency only by telephone on the number available on our website. We will charge you a commission on each transaction which shall be notified to you through the Online Facility.

3.2 Each price published through the Online Facility shall be valid until the earlier of its expiration time and the time, if any, at which it is otherwise cancelled or withdrawn by us. Each price shall be available for you to enter into a transaction with or through us up to a principal amount not to exceed a maximum determined by us published on the Online Facility or otherwise notified to you.

3.3 You acknowledge that the prices and maximum amounts we may offer to you may differ from prices and maximum amounts provided to other clients of ours and may be withdrawn or changed without notice. We may at our absolute discretion and without prior notice to you immediately alter, withdraw or refuse to deal on any price we may have published or cease the provision of prices altogether in some or all Products and for some or all delivery or settlement dates at any time.

4. ORDERS, TRANSACTIONS AND OPEN POSITIONS

4.1 Unless otherwise agreed by us all orders must be given to us electronically through the Online Facility (although we may in an emergency and at our discretion accept instructions by telephone

through our dealing desk at the designated phone number specified on the Online Facility or as otherwise notified to you).

- 4.2** We may, at our absolute discretion, require confirmation of any order in such form as we may specify.
- 4.3** An order given by you, or on your behalf, to us shall not take effect until actually received by us. An order once received by us cannot be rescinded, withdrawn or amended without our express consent.
- 4.4** We shall be entitled to act on your behalf upon any order or instruction we reasonably believe to have been given or purporting to be given by you or any other person on your behalf without further enquiry as to the authenticity of the order or the instruction or the authority or identity of any such person giving or purporting to give such order or instruction.
- 4.5** We may, at our discretion refuse to accept any order from you in whole or in part or following receipt of your order refuse to act on it but should we do so we will use our reasonable endeavours to notify you of any such refusal, with or without giving any reasons. In addition, an order which, for any reason, is not received by us in a manner in which it can be processed, including a failure of the Online Facility to accept or process such instruction, shall be deemed not to have been received by us.
- 4.6** The execution of an order by us shall constitute a binding agreement between us on the terms of such executed order.
- 4.7** The procedure for entering orders is specified on the Online Facility in the online trading section.
- 4.8** You acknowledge that following execution of any transaction, you are solely responsible for making and maintaining contact with us and for monitoring open positions and ensuring that any further instructions are given on a timely basis. In the event of any failure to do so, we can give no assurance that it will be possible for us to contact you and we accept no liability for loss alleged to be suffered (or suffered) as a result of any failure by you to do so.
- 4.9** We may, at our absolute discretion, require you to limit the number of orders you may give us or the number of open positions which you may have at any time and/or only allow you to enter into closing transactions or we may close out any one or more positions

or reverse transactions in order to ensure that the position limits we have imposed are maintained.

- 4.10** If you place a stop loss order and are stopped out incurring a loss, you must cover the shortfall on your account within one business day or within such other time as we may agree with you in writing.
- 4.11** Should quoting and/or execution errors occur due to a typographical error or other obvious mistake in a quote or indication, we will not be liable for the resulting errors in your account balances. In the event of a quoting and/or execution error, we reserve the right to cancel orders, reverse transactions, close positions and make any necessary corrections or adjustments on the account involved. Any dispute arising from such quoting or execution errors will be resolved by us at our absolute discretion.

5. ONLINE FACILITY

- 5.1** To use our website, online trading platform and account review facility (collectively, the **Online Facility**) you will need to request a username and password (**Access Code**) allocated by us. You will need to provide the Access Code each time you wish to use the Online Facility which will identify you to us. The use of your Access Code will be deemed by us to be use of the Online Facility by you or with your knowledge and consent. You can use the Online Facility either through your computer or mobile phone.
- 5.2** In relation to the Access Code, you acknowledge and undertake that:
 - 5.2.1** you will be responsible for the confidentiality and use of your Access Code;
 - 5.2.2** you will change your password regularly;
 - 5.2.3** other than with our prior written consent, you will not disclose your Access Code to other persons for any purpose whatsoever;
 - 5.2.4** without limiting the generality of clause 4, we may rely on all instructions, orders and other communications entered using your Access Code, and you will be bound by any transaction entered into or expense incurred on your behalf in reliance on such instructions, orders and other communications; and

