



# **EMXPRO LIMITED**

## **Client Service Agreement**

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# 1. INTERPRETATION OF TERMS

1.1 In this Agreement, the words shall have the following meaning:

**"Abnormal Market Conditions"** shall mean conditions contrary to Normal Markets Conditions, e.g., when there is low liquidity in the market, or rapid price movements in the market, or Price Gaps.

**"Access Data"** shall mean the Client's access codes, any login code, password(s), his/her Trading Account number and any information required to make Orders with the Company.

**"Agreed Process"** means any process agreed between the parties in respect of a Dispute other than the Procedure for Dispute Resolution, as may be amended between the parties.

**"Application Form"** shall mean the "Individual/Corporate Account" Application Form completed by the Client and accessed through the Website.

**"Ask"** shall mean the higher price in the Quote being the price at which the Client may buy.

**"Balance"** shall mean the total financial result of all Completed Transactions and depositing/withdrawal operations on the Trading Account.

**"Base Currency"** shall mean the default currency in the Currency Pair against which the Client buys or sells the Quote Currency.

**"Bid"** shall mean the lower price in the Quote being the price at which the Client may sell.

**"Business Day"** shall mean any day between Monday and Friday, inclusive, other than the 25th of December, or the 1st of January or any other holiday to be announced by the Company on its Website.

**"Business Hours"** shall mean 8:00 a.m. to 5:00 p.m. (GMT+8) on a Business Day (Monday to Friday).

**"Client Terminal"** shall mean the MetaTrader program version 4 and/or 5, which is used by the Client in order to obtain information of financial markets (which content is defined by the Company) in real-time, to make technical analysis of the markets, make Transactions, place/modify/delete Orders, as well as to receive notices from the Company. The program can be downloaded on the Website free of charge.

**"Company"** shall mean EMXPRO Limited ([www.emxpro.com](http://www.emxpro.com)).

**"Completed Transaction"** shall mean two counter deals of the same size in different directions (opening a position and closing the position): buying and then selling or selling and then buying.

**"CRS"** shall mean the Common Reporting Standard.

**"Currency of the Trading Account"** shall mean the currency that the Client chooses when opening the Trading Account.

**"Currency Pair"** shall mean the object of a Transaction based on the change in the value of one currency against the other.

**"Client Information"** shall mean any information or documentation that the Company receives from the Client or otherwise obtains which relates to him/her, his/her Account or the provision or the use of the Services.

**"Dispute"** shall mean either:

- (a) the conflict situation when the Client reasonably believes that the Company as a result of any action or failure to act breaches one or more terms of the Operative Agreements; or
- (b) the conflict situation when the Company reasonably believes that the Client as a result of any action or failure to act breaches one or more terms of the Operative Agreements; or
- (c) the conflict situation when the Client makes a deal at an Error Quote (Spike), or before the first Quote comes to the Trading Platform on the Market Opening, or at the Quote received by the Client because a Dealer made a Manifest Error or because of a software failure of the Trading Platform.
- (d) any dispute between the parties (i) which, in the sole opinion of the party delivering the relevant Dispute Notice, is required to be subject to the Dispute Resolution Procedure (or other Agreed Process) pursuant to the Dispute Resolution Risk Mitigation Techniques; and (ii) in respect of which a Dispute Notice has been effectively delivered.

**"Dispute Date"** means, with respect to a Dispute, the date on which a Dispute Notice is effectively delivered by one party to the other party save that if, with respect to a Dispute, both parties deliver a Dispute Notice, the date on which the first in time of such notices is effectively delivered will be the Dispute Date. Each Dispute Notice will be effectively delivered if delivered in the manner agreed between the parties for the giving of notices in respect of this Agreement.

**"Dormant and/or Inactive Account"** shall mean any trading account where the Client/account holder/owner of that trading account has not initiated any trading activity and/or inactivity for a period of six (6) consecutive months and/or where the Company has not carried out any transactions in relation to the trading account by and/or on the instructions of the Client/account holder/owner and/or his/her authorized representative for a period of six (6) consecutive months.

**"Dormant and/or Inactive Account Fee"** shall mean a handling fee of \$5 or equivalent per month imposed by the Company and/or paid by a Client for his/her dormant account(s) held by the Company, as this may be amended from time to time by the Company.

**"Equity"** shall mean: Balance + Floating Profit - Floating Loss.

**"Error Quotes"** are rates received which are transmitted to the Client's Terminal due to a system technical error.

**"Error Quote (Spike)"** shall mean an Error Quote with the following characteristics:

- (a) a significant Price Gap; and
- (b) in a short period of time the price rebounds with a Price Gap; and
- (c) before it appears there have been no rapid price movements; and
- (d) before and immediately after it appears that no important macroeconomic indicators and/or corporate reports are released; and
- (e) a significant variance from the market pricing.

The Company has the right to delete Error Quotes (Spikes) from the Server's Quotes Base.

**"Event of Default"** shall have the meaning given in Clause 15 herein.

**"FATCA"** shall mean the Foreign Account Tax Compliance Act.

**“Floating Profit/Loss”** shall mean current profit/loss on Open Positions calculated at the current Quotes.

**“Force Majeure Event”** shall have the meaning as set out in Clause 17 herein.

**“Free Margin”** shall mean funds on the Trading Account, which may be used to open a position. It is calculated as Equity Less Necessary Margin.

**“Initial Margin”** shall mean the margin required by the Company to open a position. The details for each Instrument are in the Trading Rules.

**“Instruction”** shall mean an instruction from the Client to the Company to open/close a position or to place/modify/delete an Order.

**“Instrument”** shall mean any Currency Pair, Precious Metal, CFD, Energy, or Index.

**“Illicit Profit”** shall mean profit which has been generated as a result of an Event of Default and/or during Abnormal Market Conditions.

**“Long Position”** shall mean a buy position that appreciates in value if market prices increase. In respect of Currency Pairs: buying the Base Currency against the Quote Currency.

**“Lot”** shall mean a unit of Securities Base Currency or troy oz. of Precious Metal in the Trading Platform.

**“Lot Size”** shall mean the number of shares, underlying assets or units of Base Currency, or troy oz. of Precious Metal in one Lot defined in the Trading Rules.

