



## CLIENT'S AGREEMENT (AND TERMS & CONDITIONS)

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### **A) OBJECTIVE**

NEWERA CAPITAL MARKETS LIMITED ("the Company" / "NCML") is regulated under the International Business Companies Act in the Saint Lucia, by the Financial Services Regulatory Authority, Saint Lucia.

These Terms and Conditions ("Agreement"), entered by and between the Company and You (the "Client") (hereinafter both referred to as "Parties"), contain the terms and conditions governing the contractual relationship between both Parties and govern each transaction entered into or outstanding between the Company on or after the execution of this Agreement.

The relationship between the Client and the Company shall be governed by this Terms & Conditions. As this Agreement is a distance contract, which signing the Agreement is not required and the Agreement has the same judicial power and rights as a regular signed one.

The Agreement together with other documents including Risk Disclosure, Order Execution Policy, Conflicts of Interest Policy, Privacy Policy, Anti Fraud (and Financial Crime) Policy, Anti Money Laundering, Know Your Customer & Due Diligence Policy constitute the entire Agreement between the Company and the Client and set out the basis on which the services are rendered to the Client.

### **B) DEFINITIONS AND INTERPRETATION OF TERMS**

In this Agreement the following terms shall, unless the context otherwise pledges, have the following meanings and may be used in the singular or plural as appropriate:

**Applicable Law** – the laws, orders, legally binding guidelines or directives and regulations of Saint Lucia including but not limited to International Business Companies Act, Banking Act, Anti-Terrorism Act - Cap. 3.16, Anti-Terrorism (Amendment) Act No. 28 of 2019, Anti-Terrorism (Amendment) Act No. 8 of 2023, Money Laundering (Prevention) Act Cap. 12.20, Money Laundering (Prevention) (Amendment) Act No. 20 of 2016, Money Laundering (Prevention) (Amendment) Act No. 13 of 2019, Money Laundering (Prevention) (Amendment) Act No. 16 of 2021, Money Laundering (Prevention) (Amendment) Act No. 5 of 2023, Money Laundering (Prevention) Regulations, Proceeds of Crime Act - Cap. 3.04 and any other related laws, orders, legally binding guidelines or directives and regulations.

**Applicable Regulation** – for the purposes of these Terms, applicable regulations shall include the rules of any other relevant regulatory authority or exchange and any applicable laws and regulations in force from time to time. Where these Terms conflict with Applicable Regulations, the latter shall prevail.

**Business Day** - a day (other than a Saturday, Sunday and Public Holidays applicable to Saint Lucia) on which Saint Lucia Banks are generally open for business in Saint Lucia.

**Calculation Agent** – Newera Capital Markets Limited (Company No.: 2023-00564).

**Clients' Money** – Money of any currency belonging to you that we receive or hold for you, or on your behalf in the course of providing the Services, that we treat as clients' money held in trust. In a designated bank account.

**Closing Date** – the date on which the close-out of an open Transaction is effective.

**Closing Level** – the level at which a Transaction is closed.

**Complaints Policy** - our complaints policy which is updated from time to time and can be found on our Website for the use of clients.

**Contract Specifications** – the section of our Website designated as the "Contract Specifications" as amended from time to time.

**Credit Support Provider** – with respect to the counterparty, a party providing credit support in respect of the obligations of the Counterparty.



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Daily Financing Fee – the charge which we apply daily to the Open Position. Details of the Daily Financing Fees are set out in the Contract Specifications.

Electronic Trading Services – any electronic services (together with any related software) including without limitation trading, direct market access order routing or information services that we grant you access to or make available to you either directly or through a third-party service provider, and used by you to view information and/or enter into Transactions.

Expiry Transaction – a Transaction which had a set contract period at the end of which the Expiry Transaction expires automatically.

Force Majeure Event – an event which is beyond the reasonable control of an affected party or the reasonable control of its suppliers and contractors including without limit any Market Disruption, acts or restraints of government(s) or public authorities, war, derelict weapons of war, nuclear, radioactive, biological, chemical, biochemical or electromagnetic weapons or contamination, revolution, strikes, lock-outs or other forms of industrial action, fire, flood, natural disaster, explosion, unavoidable accidents, terrorist action, failure of a utility service or transport network, the suspension or limitation of trading by any execution venue, or any breakdown, failure, defective performance or malfunction of any telecommunications, uncontrolled spread of epidemic or pandemic, settlement or other equipment or systems.

Financial Instrument – options, and contracts for difference in foreign exchange offered for trading by us or our Group Company pursuant to this agreement.

Group – in relation to Newera Capital Markets Limited (Company No.: 2023-00564), that company, any subsidiary(ies) or any holding company(ies) from time to time of Newera Capital Markets Limited (Company No.: 2023-00564), and any subsidiary(is) from time to time of a holding company of Newera Capital Markets Limited (Company No.: 2023-00564). Each company in a Group is a member of the Group.

Group Company – in relation to a company, any member or/and affiliate of its Group.

Last Dealing Time – the last day and time before which a Transaction may be dealt in, as set out in the customer account application otherwise notified to you, or otherwise the last day and (as the context requires) time on which the underlying instrument may be dealt in on the relevant Underlying Market.

Linked Transaction – two or more Transactions in respect of which we agree not to call for, or apply, the full amount of Margin as a result of the relationship between such Transactions.

Manifest Error / Manifestly Erroneous – a manifest or obvious misquote by us based on a price source on which we have relied in connection with any Transaction, having regard to the current market conditions at the time a Transactions is entered into, as determined by us.

Margin – a deposit of funds or collateral acceptable to us to secure your liability to us for any losses which may be incurred in respect of the transaction or where we determine in our sole and absolute discretion that additional security is required from you where there is adverse movement in the price of a transaction.

Market – any market subject to government or state regulation with established trading rules and trading hours including a Market.

Market Disruption – any circumstance in which we reasonably believe the relevant market or exchange relating to a Transaction, our matching contract with our counterparty or any relevant foreign exchange related product is suspended, closed, materially impaired or cannot be relied upon.

Market Rules – the rules, regulations, customs and practices from time to time including any exchange, clearing house or other organisation or market involved in the conclusion, execution or settlement of a Transaction or any matching contract we enter into with a counterparty. This includes any exercise by any such exchange, clearing house or other organisation or market of any power or authority conferred on it.



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**Market Spread** – the difference between the bid and offer prices for a Transaction of equivalent size in an instrument, or a related Instrument, in the Underlying Market.

**Money Laundering Requirements** – All applicable anti-money laundering laws and regulations to which – Newera Capital Markets Limited (Company No.: 2023-00564), the Group Companies and you are subject, including but not limited to Money Laundering (Prevention) Act Cap. 12.20, Money Laundering (Prevention) (Amendment) Act No. 20 of 2016, Money Laundering (Prevention) (Amendment) Act No. 13 of 2019, Money Laundering (Prevention) (Amendment) Act No. 16 of 2021, Money Laundering (Prevention) (Amendment) Act No. 5 of 2023, Money Laundering (Prevention) Regulations, Proceeds of Crime Act - Cap. 3.04 (and any other related laws, orders, legally binding guidelines or directives and regulations) of which shall include any such variations, supplements and/ or amendments thereto.

**Normal Market Size** – the maximum number of stocks, shares, contracts or other units that we reasonably believe the Underlying Market to be good in at the relevant time, having regard, if appropriate, to the exchange market size set by the Stock Exchange or any equivalent or analogous level set by the Underlying Market on which the relevant instrument is traded.

**Online Facility** – Our website, online trading platform and account review facility.

**Open Position** – a Transaction which has not been closed in whole or in part under this Agreement.

**Order Execution Policy** – the policy is available on the Website for clients' information.

**Payment Date** – the date on which you will settle the amount due to us under a Transaction(s) in the currency and to the account specified by us to you in advance of such payment becoming due.

**Reference Asset** – property of any description or an index or other factor designated in a Contract for Difference (“CFD”) or Margin transaction to which reference is made to fluctuations in the value or price for the purpose of determining profits or losses under the CFD or Margin transaction.

**Risk Warning** – the risk warning provided on the Website.

**Rolling Daily Transaction** – a Transaction which does not automatically expire at the end of the Business Day but are automatically ‘rolled over’ to the next Business Day.

**Spread** – the difference between the lower and higher figures of a quoted two-way price for an investment.

**Termination Payment** – an amount payable by you to us in accordance with clause 38.

**Termination Date** – the date of the termination of this Agreement between you and us.

**Transaction** – a transaction in options, futures and contracts for difference in foreign exchange, precious metals or commodities or other financial instruments and products entered into between you and us including any transaction liable to Margin, unless otherwise stated.

**Undated Transaction** – a Transaction with an indefinite contract period that is not capable of expiring automatically.

**Undated Buy Transaction** – a Transaction to buy with an indefinite contract period that is not capable of expiring automatically.

**Undated Sell Transaction** – a Transaction to sell with an indefinite contract period that is not capable of expiring automatically.

**Underlying Market** – means the exchange and/or other similar body and/or liquidity pool on which an Instrument is traded or trading in that Instrument as the context requires.

**Website** – means any of our website(s) which provides Electronic Trading Services to you and any other of our clients through such internet address(es) as may be designated by us from time to time.

### **C) COMMENCEMENT**



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This Agreement supersedes any previous agreement between the Client and the Company on the same subject matter and takes effect when the Client indicates his/her acceptance via the Main Website. This Agreement shall apply to all transactions contemplated under this Agreement.

