



## **TERMS OF BUSINESS**



## Terms of Business

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#### 1. Introduction

Fxcess is a trade name of Notesco Limited, a company incorporated under the laws Bermuda, with registration number 51491 (hereinafter “the Company” or “We” or “Our”). The Company will offer its services via the domain name [www.Fxcess.com](http://www.Fxcess.com) (hereinafter the “Website”). The Company may also register and operate other websites mainly for promotional and marketing purposes in languages other than English. The Client accepts and understands that the official language of the Company is the English language.

#### 2. Definitions of Terms

<b>Access Codes</b>	Means any credentials provided by the Company for accessing the Trading Platform or credentials used by the Client to access the Client Portal;
<b>Agreement</b>	Means this document;
<b>Authorized Person</b>	Means an individual duly authorized on behalf of the Client to perform under the Agreement;
<b>Balance</b>	Means the net of all realized profits and losses on executed Transactions and deposits/withdrawals to/from an account;
<b>Base currency</b>	Means the designated currency of the Client’s Account;
<b>CFD</b>	Means a contract for differences;



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<b>Charges</b>	Means all charges, fees, mark-up, mark-down or other remuneration payable to the Company under this Agreement in connection with a Transaction;
<b>Client</b>	Means any natural or legal person to whom the Company provides its Services;
<b>Client Account</b>	Means any and all accounts for trading opened by the Client with the Company;
<b>Client's Bank Account</b>	Means an account which holds client money identified separately from any accounts used to hold money belonging to the Company;
<b>Client Portal</b>	The portal on the Main Website through which the Client can access the Client Account;
<b>Contract Specification</b>	Means the principal contractual terms relating to a Financial Instrument which include such matters as size, price and margin requirements;
<b>Electronic Systems</b>	Means any electronic trading facility offered by the Company (e.g. MetaTrader platforms, web-based platforms, mobile platforms, etc.), including the Client Portal on or through which a Client may send information including prices, orders, bids, offers and executions for the purposes of trading with or through the Company including any hardware, software and/or communications link;



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<b>Equity</b>	Means with respect to a Client's Account the aggregate of (i) the Balance; and (ii) unrealized profit or loss on open positions (after deduction of any Charges and the application of any Spread on closing of a position) – which can be expressed as follows: $\text{Balance} \pm \text{Open Positions} - \text{Spread} - \text{Charges}$ ;
<b>Financial Instruments</b>	Means the financial instruments described in paragraph 3.2 of this Agreement;
<b>FOREX</b>	Means trades on the foreign exchange market;
<b>Free Margin</b>	Means the amount of funds in the Client's Account in excess of the Margin requirement and available as collateral for trading; $\text{Free Margin} = \text{Equity} - \text{Margin}$ ;
<b>Introducing Broker</b>	Means any legal entity or a natural person obtaining remuneration from the Company for introducing Clients to the Company;
<b>Main Website</b>	Means the website of the Company, being <a href="http://www.Fxcess.com">www.Fxcess.com</a> .
<b>Margin</b>	Means the funds determined by the Company in its absolute discretion that a Client is required to deposit with as collateral to secure the Client's liability for any losses which may be incurred in respect of any Transaction and is required as a condition of entering into and/or maintaining a Transaction with an open position;



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<b>Margin Level</b>	Means: $(\text{Equity} / \text{Margin}) * 100$ ; it determines the conditions of the Client's Account;
<b>Power of Attorney</b>	Means the power to authorize a third party to act on behalf of the Client in all the business relationships with the Company;
<b>Reference Asset</b>	Means property of any description (including a currency or currency pair) or an index or other factor designated in a CFD Transaction to which reference is made to fluctuations in the value or price for the purpose of determining profits or losses under the CFD Transaction;
<b>Retail Client</b>	Means a client who is not a Professional Client or an Eligible Counterparty;
<b>Swap rate</b>	Means a charge by the Company for the interest cost and associated costs incurred in relation to the overnight rollover of an open position;
<b>Services</b>	Means the services provided to a Client as described in this Agreement;
<b>Spread</b>	Means the difference between the lower bid price and higher offer price of a quoted two-way price for a Financial Instrument;
<b>The Company</b>	Means Notesco Limited a company incorporated and registered under the laws of Bermuda, with registration number 51491 and registered address of: Clovelly, 36 Victoria Street, Hamilton HM 12, Bermuda;



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**Trading Platform** Means the trading platform set up by the Company on which the Client trades Financial Instruments;

**Transaction** Means any type of transaction performed by the Company in the Client's account including but not limited to purchase and sale transactions involving Financial Instruments, deposits and withdrawals.

### 3. Scope and Application

- 3.1 This Agreement applies to services provided with respect to all client account types including an STP-ECN Client account.
- 3.2 This Agreement (and any amendments to this Agreement) supersedes any previous agreement between the Company and the Client on the same subject matter and takes effect between the Company and the Client.
- 3.3 This Agreement sets out the basis on which the Company agrees to provide its Services.
- 3.4 This Agreement is provided to assist the Client in making an informed decision about the Company, its services and the risks of the Financial Instruments.
- 3.5 This Agreement should be read in its entirety in deciding whether:
  - (a) to buy, sell or to continue to hold any Financial Instrument; and/or
  - (b) to be provided with the Services.

### 4. Provision of Services

- 4.1 The Company will provide to the Client the following Services:
  - (a) Execution of orders on behalf of Clients in relation to the Financial Instruments below:



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- (i) Contracts for Differences on spot FOREX, spot precious metals, futures, shares or any other commodities available for trading
- (ii) 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.
- (iii) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash at the option of one of the parties (otherwise that by reason of a default or other termination event).

4.2 The Services shall involve Transactions in Financial Instruments not admitted to trading on Regulated Markets. By accepting this Agreement the Client acknowledges and agrees that he has given express prior consent to the execution of orders by the Company outside a Regulated Market.

### 5. Acknowledgment of Risks

The Client understands and acknowledges the following:

- 5.1 Contracts for difference, options, futures, swaps, forward rate agreements and many other derivatives (including most put options) are leveraged products and involve a high level of risk. It is possible for the Client to lose all his invested capital. Therefore, these products may not be appropriate or suitable for everyone and the Client should ensure that he understands the risks involved. If the Client considers that he is not properly able to understand the investment risks involved he should seek independent advice.
- 5.2 When the Client trades CFDs with the Company, the Client will be entering into an off-exchange (OTC) derivative transaction, by placing his orders through the Company's trading platform. OTC transactions may involve greater risk than investing in on-exchange derivatives because there is no exchange market on which to close out an open position.

The Client needs to open and close a position with the Company that is not transferable to any other person. In this case, the Client may be exposed to the risk of the Company default.

