



**Foti Markets**

Trading For Saving

# Terms And Conditions

March 2025

Foti Markets is the trading name of Foti Capital Ltd., which is authorized by the Anjouan Offshore Finance Authority under license number L15941/FC and a registered address at Hamchako, Mutsamudu, Autonomous Island of Anjouan, Union of Comoros.

[www.fotimarkets.com](http://www.fotimarkets.com)

## 1. Introduction

- 1.1 In this Agreement, references to “we”, “us”, “Foti Capital”, “our”, “ours”, and “ourselves” (as appropriate) mean Foti Capital Ltd.
- 1.2 Reference to “you” and “your” mean you, the Client.
- 1.3 These Terms and Conditions (including any Schedules), once your application has been accepted and your Account opened, form a legally binding agreement (“Agreement”) between you and us and govern all Transactions and dealings between us.
- 1.4 All Financial Products and services provided by us are subject to the general terms of this Agreement (including Schedules), as well as any specific terms applicable to the Financial Products or services you receive.
- 1.5 You should carefully read this Agreement together with our financial services guide, ancillary documents, any relevant product module, any applicable product disclosure statement, and any other documents supplied to you in connection with your Account.
- 1.6 Nothing in this Agreement excludes or limits any duty or liability owed by us to you under Governing Law. In the event of any inconsistency, Governing Law shall prevail.
- 1.7 This Agreement takes effect once your application is accepted and your Account is opened.
- 1.8 Capitalised terms used in this Agreement have the meanings given in Clause 31.1 unless defined otherwise in a particular clause.
- 1.9 This Agreement also sets out the basis on which we enter into Transactions with you and governs all Transactions entered into or outstanding between you and us after this Agreement comes into effect.
- 1.10 This Agreement does not constitute, and should not be construed as, personal advice, financial advice, tax advice, or a recommendation regarding the suitability or appropriateness of any Financial Product or service for you.
- 1.11 All dealings under this Agreement and in relation to Financial Products between you and us are subject to Governing Law.
- 1.12 We do not accept Clients under the age of 18.

## 2. Dealings with Us

- 2.1 We will act as principal in all Transactions with you and not as your agent.
- 2.2 You will enter into each Transaction with us as principal and not as agent for any undisclosed third party. Unless otherwise agreed in writing, we will treat you as our sole Client for all purposes. You will be directly and personally responsible for fulfilling your obligations under each Transaction, whether you deal with us directly or through an agent.

If you act on behalf of another person without our prior written consent, we will not accept that person as our Client and will have no obligations towards them.

- 2.3 Unless otherwise agreed in writing, all dealings with you will be conducted by us on an execution-only basis.
- 2.4 You agree that, unless otherwise provided in this Agreement, we are under no obligation:
  - (a) to assess the suitability of any Transaction or Contract for you,
  - (b) to monitor or advise you on the status of any Transaction,
  - (c) to make Margin calls, or
  - (d) to Close Out any Transaction that you have opened,
- 2.5 You will not be entitled to request us to provide you with investment advice relating to a Transaction or to make any statement of opinion intended to encourage you to open a particular Transaction. We may, in our absolute discretion:
  - (a) provide information regarding any Transaction about which you or your authorized representative have enquired, particularly concerning the procedures and risks associated with that Transaction, and
  - (b) provide factual market information.

However, we are under no obligation to disclose such information to you, and if we do, it shall not constitute personal advice.

If, notwithstanding that dealings between you and us are on an execution-only basis, a representative of Foti Capital expresses any opinion (whether in response to your request or otherwise) regarding a Financial Product or Transaction, you

acknowledge and agree that it is not reasonable for you to rely on such opinion and that it shall not constitute personal advice.

- 2.6 You acknowledge and agree that:
- (a) any information provided by us in relation to your dealings with us constitutes general Financial Product advice only and does not constitute personal advice,
  - (b) such information will not take into Account your personal objectives, financial situation, or needs, and
  - (c) before entering into any Transaction, you are solely responsible for considering the appropriateness of that information in light of your personal objectives, financial situation, and needs.
- 2.7 You agree that you will rely solely on your own judgement and decision-making when opening, Closing Out, or refraining from opening or Closing Out a Transaction with us, and not rely on any information, suggestion, or advice provided by us unless expressly stated otherwise in writing.
- 2.8 We shall not be liable, to the fullest extent permitted by Applicable Law, for any Loss (including, without limitation, indirect or consequential losses, loss of opportunity, or loss of anticipated profits), costs, expenses, or damages suffered by you arising from any inaccuracy, mistake, or unsuitability of any information or advice (whether oral, written, or provided through any communication channel) given to you, including, without limitation, information or advice relating to any of your Transactions with us, except to the extent that such loss, costs, expenses, or damages are caused directly by Foti Capital's fraud, wilful default, or gross negligence.
- 2.9 Subject to our right to void or Close Out any Transaction as set out in this Agreement, any Transaction entered into by you, even if based on inaccurate or mistaken information or advice, shall remain valid, effective, and binding on both you and us in all respects.
- 2.10 You acknowledge that the information contained in the Contract Details is indicative only and may become inaccurate by the time you open or close a Transaction. The definitive and legally binding details shall be those displayed in your Account through the Electronic Trading Service at the relevant time.
- 2.11 If information contained in a product disclosure statement becomes inaccurate or out of date, or if there occurs a material change in any of the matters specified in a PDS, or if there occurs any significant event that affects the matters specified, we will issue a supplementary product disclosure statement or a new product disclosure statement in accordance with the Governing Law.
- 2.12 We reserve the right to require you to pay, or reimburse us for, stamp duty in the event of a change in the basis of stamp duty rates or law. We also reserve the right to charge you for the provision by us to you of market data (whether raw or derived market data), but we will notify you beforehand if such charges will be applied.
- 2.13 You agree that, subject to the Governing Law, we may provide you with any such supplementary product disclosure statement or new product disclosure statement by publishing it on our website(s). In addition, we may, at our discretion, send any supplementary product disclosure statement or new product disclosure statement to you by email or by post at the relevant email address or postal address last notified by you to us.
- 2.14 We offer different types of Accounts with different characteristics and features. Depending on your knowledge and experience and the type of Transactions you generally enter into with us, some of these Account types may not be available to you. We reserve the right to convert your Account into a different Account type if, acting reasonably, we determine that a different type of Account is more appropriate for you. We also reserve the right to change the features and eligibility criteria of our Accounts at any time, and we will provide prior notification of such changes on our website, by email, or on our Electronic Trading Service.
- 2.15 From time to time, we may make additional services or specific types of Financial Products available to you, subject to the conditions of our licence. Such additional services or Financial Products may be subject to special conditions.
- 2.16 Foti Capital has discretions under this Agreement which can affect your Transactions. You do not have any power or right to direct how we exercise those discretions. We will, however, have regard to our obligations under our UCOFAL when exercising our discretion.
- 2.17 Our Electronic Trading Platform refers to any of the following systems:
- a) MetaTrader 5 platforms developed by MetaQuotes Ltd., with user guides available at [www.metaQuotes.net](http://www.metaQuotes.net); or
  - b) any other electronic trading platform provided by us that enables the placing of Orders in Financial Products.

As our trading platforms are supplied by third-party vendors, we rely on such vendors to ensure that the systems and procedures

are regularly updated, maintained, and operate in accordance with industry standards.

The platforms provided by Foti Capital are developed by third parties, and, because of this, we do not control, endorse, or vouch for the accuracy or completeness of the platforms. They are provided to you on an “as is” basis, without any express or implied warranty or guarantee from us, and we do not promise that the platforms are fit for any particular purpose.

We strongly recommend that, before engaging in live trading, you open a “demo” Account and conduct simulated trading. This allows you to familiarize yourself with the Electronic Trading Platform you intend to use for live trading.

### 3. Client Acknowledgements

3.1 You, the Client, acknowledge and confirm to us for our benefit in relying on the following:

- (a) you (or, if a corporate entity, your directors) have read and understood all documentation provided to you by us including this Agreement and any PDS in relation to any Financial Products which you request Foti Capital to make available to you in relation to your Account,
- (b) you have received, read and understood our FSG and any PDS applicable to your trading in our Financial Products,
- (c) you agree to be bound by this Agreement,
- (d) all dealings in Financial Products and the performance by us of our obligations under this Agreement are subject to the Governing Law,
- (e) Foti Capital relies on your representation that at all times you will be able to make payments and fulfil all commitments on your part arising under this Agreement and under the conditions applicable to dealings between you and Foti Capital,
- (f) that trading in Transactions incurs a risk of loss as well as a potential for profit,
- (g) that dealing in the Contracts for Difference is highly speculative, and you may lose more than your Initial Margin, Variation Margin and other payments you make to us,
- (h) it is your obligation to continuously monitor your Account and ensure that it constantly has sufficient Margin cover,
- (i) except in the case of Foti Capital’s fraud, wilful default or gross negligence, you, the Client, acknowledge and confirm to us for our benefit in relying on the following: you will indemnify and keep indemnified us and each of its related bodies corporate and their respective directors, officers, employees and agents from and against all sums of money, actions, proceedings, suits, Claims, complaints, Loss, demands, damages, costs, expenses and any other amounts whatever claimed against any of them,
- (j) Foti Capital is not required to act in accordance with your instructions if in our opinion to do so would or could constitute a breach by us or our agent or hedge counterparties or any other Governing Law,
- (k) if errors have occurred in the pricing of Transactions Quoted by us to the Client, we may choose not to be bound by such Transactions (without further liability to the Client) if we believe that there was a Manifest Error at the time of the Transaction,
- (l) Financial Products traded on the Electronic Trading Service will not be settled by the physical or deliverable settlement of the Underlying Instrument. Depending on the Financial Product, they are generally rolled or “swapped” indefinitely until Closed Out,
- (m) an Open Position must remain open for the minimum period of time as determined by us and cannot be Closed Out by you during this period, and
- (n) the English version of this Agreement prevails over any other translated version of this Agreement.

3.2 You acknowledge and authorise us to record any or all incoming and outgoing phone calls with you without making a disclosure to you each and every time you speak with a representative of Foti Capital. These calls may be recorded with or without an audible tone. You agree that we may use such recordings for the purposes of monitoring and training our staff, monitoring compliance with our respective regulatory and Contractual obligations, and resolving disputes. If there is a dispute between us and you, you have the right to listen to any recording of those conversations (if still available). Nothing in this Agreement obliges us to keep a recording or to notify you that we have eliminated a recording.

3.3 Recordings may be used to assess the performance of or to train our representatives, monitoring compliance with our respective regulatory and Contractual obligations, and resolving disputes.

- 3.4 The Client is responsible for examining the terms of each Confirmation immediately upon receipt. The contents of a Confirmation, in the absence of Manifest Error, shall be conclusive evidence of the executed Transaction, unless the Client notifies us of any disputed details in the Confirmation within 48 hours of its issue.

In any case, the Client remains responsible for checking the accuracy and completeness of each Confirmation, and must notify Foti Capital of any disputed detail within a reasonable period of time if the issue was not apparent or could not reasonably have been discovered within 48 hours.

By accepting a Confirmation, the Client acknowledges that the platforms used to execute the Transaction may be provided by third parties, and Foti Capital does not control, endorse, or guarantee the accuracy or completeness of any Confirmation generated by such platforms.

- 3.5 Complaints (which do not include disputed details) must be referred to us in accordance with our policies and procedures from time to time for dispute resolution. Unresolved complaints will be referred to the external dispute resolution scheme of which we are a participant.
- 3.6 All representations, warranties and acknowledgments given by you under this Agreement are taken to have been made at the time you complete the Application Form and are taken to have been repeated by you:
- (a) each time you place an Order with us,
  - (b) each time you enter into a Transaction with us, and
  - (c) each time we do anything or refrain from doing something under this Agreement or as contemplated by this Agreement in connection with your Account or any Transaction.

3.7 Copy Trading and Mirror Trading Services.

- (a) you acknowledge that the Copy Trading and Mirror Trading services do not constitute discretionary investment management provided by the Company,
- (b) we shall not be held liable for any trading decisions made by the Client, or for any losses incurred as a result of trading signals received from the provider(s),
- (c) you acknowledge that Copy Trading and associated services are provided by third-party service providers. You must read and understand the terms and conditions of such providers before entering into any Transaction,
- (d) Foti Capital does not provide, and cannot provide, any guarantee as to the performance of any particular investment, Account, portfolio, or strategy provided by the service provider(s),
- (e) you acknowledge that the prices copied from the traders may differ from the prices offered directly by the Company.