**“Margin”** shall mean the necessary guarantee funds to maintain Open Positions, as determined in the Trading Rules for each Instrument.

**“Margin Level”** shall mean the percentage Equity to Necessary Margin ratio. It is calculated as  $(\text{Equity} / \text{Necessary Margin}) * 100\%$ .

**“Margin Trading”** shall mean Leverage trading when the Client may make Transactions having far less funds on the Trading Account in comparison with the Transaction Size.

**“Matched Positions”** shall mean Long and Short Positions of the same Transaction Size opened on the Trading Account for the same Instrument.

**“Necessary Margin”** shall mean the margin required by the Company to maintain Open Positions. The details for each Instrument are specified in the Trading Rules.

**“Normal Market Conditions”** shall mean the market where there are no:

- considerable breaks in the Quotes Flow in the Trading Platform; and
- fast price movements; and
- large Price Gap.

**“Open Position”** shall mean a Long Position or a Short Position which is not a Completed Transaction.

**“Operative Agreements”** shall mean this Client Agreement together with and all Account Application Forms, Policies and Trading Rules, as these may be found in the Website. The Client acknowledges that the Operative Agreements may be amended by the Company from time to time and the last version shall be available by accessing the website ([www.emxpro.com](http://www.emxpro.com)).

**“Order”** shall mean an instruction from the Client to the Company to open or close a position when the price reaches the Order Level.

**“Order Level”** shall mean the price indicated in the Order.

**“Precious Metal”** shall mean spot gold or spot silver.

**“Price Gap”** shall mean the following:

- (a) the current Quote Bid is higher than the Ask of the previous Quote; or
- (b) the current Quote Ask is lower than the Bid of the previous Quote.

**“Politically Exposed Person” or “PEP”** shall mean someone who currently or in the last 12 months belonged to a political entity or governmental body; this extends to the immediate family members and close associates of such a person.

**“Quote”** shall mean the information of the current price for a specific Instrument, in the form of the Bid and Ask prices.

**“Quote Currency”** shall mean the second currency in the Currency Pair which can be bought or sold by the Client for the Base Currency.

**“Quotes Base”** shall mean Quotes Flow information stored on the Server.

For example, if the Client has a Long Position of 2.0 Lots and a Short Position of 3.0 Lots in the same Instrument, then the Long Position and 2.0 Lots of the Short Position are considered as Matched Positions and 1.0 Lot of the Short Position is not a Matched Position.

**“Quotes Flow”** shall mean the stream of Quotes in the Trading Platform for each Instrument.

**“Rate”** shall mean the following:

- (a) for the Currency Pair: the value of the Base Currency in the terms of the Quote Currency; or
- (b) for the Precious Metal: the price of one troy oz. worth of the Precious Metal against the US dollar or any other currency specified in the Trading Rules for this instrument.

**“Request”** shall mean a request from the Client to the Company given to obtain a Quote. Such a Request shall not constitute an obligation to make a Transaction.

**“Server”** shall mean the MetaTrader Server program, version 4 and/or 5. The program is used to execute the Client’s Instructions or Requests, to provide trading information in real-time mode (the content is defined by the Company), in consideration of the mutual liabilities between the Client and the Company, subject to the Terms of the Operative Agreements.

**“Services”** shall mean the services provided by the Company to the Client as set out in Clause 5 herein.

**“Short Position”** shall mean a sell position that appreciates in value if market prices fall. In respect of Currency Pairs: selling the Base Currency against the Quote Currency.

**“Spread”** shall mean the difference between Ask and Bid.

**“Trading Account”** shall mean the unique personified registration system of all Completed Transactions, Open Positions, Orders and deposit/withdrawal transactions in the Trading Platform.

**“Trading Account History”** shall mean any of and/or all Client’s trading and/or non-trading activity including but not limited to deposits, withdrawals, credits and/or any other services offered by the Company within a Client’s account(s) with the Company, whether these derive from and/or on MetaTrader 4 and MetaTrader 5 Platforms and

as these may from time to time in part of or all be transferred, and/or further archived, and/or shrunk, and/or compressed.

**“Trading Platform”** shall mean all programs and technical facilities which provide real-time Quotes and allow Transactions to be made, Orders to be placed/modified/deleted/executed and calculate all mutual obligations between the Client and the Company. The trading platform consists of the Server and the Client Terminal including, but not limited to MetaTrader 4 and/or MetaTrader 5 Platforms.

**“Trading Rules”** shall mean principal trading terms (Spread, Lot Size, Initial Margin etc.) for each Instrument.

**“Transaction”** shall mean any contract or transaction entered into or executed by the Client arising under this Agreement.

**“Transaction Size”** shall mean Lot Size multiplied by number of Lots.

**“Website”** shall mean the Company’s website at [www.emxpro.com](http://www.emxpro.com) or such other website as the Company may maintain from time to time for access by Clients.

**“Written Notice”** shall have the meaning set out in Clause 10 herein.

- 1.2 All references to a statutory provision include references to:
  - (a) any statutory modification, consolidation or reenactment of it, whether before or after the date of these Operative Agreements, for the time being in force;
  - (b) all statutory instruments or orders made pursuant to it; and
  - (c) any statutory provision of which that statutory provision is a re-enactment or modification.
- 1.3 Words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include corporations, partnerships, other unincorporated bodies and all other legal entities and vice versa.
- 1.4 Unless otherwise stated, a reference to a clause, party or a schedule is a reference to a clause in or a party or schedule to this Agreement respectively.
- 1.5 The clause headings are inserted for ease of reference only and do not affect the construction of the terms of this Agreement.

## 2. INTRODUCTION

- 2.1 This Client Agreement (“Agreement”) is entered by and between EMXPRO Limited (hereinafter called “the Company” or “EMXPRO”) and the Client who has completed the online registration form with the title “Open Real Account”.
- 2.2 EMXPRO Limited is a company registered in St. Vincent and the Grenadines with Business Company Number 25592 BC 2019.
- 2.3 This Client Agreement, together with the Conflict of Interest Policy, the Privacy Policy Statement, the Risk Disclosure documents (collectively, the “Operative Agreement” or “Agreements”), as well as any other document we may post on the Website as these may be amended or supplemented from time to time, constitute the entire agreement between the Company and the Client. The Operative Agreements, as amended from time to time, set out the terms upon which the Company shall deal with the Client in respect of Instruments.
- 2.4 The Operative Agreements shall govern all trading activity and non-trading operations of the Client with the Company and shall be read carefully by the Client. Amongst other things, they set out those matters which the Company is required to disclose to the

Client under the applicable regulations.

