

# PRIME WHALE LLC T&C's

## 1. INTRODUCTION

1.1. **Prime Whale LLC** is incorporated in St. Vincent & the Grenadines as a International Business Company with the registration number 606 LLC 2020. The registered Office of the Company is at First Floor, First St Vincent, Bank Ltd Building, James Street, Kingstown, St. Vincent and the Grenadines. The objects of the company are all subject matters not forbidden by the Limited Liability Companies Act, Chapter 151 of the Revised Laws of Saint Vincent and the Grenadines, 2009, in particular but not exclusively all commercial, financial lending, borrowing, trading, service activities, the participation in other enterprises. To provide brokerage, training and managed account services in foreign exchange /currencies, commodities, indexes, CFDs and leverage financial instruments

1.2. This Agreement, also referred to as the "Client Agreement" contains the terms of business relevant to your trading activities with **Prime Whale LLC** and is an agreement between you (referred to as "you" or the "Client") and **Prime Whale LLC**(the "Company", "us", "we", "our", "ours" or "ourselves" as appropriate) whose Principal and Registered Office is First Floor, First St Vincent, Bank Ltd Building, James Street, Kingstown, St. Vincent and the Grenadines.

1.3. These Terms of Business together with the following documents as well as any other Appendices added thereto (all together the "Agreement") set out the terms upon which we will offer our Services to you, the rights and obligations of both Parties and govern the relationship and trading activity between us and you. By completing and signing the Application Form or by ticking the relevant "I agree" box online you acknowledge that you have read, understood and agree to be legally bound by the Agreement;

- a) The Risk Disclose and Warning Notice
- b) Our Execution Policy
- c) Your completed Application Form
- d) any other specific terms and conditions relating to the Company, which will be displayed on the relevant website.
- e) Any relevant software licence; and
- f) Any additional terms and conditions issued by us, including those relating to Trading Accounts and/or other terms issued in respect of transactions contemplated by these Terms of Business.

1.4. Documentation between us and you is in English and our Website is in English. Where the Agreement or any supplementary documentation, or our Website has been translated into a language other than English, you expressly agree that the English language version shall prevail in the event of any conflict. For your own benefit and protection, the Agreement should be read carefully and understood by you.

1.5. Defined terms used in this Agreement are set out in clause 33 ("Definitions and Interpretations").

# PRIME WHALE LLC T&C's

1.6. This Agreement may be revised from time to time in Accordance with clause 26 (Amendment and Termination), upon notice to you in writing, which may include displaying such revisions on our website.

1.7. We reserve the right to modify, suspend or discontinue (temporarily or permanently) all or any of our Services, though if we do so we will endeavor to give you reasonable notice where it is practical to do so. This may include instruments, margin requirements and price spreads. You agree that we will not be liable to you or to any third party for any modification, suspension or discontinuance of our Services.

1.8. The copyrights, trademarks, database and other property or rights in any information distributed to or received by the Client (including, but not limited to, our prices), together with the content of our website(s), brochures and other material connected with the company's dealing service and in any database that contains or constitutes such information, will remain the sole and exclusive property of the Company or any third party identified as the owner of such rights.

1.9. The Agreement will commence on the date on which you receive notice from the Company that your Trading Account has been activated and will continue unless or until terminated by either party in accordance with clause 26.

1.10. This Agreement is an initial service agreement which relates to a series of successive or separate operations including, without limitation, Transactions. You have no right to cancel the Agreement on the basis that it is a "distance contract".

## **2. Definition**

2.1. 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.

2.2. Unless otherwise stated, a reference to a clause, party or a schedule is a reference to respectively a clause in or a party or schedule to this Agreement.

2.3. Clause headings are for ease of reference only and do not affect the interpretation of this Agreement.

## **3. Important Information**

3.1. The Company enters into all trading transactions with you on a principal to principal basis (meaning that the Company will not be entering into trades as your agent) unless otherwise agreed with you. You acknowledge that you will also enter into this Agreement, including all trades contemplated by this Agreement, as principal and not as agent for any other person and that the Company will treat you as our Client for the purposes thereof.

3.2. The trading Services provided by or on behalf of the Company are for margined foreign exchange transactions ("FX") and Contracts for Difference ("CFDs") on an execution-only basis.

## PRIME WHALE LLC T&C's

3.3. Accordingly, you hereby acknowledge that any information provided by us should not be taken to constitute advice to you on the merits or suitability of you entering into any particular trade. Further, the Company does not advise on the merits or suitability of particular transactions or their tax consequences and accordingly. If you are unsure about whether trading with the Company is suitable for you, please seek independent advice prior to entering into this Agreement or any Transaction.

3.4. Make sure you are fully aware of the nature of the business and understand the risks involved. In particular, please take note of how to open or close a position, how to place an order and how orders function, how to calculate your profit and loss, how to calculate initial Margin requirements, and the circumstances under which we can close your open positions.

3.5. You are accountable for everything you do or omit to do. You must check and be aware of your open positions at all times.

3.6. The Company has the right to close your open positions in certain situations. If you wish to keep positions open, you may have to make payments to the Company at short notice.

3.7. FX and CFD trading involve using specific terminology to that marketplace and/or our business. You should only trade if you fully understand the terminology used.

3.8. All transactions made under this Agreement are legally enforceable; this means that we can take legal action to recover money that you owe to the Company.

3.9. You are responsible for your own tax situation; you must obtain your own tax advice and be aware that your dealings may be subject to tax (for example due to your personal circumstances , current or new legislation or practice or because of the way you deal or the jurisdiction in which you are subject to taxation). Tax treatment depends on the individual circumstances of each Client and may be subject to change in future. You should seek your own advice regarding taxation matters.

3.10. It is not the Company's responsibility to advise you of any changes in laws or market practices.

3.11. When trading in FX and CFD products, you are placing trades on the movement of the price in a bespoke product that may or may not reflect the price in the underlying security, asset or index. At no stage are you acquiring the underlying security or asset.

### **4. Risk Disclosure and Warning Notice**

4.1. Trading and investing in these products, particularly those where there is Leverage, are speculative and carry a high degree of risk to your capital. Investments such as these are not appropriate for all investors and you should ensure you understand all the risks and seek independent advice prior to entering into a Transaction.

4.2. The Company is under no obligation to assess the suitability of these products in relation to your particular circumstances.

4.3. You should be aware that trading in leveraged products such as FX and CFDs are high risk and losses can exceed your investment as well as any funds held on deposit as margin.

## PRIME WHALE LLC T&C's

4.4. The Company provides an execution-only service and does not provide investment advice, nor does it in any way guarantee or forecast any potential profit or freedom from loss.

4.5. You are required to read and understand the Risk Warning Notice located at the bottom of our Website at <http://www.prime-whale.com/> and which also forms part of the Agreement. It lists the key risks involved with trading with us.

### 5. Execution Policy

5.1. All orders that you enter into on our Trading Platform will be generally executed in accordance with the terms of our execution policy (the "Execution Policy" as may be amended from time to time). The Execution Policy is available on our Website at <http://www.prime-whale.com/>.

5.2. Your consent and acceptance of the Execution Policy is assumed if you place a trade with us. In particular, by placing a trade with us, you will be deemed to be providing your consent to your order being executed outside of a regulated market or Multilateral Trading Facility (MTF).

### 6. Conflicts of Interest

6.1. The Company, or an associate, Affiliate or some other person connected with us may have an interest, relationship or arrangement that is material in relation to any Transaction that conflicts with your interests.