## 4. Client Accounts

- 4.1 All of your dealings (including Transactions) will be conducted through your Account held with us, which may include one or more sub-trading Accounts within your Account.
- 4.2 Unless you have specifically requested and we have agreed to open separate Accounts, you will be deemed to have only one Account, with all Transactions in respect of each Financial Product or financial service provided to you being recorded in that Account.
- 4.3 A Client may consist of two or more persons. If so, the Account will be deemed to be held as joint tenancy, unless a court determines otherwise.
- 4.4 Each person constituting the Client (as recorded on the Application Form) is jointly and severally liable for the obligations under this Agreement, and we may act on the instructions of any one of them.
- 4.5 The calculations, reporting, and administration may be performed by us separately for each Account, so that (without limitation):
- (a) Margin calculations may be managed, and enforcement action may be taken separately for each Account,
  - (b) we may at any time aggregate one or more Accounts (for reporting or other purposes of this Agreement), even if you may not be able to immediately access aggregated Account reports,
  - (c) we may set off any amount you owe us (including any negative balance in one or more Accounts) against any amount we owe you in any other Account, to the extent permitted by law, without prior notice to you.

- 4.6 We may, in our absolute discretion, determine which Financial Products, Transactions, cash, Account balances, or other property to apply in offsetting any debt you owe us. For the avoidance of doubt, this right of set-off (and any other set-off rights under this Agreement) applies across multiple Accounts, to the extent permitted by law. You agree that we may exercise set-off among one or more Accounts, both before and after an Event of Default.
- 4.7 We may, with or without notice, and in addition to any other rights under this Agreement, do any one or more of the following, as we reasonably consider appropriate:
- (a) Close Out or cancel all or part of any Transaction, as outlined in clauses 14 and 20 of this Agreement,
  - (b) reduce your position limits,
  - (c) refuse your Orders,
  - (d) suspend your Account,
  - (e) terminate this Agreement,
  - (f) adjust the price, size or value of an Open Position, or
  - (g) adjust the Margin Cover requirement.

## 5. Quotes and Pricing

- 5.1 Upon your request, and in accordance with this clause, we will Quote both a higher and a lower figure for each Transaction (our "Bid" and "Ask" prices). Subject to clause 6.10, these figures will either be effectively based on comparable Bid and Ask prices in the Underlying Market or will be determined as our own Bid and Ask prices.
- 5.2 You acknowledge that our Spreads may widen significantly in certain circumstances, that they may differ from the examples provided in the Contract Details or on our website, and that there is no limit on how wide they may become.
- 5.3 You acknowledge that when a Transaction is Closed Out, the Spread may be wider or narrower than when the Transaction was opened. You acknowledge that such Spreads are determined by us in our reasonable discretion and will reflect our view of prevailing market conditions.
- 5.4 You acknowledge that our Quotes for dealing in our Financial Products are indicative only and are subject to the actual Quote at the time of execution of your Transaction. There is no assurance that your Contracts will be executed at the indicative Quote, particularly if you delay placing the Order.
- 5.5 Quotes will only be provided, and Transactions may only be executed, during the open market hours of the relevant Exchange or market on which the Underlying Instruments are traded. The opening hours of the relevant Exchanges can be obtained from the relevant Exchange website or by contacting us.
- 5.6 We may, at any time and in our discretion, without prior notice, impose limits on our Financial Products in respect of particular Underlying Instruments. We would ordinarily do this only if the market for the relevant Underlying Instrument has become illiquid, its trading status has been suspended, or there has been a significant disruption to the markets, including the Electronic Trading Services.
- 5.7 You should be aware that market prices and other market data displayed through the Electronic Trading Services or through other facilities arranged by you may not be current or may not exactly correspond with the prices of our Financial Products offered or dealt by us.
- 5.8 If you access your Accounts or the Electronic Trading Services outside the hours when Orders may be accepted, you should be aware that your Orders may only be processed once the relevant Exchange or market reopens, at which time market prices (and currency Exchange rates) may have changed significantly.
- 5.9 We may notify you of certain Financial Products for which we will not provide a Quote, of restrictions on the amounts for which we will Quote, or of other conditions that may apply to our Quotes. However, any such notification (or failure to notify) will not be binding on us.
- 5.10 If we choose to provide a Quote, we may do so verbally, by telephone, electronically via our Electronic Trading Services, or by any other means we may notify you from time to time.
- 5.11 Our provision of a Quote (whether by telephone, Electronic Trading Service, or otherwise) does not constitute an offer for you to open or close a Transaction at those levels.

5.12 You may only enter into a Transaction at the Quote provided by us (including through the Electronic Trading Service). We may, acting reasonably, accept or reject your Order at any time until the Transaction has been executed or we have confirmed that your Order has been withdrawn.

## 6. Orders

6.1 You enter into a Transaction with us by placing an Order which has been received and accepted by us. Our acceptance of an Order to open or close a Transaction, and the subsequent execution of that Transaction, will be evidenced by a Confirmation.

6.2 Any delay or error in the transmission of an Order, or in the execution of your instructions, will not be our responsibility and we will not be liable for them (except to the extent liability cannot be excluded by law).

6.3 You will not have a Contract with us unless and until your Order is actually executed. This will be reflected in your Account.

6.4 If we become aware that any of the factors set out in clause 6.5 (without limitation to those factors) are not satisfied at the time you place an Order, in our reasonable opinion, we reserve the right to reject your Order. If we have already opened or closed a Transaction before becoming aware that a factor in clause 6.5 was not satisfied, we may, in our absolute discretion, treat the Transaction as void from the outset, close it at the prevailing price, or take any other steps we consider necessary.

6.5 The factors referred to in clause 6.4 include, but are not limited to, the following:

- (a) the Quote must be obtained from us,
- (b) the Quote must not be expressed as being “indicative only” or on a similar basis,
- (c) if you obtain the Quote by telephone:
  - i. it must be given by a representative of Foti Capital,
  - ii. your Order must be given during the same telephone conversation in which you obtained the Quote, and
  - iii. the Foti Capital representative must confirm that the Order has been accepted by us,
- (d) if you obtain the Quote electronically via our Electronic Trading Services, your Order and our acceptance of it must occur while the Quote is still valid,
- (e) the Quote must not contain a Manifest Error,
- (f) when you place an Order, the number of shares, Contracts, or other units for the Transaction must not be smaller than the minimum size or larger than the Normal Market Size,
- (g) when you offer to Close Out part, but not all, of a Transaction, both the portion you offer to Close Out and the portion that remains open (subject to our acceptance of the Order) must not be smaller than the minimum size,
- (h) a Force Majeure Event must not have occurred,
- (i) when you offer to open a Transaction, no Event of Default must have occurred, and you must not have acted in a way that would trigger an Event of Default,
- (j) the telephone or electronic conversation in which you place an Order must not be terminated before we have received and accepted your Order,
- (k) when you offer to open or close a Transaction, doing so must not cause you to exceed any credit or other limit placed on your dealings with us.

6.6 We may, in our absolute discretion and for any reason, refuse to accept any Order (including, without limitation, any Order relating to black-box trading, scalping, or any similar trading practices). We may also impose a limit on any Order or place other conditions on the receipt or execution of instructions or Orders.

6.7 We may, at any time, implement, add to, or modify filters within an Electronic Trading Service that prevent the submission or execution of Orders. We will notify you of any refusal or limitation as soon as reasonably practicable, unless we are prevented from doing so by law or by a direction from a regulatory authority.

6.8 We may cancel or amend an Order:

- (a) if required to do so by the Governing Law,
- (b) in the event of an error (including a Manifest Error),

- (c) if we consider the cancellation or amendment appropriate, having regard to the need to maintain a fair and Orderly market, our obligations as the holder of an UCOFAL, as a participant or user of the relevant Exchange, or under other legal and regulatory requirements, or if the Underlying Instrument that is the subject of the Transaction has been placed under a trading halt on an Exchange and you have not reconfirmed your instructions.
- 6.9 We reserve the right to refuse any Order larger than the Normal Market Size. Our Quote for a Transaction equal to or greater than the Normal Market Size is not guaranteed to be within any specific percentage of the underlying or related market quotation, and our acceptance of your Order may be subject to special conditions and requirements, which we will notify you of at the time we accept your Order. We will inform you of the Normal Market Size for a particular Transaction if you request it.
- 6.10 Where an Underlying Instrument is traded on multiple markets, you agree that we may, but are not obliged to, base our Quote on the aggregate prices from those markets.
- 6.11 We will make reasonable efforts to carry out any instructions to cancel or amend Orders as quickly as possible. However, if an Order is filled before a cancellation or amendment instruction takes effect, you must accept the Transaction on its original terms, unless the Transaction itself is cancelled or amended.
- 6.12 You acknowledge that we do not operate discretionary Accounts and, unless expressly provided otherwise in this Agreement, we will act only on your instructions.
- 6.13 Unless otherwise specified in this Agreement, all Orders will remain open until cancelled by you or removed by the Electronic Trading Service. We accept no responsibility for reinstating expired Orders or for contacting you to obtain new instructions.
- 6.14 You must not instruct us to submit an Order to enter into a Transaction that would breach, or cause us or any other person to breach, the Governing Law, or any other applicable laws, including, without limitation, laws or rules relating to:
- (a) market manipulation, false trading, market rigging, fictitious Transactions, black-box trading, high-frequency trading, scalping, wash trading, or Order matching,
  - (b) insider trading,
  - (c) short selling,
  - (d) creating a disOrderly market or otherwise undermining the integrity or efficiency of the market, or
  - (e) misleading or deceptive conduct.

## 7. Conflicts of Interest

- 7.1 We are required by law to take all reasonable steps to identify conflicts of interest between ourselves, our associated companies, and our Clients, or between one Client and another, that may arise in the course of providing our financial services.
- 7.2 Subject to the Governing Law, we may pay to, and accept from, third parties benefits, commissions, or remuneration arising from Transactions entered into by you, and we will not be liable to Account to you for them.
- 7.3 We may, in accordance with our UCOFAL, provide general Financial Product advice or other financial services to another Client concerning the Underlying Market in relation to which you enter into a Transaction.
- 7.4 We are under no obligation to Account to you for any profit, commission, or remuneration earned or received by us from Transactions or circumstances in which we have a material interest, or where a conflict of interest may exist.
- 7.5 You acknowledge that you are aware of the possibility of the conflicts disclosed in this clause arising, and you consent to us acting notwithstanding such conflicts.

## 8. Opening a Transaction

- 8.1 The specific terms of each Transaction must be agreed between you and us before the Transaction is entered into.
- 8.2 Before entering into a Transaction, you must have sufficient Account value to meet the initial Margin requirements for the relevant number of Contracts. Payments you make to us will either be held as Margin or applied to cover Realised or Unrealised losses, fees, or charges owed by you.
- 8.3 You may open a Transaction by “buying” or “selling.” In this Agreement, a Transaction opened by “buying” is referred to as a “Buy Transaction” and may also be described as a “long” or “long position.” A Transaction opened by “selling” is referred to as a “Sell Transaction” and may also be described as a “short” or “short position”.

- 8.4 When you open a buy Transaction, the opening level will be the higher price Quoted by us. When you open a sell Transaction, the opening level will be the lower price Quoted by us.
- 8.5 Every Transaction must specify a defined number of units of the Underlying Instrument.
- 8.6 Subject to any other provision of this Agreement, each Transaction you open will be binding on you, even if by opening the Transaction you exceed any credit or other limit applicable to you or to your dealings with us.

## 9. Closing a Transaction

### Transactions with no Expiry Date

- 9.1 Subject to any other provision of this Agreement and any requirements we may specify in relation to linked Transactions, you may Close Out an Open Position, in whole or in part, at any time.
- 9.2 When you Close Out an Open Position, the Closing Level will be the lower figure Quoted by us if you are Closing Out an Undated Buy Transaction, and the higher figure Quoted by us if you are Closing Out an Undated Sell Transaction.
- 9.3 At any time, you may notify Foti Capital of your intention to Close Out any Transaction (in whole or in part) by specifying the Underlying Instrument and the quantity you wish to close. This must be done by placing an Order which, if accepted, will Close Out the Undated Transaction concerned.
- 9.4 Upon receiving your Order to Close Out an Undated Transaction, Foti Capital will use reasonable endeavours to provide a Closing Level (by quoting prices to Close Out your Open Positions) and will notify you of that Quote through the Electronic Trading Service or otherwise. It is your responsibility to notify Foti Capital promptly whether you are willing to accept the Quoted Closing Level. If you accept the Closing Level Quoted by Foti Capital, the Undated Transaction, or the relevant portion of it, will be Closed Out by issuing you with a Contract equal and opposite to the open Contract, or the relevant portion thereof, to be Closed Out.
- 9.5 If the Underlying Instrument of a Contract is subject to redemption, Exchange, or termination, and you do not notify Foti Capital of your intention to Close Out or roll over the Contract on terms and within a timeframe acceptable to Foti Capital (whether or not you had prior notice of such terms), you will be deemed to have instructed Foti Capital to Close Out the Contract at a Closing Level reasonably determined by Foti Capital. In such case, Foti Capital will Close Out the Contract at a time it determines.
- 9.6 Upon Close-Out, if there is a difference between the Closing Value and the Contract value, it will be Accounted for as follows:
- (a) if the Closing Value is greater than the Contract value, the Short party must pay the Long Party the difference, and
  - (b) if the Closing Value is less than the Contract value, the Long Party must pay the Short party the difference.