- 2.5 The defined terms used in this Agreement are set out in Clause 0 (“Interpretation of Terms”).
- 2.6 In relation to any Client transaction, the Company acts on a principal-to-principal basis and not as the agent on the Client’s behalf. This means that unless otherwise agreed, the Company shall treat the Client as a client for all purposes and the Client shall be directly and fully responsible for performing the obligations under each transaction made by the Client. If the Client acts in relation to or on behalf of another person, whether or not the Client makes the identity of that person known to the Company, the Company shall not accept that person as an indirect client and shall accept no obligation to that person, unless otherwise specifically agreed.

### **3. COMMENCEMENT**

- 3.1 The Operative Agreements shall commence on the date on which the Client receives notice from the Company in accordance with Clause 4.1 and shall continue unless or until terminated by either party.
- 3.2 This Agreement is an initial service agreement which relates to a series of successive or separate operations including, without limitation, Transactions in Instruments.
- 3.3 The Client has no right to cancel the Agreement on the basis that it is a distance contract.

### **4. ACCOUNT ACTIVATION**

- 4.1 The Client’s Trading Account shall be activated by the Company giving notice to the Client as soon as:
  - a) the Company has received a completed by the Client on-line registration form with the title “Complete your Profile”; and
  - b) the Operative Agreements have been accepted by the Client; and
  - c) relevant identity checks have been completed to the Company satisfaction.
- 4.2 The Company reserves the right at its absolute discretion to accept or reject the Client subject to all documentation requested has been received by the Company, properly and fully completed by the Client.
- 4.3 The Company has the right to request minimum initial deposit to allow the Client to start using his Trading Account.

### **5. SERVICES**

- 5.1 Subject to the Client’s obligations under the Operative Agreements being fulfilled and any other rights of the Company herein in the Operative Agreements, the Company shall offer the following Services to the Client:
  - (a) Receive and transmit orders or execute (on an own account basis) orders for the Client in financial instruments.
  - (b) Provide Foreign Currency Services provided they are associated with the provision of the Investment Service of Clause 5.1(a) herein.
  - (c) Grant credits to a Client (as and if applicable), to allow the Client to carry out a transaction in one or more financial instruments, as described in the present clause, provided that the Company is involved in the aforesaid transaction.



- (d) Provide safekeeping and administration of financial instruments for the account of Client (as and if applicable), including custodianship and related services such as cash/collateral management, as described in Clause 7 herein.
  - (e) Provide the Clients access to Investment Research data which may be relevant for Clients' consideration;
- 5.2** Subject to the Client's obligations under the Operative Agreements being fulfilled, the Company may enter into Transactions with the Client in Instruments specified on the Company website.
- 5.3** The Company shall carry out all Transactions with the Client on an execution-only basis. The Company is entitled to execute Transactions notwithstanding that a Transaction may be not suitable for the Client. The Company is under no obligation, unless otherwise agreed in the Operative Agreements, to monitor or advise the Client on the status of any Transaction; to make margin calls; or to close out any Client's Open Positions.
- 5.4** The Client shall not be entitled to ask the Company to provide investment advice or to make any statements of opinion to encourage the Client to make any particular Transaction.
- 5.5** The Company shall not provide physical delivery of the underlying asset of an Instrument in relation to any Transaction. Profit or loss in the Currency of the Trading Account is deposited in/withdrawn from the Trading Account once the Transaction is closed.
- 5.6** The Company shall not provide personal recommendations or advice on the merits of any specific Transactions.
- 5.7** The Company may from time to time and at its discretion provide information and recommendations in newsletters which it may post on its Website or provide to subscribers via its Website or otherwise. Where it does so:
- (a) this information is provided solely to enable the Client to make his/her own investment decisions and does not amount to investment advice;
  - (b) if the document contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, the Client agrees that he shall not pass it on to any such person or category of persons;
  - (c) the Company gives no representation, warranty or guarantee as to the accuracy of completeness of such information or as to the tax consequences of any Transaction;
  - (d) the Client accepts that prior to dispatch, the Company may have acted upon it itself to make use of the information on which it is based. The Company does not make representations as to the time of receipt by the Client and cannot guarantee that he shall receive such information at the same time as other Clients. Any published research reports or recommendations may appear in one or more screen information service.
  - (e) It is provided solely to assist the Client to make the Client's own investment decisions and does not amount to investment advice or unsolicited financial promotions to the Client.
  - (f) It does not necessarily take into consideration the relevant legislative or regulatory framework of the country where the Client is resident and it is the Client's responsibility to ensure compliance therewith.