### 1. **INTRODUCTION**

- 1.1 This Client Agreement provides for the terms and conditions ("Terms") which shall govern the services provided by "Newera Capital Markets Limited" ("**we**", "**our**" or "**us**") a duly registered trading name of Newera Capital Markets Limited / NCML to you. Newera Capital Markets Limited is a company limited by shares (bearing registration number 2023-00564), incorporated under International Business Companies Act, Cap 12.14, Section 6. Our registered address is Ground Floor, The Sotheby Building, Rodney Village, Rodney Bay, Gros-Islet, Saint Lucia.
- 1.2 We shall hereby deal with you as a principal unless and until we inform you in writing that we are dealing with you as an agent, or agent with respect to any other transaction(s) or class of transaction(s). You will hereby enter into transactions as a principal unless otherwise agreed in writing by us.
- 1.3 You hereby acknowledge and agree that, by (i) opening an Account via our Online Facility; (2) your electronic acceptance of the Terms as stated herein; and (3) your use or continued use of our services, you hereby understand, represent, acknowledge and agree to be bound by the Terms of this Agreement (of which any variation, changes, amendment, addition or novation of these Terms which shall be notified to you from time to time by reasonable manner). A current and definitive copy of this Agreement (as may be updated by us from time to time) shall be available to you on our Website (as hereinafter defined) at all times SAVE AND EXCEPT (i) during our website maintenance of which will be announced by us on the main page of our Website within reasonable time prior to the said maintenance; and/or (ii) the malfunctioning of the Website due to hacking, other security threat and/or issues caused by negligence or omission of any person.
- 1.4 You hereby agree under these Terms to notify us immediately upon any variation, change, amendment, addition or alteration to any information that you have provided to us in connection with these Terms. We shall not be in any way liable for any damages, losses, costs, or expenses whatsoever of any kind suffered or incurred by you as a result arising from your failure, negligence or omission to make such notification.
- 1.5 In this Agreement we have used defined words and terms. After a definition, an explanatory word or phrase, we have thereby included the relevant defined word or term in bold and in inverted commas between brackets. Unless otherwise specified, all other uses of the same defined word or term shall bear the same meaning. In the event any capitalized term not being defined in any part herein, those term shall denote its meaning from common trade and commercial usage of the financial services industry.

### 2. **REGISTRATION INFORMATION**

- 2.1 NCML is a registered trading name of Newera Capital Markets Limited. It was incorporated under Cap 12.14, Section 6 of International Business Companies Act, bearing registration number 2023-00564. The supervisory authority is Financial Services Regulatory Authority, Saint Lucia.

### 3. **OUR SERVICES**

- 3.1 Subject to the Terms in this Agreement and the acceptance of your application to open an account with us, we shall maintain one (1) or more account registered in your name and shall provide you with execution- only dealing services in relation to contracts in Foreign Exchange ("FX") and Contracts for Difference ("CFDs") where the underlying investments or products include foreign exchange contracts, metals, equity indices and commodities and such other dealings as we deem fit and proper. Our services shall also include the offering of any other type of financial products of which we may offer to clients through the Online Facility from time to time ("the Services").

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- 3.2 Orders for execution of a Transaction, unless otherwise agreed by us (whether in writing or oral), are to be given to us electronically through our Online Facility to buy at the quoted offer price ("Long Position") or sell at the quoted bid price ("Short Position") for the relevant Reference Asset.
- 3.3 You hereby acknowledge and agree that, unless otherwise agreed in a formal written instrument, you shall not be entitled to delivery of, or be required to deliver, any Reference Asset, and you shall not acquire any interest in any Reference Asset.
- 3.4 You hereby acknowledge and agree that we have the right to close any Transaction in our sole and absolute discretion without notice.
- 3.5 We shall not nor provide nor under any duty to provide you with advice on the merits or demerits of a particular transaction and/or any personal recommendations in relation to any transaction. This shall mean that you shall rely solely on your own assessment of any transaction that you are considering or of the composition of your account(s) and any opinion, research whereby the analysis expressed or published by us or our Group Companies as being a recommendation or advice in relation to that transaction shall only be deemed as part one of the sources of which you have referred to in relation to your research and shall not be deemed as the representation, undertaking or otherwise any guarantee whatsoever to you.
- 3.6 Any advisors in legal, accounting, tax and/or other services retained, engaged, selected or remunerated by us shall be providing the services solely to us (the "Professional Services"). You shall be responsible for obtaining the Professional Services, if required, at your own expenses and liabilities. No Professional Services retained by us and/or any Group Company shall in any circumstances be deemed to be Professional Services available to you, your Group Company or any other person in relation thereto.
- 3.7 Provision of the Services shall not, unless and until specifically agreed between us and you in writing, give rise to any fiduciary or equitable duties to you on our part or that of our Group Companies. You hereby agree that nothing contained in these Terms shall create any fiduciary, trustee, agency, joint venture or partnership relationship between us or any Group Company of ours, on the one hand, and you or any Group Company of yours on the other.

#### **4. OUR OBLIGATION TO KNOW OUR CLIENT**

- 4.1 We are required to identify the following from each of our clients: -
  - (a) the identification particulars of our client including but not limited to name, identification number or passport number (whichever applicable) and registration number in relation to a company, limited partnership, limited liability partnership, society, business and or other entities duly registered under the law of any jurisdiction;
  - (b) the nature of the client's business, source of client's funds.
  - (c) address proof, documents relating to client's business, banking information.
  - (d) other details relating to Transactions;

[Collectively referred to as the Customer Due Diligence or Know Your Customer ("CDD") or ("KYC") Enhanced Due Diligence may also be required. Client will be under obligation to provide all necessary documents as required.]

- 4.2 You hereby agree and undertake to provide us with all the information we require as part of our CDD procedures. You hereby further authorize us or any of our agent(s) to investigate your identity, credit standing and/or any current and past investment activity, and in connection with such investigations, to contact such banks, brokers and other related party as we shall deem appropriate and necessary.
- 4.3 Without prejudice to the Terms herein, you agree that we shall be held harmless against any loss arising as a result of any delay or failure to process any application or transaction if all such documentation as has been requested by us has not been provided by you.



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4.4 We hereby reserve the right to make necessary amendments, corrections and/or deletions to any details, particulars and information provided by the clients at our sole discretion on the company's trading platform PROVIDED THAT the said details, particulars and/or information contained on the application form therein are incorrect, missing and/or unnecessary after comparison is made with the clients' KYC documentations.

### 5. PROVIDING A QUOTE

5.1 Upon your request we may at our sole and absolute discretion provide you with a relevant quotation, of which shall be non-binding at any laws and equities and therein shall contain the description of all relevant charges for each Transaction intended to be provided by us to you ("the Quotation"). The Quotation shall thereby be either the bid/offer prices commensurate to the Underlying Market or bid/offer prices as fixed by us (whichever may apply) and the details of the application of the either basis may be found in the Contract Specifications or may be obtained from our dealers should there be any request from you. You hereby further agree that we shall charge you for opening and closing a Transaction in accordance with the type of account of your choice.

5.2 The rates as quoted in the Quotation shall be the relevant rate as of the time when the Quotation is issued to you and shall be valid for such time as stipulated in the Quotation. For the avoidance of doubts, such rates shall be subject to change from time to time by us provided that we serve you a notice in writing stipulating the changes. You hereby acknowledge that both of the sizes our Spreads and Market Spreads ("the Spread"), may without limit, be increased significantly in certain circumstances, and may not necessarily be the same size as the examples as therein provided by the Contract Specifications. You hereby acknowledge that when you close a Transaction, the Spread may be larger or smaller than the Spread when the Transaction was opened. For Transactions transacted when the Underlying Market is closed or in respect of which there is no Underlying Market, the rate as quoted in the Quotation shall, to our best and reasonable belief, reflect the market price in an Instrument which thereupon ought to be. You hereby acknowledge that such rate shall be set by us solely at our reasonable discretion. The Spread quoted by us shall thereby reflect our view of the prevailing market conditions.

5.3 You may request for a Quotation to open a Transaction or to close all or any part of a Transaction at any time during our normal hours of trading for the Instrument should you desire to open or close the Transaction.

5.4 The Quotation may be provided by us in any manner as deem fit and proper by us, including but not limited to oral communication through any tele-communication or electronic communication via our Online Facility or otherwise, For the avoidance of doubt, the Quotation provided shall not be construed as an offer to open or close a Transaction at the levels as specified in such Quotation. An offer shall only be formed when you initiate a Transaction to offer to close or open a Transaction and our acceptance to such offer shall not be unreasonable withheld or given until the Transaction has been executed or we have acknowledged your withdrawal of the said offer. A Transaction will be opened or closed only (whichever applicable) when your offer has been duly received and accepted by us. Our acceptance of an offer to open or close a Transaction, and thus the execution of the Transaction, shall thereby be evidenced by the issuance of our confirmation of its terms in writing to you.

5.5 In any event, we reserve the right to reject your offer at the level quoted, if any of the following factors are not satisfied:

5.5.1 the Quotation has not been obtained from us in accordance with the Terms;

5.5.2 the Quotation is not to be expressed as being given on an 'indicative only' or similar basis

5.5.3 if you obtain the Quotation by tele-communication from us, such Quotation must be given by a person who is a dealer duly employed by us and your offer to open or close the Transaction must be expressly given during the same tele-communication in which you obtained the Quotation from.

5.5.4 if you obtain the Quotation electronically via our Online Facility, your offer to open or close the Transaction, and our acceptance of your offer, must be given while the Quotation is still valid;

5.5.5 the Quotation must not be Manifestly Erroneous;

- 5.5.6 Upon your offer to open a Transaction, the number of shares, contracts or other units in respect of which the Transaction is to be opened must be neither smaller than the Minimum Size nor larger than the Normal Market Size;
- 5.5.7 Upon your offer to close part of an open Transaction both parts of the Transaction that you have offered to close and the part that would remain open shall not be smaller than the Minimum Size;
- 5.5.8 a Force Majeure event must not have occurred;
- 5.5.9 Upon your offer to open a Transaction an Event of Default must not have occurred in respect of you, nor must you have acted in such a way as to trigger an Event of Default;
- 5.5.10 the tele-communication or electronic communication (whichever applicable) in which you offer to open or close the Transaction shall not be terminated before we have received and accepted your offer; or
- 5.5.11 Upon your offer to open or close any Transaction, the opening of the Transaction must not result in your exceeding of any credit or other limit(s) placed on your dealings.