- 5.3 Information on past performance of a Financial Instrument does not guarantee the present and/or future performance. The use of historic data does not constitute a binding or safe



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- forecast as to the corresponding future return of the Financial Instruments to which such data refers.
- 5.4 When a Financial Instrument is negotiated in a currency other than the currency of the Client's country of residence, any changes in an exchange rate may have a negative effect on the Financial Instruments' value, price and performance.
  - 5.5 A Financial Instrument in foreign markets may entail risks different than the usual risks in the markets at the Client's country of residence. The prospect of profit or loss from transactions in foreign markets is also influenced by the exchange rate fluctuations.
  - 5.6 Some Financial Instruments may not become immediately liquid due to various reasons such as reduced demand and the Company may not be in a position to sell them or easily obtain information on the value of such Financial Instruments or the extent of any related or inherent risk concerning such Financial Instruments.
  - 5.7 The Client unreservedly acknowledges and accepts that, regardless of any information, which may be offered by the Company, the value of any investment in Financial Instruments may increase or decrease and there is a substantial risk that the investment may become of no value. In the case of Financial Instruments which are contracts for differences or other contractually based derivatives the entire amount of margin deposit may be lost.
  - 5.8 The Company has not solicited, or in any other way recommended his/her participation in trading with the Company pursuant to any particular trading system, and that the Client has made inquiries and conducted research sufficient to make an informed investment decision.
  - 5.9 Client unreservedly acknowledges and accepts that he runs a great risk of incurring losses as a result of purchasing and/or selling any Financial Instrument and the Client accepts and declares that he is willing to undertake this risk.
  - 5.10 The Client acknowledges and accepts that the Company does not provide any investment advice. The Company is not acting as an advisor to, or serving as a fiduciary of, the Client, and the Company specifically disclaims any such duties.
  - 5.11 The Client confirms that the funds deposited to the account held with the Company are derived from legitimate sources. The Client further acknowledges and confirms that he/she has the financial resources and relevant knowledge to make an informed decision regarding





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the funding and trading of the account, and that the Client is trading on his/her own behalf and on his/her own accord.

- 5.12 The Company's services include products that are traded on margin and carry a risk of losing all client's initial deposit. Before deciding on trading on margin products a Client should consider his/her investment objectives, risk tolerance and his/her level of experience on these products. Margin products may not be suitable for everyone and Client should ensure that he/she understands the risks involved. The Client should be aware of all the risks associated in regard to products that are traded on margin and seek independent financial advice, if necessary.

### **6. Electronic Systems and Trading**

- 6.1 The Company shall provide the Client with Access Codes for entering into Transactions or dealings with or through the Company. Such Access Codes can be used to access the Electronic Systems. Any such dealings shall be carried out on the basis set out in this paragraph and on the basis of any additional agreement which the Company may enter into with the Client to regulate such activity.
- 6.2 The Client acknowledges and accepts that the Company has the right to restrict any access to its Electronic Systems where it deems appropriate, for the smooth operation of its Electronic Systems as well as to protect other client's interest and its own. The Client will only be entitled to access the Electronic Systems and enter into dealings for its own use on a non-exclusive, non-transferable basis.
- 6.3 All rights and interests and all intellectual property rights (including, without limitation, all trademarks and trade names in or relating to the Company) are owned by the Company or the Company's suppliers or licensors and will always remain the Company's property or that of the Company's suppliers or licensors. The Client will have no right or interest in those intellectual property rights other than the right to access the Electronic Systems. The Client shall not copy, license, sell, transfer, make available the Electronic Systems or information on the Electronic Systems to any other person. The Client shall not remove or alter any copyright notice, or other proprietary or restrictive notice contained in the Electronic Systems.
- 6.4 The Client shall take all necessary precautions to ensure the confidentiality of all information, including, but not limited to, the Access Codes to the Electronic Systems,



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Transaction activities, account balances, as well as all other information and all orders. The Client shall be solely responsible for all orders and the accuracy of all information sent via the internet using its Access Codes. The Client acknowledges that the Company bears no responsibility in the case that the Access Codes are used in an unauthorized manner. The Client undertakes to notify the Company immediately if it comes to his attention that the Client's Electronic System Access Codes are being used unauthorized.

- 6.5 To the extent permitted by Applicable law, the Company shall not be liable for:
- (a) any loss, expense, cost or liability (including consequential loss) suffered or incurred by the Client as a result of instructions being given, or any other communication being made via the internet or other electronic media; the Client shall be solely responsible for all orders, and for the accuracy of all information, sent via such electronic media; and
  - (b) any loss or damage that may be caused to any equipment or software due to any viruses, defects or malfunctions in connection with the access to, or use of, the Electronic Systems.
- 6.6 If the Client should uses a third party software application to provide trading signals or advice or other trading assistance (an "Expert Advisor") or uses MetaTrader Hosting, a hosting environment allowing for real-time access to the Client's account, the Company and its third party suppliers or licensors make no warranties or representations of any kind, whether expressed or implied for the service it is providing. The Company and its third party suppliers or licensors also disclaim any warranty of merchantability or fitness for any particular purpose and will not be responsible for any damages that may be suffered by the Client, including loss of funds, data, non-deliveries or service interruptions by any cause or errors or omissions by the Client. The Client's use of any information obtained by way of an Expert Advisor used in conjunction with MetaTrader Hosting or otherwise is at the Client's own risk, and the Company and its third party suppliers specifically disclaim any responsibility for the accuracy or quality of information obtained through its services. Connection speed represents the speed of an end-to-end connection. The Company and its third party suppliers or licensors do not represent or guarantee the speed or availability of end-to-end connections. The Company and its third party suppliers or licensors shall not be subject to any damages or liability for any errors, omissions or delays therein including unavailability. The licensed products and all components thereof are provided on an "as is" basis and are separate and distinct from the services provided under this Agreement. Where the Company believes that a Client is using additional functionalities /plug-ins



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where it affects the reliability and/or smooth and/or orderly operation of the Electronic Systems, the Company has the right to suspend or terminate the Client's Account.

- 6.7 The Company makes every effort to deliver high quality products. However, we do not guarantee that our products are free from defects. Our software is provided "as is" and the Client uses the web platform at his own risk. The Company makes no warranties as to performance, fitness for a particular purpose, or any other warranties whether expressed or implied. No oral or written communication from or information provided by the Company shall create a warranty. Under no circumstances shall the Company be liable for direct, indirect, special, incidental, or consequential damages resulting from the use, misuse, or inability to use this software, even if the Company has been advised of the possibility of such damages.

### **7. Client Instructions and Orders**

- 7.1 The Client understands and acknowledges that the Company will enter into transactions with the client as principal (counterparty) not as an agent and where the client holds an STP-ECN account the Company will nonetheless act on behalf of the Client in the capacity of agent for all STP-ECN Client Account Transactions. The Company will be the contractual counterparty to the Client.
- 7.2 The Client can open and close a position via the Electronic Systems and can add or modify orders by placing "buy limit", "buy stop", "sell limit", "sell stop", "stop loss" and/or "take profit" orders on any Financial Instrument.
- 7.3 The Client has the right to use a Power of Attorney to authorise a third person (representative) to act on behalf of the Client in all business relationships with the Company as defined in this Agreement. The Power of Attorney should be provided to the Company accompanied by all identification documents of the representative. If there is no expiry date, the Power of Attorney will be considered valid until the written termination by the Client.
- 7.4 The Client further ratifies and accepts full responsibility and liability for all instructions given to the Company by the representative (and for all Transactions that may be entered into as a result) and will indemnify (fully compensate or reimburse) the Company and keep the Company indemnified against any loss, damage or expense incurred as a result of acting on such instructions. This indemnity shall be effective irrespective of the circumstances



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giving rise to such loss, damage or expense, and irrespective of any knowledge, acts or omissions of the Company in relation to any other Account held by any other person or body with the Company.