- 5.2.5** you will immediately notify us on the number provided on our website if you become aware of the loss, theft or disclosure to any third party or of any unauthorised use of your Access Code.
- 5.3** You acknowledge that the Online Facility is provided for use only by you or by others you have permitted to use the Online Facility on your behalf.
- 5.4** If you tell us or we believe that your Access Code is being used without your knowledge by unauthorised persons or has been disclosed by you to other persons without our consent, we may without prior notice suspend or terminate your right to use the Online Facility.
- 5.5** We may at our absolute discretion introduce and require additional levels of user identification including but not limited to scratch-lists and/or secure-ID.
- 5.6** You shall be solely responsible for providing and maintaining any equipment you use to access the Online Facility and for making all appropriate arrangements with any telecommunications suppliers or, where access to the Online Facility is provided through a third party server, any such third party, necessary in order to obtain access to the Online Facility. Neither we nor any company maintaining, operating, owning, licensing, or providing services to us in connection with, the Online Facility (**Service Provider**) makes any representation or warranty as to the availability, utility, suitability or otherwise of any such equipment or arrangements. Since we do not control signal power, its reception or routing via the internet, configuration of your equipment or that of any third party or the reliability of its connection, we cannot be responsible for communication failures, distortions or delays when you are accessing the Online Facility via the internet.
- 5.7** Without limiting the generality of clause 14, the Online Facility is provided "as is" and neither us nor any of our directors, officers, employees, agents (collectively **Associates**) or Service Providers makes any representations or warranties of any kind whatsoever regarding (a) the availability, currency, accuracy or completeness of the Online Facility, (b) the results to be obtained by you or anyone else from the use of the Online Facility, and (c) any third party content accessible on or through the Online Facility.

- 5.8** Internet connectivity delays and price feed errors sometimes create a situation where the prices displayed on the Online Facility do not accurately reflect the then prevailing market rates. In the event of such delays and errors, we reserve the right to cancel orders, reverse transactions, close positions and make any necessary corrections or adjustments on the account involved.
- 5.9** You will not use, or allow the use of, the Online Facility:
- 5.9.1** in contravention of any laws (in any jurisdiction), regulations or the FCA Rules (including the rules on market abuse) or any other regulatory authorities to which you may be subject;
 - 5.9.2** in any way (including, without limitation, posting information on the Online Facility where this facility is available) which is defamatory, obscene, abusive, indecent or menacing or which infringes any intellectual property rights or breaches obligations of confidence or which is otherwise illegal or unlawful;
 - 5.9.3** to introduce a software virus or other disruptive program or do any act which would cause the Online Facility to become unavailable for use by others;
 - 5.9.4** to solicit or encourage other internet websites to frame or hypertext link direct to the Online Facility without our prior written consent; or
 - 5.9.5** in any way which is not authorised by us or is in breach of the Agreement.
- 5.10** We do not permit the practice of arbitrage or otherwise taking advantage of internet delays, using the Online Facility or any other manipulative or abusive behaviour (such as the dissemination of false or misleading market information through media, including the internet, or by any other means with the intention of moving the price of a security, a derivative contract or the underlying asset).
- 5.11** We regularly publish on our website updates of the system, features available to clients as well as information, declarations and warnings related to our services. We may also send newsletters from time to time related to this information to your email address.

You undertake to read any such communications on receipt and regularly familiarise yourself with this information, declarations and warnings and to inform us immediately of any disagreement with any such information.

6. **TRANSACTION CONFIRMATIONS AND ACCOUNT STATEMENTS**

6.1 Following the execution of an order for your account, we will confirm that transaction by email (**Confirmation**) on the next business day after the execution but failure to do so will not affect the validity of the transaction.