- 5.6 We reserve the right to refuse any offer to open or close a Transaction larger than the Normal Market Size. You are hereby acknowledged that our Quotation for a Transaction equal to or greater than Normal Market Size is not guaranteed to be within any specific percentage of any Underlying Market or related market quotation and our acceptance of your offer may be subject to special conditions and requirements of which we shall thereby advise to you during our acceptance of your offer. We hereby undertake and warrant to inform you of the Normal Market Size for a particular Instrument upon your request.
- 5.7 If, before your offer to open or close a Transaction is thereby accepted by us, our Quotation moves to your advantage (for example, if the price goes down as you buy or the price goes up as you sell) you hereby agree that we may at our discretion, pass such price improvement on to you.
- 5.8 Where an Instrument trades on multiple Underlying Markets and one of which is the primary Underlying Market, you hereby agree that we may at our discretion to base our bid and offer prices on the aggregate bid/offer prices in the Underlying Markets.

## 6. **RISK WARNING**

- 6.1 Trading in options and contracts for difference in foreign exchange, precious metals and commodities or other financial instruments and products involves high level of risk and may not be suitable for everyone. You are hereby advised to carefully consider your investment objectives, level of experience and risk appetite prior to making any decision to trade with us. You are hereby further advised not to invest any amount of money which exceeds your risk appetite. We shall not be responsible for any losses, liabilities, costs, charges or other expenses hereby incurred in connection to your trading with us.
- 6.2 You hereby understand that there is considerable exposure to risk in any off-exchange transaction, including, but not limited to, leverage, creditworthiness, limited regulatory protection and market volatility that may substantially affect the price, or liquidity of the markets that you are trading. Further details of the risk warnings are set out in the Risk Warning.

## 7. **DEALING PROCEDURES**

- 7.1 In the event that a Transaction has been executed in whole or in part it will not be possible for you to cancel the Transaction to the extent that the Transaction has been executed.





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- 7.2 We reserve the right to limit the number of open positions you may enter or maintain in your Account. We also reserve the right in which we shall have the sole discretion to refuse to accept any Transaction to open a new position or to increase an open position.

### Electronic Trading

- 7.3 We shall not have any obligation to accept, execute or cancel, all or any part of a Transaction that you seek to execute or cancel through an Electronic Trading Service. Without limitation of the foregoing, we do not bear any responsibility for any transmissions that are inaccurate or not received by us, and we may execute any Transaction on the terms of which we have thereof received. We shall not be responsible for any Losses arising out of Delays, lags or latency caused by poor or weak internet connection or outages, application or software failures and device related issues.
- 7.4 The Client acknowledges that it is aware of the risks involved in the use of postal services, telephone, facsimile, e-mail and instant messaging services, Voice Over Internet Protocol and other similar services, which may include errors in transmission, mutilation, interruption or delay in transmission, technical defect, data corruption, viruses, power failure, breakdown of telecommunication networks, fraud, forgery, misunderstanding, unintended disclosure or unauthorised interception or manipulation or fraud or forgery of third parties. If the Client undertakes transactions on an electronic trading system, it will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that the Client's order is either not executed according to its instructions or not executed at all. The Client agrees that it shall bear all such risks and notwithstanding the foregoing, the Client authorises Newera Capital Markets Limited to accept any instruction and effect any communication through such means.
- 7.5 In the absence of gross negligence, willful default or fraud on our part, we shall not be liable to the Client for any and all Losses incurred by the Client arising from any Loss or delay in the transmission or wrongful interception of any Order through any equipment or system, including any equipment or system owned and/or operated by or for us or any electronic facilities. The Client agrees and acknowledges that if the Client is in any doubt whatsoever as to the validity of any Order for any reason, including, but not limited to, by reason of a breakdown in communication leading to a cessation of connection between Newera Capital Markets Limited and the Client, it is the Client's sole responsibility to contact Newera Capital Markets Limited immediately by telephone in order to obtain clarification as to and/or confirmation of the validity of such Order.
- 7.6 Newera Capital Markets Limited has the right, without having to furnish any notice to the Client, to modify, update, upgrade, end, suspend, terminate or discontinue the Electronic Facilities or any part thereof, including without limitation the functionality, specifications, availability and/or content of the electronic facilities or any part thereof, temporarily or permanently, at any time. The Client acknowledges and agrees that Newera Capital Markets Limited will not be liable to the Client or any third party for any modifications, upgrades, termination, suspension or discontinuance of the Electronic Facilities or any part thereof.
- 7.7 Newera Capital Markets Limited shall not be liable to any Person for any loss (consequential or otherwise, including, without limitation, loss of profit), damage, injury, or delay, whether direct or indirect, arising from:
- (i) any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination, or any other event, in connection with the furnishing, performance, operation, maintenance, use of or inability to use all or any part of any of the systems and services of Newera Capital Markets Limited, or services, equipment or facilities used to support such systems and services, including without limitation electronic order entry/delivery, trading through any electronic means, electronic communication of market data or information, workstations used by participants, price reporting systems and any and all terminals, communications networks, central computers, software, hardware, and firmware relating thereto.
  - (ii) any failure or malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption or termination, or any other event, of any system or service of Newera Capital Markets Limited, or services, equipment or facilities used to support such systems or services, caused by any third parties including, but not limited to, independent software vendors, network providers and / or liquidity providers.





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- (iii) any errors or inaccuracies in information provided by Newera Capital Markets Limited or any of the Newera Capital Markets Limited systems, services or facilities.
- (iv) any unauthorized access to or unauthorized use of any of the Newera Capital Markets Limited's systems, services, equipment or facilities by any person.

### Agents

- 7.8 We will not be under any duty to open or close any Transaction or accept and act in accordance with any communication if we reasonably believe that such agent may be acting in excess of its authority or without authority. In the event that we have opened a Transaction before coming to such a belief we may, at our absolute discretion, either close such a Transaction at our then prevailing price or treat the Transaction as having been void from the outset. Nothing in this clause 7.4 will be construed as placing us under a duty to enquire about the authority of an agent who purports to represent you.

### Infringement of law

- 7.9 We will not be under any duty to open or close any Transaction if we reasonably believe that to do so may not be practicable or would infringe any Applicable Regulation, law, rule, regulation or Term. In the event that we have opened a Transaction before coming to such a belief we may, at our absolute discretion, either close such a Transaction at the then prevailing bid price (in the case of sell Transactions) or offer price (in the case of buy Transactions) or treat the Transaction as having been void from the outset.

### Situations not covered by this agreement

- 7.10 In the event that a situation arises that is not covered under these Terms or the Contract Specifications, we will resolve the matter on the basis of good faith and fairness and, where appropriate, by taking such action as is consistent with market practice and/or paying due regard to the treatment we receive from any hedging broker with which we have hedged our exposure to you arising from the Transaction in question.

### Borrowing charges and transactions becoming un-borrowable

- 7.11 Where you have opened a Sell in respect of a particular Instrument, we reserve the right to pass on to you any stock borrowing charges incurred by us. If you do not pay any stock borrowing charges that become payable after you have opened such a Transaction, or we are unable to continue to borrow that Instrument in the Underlying Market (and we give you notice to that effect), we will be entitled to close your Transaction in respect of that Instrument with immediate effect. This may result in you incurring a loss on the Transaction. Further, you agree to reimburse us for any fine, penalty, compound, liability or other similar charge (such as buy back fees) imposed on us for any reason by any exchange, Underlying Market or any other regulatory authority that relates in any way to your opening or closing a Transaction or any related transaction by us to hedge your Transaction.
- 7.12 In the event that you open a Transaction in relation to an Underlying Instrument that is a share, and that underlying share becomes un-borrowable (either from the outset or our brokers/agents have recall from us a stock that we have already borrowed against) so that we are unable to hedge against losses that we may incur in relation to that Transaction we may, at our absolute discretion, take one or more of the following steps:
- 7.12.1 increase your Margin requirements;
  - 7.12.2 close the relevant Transactions at such Closing Level as we reasonably believe to be appropriate;
  - 7.12.3 alter the Last Dealing Time for the relevant Transaction.



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### 8. OPENING A TRANSACTION

- 8.1 You will open a Transaction by 'buying' or 'selling'. In these Terms a Transaction that is opened by:
- 8.1.1 'buying' is referred to as a 'Buy' and may also, in our dealings with you, be referred to as 'long' or 'long position'; and
  - 8.1.2 'selling' is referred to as a 'Sell' and may also, in our dealings with you, be referred to as 'short' or 'short position'.
- 8.2 A Transaction must always be made for a specified number of shares, contracts or other units that constitute the underlying instrument.
- 8.3 Each Transaction opened by you will be binding on you notwithstanding that by opening the Transaction you may have exceeded any credit or other limit applicable to you or in respect of your dealings with us.
- 8.4 When you open and when you close a Transaction, you may be required to pay us a Commission that is calculated as a percentage of the value of the opening or closing Transaction (as applicable) or as an amount per equivalent Instrument or Instruments on the Underlying Market or on any other basis agreed between ourselves in writing. Our commission terms will be notified in writing to you, however, in the event that we do not notify you of the commission terms, we will charge the standard commission rate as published on our Website or, if no rate is published, 0.01% of the value of the opening or closing Transaction (as applicable).
- 8.5 Unless we agree otherwise, all sums payable by you pursuant to this Agreement upon opening a Transaction are due and must be paid upon the Opening Level of your Transaction being determined by us.
- 8.6 All fees payable pursuant to this clause 8 and this Agreement will be subject to the provisions at clause 25 of this Agreement.