- 7.5 The Company reserves the right at its own discretion, without the Client's consent, due to risk management policies to transfer the Client's execution to STP/ECN execution when the Client's trading strategy, exposes the Company to greater risk than the Company can tolerate.
- 7.6 The Client acknowledges that the Company may reject orders and/or instructions by the Client when they are not clear when the Client seeks to open a position, close a position or modify or withdraw an order.
- 7.7 If any Financial Instrument Reference Asset which is a security becomes subject to possible adjustments as a result of any of the events set out in paragraph 7.8 (referred to as "Corporate Event"), the Company will determine the appropriate adjustment, if any, to be made to the opening/closing price, size, value and/or quantity of the corresponding transaction (and also the level or size of the corresponding orders). This action is made in order to (i) account for the diluting or concentrating effect necessary to preserve the economic equivalent of the rights and obligations of the parties under that transaction immediately prior to that Corporate Event, and/or (ii) replicate the effect of the Corporate Event upon someone with an interest in the relevant underlying Reference Asset security, to be effective from the date determined by the Company.
- 7.8 The events to which paragraph 7.7 refers to are any of the following, by the declaration of the issuer of a security:
- (a) a subdivision, consolidation or reclassification of shares, a share buy-back or cancellation, or a free distribution of bonus shares to existing shareholders, capitalization or share split or reverse share split or similar event;
  - (b) a distribution to existing holders of the shares or additional shares, other share capital or securities, granting the right to payment of dividends and/or proceeds from the liquidation of the issuer equally proportionate to such payments to holders of the underlying shares, securities, or warrants granting the right to receive or purchase shares for less than the current market price per share;
  - (c) any other event regarding shares analogous to any of the above events or otherwise having a diluting or concentrating effect on the market value of shares;



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- (d) any event analogous to any of the above events or otherwise having a diluting or concentrating effect on the market value of any security not based on shares;
  - (e) any event that is caused by a merger offer made regarding the Company of the underlying asset;
  - (f) earnings announcements.
- 7.9 If any Financial Instrument Reference Asset which is a security becomes subject to a specific risk resulting in a predicted fall in value, the Company reserves the right to restrict short selling or even withdraw the specific Financial Instrument from the Trading Platform.
- 7.10 Determination of any adjustment or amendment to the opening/closing price, size, value and/or quantity of the Transaction (and/or the level or size of any order) shall be at the Company's sole discretion and shall be conclusive and binding upon the Client. The Company shall inform the Client of any adjustment or amendment via its internal mail or email as soon as is reasonably practicable.
- 7.11 In the case where the Client has any open positions on the ex-dividend day for any of the Financial Instrument Reference Assets, the Company has the right to close such positions at the last price of the previous trading day and open the equivalent volume of the underlying Financial Instrument at the first available price on the ex-dividend day. In this case, the Company will inform the Client via its internal mail or email of the said adjustment and no Client consent will be required. In the case where the Company's Risk Management deems the Client is deliberately attempting to take advantage of the fact that shares in a particular Spot Index going ex-dividend, the Company reserves the right to apply a dividend adjustment. In the case of short positions, the dividend adjustment will be debited from the clients' account where dividend adjustment = Index Dividend declared x position size in Lots.
- 7.12 The Client acknowledges that orders shall be executed at the bid and ask prices that are offered by the Company. Due to the high volatility of the market as well as the internet connectivity between the Client terminal and the Company's server, the prices requested by the Client and the current market price may change in the period between the Client placing his order with the Company the time the order is executed. The Client acknowledges that in the case of any communication or technical failure which results in the quotation of off-market prices on the quotes feed (i.e. prices to freeze/stop updating or price spikes), the Company reserves the right not to execute an order or, in cases in which



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the order was executed, to change the opening and/or closing price of a particular order or to cancel the said executed order.

- 7.13 Considering the levels of volatility affecting both price and volume, the Company is constantly seeking to provide client orders with the best execution reasonably possible under the prevailing market conditions. Client's orders (Buy/Sell, Buy Limit, Buy Stop, Sell Limit, Sell Stop, Stop Loss and/or Take Profit) are executed at the requested/declared price. However, during periods of volatile market conditions, during news announcements, on opening gaps (trading session starts), or on possible gaps where the underlying instrument has been suspended or restricted on a particular market, Buy/Sell Stop and Stop Loss orders may not be filled at requested/declared price but instead at the next best available price. In such case, Take Profit orders below/above Buy Stop/Sell Stop orders or Stop Loss orders above/below Buy Stop/Sell Stop orders during activation will be removed. The same execution policy applies when a trading strategy is deemed as abusive, because it is aiming towards potential riskless profit or another strategy deemed by the Company to be abusive. Accordingly, placing a Stop Loss order will not necessarily limit the Client's losses at the intended amount.
- 7.14 The Company shall not be liable for any delays, inaccuracies or other errors in the transmission of any order, instruction or information from the Client to the Company due to any cause beyond the reasonable control of the Company. Delays can be caused by various reasons depending on the current market conditions (e.g. high market volatility) as well as a slow/weak internet connection (e.g. between the Client's terminal and the Company's server).
- 7.15 "Manifest Error" means a manifest or obvious misquote by the Company or any market, liquidity provider or official price source on which the Company has relied in connection with any Transaction, having regard to the current market conditions at the time an order is placed as the Company may reasonably determine. When determining whether a situation amounts to a Manifest Error, the Company may take into account any information in its possession, including information concerning all relevant market conditions and any error in, or lack of clarity of, any information source or announcement. the Company will, when making a determination as to whether a situation amounts to a Manifest Error, act fairly towards the Client but the fact that the Client may have entered into, or refrained from entering into, a corresponding financial commitment, contract or Transaction in reliance on an order placed with the Company (or that the Client has suffered or may suffer



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- any loss) will not be taken into account by the Company in determining whether there has been a Manifest Error.
- 7.16 In respect of any Manifest Error, the Company may (but will not be obliged to):
- (a) amend the details of each affected Transaction to reflect what the Company may reasonably determine to be the correct or fair terms of such Transaction absent such Manifest Error; or
  - (b) declare any or all affected Transactions void, in which case all such Transactions will be deemed not to have been entered into.
- 7.17 The Company will not be liable to the Client for any loss (including any loss of profits, income or opportunity) the Client or any other person may suffer or incur as a result of or in connection with any Manifest Error (including any Manifest Error by the Company) or the Company decision to maintain, amend or declare void any affected Transaction, except to the extent that such Manifest Error resulted from the Company own willful default or fraud, as determined by a competent court in a final, non-appealable judgment.
- 7.18 Considering the volume of the Client's order and the current market conditions, the Company shall have the right to execute part of an order only.
- 7.19 The Company has the right at its discretion to increase or decrease Spreads of Financial Instruments depending on the current market conditions and the size of the Client's order.
- 7.20 The Swap rate is mainly dependent on the level of interest rates as well as the Company fee for having an open position overnight. The Company has the discretion to change the level of the Swap rate on each Financial Instrument at any given time and the Client acknowledges that he will be informed by the Main Website. The Client further acknowledges that he is responsible for reviewing the contracts specifications located on the Main Website for being updated on the level of Swap rate prior to placing any order with the Company.
- 7.21 The Company reserves the right, at its discretion, to increase the Swap rate for any Client beyond the levels displayed on the Website, in the instance where the Client holds a position for a period of 10 calendar days or more.