### Transactions with an Expiry Date

- 9.7 Subject to this Agreement and any requirements we may specify in relation to linked Transactions, you may Close Out an open Expiry Transaction, in whole or in part, at any time prior to the Last Dealing Time for that Transaction.
- 9.8 Details of the applicable Last Dealing Time for each Expiry Transaction will normally be available in your Account, or may be obtained from us upon request. It is your responsibility to ensure that you are aware of the Last Dealing Time, or the expiry time, for any particular Expiry Transaction.
- 9.9 When you Close Out an Expiry Transaction prior to the Last Dealing Time, the Closing Level will be the lower figure Quoted by us if it is a buy Transaction, and the higher figure Quoted by us if it is a sell Transaction.
- 9.10 If you do not Close Out an Expiry Transaction in respect of an Underlying Instrument on or before the Last Dealing Time, then, subject to clause 10.15, we will Close Out your Expiry Transaction as soon as we have determined its Closing Level. The Closing Level of the Expiry Transaction will be:
- (a) the last traded price at or before the close, or the applicable official closing quotation or settlement price in the relevant Underlying Market as reported by the relevant Exchange, plus or minus, as the case may be,
  - (b) any Spread applied by us when the Expiry Transaction is Closed Out. Details of the Spread applied to a particular Expiry Transaction will be set out in your Account.
- 9.11 You acknowledge that it is your responsibility to be aware of the Last Dealing Time and of any Spread or commission that we may apply when an Expiry Transaction is Closed Out.
- 9.12 You acknowledge that it is your responsibility to be aware of the next applicable Contract period for an Expiry Transaction and

that rolling over an Expiry Transaction may result in losses to your Account.

- 9.13 Any agreement to roll over an Expiry Transaction or any other Transaction is entirely at our discretion. We reserve the right to refuse to roll over an Expiry Transaction or any other Transaction, notwithstanding any instruction from you, if we reasonably determine that doing so would cause you to exceed any credit or other limit placed on your dealings with us.
- 9.14 Where we do roll over an Expiry Transaction or any other Transaction, the original Expiry Transaction will be Closed Out at or just before the Last Dealing Time and settled, and a new Expiry Transaction will be created. Such closing and opening will be on our terms.
- 9.15 If an Expiry Transaction exceeds four (4) times the Normal Market Size, or if multiple Expiry Transactions together exceed four (4) times the Normal Market Size, and they have not been Closed Out before the Last Dealing Time, we reserve the absolute right, at our discretion, to roll over the Expiry Transaction(s) to the next Contract period if we reasonably determine that doing so is in your best interests or in the best interests of our Clients as a whole.
- 9.16 If we choose to roll over your Transaction(s), we will generally attempt to contact you before the Last Dealing Time. For the avoidance of doubt, however, we may roll over your Expiry Transaction(s) even if we have not contacted you, and we will not be liable in any way for failing to do so.
- 9.17 If a Transaction is Closed Out, or a settlement for difference is made:
- (a) we will credit to your Account any amount payable by us to you, or
  - (b) you must pay to us, in cleared funds and in any currency we may require, any amount payable by you to us, immediately upon request.
- 9.18 If there is surplus Margin in your Account, any amount you owe under this clause may be settled, in whole or in part, by debiting your Account with us.
- 9.19 When you Close Out a Transaction, you must pay us any commission, fees, and other charges as disclosed in the PDS, the Electronic Trading Service, or on our website.
- 9.20 Unless we agree otherwise, all sums payable by you under this clause are due immediately upon the Closing Level of your Transaction being determined by us.
- 9.21 We reserve the right to adjust the Closing Level.

## 10. Electronic Trading Service

- 10.1 You represent and warrant that you are aware of all applicable regulations governing the Electronic Trading Services you use, and that your use of such services will comply with all applicable regulations and with this Agreement, as amended from time to time.
- 10.2 The provisions of this clause are in addition to the other provisions of this Agreement and govern your use of the Electronic Trading Service or any information service we provide or make available to you (including, without limitation, all software and communication links), through which you may:
- (a) place your Orders or transmit other instructions to us or other persons,
  - (b) enquire about the availability, pricing, or value of one or more Financial Products,
  - (c) receive market data and other information relating to one or more Financial Products, or
  - (d) receive Confirmations, Account balances, or other information in connection with your Account or Transactions.
- 10.3 We have no obligation to accept, execute, or cancel all or any part of a Transaction that you seek to execute or cancel through an Electronic Trading Service. Without limiting the foregoing, we are not responsible for instructions or transmissions that are inaccurate or not received by us, and we may execute any Transaction on the terms actually received by us.
- 10.4 You authorise us to act on any instruction given, or appearing to be given, by you using the Security Data, and received by us in connection with any Electronic Trading Service you use ("Electronic Instruction").
- 10.5 We are under no obligation to act on any Electronic Instruction, or to execute or enter into any particular Transaction, and we are not required to provide reasons for declining to do so.
- 10.6 Unless otherwise agreed with you, you will have no right to amend or revoke an Electronic Instruction once it has been received

- by us.
- 10.7 You will be responsible for the genuineness and accuracy, both as to content and form, of any electronic instruction received by us.
- 10.8 You acknowledge that we have the unilateral right, with immediate effect, to suspend or terminate, at any time and with or without cause or prior notice, all or any part of any Electronic Trading Service or your access to it; to change the nature, composition, or availability of any Electronic Trading Service; or to change the limits on trading that you may conduct through any Electronic Trading Service, in the following circumstances:
- (a) where an Event of Default occurs (as outlined in clauses 14 and 20 of this Agreement),
  - (b) where a Force Majeure Event occurs, including restrictions imposed by Exchanges or governments (as outlined in clause 22.4(g) of this Agreement), or
  - (c) where an Event of Default or a Force Majeure Event occurs with our upstream liquidity or platform providers.
- 10.9 All prices shown on any Electronic Trading Service are indicative only and are subject to constant change.
- 10.10 Use of any high-speed or automated mass data entry system with the Electronic Trading Service will only be permitted with our prior written consent, exercised in our sole discretion.
- 10.11 Where we permit electronic communications between you and us through a customised interface using a protocol such as FIX API, those communications will be interpreted in accordance with, and subject to, any rules of engagement for such interface protocol that are provided to you.
- 10.12 You are required to test any customised interface prior to using it in a live environment, and you agree that you will be solely responsible for any errors or failures in your implementation of the interface protocol.
- 10.13 When using automated trading systems, the Electronic Trading Service may impose thresholds on the excessive number of messages. Upon reaching such predetermined thresholds, you may receive notifications and/or warnings from the software provider. You are solely responsible for adjusting and/or reducing the flow of Orders before reaching such thresholds, and you must at all times comply with any limitations imposed by the software provider to prevent interruption or disruption of the trading platform. We reserve the right, at our sole discretion, to disable your trading Account(s) if hyperactive trading behaviour is observed, and we shall not be liable for any Losses or unrealised profits incurred during the period in which your Account remains disabled as a result of such behaviour. You are further advised to refrain from engaging in repeated hyperactive trading practices, as your Accounts may be disabled multiple times within the same calendar day.
- 10.14 Foti Capital has no obligation to resubmit any Orders purged from the Electronic Trading Service.
- 10.15 An Electronic Trading Service may be either a proprietary service provided by us or a service provided to you by a third party pursuant to an arrangement with us. Where we grant you access to an Electronic Trading Service, we grant you, for the term of this Agreement, a non-exclusive, revocable, non-transferable, and non-transferrable licence to use the Electronic Trading Service pursuant to and in strict accordance with the terms of this Agreement.
- 10.16 We provide the Electronic Trading Services to you solely for your personal use and for the purposes set out in this Agreement.
- 10.17 You must not sell, lease, or provide, directly or indirectly, the Electronic Trading Services, or any part thereof, to any third party except as expressly permitted by this Agreement.
- 10.18 You acknowledge that all proprietary rights in the Electronic Trading Services are owned either by us or by applicable third-party service providers selected by us, who have made available to us all or part of the Electronic Trading Services.
- 10.19 You receive no copyright, intellectual property rights, or other rights in or to the Electronic Trading Services, except as expressly set out in this Agreement.
- 10.20 You must protect and not infringe proprietary rights in the Electronic Trading Services, and you must comply with our reasonable requests to protect our Contractual, statutory, and common law rights, as well as those of our third-party service providers, in the Electronic Trading Services. If you become aware of any infringement of such proprietary rights, you must notify us in writing immediately.
- 10.21 If you receive any data, information, or software via an Electronic Trading Service other than what you are entitled to receive under this Agreement, you must immediately notify us and must not use such data, information, or software in any way.
- 10.22 For some Electronic Trading Services, software may be downloaded by you onto one or more systems; however, under no

circumstances are you permitted to use the Electronic Trading Service on more than one system at the same time.

- 10.23 You must take all reasonable steps to ensure that no computer viruses, worms, software bombs, or similar items are introduced into the systems or software you use to access our Electronic Trading Services.
- 10.24 You agree that:
- (a) you must not use the Electronic Trading Service (or permit or procure any other person to use it) until the Security Data has been provided by us,
  - (b) the Security Data is confidential,
  - (c) you are responsible for maintaining the confidentiality and proper use of the Security Data at all times, and you must ensure that any of your authorised persons also maintain its confidentiality,
  - (d) you must not permit, consent to, or allow any person to use the Security Data or to access or use the Electronic Trading Service with that Security Data,
  - (e) you must not provide, disclose, or make the Security Data available to any person,
  - (f) you must notify us immediately if you become aware of any unauthorised use of the Security Data or the Electronic Trading Service,
  - (g) you acknowledge that there are significant risks in using an Electronic Trading Service to deal in our Financial Products because it is operated by computer and telecommunications systems, and
  - (h) you are responsible for familiarising yourself with, and must read, any user manuals or materials relating to the Electronic Trading Service.
- 10.25 You acknowledge and agree that all market data and information relating to trading, volumes, and pricing for a financial market provided through any Electronic Trading Service may be proprietary to the relevant Exchange, financial market, or another person, and that any display, dissemination, or other use of such information may be subject to restrictions imposed by that Exchange, financial market, or person. You are responsible for complying with any such restrictions.
- 10.26 You acknowledge and agree that:
- (a) you are only permitted to access and use the Electronic Trading Service using the Security Data,
  - (b) we are entitled to rely on all instructions or communications given by you, on your behalf, or apparently on your behalf, using the Security Data, and, notwithstanding any other provision of this Agreement, we shall have no liability whatsoever for any Loss arising from acting on such instructions or communications,
  - (c) there may be delays in the processing, execution, amendment, or cancellation of any Order entered through the Electronic Trading Service, and:
    - i. an Order may be filled before an instruction for its amendment or cancellation is processed,
    - ii. you remain fully liable to settle the original Order until any relevant amendment or cancellation is effected, and
    - iii. Foti Capital shall not be liable for any Loss incurred by you arising from any delay in the dissemination of market information or the processing of any Order,
  - (d) the execution of an Order placed through the Electronic Trading Service may be delayed by filters or other electronic features of the system,
  - (e) we are not responsible, under any circumstances, for the processing, execution, or cancellation of any Orders submitted through the Electronic Trading Service, regardless of who submits them, whether or not there is an error in Order entry, or for any delays, and
  - (f) you are solely responsible for ensuring that you have in place adequate alternative arrangements for the execution of Orders or for other services available through the Electronic Trading Service, in the event that the service, or any part of it, becomes unavailable or fails (including, without limitation, arrangements for the use of telephone or facsimile).
- 10.27 You are solely responsible for all implications and consequences arising from any unauthorised use of your Security Data or access to the Electronic Trading Service.

- 10.28 If a failure, interruption, or malfunction of electronic communication between the parties prevents an Order from being placed, cancelled, or amended, then, without limiting any other rights under this Agreement, neither party will be liable to the other for any Loss arising from such failure, interruption, or malfunction.
- 10.29 We and our licensors (as applicable) retain all intellectual property rights in all elements of the software and in such software and databases contained within the Electronic Trading Services. You must not, under any circumstances, claim or assert any title, benefit, or interest in them.
- 10.30 The Electronic Trading Service may be available in several versions. You are solely responsible for ensuring that you install and use the latest official version as released and designated by us. We shall not be liable for any Losses, expenses, costs, or liabilities suffered or incurred by you as a result of using any version of the platform other than our current standard version with all mandatory updates installed, regardless of whether we have notified you of such updates.

