



## **ACCOUNT OPENING AGREEMENT**

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## 1. Introduction

This Agreement is made by:

XLibre (hereinafter referred to as the “**Company**” or “**we**”), is incorporated under the laws of the Republic of Mauritius with registration number 182094/GBC. The Company has been granted an Investment Dealer License with number GB21026537 under section 29 of the Securities Act 2005, Rule 4 of the Securities (Licensing) Rules 2007 and the Financial Services (Consolidated Licensing and Fees) Rules 2008 (herein the “**Law**”) licensed by the Financial Services Commission (herein the “**FSC Mauritius**”).

AND

Any person who wishes to enter into a business relationship and become a Client of the Company and has completed the Account Opening process through the Company’s website (herein the “**Client**”)

The Company and the Client may hereinafter collectively be referred to as the “**Parties**” and individually as a “**Party**”, where the context requires so.

**The Account Opening Agreement (herein the “Agreement”) sets out the terms and conditions for the provision of securities dealer services under The Securities Act as amended, by XLibre (herein the “Company”) to the Clients.**

## 2. Definitions and Interpretations

2.1. Terms stated below shall have the following meanings and may be used in the singular or plural as appropriate.

“**Account**” means a personalised account of the Client with the Company. The Client is allowed to have only 1 (one) account with the Company;

“**Account Detailed Report**” shall mean a statement of the Clients securities portfolio, open positions, margin requirements, cash deposit etc. at a specific point in time;

“**Ask Price**” means the price at which the Company is willing to sell a CFD.

“**Affiliate**” means any legal entity or a natural person obtaining remuneration from the Company

for acting as mediator between Prospective Clients and the Company and carrying out activities deemed necessary for the conclusion of an agreement between the Company and its Client, as per the provisions of the present Agreement, for the purpose of introducing clients to the Company.

**“Archived”** means a trading account with no financial or trading activity and no pending orders for a set period of 60 (sixty) days as per Clause 15 of the Agreement.

**“Authorised Person”** means a person authorised by the Client under a power of attorney to give instructions to the Company in relation to the Account;

**“Balance”** means the sum of the Client Account after the last completed order and deposit/withdrawal operation made within any period of time.

**“Best Execution Policy”** means the Company’s prevailing policy available at the Company’s website regarding best execution when executing Client orders;

**“Bid Price”** means the price at which the Company is willing to buy a CFD;

**“Business Day”** means any day on which banks are open for business in the Mauritius;

**“Business Introducer”** means a person with whom the Company has entered into a contract with for introducing Clients to the Company.

**“CFD Contract or CFD”** means a contract which is a contract of difference by reference to fluctuations in the price of the relevant Underlying Asset;

**“Client”** means a natural or legal person, accepted by the Company as its Client to whom services will be provided by the Company under the Terms;

**“Collateral”** means any securities or other assets deposited with the Company;

**“Company”** means XLibre incorporated in Mauritius with registration number 182094/GBC.

**“Company’s Website”** means [www.exalibre.com](http://www.exalibre.com) or any other website that may be the Company’s website from time to time.

**“Contract”** means any contract, whether oral or written, for the purchase or sale of any commodity, security, currency or other financial instruments or property, including any

derivative contracts such as options, futures, CFDs or other transactions related thereto, entered into by the Company and the Client;

“**Counterparties**” shall mean banks and/ or brokers through whom the Company may cover its transactions with Clients;

“**CRS**” means the Common Reporting Standard.

“**Dormant**” means an Account which has been dormant i.e. no financial or trading activity within a set period of 6 (six) months as per Clause 16 of the Agreement.

“**Dorman Fee**” means the fee that will be charged by the Company to an Account which falls under the meaning of a Dormant Account as per Clause 16 of the Agreement.

“**Durable Medium**” means any instrument which enables the Client to store information in a way accessible for future reference for a period of time adequate for purposes of the information and which allows the unchanged reproduction of the information stored;

“**Equity**” equals (Balance + Floating Profit & Loss + Swap).

“**Event of Default**” shall have the meaning given to this term in Clause 28;

“**FATCA**” is the Foreign Account Tax Compliance Act which requires for foreign financial institutions to report on the foreign assets held by their U.S. account holders.

“**Floating Profit/ Loss**” shall mean the unrealised profit (loss) of open positions at current prices of the Underlying Assets,

“**Free Margin**” means the funds not used as guarantee to open positions, calculated as: Free Margin=Equity-Margin.

“**Indicative Prices**” mean prices that are displayed in the Client Terminal Chart. Indicative chart Prices are not Executable Prices but only serve as an approximation to the direction of the market. Due to factors such as Spread and other market conditions, Indicatives Prices can vary from their corresponding Executable Prices.

“**Leverage**” is a ratio of the amount used in a transaction to the required deposit.

“**Margin**” means the necessary guarantee funds to open positions and maintain Open Positions,

as determined in the Spreads and Conditions Schedule;

**“Margin Call”** when the Margin posted in the margin account is below the minimum margin requirement, the Company issues a Margin Call and in this case the Client will have to either increase the Margin that he/ she has deposited, or to close out his/ her position(s). If the Client does not do any of the aforementioned, the Company shall have the right to close the positions of the Client.

**“Margin Level”** means the percentage of Equity to Margin ratio. It is calculated as:  $\text{Margin Level} = (\text{Equity}/\text{Necessary Margin}) \times 100$

**“Market Maker”** means a dealer in securities or other assets who undertakes to buy or sell at specified prices at all time

**“Market Rules”** means the rules, regulations, customs and practices from time to time of any exchange, clearing house or other organisation or market involved in the conclusion, execution or settlement of a Contract any exercise by any such exchange, clearing house or other organisation or market of any power or authority conferred on it;

**“Open Positions”** means any position/ transaction that has not been closed. For example, an open long position not covered by the opposite short position and vice versa.

**“Orders”** means any trading transactions executed on the Company’s trading platforms by the Client.

**“OTC”** shall mean any Contract concerning a commodity, security, currency or other financial instrument or property, including any option, future, or CFD which is not traded on a regulated stock or commodity exchange but “over the counter”;

**“Principal”** means the individual person or the legal entity which is a party to a transaction;

**“Quote”** is the currency quoted for a particular instrument.

**“Rebates”** refers to the percentage of the actual spread or commission charged to the account, depending on the account type and/or if assigned under an Affiliate;

**“Security”** means any securities or other assets deposited with the Company;

**“Server Time”** means the local time of the server which is set at GMT/UTC + 2h during Standard Time and GMT/UTC + 3h during Daylight Saving Time.

**“Services”** means the services to be provided by the Company to the Client construed by these Terms. Services is inclusive of any dealing, order routing, advisory or other services which the Company provides from time to time to the Client by remote access via the Internet and which are subject to these Terms;

**“Spread”** means the difference between the Ask Price and the Bid Price

**“Spreads and Conditions Schedule”** means the schedule of spreads, charges, margin, interest and other rates which at any time may be applicable to the Services as determined by the Company on a current basis. The Spreads and Conditions Schedule is available on the Company’s Website and may be supplied to the Client on demand.

**“Swap”** shall mean the funds withdrawn or added to the Client’s Account from rolling over (transfer) of an open position to the next day.

**“Terms”** mean these Terms of business governing all the actions that relate to the execution of your trades.

**“Trade Confirmation”** means a notification from the Company’s trading platform to the Client confirming the Client’s entry into a Contract;

**“Trading Account”** is an account opened by the Client under the Company for the sole purpose of trading. The Client can open up to 5 (five) trading accounts under the Company. The Trading Account is distinct from the Account of the Client held with the Company.

**“Trading Platform”** means any online trading platform made available to the Client by the Company for placing orders, requesting quotes for trades, receiving price information and market related news as well as having a real-time revaluation of the open positions, through the Internet;

**“Underlying Asset”** means underlying asset is the financial instrument (e.g. stock, futures, commodity, currency, index) on which a derivative's price is based.

**“In writing or written”** means inclusive of electronic form.

2.2. If there is any conflict between this Agreement and relevant Market Rules, the Market Rules



shall prevail.