### 9. MULTIPLE TRANSACTIONS

#### **MT4 and XOH**

- 9.1 In the case of trading on the MT4 and XOH platform:
- 9.1.1 where you have entered a Buy Transaction and you subsequently open a sell Transaction in respect of the same instrument at a time when the Buy Transaction remains open, then both transactions will exist simultaneously on the trading system including relevant margin requirements;
  - 9.1.2 where you have opened a Sell Transaction and you subsequently open a buy Transaction in respect of the same instrument at a time when the Sell Transaction remains open, then both transactions will exist simultaneously on the trading system including relevant margin requirements.

#### **MT5 and XOH**

- 9.2 In the case of trading on the MT5 and XOH platform, where you have entered a Buy Transaction and you subsequently open a sell Transaction in respect of the same instrument at a time when the Buy Transaction remains open, then:
- 9.2.1 if the size of the Sell order is less than the size of the Buy Transaction, we will treat the offer to Sell as an offer to partly close the buy Transaction to the extent of the size of the sell Transaction;
  - 9.2.2 if the size of the Sell Transaction is the same as the size of the Buy Transaction, we will treat the offer to Sell as an offer to close the Buy Transaction entirely;



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9.2.3 if the size of the Sell Transaction exceeds the size of the Buy Transaction, we will treat the offer to Sell as an offer to close the Buy Transaction entirely and open a sell Transaction position equal to the amount of such excess.

9.3 In the case of trading on the MT5 and XOH platform, where you have opened a Sell Transaction and you subsequently open a Buy Transaction in respect of the same instrument at a time when the Sell Transaction remains open, then unless you instruct us to the contrary:

9.3.1 if the size of the Buy Transaction order is less than the size of the Sell Transaction, we will treat the offer to buy as an offer to partly close the Sell Transaction to the extent of the size of the Buy Transaction;

9.3.2 if the size of the Buy Transaction order is the same as the size of the Sell Transaction, we will treat the offer to Buy as an offer to close the Sell Transaction entirely;

9.3.3 if the size of the Buy Transaction order exceeds the size of the sell Transaction, we will treat the offer to Buy Transaction as an offer to close the sell Transaction entirely and open a buy Transaction equal to the amount of such excess.

### 10. CLOSING A TRANSACTION

10.1 In relation to trading on the MT4 platform, MT5 platform and XOH Platform to close any Transaction in whole or in part you must enter into a second Transaction in relation to the same Reference Asset as the first Transaction but you must Sell if the first Transaction was a Buy and you must Buy if the first Transaction was a Sell.

10.2 In addition, when trading on the MT5 platform and XOH Platform we will net your first and second Transaction, and the aggregate position shall be displayed on your trading platform.

10.3 Spreads, including market Spreads, can and do widen significantly in some circumstances; they may not be the same size and there is no limit on how large they may be. You acknowledge that when you close a Transaction, the Spread may be larger or smaller than the Spread when the Transaction was opened. For Transactions effected when the Market or Underlying Market of any Reference Asset is closed or in respect of which there is no Market or Underlying Market for the Reference Asset, the bid and offer price figures that we quote will reflect what we believe the market price in an investment would be at that time. Such figures will be set by us at our reasonable discretion. Our Quotation is not guaranteed to be within any specific percentage of the Quotation of the Market or Underlying Market of the Reference Asset, and the Spread quoted by us will reflect our view of prevailing market conditions. You agree not to use our bid and offer prices for any purpose other than for your own trading purpose, and you agree not to distribute our bid and offer prices to any other person whether such redistribution be for commercial or other purposes.

10.4 If you approach us to close out a trade which has been entered into between us, we are under no obligation to do this. Where we agree to do this, we will calculate the close out value of the trade based on prevailing market conditions and may include associated costs arising from the close out in this figure. The close out value may be due from you to us or from us to you depending on the trade and may be substantial.

10.5 In addition to our rights at clause 13 of the Terms and our rights pursuant to clause 4.4, we may close any Transaction in our sole discretion at any time without notice in the event that:

10.5.1 if it is a Sell Transaction, and due to illiquidity in the relevant Reference Asset we are unable to borrow a sufficient number of such Reference Asset to settle any underlying hedge position in respect of the Transaction; or

10.5.2 if we are required, at any time, by a lender to return any Reference Asset borrowed by us which relates to a Transaction and we are then unable to maintain a hedge position in respect of that Transaction; or



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- 10.5.3 if at any time we are otherwise unable to establish or maintain a hedge position or any other hedging disruption occurs in respect of a Transaction or the continuation of any such hedge or hedging disruption is likely, in our reasonable judgment, to become more burdensome to us.
- 10.6 With respect to any Transaction that is closed out by us pursuant to or as contemplated by the terms of these Terms:
- 10.6.1 except as may be otherwise specified in these Terms, the Closing Date will be the date designated by us to you and at a closing price as determined by us;
- 10.6.2 no further payments or deliveries are required to be made on or after the Closing Date, except for settlement payments as provided herein; and
- 10.6.3 any and all amounts payable by either party in settlement of such Transaction are immediately due and payable.
- 10.7 Any and all obligations arising or existing between us as a result of the close-out of one or more Transactions will be satisfied by the net settlement (whether by payment, setoff or otherwise) of all amounts due and payable between us, and the net amount determined to be payable by either party will be immediately due and payable.
- 10.8 In the event of any dispute regarding any Transaction, we may in our absolute discretion cancel, terminate, reverse or close out the whole or part of any position resulting from and/or relating to such Transaction.

### Undated Transactions

- 10.9 Subject to these Terms and any requirement we may specify in relation to any Linked Transactions, you may close an open Undated Transaction or any part of such open Undated Transaction at any time.
- 10.10 Subject to these Terms, when you close an Undated Transaction, the Closing Level will be, if you are closing an Undated Buy Transaction, the lower figure then quoted by us; and if you are closing an Undated Sell Transaction, the higher figure then quoted by us.

### Expiry Transactions

- 10.11 Unless otherwise informed, if you do not close an Expiry Transaction on or before the Last Dealing Time then we will close your Expiry Transaction as soon as we have ascertained the price of the Expiry Transaction. The price of the 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, errors and omissions excluded; add or, as the case may be, less (b) any Spread that we apply when such an Expiry Transaction is closed. Details of the Spread that we apply when a particular Expiry Transaction is closed are available on request.
- 10.12 It is your responsibility to make yourself aware of the Last Dealing Time and of any Spread that we may apply when you close an Expiry Transaction. We accept no responsibility for customer's lack of awareness.
- 10.13 We do not automatically roll over to the next contract period those of your Transaction(s) which at the end of its set contract period will expire automatically. You acknowledge that it is your responsibility to make yourself aware of the next applicable contract period for a Transaction and that effecting the rollover of a Transaction may result in you incurring losses on your account. Any agreement as to roll over is entirely at our discretion and we reserve the right to refuse to rollover a Transaction or Transactions, despite any instruction you have given us. Where we do effect a rollover, the original Transaction will be closed at or just prior to the Last Dealing Time and become due for settlement and a new Transaction will be created; such closing and opening trades will be on our normal terms.



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### **11. AGGREGATION OF ORDERS**

11.1 We reserve the right to aggregate the instructions we receive from our clients to close Transactions. Aggregation means that we may combine your instruction with those of other clients of ours for execution as a single order. We may combine your instruction to close with those of other clients if we reasonably believe that this is in the overall best interests of our clients as a whole. However, on occasions, aggregation may result in you obtaining a less favourable price once your instruction to close has been executed. You acknowledge and agree that we shall not have any liability to you as a result of any such less favourable price being obtained.

### **12. CONFIRMATIONS**

12.1 After we have executed a Transaction, we shall confirm the details of that Transaction to you (the confirmation may be in electronic format or made available on the Online Facility, in which case such electronic format shall have the same effect as if served on you in written hard copy) as soon as possible after execution. The content of our confirmations will, in the absence of a material error, be deemed conclusive and binding on you unless you object in writing to us as soon as possible, and at latest within one Business Day of dispatch. Any error or inaccuracy relating to a confirmation shall not affect the validity of the underlying Transaction.

12.2 Any dispute on the accuracy of the confirmation should be dealt with in accordance with the dispute procedures contained in clause 35.

### **13. HEDGING DISRUPTION**

13.1 Notwithstanding anything to the contrary in these Terms, if we determine that a hedging disruption has occurred, or may occur, including a hedging disruption which is a result of any actual or imminent delay, disruption, suspension, or reduction in any payment or settlement in respect of any transaction or asset we may deem necessary to hedge our Transaction price risk.

13.2 Irrespective of whether such hedging disruption arises directly or indirectly from the failure of a hedging counterparty to perform its obligations or otherwise, you will be liable to us for any increased costs or expenses resulting from such hedging disruption (including any costs of unwinding, establishing or re-establishing a hedge). We may, upon notification of such costs to you, deduct them from your account or demand payment. If you fail to comply fully and by the required time with the obligation to make payment this will constitute an event of default.

### **14. MARKET SUSPENSION AND DELISTING**

14.1 If at any time trading on a Market is suspended in any Reference Asset which is listed on a Market we shall calculate the value of the Transaction with reference to the last traded price before the time of suspension, or a closing price as reasonably determined by us if no trading in that Reference Asset is undertaken during the Business Day on which a suspension occurs.

14.2 In the event that the aforesaid suspension continues for five (5) Business Days, we and you may in good faith agree a Closing Date and a value of the Transaction. In the absence of such agreement, the Transaction shall remain open in accordance with the provisions of this clause until such time as the suspension is lifted or the Transaction is otherwise closed. During the term of a Transaction where a Reference Asset is suspended, we have the right to terminate the Transaction at our discretion and to amend or vary Margin requirements and Margin rates.