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- 7.22 The Company reserves the right in its discretion to disable and/or enable trading without a Swap rate charge (“swap free trading”) for Client’s trading account at any given time. Without prejudice to the generality of the foregoing the imposition of a Swap rate charge can occur if the Client abuses the Company trading conditions/systems or where the Client’s trading strategy imposes a threat to the Trading Platform or where the Company deems necessary in order to protect the smooth operation of its Trading Platform.
- 7.23 Internet, connectivity delays, and price feed errors sometimes create a situation where there is price latency on the Electronic Systems such that there is a disparity between the Company quoted prices and current market prices for short periods. Client expressly acknowledges and agrees that it shall not execute Transactions with the Company that rely on price latency arbitrage opportunities either by using additional functionalities/plugin-ins (i.e. Expert Adviser, etc.) or by any other means. If the Client acts in contravention of this clause the Company reserves the right to (i) make corrections or adjustments to the relevant Transaction execution prices to reflect what would have occurred had there been no price latency arbitrage; and/or (ii) cancel all the relevant Transactions; and/or (iii) terminate without notice the Client’s Account with the Company; and/or (iv) charge an administration fee equal to 10% of the deposited funds, with the maximum charge set at \$200 or deposit currency equivalent.
- 7.24 The Company reserves the right to disable and/or enable swap free trading for Client’s trading account and/or reverse any cumulative profits derived from the said trading at any given time. This can occur at times where there is suspicion of swap abuse aiming at generating riskless profit where the Client abuses the Company trading conditions/systems or where the Client’s trading strategy imposes a threat to the Company trading facility or where the Company deems necessary in order to protect the smooth operation of its trading facility. The Client further acknowledges that swap free applies for 10 calendar days only. Therefore, swap free accounts holding a position open for more than 10 calendar days, will be credited or debited swap accordingly. Note that a storage amount may apply instead for swap free account equivalent to the swap rates. In such case, the storage amount will be credited/debited in the form of deposit/withdrawal from the account equity.

## **8. Expiry Transactions**

- 8.1 For certain Financial Instrument Transactions an expiry date may apply (an “Expiry Transaction”). The details of these dates are available in the Contracts Specification on the Main Website. The Client acknowledges and agrees that the Company will have the right





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to close any Transaction in its sole and absolute discretion without notice if the Reference Asset is a derivative Financial Instrument which may settle on expiry by a delivery other than in cash, a reasonable period prior to the expiry date as determined in the sole and absolute discretion of the Company. The Company will not be subject to any obligation to roll over a position in such a derivative Financial Instrument.

- 8.2 The price of an Expiry Transaction will be (a) the last traded price at or prior to the close or the applicable official closing quotation or value in the relevant Reference Asset as reported by the relevant exchange or market, errors and omissions excluded; plus or, as the case may be, minus (b) any Spread that the Company applies when such an Expiry Transaction is closed. Details of the Spread that the Company applies when a particular Expiry Transaction is closed are available on request.

### **9. Margin Leverage Levels**

- 9.1 As a condition of entering into a Transaction, the Company requires the deposit of Margin to secure the Client's liability to the Company for any losses which may be incurred in respect of the Transaction. The "Leverage Level" is the ratio of Margin to the market value of the open Transaction position which it secures. By accepting this Agreement the Client has read, understood and accepted the "Leverage Levels" as these are uploaded in the Main Website. The Leverage Level of a Client's Account(s) may be changed by the Company in its absolute discretion with reference to such matters as the deposit or Margin amount held in the Client Account and the size of credit exposure held on Financial Instrument(s) held in the Client Account(s).
- 9.2 Margin requirements or Leverage Level may be set and varied without prior notice from time to time in the Company's sole and absolute discretion in order to cover any realised or unrealised losses arising from or in connection with Transactions, including subsequent variation of any Margin rates set at the time Transactions are opened. The Client can request to change his account leverage at any time by contacting the Company. The Client acknowledges that the Company has the discretion to change the Client's trading account leverage at any given time, without the Client's consent, either on a permanent basis or for a limited period of time. Such an event will be disclosed to the Client by the Company via its internal mail or by email. On every Friday and between the hours of 21:00 till 24:00 and occasionally before the release of major economic news, the Company maintains a maximum leverage of 1:100 on FX and 4 times the standard Margin requirement on



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remaining instruments other than FX for any new positions opened during the said specified period.

- 9.3 The Client is obliged to maintain in his Account, at all times, sufficient funds to meet all Margin requirements. In addition, the Company will be entitled to treat any assets deposited with it by the Client from time to time (other than assets deposited for safe custody only) as collateral against the Client's Margin requirements. Only funds received net of any bank charges, which relate to the transfer, will be credited as paid.
- 9.4 For STP/ECN accounts, in the event there is insufficient Margin in the Client's Account or in the event that the deposited Margin is not sufficient to meet the required Margin rates as determined by the Company, the Company may immediately close or terminate the Client's Transaction and Account without notice. Without prejudice to the generality of the foregoing, the Company shall have the right, but shall not be obliged, to start closing Client's positions starting from the most unprofitable, when the Margin is less than 100% of the Margin or Leverage Level requirement. In the case where the Margin is equal to or less than 40% of the Margin or Leverage Level requirement, then Client's positions shall be automatically closed, starting from the most unprofitable, at the then market price.
- 9.5 For any account other than an STP/ECN account for which there is insufficient Margin in the Client's Account, or in the event that the deposited Margin is not sufficient to meet the required Margin rates as determined by the Company, the Company may immediately close or terminate the Client's Transaction and Account without notice. Without prejudice to the generality of the foregoing, the Company shall have the right, but shall not be obliged, to start closing Client's positions starting from the most unprofitable, when the Margin is less than 100% of the Margin or Leverage Level requirement. In the case where the Margin is equal to or less than 40% of the Margin or Leverage Level requirement, then Client's positions shall be automatically closed, starting from the most unprofitable, at the then market price.
- 9.6 The Client acknowledges that he is responsible for monitoring the Margin on his Account and for reviewing the difference between the standard and premium accounts located on the Main Website prior to opening an account and/or placing any order with the Company.
- 9.7 The Company reserves the right to change the Client Account type from premium to standard and vice versa based on the total Margin deposits made on the Client's account as well as based on the Client's trading account current balance.



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### 10. Market Abuse etc.

The Client shall not use the Electronic Systems for orders or Transactions for or in connection with any activity which may constitute a fraudulent or illegal purpose or Market Abuse or otherwise use of the Electronic Systems in contravention of any Applicable Regulations. For the purposes of this Agreement "Market Abuse" means behaviour in relation to investments which involves insider dealing, market manipulation or market distortion in breach of Applicable Regulations. The Client undertakes to familiarise himself and comply with any Applicable Regulations concerning the short sale of securities if the Client seeks to execute a short sale contract for difference Transaction with a security as a Reference Asset and the Client will ensure that his use of the Electronic Systems will not result in a breach by the Company of any Applicable Regulations concerning the short sale of securities or any terms of this Agreement concerning short sale orders or transactions.