- 2.3. Any reference in these Terms to a person shall include bodies' corporate, unincorporated associations, partnerships and individuals.
- 2.4. Any reference in these Terms to any enactment shall include references to any statutory modification or re-enactment thereof or to any regulation or order made under such enactment (or under such a modification or re-enactment).
- 2.5. Any headings and notes used in these Terms are intended exclusively for convenience and shall not affect the content and interpretation of these Terms.

### **3. Scope of the Account Opening Agreement**

- 3.1. The Company reserves the right, at its discretion, at any time to withdraw the whole or any part of the Services on a temporary or permanent basis and the Client agrees that the Company will have no obligation to inform the Client of the reason.
- 3.2. The Agreement is non-negotiable and overrides any other agreements, arrangements, express or implied statements made by XLibre unless the Company, in its sole discretion, determines that the context requires otherwise.
- 3.3. A distance contract is legally binding upon the contractors without the requirement of a signature. The Client hereby acknowledges that this Agreement and all of the terms and conditions thereof are legally binding upon him and breach of any of the terms and conditions of this Agreement shall give rise to possible legal actions, should out-of-court settlement does not prove of a sufficient settlement method of any matter arising out of or in connection with any term or condition of this Agreement.
- 3.4. The Client hereby acknowledges and agrees that:
  - (a) By completing and submitting the online Account Opening Agreement and clicking on the "I Accept" button or similar buttons or links as may be designated by the Company on the Company's Main Website(s) shows his approval of this Agreement;
  - (b) By continuing to access or use the Company's Main Website(s).

#### 4. Client Acceptance Policy

- 4.1. The Prospective Client acknowledges and understands that the Company is not obliged and/or required under any applicable laws or regulations to accept any Prospective Client as its Client. The Company will not accept as its Clients prospective clients that are under eighteen years old. The Company has the right to decline and/or refuse to accept a Prospective Client as its Client, if it reasonably believes that the Prospective Client might pose a risk to the Company and/or if accepting such a Prospective Client shall be against the Company's Client Acceptance Policy. It should be noted that the Company is under no obligation to provide any reason for not accepting a Prospective Client as its Client.
- 4.2. The Prospective Client must fill in and submit the online Account Opening Application Form found on the Company's website and provide to the Company all the required identification documentation. The Company shall then send a notice of acceptance to the Prospective Client confirming that he has been successfully accepted as a Client of the Company.
- 4.3. The Client acknowledges and understands that the Company has the right to refuse to activate an account and/or shall not accept any money from any Prospective Client until all documentation requested has been provided to the Company, which has been properly and fully completed by the Prospective Client. The Prospective Client shall not yet be considered as a Client of the Company if all internal Company checks, including without limitation to anti-money laundering checks and the appropriateness tests have not been duly satisfied. The Client acknowledges and understands that the Company may request additional due diligence documents for further clarification.
- 4.4. The Company has the right to request for additional documentation and/or information from the Client at any time throughout the term of this Agreement and/or the business relationship with the Client. Should the Client not provide such additional documentation and/or information the Company may at its own discretion terminate its business relationship with the Client in accordance with Clause 35.1 of the Agreement.
- 4.5. The Company has the right to close any Account opened by a Prospective Client which has not been approved by the Company and which has been pending for approval for a set period

of 3 (three) months.

## **5. Commencement of the Account Opening Agreement**

- 5.1. The Commencement Date of the Agreement shall be the date the Prospective Client receives the notice that he has been accepted as a Client of the Company and which contains the trading account number and login details.

## **6. Client Categorisation**

- 6.1. The Company attaches different levels of regulatory protection to each category and hence to Clients within each category. In particular, Retail Clients are afforded the most regulatory protection; Professional Clients and ECPs are considered to be more experienced, knowledgeable and sophisticated and able to assess their own risk and are thus afforded fewer regulatory protections.
- 6.2. The Company offers its Clients the possibility to request re-categorisation and thus to increase or decrease the level of regulatory protections afforded. Where a Client requests a different categorisation (either on an overall level or on a product level), the Client needs to meet certain specified quantitative and qualitative criteria.
- 6.3. On the basis of the Client's request, the Company undertakes an adequate assessment of the expertise, experience and knowledge of the Client to give reasonable assurance, in the light of the nature of transactions or services envisaged that the Client is capable of making his/ her own investment decisions and understanding the risks involved. However, if the above- mentioned criteria are not met, the Company reserves the right to choose whether to provide services under the requested categorisation.

## **7. Capacity**

- 7.1. The Parties are entering into this Agreement as principal to principal. For the avoidance of any doubt, in relation to individual Orders for CFD transactions the Company shall execute such Orders against its Client as a principal to principal.

- 7.2. The Client is acting as a principal and not as agent or representative or trustee or custodian on behalf of someone else. The Client may act on behalf of someone else only if the Company specifically consents to this in writing and provided all the documents required by the Company for this purpose are received.
- 7.3. Even if the Client identifies a legal or natural person ('The third party') who is responsible for acting on the Client's behalf, through a power of attorney, the Company is not accepting the third party as a Client, unless specifically agreed otherwise. As a result no information shall be disclosed to the third party in relation to the Client and/ or the Clients trading activity. However the third party can give instructions to the company on the Client's behalf.

## **8. Assurances and Guarantees**

The Client assures and guarantees that:

- 8.1. The funds deposited with the Company, belong to the Client and are free of any lien, charge, pledge or other impediment
- 8.2. The funds are not direct or indirect proceeds of any illegal act or omission or product of any illegal activity and
- 8.3. Acts for himself/ herself and is not a representative or trustee of a third person, unless he/ she produces to the satisfaction of the Company document(s) to the contrary.
- 8.4. The Client guarantees the authenticity and validity of any document sent to the Company during the account opening process and the life of the account.

## **9. Services**

- 9.1. The Company offers to its Clients the financial services as Principal in relation to the following financial instruments:
- (a) CFD on currencies, equities, precious metals, financial indices, future contracts and any other trading tools.
  - (b) Options, futures, swaps, forward rate agreements and any other derivative contracts

relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.

- (c) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event)
- (d) Options, futures, swaps, and other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/ or an MTF.
- (e) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled not otherwise mentioned in point (d) above and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls.
- (f) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise that by reason of a default or other termination event), as well as any other derivative contracts relating to assess, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls.
- (g) Such other investments instruments agreed upon with the Company and allowed under the Company's License.

9.2. Orders may be placed as market Orders to buy or sell as soon as possible at the price obtainable in the market, or on selected products as limit and stop Orders to trade when the

price reaches a predefined level. Limit Orders to buy and stop orders to sell must be placed below the current market price, and limit Orders to sell and stop Orders to buy must be placed above the current market price. If the bid price for sell Orders or ask price for buy Orders is reached, the Order will be filled as soon as possible at the price obtainable in the market. Limit and stop Orders are executed consistent with the Company's Order Execution Policy and are not guaranteed executable at the specified price or amount, unless explicitly stated by the Company for the specific Order.

- 9.3. The Client will, unless otherwise agreed in writing, understands, and acknowledges that the Company will enter into transactions with the client as Principal (counterparty) and not as an agent. The Company will be the contractual counterparty to the Client.
- 9.4. The Prospective Client hereby acknowledges and agrees that any of the following actions show his approval of the Agreement:
- (a) Completing and submitting the online Account Opening Agreement and clicking on the "I Accept" button or similar buttons or links as may be designated by the Company on the Company's Main Website(s); and/or
  - (b) Continuing to access or use the Company's Main Website(s).

## **10. Instructions**

- 10.1. The Client may give the Company oral or written instructions (which shall include instructions provided via the internet or by email as described below). The Company shall acknowledge the reception of the instructions orally or in writing, as appropriate.
- 10.2. The Client shall notify the Company of the identity of any persons authorised to give instructions to the Company on behalf of the Client. Any such notice shall be in writing and shall set out the names and specimen signatures of the person or persons to be authorised. Any such authority may be revoked by notice in writing by the Client but shall only be effective upon written confirmation by the Company of the Company's receipt of notice of revocation. The Company shall not be liable for any loss, direct or indirect, resulting from the Client's failure to notify it of such revocation.