14.3 If a Market on which a Reference Asset is principally traded announces that pursuant to the rules of such Market the relevant Reference Asset has ceased (or will cease) to be listed, traded or publicly quoted on the Market for any reason and is not immediately re-listed, re-traded or re-quoted on the Market or quotation system located in the same country as the Market (or where the Market is within the European Union, in any Member State of the European Union), or already so



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issued, quoted or traded the day on which such event occurs, or (if earlier) is announced shall be the Closing Date. The closing price will be such price as notified by us to you.

### 15. PAYMENTS

- 15.1 Currency for the accounts of the Client will be denominated in United States Dollar ("USD"). Payments made in any other currency will be converted into USD at applicable conversion charges which will be borne by you.
- 15.2 On each Payment Date you will, subject to the conditions precedent that:
- 15.2.1 no Event of Default (as mentioned in clause 24) with respect to the other party has occurred and is continuing; and
  - 15.2.2 no Early Termination Date (as defined below) has occurred or been effectively designated, make the payments specified due to us in respect of one or more Transaction(s) in the currency and to the account specified by us in advance of such payment becoming due.
- 15.3 On each Payment Date each party's obligation to make payment of any amount will be automatically satisfied and discharged and replaced by an obligation upon the party by whom the larger amount would have been payable to pay to the other party the excess of the larger amount over the smaller amount. If the amounts payable by each party on any Payment Date are the same, then no payment shall be made by either party on such Payment Date.
- 15.4 You will be responsible for all third party electronic, telegraphic transfer or other bank fees in respect of payment as well as any fees or charges imposed by us, which may be based on elected payment method. Any payment made to us will be deemed to have been received when we receive clear funds.
- 15.5 You are responsible for ensuring that payments made to us are correctly identified, specifying your account details and other particulars that we may require.
- 15.6 Where you have a positive balance in the account, you may request a withdrawal for any amount of the positive balance. We may in our reasonable discretion withhold, deduct or refuse to make a payment (in whole or in part),
- (a) where you instruct us to pay money to a third party
  - (b) you have open positions on account showing loss
  - (c) the balance in your account falls or is likely to fall below the minimum margin requirements necessary to hold your open positions
  - (d) you have actual or contingent liability to us or our associates
- 15.7 Any delay in receipt of funds by virtue of elected method of payment will likely have an impact on the positions held in your account. It is hereby clarified that we shall not be responsible for any losses which may arise as a result of delay in receipt of funds. Any payment made to us will be deemed to have been received when we receive clear funds.
- 15.8 All payments made pursuant to a Transaction will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any governmental revenue authority, then in effect. If we are required to deduct or withhold, we shall:
- 15.8.1 promptly notify you;

- 15.8.2 pay to the relevant governmental revenue authorities the full amount to be deducted or withheld promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against it;
- 15.8.3 promptly forward to the other party an official receipt (or certified copy), or other documentation reasonably acceptable to the other party, evidencing such payment to such authorities; and
- 15.8.4 in addition to any payment to which the other party is otherwise entitled under the Transaction, pay to the other party such additional amount as is necessary to ensure that the net amount actually received by the other party will equal the full amount the other party would have received had no such deduction or withholding been required.

16. **MARGIN PAYMENTS**

- 16.1 We may enter into transactions in options, or contracts for difference which will, or may, result in you having to provide margin payments, being a deposit of cash to cover any unrealized losses which have occurred or may occur in relation to your investments.

**Subject to our standard terms and conditions and the acceptance of your application to open an account with us, we will provide you with execution-only dealing services in relation to contracts in FX and CFDs where the underlying investments or products include foreign exchange contracts, metals, equity indices and commodities or other financial instruments or products. The orders for executions of transaction are strictly based on Straight Through Processing by which all margins provided are the ones directly from the liquidity provider.**

- 16.1.1 Payments may be required both on entering into a Transaction and on a daily basis throughout the life of the Transaction if the value of the Transaction moves against you. The movement in the market price of your investment will affect the amount of margin payment you will be required to make.
- 16.1.2 To enter into a leveraged Transaction you may need to deposit money with us as Margin. Margin is typically a relatively small proportion of the overall contract value. For example a contract trading on leverage of 100:1 will require Margin of just 1% of the contract value. This means that a small price movement in the underlying will result in large movement in the value of your trade – this can work in your favour, or result in substantial losses.
- 16.1.3 Any requirement for Margin must be satisfied in such currency and within such time as may be specified by us (in our absolute discretion) or, if none is specified, immediately. One Margin demand does not preclude another. It is your responsibility to monitor your trading account and you should not rely on our right to call you for margin as a means of monitoring your account. Margin calls are made as a matter of courtesy and we are not obliged to make margin calls to clients.
- 16.1.4 You may lose your initial deposit and be required to deposit additional Margin in order to maintain your position. If you fail to meet any Margin requirement your position will be liquidated and you will be responsible for any resulting losses.
- 16.1.5 Margin may be provided in the form of cash or other assets acceptable to us at our discretion.
- 16.1.6 If you fail to provide Margin when required to do so we (or any applicable exchange, clearing house or counterparty) we may close out your positions and exercise the rights described in clause 10 above. Failure to provide Margin may lead to us closing out any or all of your trading positions. We will have the right to do this at any time when you fail to provide Margin. We will additionally have the right to close out your positions in any other circumstances provided in these Terms.



**17. SETTLEMENT**

17.1 Unless we have agreed otherwise in writing, settlement of transactions shall be on a payment on delivery basis. All payments and other documents required to settle your transactions must be delivered by you in time to enable us to complete settlement promptly. Where relevant documents and cleared funds are not held by us, we are not obliged to settle any transaction. If either party defaults in paying any amount when it is due to the other, then (unless otherwise agreed) interest will be payable by the defaulting party at the overdraft rate of the relevant correspondent bank at which the default occurs. We may purchase investments to cover your liability to deliver investments to us and may debit any of your accounts to cover any losses we suffer. In the event of any dispute regarding any Transaction, we may in our absolute discretion cancel, terminate, reverse or close out the whole or part of the position resulting from such Transaction.

**18. SET-OFF**

18.1 We may at any time, without notice to you, set-off any liability we have to you against any liability (including without limit any loss) you owe to us or any Group Company, whether any such liability is present or future, liquidated or unliquidated, under these Terms or not and irrespective of the currency or its denomination.

18.2 If the liabilities to be set off are expressed in different currencies, we may convert either liability at a rate of exchange which we determine to be reasonable for the purpose of set off. Any exercise by us of our rights under this clause shall be without prejudice to any other rights or remedies available to us or any Group Company under these Terms or otherwise.

**19. MANIFEST ERROR**

19.1 We reserve the right to, without your consent, either void from the outset or amend the terms of any Transaction containing or based on any Manifest Error. If, in our discretion, we choose to amend the terms of any such Manifest Error the amended level will be such level as we reasonably believe would have been fair at the time the Transaction was entered into. In deciding whether an error is a Manifest Error we shall act reasonably and we may take into account any relevant information including, without limitation, the state of the Underlying Market at the time of the error or any error in, or lack of clarity of, any information source or pronouncement upon which we base our quoted prices. Any financial commitment that you have entered into or refrained from entering into in reliance on a Transaction with us will not be taken into account in deciding whether or not there has been a Manifest Error.

19.2 In the absence of our fraud, omission, willful default or negligence, we will not be liable to you for any loss, cost, claim, demand or expense following a Manifest Error (including where the Manifest Error is made by any information source, commentator or official on whom we reasonably rely).

19.3 If a Manifest Error has occurred and we choose to exercise any of our rights under clause 18.1, and if you have received any monies from us in connection with the Manifest Error, you agree that those monies are due and payable to us and you agree to return an equal sum to us without delay without demand.

**20. MARKET CONDUCT**

20.1 Notwithstanding any other provision of this Agreement, in providing the services or otherwise, we shall be entitled to take any action we consider necessary in our reasonable discretion to ensure compliance with Market Rules, and the Money Laundering Requirements and all other applicable laws, rules, regulations and regulatory decisions including selling or closing any or all Transactions that you may have open.

20.2 We may report to the relevant regulatory authority any Transaction entered into by you or on your behalf in accordance with the Market Rules.

20.3 We may hedge our liability to you by opening analogous positions with other institutions or in the Underlying Market. The result of our doing this is that when you open or close a Transaction relating to a share or other Instrument with us, your



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Transactions may, through our hedging, exert a distorting influence on the Underlying Market for that Instrument, in addition to the impact that it may have on our own prices. This may create a possibility of market abuse and the function of this Term is to prevent such abuse.

20.4 You represent and warrant that you have sufficient knowledge and understanding of all applicable laws or regulations relating to market abuse, short selling and insider dealing and you and each Authorized User shall not submit any Order that could reasonably be considered not to be in compliance with such laws or regulations. We will look to rigorously assess the nature of trading and usage of intellectual property practices and strategies by clients which may be classified as market abusive through internal surveillance and monitoring. We reserve the right to void and / or amend the terms of any transactions which we believe stems from the use of abusive practices / strategies without providing any prior notice. We may in our discretion and without any prior notice increase the spreads on your account. All amounts received by the Client as a result of such transactions shall be forthwith paid back to us.

### 21. IMPROPER TRADING

21.1 We cannot and do not guarantee the speed at which our online trading platform (MT4/MT5/XOH) operates or that it will not be subject to system or internet failure. To the fullest extent permitted under the Saint Lucian law, we exclude all liability for: (i) any direct or indirect loss or damages incurred by you as a result of any delay or system suspension/default experienced by you, for however long, in your use of our online trading platform;(ii) any direct or indirect loss or damages incurred by you by reason of any improper, unlawful or unfair trading activity (as reasonably determined by us or our Group Company) perpetrated by you or by any third party; (iii) any direct or indirect loss or damages incurred by you by reason of a failure on your part to use the most current online trading platform.