### 11. Refusal to execute orders

11.1 The Company has the right to refuse to transmit and/or execute an order without any given notice and/or explanation to the Client. Among the cases that the Company is entitled to do so are the following (this list is non-exhaustive):

- (a) If the Client does not have the required Margin in the Client Account;
- (b) If the execution of the order would have an adverse effect upon the smooth operation or the reliability of the Trading Platform;
- (c) If the order or its execution may have the object or effect of Market Abuse;
- (d) If the order may have the object or effect of money laundering in contravention with applicable regulations

11.2 It is understood that any refusal by the Company to transmit and/or execute an order shall not affect any obligation, which the Client may have towards the Company, or any right, which the Company may have against the Client or his assets.

### 12. Settlement of Transactions

12.1 The Company shall proceed to a settlement of all Transactions upon execution of such Transactions. Unless otherwise agreed, the settlement of Transactions shall be in accordance with the normal practice for the Financial Instrument or market concerned.



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12.2 The Company provides the Client with online access to confirmations and account statements.

### **13. Order Execution Policy**

13.1 The Company takes all reasonable steps to obtain the best possible results for its Clients, either when executing client orders or receiving and transmitting orders for execution in relation to Financial Instruments.

13.2 When executing an order the Company takes a number of different factors into consideration such as the price, costs, speed, nature of the order size of the order and the likelihood of execution.

13.3 The Company reserves the right to modify the spread and the client may experience widened spreads and execution at the best available price under certain market conditions (for example, fundamental announcements, where there is a fast moving market or low liquidity).

13.4 The client who opens an STP-ECN account acknowledges that in case the Company transmits the client's order to the Liquidity Provider(s) for execution, the order may be executed against the Liquidity Provider(s) or executed within the ECN of the Liquidity Provider(s).

### **14. Joint Accounts**

14.1 If more than one natural person executes this Agreement ("Joint Account"), all such natural persons agree to be jointly and severally liable for the obligations assumed in this Agreement (which means, for example, that any one person can withdraw the entire balance of the Account, and in the case of a debit balance or debt owed on the Account to the Company, each Account holder is responsible for the repayment of the entire balance and not just a share of it).

14.2 The Company shall be entitled to treat each Account holder of a Joint Account as having full authority (as if they were the only person entering into the Agreement) on behalf of the others to give or receive any instruction, notice, request or acknowledgement without notice to the others, including an instruction to liquidate and/or withdraw investments from



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the Account and/or close any Account) however the Company may in its sole and absolute discretion, require an instruction request or demand to be given by all Joint Account holders before it takes any action.

- 14.3 One account holder may request the Company to convert the Account into a sole Account. The Company may (but shall not be obliged) require authority from all Joint Account holders before doing so. Any person removed from the Account will continue to be liable for all obligations and liabilities under the Agreement relating to the period before they were removed from the Account.

### 15. Client Account

- 15.1 The Client must open a Client Account with the Company before any Transaction may be concluded. This Agreement shall be considered effective upon the first receipt of funds in the Client's Account, provided that the Company has sent the Client written confirmation of his acceptance.
- 15.2 The Client shall not use the Client Account for payment to third parties.
- 15.3 The Client shall not open more than one Client Profile. If the Client has opened more than one Client Profile (which is created when the Client registers their personal details, reads and accepts the Terms of Business and has had the relevant identity checks successfully completed), the Company reserves the right to disable the Client Profile(s) in accordance with Paragraph 26 below.
- 15.4 If the Client has opened more than one Client Account, the Company shall have the right to treat these Client Accounts as a single Client Account. the Company shall accordingly be entitled in its discretion (but shall not be obliged) to transfer and use available Margin or other funds from one Client Account for the purposes of discharging Margin requirements or liabilities in one or more of the Client's other Client Accounts even if such transfer may result in the closure of open positions in any Client Account from which Margin or other funds are transferred.
- 15.5 Any funds received in a currency for which the Client does not hold a Client Account shall be converted by the Company into the Client's Base currency. The conversion shall be made at the exchange rate applied on the day and at the time when the relevant funds are at the disposal of the Company.



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### 16. Safeguarding of Client's Funds

- 16.1 Any money received by the Company in respect of a Client's Account with the Company shall be treated as Client Money and placed into one or more accounts, denoted as 'clients' accounts which are segregated from the Company's own accounts.
- 16.2 By entering into this Agreement the Client agrees that the Company will not pay the Client interest on Client Money or any other unencumbered funds.
- 16.3 Card processing may be provided by Notesco UK Limited, registered in the UK, under the number 8111366 and having its registered office at 20 Primrose Street, London, EC2A 2EW.
- 16.4 The Company may pass on Client Money or allow another person, such as an exchange, a clearing house or an intermediate broker, to hold or control Client Money where the Company transfers the Client Money (a) for the purposes of a Transaction for the Client through or with that person; or (b) to meet the Client's obligations to provide collateral for a Transaction (e.g. a margin requirement for a derivative transaction). By accepting this Agreement, the Client gives his consent and authorizes the Company, where applicable, to transfer/hold his funds within or outside the country of domicile of the Company, in one or more segregated client's account. ***The Company shall not be liable for the solvency, acts or omissions of any institution with which Client Money are held.***
- 16.5 The third party to whom the Company will pass money may hold it in an omnibus account and it may not be possible to separate it from the Client's money, or the third party's money in which case the Client will not have any claim against a specific sum in a specific account in the event of insolvency. The Company does not accept any liability or responsibility for any resulting losses. In general, accounts held with institutions, including omnibus accounts face various risks including the potential risk of being treated as one (1) account in case the institution defaults. Another risk might be that the funds in the Omnibus Account may be exposed to obligations of the Company connected with the positions of other clients in case the Company is unable to meet its obligations towards them.
- 16.6 The Client hereby agrees that, in the event that there has been no movement on the Client's Account balance for a period of at least three years (notwithstanding any payments or receipts of charges, interest or similar items) and the Company is unable to trace the Client



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despite having taken reasonable steps to do so, the Company may release any Client Money balances held for or on the Client's behalf, from the Client accounts.

- 16.7 Any Client Account that has been inactive for 90 (ninety) days, including funding or trading, and has an account balance of up to 1 cent (any currency) will be archived and the Company shall have the right to deduct this remaining Client Money balance.

### **17. Transfer of Funds**

- 17.1 The Client shall clearly specify his name and all required information, in accordance with international regulations related to the fight against money laundering and terrorism financing, on the payment document.

- 17.2 Any amounts transferred by the Client to the Client's Bank Account will be deposited in the Client's Account net of any deduction/charges by the Client's Bank Account providers.

- 17.3 The Company has the right to refuse a Client's transferred funds in any of the following cases (this list is not exhaustive):

- (a) If the funds are transferred by a third party;
- (b) If the Company has reasonable grounds for suspecting that the person who transferred the funds was not a duly authorized person;
- (c) If the transfer violates Applicable Regulations and legislation.