- 10.3. The Company shall be entitled to act upon the oral or written instructions to any person so authorised or any person who appears to the Company to be an Authorised Person, notwithstanding that the person is not, in fact, so authorised.
- 10.4. Once an instruction has been given by or on behalf of the Client, it cannot be rescinded, withdrawn or amended without the Company's express consent. The Company may at its absolute discretion refuse any dealing instruction given by or on behalf of the Client without giving any reason or being liable for any loss occasioned thereby.
- 10.5. The Client shall promptly give any instructions to the Company, which the Company may require of the Client. If the Client does not provide such instructions promptly, the Company may, in its absolute discretion, take such steps at the Client's cost, as the Company considers appropriate for its own protection or for protection of the Client. This provision is similarly applicable in situations when the Company is unable to obtain contact of with the Client.
- 10.6. The Company shall not be liable for any loss, expense, cost or liability suffered or incurred by the Client as a result of instructions being given, or any other communications being made, via the Internet. The Client will be solely responsible for all orders, and for the accuracy of all information, sent via the Internet using the Client's name or personal identification number. The Company will not proceed with the transmission and execution of an order until it has confirmed the order with the Client.
- 10.7. If the Company does not receive instructions from the Client to settle any open Contracts by the close of the Business Day, the Company is hereby authorised (but not obliged) to transfer all said Contracts to the next business date traded (Rollover).
- 10.8. The Company may (but shall not in any circumstances be obliged) require confirmation in such form as the Company may reasonably request if an instruction appears to the Company that such confirmation is necessary or desirable; or such instruction is to close an Account or remit money due to the Client.
- 10.9. In general, the Company shall act according to instructions as soon as practically possible and shall, as far as trading instructions are concerned, act in accordance with the Company's Best Execution Policy. If, after instructions are received, the Company believes that it is not

reasonably practicable to act upon such instructions within a reasonable time, the Company may defer acting upon those instructions until it is, in the Company's reasonable opinion, practicable to do so or notify the Client that the Company is refusing to act upon such instructions. The Company shall not be liable for any losses resulting from such deferral or refusal.

- 10.10. The Company is, in accordance with its Order Execution Policy, entitled to aggregate the Client's orders with the bank's own orders, orders of any of the Company's associates and/or persons connected with the Company including employees and other Clients. Furthermore, the Company may split the Client's orders when executing these. The orders will only be aggregated or split if the Company reasonably believes it to be in the best interest of the Client. On some occasions, aggregation and split of the Client's order may result in the Client obtaining a less favorable price than if the Client's orders had been executed respectively separately or mutually.
- 10.11. The Client agrees that the Company may record all telephone conversations, internet conversations (chat), and meetings between the Client and the Company and use such recordings, or transcripts from such recordings, as evidence in any dispute or anticipated dispute between the parties. However, technical reasons may prevent the Company from recording a conversation, and recordings or transcripts made by the Company will be destroyed in accordance with the Company's normal practice. Consequently, the Client should not rely on such recordings to be available.
- 10.12. If the Client is more than one person (for example, joint account holders):
- (a) the liabilities of each such person shall be joint and several;
  - (b) the Company may act upon instructions received from any one person who is, or appears to the Company to be, such a person, and
  - (c) any notice and other message presented by the Company to one if such persons is deemed to be presented to all said persons.
  - (d) the rights of the Company in case an Event of Default occurs shall apply if an Event of



Default shall be deemed to have occurred in respect of any such persons.

10.13. If the Client operates several Accounts (or sub-accounts) and opposite positions are opened on different Accounts (or sub-accounts), the Company shall not close out such positions. The Client is specifically made aware that unless closed manually, all such positions may be rolled over on a continuous basis and thereby consequently all incur a cost for such roll-over.

## **11. Recording of Telephone Calls**

- 11.1. The content of any telephone call ('The telephone record') between the Client and the company may be recorded and saved as a magnetic or electronic record. The Client agrees that the company has the right to use the telephone records as it deems necessary, including but not limited to instances when a dispute arises between the Client and the company.
- 11.2. All instructions received from the Client during a telephone call, in relation to trading financial instruments shall be conclusive and binding.
- 11.3. The company may provide copies of such recordings of telephone calls to a regulatory authority of a competent authority without informing the Client.
- 11.4. Unless otherwise agreed in writing, all communications shall be made in the English language. Translation or information provided in languages other than English is for informational purposes only and do not bind the Company or have any legal effect whatsoever, the Company having no responsibility or liability regarding the correctness of the information therein.

## **12. Client Fund**

- 12.1. The Company holds an omnibus account which is named as Client Account where all Clients funds are held. The Company holds a different account for its own money separated from the Clients funds.
- 12.2. Unless the Client notifies the Company in writing or otherwise, the Company may allow a third party, such as an exchange, a clearing house or an intermediate broker to hold all

control Client Funds where the Company transfers the Client Funds (a) for the purposes of a transaction for the Client through or with that person; or (b) to meet Clients obligations to provide collateral for a transaction (e.g. an initial margin requirement for a derivative transaction).

- 12.3. The Client authorises the Company to make any deposits and withdrawals from the Client's Account on his/ her behalf including, without prejudice to the generality of the above, withdrawals for the settlement of all transactions undertaken under the Terms and all amounts which are payable by or on behalf of the Client to the Company or any other person.
- 12.4. Unless the Parties otherwise agree, in writing, any amount payable by the Company to the Client, shall be paid directly to the Client's account held with the Company.
- 12.5. The Client has the right to withdraw the funds which are not used for margin covering, free from any obligations (Free Margin) from his/ her Account without closing the said Account.
- 12.6. Money transfer request (withdrawal from Trading Account) is processed within the time frame indicated on the Company's website, under deposit and withdrawal section, after receiving from the Client transfer request instructions. When the transfer request process is concluded the transferring amount is reduced from the balance of the Client's Trading Account. The Client can then request for a withdrawal from his Account. The Company reserves the right to decline a withdrawal request if the request is not in accordance with Clause 12.9 below, or delay the processing of the request if not satisfied on full documentation of the Client.
- 12.7. The Client agrees to pay any bank transfer fees which might occur when withdrawing funds from the Client's Account and depositing them to his designated bank account. The Client must provide to the Company the payments details. The Client shall be held fully liable for his own funds, if he has provided the Company with wrong and/or misleading details. The Company bears no responsibility for any funds not deposited directly into the Company's bank accounts.
- 12.8. The Client agrees that any amounts sent by the Client or on the Client's behalf in the bank account of the Company will be deposited to the Client's Account at the value date of the

payment received and net of any charges/ fees charged by the bank account providers or any other intermediary involved in such transaction process. The Company must be satisfied that the sender is the Client or an authorised representative of the Client before making any amount available to the Client's Account, otherwise the Company reserves the right to refund/ send back the net amount received to the remitter by the same method as received.

- 12.9. Withdrawals should be made using the same method used by the Client to fund his/ her Account and to the same remitter. The Company reserves the right to decline a withdrawal with specific payment method and suggest another payment method where the Client needs to proceed with a new withdrawal request, or request further documentation while processing the withdrawal request. If the Company is not satisfied with any documentation provided by the Client will reverse the withdrawal transaction and deposit the amount back to the Client's Account. More details on the circumstances which the Company might cancel a withdrawal request can be found on "Withdrawal Conditions" which is accessible via the Company's website.
- 12.10. The Client agrees to waive any of his rights to receive any interest earned in the money held in the Bank Accounts and consents that the Company will benefit for such an interest earned to cover registration/ general expenses/ charges/ fees and interest related to the administration and maintenance of the bank accounts. Such expenses will not be passed over to the Clients what so ever. However, the Company may at its discretion pay interest at a rate and basis of calculation as it determines.
- 12.11. Where the Client's Account is classified as Closed/Terminated with a positive balance (i.e. there are funds available on Client's Account), the Company will have the right to cease treating those funds as Client Money and make a deduction of the Account balance from Company's Client Account to Company's Own account. If the Client later make a valid claim to the Company, the Company may pay the Client any amount owed to the Client by the Company.