## 11. Authorised Representatives

- 11.1 Foti Capital may accept your authorisation of another person ("Authorised Representative") to give instructions and place Orders on your behalf. You must notify Foti Capital, either in your Application Form or otherwise in writing in a manner permitted by Foti Capital, of any such authorisation, providing the full name, telephone number, fax number, email address, specimen signature of that person, and any other information required by Foti Capital to identify and verify the Authorised Representative.
- 11.2 Any change to, or revocation of, such authority takes effect only upon Foti Capital's receipt of a signed written notice of change or revocation from you. If another person is subsequently appointed as an Authorised Representative, the notice must include that person's full name, telephone number, fax number, email address, and specimen signature, together with any other information required by Foti Capital to identify and verify the Authorised Representative, and, if you are a body corporate, the notice must also be verified by a director.
- 11.3 You remain fully and solely liable for all acts or omissions of any Authorised Representative, even if such acts or omissions were outside the representative's authority, or were fraudulent, erroneous, negligent, or illegal.

## 12. Manifest Error

- 12.1 We may, without your consent, either declare a Transaction or Open Position void from the outset or amend the terms of any Transaction at any time if it contains, or is based on, any error that we reasonably believe constitutes a Manifest Error.
- 12.2 If, in our discretion, we amend the terms of any such Transaction or Open Position due to a Manifest Error, the amended terms will be set at such level as we reasonably believe would have been fair at the time the Transaction was entered into, had the Manifest Error not occurred.
- 12.3 In deciding whether an error constitutes a Manifest Error, we will act reasonably and may, but are not obliged to, take into Account any relevant factors, including without limitation:

- the state of the Underlying Market at the time of the error, or
- any error in, or lack of clarity of, any information source or announcement on which we based our Quoted prices

Any financial commitment you have entered into, or refrained from entering into, in reliance on a Transaction with us will not be taken into Account in determining whether a Manifest Error has occurred.

- 12.4 In the absence of our fraud, wilful default, or negligence, we will not be liable to you for any Loss, cost, claim, demand, or expense following a determination of a Manifest Error (including where the Manifest Error is made by any information source, commentator, or official on whom we reasonably rely), or for any action (or omission) taken (or omitted) by us as a result.
- 12.5 If a Manifest Error has occurred and we choose to exercise any of our rights under this clause or any other provision of this Agreement, and if you have received any monies from us in connection with the Manifest Error, you agree that those monies are immediately due and payable to us upon our written demand, and you agree to return an equal sum to us within the period specified in our written demand.
- 12.6 If a Transaction or Open Position is based on a Manifest Error, we may (in addition to our other rights) without your consent do any or all of the following:
- (a) amend the terms of a Transaction to reflect what we consider to have been the fair terms at the time the Transaction had been entered into had there been no Manifest Error,
  - (b) Close Out the Transaction and any Open Positions resulting from it,

- (c) adjust or suspend your Account,
  - (d) treat the Transaction as void from its inception,
  - (e) refrain from taking action to amend or void the Transaction, or
  - (f) take any other action that we believe is appropriate in the circumstances.
- 12.7 We will exercise our rights under this clause reasonably, in good faith, and as soon as reasonably practical after we become aware of the Manifest Error.
- 12.8 Where practicable, we will provide you with prior notice of any action taken under this clause; if prior notice is not practicable, we will notify you as soon as reasonably practicable afterwards.
- 12.9 Except in cases of fraud or gross negligence by us, and to the extent permitted by law, we will not be liable to you for any Loss, cost, claim, demand, or expense (including loss of profits, or indirect or consequential losses) that you may incur or suffer, arising from or connected with a Manifest Error, including where the Manifest Error arises from an information service on which we reasonably rely.

### 13. Price Manipulation, Gaming and Market Misconduct

If we reasonably believe that you (including any Authorised Representative) have engaged in, attempted to engage in, or facilitated price manipulation, manipulation of our Quotes, our execution process or our Electronic Trading Service, or exploiting or attempting to exploit our Electronic Trading Service, or any form of market abuse or misconduct, we may, in our sole and absolute discretion, without notice to you and to the extent permitted by law, take any one or more of the following actions:

- (a) enforce the Transaction(s) against you if it results in you owing money to us,
- (b) treat all of your Transactions as void from inception,
- (c) withhold any funds suspected to be derived from such activities,
- (d) Close Out your Account,
- (e) adjust your Account,
- (f) suspend your Account,
- (g) terminate this Agreement, and
- (h) take any other action we consider appropriate.

### 14. Fees and Charges

- 14.1 Any realised profit or loss, net of applicable fees and charges, arising from Closing Out a Transaction will be credited or debited (as applicable) to the Account Value in the Account currency.
- 14.2 You owe us, and must pay to us or as we direct:
- (a) any Transaction charges, including commission, Finance Charges, Margins, premia, settlement and clearing fees, interest, default charges, and taxes (including GST but excluding Foti Capital's income tax, penalty tax, and levies), and any other amounts due under this Agreement, payable on demand by Foti Capital in cleared funds or as otherwise required under this Agreement,
  - (b) a Transaction fee for each Financial Product or Transaction, as specified by Foti Capital from time to time,
  - (c) any royalty or other fee payable for the use of prices or information provided to you via the Electronic Trading Service or otherwise by any Exchange,
  - (d) where applicable, a monthly access charge for the use of the Electronic Trading Service provided by Foti Capital, as specified by Foti Capital from time to time,
  - (e) any fees, Taxes, stamp duty, or other charges levied on or in connection with any Transactions entered into with you, and
  - (f) interest on any unpaid amounts required under this Agreement (including, without limitation, amounts due as a result of your failure to pay), such interest being denominated in United States Dollars (USD) at a rate reasonably determined by

Foti Capital, provided that the total rate does not exceed generally prevailing rates for comparable personal unsecured loans, and accruing daily from (and including) the due date until full payment is made.

14.3 You authorise us to deduct any of the fees described in clause 14:

- (a) from your Account, and
- (b) from the CMTA, and to pay ourselves the amount of any Transaction Fee, Realised or Unrealised losses on your Account, any other fees or charges described in clause 14 (including, but not limited to, credit card fees) that you owe, and the Margin required to maintain the necessary Margin Cover.

14.4 All payments by you under this Agreement must be:

- (a) made without any set-off, counterclaim, or condition by you, and without any deduction or withholding for Tax or any other reason unless required by applicable law or expressly permitted under this Agreement, and
- (b) payable in any currency that we may reasonably require or determine.

14.5 We agree to pay you any Finance Credit applicable to a Transaction from time to time.

## 15. Client Money Trust Account (CMTA)

15.1 You acknowledge and agree that Foti Capital must deal with your Client money in accordance with the Client money rules, and must not use Client money:

- (a) for Foti Capital's own working capital,
- (b) to meet obligations incurred by Foti Capital other than on behalf of a Client, and
- (c) to enter into, or meet obligations under, Transactions undertaken by Foti Capital to hedge, counteract, or offset its risk arising from Transactions between Foti Capital and a Client.

15.2 You acknowledge and authorise that your Client money may be pooled with the money of other Clients of Foti Capital and held by Foti Capital in a CMTA, separate from Foti Capital's own money.

15.3 You agree that we are entitled to all interest earned on Client money credited to any CMTA, unless otherwise agreed in writing between you and us.

15.4 You authorise Foti Capital to withdraw any or all Client money to which you are otherwise entitled in any CMTA maintained by Foti Capital, in Order to meet any liability, obligation, or other loss you owe to Foti Capital. This includes, without limitation, payment for your Financial Products, amounts in respect of any Realised or Unrealised loss on your Account, Margin, Margin Cover, or Variation Margin.

15.5 When you pay Client money to Foti Capital in connection with a Transaction, you also authorise us to deposit that Client money into a CMTA, where it will remain until withdrawn by Foti Capital either to pay you amounts you are entitled to receive, or to pay amounts to which Foti Capital is entitled, including payment for your Financial Products (including, without limitation, amounts in respect of any Realised or Unrealised loss on your Account).

If, after Foti Capital re-values your Account, there is a Realised or Unrealised loss, Foti Capital is authorised under this Agreement to withdraw the equivalent amount of that loss from the CMTA to pay itself the amount to which it is entitled.

15.6 You acknowledge that, once any Client money is withdrawn from the CMTA in connection with your Transactions:

- (a) you no longer benefit from the protections applicable to such a CMTA,
- (b) you become an unsecured creditor of Foti Capital in respect of its obligations arising from your Transactions, including the right to claim, as an unsecured creditor, the net Account balance (if any) after all your Open Positions have been closed, and
- (c) the funds cease to be held on your behalf and instead become the property of Foti Capital.

15.7 If you pay Client money into any CMTA maintained by us in anticipation of liabilities, obligations, or losses that you may owe to us, including payment for your Financial Products (such as Margin), you authorise us under this Agreement to withdraw that Client money to satisfy any such liability when it arises.

15.8 If no activity occurs on your Account for a period of 7 years after the date you became entitled to a transfer of your Client money held in such Account (notwithstanding any crediting or debiting of interest or similar amounts), and we are unable to locate you despite taking reasonable steps, that Client money will be treated as unclaimed money and dealt with in accordance with the

relevant laws.

- 15.9 You acknowledge that we have no obligation to pay interest on balances in your Account (or any fees we may deduct from such interest), and you waive and relinquish any entitlement to interest (and any related fees) under the Governing Law or otherwise.
- 15.10 We retain all additional interest earned on Client money held in a CMTA or with another approved deposit-taking institution.
- 15.11 We may invest Client money held in a CMTA in accordance with the Client money rules, and you irrevocably authorise us to make such investments.
- 15.12 All Client money to which you are entitled under this Agreement will be paid directly to the bank Account you nominated in your application with us (and not to any third party or third-party bank Account), unless otherwise agreed in writing.
- 15.13 You acknowledge and agree that if, after we re-value your Account, there is a realised or unrealised profit, we will hold sufficient funds in the CMTA and credit your balance as Margin to reflect the adjustment for that profit, so that those funds remain there for your benefit until dealt with in accordance with this Agreement.
- 15.14 Some of our payment methods involve the use of third-party payment service providers ("PSPs"). When a deposit is made through a PSP, and the PSP credits Foti Capital's Account, Foti Capital will make a corresponding credit to your trading Account. Following this, Foti Capital will pay the credited amount into the CMTA for your benefit, adjusted for any Realised or Unrealised profit or Loss from your trading activity during the day.

In the ordinary course of business, this will occur on the same business day or the next business day. The timing depends on you providing all required details and the PSP crediting the relevant payment to Foti Capital's Account (which is subject to the PSP's processing time and any time zone differences).

Your payment to the PSP is not automatically a payment to Foti Capital. Payment to the PSP is entirely at your own risk, and Foti Capital accepts no responsibility for any delay, failure, or Loss prior to the PSP crediting Foti Capital's Account.

Foti Capital's payment into the CMTA is a benefit for you, as Foti Capital will typically make the payment before it actually receives funds from the PSP. Any payment into the CMTA for your trading Account remains subject to adjustment for Realised or Unrealised Profit or Loss from your trading activity during the day.

- 15.15 If Foti Capital becomes insolvent, you may be entitled to payment of any net credit balance in your Account as follows:
- (a) any of your Client money in the CMTA will be paid to you, after deduction of amounts properly payable to Foti Capital for CFDs or otherwise agreed by you, subject to any court Order to the contrary.
  - (b) Foti Capital will review whether it can and should pursue recovery actions against any of its Hedge Counterparties.
  - (c) the precise amounts and timing of payments cannot be determined until the net positions with Hedge Counterparties are known.
  - (d) the position with Hedge Counterparties depends on what Foti Capital recovers from them and what it owes to its Clients.
  - (e) Foti Capital will assess the amounts prudently available for payment to CFD Clients and may decide to make interim payments, and
  - (f) Foti Capital will determine a fair and reasonable allocation to CFD Clients, taking into Account, for example, amounts paid from the CMTA, Account balances, and amounts recovered from hedge counterparties.

## 16. Margin

- 16.1 Upon opening a Transaction, you are required to provide the Initial Margin for that Transaction, as determined and calculated by us.
- 16.2 You acknowledge that the Initial Margin for certain Transactions (for example, Share CFDs) is calculated as a percentage of the Contract Value and will therefore fluctuate in line with any changes to the Contract Value.
- 16.3 The Initial Margin must be provided before you enter into a Transaction. For Transactions where the Initial Margin fluctuates based on a percentage of the Contract Value, it must be provided immediately upon opening the Transaction and immediately following any increase in the Contract Value.
- 16.4 You agree that Margin requirements vary depending on the Financial Product and may be displayed on our website. Margin requirements are subject to change at any time without prior notice, and you are responsible for keeping yourself informed of the applicable requirements.