6.2. The Company maintains a policy on managing and avoiding conflicts of interest (the "Conflicts of Interest Policy"), is available on our Website at <http://www.prime-whale.com/> (see clause 25 (Notices and Communications) for details of how to communicate with us).

### 7. Privacy Policy

7.1. The Company maintains a policy regarding how it uses information it collects about its Clients, how they can instruct us if they prefer to limit the use of that information and procedures that we have in place to safeguard Client privacy (the "Privacy Policy"). A copy of the Privacy Policy is available on our Website <http://www.prime-whale.com/>.

### 8. Client Classification

8.1. In accordance with most regulatory obligations, by which we conduct ourselves, we are required to categorise you into one of three classifications: Retail Client, Professional Client or Eligible Counterparty, depending upon the information provided by you. The purpose of assigning a classification to each Client is to provide you with the appropriate level of regulatory protection based on Client classification.

8.2. Unless expressly agreed and confirmed with you, we will classify all Clients as Retail Clients. You have the right to request (or we may request you) to be reclassified as a Professional Client or Eligible Counterparty. This must be agreed in writing and you must acknowledge (by signing a loss of protection notice) that you will not be entitled to certain protections afforded to Retail Clients.

## PRIME WHALE LLC T&C's

8.3. When assessing your category and thereafter when dealing with you, we will rely upon the truth, accuracy and completeness of the information provided by you. You expressly consent to us using and relying upon all such information.

8.4. If there is a change in your personal circumstances which could reasonably be expected to affect our assessment of you, you must immediately notify us of the change in writing.

8.5. The Company may review your classification from time to time (subject to complying with regulatory requirements, by which we conduct ourselves) and may re-classify you if necessary. If a reclassification occurs, we will notify you and give you at least 14 days Written.

### **9. Client Money**

9.1. Where you are a Retail Client, Relevant Amounts held on the Trading Account ("Segregated Funds") will be segregated into pooled client accounts within our Bank Accounts.

9.2. We shall not be obliged to pay interest to you on any funds which the Company holds. For the avoidance of doubt, no interest is paid on Client Money held with us and under Client Money Rules you will therefore relinquish any rights to interest when you enter into this Agreement.

9.3. We will promptly place any Segregated Funds held on your behalf and not transferred to or held for the Company, into a Segregated Account.

9.4. You agree that, if there has been no movement on your Balance for a period of at least six years (notwithstanding any payments or receipts of charges, interest or similar items) and we are unable to locate or contact you despite having taken reasonable steps to do so (including writing to you at your last known address), we may release any client money cash balances from the Segregated Account. However, if at any point after this time you request the return of your cash balance to you, we will do so if your cash balance is in credit.

9.5. We will carry out reconciliations of records and Segregated Funds with the records and accounts of the money we hold in Segregated Accounts on a daily basis, and any required transfer to or from the Segregated Account will take place by the close of business on the day that the reconciliation is performed. We reserve the right to carry out such reconciliations and transfers more frequently, should we reasonably consider that this is necessary to protect the Company's or your interests.

9.6. Where you are a Professional Client:

a) and agreed to the following in writing, you will transfer full title to and ownership of your Equity to the Company to be used as collateral for the purpose of securing or otherwise covering our present or future, actual or contingent or prospective obligations. Such Equity will not constitute and will not at any time be deemed to constitute Client Money. We can deal with this Equity and you will no longer have a proprietary claim over this Equity. When we no longer require you to provide collateral, the Equity will be made available to be transferred back to you at your request. In the event of our insolvency, you, being a Professional Client, will rank as a general creditor of the Company.

b) you agree that, in the event that there has been no movement on your Balance for a period of at least six years (notwithstanding any payments or receipts of charges, interest or similar items), that the Balance in question is GBP100 (or equivalent in the Trading Account Currency) or less and

## PRIME WHALE LLC T&C's

we are unable to locate or contact you despite having taken reasonable steps to do so, we may release your cash balances from the Segregated Account. However, if at any point after this time you request the return of your cash balance to you, we will do so if your cash balance is in credit.

9.7. By accepting the terms of this Agreement, you agree that we may, in accordance with the Rules, transfer your Balance to a third party as part of transferring all or part of its business to that third party where your Balance relates to that business.

9.8. Client funds held by us will no longer be deemed Client Money when that money becomes due and payable to us, whether on the closing of a Transaction that results in a loss or otherwise.

9.9. If you deposit funds in a currency other than your Base Currency, we shall pass on any charges that we have incurred in that conversion. Where we convert currency, we shall use a rate determined by us and agreed with you.

9.10. We may segregate such amount in a different currency to that of receipt. If we do so, we will ensure that the amount held is adjusted each day to an amount at least equal to the original currency amount translated at the previous day's closing spot exchange rate.

### **10. Capacity**

10.1. In relation to any Transaction, the Company acts as principal to principal (and not as agent) on your behalf. This means that unless otherwise agreed, we will treat you as a customer for all purposes and you shall be directly and fully responsible for performing the obligations under each Transaction made by or for you.

10.2. If you act in relation to or on behalf of another party, or as agent for another party, whether or not you identify that party, we shall not accept that party as a client and shall have no obligation to that party unless otherwise specifically agreed by us in writing. You will remain liable for the obligations of any Transaction or dealings it enters into on behalf of any other party.

10.3. You may provide us with Written Notice that you authorise a third party to act on your behalf as agent or otherwise and such party may give instructions and requests to us concerning any Transaction, or proposed Transaction, or any other matter on your behalf.

10.4. You authorise us to rely and act on any request, instruction or other communication received by us which purports to have been given by you or on behalf of you without further enquiry on the part of the Company as to the authenticity, genuineness, authority or identity of the person giving or purporting to give such request, instruction or other communication. You will be responsible for and will be bound by all obligations entered into or assumed by us on behalf of you in consequence of or in connection with such requests, instructions or other communications.

10.5. Further to clause 10.3, if you have expressly authorised a third party to act on your behalf, references to 'Client' or 'you' throughout the Agreement shall also include references to your authorised third-party delegate.

### **11. Services**

## PRIME WHALE LLC T&C's

11.1. Subject to you fulfilling your obligations under the Agreement, we may enter into Transactions with you in the Instruments specified in the Product and Contract Specifications.

11.2. We shall carry out all Transactions with you on an execution-only basis. You should make your own enquiries and seek independent advice to ensure you understand the risks involved prior to entering into any Transaction. We are under no obligation, unless otherwise agreed in the Agreement, to monitor or advise you on the status of any Transaction, to make margin calls, or to close out any Client Open Positions.

11.3. We will not provide investment advice, personal recommendations or make any statements of opinion which may encourage you to enter into any particular Transaction.

11.4. We shall not provide physical delivery in relation to any Transaction. Any profit or, where relevant, loss is deposited in or, where relevant, withdrawn from the Trading Account once the Transaction is closed.

11.5. We may from time to time and at our discretion provide general information which we may post on the Website or provide to subscribers via the Website, email newsletters, or otherwise. We give no representation, warranty or guarantee as to the accuracy, correctness or completeness, suitability, effect or consequences upon you of such information. Such information is provided solely to provide you with general market or other information which may be of interest when making their own investment decisions and under no circumstances is to be considered investment advice or unsolicited financial promotions to you.

11.6. We reserve the right at our discretion at any time to refuse to provide the Services to you and you acknowledge the Company has no obligation to inform you of the reasons.