- 5.8** The Company shall have the right to request and the Client shall be obliged to provide information about the Client's knowledge and experience in the investment field so that it can assess whether the service or product envisaged is appropriate for the Client. If the Client elects not to provide such information to the Company or if the Client provides insufficient information, the Company shall not be able to determine whether the service or product envisaged is appropriate for the Client. The Company shall assume that information about his/her knowledge and experience provided from the Client to the Company is accurate and the Company shall have no responsibility to the Client if such information is incomplete or misleading or changes or becomes inaccurate unless the Client has informed the Company of such changes.
- 5.9** The Company reserves the right, at its discretion, at any time to refuse to provide the Services to the Client and the Client agrees that the Company shall have no obligation to inform the Client of the reasons. The Company further reserves the right to suspend, delay and/or amend the provision of any Services in the event of Abnormal Market Conditions.
- 5.10** All trade Requests are subject to size considerations. If the requested trade size is larger than the Company is able to fill at any particular moment due to market conditions, then the Order may be executed partially or the entire trade or Order may be rejected at the Company's sole discretion.
- 5.11** Market commentary, news, or other information are subject to change and may be withdrawn at any time without notice.
- 5.12** The Client understands, confirms and accepts herein that any and/or all of his/her trading history in MetaTrader 4 and/or MetaTrader 5 Platforms may at any time and without prior written consent and/or notice to the Client, further be archived by the Company to a single summarized line in the respective MetaTrader 4 and/or MetaTrader 5 trading account, where such trading history records exceed a timeframe of one (1) month.
- 5.13** The Company hereby confirms that all Client records and/or trading and non-trading activity, current and/or past and/or archived shall be maintained for at least seven (7) years after the termination of the business relationship with the Client and as per applicable legislative requirements.
- 5.14** The Company reserves the right to suspend, close, or unwind any Transaction which has resulted from any misconfiguration, technical error, or if the Company suspects any fraud, manipulation, arbitrage, or other forms of deceitful or fraudulent activity on the Client's account or multiple accounts with the Company or otherwise related or connected to any and/or all Transactions. Under such circumstances, the Company shall be entitled to withdraw any profits and charge any costs which it deems, in its sole discretion, to have been inappropriately gained and shall not be liable for the cancellation of any Transaction or profits or in the event of any damages or losses which may result from the suspension, closure or unwinding.
- 5.15** In accordance with common reporting standards, the Client agrees to submit to the Company all the necessary information about the Client (name, address, jurisdiction of residence, TIN (tax identification number), date and place of the birth, account number of the Client, and any necessary additional documents and information at the request of the Company) and agrees to the systematic and periodic transmission of bulk taxpayer information by the source country to the country of residence. The Client agrees to transfer his/her personal data to the Company, which is registered as a data controller according to the law, for identification, administrative, and business purposes necessary for the Company to fulfil its legal and contractual obligations under

this and other agreements between the parties, with rights to transfer such personal data to auditors, lawyers, financial consultants, and other service providers and counter-agents contracted by the Company.

## **6. CONFLICTS OF INTEREST AND MATERIAL INTERESTS**

- 6.1** When the Company deals with or on behalf of the Client, the Company, an associate, or some other person connected or affiliated with the Company, may have an interest, relationship, or arrangement that is material in relation to the transaction concerned or that conflicts with the Client's interest. By way of example only, when the Company deals with a transaction for or on behalf of the Client the Company may be:
- a) dealing in the respective Instrument as principal for the Company's own account by selling to or buying the Instrument from the Client; and/or
  - b) matching the Client's transaction with that of another client by acting on such other client's behalf as well as on the Client's behalf; and/or
  - c) dealing in the Instrument which the Company may have recommended to the Client (including holding a long or short position); and/or
  - d) advising and providing other services to associates or other clients of the Company who may have interests in investments or underlying assets which conflict with the Client's interests.
- 6.2** The Client consents to and authorizes the Company to deal with or on behalf of the Client in any manner which the Company considers appropriate, notwithstanding any conflict of interest or the existence of any material interest in a transaction, without prior reference to the Client. The Company's employees are required to comply with a policy of independence and to disregard any such material interest or conflict of interest when advising the Client.

## **7. COMMISSIONS, CHARGES AND OTHER COSTS**

- 7.1** The Client shall be obliged to pay the Company the commissions, charges and other costs set out in the Trading Rules.
- 7.2** The Company may vary commissions, charges and other costs from time to time without prior Written Notice to the Client. The Company may notify Client at its sole discretion about the changes in commissions, charges and other costs.
- 7.3** The Client accepts to be notified if the Company pays commissions/fees to any third party who introduced him or who acts on the Client's behalf.
- 7.4** The Client undertakes to pay all stamp expenses relating to this Agreement and any documentation which may be required for the carrying out of the Transactions.
- 7.5** The Client shall be solely responsible for all filings, tax returns and reports on any Transactions which should be made to any relevant authority, whether governmental or otherwise, and for payment of all taxes (including but not limited to any transfer or value added taxes), arising out of or in connection with any Transaction.
- 7.6** In case the Client performs a withdrawal request without any trading activity from the last deposit made or if any other form of abuse is found the Company reserves the right to:
- a) charge the Client the equivalent amount of any deposit fees incurred, or

- b) 5% of the total withdrawal amount.

The Client shall be notified via email about processed withdrawal request and applied charges.

- 7.7 In case the Client does not have any trading activity on all Clients Trading Accounts for a period equal to 6 (Six) consecutive calendar months or more starting from the last Clients trading activity, the Company on a monthly basis shall charge the Client an amount of 5 USD or other currency equivalent to 5 USD per account, depending on the Client's Trading Account currency.

## **8. CURRENCY AND PAYMENTS**

- 8.1 The Company is entitled, without prior notice to the Client, to make any currency conversions which the Company considers necessary or desirable for the purposes of complying with its obligations or exercising its rights under the Operative Agreements or any Transaction.
- 8.2 All foreign currency exchange risk arising from any Transaction or from the compliance by the Company with its obligations or the exercise by it of its rights under the Operative Agreements will be borne by the Client.
- 8.3 If the Client has an obligation to pay any amount to the Company which exceeds the Equity on his/her Trading Account, the Client shall pay the amount representing the excess within 2 working days of the obligation arising.
- 8.4 The Client acknowledges and agrees (without prejudice to any of the Company's other rights under the Agreement to close out the Client's Open Positions and exercise other default remedies against the Client) that where a sum is due and payable to the Company in accordance with the Agreement and sufficient cleared funds have not yet been credited to the Client's Trading Account, the Company shall be entitled to treat the Customer as having failed to make a payment to the Company and to exercise its rights under the Agreement.

## **9. LIMITATIONS OF LIABILITY AND INDEMNITY**

- 9.1 In the event the Company provides advice, information or recommendations to the Client, the Company shall not be responsible for the profitability of such advice, information or recommendations. The Client acknowledges that the Company shall not, in the absence of its fraud, willful default or gross negligence, be liable for any losses, costs, expenses or damages suffered by the Client arising from any inaccuracy or mistake in any information given to the Client including, without limitation, information relating to any Transactions. Subject to the right of the Company to void or close any Transaction in the specific circumstances set out the Operative Agreements, any Transaction following such inaccuracy or mistake shall nonetheless remain valid and binding in all respects on both the Company and the Client.
- 9.2 The Company shall not be liable for any loss or expense incurred by the Client in connection with, or directly or indirectly arising from:
  - (a) any error or failure in the operation of the Trading Platform or any delay caused by the Client Terminal;
  - (b) Transactions made via the Client Terminal;
  - (c) any failure by the Company to perform any of its obligations under the Operative Agreements as a result of a cause beyond its control; or
  - (d) acts, omissions or negligence of any third party.