### **13. Company's Spreads and Conditions**

- 13.1. By accepting the Terms, the Client has read, understood and accepted the information under the Spreads and Conditions Schedule available on the Company's Website, in which all related spreads, charges, margin, interest and other rates are explained. The Company reserves the right to amend at discretion all such spreads, charges, margin, swaps and other rates and proper information on such amendments will be available on the Company's Website which the Client must review during the period the Client is dealing with the Company and especially before and after placing any orders to the Company.
- 13.2. The Company is entitled, but shall not in any circumstances be obliged, to convert:
- (a) any realised gains, losses, option premiums, commissions, interest charges and brokerage fees which arise in a currency other than the Client's base currency (i.e. the currency in which the Client's Account is denominated) to the Client's base currency;
  - (b) any cash currency deposit to another cash currency deposit for the purpose of purchasing an asset de-nominated in a currency other than the Client's base currency;
- 13.3. Whenever the Company conducts currency conversions, the Company will do so at such reasonable rate of exchange as the Company selects. The Company shall be entitled to add a mark-up to the exchange rates. The prevailing mark-up is defined in the Spreads and Conditions Schedule.
- 13.4. In addition the Client shall be obliged to pay all applicable VAT and other taxes and all other fees incurred by the Company in connection with any Contract and/ or in connection with maintaining the Client relationship.
- 13.5. The Company may share commissions and charges with its associates, Business Introducers or other third parties or receive remuneration from them in respect of Contracts entered into by the Company. Details of any such remuneration or sharing arrangement will not be set out on the relevant Trade Confirmations. The Company (or any associate) may benefit from commission, mark-up, mark-down or any other remuneration where it acts for the Counterparty to a Contract.
- 13.6. The Company will upon reasonable request and to the extent possible disclose to the Client

the amount of commission, mark-up, mark-down or any other remuneration paid by the Company to any Business Introducer or other third party.

- 13.7. In respect of any transactions to be effected OTC, the Company shall be entitled to quote prices at which the Company is prepared to trade with the Client. Save where the Company exercises any rights it may have under the Terms to close a Contract, it is the Client's responsibility to decide whether or not it wishes to enter into a Contract at such prices.
- 13.8. The Company may share Trading Rebate with its Clients, at its sole discretion and upon request of the Client. Trading Rebate is the percentage of the spread which is calculated based on the volume of trading transactions performed by the Clients and are applied to the Client's trading account(s). The Clients can be informed on which of their trading accounts are subject to Trading Rebates through their Client Area.
- 13.9. The Company will upon reasonable request and to the extent allowed by the applicable laws and regulations, disclose to the Client the amount of commission, mark-up, mark-down or any other remuneration paid to any Affiliate or another third party by the Company.
- 13.10. The Company may charge a mark-up or mark-down (the difference between the price at which we take a principal position and the Transaction execution price with the Client). The Company may alternatively agree to charge a commission or a combination of commission and mark-up or mark-down.

#### **14. Leverage**

- 14.1. A Client can change the leverage by sending a request at [trading@exalibre.com](mailto:trading@exalibre.com). The Company has the option at its own discretion to disable this option.
- 14.2. A Client can change the leverage on demo accounts as many times as he wants.
- 14.3. A Client has no restrictions to increase the leverage.
- 14.4. A Client is allowed to decrease the leverage in the following cases:
- (a) If margin is zero;
  - (b) If margin is more than zero and the margin level is more than 100%.

## 15. Archived account

15.1. A trading Account shall be archived if the following occurs:

- (a) No financial and/or trading activity and no pending orders for a set period of 60 (sixty) calendar days.

15.2. A Trading Account with no financial and/or trading activity for 60 (sixty) days shall be archived and any pending order older than 90 (ninety) days shall be deleted.

15.3. A Trading Account with no financial and/or trading activity for 60 (sixty) days and pending orders less than 90 (ninety) days, shall be archived when the said pending orders reach 90 (ninety) days and shall be deleted.

15.4. Remaining balance in the Trading Account which will be Archived, shall be transferred to the client's area before the Trading Account is archived.

15.5. Any Trading Account can be classified by the Company as an Archived, regardless of the remaining balance of the Trading Account.

15.6. A Client can request to restore an Archived Account by sending an email at [support@exalibre.com](mailto:support@exalibre.com). An Archived Account is not considered as a terminated trading account, however any trading account may only be restored at the Company's discretion.

## 16. Dormant Account

16.1. An Account will be considered as a Dormant Account, if there is no financial (deposit/withdrawal) or trading activity (opening /closing orders) in the Account for a set period of 6 (six) months. Pending orders that have been cancelled as per section 15.2 and 15.3 shall not be considered as orders for the determination of the trading activity.

16.2. Dormant Accounts will be charged as follows:

- (a) 6 months - 1 year: a monthly Dormant Fee of 5 USD (Five US Dollars) (or the equivalent amount of the base currency of the Account at the date of the charge) on

the remaining balance of the Account until the balance is 0 (zero).

- (b) 1 year – 2 year: a monthly Dormant Fee of 10 USD (Ten US Dollars) (or the equivalent amount of the base currency of the Account at the date of the charge) on the remaining balance of the Account until the balance is 0 (zero).
- (c) 2 years – 3 years: a monthly Dormant Fee of 20 USD (Twenty US Dollars) (or the equivalent amount of the base currency of the Account at the date of the charge) on the remaining balance of the Account until the balance is 0 (zero).
- (d) More than 3 years: a monthly Dormant Fee equivalent to previous year monthly Dormant Fee plus 10 USD (Ten USD Dollars) (or the equivalent amount of the base currency of the Account at the date of the charge) will be added for every additional year to, on the remaining balance of the Account until the balance is 0 (zero).

16.3. If the balance of the Account is less than the prescribed charges, the full remaining amount will be charged and the Company has the right to terminate the Account, upon a notice of termination to the Client.

16.4. There will be no charge if the balance in the Account is 0 (zero). The Company shall proceed with notifying the Client that his Account will be terminated with immediate effect. The Company undertakes to make good any valid claim against the released balances.

16.5. The Company reserve the right to charge the Dormant fee retroactively for any month in which the Company had the right to charge it but for technical reasons did not.

16.6. The Dormant Fee is charged for the maintenance, administration and compliance management of such Dormant Accounts.

16.7. For any information regarding the closure of accounts, please contact the Company at [support@exalibre.com](mailto:support@exalibre.com).

## **17. Margin Deposits, Collateral and Payment**

17.1. The Client shall pay to the Company on demand:

- (a) Such sums of money by way of deposits or as initial or variation Margin as the Company may from time to time require;
  - (b) Such sums of money as may from time to time be due to the Company under a Contract and such sums as may be required in or towards clearance of any debit balance on any Account;
  - (c) Any amount necessary for maintaining a positive balance in any and all Accounts.
- 17.2. The Client shall promptly deliver any money or property deliverable by it under a Contract in accordance with the Terms of that Contract and with any instructions given by the Company for the purpose of enabling the Company to perform its obligations under any corresponding Contract entered into between the Company and a third party.
- 17.3. If the Client fails to provide any Margin, deposit or other payable amount in accordance with the Terms in respect of any transaction, the Company may terminate any open Contract without prior notice to the Client and apply any proceeds thereof to payment of any amounts due to the Company.
- 17.4. In the event that a negative balance occurs in the Client's Trading Account due to Stop Out, the Company will make a relevant adjustment of the full negative amount so as to the Client not to suffer the loss.
- 17.5. The Company reserves the right to return the funds deposited by the Client at any time with or without reasons.

In the event funds are incorrectly placed into your account and/ or withdrawn by you, the Company reserves the right to retrieve these funds either directly from the account in question or via any other accounts held by the account holder with the Company. In the event that there are open trades within the account the Company will contact the Client via email and inform the Client of the actions to remedy the situation and that any trades must be closed. Failure of the Client to comply could result in insufficient funds in the account to hold the positions that are open and could ultimately lead to the stopping out



of the open positions. The Company will not be held liable for such events resulting in any loss direct or indirect to the Client.