6.2 We will post details of your positions and account activity via email or via the Online Facility on the first day of each month for the previous month's activity. Account information may include Confirmations, statements of profits and losses and any other information required to be provided by the FCA Rules (**Account Information**). Posting of Account Information via email or via the Online Facility will be deemed delivery of Confirmations and account statements. We may at our absolute discretion withdraw or amend any Account Information at any time. You agree that we are under no obligation to provide Confirmations in hard copy. The Account Information posted via email or via the Online Facility shall (save if manifestly incorrect) be conclusive evidence of your transactions and shall be binding on you if not objected to immediately upon receipt with such objection confirmed in writing (including email or electronic mail) and (in any event) no later than one business day after the Account Information is posted via email or via the Online Facility.

7. **CONSENT TO ELECTRONIC COMMUNICATION**

You consent to communications being made via electronic media. If you no longer wish to communicate via electronic media, you must notify us and revoke this consent in writing. If you do not wish to communicate via electronic media at all, you must inform us of your wishes when completing the Account Opening Form. Communications sent through the Online Facility or by electronic media shall be treated as satisfying any legal requirement that a communication should be signed and in writing, to the extent permitted by applicable law.

8. **MARGIN**

- 8.1** You shall provide to us and maintain with us such amount of money in respect of and as security for your actual, future and contingent liabilities to us (**Liabilities**) in such amounts and in such forms as we, at our absolute discretion, may require (**Margin**). We may change our Margin requirements at any time.
- 8.2** Any requirement for Margin must be satisfied in such currency and within such time as may be specified by us (in our absolute discretion) or, if none is specified, immediately. One Margin call does not preclude another. Margin shall be provided in the form of cash or such other forms as we may agree or accept.
- 8.3** You are responsible for maintaining appropriate arrangements with us at all times for the receipt and communication of information regarding Margin. If you fail to provide Margin to us in the required time, we may automatically close out your open positions and we will be entitled to exercise our rights in accordance with clause [19](#) below.
- 8.4** Unless otherwise agreed by us, you charge to us all Margin provided by you to us under the Agreement as a continuing security for your Liabilities under or pursuant to the Agreement (including under every transaction from time to time governed by the Agreement).
- 8.5** You agree to execute such further documents and to take such further steps as we may reasonably require to enable us to exercise our rights or to satisfy any requirement.
- 8.6** You may not withdraw or substitute any property which is subject to our security interest without our prior consent.

9. SETTLEMENT DATE, ROLLOVER AND OFFSET INSTRUCTIONS

- 9.1** All positions which remain open from 23:59:45 to 23:59:59 (Online Facility time) will be subject to rollover. All positions which are opened or closed from 23:59:45 to 23:59:59 (Online Facility time) may be subject to rollover. We may charge you a fee in respect of each such position that is rolled over. The fees that we charge will be published on the Online Facility.
- 9.2** In the absence of clear and timely instructions from you, you agree that in order to protect your interests and ours we are authorised, at our absolute discretion and at your expense, at the end of each

business day, to close any open position, rollover or offset all or any open position(s), enter into offsetting transactions or to make or receive delivery on your behalf upon such terms and by such methods as we may deem reasonable in the circumstances.

- 9.3** For the avoidance of doubt, we will not arrange delivery of the subject matter any Product (where applicable) unless we deem it necessary or if we otherwise agreed in writing with you to do so and, accordingly, unless such arrangements have been made by us any open positions (where applicable) shall be closed and the resulting profit or loss credited or debited to your account with us.

10. CLIENT MONEY

- 10.1** Any cash received by us from you will be held in an account with us or with a bank chosen by us and will be segregated from our own funds in accordance with the FCA Rules. Unless otherwise agreed, your funds may be pooled with the funds of other clients in a general omnibus account.

- 10.2** We will not pay interest to you on any of your money that we hold and by entering into this Agreement you acknowledge that you waive any entitlement to interest on such money under the FCA Rules or otherwise.

- 10.3** We may hold funds you pay to us with banks located outside the United Kingdom. The legal and regulatory regime applying to any such bank will be different from that of the United Kingdom and in the event of the insolvency or any other equivalent failure of the bank, your money may be treated differently from the treatment which would apply if the money was held in the United Kingdom. We will not be liable for the solvency, acts or omissions of any bank or other third party holding money under this clause 10.