- 9.3** The Client shall indemnify the Company and keep the Company indemnified on demand in respect of all liabilities, costs, claims, demands and expenses of any nature whatsoever which the Company suffers or incurs as a direct or indirect result of any failure by the Client to perform any of the Client's obligations under the Operative Agreements.
- 9.4** The Company shall in no circumstances be liable to the Client for any consequential special or indirect losses, loss of profits, loss of opportunity (including in relation to subsequent market movements), costs, expenses or damages the Client may suffer in relation to the Operative Agreements, unless otherwise agreed.

## **10. WRITTEN NOTICE**

- 10.1** Any Written Notice given under this Agreement may be made as follows:
- (a) email;
  - (b) post; or
  - (c) information published on the Company Website.
- 10.2** All contact details provided by the Client, e.g. address, email address or fax number as last notified shall be used as applicable. The Client agrees to accept any notices or messages from the Company at any time.
- 10.3** Any such Written Notice shall be deemed to have been served:
- (a) if sent by email, within one hour after emailing it;
  - (b) if sent by fax, at the completion of transmission during business hours at its destination or, if not within business hours, at the opening of the next period of business hours, but subject to:
    - proof by the sender that the sender holds a printed transmission report confirming dispatch of the transmitted notice; and
  - (c) if sent by post, seven calendar days after posting it;
  - (d) if posted on the Company Website, within one hour after it has been posted.

## **11. AMENDMENT AND TERMINATION**

- 11.1** The Client acknowledges that the Company has the right to unilaterally modify the terms and conditions of the Operative Agreements at any time and at its sole discretion, giving to the Client Written Notice by email and/or by posting the modification on the Company Website and the Client shall have an option to terminate the present by giving notice in writing.
- 11.2** Both parties to the Agreement can terminate by giving such notice in Writing to the other Party.
- 11.3** Upon termination of this Agreement, the Company shall be entitled without prior notice to the Client to cease to grant the Client access to the Trading Platform.
- 11.4** Upon termination of this Agreement, all amounts payable by the Client to the Company shall become immediately due and payable including (but without limitation):
- (a) all outstanding fees, charges and commissions;
  - (b) any dealing expenses incurred by terminating this Agreement and charges incurred for transferring the Client's investments to another investment firm;

and

- (c) any losses and expenses realized in closing out any Transactions or settling or concluding outstanding obligations incurred by the Company on the Client's behalf.

**11.5** The Company, under the terms and conditions of Operative Agreements, reserves the right at its absolute discretion, to disable the Client's account without prior notice in case it places abnormal number of erroneous requests which creates an extra-load to the Company's servers and can cause negative trading experience to the other clients of the respective servers. Erroneous requests may include but not limited to invalid stops or modifications, wrong TP or SL, over limit volume or number of orders, requests with not enough account funds and others.

## **12. PERSONAL DATA AND RECORDING OF TELEPHONE CALLS**

**12.1** The Company may use, store or otherwise process personal information provided by the Client in connection with the provision of the Services.

**12.2** If the Client is an individual, the Company is obliged to supply the Client, on request, with a copy of personal data which it holds about the Client (if any), provided that the Client pays a fee.

**12.3** By entering into this Agreement, the Client expressly consents to the Company transmitting the Client's Information to any third parties which may require same in order to effectively implement the Services or effectively executing any operational function performed to the Company to Client (e.g. refunding the Client his money).

**12.4** Telephone conversations between the Client and the Company may be recorded. All Instructions or Requests received by telephone will be binding as if received in writing. Any recordings shall be and remain the sole property of the Company and will be accepted by the Client as conclusive evidence of the Instructions/Requests or conversations so recorded. The Client agrees that the Company may deliver copies of transcripts of such recordings to any court, regulatory or government authority.

## **13. CONSENT TO DIRECT CONTACT**

**13.1** The Client accepts that the Company, for the purpose of marketing financial services and products, may, from time to time, make direct contact with the Client by telephone or otherwise upon the Client's consent. Once such a consent is obtained the Client agrees to such communications and agrees that the Client shall not consider such communication a breach of any of the Client's rights under any relevant data protection and/or privacy regulations. The Client may opt out of receiving such communications by sending the Company an e-mail at [cs@emxpro.com](mailto:cs@emxpro.com).

**13.2** The Client accepts that the Company, for the purpose of complying with FATCA and CRS, shall have the right to request any information or documentation reasonably required and the Client shall be obliged to provide the same to the Company immediately.

## **14. CONFIDENTIALITY AND WAIVER**

**14.1** The information which the Company holds about the Client is confidential and shall not be used for any purpose other than in connection with the provision of the Services. Information of a confidential nature shall be treated as such provided that such information is not already in the public domain or in the legal possession of the

Company and was not subject to an obligation of confidence or non-disclosure at the moment of its receipt by the Company. Information of a confidential nature shall only be disclosed to any person, in the following circumstances:

- (a) in compliance with the Foreign Accounting Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS);
- (b) where required by law or as requested by regulatory and enforcement authorities, courts and similar bodies which have jurisdiction over the Company;
- (c) to investigate or prevent fraud or other illegal activity;
- (d) to those members of the Company personnel who require information thereof for the performance of their duties under the Operative Agreements or to any third party in connection with the provision of Services to the Client by the Company;
- (e) for purposes ancillary to the provision of the Services or the administration of the Client's Trading Account, including, without limitation, for the purposes of credit or identification enquiries or assessments;
- (f) at the Client's request or with the Client's consent;
- (g) to the Company's consultants, lawyers, auditors, provided that in each case the relevant professional shall be informed about the confidential nature of such information and commit to the confidentiality herein obligations as well;
- (h) In judicial proceeding between the Company and the Client.