### **12. Orders and Order Execution**

12.1. We will accept instructions or Orders (as defined in clause 33 (Definitions)) from you to open or close a trade when our quote reaches or trades through your elected level. Please refer to the Website, the Trading Platform, or our client service team to identify the nature of our orders and those markets (if any) where orders are not accepted.

12.2. The following rules apply to orders and their execution:

- Orders should be placed over the Trading Platform under normal circumstances.
- We will generally not accept any orders from any other medium;
- we can refuse to place an order;
- all Orders are based on our quote and are deemed to be Good till Cancelled (GTC).
- we shall only accept, monitor and execute orders during our usual trading hours for the relevant market (details of which are set out on the Website);
- Orders will be executed at the first reasonable price available to us, on the basis of our quote (for example if the applicable market opens or trades through the level of your order, this may create a situation where the order will be subject to Gapping).
- all orders must be at price levels and on other terms acceptable to us (acting reasonably);

## PRIME WHALE LLC T&C's

- the price level at which orders are executed is NOT guaranteed;
- it is your sole responsibility for cancelling orders that you have placed and unless you do so, orders may be executed which could cause liability for you;
- Orders exceeding a maximum lot size will not be executed by the Company;
- unless we agree otherwise, orders will not be attached to a specific trade or another order but are instructions to open or close a trade regardless of whether the trade has the effect of opening a new trade or closing an existing trade;
- if a price has traded through your specified order level while outside of our normal trading hours but has reverted back so your order level has not been reached, your Order will remain active;
- we are not obliged to contact you once an order has been filled, except through the contract notes, confirmations and statements referred to in clause 25 (Notices and Communications).
- all terms that relate to opening and closing a trade have to be complied with both on placing an order (as if you were placing a trade) and on its execution and we can refuse to execute or accept an order if the relevant Terms are not complied with;
- an Order will not be filled if you have insufficient funds on your Account to execute the full Order.
- Trading schedule is subject to change without prior notice. Liquidity Providers may change respective trading schedule depending on market conditions, as necessary.
- Any updates on or additions or revisions to the types of orders that we accept may be
- communicated to you through Trading Terms on website, the Trading Platform or newsletters or bulletins.

12.3. Please be aware of the nature of a Stop Loss Order. For the purposes of this clause, a Stop Loss means a Pending Order by the Client to close an Open Position at a price less profitable than the price at the moment of placing the order. The acceptance of a Stop Loss order is not an absolute commitment by us to execute the order at your desired level. If your desired level is not available once the order has been triggered, the Company will execute the order based upon:

- a) the next available price and,
- b) the position of your order in the execution queue.

12.4. When providing a Service to you in relation to Transactions we will take reasonable steps to achieve the best overall trading result. This means that we will aim to provide "best execution" subject to and taking into account the nature of client orders, the prices available to the Company in the market, the nature of the market in question and a reasonable assessment of the sometimes overlapping and conflicting execution factors.

12.5. It is your responsibility to ensure there is sufficient Equity in your Account for any order you have placed. We will not be liable for any direct or indirect losses you may incur where an order has not been executed for any reason, including situations where you have insufficient funds in your Account. We reserve the right to refuse any order that would put your Equity into a negative position.



## PRIME WHALE LLC T&C's

12.6. Negative balance protection is available on per account basis. If your balance falls below zero, we will bring it back to zero as soon as possible at no cost to you. Please note that negative balance protection does not apply to professional traders who can still lose more than the balance on their account.

### **13. Conflicts of interest**

13.1. The Company, or an associate, Affiliate or some other person connected with the Company may have an interest, relationship or arrangement that is material in relation to any Transaction that conflicts with your interest. This may include, but is not limited to, the Company:

- a) dealing in the Instrument concerned as principal for the Company's account by selling to or buying the Instrument from you; or
- b) matching your Transaction with that of another customer by acting on such other customer's behalf as well as on your behalf.

13.2. You consent to and authorise us to deal with or for you in any manner which we consider appropriate, notwithstanding any conflict of interest or the existence of any material interest in a Transaction without prior reference to you.

13.3. The Company maintains a policy on managing and avoiding conflicts of interest (the "Conflicts of Interest Policy"), is available on our Website at <http://www.prime-whale.com/> (see clause 25 (Notices and Communications) for details of how to communicate with us).

### **14. Commissions, charges and other costs**

14.1. You shall pay us all commissions and other costs as set out in the Trading Conditions on the Website. Subject to clause 14.3, the Company will display all current commissions, charges and other costs on the Website and or Platform.

14.2. The provision of the Services may be subject, but not limited to, the payment of fees and commissions such as brokerage, swaps and rollovers, additional positions on Swap Free accounts and other fees or commission payments.

14.3. Commissions may be charged either in the form of a percentage of the overall value of the trade or as a fixed amount.

14.4. When holding some types of CFD products overnight the Client may be required to pay or receive financing fees "Swap/Rollover". Spreads and Swap rates can be found in the Contract Specifications area on our Website and/or Platform. Any additional Company fees where relevant (such as account maintenance fees or inactivity fees) will also appear on our Website and/or Platform.

14.5. We may vary commissions, charges, spreads and other costs from time to time and where required shall provide you with sufficient notice in accordance. All changes in commissions, charges and other costs are displayed on the company Webpage, except the changes in rollover/interest policy which are displayed on our Website and/or Platform.

## PRIME WHALE LLC T&C's

14.6. Subject to complying with the Rules and any other applicable regulations of any regulatory authority or investment exchange or other exchange, the Company will not be under any obligation to disclose to, or account to you for any profit, benefit, commission or other remuneration made or received by the Company by reason of any Transaction or investment, unless otherwise agreed in the Agreement.

14.7. You acknowledge and agree that the Company may, where applicable, make payments to third parties that help initiate, conclude or maintain a business relationship between the Company (or its Affiliates) and clients to enhance the service offered to you. These payments may include rebates, commission, widened spreads performance fees and/or management fees and profit sharing. More detailed information, specific to you circumstances, is available upon request from [support@prime-whale.com](mailto:support@prime-whale.com).

14.8. You acknowledge that all amounts due to the Company under the Agreement shall be deducted from the Balance held by the Company for you.

14.9. You must pay us all costs and expenses that we reasonably pay or incur:

- a) because you fail to pay funds due to us on time; or
- b) in enforcing our rights against you.

14.10. If you fail to pay on time any amount you owe to us, we reserve the right to charge you interest. The rate of interest charged will be 5% above the base rate of Blackthorn from time to time. The interest will be charged until you have paid the amount in full. You will be charged such interest before and after any judgment.

### **15. Currency**

15.1. We are entitled, without prior notice to you, to make any currency conversions which we consider necessary or desirable for the purposes of complying with our obligations or exercising our rights under the Agreement or any Transaction. Any such conversion shall be affected by us in such manner and at such rates as we may in our discretion determine, having regard to the prevailing rates for freely convertible currencies at that time.

15.2. All foreign currency exchange risk arising from any Transaction or from any compliance by us with our obligations or the exercise by us of our rights under the Agreement will be borne by you.

15.3. You should pay reference to clauses 9.10 and 9.11 (Client Money).

### **16. Providing Quotes and Prohibitive Actions**

16.1. Where relevant, we may provide quotes via the Trading Platform. All quotes are indicative only, are current as at the time provided or displayed, and are provided for information purposes only but do not constitute an offer by the Company to buy or sell any product or Instrument at that price. All quotes are subject to volatility and market fluctuations.

16.2. We may, in our absolute discretion, but are under no obligation to, execute your requests and instructions outside of the normal trading hours specified for that particular product or instrument.