- 17.4 In any of the above cases, subject to applicable regulations, the Company will send back the received funds to the remitter by the same method as they were received and the Client will suffer the relevant Client's Bank Account provider's charges.

- 17.5 By signing this Agreement the Client gives his consent and authorizes the Company to make deposits and withdrawals from the Client's Bank Account on the Client's behalf, including but not limited to, the settlement of Transactions performed by or on behalf of the Client, for payment of all amounts due by or on behalf of the Client to the Company or any other person.

- 17.6 The Client has the right to withdraw the funds which are not required for Margin free from any obligations (i.e. Free Margin) from the Client's Account without closing the said account.





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- 17.7 Unless the Parties otherwise agree, in writing, any amount payable by the Company to the Client, shall be transferred directly to the Client's personal account.
- 17.8 Client's withdrawals should be made using the same method used by the Client to fund his Client Account and to the same remitter. The Company reserves the right to decline a withdrawal with a specific payment method and will suggest another payment method where the Client needs to proceed with a new withdrawal request, or request further documentation while processing the withdrawal request. Where applicable, the Company reserves the right to send Client's funds only in the currency as these funds were deposited. Where applicable, if the Company is not satisfied with any documentation provided by the Client, then the Company will reverse the withdrawal transaction and deposit the amount back to the Client's Account net of any charges / fees charged by the Client's Bank Account providers.
- 17.9 Client fund transfer requests will be performed from the Client Portal.
- 17.10 The Client acknowledges that in case where a Client's Bank Account is frozen for any given period and for any given reason the Company assumes no responsibility and Client's funds will also be frozen. Furthermore, the Client acknowledges that he has read and understood the additional information provided on each payment method available on the Client Portal.

### **18. The Company Fees**

- 18.1 For any Services provided to the Client, the Company is entitled to receive fees from the Client as well as compensation for the expenses it will incur for the obligations it will undertake during the execution of the said services. From time to time, the Company reserves the right to modify the size, the amounts and the percentage rates of its charges and the Client will be informed accordingly. The Client agrees that the Company is entitled to change fees unilaterally without any consultation or prior consent from the Client.
- 18.2 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. Where the Client's Account was introduced by an Introducing Broker a portion of charges paid by the Client may be given to the





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Introducing Broker. The Company may also charge for incidental banking-related fees such as wire charges for deposits/withdrawals and returned cheque fees. The Client may incur additional fees for the purchase of optional, value added services offered by the Company.

- 18.3 The Client will pay the Company any amount, which he owes, when due, in freely transferable, cleared and available same day funds, in the currency and to the accounts, which will be specified, and without making any off-set, counterclaim, deduction or withholding, unless the Client is required to do so by law.
- 18.4 The Company may deduct its charges from any funds which it holds on the Client's behalf. For this purpose, the Company will be entitled to combine or make transfers between any of the Client's Accounts. The Company has the right to close any open positions of the Client in order to settle any obligations owned by the Client to the Company.
- 18.5 The Company will charge the Client interest on any amounts due, which are not paid, at such a rate as is reasonably determined by the Company as representing the cost of funding such overdue amounts. Interest will accrue on a daily basis. Furthermore, in the case that the Client fails to make the required deposit within the given deadline, The Company may also proceed with the sale of Financial Instruments from his Client Account(s) without further notice unless otherwise agreed upon by the Company and the Client. The Company will then notify the Client of the effected sale orally, via email or by sending a relevant notification via our Trading Platform.
- 18.6 The Company may deduct or withhold all forms of tax from any payment if obliged to do so under applicable regulations. If the Client is required by law to make any deduction or withholding in respect of any payment, the Client agrees to pay such amount to the Company and this will result in the Company receiving an amount equal to the full amount which would have been received had no deduction or withholding been required. The Company may debit amounts due from any of Client's Accounts.
- 18.7 The Company is not responsible for paying Client's tax obligations in relation to possible income tax or similar taxes imposed on him by his jurisdiction on profits and/or for trading in Financial Instruments.
- 18.8 The Client acknowledges and accepts that in the case of no activity, including funding or trading, within one year, the Company reserves the right to charge an annual fixed administrative fee of 50 USD (or currency equivalent). In case the account balance is



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below USD 50 (or currency equivalent), the Company will charge any remaining balance and archive the Client's Account.

- 18.9 The Client further acknowledges and agrees that in cases where deposits and withdrawals are conducted on the Client account without any trading activity, the Company reserves the right to charge an administration fee of 3% of the deposited funds to cover any fees/transaction costs incurred by the Company.
- 18.10 By accepting this Agreement the Client has read, understood and accepted the "Contract Specifications" as these are uploaded on the Main Website, in which all related commission, costs and financing fees are explained. The Company reserves the right to amend at its discretion all such commission, costs and financing fees and the new information will be available on the Main Website. It is the Client's responsibility to visit the Main Website and review the Contracts Specification during the time he is dealing with the Company as well as prior of placing any orders with the Company.

### **19. Introduction of Clients from an Introducing Broker**

- 19.1 The Client may have been recommended by an Introducing Broker. Based on a written agreement with the Company, the Company will pay a fee or commission to the Introducing Broker. This fee/commission is related to the frequency/volume of transactions performed by and the number of referred Client to the Company. The Company will disclose to the Client, upon his request, further details regarding the amount of fees/commission or any other remuneration paid by the Company to Introducing Brokers, or other third parties.
- 19.2 The Client acknowledges and agrees that the Company shall not be responsible or liable for any agreement or arrangement that may exist between the Client and the Introducing Broker or for any additional costs in relation thereto that may arise as a result of this Agreement.
- 19.3 The Client acknowledges and agrees that the Introducing Broker acts independently and is not a representative or agent of the Company and does not otherwise act on behalf of the Company. The Introducing Broker is not authorised to provide any guarantees or any promises with respect to the Company or its Services and any advice or personal recommendations given by an Introducing Broker to the Client regarding his Client



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Account or Transactions is not given on behalf of the Company and nor does the Company accept or assume any responsibility whatsoever for any such advice or recommendations.

- 19.4 In its written agreement with Introducing Brokers, the Company prohibits Introducing Brokers from providing investment advice to Clients.

### **20. Interest**

20.1 The Company has no liability in regards to the payment of any interest earned on Client's deposited funds with the Company and/or on available credit balance on Client's account(s).

20.2 By accepting this Agreement the Client consents and waives any of his rights to receive the interest earned on the deposited funds held by the Company on behalf of the Client and further acknowledges that the Company will be entitled to act as the beneficiary of such interest.