- 16.5 You also agree that you have an ongoing obligation to maintain sufficient Margin in your Account to ensure that, at all times while you have Open Transactions, your Margin Cover remains positive.
- 16.6 You must maintain at least the level of Margin Cover required by us, regardless of whether we provide notice to you or you have actual knowledge of the required amount. The required Margin Cover may change continuously and automatically, including during weekends or other non-trading days. Your obligation to maintain the required Margin Cover is ongoing.
- 16.7 You are solely responsible for monitoring and meeting all Margin Cover requirements.
- 16.8 You are required to maintain the Margin Cover, which might mean you must pay more Margin, whether or not we give you a Margin Call and even if you are not contactable.
- 16.9 A Margin payment is credited by Foti Capital at the time that cleared funds have been received into the CMTA and we have applied the payment to your Account or such other time as allowed by us, so a Margin Cover requirement for a Contract or other Transaction issued by us is not satisfied unless and until your payment is received in cleared funds in to the CMTA and applied to your Account by us.
- 16.10 Your liability in respect of Margin requirements is not limited to your payment of Initial Margin or Variation Margin. You are responsible to pay any deficit owing to us after Close Out of a Transaction. If you default in payment of such deficit, we may pay the deficit out of the Account or realise any Financial Products held by us and apply the amounts or proceeds against that deficit. You are responsible for the full and prompt discharge of the deficit (including any amount exceeding the value of the Account) by making payment in full to us immediately when that deficit arises.
- 16.11 Foti Capital may, without prior notice to you, Close Out your Open Positions at any time, or at a later time as determined by us (either at our discretion or by automatic trading platform management), if:
- (a) your Account Value falls below the Liquidation Level, or
  - (b) you fail to maintain the required Margin Cover, or
  - (c) at any time, Foti Capital determines that the value of all your Open Positions (excluding any cash balance in your Account) represents a substantial net unrealised loss, such that, in our reasonable belief, the continuation of trading or the failure to Close Out one or more of your Open Positions will, or is likely to, materially prejudice your Account Value. For the avoidance of doubt, we are not obliged to Close Out or attempt to Close Out your Open Positions, even if the above circumstances occur.
- 16.12 Details of Margin amounts paid and outstanding are available by logging into your Account.
- 16.13 Margin payments must be made in the form of cleared funds (paid into the nominated Account of Foti Capital).
- 16.14 We are under no obligation to keep you informed of your Account balance, Margin Cover requirements, or to issue Margin calls.
- 16.15 If we, in our reasonable discretion, issue a Margin Call to you:
- (a) we may do so by telephone call, post, fax, email or text message,
  - (b) the Margin Call will be deemed to have been made once you are deemed to have received such notice in accordance with clause 18.9 of this Agreement,
  - (c) we will also be deemed to have made a demand on you by telephone if we have left a message requesting you to contact us and you have not done so within the time specified in the message,
  - (d) you are responsible for immediately notifying us of any change in your contact details, providing alternative contact details, and ensuring that our Margin Calls can be received if you are otherwise uncontactable at the contact information provided (for example, due to travel, holidays, or observance of religious holidays).
- 16.16 We will not be liable for any Losses, costs, expenses or damages incurred or suffered by you as a consequence of your failure to satisfy a Margin Call or if we are unable to contact you in making a Margin Call.

## 17. Payments, Set-off and Netting

- 17.1 We may request that you provide documentation or other proof, acceptable to us, showing the origin of any funds used for payments to us. We may restrict you from entering into any Contracts or Transactions until such documentation or proof is provided to our satisfaction and does not give rise to any suspicion of illegality concerning those payments.
- 17.2 All amounts payable by you to Foti Capital shall:

- (a) be made without any set-off, counterclaim, or condition, and without any deduction or withholding for tax or any other reason, unless such deduction or withholding is required by applicable law or the set-off arises under this Agreement be made in full, without set-off, counterclaim or condition of any kind, and without any deduction or withholding in respect of Tax or otherwise, except where such deduction or withholding is required by Applicable Law or expressly permitted under this Agreementent,
  - (b) be payable in any currency that Foti Capital may reasonably specify or accept,
  - (c) be paid on the due date and time, failing which interest shall accrue on the overdue balance at a minimum rate of 4% per annum, calculated daily until settlement in full,
  - (d) only be deemed discharged once received by us as cleared funds, and
  - (e) be made in the currency of your Account, provided that payments by Foti Capital to you will also be made in that currency unless we reasonably decide otherwise.
- 17.3 If you make a payment to us in a currency other than the base currency of your Account, you agree that we may, without prior notice, carry out any adjustments or currency conversions we consider necessary, at rates determined by us, and you will be responsible for any related losses, charges, Exchange-rate fluctuations, or other applicable costs.
- 17.4 Without prejudice to our right to require payment from you in accordance with this Agreement, Foti Capital may, at any time and without prior notice, set off any losses incurred, amounts you owe in respect of your Transactions, or any debit balances in any Account. If any loss or debit balance exceeds the amounts held, you must immediately pay us the excess, whether demanded or not. You also authorise us to set off any amounts held by us for your benefit in a joint Account against losses incurred by the other joint Account holder.
- 17.5 If the total amount payable by one party exceeds that payable by the other, the party owing the greater amount must pay the difference to the other party. Once the excess is paid, both parties' payment obligations are deemed satisfied and discharged.
- 17.6 All payments due from you under this Agreement become immediately payable upon our verbal or written demand. Such payments must be made by you and received by us in full, in cleared funds, for your obligations to be discharged.
- 17.7 When deciding whether to accept payments under this Agreement, we will give utmost regard to our obligations under UCOFAL and the Governing Law. We may, at our sole discretion, refuse to accept payments from you or from any third party and return such funds to their source. In particular, we will not accept payment from a bank Account unless we are satisfied that the Account is held in Client's name.
- 17.8 Our failure, delay, or omission in enforcing our right to timely payment (including our right to immediate payment of Margin) will not constitute a waiver of that right, nor prevent us from enforcing it at any time.
- 17.9 Time is of the essence with respect to all payment obligations under this Agreement.
- 17.10 You acknowledge and agree that, in certain circumstances, there may be delays before funds you have deposited are reflected in your trading Account. Such delays may result, for example, from high volumes of Client deposits or transfers being processed at the same time, or from factors outside our control. You further agree that we shall not be liable for any loss, damage, or additional costs you may incur as a result of such delays.

## 18. Communications

- 18.1 Your instruction to open or Close Out a Transaction (including an Order) must be given by you, or on your behalf:
- (a) through our Electronic Trading Service, or
  - (b) in any other manner we may specify from time to time.
- 18.2 Written instructions to open or Close Out a Transaction, including those sent by facsimile, email (even secure email through our Electronic Trading Service), or text message, will not be accepted or effective under this Agreement.
- 18.3 Any communication that is not an instruction to open or Close Out a Transaction may be made by you, or on your behalf:
- (a) verbally, by telephone,
  - (b) in person,
  - (c) in writing, by email, post, or facsimile, or
  - (d) in any other manner we may specify from time to time, as published on our website.

- 18.4 We will generally not accept any instruction to open or Close Out a Transaction unless it is given in accordance with clause 19.1, unless we notify you otherwise.
- 18.5 We will send notices and communications only to the contact details you provided in your Application Form, unless you have subsequently notified us of updated details.
- 18.6 We may notify you of any changes to this Agreement, any disclosure materials, our Transaction fees, rates, charges, or other amounts payable by you by posting a notice on our website or through our Electronic Trading Services. To the extent required by applicable law, we will provide at least the minimum period of notice.
- 18.7 If no minimum notice period is required or specified elsewhere in this Agreement, a change in Transaction fees, charges, or rates may take effect immediately once Foti Capital has published the variation on its website or through its Electronic Trading Services.
- 18.8 If, at any time, you are unable for any reason to communicate with us, if we do not receive your communication, or if you do not receive our communication under this Agreement, we will not:
- (a) be liable for any loss, damage, or cost you incur as a result of your inability to open or Close Out a Transaction, arising from any act, error, delay, or omission, and
  - (b) except where your inability to communicate with us results from our fraud, wilful default, or negligence, be liable for any loss, damage, or cost you incur arising from any act, error, omission, or delay, including, without limitation, where such loss, damage, or cost results from your inability to Close Out a Transaction.
- 18.9 Any correspondence, documents, written notices, Confirmations, or electronic instructions shall be deemed to have been properly given and received by you:
- (a) by ordinary post: on the third (3rd) business day after posting,
  - (b) by express post: on the next business day after posting,
  - (c) by SMS: once sent by the sender, regardless of whether actually received,
  - (d) by email: once sent by the sender, provided no notification of failed delivery is received, regardless of whether actually opened or read,
  - (e) by posting on the Electronic Trading Service: once posted.
- 18.10 You are responsible for ensuring, at all times, that we are notified of your current and correct address and contact details. Any changes must be notified to us immediately in writing, unless we agree to another form of communication. We shall not be liable for any loss, damage, or cost arising from your failure to provide or update such information.
- 18.11 You are also responsible for regularly reviewing and reading all notices posted on our website and Electronic Trading Service in a timely manner. Failure to do so will not affect the validity or effectiveness of such notices.

## 19. Events of Default

Each of the following constitutes an Event of Default:

- (a) your failure to make any payment (including, without limitation, Margin, initial Margin, or variation Margin),
- (b) your failure to maintain Margin cover,
- (c) your failure to perform any obligation due to us under this Agreement,
- (d) your failure to pay any amount due in respect of a Transaction entered into under this Agreement,
- (e) your breach of this Agreement (whether by act or omission),
- (f) entering into a Transaction, Closing Out an Open Position, or placing an Order in circumstances where we reasonably believe the conduct is, or could be considered, a breach of the Act, Governing Law, or applicable regulations, whether or not you were aware of such breach,
- (g) any Transaction, combination of Transactions, or realised/unrealised losses on Transactions resulting in your exceeding any credit or other limit applicable to your dealings,
- (h) if you are an individual, your death, incapacity, or loss of mental capacity,

- (i) you become insolvent or bankrupt, or steps are taken towards insolvency or bankruptcy,
- (j) we reasonably believe that any information you have provided to us is false, misleading, or untrue,
- (k) we reasonably believe that the source of any funds you provide to us is illegal,
- (l) any representation or warranty you have made under this Agreement is, or becomes, untrue,
- (m) you are, or become, unable to pay your debts as they fall due,
- (n) you are not immediately contactable by us for instructions in relation to your Transactions,
- (o) failure to perform any obligation under another provision of this Agreement that expressly states non-performance constitutes an Event of Default, or
- (p) any other circumstance in which we reasonably believe it is necessary or desirable to act to protect ourselves or any of our Clients.

## 20. Action following an Event of Default

- 20.1 If an Event of Default occurs, we may, in addition to any other rights available to us under this Agreement or otherwise, and without prior notice to you (unless we determine that providing notice is practicable and appropriate), take any action, or refrain from taking action, that we consider reasonable in the circumstances in relation to Transactions under this Agreement. Without limitation, we may do one or more of the following:
- (a) suspend or terminate your Account, as we consider appropriate,
  - (b) Close Out or partially Close Out any or all of your Transactions at a Closing Level based on prevailing market quotations or prices, or, if unavailable, at such levels as we reasonably determine,
  - (c) Close Out any Open Positions,
  - (d) prohibit or restrict your access to your Account,
  - (e) reverse or void any of your Transactions,
  - (f) make adjustments, modifications, or changes to your Account as we consider appropriate,
  - (g) apply any money you have deposited into a CMTA and to which you are entitled, by way of set-off or withdrawal, and use it to pay any amount you owe us,
  - (h) immediately, or at a later time, terminate this Agreement, any of your Accounts, any of your Transactions, or any combination of them,
  - (i) calculate any or all amounts owing by you to us and declare them immediately due and payable,
  - (j) vary your Margin Cover requirements,
  - (k) convert any currency balances in your Account into another currency,
  - (l) exercise rights of set-off under this Agreement,
  - (m) charge interest on any overdue amount, from the close of business on the due date until the date of actual payment, at a rate determined by us (subject to applicable law), and
  - (n) exercise any other rights granted by Governing Law, Applicable Regulations, or this Agreement.
- 20.2 You acknowledge and agree that, when Closing Out Transactions under this clause 20, we may, at our discretion, Close Out your Positions partly and progressively over a period of time, in such amounts and at such prices as we determine. This may result in your Transactions being Closed in stages at different prices, producing an aggregate Closing Level that increases losses on your Account. You further acknowledge and agree that we shall have no liability to you for any Losses, Costs, or Consequences arising from any such Closing Out of your Transactions.
- 20.3 Nothing in this Agreement limits your rights to claim a Default by Foti Capital or to take any lawful action you reasonably determine appropriate to recover any Loss arising from such a claim. For example, we acknowledge that you may terminate this Agreement if Foti Capital commits a material breach. However, you agree that it is reasonable for you not to have specific rights following an Event of Default by us, in Order to avoid the premature termination of all Transactions of all Clients, which could cause irrevocable Losses to some or all Clients and may be irrevocably increased by such automatic termination.