## PRIME WHALE LLC T&C's

16.3. Where relevant, we will specify the Average Spread for each Instrument on the Website. We are entitled to change Spreads without prior notice to you, if for example, where there is excessive volatility at venues from where we derive our quotes.

16.4. While we take into account the underlying asset price, you acknowledge that we are under no obligation to ensure that the Currency Pair and CFD quotes you are provided with are within any specific percentage of the underlying asset price. When the Underlying Market or exchange is closed, quotes provided by the Company will reflect what the Company believes to be the current Bid and Ask Price of the relevant underlying asset price at that time. You acknowledge that quotes may be set by the Company in its absolute discretion.

16.5. There may be periods where the markets you trade on experience excessive volatility and can delay order processing and trade execution while prices are cross-referenced to ensure valid execution. We reserve the right to cancel any trade that has previously been confirmed if it does not reflect the actual market price when executed or if the price has been delayed due to a latency issue.

16.6. We specifically prohibit you to take any of the following actions in relation to our systems and/or Trading Platform and/or Client Account:

- a) Use, without our consent, any software which applies artificial intelligence analysis to our systems and/or Platform(s) and/or Client Account;
- b) Intercept, monitor, damage or modify any communication which is not intended for you;
- c) Use any type of spider, virus, worm, Trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the Platform(s) or the communication system or any system of the Company;
- d) Send any unsolicited commercial communication not permitted under applicable law or Applicable Regulations;
- e) Do anything that will or may violate the integrity of the Company computer system or Platform(s) or cause such system(s) to malfunction or stop their operation;
- f) Unlawfully access or attempt to gain access, reverse engineer or otherwise circumvent any security measures that the Company has applied to the Platform(s);
- g) any action that could potentially allow the irregular or unauthorised access or use of the Platform(s);
- h) send massive requests on the server which may cause delays in the execution time;
- i) Abusive Trading;

16.7. Should the Company reasonably suspect that the Client has breached the terms of clause 16.6, we reserve the right to amend, delete or cancel any applicable Order or position on your Trading Account.

16.8. Customers are urged to trade ethically and not to try to take advantage of our competitive services. Customers will solely be held liable and will indemnify us from any damages or losses that may result from cancelling such trades.

# PRIME WHALE LLC T&C's

## 17. Client Order Processing, Requests and Instructions

17.1. You can only place Orders via our Trading Platform within our usual hours of trading (details of which can be found on the Website). To place an Order, you are required to log into the Trading Platform using your Access Data (username and password).

17.2. Where you place an Order following a quote, you are placing an Order at our then offered current rate. You acknowledge that the current rate we offer you may differ from the original quote.

17.3. Instructions or Orders placed via the Trading Platform shall only be deemed to have been received and shall only constitute a valid Order when that Order has been confirmed by us via the Trading Platform. An order shall not be binding between us and you unless it is accepted by us and we confirm the Transaction through the Trading Platform.

17.4. As an enhanced service, we offer our clients mobile trading applications for smartphones and tablets in order to access the Trading Platform but suggest, that for optimal speed, users do not use these applications as their primary access to the Trading Platform. There are a series of inherent risks with the use of any mobile trading technology such as the duplication of Order instructions, latency in the prices provided, and other issues that are a result of mobile connectivity which can vary depending upon your device, your internet service provider, and your location, among other things.

17.5. In the event of a system failure of the Trading Platform, or where the Trading Platform is unavailable for any other reason, trades may be placed over the telephone and other live communication mediums (within our usual trading hours, details of which are set out on the Website). To place a trade over the telephone and other live communication mediums, you must supply your Account number if applicable, Username, name and provide certain security information if asked. When you place trades over the telephone, we cannot be expected to recognise your voice.

17.6. To place a trade, you must offer to either "Sell" the Bid Price (a short position) or "Buy" the Ask Price (a long position) at the current price. You may not reverse any offer to trade once we have accepted it.

17.7. We may decline any offer to trade. In particular, we may refuse to accept an offer to trade if:

- a) the proposed trade would or could breach our Agreement, the Regulatory System or any law;
- b) accepting the trade would be disadvantageous to us as a result of the price moving up or down during the time between you offering to trade and our acceptance of that offer;
- c) your proposed Order is of such a size (too big or too small) that we do not wish to accept it;
- d) any amount you owe to us is outstanding (for example a negative Balance in your trading account);
- e) any initial Margin requirement has not been met in relation to the trade;
- f) an Insolvency Event has occurred in relation to you;
- g) you die or become a patient of the Court (under the relevant mental health legislation) or we reasonably believe that either of those events have occurred;
- h) (acting reasonably) we think it is not commercially viable to accept your Order;

## PRIME WHALE LLC T&C's

- i) we or our systems are affected by a Force Majeure Event;
- j) based on the information available to us, we do not consider it appropriate for you.

17.8. We have the right to delete any cancelled Pending Orders older than one month from your Trading Account history.

17.9. We have the right to delete and or amend a position if:

- a) the Dealer erroneously executes the Instruction to open or close the position at an Error Quote (Spike); or
- b) we make a manifest error while processing your instruction to open or close the position.
- c) you have breached a term of clause 16.6.

17.10. We may resolve all Disputes by:

- a) crediting or debiting your Trading Account;
- b) re-opening erroneously closed positions;
- c) deleting erroneously opened positions or erroneously placed Orders; or
- d) using any other method at its sole discretion in good faith and in accordance with common market practice.

17.11. All calls to our dealers are recorded. You agree to the recording of such calls. An electronic trail of all client activity on the Platform may be recorded. All information recorded may be used as evidence in the event of a dispute or used for training purposes.

17.12. Please note that in relation to your trade:

- a) if you trade with anyone else, this will not affect your trade with us;
- b) we shall treat all trades as a Buy or Sell regardless of whether the trade has the effect of closing an existing position or opening a new position; and
- c) we shall not check or have any regard to any assumption made or expressed by you as to the effect of any position you hold with us or anyone else.

17.13. For trades placed on the Platform, we are under no obligation to establish the legality of the place from which you are trading; it is your sole responsibility to ascertain the legality of trading from whatever place you are trading from.

17.14. If you are unsure whether a trade or Order has been accepted because communication via the Trading Platform has broken down or has been interrupted, you must notify us immediately by telephone to confirm the status of that trade or Order.

17.15. You cannot place a trade, Order or any other instruction by leaving a message on an answer phone or voicemail facility or via e-mail.

17.16. Should you place a trade over the telephone, it will be confirmed back to you. If at any time during the call you believe that the trade has been incorrectly confirmed, you must notify the trader straight away during that call.

# PRIME WHALE LLC T&C's

## **18. Closure of Positions**

18.1. You may close a long position by selling at the bid (lower) price. You may close a short position by buying at the ask (higher) price.

18.2. Positions can normally be closed at any time during our normal trading hours (please refer to the Trading Conditions on the Website for more details).

18.3. In certain market conditions, it may not be possible to close positions with sizeable market consideration in full at the normal price or at the price requested by you. Such a trade may be closed at a price that we determine to be reasonable in light of the prevailing market conditions.

18.4. If you hold more than one position in the same market those positions will normally be closed out independently of each other and in the manner you have selected. However, this may not apply if we have agreed with you a different order in which your trades should be closed.

18.5. You acknowledge that you will not be able to manage any position(s) that you may have open while a Dispute in respect of that position is being considered and no complaints in respect of this matter can be accepted (see clause 24 (Complaints and Disputes)).