21.2 Where we believe, in our reasonable judgment, that you (and/or other parties) may have engaged or may be engaging in improper, unlawful or unfair trading activity, we may immediately suspend your (and or other trading account(s) in order to investigate.

21.3 Latency trading is characterized by a high volume of transactions which are opened and closed within an unusually short period of time as compared to the 'average' client, with a disproportionate number placed advantageously between price of trade and price of Underlying Market instead of the 'random distribution' that would be expected when the trading platform is used 'fairly'. Where we believe, in our reasonable judgment, that latency in the trading platform is being unfairly exploited by you, we may at our absolute discretion void all trades and return to you only funds deposited net of any earlier withdrawals and thereafter close your account.

### 22. EXPERT ADVISORS

22.1 You may choose to trade on our online trading platform (MT4/MT5/XOH) using an Expert Adviser, being a robotic algorithmic trading system, which trades the market on behalf of clients. Trading with an Expert Adviser is inherently risky by virtue of the robotic nature of the trading system and we do not encourage or endorse it as a practice.

22.2 Should you choose to trade using an Expert Adviser, to the fullest extent permitted under the Saint Lucian Law, we shall be indemnified from any liability derived from direct or indirect loss or damages incurred by you due to (i) use of an Expert Adviser; (ii) any fault, omission, negligence or failure on the part of the Expert Adviser and/or (iii) other reasons, in view of inappropriate judgement of yourself or technical error of your device and/or its software & applications.

### 23. SYSTEM MAINTENANCE

23.1 From time to time, we will need to carry out certain system maintenance on the online trading platform. We shall endeavour to do this out of trading hours when the market is closed but we reserve the right to conduct such system maintenance, in our absolute discretion, at any time.



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23.2 In the event that we need to conduct such system maintenance when the market is open, we shall notify you of this but we shall not be liable for any direct or indirect loss or damages incurred by you by reason of the system maintenance and/or any suspension of the online trading platform.

### 24. EVENTS OF DEFAULT

24.1 The occurrence of any one or more of the following in respect of either party ("Defaulting Party") shall be an Event of Default:

24.1.1 You have failed to make any payment when due under the Transaction and these Terms and such failure is not remedied on or before the third Business Day after notice of such failure is given to the party;

24.1.2 You shall be in default of any other obligation under the Transaction and these Terms), which if capable of remedy is not remedied within 30 days after notice by us;

24.1.3 Any representation or warranty given by you or any of your Credit Support Provider in clause 38 of these Terms or otherwise is, when given, incorrect or misleading in any material respect;

24.1.4 When your Credit Support Provider:

24.1.4.1 is dissolved (other than pursuant to a consolidation, amalgamation or merger);

24.1.4.2 becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

24.1.4.3 makes a general assignment, arrangement or composition with or for the benefit of its creditors;

24.1.4.4 institutes or has instituted against it a proceeding seeking a judgment or order of judicial management, insolvency or bankruptcy or any other relief under any company, bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation or application for judicial management is made, and, in the case of any such proceeding or petition instituted or presented against it. Such proceeding or petition:

a) results in a judgment of insolvency or bankruptcy or judicial management or the entry of an order for relief or the making of an order for its winding-up or liquidation or judicial management; or

b) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;

24.1.4.5 has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

24.1.4.6 seeks or becomes subject to the appointment of an judicial manager, administrator, provisional liquidator, interim liquidator, conservator, receiver, receiver and manager, trustee, custodian or other similar official for it or for all or substantially all its assets;

24.1.4.7 has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;



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24.1.4.8 causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses 24.1.4.1 to 24.1.4.7 (inclusive); or

24.2 The occurrence of the following in respect of you or your Credit Support Provider (each respectively the "Defaulting Party") shall constitute an Event of Default:

24.2.1 any sums due from you or your Credit Support Provider, whether such sum is due to us or to any other person or entity, by way of borrowing or under any obligation of any description for the payment of money on the part of you or your Credit Support Provider:

24.2.1.1 are not paid when due and demanded nor within any applicable grace period; or

24.2.1.2 become due and payable prior to the scheduled due date or become capable of being declared, due and payable prior to the scheduled due date, in either case by reason of default or event of default (howsoever described) on the part of the counterparty or its Credit Support Provider.

24.2.2 you or your Credit Support Provider shall be in default of any other obligation under:

24.2.2.1 any Transaction now existing or hereafter entered into between us, which are:

24.2.2.1.1 a rate swap transaction, basis swap, forward rate transaction, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions); or

24.2.2.1.2 which is a type of transaction that is similar to any transaction referred to in clause 24.2.2.1.1 above that is currently, or in the future becomes, recurrently entered into in the financial markets.

## 25. **OUR FEES AND CHARGES**

25.1 Our fees and charges will be notified to you in writing from time to time. Charges and expenses incurred by us pursuant to these Terms (including but not limited to applicable taxes and duties) are payable by you and by such payment arrangements at such times as we shall determine. For transactions denominated in foreign currency, charges may be levied on you in that currency at prevailing rates. You may incur costs or taxes associated with your transactions that are not paid through us or imposed by us.

25.2 In the event that you have an Open Position at the daily close of business, we will charge you a Daily Financing Fee. The basis of calculation of Daily Financing Fees is set out in the Contract Specifications. We may vary the method of calculating the Daily Financing Fees and/or commission. When we do so we will give you notice in accordance with clause 38.

25.3 We may share fees and charges with a Group Company or third party and, where appropriate, we may provide you with information on such fees and charges. Details of shared fees and charges will also be made available to you upon request.

25.4 You acknowledge and agree that we may make or receive a fee, commission or nonmonetary benefit to or from a third party in connection with our service to you. Upon request, if you have been introduced to us for trading purposes, we may provide further details of any fee, rebate, commission, widened spread, performance fee or management fee paid to third parties that help initiate, conclude or maintain a business relationship between you and the firm, thus enhancing the service offered to you.



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### 26. INACTIVITY FEE

- 26.1 Where no activity has occurred on your account for 180 calendar days or more (“qualifying charging period”), your account will be deemed inactive.
- 26.2 Activity relates to the placing or closing of a trade or maintaining an open position on your account.
- 26.3 In such cases, a monthly inactivity fee may be applied to your account at some stage in the future and in accordance with the designated currency of your account. We will notify clients in advance should such a fee become payable.

### 27. OUR AUTHORITY AND OUR DUTIES

- 27.1 These Terms do not impose any obligation on us to enter into any transactions with you or to accept any instructions and we are not obliged to give our reasons for declining to do so. We may accept and act upon, without further enquiry, any instructions believed by us to be in good faith and on reasonable grounds to be genuine. Nothing in these Terms shall oblige us to do anything that we believe to be contrary to the law and any Applicable Regulations.
- 27.2 You acknowledge and accept that in the ordinary course of business, we will deal with you as principal and that we may provide you with two-way price quotes where we acknowledge that if you are a Retail Client that you may rely upon us to provide or display bid and offer prices which are the best available prices for retail investors on a consistent basis.
- 27.3 Your transactions will be handled in accordance with our Order Execution Policy. While we seek to ensure that the prices we display are competitive, we are not able to give a warranty, express or implied, that the bid and offer prices displayed on our trading systems always represent the best prevailing market prices for retail investors. Our quoted prices may reflect market volatility or additional costs and charges which may result in an increase in the Spread as well as per Transaction.
- 27.4 We may employ agents or contractors on such terms as we think fit in discharging our obligations herein.
- 27.5 Any information we provide to you relating to transactions is believed, to the best of our knowledge and belief at the time it is given, to be accurate and reliable. No further representation is made nor warranty given or liability accepted, as to its completeness or accuracy. Such information does not constitute an assurance or a guarantee as to the expected outcome of any such transaction.
- 27.6 You should also be aware that market conditions and pricing may change between the time we provide you with information and the time you approach us with a view to entering into a trade.

### 28. EXCLUSION OF LIABILITY/INDEMNITIES

- 28.1 Nothing in these Terms will exclude or restrict any liability that we owe you under Applicable Law and Applicable Regulations. Except to the extent that the same results from gross negligence, willful default or fraud, we, our directors, officers, employees and agents shall not be liable for any loss resulting from any act, negligence or omission made under or in relation to or in connection with these Terms or the solvency, acts or omissions of any third party with whom we deal or transact business or who is appointed by us in good faith. We will make available to you, when and to the extent reasonably so requested and at your expense, details of any rights that we may have against such person.
- 28.2 If any action or proceeding is brought by or against us, against or by a third party, in relation to any transaction with or for you, you shall co-operate with us to the fullest extent possible in the prosecution or defence of such action or proceeding. Except to the extent that the same results from gross negligence, omission, willful default or fraud, you shall reimburse us and hold us harmless together with our Group Companies and our directors, officers, employees or agents, on a full indemnity basis from and against all actions, claims, liabilities, losses, damages and expenses of any nature arising from us dealing with you pursuant to these Terms.