## **18. Account Reporting and Trade Confirmation**

- 18.1. The Company will make available to the Client a Trade Confirmation in respect of any transaction or Contract entered into by the Company with or for the Client and in respect of any open position closed by the Company for the Client. Trade Confirmations will normally be available instantly following the execution of the transaction through the Trading Platform.
- 18.2. An Account Detailed Report is available to the Client through the Trading Platform. The Account Detailed Report will normally be updated periodically during the Company's opening hours. By accepting the Terms the Client agrees not to receive any Trade Confirmations or Account Detailed Reports in printed form from the Company other than upon specific request.
- 18.3. The Client is obliged to verify the contents of each document, including documents sent in electronic form from the Company. Such documents shall, in the absence of manifest error, be deemed conclusive unless the Client notifies the Company in writing to the contrary within (3) Business Days after having received such document. In the event that the Client believes to have entered into a transaction or Contract, which should have produced a Trade Confirmation or otherwise a posting on the Client's Account, but the Client has not received such confirmation, the Client must inform the Company immediately when the Client ought to have received such confirmation. In the absence of such information the transaction or Contract may at the Company's reasonable discretion be deemed non-existent.

## **19. Communication**

- 19.1. Communications may be made to the Client at such address, telephone, facsimile or email address notified from time to time to the Company for this purpose.

19.2. Unless otherwise agreed in writing, all communications shall be made in the English language and shall be served by sending them by prepaid first class post, email or facsimile transmission or by delivering it by hand to the address for the time being of the addressee. Translation or information provided in languages other than English is for informational purposes only and do not bind the Company or have any legal effect whatsoever, the Company having no responsibility or liability regarding the correctness of the information therein.

19.3. Any notice/ communication sent to the Client by:

- (a) post shall be deemed to have been served, in the case of service in Mauritius 48 hours after dispatch and, in the case of service outside Mauritius, seven (7) days after dispatch.
- (b) facsimile shall be deemed to have been served at the time of receipt of a positive transmission notice by the sender.
- (c) email shall be deemed to have been served when received at the destination site or the address advised by recipient to the sender to be its email address.

19.4. In proving service, it will be sufficient to prove,

- (a) in the case of a letter, that it was properly stamped, addressed and placed in the post,
- (b) in the case of a facsimile transmission, that it was fully dispatched to a current or facsimile number of the addressee and,
- (c) in the case of email, that the sender has received a valid message confirmation delivery.

19.5. The Client shall ensure that at all times the Company will be able to communicate with the Client or his appointed representative by telephone, facsimile or email.

19.6. Communications may be made to the Company at the address and telephone number notified to the Client for this purpose and shall be considered to have been duly made only upon their actual receipt by the Company.

19.7. The Client may alter his/ her communication details by written notice to the Company.

19.8. The Company may from time to time communicate with the Client by any of the means of communication mentioned in Clause 19.1 for providing any kind of information including but not limited to information on any new feature on its platform, for any updates on the Company's website, for the provision of information on new products and/or new promotions and bonuses schemes and/or anything that in the Company's opinion might be of interest and assistance to its Clients. The Client consents and agrees to receive any of the information which the Company wishes to make available to the Client.

## **20. Conflicts of Interest**

20.1. The Company, its associates or other persons or companies connected with the Company may have an interest, relationship or arrangement that is material in relation to any transaction or Contract affected or advice provided by the Company, under the Terms. By accepting these Terms and the Company's Conflict of Interest Policy (which distinctly describes the general character and/ or background of any conflict of interest) the Client agrees that the Company may transact such business without prior reference to any potential specific conflict of interest

## **21. Inducements**

21.1. The Company may pay and/or receive fees/commission to/from third-parties, provided that these benefits are designed to enhance the quality of the offers services to the Client and they not impair compliance with the Company's duty to act in the best interests of the Client.

## **22. Business Introducer**

22.1. The Client may have been recommended by a Business Introducer. Based on a written agreement with the Company, the Business Introducer will be paid with a fee / commission.

22.2. The Business Introducer or other third parties will be paid with a fee/commission based on a written agreement with the Company. This fee/commission is related to the volume of trading transactions performed by and the number of referred Clients to the Company. The Company has the obligation and undertakes to disclose to the Client, upon his request,

further details regarding the amount of fees/commissions or any other remuneration paid to the Business Introducer, or other third parties.

- 22.3. The Client acknowledges and understands that in circumstances of a Client being introduced to the Company through an Introducer higher spreads may be applied as mark-up, as indicated in Company's website. Note that fees/commissions to the Introducers may be paid by the Company even if mark ups are not existent. If the Client does not consent to this, the Company shall not apply the mark-up or mark-down to any of the applicable accounts and the Introducer will be remunerated based on the terms of the standard Introducer's Agreement offered by the Company.
- 22.4. By accepting this Agreement, the Client confirms that he/ she is also aware that commissions based on the Client's traded volume may be paid to the Business Introducer.
- 22.5. The Introducer has the option to share a percentage of the remuneration he receives from the Company, based on the Introducer and/or Complementary Agreement he has in place with the Company, with any Client he has referred to the Company, through the Company's Rebate system. The Introducer has the option to change the percentage of Introducer Rebate he is willing to share with a Client at any given time, without his prior consent. It is understood that the Introducer and the Client do not maintain any form of relationship, when the referred Client has already concluded an agreement with the Company.
- 22.6. Introducer Rebates apply only to Clients of the Company who have been introduced to the Company by Affiliates and can be applied to any trading account that the referred Client has opened with the Company.
- 22.7. Introducer Rebates is the percentage of the Introducer commission which is calculated based on the volume of trading transactions performed by the referred Clients and are applied to the Client's trading account(s).
- 22.8. The Client acknowledges that Introducer Rebates are discretionary and the Company reserves the right to terminate this offer at any time.
- 22.9. The Client acknowledges and confirms that:

- (a) the Company does not bear responsibility for whatever agreements are reached between the Client and the Business Introducer.
  - (b) his/ her agreement with the Business Introducer may result in additional costs, since the Company may be obliged to pay commission fees or charges to the Business Introducer.
  - (c) the Business Introducer is authorised to have "View Only" access to one or more terminals, including terminal access through internet browser, to electronically monitor the activities of Clients' Accounts introduced by the Business Introducer to the Company.
- 22.10. The Client acknowledges that the Business Introducer is not a representative of the Company nor is he authorised to provide any guarantees or any promises with respect to the Company or its services.
- 22.11. The Client acknowledges and understands that the Business Introducer is not allowed to offer the service of Investment Advice.

### **23. Acknowledgements**

- 23.1. The Client acknowledges that he has read, understood and accepted the present Agreement, and all other legal documentation available on the Company's website (the Terms of Business, the Privacy Policy, the General Risk Disclosure, the Client Categorisation Policy, the Complaint Handling, the Order Execution Policy, the Risk Disclosures for Financial Instruments and the Summary of Conflicts of Interest Policy as amended from time to time). The Company shall notify the Client of any changes in the legal documentation of the Company and the Client shall be solely responsible for making himself familiarised with such changes.
- 23.2. The Client further acknowledges and understands that:
- (a) the Company's relationship with him will be governed by the Terms and conditions of this Agreement and the Terms of Business available at the Company's website as amended from time to time;

- (b) the Company has the right to archive any trading account if the Client does not perform any trading or financial transaction for a period of 90 (ninety) calendar days, regardless of the balance amount. If there is insufficient balance to support pending orders at the time of archiving, the pending orders will be deleted. The said archived trading account can be reinstated with the same conditions upon request to [support@exalibre.com](mailto:support@exalibre.com) . An archived account is not considered as a terminated account; however, any trading account may only be restored at the Company's discretion;
- (c) that any market recommendation and any information communicated by the Company does not constitute an offer to buy or sell or the solicitation of an offer to buy or sell a Contract and that such recommendation and information, although based upon information from sources believed by the Company to be reliable, may be based solely on a vendor's opinion (such as a third-party market analysis provider) and that such information may be incomplete and may be unverified and unverifiable. The Company makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy or completeness of any information or trading recommendation furnished to the Client;
- (d) the Company reserves the right to change the specification of a Trading Account and publish any changes made to a specific trading account type on the relevant page of its Website;
- (e) that the Company's official language is the English Language.
- (f) The Services and/or any marketing communication as regards the same are only provided via the Company's website and/or Trading Platform(s) and/or official social networking channels as per the provisions of the Agreement, thus, only these methods shall be used for communicating and receiving the Services offered by the Company. The Company shall not be liable for any loss, expense, cost or liability of any kind of nature incurred by the Client in case he has communicated and/or conducted any type of business with any natural or legal entity claiming to act on the Company's behalf in respect of the Services offered by the Company (i.e. imposters, fraudsters etc.).