## **19. Netting of Payments**

19.1. Any amounts owed or payable under the Agreement are automatically converted by us into the currency of the Trading Account at the relevant exchange rate for spot dealings in the foreign exchange market.

19.2. If on any date amounts would otherwise be payable by one party to the other party under the Agreement, then on such a date:

- a) the aggregate amount payable by you equals the aggregate amount payable by us, then the obligations to make payment of any such amount will be automatically satisfied and discharged;
- b) if the aggregate amount payable by one party exceeds the aggregate amount payable by the other party, then the party with the larger aggregate amount shall pay the excess to the other party and all obligations to make payment will be automatically satisfied and discharged.

19.3. Your obligation to pay any amount due shall include all commissions, charges and other costs determined by us.

## **20. Margin requirements**

20.1. Where applicable, you shall provide and maintain the Initial Margin and/or Necessary Margin in such sums as we, in our sole discretion, may require from time to time under the Agreement. It is your responsibility to ensure that you understand how Margin is calculated. If you have any doubt about the Margin requirement for a particular Order, please contact our client services team.

20.2. Margin is due to us on each opening Order that you place and must be maintained in respect of all open positions.

## PRIME WHALE LLC T&C's

20.3. We are entitled to change Margin requirements by providing you with five Business Days prior Written Notice.

20.4. We are entitled to change Margin requirements without prior Written Notice in the case of a Force Majeure Event or a Market Disruption Event.

20.5. Subject to clauses 20.3 and 20.4 we are entitled to apply the amended Margin requirements to your Open Positions and to any further positions that you subsequently enter.

20.6. We may permit you to maintain opposing positions in the same instrument, however we reserve the right to acquire enough funds to cover the Margin requirement of both long and short positions.

20.7. You undertake to provide us with and maintain on your Account at all times, sufficient cleared funds in order to meet the Margin requirement for your transactions. You agree that a failure to meet the Margin requirement at any time will result in the closing out of some or all of your open positions without prior notice to you. This process is automatically triggered when your Trading Account's ratio of Equity to Margin falls below 50%. The position with the greatest negative balance will be closed first and so on until the Trading Account's ratio has reached parity.

20.8. It is your responsibility to notify us as soon as you believe that you will be unable to meet a Margin payment when due.

20.9. We have the right to make margin calls for you. We are not liable to you for any failure by us to contact or attempt to contact you in respect of a Margin call.

### **21. Payments**

21.1. You may deposit funds into the Trading Account at any time. Deposits will only be accepted by Bitcoin, debit/credit card, Neteller or by bank transfer from your personal account.

21.2. You may withdraw funds by simply logging into your Members Area. Once you are signed in, navigate to the Withdrawal area and fill out the requested details, in accordance with clause 21.4.

21.3. If you give us an instruction to withdraw funds from the Trading Account, we shall pay you the specified amount once the instruction has been accepted, if the following requirements have been met:

- a) the withdrawal instruction includes all the necessary information;
- b) the instruction is to make a bank transfer to your bank account (under no circumstances will payments to a third party or anonymous account be accepted);
- c) there are no outstanding regulatory or legal issues affecting the withdrawal; and
- d) the withdrawal amount does not exceed the Equity in the Trading Account less any Necessary Margin and any payments or charges due.
- e) there is no Force Majeure event prohibiting us from effecting the withdrawal.

21.4. You agree that we shall debit your Trading Account for all applicable payment charges.

## PRIME WHALE LLC T&C's

21.5. Where you have an obligation to pay any amount to us which exceeds the Trading Account Balance you shall promptly pay the excess amount owed upon the obligation arising.

21.6. All payments subject to the terms of clause 21 are made by bank transfer. We also accept payments to be made by Bitcoin, a debit or credit card or e-wallet and we reserve the right to levy a transfer charge.

21.7. If you make a payment by bank transfer, by credit card or any other method of electronic money transfer, we shall credit your Trading Account with the funds within one Business Day of receiving notification from the payment processor.

21.8. You acknowledge and agree that (without prejudice to any of the Company's other rights under the Agreement to close out your Open Positions and exercise other default remedies against you), where any sum is due and payable by you to us in accordance with the Agreement and sufficient cleared funds are not available in your Trading Account, we shall be entitled to exercise our rights under clause 26 this Agreement.

21.9. You may make any Margin payments or other payments in US dollars, Euros and British Pounds Sterling (GBP). If that payment amount differs from that of your trading account it will be converted into the Currency of the Trading Account at a rate determined by us.

21.10. Any amount which is not paid on the due date shall bear interest at the Applicable Rate plus 5% per annum for each day for which such amount remains unpaid. All debts are legally enforceable.

21.11. We shall process your request for withdrawal of funds upon us receiving a formal request from you (details of which can be found on the Website).

21.12. You may request to make an internal transfer of funds if you hold two or more Trading Accounts with us and we, in our sole discretion, may accept or decline your request.

### **22. Set-off**

22.1. If we have deemed it reasonable to close your Transactions and/or have chosen to close your Trading Account, we may consolidate cash in your Trading Account with any other Trading Account you may hold with us.

22.2. Where a Client has more than one Trading Account; and where any or all of those separate Client Trading Accounts have a positive Balance; and where you have outstanding amounts due and payable to the Company incurred in relation to Transactions under any of your Trading Accounts; we are entitled to set-off any outstanding amounts owed by debiting any one of your other Trading Accounts.

22.3. If, in our absolute discretion, we choose to exercise our set-off rights listed in this clause all payment obligations will be consolidated into a single payment for us to pay a net sum to you or for you to pay a net sum to us, regardless of the currency of the Account.

### **23. Limitation of Liability and Indemnity**

23.1. Nothing in the Agreement will exclude or restrict any obligation or liability which we may have or owe to you under law, nor any liability which we may incur under the Act or law in respect of a

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## PRIME WHALE LLC T&C's

breach of any such obligation, nor will anything in the Agreement require you to indemnify or compensate the Company to any extent prohibited by the law.

23.2. Subject to clause 23.1 we shall not be held liable, in the absence of negligence, for any loss or damage or expense, claims or liabilities that you may suffer or incur in relation to, or directly or indirectly arising from (but not limited to):

- a) Any error or failure or interruption or disconnection in the operation of the Trading Platform(s), or any delay caused by your Terminal or Transactions made via you Terminal, any technical problems, system failures and malfunctions, communication line failures, equipment or software failures or malfunctions, system access issues, system capacity issues, high internet traffic demand, security breaches and unauthorized access, and other similar computer problems and defects.
- b) Any failure by the Company to perform any of its obligations under the Agreement as a result of Force Majeure Event, Manifest Error or Market Disruption Event or any other cause beyond its control.
- c) The acts, omissions or negligence of any third party or any third-party software including, but not limited to, expert advisers, signal providers, social trading platforms, and virtual private networks.
- d) Any person obtaining your Access Data that we have issued to you prior to your reporting to the Company of the misuse of your Access Data.
- e) Unauthorized third persons having access to information, including electronic addresses, electronic communication, personal data and Access Data when the above are transmitted between you and us or any other party, using the internet or other network communication facilities, post, telephone, or any other electronic means.
- f) Any of the risks of the Risk Disclosure and Warnings Notice.
- g) Currency risk.
- h) Any changes in the rates of tax.
- i) The occurrence of Slippage.
- j) Your reliance on functions such as Trailing Stop, Expert Advisors and Stop Loss Orders.
- k) Under abnormal Market Conditions.
- l) Any acts or omissions (including negligence and fraud) by you and/or your Authorized Representative.
- m) For your or your Authorised Representative's trading decisions.
- n) All Orders given through and under your Access Data.
- o) The contents, correctness, accuracy and completeness of any communication spread by the use of the Platform(s).
- p) As a result of you engaging in Social Trading (if applicable).