- 10.4** We are authorised to convert money in your account (including for Margin) into and from such foreign currency at a rate of exchange determined by us on the basis of the then prevailing money market rates. In such circumstances, we will not be liable to you for any loss suffered by you as a result of such action (although, we will use reasonable endeavours to only convert such funds as may prudently be required to cover Liabilities in respect of relevant transactions).

- 10.5** This clause [10](#) and some of the FCA Rules on client money may not

apply to you if you are a professional client and agree to opt out of these provisions.

11. PROFITS, LOSSES AND INTEREST CHARGES ON OPEN POSITIONS

For any open position held by you, we shall from time to time credit your account with profits and interest earned, or debit your account for losses, interest and fees incurred as described on the Online Facility.

12. FEES AND CHARGES

12.1 You shall pay to us such fees and charges at such rates as are notified by us to you from time to time or published on the Online Facility. These will include transaction charges, interest and charges in respect of automatic rollover of your positions pursuant to clause [9.1](#). In addition to this you shall be responsible for the payment of any other charges that may be incurred as a result of the provision of our services to you.

12.2 You acknowledge and agree that we may make or receive a fee, commission or non-monetary benefit to or from any other person in connection with our service to you. If this applies to you we will provide you with separate information regarding such fee, commission or non-monetary benefit.

12.3 All fees and charges shall be regarded as being due and payable immediately. Any sums due to us may be deducted by us from the proceeds of any transaction or debited from your account(s) with us. In the event of late payment by you, overdue amounts shall bear interest at a rate that we shall reasonably determine as notified to you in the Account Information.

12.4 You agree to pay a transfer fee, as determined by us and made available on the Online Facility in the event that on termination of the Agreement you instruct us to transfer cash relating to your account to another institution. Under no other circumstances will we accept an instruction to transfer cash relating to your account to a third party.

12.5 If we receive or recover any amount in respect of any of your obligations in a currency other than that in which such amount is payable, whether pursuant to a judgment of any court or otherwise,

you will indemnify us and hold us harmless from and against any cost (including costs of conversion) and loss suffered by us (i.e. you will be responsible for the cost and you will pay or repay us immediately on demand by us) as a result of receiving such amount in a currency other than the currency in which it is due.

13. **CONFLICTS OF INTEREST**

13.1 You should be aware that when we enter into a transaction for you, we or our Associates or Service Providers, may have an interest, relationship or arrangement that is material in relation to the transaction concerned. Should such a conflict of interest arise we will seek to resolve such conflict in such a way as we believe is in your best interests in accordance with our conflicts of interest policy (as amended or extended from time to time) (**Conflicts of Interest Policy**).

13.2 Full details of our Conflicts of Interest Policy are available on the Online Facility. Our Conflicts of Interest Policy is a policy only, it is not part of the Agreement and is not intended to be contractually binding or impose or seek to impose any obligations on us which we would not otherwise have whether under the Agreement or the FCA Rules.

14. **LIABILITY AND INDEMNITY**

14.1 Neither we nor our Associates shall be liable for any loss or damage suffered by you arising from any act or omission in the course of providing our services to you or otherwise arising from the activities to which the Agreement applies except such as is caused by our negligence, wilful default or fraud.

14.2 Neither we nor any of our Associates shall have any liability to you for any loss or damage suffered by you arising out of, or in connection with, the use of (or any inability to use) the Online Facility or any data or information obtained, downloaded or supplied in relation thereto, including, without limitation, any loss of, or delay in the transmission of, instructions or the inability to make instructions or access the Online Facility whether due to breakdown or failure of communication facilities or otherwise.

14.3 Neither we nor any of our Associates shall be liable for any loss arising from any act or omission of any attorney, agent or third party who performs services for you.