## 24. Risks

24.1. The Client acknowledges, recognises and understands that trading and investments in leveraged as well as non-leveraged Contracts is:

- (a) highly speculative;
- (b) may involve an extreme degree of risk; and
- (c) is appropriate only for persons who, if they trade on margin, can assume risk of loss in excess of their margin deposit.

An example of a leveraged product is a Forex account with a leverage of higher than 1:1. Clients may choose a leverage of 1:1 which makes the Contract non-leveraged.

24.2. The Client acknowledges, recognises and understands that:

- (a) because of the low margin normally required in margined transactions, price changes in the underlying asset may result in significant losses, which losses may substantially exceed the Client's investment and margin deposit;
- (b) certain market conditions may make it difficult or impossible to execute orders at a stipulated price;
- (c) when the Client directs the Company to enter into any transaction, any profit or loss arising as a result of a fluctuation in the value of the asset or the underlying asset will be entirely for the Client's account and risk;
- (d) the Company will never provide any trading advice to the Client. Therefore, the Client agrees not to hold the Company responsible for losses incurred as a consequence of following the Company's recommendations or suggestions or those of its employees, associates or representatives, unless the Company has exercised gross negligence in connection herewith;
- (e) the Company shall not conduct any continuous monitoring of the transactions already entered into by the Client. Thus, the Company cannot be held responsible for the transactions developing differently from what the Client might have presupposed and/or to the disadvantage of the Client;

- (f) guarantees of profit or freedom from loss are impossible in investment trading;
- (g) he/ she has received no such guarantees or similar representations from the Company, from a Business Introducer, or representatives hereof or any other entity with whom the Client is conducting a Company account.
- (h) the Company shall not provide any advice to the Client on any tax issues related to any Services. The Client is advised to obtain individual independent counsel from its financial advisor, auditor or legal counsel with respect to tax implications of the respective Services.
- (i) The Client further acknowledges, recognises and understands that many Contracts will be effected subject and in accordance with Market Rules. In particular, the Client acknowledges that Market Rules usually contain far-reaching powers in an emergency or otherwise undesirable situation and agrees that if any exchange or clearing house takes any action which affects a contract then the Company may take any action which it, in its discretion, considers desirable in the interests of the customer and/ or the Company. The Company shall not be liable for any loss suffered by the Client as a result of the acts or omissions of any exchange or clearing house or any action reasonably taken by the Company as a result of such acts or omission unless the Company has exercised gross negligence in connection hereby.
- (j) The Company offers various trading account types, the specifications of which are available on the Company's website. The Company reserves the right to change the specification of the Trading Account and publish any changes made to a specific trading account type on the relevant page of its.

## **25. Representations and Warranties**

### **25.1. The Client represents and warrants that:**

- (a) He does not have any legal disability with respect to, and is not subject to any law or regulation which prevents its performance of the Terms or any transaction



contemplated by the Terms;

- (b) He has obtained all necessary consents and has the authority to operate to according the Agreement (and if the Client is a company, it is properly empowered and has obtained necessary corporate or other authority pursuant to its constitutional and organisational documents);
- (c) sums, investments or other assets supplied by the Client for any purpose, subject to the Agreement, at all times be free from any charge, lien, pledge or encumbrance and shall be beneficially owned by the Client;
- (d) He is in compliance with all laws to which it is subject including, without limitation, all tax laws and regulations, exchange control requirements and registration requirements; and
- (e) the information provided by the Client to the Company is complete, accurate and under no circumstances is misleading and the documents handed over by the Client are valid and authentic;
- (f) the Client has read and fully understood the terms of the Agreement;
- (g) the Client is acting as a principal and not as agent or representative or trustee or custodian on behalf of someone else. The Client may act on behalf of someone else only if the Company specifically consents to this in writing and provided all the documents required by the Company for this purpose are received;
- (h) the Client is the individual who has completed the Account Opening Application Form or, if the Client is a company, the person who has completed Account Opening Application Form on the Client's behalf is duly authorised to do so;
- (i) all actions performed under the Agreement will not violate any law or rule applicable to the Client or to the jurisdiction in which the Client is resident, or any agreement by which the Client is bound or by which any of the Client's assets or funds are affected;
- (j) the Client funds are not in any direct or indirect way the proceeds of any illegal activity or used or intended to be used for terrorist financing;

- (k) the Client has chosen the particular type of service and financial instrument, taking his total financial circumstances into consideration which he considers reasonable under such circumstances;
- (l) the Client has declared in the Account Opening Application Form if he is a Politically Exposed Person and will notify the Company if at any stage during the course of this Agreement he becomes a Politically Exposed Person;
- (m) there are no restrictions on the markets or financial instruments in which any Transactions will be sent for execution, depending on the Client's nationality or religion.

25.2. The Client represents and warrants that the above representations and warranties shall be applied for any future instructions and/or transactions provided by the Client for the duration of his business relationship with the Company.

## **26. Indemnity and Limit of Liability**

26.1. The Client shall indemnify the Company and keep the Company indemnified at all times against all losses, expenses, costs and liabilities of any kind or nature which may be suffered or incurred by the Company:

- (a) As a direct or indirect result of any failure of the Client to perform any of his obligations under this Agreement; and/or
- (b) In relation to any instruction given to the Company by an authorised representative of the Client; and/or
- (c) In relation to any instruction, which appears to the Company to be given by an authorised representative of the Client; and/or
- (d) Where the Client and/or the authorised representative of the Client and/or any person which appears to the Company to be an authorised representative of the Company, has provided false and/or misleading information for any transaction.

26.2. This Indemnity shall survive the termination of this Agreement.

26.3. The Company shall not be liable for:

- (a) any loss, expense, cost or liability of any kind or nature suffered or incurred by the Client unless such loss, expense, cost or liability of any kind or nature is suffered or incurred as a result of the Company's gross negligence and/or fraud on behalf of the Company and/or the intended failure of the Company's obligations under this Agreement; and/or
- (b) any acts or omissions of an authorised representative or a person which appears to the Company to be an authorised representative of the Client which provides the Company with false and/or misleading information of the Client's instructions unless such acts or omissions were the result of the Company's gross negligence and/or fraud on behalf of the Company; and/or
- (c) any loss of opportunity that results in reduction in the values of the Client's transactions, regardless of the cause of such reduction, except to the extent that the reduction occurred as a direct consequence of the Company's deliberate actions or omissions;
- (d) any loss caused by actions of the Company, within the limits of realisation of its rights, stipulated in these Terms;
- (e) any loss or expense incurred by the Client in connection with any error and/or failure and/or delay in the operation of the Trading Platform.

## **27. Prohibited Trading**

27.1. The Client is not allowed to enter into any form of prohibited trading i.e. certain trading techniques commonly known as "arbitrage trading", "picking/ sniping" or the use of certain automated trading systems or "Expert Advisors"; and/or follow an abusive trading strategy i.e. any trading activity which is aiming towards potential riskless profit by opening opposite orders, during periods of volatile market conditions, during news announcements, on opening gaps (trading sessions starts), or on possible gaps where the underlying instrument has been suspended or restricted on a particular market, between same or different trading accounts. The Client agrees and acknowledges that if the Company considers that the Client

has been acting in any of the manners described above; the Company may at its sole discretion and without prior notice to the Client, take one or more, or any portion of, the following actions:

- (a) close the Client's account;
- (b) suspend the Client's account for an indefinite period of time;
- (c) carry out an investigation on the Client's account for an indefinite period of time;
- (d) charge a penalty fee to the Client in the same or greater amount of money that resulted from the Client using such techniques; or
- (e) close the account, confiscate any profits that arose from prohibited trading techniques and return the original deposit(s) to the account holder. If profits arising out of Prohibited Trading were already withdrawn, profits can be confiscated from the Client's related accounts in order to make up for the difference.