23.3. In the event that we provide information, recommendations, news, information relating to transactions, market commentary or research to you (or in newsletters which we may post on the

## PRIME WHALE LLC T&C's

Website or provide to subscribers via the Website or otherwise), we shall not, in the absence of fraud, wilful default or gross negligence, be liable for any losses, costs, expenses or damages suffered by you arising from any inaccuracy or mistake in any such information given.

23.4. You will indemnify us and keep us indemnified on demand in respect of all liabilities, costs, claims, demands and expenses of any nature whatsoever which we may suffer or incur as a direct or indirect result of any failure by you to perform any of your obligations under the Agreement.

23.5. When agreeing to accept trades, orders and trades under this Agreement, and when establishing prices and spreads, we have done so on the basis that the limitations and exclusions on liability contained in this Agreement (particularly in this clause 23 (Limitation of Liability and Indemnity) are valid and enforceable. We do not effect insurance in respect of the liabilities limited and/or excluded under this clause 23. If the limitations on liability and the indemnity in this clause 23 are not acceptable to you, you should not open an Account, and should close any Account that you have already opened.

### **24. Complaints and Disputes**

24.1. Any complaint or dispute in relation to the Services provided to you under the Agreement should be raised with our Customer Services or by emailing [admin@prime-whale.com](mailto:admin@prime-whale.com). We will try to resolve any such complaint or dispute without undue delay and it will be handled in accordance with our complaint's procedures, a summary of which is available on the Website and a full version is available upon request.

24.2. It is your responsibility to keep yourself informed and up to date of your trading positions and trades placed on your Account. You should check statements, contract notes and other forms of trade confirmation and ensure that they are correct. Should you receive a statement, contract note or trade confirmation that you believe to be incorrect, it is your responsibility to contact us immediately. If you do not receive a contract note or trade confirmation for any trade you have placed or allegedly placed it is your responsibility to contact us immediately.

24.3. We reserve the right to refuse to open any new positions or Orders and/or trading instructions from you other than instructions to close positions whilst there is an unresolved dispute relating to any trade or trading issue on your Account.

24.4. Your right to take legal action remains unaffected by the existence or use of any complaint's procedures referred to above.

### **25. Notices and Communications**

25.1. We may give notice to you and communicate with you under the terms of the Agreement (and in accordance with the regulatory system) using your contact details and communicate via:

- a) In person;
- b) Trading Platform internal mail;
- c) Email, telephone, SMS text, live chat;
- d) post; or

Version 2020 / 01 – Prime Whale LLC is registered in the Financial Services Authority of St. Vincent & the Grenadines Registration number 606 LLC 2020

## PRIME WHALE LLC T&C's

e) information published on the website; it shall constitute "Written Notice" for the purposes of the Agreement.

25.2. Any such Written Notice will be deemed to have been served:

- a) if sent by email, within one hour after emailing it, provided we do not receive a delivery failure notification. If sent by SMS text or live chat, immediately after sending it;
- b) if sent by the Trading Platform internal mail, immediately after sending it;
- c) if sent by post, seven calendar days after posting it;
- d) if posted on the Website, within one hour after it has been posted.

25.3. For clause 25, "Business Hours" means between 0900 & 1700 UK local time on a Business Day.

25.4. All communications between you and the Company are to be in English. If at any time translations have been provided by us to you, only the original English version shall be binding.

25.5. You must notify us immediately of any change to your contact details.

25.6. Where relevant, we will send a monthly statement which includes all of your Transactions during the previous month.

25.7. Any telephone conversation between you and us may be recorded. All instructions and requests received by telephone will be binding as if received in writing. Any recordings shall be and will remain our sole property and will be accepted by you as conclusive evidence of the instructions, requests or conversations so recorded.

### **26. Amendment and Termination**

26.1. Either Party may terminate this Agreement with immediate effect by giving no less than 15 days Written Notice to the other Party.

26.2. You acknowledge that once the Agreement (or any part thereof) has been terminated, we may, acting reasonably, close out any or all of your Open Positions without any prior notice to you and refuse to open new positions for you.

26.3. Any such termination will not affect any obligation which has already been incurred by you or us in respect of any open Position or any legal rights or obligations which may already have arisen under the Agreement or any Transactions and deposit/withdrawal operations made thereunder.

26.4. Upon termination of any of the Agreement, you will no longer have access to the Trading Platform and all amounts payable by you to us will become immediately due and payable.

26.5. As soon as reasonably practicable and subject to the terms of the Agreement, upon termination of the Agreement we will pay you any monies due, subject to any applicable charges, fees and rights of set-off.

26.6. We may, in our sole discretion, terminate this Agreement and in so doing close any or all of your open trades on your Account (including those held in a joint Account) on the basis of our current (or next available) price quotations and to close your Account (and any other Account you may have with us) if:

Version 2020 / 01 – Prime Whale LLC is registered in the Financial Services Authority of St. Vincent & the Grenadines Registration number 606 LLC 2020

## PRIME WHALE LLC T&C's

- a) you are found to have breached a material term of our Agreement;
- b) any Margin is not received immediately;
- c) any other payment owed by you to us under this Agreement is not received within five (5) Business Days;
- d) any method of payment used by you to make payment to us is not met on first presentation or is subsequently dishonoured;
- e) we reasonably believe you may be unable to pay Margin (or other payment) when due;
- f) you are subject to an Insolvency Event or become bankrupt;
- g) you die or become a patient of the Court (under the relevant mental health legislation) or we reasonably believe you to have done so;
- h) we have reasonable concerns in relation to a breach of any current law or the Regulatory System;
- i) we reasonably believe that you do not have a sufficient understanding of trading products;
- j) we suspect or have reason to suspect that you may be involved in fraudulent, illegal or criminal activity;
- k) we reasonably believe that any statement or representation that you have made is false or misleading; or
- l) you are deemed to have behaved in a rude or offensive manner towards our employees or anyone acting on our behalf.

26.7. We reserve the right to amend any of the Agreement from time to time and will provide you with the relevant notice where required.

### **27. Personal data, Confidentiality, Recording of telephone calls and Records**

27.1. We may collect, use, store or otherwise process your personal information that we have obtained directly from you or from other persons including, but not limited to, credit reference agencies, fraud prevention agencies, banks, other financial institutions, third authentication service providers and the providers of public registers.

27.2. Client information that we hold is to be treated by us as confidential and will not be used for any purpose other than in connection with the provision, administration and improvement of the Services, anti-money laundering and due diligence checks, for research and statistical purposes and for marketing purposes. Information already in the public domain, or already possessed by us without a duty of confidentiality will not be regarded as confidential.

27.3. We have the right to disclose Client information (including recordings and documents of a confidential nature, card details) in the following circumstances:

- a) Where required by law or a court order by a competent Court.