### **21. Force Majeure**

21.1 The Company shall not be liable to the Client for a failure to perform any obligation or discharge any duty owed under this Agreement if the failure results from any cause beyond its control, including, without limitation:

- a) acts of God, war, fire, flood, earthquake or other natural disaster;
- b) terrorist attack, civil war, threat of or preparation for war, imposition of sanctions, explosions;
- c) Postal or other strikes or similar industrial actions or disputes;
- d) any law or any action taken by a government or public authority;
- e) any breakdown, or interruption of power supply or failure of utility service or of transmission or communication or computer facilities;
- f) hacker attacks or other illegal actions against the Company's electronic Trading Platform or of the equipment of the Company;
- g) the suspension, liquidation or closure of any market or the abandonment or failure of any event to which the Company relates its Quotes, or the imposition of limits or special or unusual terms on trading in any such market or on any such event
- h) the failure of any relevant exchange, clearing house and/or broker for any reason to perform its obligations;



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- 21.2 In case such an event occurs and the Company reasonably believes that Force Majeure exists, the Company may, without any prior notice to the Client, at any time and without limitations, take any of the following actions:
- a) increase margin requirements;
  - b) determine at its discretion the quotes and spreads that are executable through the Trading Platform;
  - c) decrease leverage;
  - d) close out any or all Client's Open Positions at such prices as the Company considers in good faith to be appropriate;
  - e) suspend or freeze or modify any or all terms of this Agreement to the extent that the Force Majeure makes it impossible or impracticable for the Company to comply with them;
  - f) suspend the provision of any or all services of this Agreement;
  - g) take or omit to take any other actions as the Company deems reasonable with regards to the position of the Company, the Client and all the other Clients of the Company;

## 22. Conflicts of Interest

The Company may be required to have arrangements in place to manage conflicts of interest between the Company and its clients and between clients themselves. The Company will take all reasonable steps to avoid conflicts of interest. When conflicts of interest cannot be avoided the Company shall disclose to the Client the nature and source of the conflict. The Company shall at all times ensure that clients are treated fairly and with the highest level of integrity and that their interests are protected.

## 23. Anti-Money Laundering Provisions

- 23.1 The Company is obliged to follow certain requirements as set out by international standards as well as local authorities for preventing and suppressing money laundering activities, which requires investment firms to obtain certain verification documents from Clients.
- 23.2 The Company may request the Client to inform the Company how the invested funds were obtained/accumulated and obtain verification documents from Clients.
- 23.3 The Company has the right not to carry out orders or instructions received from the Client, as long as the Client has not supplied information requested by the Company. The



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Company takes no responsibility for any possible delays where the Client's verification documents are outstanding.

### **24. Communication between the Client and the Company**

- 24.1 Unless otherwise specified, the Client has to send any notice, instruction, request or other communication via e-mail at: [support@Fxcess.com](mailto:support@Fxcess.com).
- 24.2 All notices/information provided by the Company or received from the Clients should be in the English language.

### **25. Complaint Handling Procedures**

- 25.1 The Company has introduced an internal dispute resolution system to resolve any complaints or concerns Clients may have. Clients who are not satisfied with any aspects of our service should contact the Company's Customer Support Department by emailing: [support@FXcess.com](mailto:support@FXcess.com).
- 25.2 If after receiving a response from Customer Support the issue is not resolved to the Client's satisfaction, Clients may refer the matter to the Compliance Department by emailing: [bmcompliance@notesco.com](mailto:bmcompliance@notesco.com). Clients should include a detailed description of any complaint as well as attach any supporting documentation.
- 25.3 Upon receipt by the Compliance Department of a formal complaint, a written acknowledgment will be sent to the Client within five (5) Business Days.
- 25.4 The Compliance Department shall investigate and provide its final decision to the Client within eight (8) weeks of receiving the complaint.
- 25.5 If the Compliance Department requires more time for investigating the complaint the Client will receive a holding response justifying the reasons for the delay.

### **26. Provision of Information, Data Protection**

- 26.1 The Client shall promptly provide the Company with any information which it may request as evidence for the matters referred to in this Agreement or to comply with any applicable regulations or otherwise and shall notify the Company if there are any material changes to



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such information. By opening an Account with the Company and by placing orders and entering into transactions, the Client acknowledges that he will be providing personal information (possibly including sensitive data) and the Client consents to the processing of that information by the Company for the purposes of performing its obligations under this Agreement and administering the relationship with the Client. Such purposes include the processing of instructions and generation of confirmations, the operation of control systems; the operation of management information systems and allowing staff of any of the Company's affiliates who share responsibility for managing the Client relationship from other offices to view information about the Client.

- 26.2 The Company shall be entitled to disclose personal information without informing the Client to any regulatory or governmental authorities as may be required and/or where the Client is directly or indirectly involved in fraud.

### 27. Termination

- 27.1 The Company or the Client can terminate this Agreement by giving five (5) business days written notice to the other party. During the termination notice, the Client is obliged to close all open positions. In the case where the Client has open positions during the termination notice period, then the Company reserves the right not to accept any new Transaction orders and the Company shall have the right to close all of the Client's open positions on expiry of the notice period to the extent the Client has not already done so.
- 27.2 Upon termination of this Agreement, the Company shall be entitled, without prior notice of the Client, to cease the access of the Client to the Trading Platform.
- 27.3 The Company may close all open transaction positions and terminate this Agreement immediately without giving five (5) business days written notice in the following cases:

If at any time:

- The Client fails to comply fully and by the required time with any obligation to make any payment when due under this Agreement;
- The Company has reasonable grounds to believe that the Client is in breach of any covenant or provision set out in this Agreement;
- The Company believes that Client activity might be a violation of any applicable regulations;



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- The Client dies, becomes or is adjudged to be of unsound mind, is or becomes unable to pay his debts as they fall due, is or becomes bankrupt or insolvent within the meaning of any insolvency law or any suit, action or proceeding is commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, all or any part of the property, undertaking or assets (tangible and intangible) of the Client;
  - The Client commences a voluntary case or other procedure, or there is an involuntary case or other procedure, seeking or proposing, the appointment of an insolvency officer, the liquidation, reorganization, an arrangement or composition, a freeze or moratorium, or other similar under any insolvency law.
- 27.4 The Company may terminate this Agreement immediately without giving five (5) business days written notice, and the Company has the right to reverse and/or cancel all previous transactions on a Client's account, in the following cases:
- a) The Client involves the Company directly or indirectly in any type of fraud, in which it places the interests of the Company and/or the Company's clients at risk prior to terminating this Agreement.
  - b) The Company have grounds to believe that the Client's trading activity adversely affects in any manner the reliability and/or smooth operation and/or orderly functioning of the Trading Platform.
- 27.5 The termination of this Agreement shall not in any case affect, the rights of which have arisen, existing commitments or any contractual commitments which were intended to remain in force after the termination and in the case of termination, the Client shall pay for:
- a) Any pending fees / commissions of the Company and any other amount payable to the Company ;
  - b) Any charges and additional expenses incurred or to be incurred by the Company as a result of the termination of this Agreement;
  - c) Any damages which arose during the arrangement or settlement of pending obligations. The Company has the right to deduct such sums as are appropriate with respect to all of the above Client liabilities or contingent liabilities from the Client's Account.