- 14.4** We make no representations concerning the tax implications or treatment of transactions entered into by you pursuant to the Agreement.
- 14.5** In no event shall we nor any of our Associates be liable for any indirect, consequential or special loss, howsoever arising.
- 14.6** Nothing in the Agreement will exclude or restrict our liability in respect of a breach by us or any of our Associates under the regulatory system (as defined in the FCA Rules).
- 14.7** You will indemnify and hold harmless us and our Associates against any cost, loss, liability or expense whatsoever which may be suffered or incurred by us and/or our Associates directly or indirectly in connection with, or as a result of, any services, performance or action permitted under the Agreement (i.e. you will be responsible for the cost and you will pay or repay us immediately on demand by us) except such as is caused by our negligence, willful default or fraud.
- 14.8** If you hold an account with us with another person (in the case of joint account holders) the liabilities of each such person shall be joint and several and we may act upon orders and instructions received from any one person (unless you notify us in writing to the contrary) who is, or who appears to us to be, such a person.

15. RESEARCH AND RECOMMENDATIONS

15.1 You acknowledge that:

- 15.1.1** any market information or third party recommendations communicated to you by us or any Associate or Service Provider, does not constitute advice or an offer to sell or the solicitation of an offer to buy any Products;
- 15.1.2** such information or recommendations, although based upon information obtained from sources believed by us to be reliable, may be based solely on a third party's opinion and such information may be incomplete and may be unverified;
- 15.1.3** any research we provide is for your own information purposes. It is not for onward transmission in whole or in

part and is not an offer or solicitation for the purchase or sale of any financial instrument or investment. While we take reasonable care to ensure that information contained in our research is accurate at the time of publication, it is based on information drawn from a variety of sources and may not have been verified. We do not make any warrant or representation as to its accuracy or completeness;

15.1.4 you may not receive our research at the same time as our other clients and any research we may issue is subject to change without notice to you and we shall not be under any obligation to inform you of that change; and

15.1.5 you should exercise your own judgment and where appropriate, seek independent advice before contemplating any investment or transaction based on our research.

16. REPRESENTATIONS AND WARRANTIES

16.1 You represent and warrant that:

16.1.1 if you are an individual, you are at least 18 years of age, of sound mind and have the legal capacity to enter into a legally binding agreement with us;

16.1.2 if you are a corporation, you are duly incorporated and validly existing under the laws of the country of your incorporation and that you have approved the opening of an account with us by a board resolution certified by the corporation's officers;

16.1.3 no person other than you has or will have an interest in your account(s);

16.1.4 regardless of any subsequent determination to the contrary, trading in the Products (and such other investments as we may from time to time agree) is suitable for you and that you are aware of the risks involved with such transactions; and

16.1.5 the information disclosed to us in the Account Opening Form (including any financial information) is true, accurate and complete in all material respects (save for any change to such information notified to us in writing).

16.2 Each representation and warranty under clause 16.1 shall be deemed repeated on each occasion you place an order or enter into a transaction with or through us.

17. CONFIDENTIALITY AND DATA PROTECTION

17.1 We are a data controller for the purposes of data protection legislation. Any queries about the use of personal data by us should be referred to our Compliance Officer.

17.2 We may collect, use and disclose personal data about you, including personal data you may voluntarily disclose to us in any manner, so that we can:

17.2.1 carry out our obligations under the Agreement;

17.2.2 carry out our everyday business activities and dealings with you;

17.2.3 compile statistical analysis of the pages of the Online Facility visited;

17.2.4 monitor and analyse our business;

17.2.5 participate in crime prevention, legal and regulatory compliance;

17.2.6 market and develop other products and services;

17.2.7 transfer any of our rights or obligations under the Agreement; and process clients' personal data for other related purposes.

If you choose to withhold non-sensitive personal data requested, we may not be able to give you access to the Online Facility.

17.3 We will not obtain or require disclosure of sensitive personal data (such as ethnic origin, religious beliefs or medical records) but if you choose to provide such sensitive personal data, we may assume such sensitive personal data is provided with your consent for processing for the purposes for which such personal data was provided, unless otherwise notified by you to us in writing.