## PRIME WHALE LLC T&C's

- b) Where requested by the FCA or any other regulatory authority having control or jurisdiction over the Company or you or your associates or in whose territory the Company has Clients.
- c) To relevant authorities to investigate or prevent fraud, money laundering or other illegal activity.
- d) To such an extent as reasonably required so as to execute Orders and for purposes ancillary to the provision of the Services.
- e) To credit reference and fraud prevention agencies, third authentication service providers, banks and other financial institutions for credit checking, fraud prevention, anti-money laundering purposes, identification or due diligence checks on our Clients.
- f) To our professional advisors provided that in each case the relevant professional shall be informed about the confidential nature of such information and expressly commit to such confidentiality.
- g) To other service providers who create, maintain or process databases (whether electronic or not), offer record keeping services, email transmission services, messaging services or similar services which aim to assist us to collect, store, process and use Client information to communicate with Clients or improve the provision of the Services under this Agreement.
- h) To other service providers for statistical purposes in order to improve the Company's marketing strategies (in such cases the data will be provided in an aggregate form).
- i) To market research call centres that provide telephone or email surveys with the purpose of improving the Services of the Company (in such cases only contact details data will be provided).
- j) Where necessary in order for us to defend or exercise our legal rights to any court or tribunal or arbitrator or Ombudsman or governmental authority.
- k) At your request or with your consent.
- l) To an Affiliate of the Company or any other company in the same group of the Company.
- m) To successors or assignees or transferees or buyers, with ten Business Days prior Written Notice to you, and for the purposes of clause 31 of the Agreement.
- n) to an introducing broker, sub introducing broker, or marketing agent.

27.4. Telephone conversations between you and the Company may be recorded and kept by us and recordings will be the sole property of the Company. You accept such recordings as conclusive evidence of conversations so recorded.

27.5. You accept that we may, for the purpose of administering the terms of this Agreement, from time to time, make direct contact with you.

27.6. You accept that we or any of our Affiliates or other group entity of the Company may make contact with you, from time to time, by telephone, email or post for marketing and research purposes to bring to your attention products or services that may be of interest to you. If you are a natural person such marketing communications will be made only with your consent.

## PRIME WHALE LLC T&C's

27.7. Under Applicable Regulations, we will keep records containing Client personal data, trading information, account opening documents, communications and anything else which relates to you for a minimum of six years after termination of this Agreement.

### **28. Representations and warranties**

28.1. You agree to make the following representations and warranties to us when you submit your Application Form and agree that each such representation and warranty is deemed repeated each time you give us an instruction or request that:

- a) the information provided by you to us in any Application Form and in the Agreement and at any time thereafter is true, accurate and complete in all material respects;
- b) you have read and fully understand the terms of the Agreement including, in particular, the Risk Disclosure Notice;
- c) you are duly authorised to enter into the Agreement, to give instructions and requests and to perform and maintain your obligations under the Agreement and such obligations do not contravene other laws, rule or agreements applicable to you;
- d) you have full capacity to do so and are of sound mind and capable of taking responsibility for your own actions;
- e) you are acting as Principal and not as agent or representative or trustee or custodian on behalf of someone else unless we agree otherwise and such entity has been validly appointed by you to trade on your behalf;
- f) you are an individual who has completed the account application to open an online trading account or, if you are a company, the person who has completed an application to open an online trading account on your behalf is duly authorised to do so; and
- g) all actions performed under the Agreement will not violate any law, ordinance, charter, by-law or rule applicable to you or to the jurisdiction in which you are resident.
- h) your funds used for trading are not in any direct or indirect way the proceeds of any illegal activity or used or intended to be used for terrorist financing.
- i) you are not a Politically Exposed Person and do not have any relationship (for example relative or business associate) with a person who holds or held in the last twelve months a prominent public position. If the above statement is untrue and, in the event, that you have not disclosed this already in the Account Opening you consent to the provision of the information of the Agreement by means of the Website or email.
- j) you confirm that you have regular access to the internet and consent to us providing you with information, including, without limitation, information about amendments to the terms and conditions, costs, fees, this Agreement, Policies and information about the nature and risks of investments by posting such information on website or email.

### **29. Force Majeure and Market Disruption events**

## PRIME WHALE LLC T&C's

29.1. The company may, in its reasonable opinion, determine that a Force Majeure event or a Market Disruption event has occurred or is continuing to occur, in which case we will take reasonable steps to inform you. Such events include, without limitation:

- a) any act, event or occurrence (including, without limitation, any strike, industrial action, 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, or act or regulation of any government or relevant regulatory authority) which, in the Company's reasonable opinion, prevents us from maintaining an orderly market in one or more of the Instruments or your Orders;
- b) the suspension, liquidation, or closure, excessive movement, volatility or loss of liquidity, in of any relevant market or underlying Instrument, or the imposition of limits or special or unusual terms on the trading in any such market or underlying Instrument;
- c) any event, act or circumstances not reasonably within our control and the effect of that event(s) is such that we would not be in a position to take any reasonable action to cure the disruption.

29.2. If the Company determines in its reasonable opinion that a Force Majeure Event has occurred or is continuing to occur (without prejudice to any other rights under the Agreement) we may without prior Written Notice and at any time take any of the following steps:

- a) change spreads lot sizes and margin requirements;
- b) change the size of any open Orders
- c) close out any or all Open Positions at such prices as we consider in good faith to be appropriate;
- d) cancel and or execute any Order
- e) refuse to accept Orders from Clients
- f) cease or suspend trading for any market
- g) void any trade, where our prices are based on a regulated market, systematic internalise, MTF or other third-party price and those prices or trades are subsequently cancelled by the applicable venue;
- h) request immediate payment of Margin and/or any other amounts that clients owe us;
- i) suspend or modify the application of any or all terms of the Agreement to the extent that the Force Majeure Event makes it impossible or impractical for us to comply with them; or
- j) take or omit to take all such other actions as we deem to be reasonably appropriate in the circumstances with regard to the position of the Company, you and other customers.

### **30. Tax**

## PRIME WHALE LLC T&C's

30.1. You shall be solely responsible for obtaining their own tax advice and for complying with the applicable local tax laws. Tax legislation may change at any given time, and we encourage you to regularly seek independent tax advice.

30.2. We shall not be liable for any tax owed by you to local or any other tax authorities and we shall not, subject to applicable laws, withhold tax for these purposes.

30.3. We shall not provide any tax advice to you in relation to any Transactions or anything under the Agreement.

### **31. Miscellaneous**

31.1. The Company has the right to suspend your Trading Account at any time for any reason with or without Written Notice to you.

31.2. In the event that a situation arises that is not covered under the Agreement, 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.

31.3. 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 Agreement or at law.

31.4. Any liability of you to the Company under the Agreement 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 Agreement 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 Agreement or a default under these terms will not prevent the Company from subsequently requiring compliance with the waived obligation.

31.5. The rights and remedies provided to the Company under the Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

31.6. The Company may assign the benefit and burden of the Agreement to a third party in whole or in part, provided that such assignee agrees to abide by the terms of the Agreement. Such assignment shall come into effect ten Business Days following the day you are deemed to have received notice of the assignment in accordance with the Agreement.

31.7. If any term of the Agreement (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 Agreement shall not be affected.

31.8. You may not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer your rights or obligations under the Agreement without prior written consent of the Company and any purported assignment, charge or transfer in violation of this term shall be void.



# PRIME WHALE LLC T&C's

## 32. Governing Law and Jurisdiction

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

32.2. With respect to any proceedings, you irrevocably:

- a) agree that the courts of St. Vincent & the Grenadines shall have exclusive jurisdiction to determine any proceedings;
- b) submit to the jurisdiction of St. Vincent & the Grenadines courts;
- c) waive any objection which you may have at any time to the bringing of any proceedings in any such court; and
- d) agree not to claim that such proceedings have been brought in an inconvenient forum or that such court does not have jurisdiction over you.