## 21. Indemnity and Limitation of Liability

21.1 Except in cases of Foti Capital's fraud, wilful default, or negligence, and subject to the Governing Law, you must indemnify us, and keep us indemnified on demand, for all liabilities, losses, or costs of any kind, whether direct or indirect, arising from:

- (a) your failure to perform any obligation under this Agreement,
- (b) any Transaction, or
- (c) any false or misleading information or declaration made to us or to any third party, including any Exchange.

This indemnity includes our legal and administrative costs and expenses incurred in preparing for or taking legal or investigatory action against you, or in instructing any debt collection agency, to recover monies owed by you to us.

21.2 To the extent permitted by law, you must indemnify, protect, and hold us harmless from all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, or costs arising from any act or omission by any person who gains access to your Account, whether or not you authorised such access (except in cases of Foti Capital's fraud, wilful default, or gross negligence).

21.3 To the fullest extent permitted by law, you release, discharge, indemnify and agree to indemnify and keep indemnified Foti Capital and its officers, employees, agents, and representatives from and against all claims arising out of or in connection with:

- (a) any default by you, whether by act or omission, under this Agreement or any Order or Transaction,
- (b) any breach by you of Governing Law,
- (c) any representation or warranty made by you under this Agreement proving to be untrue or incorrect,
- (d) any error, omission, fraud, malfeasance, negligence, misappropriation, or criminal act or omission by you or by any of your Clients, employees, agents, authorised representatives, consultants, or servants,
- (e) any failure of your computer or electronic systems or networks to operate, be available, or successfully transmit data to Foti Capital, or any error or inadequacy in the data or information input into such systems by you,
- (f) any delays in processing an Order, including (without limitation) delays due to systems or market conditions, verification or filtering procedures, unauthorised processes, email delays, telephone call waiting times, or compliance with internal policies and procedures,
- (g) any lawful act done by Foti Capital in accordance with, pursuant to, or incidental to this Agreement,
- (h) any instruction, request, or direction given by you,
- (i) Foti Capital's compliance with any direction, request, or requirement of Governing Law, an Underlying Market or CS facility, any government body, or any regulatory authority with jurisdiction over Foti Capital or any hedge counterparty,
- (j) Foti Capital's good faith acceptance and action on instructions received by facsimile, email, or other means, signed or appearing to be signed by you or an authorised representative,
- (k) any failure or delay by a hedge counterparty to meet its obligations to Foti Capital in respect of your Transactions or related payments, except to the extent directly caused by Foti Capital's breach of this Agreement, gross negligence, or fraud.

21.4 Except in cases of Foti Capital's fraud, wilful default, or gross negligence, Foti Capital excludes all liability, whether in Contract, tort, or otherwise, arising from or relating to the use of any services we provide under this Agreement and for any loss incurred by you, directly or indirectly, including (without limitation) losses arising out of:

- (a) your use of the Electronic Trading Service,
- (b) any inaccuracy, error, delay, or omission in information provided under this Agreement, including via the Electronic Trading Service,
- (c) any misinterpretation of your Orders or instructions that are unclear, ambiguous, or insufficiently specific,
- (d) any misinterpretation of your Orders or instructions which are unclear, ambiguous, or not specific,
- (e) any inability on your part to open or close a Transaction,
- (f) any circumstance beyond our control, the effect of which could not reasonably be avoided,

- (g) government restrictions, Exchange or market rulings, suspension of trading, computer or telephone failure, unauthorised access to our Electronic Trading Service, theft, sabotage, war, earthquakes, strikes, Force Majeure Events, or any other conditions beyond our control.

21.5 Except in cases of Foti Capital's fraud, wilful default, or gross negligence, and unless prohibited by law (for example, liability for death, personal injury, or fraud), we will not be liable for any direct, indirect, special, incidental, punitive, or consequential damages, including (without limitation) loss of business, loss of profits, failure to avoid a loss, loss or corruption of data, or loss of goodwill or reputation, arising from any act or omission by us under this Agreement.

21.6 If and to the extent that we are found liable for any losses or damages in relation to a Transaction or your dealings with us, then, unless prohibited by law, our maximum liability to you will be limited to four (4) times the amount of Transaction fees, commission, or Spread paid or payable by you in respect of that Transaction.

## 22. Representations and Warranties

22.1 You represent and warrant to us, and agree that each such representation and warranty is deemed repeated each time you open or close a Transaction, by reference to the circumstances prevailing at that time, that:

- (a) the information provided to us in your Application Form, and at any time thereafter, is true, complete, and accurate in all respects,
- (b) you are duly authorised to execute and deliver this Agreement, to open each Transaction, and to perform your obligations under this Agreement, and you have taken all necessary action to authorise such execution, delivery, and performance,
- (c) you will enter into this Agreement and open each Transaction as principal,
- (d) any person acting on your behalf to open or close a Transaction is, and (if you are a company) the person entering into this Agreement on your behalf is, duly authorised to do so,
- (e) you have obtained all governmental or other authorisations and consents required in connection with this Agreement and in connection with opening or closing Transactions, and such authorisations and consents remain in full force and effect, with all conditions duly complied with,
- (f) the execution, delivery, and performance of this Agreement and each Transaction will not breach any Governing Law, applicable regulations, ordinance, charter, by-law, rule, jurisdiction of your residence, or any agreement binding upon you or affecting your assets,
- (g) you will not transfer funds to or from your Account to any bank Account other than the one identified in your Application Form or otherwise agreed by us,
- (h) if you act as an intermediary on behalf of another, you are specifically authorised to enter into Transactions on that person's behalf and (if required) you hold all necessary Comoros financial services licence authorisations,
- (i) if you act as a trustee of a trust, you act in accordance with the applicable trust deed,
- (j) if you are constituted by more than one person (including partnerships or joint ventures), each person is jointly and severally liable for obligations under this Agreement, and we may act on the instructions of any one of them,
- (k) you will use our services under this Agreement in good faith and will not use any electronic device, software, algorithm, trading service, or trading strategy intended to manipulate or take unfair advantage of the way we provide, construct, or deliver our Quotes.

22.2 In the absence of Foti Capital's fraud, wilful default, or negligence, we give no warranty regarding the performance of our website, Electronic Trading Services, or other software, or their suitability for any equipment you use for any purpose.

22.3 Except for non-excludable terms implied by the Governing Law, all implied terms (including, without limitation, terms relating to fitness for purpose) that may be excluded by agreement are hereby excluded from this Agreement.

22.4 Any breach by you of a representation or warranty under this Agreement constitutes an Event of Default.

## 23. Credit

If you apply for, and we approve, credit in connection with your trading with us, such credit will only be provided on the basis of written terms agreed between you and us.

## 24. Force Majeure Events

- 24.1 We may, in our reasonable opinion, determine that a Force Majeure Event has occurred, in which case we will take reasonable steps to inform you in due course.
- 24.2 If we determine that a Force Majeure Event has occurred, we may, in our absolute discretion, treat it as an Event of Default and take any action we consider necessary under clause 21.

## 25. Corporate Events, Takeovers, Voting Rights, Interest and Dividends

### Corporate Events

- 25.1 If any Underlying Instrument becomes subject to adjustment as a result of an event described in clause 25.2 (a "Corporate Event"), we will determine, in our discretion, the appropriate adjustment (if any) to the size, value, or number of related Transactions (or to the level of any Order) to Account for the diluting or concentrating effect, so as to preserve the economic equivalent of the rights and obligations of the parties in relation to that Transaction immediately prior to the Corporate Event.
- 25.2 The following may be regarded as Corporate Events:
- (a) a subdivision, consolidation, or reclassification of shares, a share buy-back or cancellation, or a bonus issue, capitalisation, or other free distribution of shares to existing shareholders,
  - (b) a distribution to existing shareholders of additional shares, other share capital, or securities granting rights to dividends or liquidation proceeds proportionately with such payments to holders of the underlying shares, or securities, rights, or warrants granting the right to a distribution or to purchase, subscribe, or receive shares, in any case at a price (in cash or otherwise) below the prevailing market price per share as determined by us,
  - (c) the cancellation of an Underlying Instrument traded, or previously traded, on a when-issued basis, in which case any related Transaction will also be void,
  - (d) any other event relating to shares that is analogous to the above or that otherwise has a diluting or concentrating effect on their market value, whether temporary or permanent; or
  - (e) any analogous event relating to an Underlying Instrument not based on shares, that has a diluting or concentrating effect on its market value, whether temporary or permanent.

### Takeovers

- 25.3 If a takeover offer is made in respect of a company, and you hold a Transaction relating to that company's securities, then:
- (a) we will use reasonable endeavours to notify you of the takeover offer,
  - (b) if applicable, we will apply the terms of the takeover offer to your Transaction as if you were a holder of the relevant securities,
  - (c) we may either (i) offer you the opportunity to accept the takeover offer as it applies to your Transaction, or (ii) accept the offer on your behalf if we reasonably believe it is in your best interests. If the offer is accepted (by you or on your behalf), your Transaction will be suspended and become untradeable until the closing date of the takeover offer, at which point it will be closed in accordance with the takeover terms. You agree that we may cancel or adjust the size, value, or number of any Transaction (or the level of any Order) to reflect the takeover offer, and such cancellation or adjustment will be final and binding on you,
  - (d) if you do not accept the takeover offer, and we do not accept it on your behalf, but the takeover proceeds (for example, under drag-along rights), you agree that we may cancel or adjust the size, value, or number of any Transaction (or the level of any Order) to reflect the takeover offer, and such cancellation or adjustment will be final and binding on you, and
  - (e) at any time before the closing date of the takeover offer, we may notify you of our intention to Close Out a Transaction relating to that company's securities. The date of such notice will be the closing date, and the Closing Level will be determined by us based on our reasonable assessment of the instrument's market value at that time.

### Voting rights

- 25.4 You acknowledge that we will not transfer to you any voting rights relating to an Underlying Instrument, nor will we permit you to influence the exercise of voting rights held by us or by any agent acting on our behalf.

### Interest

- 25.5 We will value open Transactions daily and calculate interest, on a basis notified to you in writing (including electronically) on a daily or monthly basis, applicable to the notional amount required to open a position in the Underlying Instrument of the same value. Different interest rates will generally apply to long and short positions. While your Transaction remains open, interest will accrue and be calculated daily as follows:
- (a) if you sell, interest will either be credited or debited to your Account, depending on the interest rate, and
  - (b) if you buy, interest will be debited from your Account.
- 25.6 For certain Expiry Transactions, our Quote (based on the Underlying Market) will include an interest component. Such Expiry Transactions will not be adjusted for interest as described in clause 25.5.

## Dividends

- 25.7 Where applicable (e.g. where the Underlying Instrument is a stock or index that pays a dividend), a dividend adjustment will be calculated for your Account in respect of Open Positions held over the ex-dividend date or time for the relevant Underlying Instrument. For long positions, the dividend adjustment will generally equal the net dividend receivable by a holder of the equivalent Underlying Instrument and, for non-Australian instruments, will reflect normal market practice unless otherwise agreed with you. For short positions, the dividend adjustment will generally equal the net dividend amount, unless otherwise agreed, though this may depend on the market in which the Underlying Instrument trades. Further details are available from us on request. Dividends will be credited to your Account if you hold a long position and debited if you hold a short position.
- 25.8 For certain Expiry Transactions, our Quote (based on the Underlying Market) will include a forecasted dividend component. Such Expiry Transactions will not be adjusted for dividends as described in clause 25.7. However, where a special dividend is declared or paid, or where a dividend is unusually large or small, or payable by reference to an unusually early or late ex-dividend date, or where a previously regular dividend is omitted (each case assessed by reference to past dividend payments for the same instrument), we may make an appropriate adjustment (including a retrospective adjustment) to the opening level or size of the Transaction relating to that Underlying Instrument.

## 26. Know Your Client and AML

- 26.1 You acknowledge and agree:
- (a) that we are required to properly identify and verify you before opening an Account, as we are subject to AML laws,
  - (b) to provide all information and documentation we require for verification,
  - (c) that if we cannot properly verify you, we reserve the right to reject your Account application and will not be liable for any such rejection,
  - (d) that we may delay, block, or refuse any payment or service if we reasonably believe doing so may breach AML laws or any law in Comoros or any other country, and we will have no liability to you in such circumstances,
  - (e) that during the term of this Agreement, we reserve the right to take any action we consider necessary if we suspect you are breaching AML laws, and
  - (f) that any payment of money to us, or any instructions given by you, will not breach any law in Comoros or any other country.
- 26.2 You agree to provide all information and complete all documents that we are required to obtain under the Foreign Account Tax Compliance Act (FATCA).

## 27. Privacy

- 27.1 You confirm that you understand and agree that we will collect your personal information for the purposes of assessing your application, maintaining and operating your Account, and enforcing this Agreement, in accordance with applicable personal information protection regulations.
- 27.2 You authorise us to collect your personal information when providing services to you under this Agreement. You authorise us to use and disclose any information we collect from you or from other sources, or contained in relevant documents, for the following purposes:
- (a) assessing your request for our services,
  - (b) providing our services to you in accordance with this Agreement,

- (c) complying with our obligations regarding your beneficial interests,
- (d) communicating with third parties in connection with matters under this Agreement, including Account-related matters, and
- (e) ensuring compliance with legal and regulatory requirements under the Governing Law.