## CLIENT'S AGREEMENT (AND TERMS & CONDITIONS)

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### 29. YOUR AUTHORITY AND YOUR OBLIGATIONS

29.1 You represent and warrant to us from the date on which you agree to these Terms that:

- 29.1.1 where you are a company, limited liability partnership, limited partnership or a partnership, you have full power and authority (corporate and otherwise) to enter into the Transaction and to exercise your rights and perform your obligations hereunder and have obtained all authorisations and consents necessary so to enter, exercise rights and perform obligations and such authorisations and consents are in full force and effect;
- 29.1.2 where you are an individual or sole proprietorship, you, in person or in the capacity as the owner of the sole proprietorship, are of full age and sound mind and have full capacity to enter into the Transaction(s) and to exercise your rights and perform your obligations. The normal minimum age for trading in such Transactions is eighteen (18) years of age;
- 29.1.3 the obligations expressed to be assumed by you under the Transaction are legal and valid obligations binding on you in accordance with their terms;
- 29.1.4 all payments to be made by you under the Transaction may be made free and clear of, and without deduction for or on account of any taxes whatsoever;
- 29.1.5 all information that is furnished in writing by or on behalf of you to us in respect of these Terms is, as of the date such information is furnished, true, accurate and complete in every material respect;
- 29.1.6 in entering into the Transaction you are not relying upon us in relation to any advice or forecast or estimate of future trends in relation to interest rates or otherwise nor in relation to the fiscal consequences of the Transaction;
- 29.1.7 you are acting for your own account, and have made your own independent decisions to enter into the Transaction(s) and as to whether the Transaction(s) is appropriate or proper for you based upon your own judgement and upon advice from such advisers as you have deemed necessary. You are not relying on any communication (written or oral) from us as investment advice or as a recommendation to enter into the Transaction. It is understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction. You understand that no communication (written or oral) received from us can be considered to be an assurance or guarantee as to the expected results of the Transaction;
- 29.1.8 you are capable of assessing the merits of and understanding (on your own behalf or through independent professional advice), and understand and accept, the terms, conditions and risks of the Transaction. You are also capable of assuming, and assumes, the risks of the Transaction;
- 29.1.9 you are entering into the Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise); and
- 29.1.10 you are aware of all Applicable Regulations that apply to Electronic Trading Services that you use and that your use of the Electronic Trading Services will comply with all Applicable Regulations and this Agreement as amended from time to time.

29.2 Tax regulations may change at any time. You will be responsible at all times for the payment of all taxes due and for providing any relevant tax authority with any information relating to your dealings with us. You agree that if we provide you with any information or express any opinion in relation to the tax treatment of your dealings with us it will not be reasonable for you to rely upon any such statement and it will not constitute tax advice.



## CLIENT'S AGREEMENT (AND TERMS & CONDITIONS)

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### 30. AUTHORISED THIRD PARTY

- 30.1 We recognise that in some circumstances it may be necessary or desirable for you to authorise someone to manage your account. You do so at your own risk and both you and the person you wish to authorise to operate your account will be required to submit a signed form which is a type of Power of Attorney document authorising and appointing an Authorised Third Party to operate your account.
- 30.2 You will be liable for any act or omission by an Authorised Third Party, and we may rely on any instructions given by the Authorised Third Party on your behalf. We are not responsible for monitoring the activities of the Authorised Third Party.
- 30.3 If you have opened an account electronically, and we do not have an original of your signature, you will need to provide an identity document such as a copy of your passport or driving licence in order to be able to appoint an Authorised Third Party.

### 31. CLIENTS' MONEY

- 31.1 Any money received by us in respect of your account with us shall be treated as Client's Money and be held in trust.
- 31.2 In relation to Clients' Money unless you notify us in writing or otherwise we will promptly pay any Clients' Money received to our Clients' Money bank accounts. Our Clients' Money accounts will be identified and designated separately from any accounts used to hold other money belonging to us. Interest will not be paid on the money held in the Clients' Money accounts and by entering into this Agreement you acknowledge that you waive any entitlement to interest on such money.
- 31.3 We will exercise all due skill, care and diligence when selecting which third party banks and brokers to use. We will periodically (at least annually) review the adequacy and appropriateness of any banks and brokers where your money is or may be deposited and of the arrangements for holding your money. We will not be responsible for any acts, omissions or default (including the insolvency, administration, judicial management, bankruptcy or similar event) of the third party banks or brokers for any resulting shortfall or loss in the return of your money.
- 31.4 The Clients' Money accounts will be pooled accounts and holds the Clients' Money relating to a number of clients. Claimants to money held in pooled accounts have a claim to a rateable proportion of the money held in that pool.
- 31.5 We and/or our Group Companies uses only its own funds for hedging and does not pass Clients' Money to hedging counterparties or to any part of the business as working capital. We and/or our Group Companies does not initiate speculative positions in the market.
- 31.6 We may transfer any money we hold for you as Client's Money (after deduction of any amounts permitted by the terms of these Terms) to another legal entity (including any of our Group Companies) where we transfer all or part of our business to that entity and your Clients' Money relates to the business transferred. Where we transfer your Clients' Money to another legal entity under this clause 31.6 we shall ensure that such Clients' Money will be held by that entity for you in accordance with this Agreement.
- 31.7 In the event that the account you hold with us is a joint account, we do exercise all due care and diligence to ensure that all withdrawals are paid back to its source and to the particular party that initiated the actual deposit. In case of profit payments and/or withdrawals, We and/or our Group Companies may initiate payments to any party to the joint account provided that it has received appropriate approval from the other party and it is satisfied pursuant to its due diligence verification and checks.
- 31.8 You consent to us releasing any Clients' Money balances, for or on your behalf, from Clients' Money bank accounts and for us to cease to treat as Clients' Money any unclaimed Clients' Money balance where:
- 31.8.1 it is permitted by law and consistent with the arrangements under which Clients' Money are held;



31.8.2 we have determined that there has been no movement on your balance for a period of six years (notwithstanding any payments or receipts of charges, interest or similar items);

31.8.3 we have taken reasonable steps to trace you and to return the balance to you; and

31.8.4 we make and retain records of all balances released from our Clients' Money bank accounts in respect of your monies. All unclaimed money will be treated in pursuant to Section 154 of Banking Act, Saint Lucia.

**32. OVERNIGHT FINANCING AND ROLLOVER**

32.1 Rolling Daily Transactions and Undated Contracts for CFDs are available in a variety of Markets and Underlying Markets. Each Market and Underlying Market has its own conditions and spread which may vary at our discretion. Such contracts automatically roll into the next trading session. A Daily Financing Fee debit/credit will be made to your account if you hold a Transaction open from one trading session to the next.

**33. TEMPORARY CREDIT AGREEMENT**

33.1 Details of any temporary credit arrangement that may be available to you are or will be set out in, and will be subject to, such terms, conditions and limits as may be agreed in separate correspondence. We reserve the right to alter any credit arrangements agreed with you at any time. You acknowledge that when you deal with us on credit, neither any limit set on your account nor any amount of Margin you have paid puts any limit on your potential losses in respect of a Transaction. You acknowledge and agree that your financial liability to us may exceed the level of any credit or other limit placed on your account. You are obliged to repay any such temporary credit facility provided within stipulated time period.

**34. CONFLICTS OF INTEREST**

34.1 When we deal with you, we, a Group Company, or some other person connected with us, may have an interest, relationship or arrangement that is material in relation to the Investment, transaction or Service concerned. Conflicts of interest can arise in particular when we have an economic or other incentive to act in a way that favours us or any of our Group Companies.

34.2 Consistent with our regulatory obligations we seek to ensure that any conflicts that arise between our interests and those of our clients, or between clients, are properly managed. Our conflicts policy, which is communicated to all relevant employees, identifies the types of conflict that may arise and provides express instructions on the management of those conflicts. To this effect, we have a framework in place to handle conflicts of interest, so that we act with an appropriate degree of independence from our own interests when transacting with you or dealing on your behalf.

34.3 In some circumstances appropriate management of any conflict of interest and fair treatment of the relevant parties may only be achieved by our declining to enter into Transactions with you whereupon such occurrence you warrants and undertake that we and/or our Group Companies shall not be liable for any losses, damages, demand, claims, profits whatsoever from our declination of your Transaction pursuant to this Clause 34.3.

**35. COMPLAINTS**

35.1 We have a written Complaints Policy to ensure that complaints regarding our services are dealt with fairly and promptly and in accordance with our membership of the dispute resolution scheme which we are a member of.

35.2 If you have a complaint about our Services, you should direct that complaint to our client services department or to our Compliance Department, by sending an email to us at [compliance@newera365.com](mailto:compliance@newera365.com)

35.3 who will investigate the nature of the complaint to try to resolve it.

**36. AMENDMENTS**

- 36.1 We may amend any part of these Terms by giving you reasonable advance written notice by post, email or on the Online Facility. Where reasonable notice is impractical (e.g. due to a sudden change in commercial terms with a liquidity provider or regulatory changes) we reserve the right to provide notice of such change with immediate effect.
- 36.2 Each amendment will become effective on the date specified in the notice. Any amendment requested by you must be agreed in a formal amendment agreement by us. Unless expressly agreed otherwise, an amendment will not affect any outstanding Transaction or any legal rights or obligations which may already have arisen. If you do not wish to accept any amendment made by us you may by notice to us close any of your open Transactions and your account in accordance with these Terms.

**37. TERMINATION**

- 37.1 Subject to clause 37.2 below, you may terminate this Agreement by written notice at any time. We may terminate the Terms by providing you with at least thirty (30) days written notice of termination unless circumstances require us to provide a shorter notice period.
- 37.2 We may terminate the arrangements set out in these Terms immediately and without notice to you if:
- 37.2.1 you admit to your inability to pay your debts as they fall due or enter into any scheme or arrangement with your creditors or, in the case of a company, limited partnership or limited liability partnership, file or have filed against you a petition for winding up, pass a resolution for winding up, application of judicial management or have a receiver, liquidator, administrator, judicial manager or similar officer appointed over all or any part of your assets or undertaking or, in the case of an individual, a bankruptcy petition is presented or a trustee in bankruptcy is appointed or a protection order is made pursuant to Applicable Law;
  - 37.2.2 you are, in our opinion, in material breach of the obligations owed by you, whether arising under these Terms, any supplementary or separate terms that we have entered into with you in respect of transactions in investments, the rules and regulations of any regulatory authority or under Applicable Law; and/or
  - 37.2.3 on the occurrence of a Force Majeure Event.
- 37.3 Termination will be without prejudice to any legal and equitable rights or obligations which may already have arisen.