## 33. Definitions and Interpretation

33.1. All references to a statutory provision include references to:

- a) any statutory modification, consolidation or re-enactment of it, whether before or after the date of this Agreement, 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.
- d) In this Agreement:

**“Act”** shall mean the Financial Services Act 2012.

**“Affiliate”** shall mean in relation to the Company, any entity controlled directly or indirectly, by the Company, any entity that controls the Company directly or indirectly, or any entity directly or indirectly under common control with the Company. For this purpose, “control” means ownership of most of the voting power of the Company or entity.

**“Agreement”** is defined in clause 1.

**“Applicable Rate”** shall mean:

- a) Federal Funds rate, if the Currency of the Trading Account is US dollars;

## PRIME WHALE LLC T&C's

b) Bank of England Official Bank Rate, if the Currency of the Trading Account is Great British pounds;

c) Key European Central Bank (repo) Interest Rate, if the Currency of the Trading Account is euros;

<b>“Application Form”</b>	means the application form to open an online trading account completed by you and accessed through website.
<b>“Ask Price”</b>	shall mean the higher price in a quote being the price at which you may buy.
<b>“Balance”</b>	in relation to the Trading Account, means the financial position once all Completed Transactions, deposits and withdrawals have been accounted for.
<b>“Base Currency”</b>	shall mean the first currency in a Currency Pair.
<b>“Bid Price”</b>	shall mean the lower price in a quote being the price at which you may sell.
<b>“Business Day”</b>	shall mean any day between Monday and Friday inclusive on which clearing banks are open in the Europe.
<b>“Clearing Requirement”</b>	shall mean your own determination as to whether it is subject to mandatory clearing obligations under Article 4 of EMIR.
<b>“Client Terminal”</b>	shall mean any of the Company’s trading programs used by you in order to obtain information of financial markets in real-time (which content is defined by the Company), to perform technical analysis of the markets, conduct Transactions, place/modify/delete orders, as well as to receive notices from the Company. Such programs can be downloaded or accessed on website free of charge.
<b>“Client Update Webpage”</b>	shall mean the page of website where updates are displayed.  At the date of this Agreement the information is displayed on <a href="http://www.prime-whale.com/">http://www.prime-whale.com/</a>
<b>“Completed Transaction”</b>	shall mean two counter deals of the same size (opening a position and closing a position): buy then sell and vice versa.
<b>“Contract for Difference” or “CFD”</b>	shall mean a contract which is a contract for difference by reference to fluctuations in the price of the underlying asset (including but not limited to shares, futures, metals, or indices).
<b>“Currency of the Trading Account”</b>	shall mean the currency that you choose when opening the Trading Account.
<b>“Currency Pair”</b>	when quoting and pricing currencies which are traded in the foreign exchange market, the value of a currency is determined by its comparison to another currency. The first currency of a

## PRIME WHALE LLC T&C's

currency pair is called the 'Base Currency', and the second currency is called the 'Quote Currency'. The Currency Pair shows how much of the Quote Currency is needed to purchase one unit of the Base Currency.

- “Dealer”** shall mean the Server or an employee of the Company who is authorised to process the Customer’s Instructions and Requests and execute Orders and Stop Outs.
- “Dispute”** shall mean either:
- a) the conflicts situation when you reasonably believe that the Company, as a result of any action or failure to act, breaches one or more terms of the Agreement; 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 Agreement; or
  - c) the conflict situation when you make 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 you because a Dealer made a manifest error or because of a software failure of the Trading Platform.
- “EMIR”** shall mean the European Market Infrastructure Regulation No. 648/2012 on derivatives, central counterparties and trade repositories and all related delegated, supplementing or successive regulations.
- “Equity”** shall mean:  $\text{Balance} + \text{Floating Profit} - \text{Floating Loss}$ .
- “Error Quote (Spike)”** shall mean a price, or series of prices, which are subsequently determined to be unrepresentative of the actual market valuation of an asset/product.
- “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 29.
- “Initial Margin”** shall mean the margin required by the Company to open a position and reflects the deposit of funds or other collateral acceptable to the Company as security for payment of any losses incurred by you in relation to any Transaction.
- “Instrument”** shall mean any Currency Pair, Precious Metal or Contract for Difference.
- “Leverage”** is expressed as a ratio of the Transaction Size as against the margin requirements. For example, 1:100 ratio means that in order to open a position the Initial Margin is one hundred times

## PRIME WHALE LLC T&C's

less than Transaction Size. Leverage comes with greater risk and can magnify losses as well as gains.

<b>“Long Position”</b>	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.
<b>“Lot”</b>	shall mean a unit of Securities, Base Currency or troy ounce of Precious Metal in the Trading Platform.
<b>“Lot Size”</b>	shall mean the number of shares, underlying assets or units of Base Currency, or troy ounce of Precious Metal in one Lot defined in the Product and Contract Specifications.
<b>“Market Opening”</b>	shall mean the time at which the market opens after weekends, holidays or trading session time gaps.
<b>“Necessary Margin”</b>	shall mean the margin required by the Company to maintain Open Positions. It is not a fee or a Transaction cost but is a portion of the Equity in your Trading Account allocated as a margin deposit to cover fluctuations in market movements. The details for each Instrument are specified in the Product and Contract Specifications.
<b>“Open Position”</b>	shall mean a Long Position or a Short Position which is not a Completed Transaction.
<b>“Pending Order”</b>	shall mean an instruction from you to the Company to open or close a position once the price has reached the level of the order.
<b>“Precious Metal”</b>	shall mean spot gold or spot silver.
<b>“Product and Contract Specifications”</b>	shall mean principal trading terms (Spread, Lot Size, Transaction Size, Initial Margin) and other such information for each Instrument as displayed at <a href="http://www.prime-whale.com/">http://www.prime-whale.com/</a>
<b>“Quote Currency”</b>	means the second currency quoted in a Currency Pair.
<b>“Relevant Amount(s)”</b>	shall mean any available Equity in your Trading Account not used for margin purposes.
<b>“Risk Disclosure Notice”</b>	shall mean the Risk Disclosure Notice on the Company Website.
<b>“Security”</b>	shall mean any share, future, forward or option contract, commodity, Precious Metal, interest rate, debt instrument or stock index.
<b>“Segregated Account”</b>	shall mean a client bank account as defined by and held in accordance with the FCA Rules.
<b>“Segregated Funds”</b>	shall have the meaning as set out in clause 9.

## PRIME WHALE LLC T&C's

<b>“Server”</b>	shall mean the relevant COLLECTIVE Server trading program in use by you.
<b>“Services”</b>	shall mean the services provided by the Company to you as set out in clause 11.
<b>“Short Position”</b>	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.
<b>“Spread”</b>	shall mean the difference between Ask and Bid.
<b>“Trading Account”</b>	shall mean the unique personified registration system of all Completed Transactions, Open Positions, orders and deposit/withdrawal transactions in the Trading Platform.
<b>“Trading Platform”</b>	shall mean all programs and technical facilities which provide real-time quotes, 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 Client Terminal.
<b>“Transaction”</b>	shall mean any contract or transaction entered into or executed by the Client or on behalf of you arising under this Agreement.
<b>“Transaction Size”</b>	shall mean Lot Size multiplied by number of Lots.
<b>“Underlying Market”</b>	shall mean the market where the underlying asset for CFD is traded.
<b>“Website”</b>	Shall mean the Company’s website at <a href="http://www.prime-whale.com/">http://www.prime-whale.com/</a> or such other public website as the Company may maintain from time to time.
<b>“Written Notice”</b>	shall have the meaning set out in clause 25.