27.3 You must immediately notify us of any changes to the information you have previously provided. This is your continuing obligation.

27.4 You have the right to request and view, free of charge, any documentation we have collected from you.

## 28. Termination

28.1 Without limiting our rights under clause 20, either party may terminate this Agreement by giving the other reasonable written notice.

28.2 Nothing in this clause limits our other rights under this Agreement. Each indemnity you provide under this Agreement will survive termination.

28.3 Upon termination of this Agreement, and without limiting any of our other rights, we may take one or more of the following actions:

- (a) close your Account,
- (b) settle any unsettled Transactions at the time of termination,
- (c) enter into one or more Transactions to Close Out unsettled Transactions or Open Positions (and determine the value at which they are Closed Out),
- (d) cancel any Orders,
- (e) take, or refrain from taking, any action we consider appropriate in the circumstances; and
- (f) exercise any other rights under this Agreement.

## 29. Miscellaneous

29.1 We reserve the right to suspend your Account at any time if we consider it appropriate in the circumstances, with reasonable notice where practicable. However, we may suspend your Account immediately without prior notice where required by law, regulation, or where necessary to protect our rights, your interests, or the integrity of the financial markets.

29.2 We may amend this Agreement from time to time and will provide you with the notice required by the Governing Law before the amendment takes effect. Notice of the amendment may be given by posting the amended Agreement, or a summary of the amendments, on our website, or by sending a copy to you directly.

29.3 This Agreement, together with any relevant Application Form completed by you and any product specification, constitutes the entire understanding between you and Foti Capital regarding the provision of Financial Products, financial services, and any other services under this Agreement, as amended only in accordance with this Agreement.

29.4 Our rights and remedies under this Agreement are cumulative. Our exercise or waiver of any right or remedy does not preclude or limit our ability to exercise any additional right or remedy. Failure to enforce any right under this Agreement will not constitute a waiver or prevent enforcement of that right.

29.5 Both parties must take all reasonable steps to give full effect to and to perform this Agreement.

29.6 We may, after giving reasonable notice where practicable, assign, novate, or otherwise transfer any of our rights or obligations under this Agreement, in whole or in part, to a third party without your prior consent. You may not assign, novate, or otherwise transfer any of your rights or obligations without our prior written consent.

29.7 You acknowledge and agree that all copyrights, trademarks, database rights, and other proprietary rights in any information provided to or received by you from us (including, without limitation, our Quotes), together with the contents of our website, brochures, and other materials related to our dealing services, remain the sole and exclusive property of us or any identified third-party owner, whether registered or not.

29.8 If any clause (or part of a clause) is held by a court of competent jurisdiction to be unenforceable, that clause (or part) will, to that extent, be deemed severed and will not form part of this Agreement, and the remainder will continue in full force and effect. The parties shall use reasonable efforts to replace such provision with a valid provision that achieves, as far as possible, the intended purpose.

- 29.9 You are responsible at all times for paying all taxes due and for providing any relevant tax authority with information relating to your dealings with us. You agree that any information or opinion we provide regarding the tax treatment of your dealings with us does not constitute tax advice, and you remain solely responsible for seeking independent tax advice.
- 29.10 This Agreement and each Transaction entered into with you are governed by the laws of the Comoros, and the parties submit to the non-exclusive jurisdiction of the courts of the Comoros.
- 29.11 If you are situated outside the Comoros, any originating process commencing proceedings in the Comoros may be served on you in accordance with local rules for service out of the jurisdiction. Nothing in this clause affects our right to serve process in any other manner permitted by law.
- 29.12 You agree that all complaints or disputes must first be referred to us in accordance with our complaints-handling procedures from time to time. You must refer any complaint to us before progressing it to any third party. Unresolved complaints or disputes may then be referred by you to the financial ombudsman service or any other independent dispute resolution scheme of which we are a participant, subject to the eligibility criteria of that scheme.

## 30. Waiver of Class and Collective Proceedings

### NOTICE – IMPORTANT INFORMATION:

This section sets out legal provisions that may significantly affect your rights and the manner in which disputes are resolved. In particular, it provides that disputes must be resolved on an individual basis and not through class, collective, or representative proceedings.

#### Waiver of Group Proceedings Clause:

To the fullest extent permitted by applicable law, you and Foti Capital agree that any dispute, claim, or controversy arising from or relating to these Terms and Conditions, your trading Account, or any services provided by Foti Capital shall be resolved exclusively on an individual basis. By entering into this Agreement, you expressly waive and relinquish any right to:

- Initiate, join, or participate in any class, collective, representative, or mass action,
- Act in any capacity as a private attorney general or in a similar representative role,
- Combine or consolidate your claims with those of any other individual or entity in any forum, whether arbitration, court, or otherwise.

Unless expressly agreed in writing by both you and Foti Capital, no arbitration, litigation, or other proceeding shall be joined, consolidated, or heard together with any matter involving another customer or third party. This waiver applies to all forms of dispute resolution, whether through a court, arbitral tribunal, or other adjudicatory body, and covers disputes arising under Contract, statute, regulation, tort, equity, or any other legal basis

## 31. Definitions

- 31.1 In this Agreement:

**Account** means an Account maintained with Foti Capital in your name and governed by this Agreement.

**Account Value** means the current value of your Account, calculated by Foti Capital as the aggregate of:

- the equivalent balance of your Account in the CMTA,
- realised and unrealised profits and losses,
- indicative close-out costs (including fees and finance charges); and
- the values of Transactions not yet booked.

This term may be referred to as “equity” on the Electronic Trading Service.

**Agreement** Agreement means this Agreement, as amended from time to time, together with all schedules, product specifications, and any ancillary documents referenced herein.

**Applicable Regulations** means:

- (a) the rules of any relevant regulatory authority,
- (b) the rules of the relevant Exchange, and

(c) all other applicable laws, rules, and regulations (including, without limitation, the Governing Law) in force from time to time, as applicable to this Agreement, any Transaction, or any Electronic Trading Service.

**Application Form** means the application, whether online or in paper form, that you submit to Foti Capital to become a Client.

**AML laws** means the Anti-Money Laundering and Counter-Terrorism Financing laws and related regulations in force in the Comoros.

**Ask** means the price which Foti Capital, as the seller is willing to accept, i.e., the price at which you can buy the Contract. This is also known as the “offer price the price at which Foti Capital, as seller, is willing to sell and at which you may buy the Contract. This is also referred to as the “offer price”.

**Associated Company** means any related body corporate of Foti Capital.

**Authorised Representative** means a person authorised to act on behalf of a Client, as described in clause 3.

**Base Currency** means the currency designated for your Account, as chosen by you, in accordance with this Agreement.

**Bid** means the price at which Foti Capital, as buyer, is willing to buy, i.e., the price at which you can sell the Contract.

**Business Day** means any day other than Saturday, Sunday, or a gazetted public holiday.

**Buy Transaction** has the meaning given in clause 8.3.

**Client** means any individual aged 18 or over, or any entity, that holds an Account with Foti Capital.

**CFD Transaction** has the meaning given in Schedule 1.

**Client Money Regulations** mean the applicable ‘Client money’ rules as amended by time to time.

**Close Out, Closed Out and Closing Out** in relation to a Transaction, mean discharging or satisfying the obligations of the Client and Foti Capital under that Transaction, including by matching it with a Transaction of the same kind under which the Client has taken an offsetting opposite position.

**Closing Level** means the price at which a Transaction is closed.

**Closing Value** means the value calculated by multiplying the number of Contracts by the value or level of the Underlying Instrument of the Contract on the closing-out date.

**CMTA** means a Client Money Trust Account (or any one of several such Accounts) maintained by Foti Capital as a “Client bank Account”. The money held in such an Account for your benefit are credited to your Account.

**Confirmation** means any Confirmation of a Transaction issued by us to you, including an electronic Confirmation or a substantially continuously available Account statement containing the information that would otherwise be in a Confirmation.

**Contract Details** means the section of the public pages of our website designated as “Contract Details,” as amended from time to time.

**Contract** means an over-the-counter Financial Product issued by Foti Capital to a Client in its capacity as principal.

**Contracts for difference or CFD** means a derivative Contract that derives its value from one or more Underlying Instruments.

**Contract Value** means the number of shares, Contracts, or other units of the Underlying Instrument that you are notionally buying or selling, multiplied by our then-current Quote for Closing Out the Transaction.

**Corporate Event** has the meaning given in clause 25.1.

**CS Facility** means a clearing and settlement facility, including any facility through which Transactions are cleared or settled, whether located in the Comoros or elsewhere.

**Currency** means any legally accepted form of currency, including but not limited to dollar currencies.

**Dollars** and “\$” mean the lawful currency of the United States.

**Euros** and “€” mean the lawful currency of the Eurozone member countries of the European Union.

**Electronic Conversation** means any conversation between you and us conducted via our Electronic Trading Services.

**Electronic Instruction** has the meaning given in clause 10.4.

**Electronic Trading Services** means any electronic services (together with any related software), including without limitation trading, direct market access Order routing, or information services, that we grant you access to or make available to you, either directly or through a third-party provider, and that you use to view information or enter into Transactions. This term may also be referred to as the “Electronic Trading Platform” in this Agreement and related disclosure documents.

**Event of Default** means any event occurring as set out in clause 20.1.

**Exchange** means any securities or futures Exchange, clearing house, self-regulatory organisation, alternative trading system, or multilateral trading facility, as the context may require from time to time.

**Exchange Rate** means the rate, in relation to two currencies for which you may wish to open a foreign Exchange CFD, at which one unit of the first currency may be bought with, or sold for, units of the second currency.

**Expiry Transaction** means a Transaction with a fixed Contract period, at the end of which it automatically expires.

**Finance Charge** means the amount you must pay in respect of a Transaction held overnight, in accordance with this Agreement.

This is sometimes referred to as a “swap rate” or “rollover rate”.

**Finance Credit** means the amount you receive from us in respect of a Transaction held overnight, in accordance with this Agreement. This is sometimes referred to as a “swap rate” or “rollover rate”.

**Financial Product** includes Contracts and any other Financial Products issued by Foti Capital from time to time.

**FIX API** means the Financial Information Exchange Application Programming Interface.

**Force Majeure Event** means any one or more of the following events, occurring beyond our reasonable control:

- (a) any act, event, or circumstance (including, without limitation, strikes, riots, civil commotions, acts of terrorism, war, industrial action, or acts and regulations of any governmental or supranational authority) that, in our opinion, prevents us from maintaining an Orderly market in Transactions,
- (b) the suspension or closure of any market or Exchange, the abandonment or failure of any event on which we base, or to which we relate, our Quotes, or the imposition of limits or special or unusual terms on trading in such market or on such event,
- (c) any excessive movement in the level of any Transaction, Underlying Instrument, or Underlying Market, or our reasonable anticipation of such a movement,
- (d) any breakdown or failure of transmission, communication, or computer systems (including the Electronic Trading Service), interruption of power supply, or electronic or communications equipment failure beyond our control, or
- (e) the failure of any relevant supplier, intermediary, broker, agent, principal, custodian, sub-custodian, dealer, Exchange, clearing house, or regulatory or self-regulatory organisation to perform its obligations, for any reason.

**Foreign Exchange CFD** is a form of CFD that gives you exposure to changes in the value of an Exchange rate. Unless you and we expressly agree otherwise in a separate written agreement, it does not and cannot result in the delivery of any currency to or by you.

**Governing Law** means that this Agreement shall be governed by, and construed in accordance with, the laws of the Union of the Comoros

**Initial Margin** means the amount that you are required to pay to us (depending on the relevant Financial Product) as the initial Margin Cover for any Transaction you propose to enter into.

**Last Dealing Time** means the last day and, where the context requires, the time before which a Transaction may be executed, as set out in the Contract Details or otherwise notified to you, or, where applicable, the last day and time on which the Underlying Instrument may be dealt in on the relevant Underlying Market.

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

**Liquidation Level** means the minimum Margin Cover allowable before there may be an automatic close-out of all or some of your Open Positions.

**Long Party** means the party to a Transaction who is treated as having notionally bought the Underlying Instrument, or, in the

case of an Index CFD, a right to payment arising from a change in the level of an index.

**Loss** means any damage, loss, cost, expense, or liability incurred by the person concerned, however arising and whether present or future, fixed or unascertained, actual or contingent.

**Manifest Error** means a material, obvious error or omission that is, or should reasonably be, apparent. This includes (but is not limited to) an incorrect date or time, a misQuote of prices by us, by any Exchange, or by any price-providing financial institution, or by any other information source on which we rely at the time of an Order or Transaction.