**38. PAYMENTS ON TERMINATION**

- 38.1 We as the Calculation Agent, in good faith and acting reasonably, will determine an amount, if any, (the Close-out Amount) that would be paid by (expressed as a positive) or to (expressed as a negative) the non-Affected Party in consideration of an agreement between the non-Affected Party and a third party that would have the effect of preserving for the non-Affected Party the economic equivalent of any payment in respect of the Transaction that would, but for the occurrence of the Early Termination Date, have been required after that date.
- 38.2 An amount (the "Termination Payment") will be payable equal to the Close-out Amount plus any amounts which have fallen due but remain unpaid as at the Early Termination Date owing to the non-Affected Party, and less any amounts which have fallen due but remain unpaid as at the Early Termination Date owing to the Affected Party, together with, to the extent permitted under Applicable Law, any interest owing pursuant to the terms of these Terms.
- 38.3 If the Termination Payment is a positive number, the Affected Party will pay it to the non-Affected Party; if it is a negative number then the non-Affected Party will pay it to the Affected Party.

- 38.4 The Termination Payment will, at the option of the non-Affected Party, be reduced by its set-off against any amounts payable (whether at such time or in the future or upon the occurrence of a contingency) by or to, as appropriate, the non-Affected Party (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the parties or instrument(s) or undertaking(s) issued or executed by one party to, or in favour of, the other party.
- 38.5 The parties agree that an amount recoverable under this clause 38 is a reasonable pre-estimate of loss with the characteristic of liquidated ascertained damages and is not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in these Terms neither party will be entitled to recover any additional damages as a consequence of the occurrence of the Early Termination Date.
- 38.6 In determining the Close-out Amount, the Calculation Agent may consider any relevant information, including, without limitation, one or more of the following types of information:
- 38.6.1 quotations (either firm or indicative) for replacement Transactions supplied by one or more third parties that may take into account the creditworthiness of the non-Affected Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the non-Affected Party and the third party providing the quotation;
  - 38.6.2 information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
  - 38.6.3 information of the types described in clause 38.6.1 or 38.6.2 above from internal sources if that information is of the same type used by the non-Affected Party in the regular course of its business for the valuation of similar transactions. Without duplication of amounts calculated based on information described in clause 38.6.1, 38.6.2 or 38.6.3 above, or other relevant information, and when it is commercially reasonable to do so, the Calculation Agent may in addition consider, in calculating the Close-out Amount, any loss or cost incurred in connection with the non-Affected Party terminating, liquidating or re-establishing any hedge related to the Transaction.
  - 38.6.4 We shall be the Calculation Agent. Whenever the Calculation Agent is required to act or exercise judgment in any other way, it will do so in good faith and in a commercially reasonable manner.

### 39. **PERSONAL DATA PROTECTION**

- 39.1 We will observe the requirements of the Privacy and Data Protection Bill, in the performance of its obligations under these Terms and will comply with any request made or direction given by you, which is directly due to the requirements of the Privacy and Data Protection Bill.
- 39.2 We will only use personal data and/or sensitive personal data (Privacy and Data Protection Bill) to allow us (which for the purposes of the following permissions will include any Group Company) to provide the services to the Client set out herein, to assess our risks in providing those services and to enable us to enforce our rights under these Terms if necessary. This may involve passing personal data and/or sensitive personal data to third-party service providers or our agents, on the understanding that they keep it confidential. We may need to give our auditors, advocates and solicitors, bankers, brokers, tax advisors, professional advisers, agents or subcontractors access to personal data and/or sensitive personal data or anyone who is interested in our business.
- 39.3 We may send personal data and/or sensitive personal data outside Saint Lucia to jurisdictions which may not have an equivalent standard of data privacy laws as that in Saint Lucia. Where we do this, we will take appropriate steps to protect personal data and/or sensitive personal data. You may access our full privacy commitment which is available on our Website.



## CLIENT'S AGREEMENT (AND TERMS & CONDITIONS)

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- 39.4 We may conduct searches through credit and identity-referencing agencies and other sources of information and use scoring methods to verify your identity and credit rating. A record of this process will be kept and may be used to help other companies verify your identity.
- 39.5 We may from time to time - by telephone, email or other electronic communication, fax or post - provide you with information relating to other services that we, any Group Company or selected third parties connected with our business can offer. You agree that we may call upon you at a reasonable hour or otherwise communicate with you without an express invitation.
- 39.6 For the purposes of this clause 39 "your information" includes information about your transactions.
- 39.7 If you would like a copy of the information we hold about you, please write to us at the address set out for notices and correspondence in clause 1.1.

### 40. **MONITORING AND RECORDING**

- 40.1 Emails sent by you may be monitored and telephone conversations between us may be recorded. Recordings remain our sole property and may be used by us in evidence in the event of a dispute.

### 41. **COMMUNICATIONS (Including Electronic Communications)**

- 41.1 Save as otherwise agreed or where Applicable Regulations require otherwise, we will communicate with you, and send documents and other information to you, in Saint Lucia. Unless otherwise agreed or where Applicable Regulations require otherwise, you agree to communicate with us, and send documents and other information to us, in Saint Lucia.
- 41.2 Unless otherwise agreed, you accept that we may communicate with you by post, telephone, facsimile, electronic mail or through the Online Facility in order to provide you with dealing services or for any other related purpose.
- 41.3 Any notice or other communication will be required to be given in writing under this Agreement and shall:
- 41.3.1 in the case of notices or other communications to be delivered personally, sent by pre-paid registered post, proof of posting delivery or by commercial courier, fax or email by you to us, such communication should be made to your usual point of contact or for the attention of the Managing Director of Newera Capital Markets Limited
  - 41.3.2 In the case of notices or other communications to be delivered personally, sent by pre-paid registered post, proof of posting delivery or by commercial courier, fax or email by us to you we will do so to such address (including a fax number or an email address) as the you may specify. You are responsible for notifying us of any changes to such contact details and we shall be entitled to serve notice on you (including the service of any legal and equitable cause papers) using the last known contact details that you have provided to us for the purposes of these Terms; or, in each case, as otherwise specified by the relevant Party by notice in writing to the other Party.
- 41.4 Any such notice or other communication shall be deemed to have been duly received:
- 41.4.1 if delivered personally, when left at the address and for the contact referred to in this clause; or
  - 41.4.2 if sent in Saint Lucia to a Saint Lucian address by pre-paid registered post or proof of posting delivery, at 9am (GMT-4) on the third Business Day after posting; if sent in Saint Lucia to a non-Saint Lucian address by pre-paid registered post or proof of posting delivery, at 9 am (GMT-4) on the fifth Business Day after posting; or
  - 41.4.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or

41.4.4 if delivered by fax or email, at the time of transmission (unless the sender receives an automated response which indicates that the notice in question was not received by the intended recipient, in which case such notice shall not be deemed to have been received); or

41.4.5 if delivered on the Online Facility, upon it being uploaded and available to you.

41.5 For the service of any proceedings or other documents in any legal action, any statutory provisions in the relevant jurisdiction shall prevail.

**42. INTELLECTUAL PROPERTY**

42.1 All intellectual property rights in the Online Facility, any advertising material issued by or on behalf of us, all information, materials, prices or charts, business methods, databases or settlement specifications relevant to this Agreement of otherwise used or arising in connection with this Agreement will remain our property or any third party which provided it to us and you will have no rights to distribute, republish, copy, reproduce, sell, sub-license or otherwise transfer or disseminate any of the foregoing unless otherwise expressly agreed by us in writing.

**43. THIRD PARTIES' RIGHTS**

43.1 The provisions of this Agreement shall not be enforceable by any person (other than our Group Companies) who is not a party to it. However, this shall not affect any rights or remedies of any third party who acts in reliance on the authority of any of our employees, agents or servants in any other circumstances.

43.2 We may cancel any instructions previously given by you provided that we have not acted on your instructions.

43.3 If a transaction has been executed, in whole or in part, it will not be possible for you to cancel the Order to the extent that the transaction has been executed.

**44. WEBSITE**

44.1 We have taken reasonable measures to ensure the accuracy of the information on the Website. The content on this Website shall be subject to change at any time with or without notice, whichever deems fit and proper by us.

**45. SEVERABILITY**

45.1 Any Terms, condition, stipulation, provision, covenant or undertaking in this Agreement which is illegal, void, voidable, prohibited or unenforceable for any reason whatsoever shall be ineffective to the extent of such illegality, voidness, voidability, prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality, voidness, voidability, prohibition or unenforceability shall not invalidate or render illegal, void or unenforceable any other Terms, condition, stipulation, provision, covenant or undertaking herein contained.

**46. FORCE MAJEURE**

46.1 We shall not be responsible for or liable to you for any liability, loss, damage, cost or expense of any nature whatsoever incurred or suffered by you or any person claiming through you as a result of any Force Majeure Event.

**47. GOVERNING LAW AND JURISDICTION**

47.1 Any non-contractual disputes, claims or differences arising out of under this Agreement or Transaction hereunder shall be governed and resolved in accordance with the Applicable Laws of Saint Lucia and we may thereby refer to the courts of Saint Lucia of which shall have the exclusive jurisdiction to resolve any disputes arising hereunder.



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### 48. REVIEW OF TERMS & CONDITIONS

NEWERA CAPITAL MARKETS LIMITED is committed to continuously improve this document and it will be reviewed regularly (at least every six months) for effectiveness and updated.

This Client's Agreement (and Terms & Conditions) is supported by management NEWERA CAPITAL MARKETS LIMITED commits to providing this document to all employee and displaying it in its business with clients.

Signed by:

Date :