## 28. Event of Default

28.1. Each of the following constitutes an 'Event of Default':

- (a) The Client has failed to make any payment to the Company in accordance with the terms and conditions under the Agreement;
- (b) The Client has failed to perform any of his obligations to the Company under the Agreement;
- (c) If the Client is a natural person, his death or incapacity;
- (d) The initiation of proceedings for bankruptcy (in case of a natural person) or the winding up (in case of a legal entity) by a third party or the appointment of an administrator or receiver in respect of the Clients' assets (either a natural or legal person);
- (e) Where the Client has entered into any arrangements and/or compositions with his Creditors;
- (f) If the Clients becomes unable to pay any of his debts due and payable to the Company;

- (g) Where any representation and/or warranty made by the Client to the Company under this Agreement becomes untrue;

28.2. In an Event of Default the Company has the right to either:

- (a) Immediately demand any amount due and terminate the Agreement without prior notice to the Client; and/or
- (b) Close or partly close all or any of your open trades at a closing level based on the market price at the time of closure; and/or
- (c) Close all or any of the Accounts of the Client held with the Company of whatever nature and refuse to enter into further dealings with the Client; and/or
- (d) Cancel any of its obligations to continue providing any of its Services to the Client without prior notice.

## 29. Amendments

29.1. The Company reserves the right to amend these Terms at any time by written notice to the Client. Such changes will become effective on the date specified in the notice, which will be at least one week after the Client is notified by email or any other appropriate means, unless any relevant law, regulation, rule or action of any applicable government or regulator requires otherwise.

## 30. Information Disclosure

30.1. The Company shall maintain all information received by the Client confidential. The Client acknowledges that such information shall be disclosed to the Company's employees, introducing brokers, consultants and advisors who are required to know such information for the purpose of this Agreement and/or to any parties either in the Republic of Mauritius or outside of it to facilitate the transfer of funds from the Client's credit card and who shall maintain that the confidentiality of such information. The Client acknowledges and agrees that the Company may disclose such information relating to the Client as may be required by any law, rule or regulatory authority, including any applicable Market Rules, without prior

notice to the Client.

### **31. Advice and Provision of Information**

- 31.1. The Company will not advise the Client about the merits of a particular Transaction or give him any form of investment advice and the Client acknowledges that the Services do not include the provision of investment advice in CFDs or the Underlying Markets. The Client alone will enter into Transactions and take relevant decisions based on his own judgment. In asking the Company to enter into any Transaction, the Client represents that he has been solely responsible for making his own independent appraisal and investigation into the risks of the Transaction. He represents that he has sufficient knowledge, market sophistication, professional advice and experience to make his own evaluation of the merits and risks of any Transaction. The Company gives no warranty as to the suitability of the products traded under this Agreement and assumes no fiduciary duty in its relations with the Client.
- 31.2. The Company will not be under any duty to provide the Client with any legal, tax or other advice relating to any Transaction. The Client should seek independent expert advice if he is in any doubt as to whether he may incur any tax liabilities. Tax laws are subject to change from time to time.
- 31.3. The Company may, from time to time and at its discretion, provide the Client (or in newsletters which it may post on its Website or provide to subscribers via its Website or the Platform or otherwise) with information, recommendations, news, market commentary or other information but not as a service. Where it does so:
- (a) the Company will not be responsible for such information;
  - (b) the Company gives no representation, warranty or guarantee as to the accuracy, correctness or completeness of such information or as to the tax or legal consequences of any related Transaction;
  - (c) this information is provided solely to enable the Client to make his own investment decisions and does not amount to investment advice or unsolicited financial promotions to the Client;

- (d) if the document contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, the Client agrees that he will not pass it on to any such person or category of persons;
- (e) the Client accepts that prior to dispatch, the Company may have acted upon it itself to make use of the information on which it is based. The Company does not make representations as to the time of receipt by the Client and cannot guarantee that he will receive such information at the same time as other Clients.

31.4. It is understood that market commentary, news, or other information provided or made available by the Company are subject to change and may be withdrawn at any time without notice.

## **32. Chargeback Policy**

32.1. The Client shall have the right to file a complaint for a belief that a fraudulent transaction was committed. The Company shall then conduct an investigation to determine whether the alleged transaction was fraudulent. The Client acknowledges that the Company reserves the right to charge the Client a “150 USD research fee” in order to conclude the investigation.

32.2. The Company will not accept any form of fraud including but not limited to credit card fraud. The Company shall conduct full investigations and pursue all the losses it might incur under the law. The Company will conduct court proceedings and will claim any losses incurred covering all business, legal fees, research costs, human resource and loss of income.

32.3. The Company maintains systems which monitor fraudulent activities. Any transactions detected are immediately cancelled along with any orders associated with the transaction. The Company maintains a database of black listed users which are banned from trading.

32.4. The Company shall regard any chargeback as fraudulent if the Client fails and/or neglects to assist the Company in resolving any issues associated with a specific deposit. All unnecessary chargebacks produce unnecessary costs for the Company and therefore the Company shall take the following measures:

- (a) When the Company detects suspicious activity regarding a deposit the respective

deposit will be placed as 'Pending' and fraud detection checks will be performed during this time. Access to the Client's account will be temporarily prohibited in order to reduce the Client's exposure to risk.

- (b) All reviews are generally completed within four (4) to six (6) hours; however, deposits posing a potentially higher risk of fraud might require more time as more extensive fraud detection checks will be performed by the Compliance Department of the Company. As a back-up precaution, the Company may also make direct contact with the Client. The deposit will be immediately cancelled and the funds will be refunded to the credit card in the case that the deposit is determined to be high-risk or does not comply with our Fraud and Security policies. The Company reserves the right to close any and/or all Client accounts with the Company. Any active orders will be cancelled immediately if associated with the same fraudulent credit card and/ or account.
- (c) Unsuccessful chargebacks shall receive a total fee of 300 USD i.e. the 150 USD research fee and an additional 150 USD administrative processing fee' which must be reimbursed to the Company. Under the terms and conditions of this Agreement, the Client hereby agrees and gives permission to the Company to proceed with any charges on the Client's credit card; if these charges are in anyway disputed, the Company reserves the right to take any legal action necessary in order to recover any losses associated with these claims.
- (d) Inconclusive chargebacks made against the Company will be passed to a third-party agency for collection and the appropriate credit bureaus will be informed of the actions of the Client. The Client faces a risk of his credit rating being affected for a minimum period of 7 (seven) years. In these circumstances the Company shall not negotiate a settlement of the debt and shall request a full payment. The Company will inform the local Police Department where the Client is resident and shall request all necessary actions to be taken under the applicable law of the country of residence of the Client. The Company reserves the right to block online trading facility of the Client and terminate hisaccount without prior notice. The Client acknowledges that in such



circumstances any profits or revenues may be seized and the Company reserves the right to inform any third party. The Company is continuously developing tools to monitor any fraudulent activity. The Company shall deal with cases of fraudulent activity as it thinks fit and the decisions taken shall be final, non-negotiable and irreversible.

(e) The Company reserves the right to deduct the disputed amount until any form of investigation conducted by the Company is completed.

32.5. Due to the high risks entailed with the crime of fraud the Company considers that more serious measures shall be taken. All IP addresses are closely monitored by the Company and any fraudulent chargebacks will be fully investigated and appropriate measures shall be taken.