17.4 Neither we nor any of our Associates or Service Providers will disclose any personal data we or it collects about you to third parties except:

- 17.4.1** to the extent that it is required to do so by any applicable law or regulation;
 - 17.4.2** where there is a duty to the public to disclose;
 - 17.4.3** where our legitimate business interests require disclosure; or
 - 17.4.4** at your request or with your consent or to persons described in clause 17.5 below.
- 17.5** We or our Associates or Service Providers may disclose personal data about you to those who provide services to us or our Associates or our Service Providers or act as our or our Associates' or our Service Providers' agents, to any person to whom we or our Associates or our Service Providers transfers or proposes to transfer any of our or its rights or obligations under the Agreement and to licensed credit reference agencies or other organisations that help us or our Associates or our Service Providers and others make credit decisions and reduce the incidence of fraud or in the course of carrying out identity, fraud prevention or credit control checks. In addition, we may share personal data about you with our Associates and Service Providers for business purposes, such as servicing client accounts and informing clients about new products and services, as permitted by applicable law.
- 17.6** You have certain rights of access to some or all of the personal data we collect and hold about you at the time of request, or to have inaccurate information corrected, under applicable data protection laws. If you wish to exercise such rights (solely at your own cost and expense), you should contact us in writing, and you may be requested to provide further information to assist us in complying with such request.
- 17.7** We or our Associates or Service Providers may transfer data, including personal data and data on your trading activity, collected and held about you to other countries, including countries outside the European Economic Area which may not have data protection laws, for any of the purposes described in this clause [17](#). By accepting the Agreement, you consent to such transfers.
- 17.8** We or our Associates or a Service Provider may record or monitor telephone conversations between you and us or our Associates or a Service Provider for security, compliance with law, training

purposes and to maintain and improve the quality of our services. Such telephone conversations may be used by us as evidence in the event of any dispute between us.

17.9 We may use cookies or IP address tracking devices on the Online Facility to administer the Online Facility, store password and usernames, to monitor visits to pages on the Online Facility on this and other occasions from your terminal, to personalise the Online Facility service to you and to track and facilitate browsing through the Online Facility. A cookie is a piece of data stored on your hard drive containing information about you relating to the use of the Online Facility. IP addresses may be linked to your personal data and by tracking these addresses, we would be obtaining such personal data. Access to the Online Facility is conditional on acceptance by you of any cookies and IP address tracking devices described in and for the purposes explained in this clause. By accepting the Agreement, you acknowledge that you understand the broad nature of cookies and IP address tracking devices and the purposes for which they will be used by us.

17.10 You acknowledge and accept that any services provided through the Online Facility involve transmissions over the internet and that such transmissions are therefore subject to the internet's inherent risks. Whilst we acknowledge our responsibility to take reasonable security precautions, you also acknowledge and accept that, as with any network, you may also be exposed to unauthorised programs transmitted by third parties, electronic trespassing and/or the failure of information and data to reach their intended destinations and/or erroneous receipt or misdirection of such information. Although our, our Associates' and our Service Providers' privacy and security features are designed to reduce these risks, we cannot guarantee their elimination. You therefore acknowledge that no transmission via the Online Facility shall be guaranteed to be confidential and that we shall not be liable for any breach of confidence arising as a result of such event.

18. DEFAULT AND NETTING

18.1 The following shall be construed as **Events of Default** if at any time:

18.1.1 you fail to comply fully and immediately with any obligation to make any payment to us or close any open

position on the due settlement date or when required by us;

- 18.1.2** you default in any other obligation to us under the Agreement or in relation to any transaction or commit any breach of any other obligations under the Agreement including but not limited to satisfying any Margin call;
- 18.1.3** any representation or warranty made by you was or has become or subsequently would, if repeated at any time, be incorrect;
- 18.1.4** due to market fluctuations or for any other reason we shall at our absolute discretion consider that we hold insufficient Margin to meet your Liabilities;
- 18.1.5** we consider it necessary or desirable to prevent what we consider is or might be a violation by you of clause 5.9.1 above;
- 18.1.6** (where you are a corporate) you commence a voluntary case (or an involuntary case is commenced against you) or other procedure seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official of you or any substantial part of your assets; or if you take any corporate action to authorise any of the foregoing; and, in the case of a reorganisation, arrangement or composition, we do not consent to the proposals;
- 18.1.7** (where you are a corporate) you are dissolved, or, if your capacity or existence is dependent upon a record in a formal register, the registration is removed or ends, or any procedures are commenced seeking or proposing your dissolution, removal from such a register, or the ending of such a registration;

18.1.8 (where you are an individual) you (or if you are joint account holders if any of you) die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefor, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings are commenced or any action is taken for any execution, any attachment or garnishment, or distress against, or an encumbrance takes possession of, the whole or any part of your property or assets (tangible and intangible);

18.1.9 we reasonably anticipate that any of the foregoing may occur;

then we may exercise our rights under clause 18.2, except in the case of the occurrence of an Event of Default specified in clauses [18.1.6](#) or [18.1.8](#) (each a **Bankruptcy Event of Default**), the provisions of clause 18.3 shall apply.