**Margin** means the amount of money you are required to pay us in Order to open and maintain a Transaction, including Initial Margin and Variation Margin.

**Margin Cover** means the amount of Margin available on your Account for Margin trading and for the continuation of your trading.

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

**Minimum Size** means, in respect of any Transaction to which a minimum size applies, the minimum number of shares, Contracts, or other units of an Underlying Instrument that we will deal in. In most cases this is specified in the Contract Details, and where not specified, we will inform you upon request.

**Normal Market Size** means the maximum number of Underlying Instruments that we reasonably believe the Underlying Market is able to accept at the relevant time.

**Opening Level** means the price at which a Transaction is opened.

**Open Position** means, at any time, a Transaction that has not been Closed Out or settled prior to the agreed settlement time.

**Order** means any instruction placed by you to enter into a Transaction.

**P&L** means realised and/or unrealised profits and/or losses, as the case may be.

**Privacy Policy** means the privacy policy of Foti Capital.

**Product Specification** means a product-specific module forming part of this Agreement (which we may make available on the website) that sets out the terms and conditions applicable to specific types of Transactions or services that we provide to you.

**Quote** means, in relation to a Transaction, the price or rate Quoted by Foti Capital as finally determined when an Order is executed.

**Realised/ Unrealised Loss** means:

- (a) **Realised Loss** – the amount by which the value of an Open Position on close-out is less than the value of the Open Position when it was last valued, or, if the Open Position has never previously been valued, its value when the position was opened, and
- (b) **Unrealised Loss** – the amount by which the value of an Open Position (not on close-out) is less than the value of the Open Position when it was last re-valued, or, if the Open Position has never previously been valued, its value when the position was opened.

This term may also be referred to as “Floating Loss” on the Electronic Trading Services.

**Realised/ Unrealised Profit** means:

- (a) **Realised Profit** – the amount by which the value of an Open Position at close-out exceeds the value of that Open Position when it was last valued, or, if the Open Position has never previously been valued, its value when the position was opened, and
- (b) **Unrealised Profit** – the amount by which the value of an Open Position (not yet Closed Out) exceeds the value of that Open Position when it was last re-valued, or, if the Open Position has never previously been valued, its value when the position was opened.

This term may also be referred to as “Floating Profit” on the Electronic Trading Services.

**Rules** in relation to a financial market or Exchange means the operating rules, procedures, customs, and usages of the relevant financial market or Exchange.

**Schedule** means any schedule annexed to this Agreement and forming part of this Agreement.

**Security Data** means one or more user identification codes, digital certificates, passwords, authentication codes, or such other information or devices (electronic or otherwise) as may be provided or specified to you to enable access to the Electronic Trading Services.

**Sell Transaction** has the meaning given to it in Clause 8.3.

**Share CFD** is a form of CFD that provides exposure to changes in share prices. It is not an agreement to buy or sell any shares and cannot result in the delivery of any shares to or by you.

**Short party** means the party to a Transaction who is treated as having a financial outcome equivalent to having sold the Underlying Instrument.

**Spread** means the difference between the Bid Price and the Ask Price of a Contract.

**Stock index CFD** is a form of CFD that provides exposure to changes in the value of a stock index.

**System** means all computer hardware and software, equipment, network facilities, and other resources and facilities required to enable you to use an Electronic Trading Service.

**Tax** means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan, or withholding (together with any related interest, penalty, fine, or expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on overall net income.

**Transaction** means any Contract between you and Foti Capital as principal:

- (a) to pay, or to agree to pay, an amount calculated in respect of an Underlying Instrument in one currency against settlement in the same or another currency (or another agreed Underlying Instrument), and
- (b) in respect of which (other than Closing Out an Open Position as permitted under this Agreement) you have, or are deemed to have, agreed (whether orally, electronically, or in writing) to:
  - (i) the specification of the Underlying Instruments involved,
  - (ii) the amount of Underlying Instruments involved and, if applicable, the amount of the specified currency involved,
  - (iii) the Quote,
  - (iv) Transaction fee and finance charges, and
  - (v) any other features agreed by Foti Capital.

It also includes Expiry Transactions and CFD Transactions as the context requires.

**Transaction Fee** means the fee or commission specified from time to time by Foti Capital as payable by you to Foti Capital in respect of each Transaction, as set out on the Electronic Trading Service.

**UCOFAL** means a licence issued by the Union of Comoros Offshore Finance Authority, allowing financial institutions to operate within the offshore financial sector under its regulatory framework.

**Unattached Order** means an Order that relates to a proposed Transaction and that will come into effect if and when the Order is executed.

**Undated Buy Transaction** means a Transaction with an indefinite Contract period that does not automatically expire.

**Underlying Market** means an Exchange, or other similar body or liquidity pool, on which an Underlying Instrument is traded.

**Underlying Instrument** means any security, Financial Product, foreign Exchange, cryptocurrency, commodity, index, or other item (or any combination of them) that is the subject of a Transaction, including a value determined by reference to an index, or to an index multiplied by an amount of currency, in any jurisdiction, whether or not through an Exchange or other market facility.

**Variation Margin** means an amount that you are required to pay to Foti Capital as additional Margin Cover.

**Website** means any website of Foti Capital.

## 31.2 Interpretation

### 31.2.1 A reference to:

- (a) a Clause is a reference to a term of this Agreement,
- (b) an Act of Parliament is a reference to such Act as amended, consolidated, or re-enacted from time to time (with or without modification), and includes all instruments or Orders made under that enactment,
- (c) any time or date is to Comoros time, unless expressly stated otherwise, and
- (d) the singular includes the plural, and the masculine includes the feminine, as the context requires.

31.2.2 The following rules also apply in interpreting this Agreement, except where the context clearly indicates that a rule is not intended to apply:

- (e) headings used in this Agreement are for convenience only and do not affect interpretation.
- (f) a reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted, or replaced, and includes any subordinate legislation issued under it.
- (g) a singular word includes the plural and vice versa.
- (h) a word suggesting one gender includes all genders.
- (i) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (j) a reference to time is to local time in the Comoros, unless otherwise specified.
- (k) anything permitted to be done by Foti Capital in accordance with this Agreement may be done in its absolute discretion, and any opinion or view required to be formed by Foti Capital may be formed in its absolute discretion.
- (l) for the avoidance of doubt, time continues to run on days that are not Business Days; and
- (m) the English version of this Agreement prevails over any translated version of this Agreement.

31.2.3 If a specific provision in a Schedule is inconsistent with another provision in this Agreement, the specific provision prevails over the other provision to the extent of the inconsistency.

## Schedule 1 – Terms for Trading in CFDs

### 1. Scope of this Schedule

- 1.1 This Schedule applies each time you place an Order to deal in a CFD. You agree to be bound by the terms contained in this Schedule.
- 1.2 If there is any inconsistency between this Schedule and the Agreement, the provisions of this Schedule prevail to the extent of the inconsistency.
- 1.3 Any capitalised term not defined in Clause 2 of this Schedule will have the corresponding meaning given to it in Clause 31.1 of the Agreement.
- 1.4 References to “the Agreement” in this Schedule mean the main body of the Agreement.

### 2. Definitions

The following capitalised words in this Schedule have the following meanings:

**CFD Transaction** means a Transaction entered into by you in respect of a CFD or CFDs.

**Trigger Event** means any one or more of the following events as determined by Foti Capital:

- (a) an event that has a diluting effect on the market value of Securities,
- (b) if the Underlying Instrument is an Index, a substantial adjustment to the composition of the Index outside its own terms (including adjustments or weightings), a failure to publish the Index, or a suspension or cancellation of the Index,
- (c) if the Underlying Instrument is a Security, a subdivision, consolidation, or reclassification of the Security, or a free distribution of Securities to existing holders by way of a bonus or capitalisation,
- (d) if the Underlying Instrument is a Derivative traded on an Exchange – any event in respect of which the operator of the Exchange makes an adjustment to the terms of the Derivative,

- (e) a distribution to existing holders of additional Shares or other Securities or other Financial Products granting them the right to receive dividends or other proceeds equally and proportionately with payments made to holders of the underlying Securities; or Securities, Rights, or Warrants granting the right to a distribution of Shares or to purchase, subscribe for, or
- (f) receive Shares, in any case for payment (in cash or money's worth) at less than the prevailing market price per Share, as determined by Foti Capital.

### 3. Opening a CFD Transaction

- 3.1 You may enter into a CFD Transaction either by buying (going Long) or selling (going Short) a CFD. You go Long when you buy a CFD in the expectation that the price of the Underlying Instrument to which the CFD relates will increase, with the effect that the value of the CFD will rise. You go Short when you sell a CFD in the expectation that the price of the Underlying Instrument will decrease, with the effect that the value of the CFD will fall.
- 3.2 A CFD Transaction comes into existence when we accept your Order to enter into the CFD Transaction.
- 3.3 The obligation to pay any fees and charges, as outlined in Clause 16 of the Agreement (as applicable), applies to CFD Transactions.
- 3.4 The Margin obligations outlined in Clause 16 of the Agreement (as applicable), apply to CFD Transactions.

### 4. Closing a CFD Transaction

- 4.1 You acknowledge that:
  - (a) CFDs do not expire or have a fixed term and must therefore be Closed Out by you (or by us); and
  - (b) CFDs with an expiry date are governed by Clauses 9.7 to 9.16 of the Agreement.
- 4.2 If you wish to close an Open Position in respect of a CFD Transaction, you must enter into a new position equal and opposite to the Open Position. To close a bought or Long position, you sell. To close a Short or sold position, you buy.
- 4.3 When Open Positions are Closed Out, the Electronic Trading Service will calculate the remaining payment rights and obligations to reflect movements in the Contract value since the previous business close (including any other credits or debits). Because you enter into a position to Close Out the existing position, a fee may apply to the closing position, which you agree to pay.
- 4.4 You may notify us of your intention to close any CFD (in whole or in part) by specifying the Underlying Instrument and the quantity of CFDs you wish to close. This is done by placing an Order for a CFD Transaction which, if accepted, will Close Out the CFD specified.
- 4.5 At the Closing Out of a CFD Transaction, if there is a difference between the Closing Value and the Contract Value of the CFD, it must be Accounted for as follows:
  - (a) if the Closing Value is greater than the Contract Value, the Short Party must pay the Long Party the difference; and
  - (b) if the Closing Value is less than the Contract Value, the Long Party must pay the Short Party the difference.
- 4.6 If the issuer whose security represents the Underlying Instrument of a CFD Transaction (in whole or in part) becomes insolvent, the CFD Transaction will be deemed to have been Closed Out at that time. The Closing Price of the CFD Transaction will be determined by us, and we may take into Account such factors as we consider appropriate in the circumstances.
- 4.7 If the Underlying Instrument of a CFD Transaction ceases to be listed for quotation on an Exchange, or is suspended or halted from quotation, we may, in our absolute discretion, elect to terminate the relevant CFD Transaction and make such adjustments as we consider necessary.
- 4.8 All adjustments or price calculations made by us in respect of a CFD Transaction are binding on you.

### 5. Trigger Events

- 5.1 If an Underlying Instrument in respect of a CFD is subject to a Trigger Event, we will make such adjustments to the relevant CFD Transaction (including to the Contract Value) as we consider fair and reasonable in the circumstances. Any adjustment takes effect at the time we determine.
- 5.2 If at any time a Trigger Event occurs and, in Foti Capital's absolute discretion, it is not reasonably practicable to make an adjustment, Foti Capital may, at any time after the Trigger Event, give you notice of Foti Capital's intention to Close Out the CFD Transaction, with the Closing Value being the value notified to you by Foti Capital.

## 6. Terminating a CFD

- 6.1 You acknowledge that Foti Capital may terminate a CFD (in addition to any other termination rights) if:
- (a) the Underlying Instrument ceases to be traded on an Exchange, or is subject to a trading suspension or halt for more than five (5) Business Days,
  - (b) a Trigger Event occurs and Foti Capital determines that it is not reasonably practicable to make an adjustment to the terms of a CFD under this Schedule,
  - (c) Foti Capital's rights under the relevant hedge Contract, or in respect of the relevant Underlying Instrument, are Closed Out, suspended, or terminated by its hedge counterparty (which may occur automatically under the terms of any agreement between Foti Capital and the hedge counterparty), or
  - (d) Foti Capital, acting reasonably, considers that the hedge counterparty or issuer of the Underlying Instrument may be unable to meet its obligations to Foti Capital under the terms of the hedge Contract, the Underlying Instrument, or any other related Contract.
- 6.2 If Foti Capital terminates a CFD under this Clause or otherwise, Foti Capital will determine a termination value, payable either by Foti Capital to you or by you to Foti Capital, as Foti Capital, acting reasonably, considers appropriate, having regard to the circumstances of termination and the value (if any) of the Underlying Instrument. Termination takes effect at the time determined by Foti Capital.