### **33. Force Majeure Event**

33.1. The Company shall not be liable to the Client for any failure, hindrance, or delay in performing its obligations under these Terms where such failure, hindrance or delay arises directly or indirectly from circumstances beyond its reasonable control. Such force majeure events shall include without limitation any technical difficulties such as telecommunications failures or disruptions, non-availability of the Company's Website e.g. due to maintenance downtime, declared or imminent war, revolt, civil unrest, catastrophes of nature, statutory provisions, measures taken by authorities, strikes, lock-outs, boycotts, or blockades, notwithstanding that the Company is a party to the conflict and including cases where only part of the Company's functions are affected by such events.

33.2. The Company, in its reasonable opinion, determines that a force majeure even occurred; under such circumstances the Company shall take all reasonable steps in order to inform the Client.

33.3. A force majeure even is an event or circumstance, including but not limited to any natural, technological, political, governmental, social, economic, or similar event or circumstance

that occurred after a transaction in a financial instrument occurred and such event or circumstance has not been anticipated at the date of entering into the transaction. In addition to the above, a force majeure event may include instances of illegitimate actions against the Company's servers that maybe outside the control of with the Client or the Company.

33.4. If the Company determines that a force majeure event occurred, without prejudice to any other rights of the Client under the account opening agreement, the company may:

- (a) Increase margin requirements and/ or;
- (b) increase spreads and/ or;
- (c) decrease leverage and/ or (Leverage is a ratio of amount used in a transaction to the required deposit);
- (d) close out, in good faith, any open positions at a price that the Company considers reasonable and/ or;
- (e) request amendments to any closed positions and/ or;
- (f) suspend the provision of the Services to the Client and/ or;
- (g) amend any of the content of the Agreement on the basis that it is impossible for the company to comply with it;
- (h) suspend or modify the application of any or all terms of the Agreement to the extent that the Force Majeure Event makes it impossible or impractical for the Company to comply with them and /or;
- (i) take or omit to take all such other actions as the Company deems to be reasonably appropriate in the circumstances with regard to the position of the Company, the Client and other Clients.

#### **34. Demo Accounts**

34.1. A Demo Account is a type of 'virtual account' designed to closely simulate a real trading environment based on actual market conditions. This type of account is offered by the

Company to Clients and/or Prospective Clients, for them to test their trading skills prior to opening a live trading account.

34.2. A Demo Account's Balance can be increased or decreased by Clients and/or Prospective Clients subject to the restrictions mentioned in clauses **Error! Reference source not found.** and **Error! Reference source not found.** below.

34.3. It should be noted that inactive Demo Accounts are automatically deleted within 29 (twenty-nine) days of inactivity without prior notice of termination to the Clients and/or Prospective Clients.

### 35. Term

35.1. This Agreement shall come into force on the Commencement Date of this Agreement and shall remain in full force and effect until it is terminated by either Party in accordance with Clause 35.1 of this Agreement.

### 36. Complaints Handling

36.1. Any complaints and/or grievances against the Company must be in writing and shall be addressed to the Customer Support Department of the Company via email at [support@exalibre.com](mailto:support@exalibre.com) (for any issues other than trading issues) or to the Trading Department at [trading@exalibre.com](mailto:trading@exalibre.com) for any trading issues.

36.2. Upon receipt of the complaint and/or grievance, the Client shall receive an acknowledgment email that the issue shall be investigated within 5 (five) business days from the date of receiving the complaint and a unique reference number relating to his complaint.

36.3. The Company shall send its initial response within 10 (ten) business days from the date of receiving the complaint. If the complaint requires further investigation and it cannot be resolved it within 10 (ten) business days, the Company will issue a holding response in writing.

### 37. Termination

- 37.1. The Client relationship shall remain in force until terminated.
- 37.2. Either party has the right to terminate cooperation immediately by giving written notice to the other. Termination will not affect any accrued rights. The Company will provide the notice to the Client either by phone or email (or both).
- 37.3. The Company may terminate this Agreement with immediate effect without notice in an event of Default of the Client.
- 37.4. In case the Client involves the Company directly or indirectly in any type of fraud, the Company reserves the right to reverse all previous transactions which place the Company's interest and/ or any of its Clients interest at risk before terminating cooperation with the respective Client. The Company will use its best judgment to determine the existence of fraud.
- 37.5. Termination by any Party will not affect any obligation which has already been incurred by either Party in respect of any Open Position or any legal rights or obligations which may already have arisen under the Agreement or any Transactions and deposit/ withdrawal operations made there under.
- 37.6. Upon termination of this Agreement, all amounts payable by the Client to the Company will become immediately due and payable including (without limitation):
- (a) all outstanding Costs and any other amounts payable to the Company;
  - (b) any dealing expenses incurred by terminating the Agreement and charges incurred for transferring the Client's investments to another investment firm;
  - (c) any losses and expenses realised in closing out any Transactions or settling or concluding outstanding obligations incurred by the Company on the Client's behalf;
  - (d) any charges and additional expenses incurred or to be incurred by the Company as a result of the termination of the Agreement;
  - (e) any damages which arose during the arrangement or settlement of pending obligations.

37.7. Once notice of termination of this Agreement is sent or upon termination (when a notice is not required) the following will apply:

- (a) the Client will have an obligation close all his open positions. If he fails to do so, upon termination, the Company will close any open positions;
- (b) the Company will be entitled to cease to grant the Client access to the Platform or may limit the functionalities the Client is allowed to use on the Platform;
- (c) the Company will be entitled to refuse to open new positions for the Client;
- (d) the Company will be entitled to refuse to the Client to withdraw money from the Client Account and the Company reserves the right to keep Client's funds as necessary to close positions which have already been opened and/ or pay any pending obligations of the Client under the Agreement.

37.8. Upon Termination:

- (a) the Company reserves the right to combine any Client Accounts of the Client, to consolidate the Balances in such Client Accounts and to set off those Balances;
- (b) the Company reserves the right to close the Client Account(s);
- (c) the Company reserves the right to convert any currency;
- (d) the Company may close out all or any of the Client's Open Positions at current Quotes;
- (e) if there is Balance in the Client's favour, the Company will (after withholding such amounts that in the Company's absolute discretion considers appropriate in respect of future liabilities) pay such Balance to the Client as soon as reasonably practicable and supply him with a statement showing how that Balance was arrived at and, where appropriate, instruct any Nominee and/ or any Custodian to also pay any applicable amounts. Such funds shall be delivered in accordance to the Client's Instructions to the Client.

## **38. Miscellaneous Provisions**

38.1. If at any time, any provision of the Terms is or becomes illegal, invalid, or unenforceable in

any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected.

38.2. No delay or omission on the part of the Company in exercising any right, power or remedy provided by law or these Terms, or partial or defective exercise thereof, shall:

- (a) Impair or prevent further or other exercise of such right, power or remedy; or
- (b) Operate as a waiver of such right, power or remedy.

38.3. No waiver of any breach of any term under these Terms shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach.

38.4. The Client is not entitled to assign and or transfer any of its rights or delegate any of the Client's obligations under the Terms to any person, whereas the Company may assign its rights or delegate its obligations to any publicly regulated financial institution.

38.5. If the Company effects a transaction with or for the Client this shall not be taken to mean that the Company recommends or concurs on the merits of the transaction or that the transaction is suitable for the Client.

### **39. Tax Information**

39.1. The Client acknowledges that the Company shall have the right to request any information and/or documentation required for the purposes of FATCA and CRS and the Client confirms and agrees that he shall disclose such information to the Company immediately.

39.2. By accepting these Terms and Conditions, the Client consents that the Company can provide, directly or indirectly, to any relevant tax authorities or any party authorised to audit or conduct a similar control of the Company for tax purposes information obtained from the Client or otherwise in connection with the Agreement and the Transactions and to disclose to such tax authorities any additional information that the Company may have in its possession that is relevant to his Account.

**40. Governing Language**

40.1. This Agreement as well as any additional agreement hereto (both present and future) are made in English language. Any other language translation is provided as a convenience only. In the case of any inconsistency or discrepancy between original English texts and their translation into any other language, as the case may be, original versions of English shall prevail.

**41. Governing Law and Jurisdiction**

41.1. These Terms shall be governed by and construed in accordance with the Laws of Mauritius.

*Version: 2024/01*