## **15. DEFAULT**

**15.1** Each of the following constitutes an "Event of Default":

- (a) the failure of the Client to provide any Initial Margin, or other amount due under the Operative Agreements;
- (b) the failure of the Client to perform any obligation due to the Company;
- (c) the initiation by a third party of proceedings for the Client's bankruptcy (if the Client is an individual) or for the Client's winding-up or for the appointment of an administrator or receiver in respect of the Client or any of the Client's assets (if the Client is a company) or (in both cases) if the Client makes an arrangement or composition with the Client's creditors or any procedure which is similar or analogous to any of the above is commenced in respect of the Client;
- (d) where any representation or warranty made by the Client in Clause 16 herein is or becomes untrue;
- (e) the Client is unable to pay the Client's debts when they fall due;
- (f) the Client (if the Client is an individual) dies or becomes of unsound mind; or
- (g) any other circumstance where the Company reasonably believes that it is necessary or desirable to take any action set out in Clause 15.2 herein.
- (h) the Client attempts and/or performs any of the actions which shall be determined by the Company as fraud, manipulation, swap-arbitrage or other forms of deceitful or fraudulent activity in the Client's account or accounts with the Company;
- (i) The Client has carried out trading:



- which can be characterized as excessive without a legitimate intent, to profit from market movements;
- while relying on price latency or arbitrage opportunities;
- which can be considered as market abuse;
- during Abnormal Market Conditions.

**15.2** If an Event of Default occurs the Company may, at its absolute discretion, at any time and without prior Written Notice, take one or more of the following steps:

- (a) close out all or any of the Client's Open Positions at current Quotes;
- (b) debit the Client's Trading Account(s) for the amounts which are due to the Company;
- (c) close any or all of the Client's Trading Accounts held with the Company;
- (d) refuse to open new Trading Accounts for the Client;
- (e) adjust the Client's trading account balance to remove illicit profit.

## **16. REPRESENTATIONS AND WARRANTIES**

**16.1** The Client represents and warrants to the Company, and agrees that each such representation and warranty is deemed repeated each time the Client gives an Instruction or Request by reference to the circumstances prevailing at such time, that:

- (a) the information provided by the Client to the Company in the Application Form and the Operative Agreements and at any time thereafter is true, accurate and complete in all material respects;
- (b) the Client has read and fully understood the terms of the Operative Agreements including the Risk Disclosure;
- (c) the Client is duly authorized to enter into the Operative Agreements, to give Instructions and requests and to perform its obligations thereunder;
- (d) the Client acts as principal;
- (e) the Client is an individual who has completed a Application Form or, if the Client is a company, the person who has completed Application Form on the Client's behalf is duly authorized to do so;
- (f) all actions performed under the Operative Agreements shall not violate the applicable regulations or any law, ordinance, charter, by-law or rule applicable to the Client or to the jurisdiction in which the Client is resident, or any agreement by which the Client is bound or by which any of the Client's assets are affected;
- (g) the Client consents to the provision of the information of the Operative Agreements by means of the Website and/or any other means which the Company chooses at its sole discretion;
- (h) the Client confirms that he/she has regular access to the internet and consents the Company provides him with information, including, without limitation, information about amendments to the terms and conditions, costs, fees, the Operative Agreements, Policies and information about the nature and risks of investments by posting such information on the Company's Website;
- (i) The Client hereby represents that the purpose of his/her transactions with the Company is one or more of the following:
  - Speculative;



- Hedging;
- Investments;
- Intraday Trading;
- Manage Risk.

In the event where the purpose is other than the above, or at any stage during the course of this Agreement the purpose changes, the Client undertakes the strict obligation to notify the Company.

(j) The Client hereby represents that the nature of business for entering into the present Agreement is one or more of the followings:

- Trading in CFDs;
- Trading in Forex;
- Trading in CFDs in Commodities;
- Trading in CFDs in Precious Metals;
- Trading in CFDs on Indices;

In the event where the nature is other than the above, or at any stage during the course of this Agreement the nature changes, the Client undertakes the strict obligation to notify the Company.

**16.2** In addition to all other rights and remedies available to it, the Company has the right to render any position voidable or to close out any or all positions at the current Quotes at any time, at its absolute discretion, if the Client breaches Clause 16.1 herein.

## 17. FORCE MAJEURE

**17.1** The Company may, in its reasonable opinion, determine that a Force Majeure Event exists, in which case the Company will, in due course, take reasonable steps to inform the Client. A Force Majeure Event includes without limitation:

- any act, event or occurrence (including, without limitation, any strike, riot or civil commotion, terrorism, war, act of God, accident, fire, flood, storm, interruption of power supply, electronic, communication equipment or supplier failure, civil unrest, statutory provisions, lock-outs) which, in the Company's reasonable opinion, prevents the Company from maintaining an orderly market in one or more of the Instruments;
- the suspension, liquidation or closure of any market or the abandonment or failure of any event to which the Company relates its Quotes, or the imposition of limits or special or unusual terms on the trading in any such market or on any such event; or
- Abnormal Market Conditions.

**17.2** If the Company determines in its reasonable opinion that a Force Majeure Event exists (without prejudice to any other rights under the Operative Agreements) the Company may without prior Written Notice and at any time take any of the following steps:

- increase margin requirements; or
- close out any or all Open Positions at such prices as the Company considers in good faith to be appropriate; or

- (c) suspend or freeze or modify the application of any or all terms of the Operative Agreements to the extent that the Force Majeure Event makes it impossible or impractical for the Company to comply with them; or
- (d) take or omit to take all such other actions as the Company deems to be reasonably appropriate in the circumstances with regard to the position of the Company, the Client and other clients.