18.2 Subject to clause 18.3, we may on or at any time following the occurrence of an Event of Default, cancel any outstanding orders, terminate our services and liquidate all or any of your open positions (**Liquidation Date**).

18.3 Should a Bankruptcy Event of Default occur, subject to applicable law, we shall be deemed to have exercised our rights under clause 18.2 immediately before the time of the occurrence of the Bankruptcy Event of Default.

18.4 On the Liquidation Date and following it:

18.4.1 neither of us shall be obliged to make any further payments or deliveries under any transactions which would, but for this clause, have fallen due for payment or performance on or after the Liquidation Date;

18.4.2 we shall (on, or as soon as reasonably practicable after, the Liquidation Date) close all your open positions and apply all monies held by us towards the costs of such closures.

18.5 If as a result of the actions taken by us pursuant to clause 18.4.2 your account is in credit, we shall pay such money to you (to such account in your name as you direct) as soon as reasonably practicable. If there is insufficient money in your account to cover the actions undertaken by us under clause 18.4.2, the difference between the amount of money in your account and the cost of closing your open positions will be immediately due and payable to us.

18.6 Our rights under this clause 18 are in addition to, and not in limitation or exclusion of, any other rights which we may have under the Agreement or otherwise whether by agreement or operation of law. In particular and without prejudice to the provisions of clauses 18.2 to 18.5 (inclusive), we are authorised and entitled, without notification to you and at our absolute discretion, to take such action to protect our own position, including without limitation, one or more of the following actions (whether in whole or in part):

18.6.1 cancel all or any unexecuted orders;

18.6.2 close out, perform, cancel or, if applicable, abandon any of your open positions or enter into offsetting positions;

19.6.3 combine accounts, set-off between accounts or convert one currency into any other currency;

19.6.4 satisfy any obligation that you may have to us, either directly or by way of guarantee or suretyship, out of any of your monies in our custody or control.

19. **INTELLECTUAL PROPERTY RIGHTS**

19.1 The Online Facility may incorporate third party data, text, images, software, multi-media materials and other content (**Third Party Content**) and references to the term "Online Facility" shall be taken to include all materials, content and services made available from time to time on the Online Facility whether viewed on screen or downloaded to another computer including, without limitation, Third Party Content.

19.2 The Online Facility is protected by copyright, database rights and other intellectual property rights. You acknowledge that we and/or third parties retain all right, title and interest in and to the Online

Facility. Use of the Online Facility does not confer any ownership rights in the Online Facility.

19.3 Except as otherwise specifically agreed in writing or to the extent necessary for you to view the Online Facility in accordance with the Agreement, you shall not:

19.3.1 copy the Online Facility in whole or in part (except to make backup copies solely for disaster recovery purposes);

19.3.2 display, reproduce, create derivative works from, transmit, sell, distribute, rent, lease, sublicense, time-share, lend or transfer or in any way exploit the Online Facility in whole or in part;

19.3.3 embed the Online Facility into other products;

19.3.4 use the Online Facility in any filesharing arrangement;

19.3.5 create function calls or other embedded links from any software program to the Online Facility;

19.3.6 remove or obscure any of our copyright notices or those of any of our Associates;

19.3.7 use any of our trademarks, service marks, domain names, logos, or other identifiers or those of any of our third party suppliers; or

19.3.8 save to the extent permitted by law, reverse engineer, decompile, disassemble, or access the source code of the Online Facility.