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### 28. General Provisions

- 28.1 The Client shall not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer his rights or obligations under this Agreement or any interest in this Agreement, without the Company prior written consent, otherwise any purported assignment, charge or transfer in violation of this paragraph shall be void.
- 28.2 If the Client is a partnership, or otherwise comprises of more than one person, his liability under this Agreement shall be joint and several. In the event of the demise, bankruptcy, winding-up or dissolution of any one or more of such persons, then (but without prejudice to the above or the Company rights in respect of such person and his successors) the obligations and rights of all other such persons under this Agreement shall continue in full force and effect.
- 28.3 Without prejudice, and to any other rights in which the Company may be entitled, the Company may at any time and without notice to the Client set-off any amount (whether actual or contingent, present or future) at any time, owing between the Client and the Company. The Company can off-set any owned amounts using any account the Client maintains with the Company.
- 28.4 If any provision of this Agreement 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 this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be affected or impaired.
- 28.5 The Company's records, unless proven to be wrong, shall be the evidence of Client's dealings with the Company in connection to the services provided.
- 28.6 This Agreement may be amended from time to time and the Company shall notify the Client of the relevant amendment or about the updated Agreement either in writing or through the Main Website. Any changes to this Agreement shall not apply to transactions performed prior to the date on which the changes become effective unless specifically agreed otherwise. Should the Client disagree with the changes, he may terminate this Agreement in accordance with paragraph 26 hereof.
- 28.7 A person who is not a party to this Customer Agreement has no rights to enforce any terms of this Customer Agreement.





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28.8 In case the Company in good faith has reason to believe that a Client (whether individually or as part of a group) has participated in Abusive Behaviour as defined below, then the Company is entitled at its sole discretion, to: (i) cancel any profits, as well as any Introducing Broker's fees, generated from Abusive Behaviour, (ii) to offset any resulting losses against related/hedged winning accounts, (iii) to terminate that Client's access to services provided by the Company and/or terminate the contract between the Company and the Client for the provision of services, (iv) to block that Client's Account(s) (save where required otherwise by a relevant authority) and to arrange for the transfer of any unused balance (less any bonus (if applicable)) to the Client. For the avoidance of doubt, Abusive Behaviour includes the following:

- giving instructions on behalf of a Client without due or proper authority;
- repeatedly failing to respond to an email for a period of 15 days or more;
- the Client, by himself or acting with others (including an Introducing Broker), constructing a trading position or positions which have the purpose to generate profits without exposure to economic risk, including without limitation loss of the Client's capital (or the capital of others);
- the Client, by himself or acting with others, having an account or accounts where the Client hedging his positions including, without limitation, by holding open position(s) on the opposite of a trade, including, by way of illustration only, through use of a single or correlated currency, at given periods, internally (using other trading accounts held with the Company) or externally (using other trading accounts held with other brokers).

### 29. **Representations, Warranties and Covenants:**

On a continuing basis, a Client represents, warrants, covenants and undertakes to the Company, both in respect of himself and any other person for whom the Client acts as an agent, that:

- a) The Client is authorized and has the capacity to enter into this Agreement and any transactions which may arise under them;
- b) The Client is over 18 years old;
- c) The Client warrants that the information that he provides on the account opening form (registration process) as well as in any other documentation is complete, true and accurate. For any change or amendment in the above mentioned information, including change of address, the client remains responsible to notify the Company;



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- d) The Client has obtained the necessary approvals from the relevant regulatory/legal and compliance authorities to make use of the services provided pursuant to this Agreement.
- e) The Client has read and fully understood the entire contents of this Agreement with which he fully accepts and agrees;
- f) There are no restrictions, conditions or restraints by Central Banks or any governmental, regulatory or supervisory bodies, regulating Client's activities, which could prevent or otherwise inhibit the Client entering into, or performing in accordance with this Agreement and/or under any transaction which may arise under them;
- g) Client's performance under any transaction in accordance with this Agreement does not violate any agreement and/or contract with third parties;
- h) This Agreement, each transaction and the obligations created thereunder are binding on the Client and enforceable against the Client in accordance with their terms;
- i) There are no pending or, to the best of the Client's knowledge, any legal proceedings before any court, arbitration court, governmental body, agency or official or any arbitrator that purports to draw into question, or is likely to affect, the legality, validity or enforceability against him of this Agreement and any transaction which may arise under it or the Client's ability to perform his obligations under this Agreement and/or under any transaction which may arise under them in any material respect;
- j) The Client shall not enter into any transaction unless he has a full understanding of all of the terms, conditions and risks thereof, and he is capable of understanding and willing to accept (financially and otherwise) those risks;
- k) The Client shall not provide to the Company any information that is misleading and all information that the Client provides to the Company shall be true and accurate in all material respects.
- l) By entering into this Agreement, the Client acknowledges and understands that, when participating in the Company's promotions, he will be bound by the terms and conditions of such promotions applicable at the time on the country of residence of the Client;

### **30. The Company's Liability**

- 30.1 Access to the Trading Systems is provided "as is". The Company makes no warranties (express or implied), representations, or guarantees as to merchantability, fitness for any



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particular purpose or otherwise with respect to the Electronic Systems, their content, any documentation or any hardware or software provided by the Company. Technical difficulties could be encountered in connection with the Electronic Systems. These difficulties could involve, among others, failures, delays, malfunction, software erosion or hardware damage, which difficulties could be the result of hardware, software or communication link inadequacies or other causes. Such difficulties could lead to possible economic and/or data loss. In no event will the Company or its affiliates or any of their employees be liable for any possible loss (including loss of profit or revenue whether direct or indirect), cost or damage including, without limitation, consequential, unforeseeable or special damages or expense which might occur as a result of or arising out of using, accessing, installing, maintaining, modifying, deactivating or attempting to access the Electronic Systems or otherwise. The Company further reserves the right, in its reasonable discretion to unwind an executed Transaction or adjust the price of executed transactions (including Transactions that have been confirmed or settled) to a fair market price if the transaction was mispriced because of technical difficulties with the Electronic Systems.

- 30.2 The Company shall not be liable for any loss, liability or cost suffered or incurred by the Client as a result of providing the services as described in this Agreement.
- 30.3 The Company shall not be liable for any loss, liability or cost which the Client may suffer or incur as a result of the negligence, willful default or fraud of any third party (e.g. bank, electronic payment provider, etc.) which it has taken reasonable care in appointing.
- 30.4 Neither the Company nor the directors, officers, servants, agents or representatives of the Company shall be liable to the Client (except in the case of fraud) for any consequential, indirect, special, incidental, punitive or exemplary loss, liability or cost which the Client may suffer or incur arising from the act of omissions of the Company under this Agreement regardless of how such loss, liability or cost was caused and regardless of whether it was foreseeable or not. For the purposes of this paragraph, a loss, liability or cost includes any loss, liability or cost (as appropriate) arising from the Client being unable to sell Financial Instruments where the price is falling, or from not being able to purchase Financial Instruments where the price is rising, or from being unable to enter into or complete another trade which requires him to have disposed of or purchased the Financial Instruments or any other loss, liability or cost arising as a result of loss of business, profits, goodwill or data and any indirect, special, incidental, consequential, punitive or exemplary loss, liability or cost, whether arising from negligence, breach of contract or otherwise and whether foreseeable or not.



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### 31. Governing Language

This Agreement as well as any additional agreement hereto (both present and future) are made in English. 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 in English shall prevail.

### 32. Governing Law and Jurisdiction

This Agreement and all transactional relations between the Client and the Company are governed by the Laws of Bermuda, and the competent court for the settlement of any dispute which may arise between them under or in relation to this Agreement shall be the Courts of Bermuda.

*12 October 2021 – v.2021/003  
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Notesco Limited  
Web: [www.fxcess.com](http://www.fxcess.com)