## **18. MISCELLANEOUS**

- 18.1** The Company has the right to suspend the Client's Trading Account at any time for any good reason (including Abnormal Market Conditions) with or without Written Notice to the Client.
- 18.2** The Company reserves the right to suspend, close or unwind any Transaction which has resulted from any miss-configuration, technical error or if the Company suspects any fraud, manipulation, arbitrage or other forms of deceitful or fraudulent activity in a Client's account or multiple accounts with the Company or otherwise related or connected to the any and/or all Transactions. Under such circumstances the Company shall be entitled to withdraw any profits and charge any costs which it deems, in its sole discretion, to have been inappropriately gained and shall not be liable for the cancellation of any Transaction or profits or in the event of any damages or losses which may result from the suspension, closure or unwinding.
- 18.3** In the event that a situation arises that is not covered under the Operative Agreements, the Company 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.
- 18.4** No single or partial exercise of, or failure or delay in exercising any right, power or remedy (under these terms or at law) by the Company shall constitute a waiver by the Company of, or impair or preclude any exercise or further exercise of, that or any other right, power or remedy arising under the Operative Agreements or at law.
- 18.5** Any liability of the Client to the Company under the Operative Agreements may in whole or in part be released, compounded, compromised or postponed by the Company in its absolute discretion without affecting any rights in respect of that or any liability not so waived, released, compounded, compromised or postponed. A waiver by the Company of a breach of any of the terms of the Operative Agreements or of a default under these terms does not constitute a waiver of any other breach or default and shall not affect the other terms. A waiver by the Company of a breach of any of the terms of the Operative Agreements or a default under these terms will not prevent the Company from subsequently requiring compliance with the waived obligation.
- 18.6** The rights and remedies provided to the Company under the Operative Agreements are cumulative and are not exclusive of any rights or remedies provided by law.
- 18.7** The Company may assign the benefit and burden of the Operative Agreements to a third party in whole or in part, provided that such assignee agrees to abide by the terms of the Operative Agreements. Such assignment shall come into effect ten Business Days following the day the Client is deemed to have received notice of the assignment in accordance with the agreement.
- 18.8** If any term of the Operative Agreements (or any part of any term) shall be held by a court of competent jurisdiction to be unenforceable for any reason then such term shall, to that extent, be deemed severable and not form part of this Agreement, but the enforceability of the remainder of Operative Agreements shall not be affected.

- 18.9** The Client may not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer the Client's rights or obligations under the Operative Agreements without prior written consent of the Company and any purported assignment, charge or transfer in violation of this term shall be void.
- 18.10** Where the Client comprises two or more persons, the liabilities and obligations under any agreement with the Company shall be joint and several. Any warning or other notice given to one of the persons which form the Client shall be deemed to have been given to all the persons who form the Client. Any Order given by one of the persons who form the Client shall be deemed to have been given by all the persons who form the Client.
- 18.11** In the event of the death or mental incapacity of one of the persons which form the Client, all funds held by the Company or its Nominee, will be for the benefit and at the order of the survivor Account Holder(s) and all obligations and liabilities owed to the Company will be owed by such survivor(s).
- 18.12** The Client accepts and understands that the Company's official language is the English language and the Client should always read and refer to the main Website for all information and disclosures about the Company and its activities. Translation or information provided in languages other than English in the Company's local websites is for informational purposes only and do not bind the Company or have any legal effect whatsoever, the Company having no responsibility or liability regarding the correctness of the information therein.
- 18.13** The Company, under the terms and conditions of this Agreement and in accordance with its internal policies and procedures, reserves the right in its absolute discretion, to create a dormant accounts policy and/or to impose on any dormant and/or inactive account a handling fee of \$5 or equivalent per month and/or close the trading account upon and/or after the period of six (6) consecutive months of inactivity in the following cases:
- a) Where a Client has not transacted with the Company for a period of six (6) consecutive months and the Company will deem the trading account to be dormant and/or inactivate;
  - b) Where a Client's dormant and/or inactivate account(s) has a positive cash balance, the company reserves the right at its absolute discretion to apply and/or impose a handling fee of \$5 or equivalent per month and as this may be amended from time to time by the Company;
  - c) Where a Client makes a genuine attempt to resolve their account balances, the Company reserves the right to waive any and/or all payments and/or fees at its own and absolute discretion;
  - d) Where a Client's dormant account and/or inactivate account(s) has a zero cash balance the handling fee of \$5 or equivalent per month shall not be imposed the Company, however, the Company will reserve the right to close the account(s) upon and/or after the period of six (6) consecutive months of inactivity.
- 18.14** In the event that the Company determines, in its sole discretion, that an Order(s) submitted by the Client is clearly erroneous, the Company reserves the right to disable the relevant account of the Client to Close Only Mode. A 'clearly erroneous order' is defined as, but shall not be limited to, an order at a price substantially different from, or inconsistent with, the prevailing market for any given tradeable financial instrument on a trading day or, as applicable, outside the traded range for any given tradeable financial instrument for a particular moment in time that may be in question.

- (i) If the Company disables the Client's account to Close Only Mode, it means that the Client shall not be permitted to open any new Transactions or increase exposure under existing Transactions, but the Client shall be permitted to close, part close or reduce exposure under the existing Transactions.
- (ii) The right of the Company to disable the account is subject to prior notification of the Client. The Company shall give the Client either oral or a written (includes electronic) notice of its intention to disable the account. The Client shall have three (3) working days from the date of notice to withhold all clearly erroneous Orders. In the event that the Client has failed to do so, the Company shall disable the account as stated above until any of the erroneous Orders is effective.
- (iii) The Company shall not be liable for losses of the Client arising from or in connection with submission of the clearly erroneous Order(s) and followed disability. The Client agrees to indemnify and hold the Company harmless from all damages or liability as a result of the foregoing. Any dispute arising in this regard shall be resolved by the Company in its sole and absolute discretion.

**18.15** All copyrights, trademarks, trade secrets, and other intellectual property rights and proprietary rights to the Website in its totality, its contents, and any related materials ("Company's IP") shall remain at all times the sole and exclusive property of the Company and the Client shall have no right or interest in the Company's IP except for the right to access and use the Company's IP as specified in the Agreement. The Client acknowledges that the Company's IP is confidential and has been developed by means of substantial investments of skill, time, effort, and money. The Client shall protect the confidentiality of the Company's IP and not allow website access to any third party. The Client shall not publish, distribute, or otherwise make the Company liable to third parties, any information derived from or relating to the Company IP. The Client shall not copy, modify, decompile, reverse engineer, or make derivative works of the Company's IP.

## **19. GOVERNING LAW AND JURISDICTION**

**19.1** This Agreement shall be governed by and construed in accordance with the laws of St. Vincent and the Grenadines.

**19.2** In the event of a dispute arising out of or relating to the Agreement, the Client irrevocably agrees that the parties to the Agreement shall first seek settlement of that dispute with the Company under the dispute resolution mechanism set out in the Operative Agreements.

If the dispute is not satisfactorily settled, the parties to the Agreement shall seek the settlement thereof by mediation in accordance with the Dispute Resolution procedure.