20. LINKS

The Online Facility may contain links to other websites which are not controlled by us or any of our Associates and contain material produced by independent third parties. The owners of such linked websites do not necessarily have any relationship, commercial or otherwise, with us. The existence of a link from the Online Facility to any third party website does not constitute a recommendation or other approval by us or any of our Associates or Service Providers of such website its content or any provider thereof. Any opinions or recommendations expressed on third party websites are those of

the relevant provider and are not the opinions or recommendations of ours or any of our Associates. Neither we nor any of our Associates accepts any responsibility for content provided on any website that may be accessed through links on the Online Facility.

21. **TERMINATION**

You may request the repayment of cash and terminate the Agreement at any time, by notice in writing to us, provided that you do not have any open position(s) and do not have any outstanding liabilities to us. We may terminate the provision of our services to you forthwith upon notice in writing to you at any time. Termination shall not affect any open positions or transactions previously entered into and shall be without prejudice to any accrued rights and obligations of either you or us.

22. **NOTICES**

Subject to clause 6, notices and any other communications may be transmitted to you via the Online Facility, or via email or post, to such address as you may from time to time notify in writing to us. All communications so sent, whether by posting on the Online Facility, mail, email, or otherwise, shall be deemed transmitted by us when posted on the Online Facility, deposited in the mail, or when received by a transmitting agent, and deemed delivered to you personally, whether actually received by you or not.

23. **COMPLAINTS**

If you have any complaint about our performance under the Agreement, you should direct that complaint to our client services department or to our Compliance Officer, who will investigate the nature of the complaint to try to resolve it. Details of our internal complaints policy are available on request. You may also have a right to complain directly to the Financial Ombudsman Service. The Financial Ombudsmans Service can be contacted by telephone on 0800 0234567, as well as on +44 20 7964 1000 or you can find further details on their website www.financial-ombudsman.org.uk.

24. **GENERAL**

24.1 The provision of our services to you is subject to all applicable laws, regulations and other provisions or market practices to which we are subject (collectively **applicable laws or regulations**). If any

conflict arises between the Agreement and any applicable laws or regulations, the latter shall prevail. We are not required to do anything or refrain from doing anything which would infringe any applicable laws or regulations and may do whatever we consider necessary to comply with them.

24.2 If any provision of the Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Agreement which shall remain in full force and effect.

24.3 Any failure by us (whether continued or not) to insist upon strict compliance with any provision of the Agreement shall not constitute nor be deemed to constitute a waiver by us of any of our rights or remedies. The rights and remedies conferred upon us hereby shall be cumulative and the exercise or waiver of any part thereof shall not preclude or inhibit the exercise of any other additional rights and remedies.

24.4 No action, regardless of form, arising out of or in connection the Agreement, or otherwise existing between the parties, may be brought by a party more than two years after the cause of action is discovered. Discovery of action must be reported within two years of termination of this Agreement.

24.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement or to any agreement or document entered into pursuant to the Agreement and only the parties with explicit rights or obligations pursuant to the Agreement may enforce any term of and benefit from the Agreement.

24.6 We are covered by the Financial Services Compensation Scheme (**FSCS**). If we are unable to meet our liabilities in respect of investment business, if you make a valid claim you may be entitled to redress from the FSCS in respect of the investments that we arrange or deal in for you. This depends on the type of business and circumstances of the claim. Most types of investment business are covered for 100% of the first £50,000 per person. Further information is available from us or from the Financial Services Compensation Scheme, 10th floor, Beaufort House, 15 St Botolph Street, London EC3A 7QU. You should note that this scheme is not normally available to professional clients (as defined in the FCA

Rules).

25. **GOVERNING LAW AND JURISDICTION**

The Agreement is governed by and shall be construed in accordance with the laws of England. You irrevocably submit to the exclusive jurisdiction of the English courts to settle any suit, action or other proceedings relating to the Agreement (**proceedings**). Nothing in the Agreement shall prevent us from bringing proceedings against you in any jurisdiction.

Each party irrevocably agrees to waive any objection which it may have at any time to the laying of venue of any proceedings brought in the English courts and agrees not to claim that such proceedings have been brought in an inconvenient forum or that such court does not have jurisdiction over it.