**19.3** With respect to any proceedings, the Client irrevocably:

- (a) agrees that the courts of St. Vincent and the Grenadines shall have exclusive jurisdiction to settle any disputes in connection with the Agreement; and
- (b) submits to the jurisdiction of the courts of the St. Vincent and the Grenadines; and
- (c) waives his/her right to any objection which the Client may have at any time to the filing of any legal cases in any such courts; and
- (d) agrees not to claim that such proceedings have been brought in an inconvenient forum or that such court does not have jurisdiction over the Client.

- 19.4** The Client irrevocably waives to the fullest extent permitted by law, with respect to the Client and the Client's revenues and assets (irrespective of their use or intended use), all immunity (including but not limited to grounds for diplomatic immunity or other similar grounds) from (a) suit or arbitral proceedings, (b) the jurisdiction of any courts, (c) relief by way of injunction, order for specific performance, or for recovery of property, (d) attachment of their assets (whether obtained before or after judgment) and (e) the execution or enforcement of any judgment to which the Client or the Client's revenues or assets might otherwise be the subject matter in any proceedings in the courts of any jurisdiction and irrevocably agrees to the extent permitted by any applicable law that the Client will not claim any such immunity in any proceedings. The Client consents generally in respect of any proceedings to the provision of any relief or the initiation of any process in connection with such proceedings, including, without limitation, the making, enforcement, or execution against any property whatsoever of any order or judgment which may be made or given in such proceedings.
- 19.5** In the case of a dispute which cannot be resolved following the Dispute Resolution procedure provided in Clause 21 below, the parties submit to the jurisdictions of the Courts of St. Vincent and the Grenadines.

## **20. USE OF THE TRADING PLATFORM AND SAFETY**

- 20.1** The Client shall not proceed in any action that could probably allow the irregular or unauthorized access or use of the Trading Platform. The Client accepts and understands the Company reserves the right, at its discretion, to terminate or limit his access to the Trading Platform if it suspects that he/she allowed such use.
- 20.2** When using the Trading Platform, the Client shall not, whether by act or omission, do anything that shall or may violate the integrity of the Platform or cause it to malfunction.
- 20.3** The Client is permitted to store, display, analyze, modify, reformat and print the information made available through the Trading Platform. The Client is not permitted to publish, transmit, or otherwise reproduce that information, in whole or in part, in any format to any third party without the Company's consent. The Client may not alter, obscure or remove any copyright, trademark or any other notices that are provided on the Trading Platform.
- 20.4** The Client agrees to keep secret and not to disclose any Access Data to any person other than an individual who has been expressly authorized to act on his behalf.
- 20.5** The Client agrees to notify the Company immediately if he knows or suspect that his Access Data has or may have been disclosed to any unauthorized person.
- 20.6** The Client agrees to co-operate with any investigation the Company may conduct into any misuse or suspected misuse of his Access Data.
- 20.7** The Client accepts that he shall be liable for all orders given through and under his/her Access Data and any such orders received by the Company shall be considered as sent by him/her. In cases where a third person is assigned as an authorized representative to act on his/her behalf the Client shall be responsible for all orders given through and under his representative's Access Data.
- 20.8** The Client acknowledges that the Company bears no responsibility if unauthorized third persons have access to information, including electronic addresses, electronic communication and personal data, when the above are transmitted, using the internet or other network communication facilities, post, telephone, or any other electronic means.

**20.9** In the event where the Company suspects any fraud, manipulation, or other forms of deceitful or fraudulent activity in a Client's account or accounts with the Company or otherwise related or connected to the any and/or all Transactions, then the Company reserves the right to decide, at its sole discretion, to close all open positions in the Client's Trading Account and deduct or add a penalty (equivalent to any profit amount) for all transactions currently and/or previously made in the account and/or annul all profits made as a result and/or terminate all agreements with the Client.

## **21. THE PROCEDURE FOR DISPUTE RESOLUTION**

**21.1** If any conflict situation arises when the Client reasonably believes that the Company as a result of any action or failure to act has breached one or more of the terms of the Operative Agreements, the Client has the right to lodge a complaint with the Company as soon as reasonably practicable after the occurrence of the event.

**21.2** To file any complaint, the Client shall follow the procedure outlined in the Complaints Handling Policy posted on the Website.

**21.3** The Company has the right to dismiss a complaint in case it does not comply with the requirements set out above.

**21.4** Disputes not mentioned in the Operative Agreements and/or Complaint Handling Policy are resolved in accordance with the common market practice and at the sole discretion of the Company.

**21.5** The Company shall not be liable to the Client if for any reason the Client has received less profit than the Client had hoped for or has incurred a loss as a result of uncompleted action which the Client had intended to complete.

**21.6** The Company shall not be liable to the Client in regard to any indirect, consequential or non-financial damage (emotional distress, etc.).

## **22. REFUSAL OF COMPLAINT**

**22.1** The Company shall have the absolute right to refuse a complaint lodged by a Client.

**22.2** If the Client has been notified in advance by Trading Platform internal mail or some other way of routine construction on the Server, complaints made in regard to any unexecuted Instructions which are given during such a construction period, are not accepted. The fact that the Client has not received a notice shall not constitute a reason to lodge a complaint.

**22.3** Complaints in regard to a Transaction or Order execution based on the difference in the prices for the Contract for Difference in the Trading Platform and for the underlying asset of the Contract for Difference are not accepted.

**22.4** No Client complaints shall be accepted in regard to the financial results of the deals made using temporary excess Free Margin on the Trading Account gained as a result of a profitable position (cancelled by the Company afterwards) opened at an Error Quote (Spike) or at a Quote received as a result of a Manifest Error.

**22.5** In regard to all Disputes any references by the Client to the Quotes of other companies or information systems shall not be taken into account.

**22.6** Once the Dispute has been resolved the Company has the right to trigger the Stop Loss or Take Profit in the chronological order in which they would have been triggered if the Stop Out had not been executed.

## **23. RISK ACKNOWLEDGEMENT AND DISCLOSURE**

**23.1** The Company discloses and the Client acknowledges that he/she runs a great risk of incurring losses and damages as a result of the purchase and/or sale of any financial instrument and accepts that he/she is willing to undertake this risk.