



**FXTM**  
Gives you more

# **CLIENT AGREEMENT**

**v. 2**





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## 1. SCOPE

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- 1.1 This Client Agreement (“Agreement”) explains your rights and obligations as a “client” or a potential client of FXTM. It sets out the basis on which we will enter into Transactions with you and governs each Transaction entered into or outstanding between you and us on or after the date that this Agreement comes into effect”.
- 1.2 When the Agreement mentions “FXTM” or the “Company”, or “us” it refers to Exinity Capital East Africa Limited, a company registered in the Republic of Kenya and licensed by the Capital Markets Authority of Kenya as a Non-Dealing Foreign Exchange Broker with license number 135. Our company registration No. is PVT-ZQU6JE7, and our registered address is Kiganjo House, Rose Avenue, Kilimani, P.O. Box 50719 – 00200 Nairobi, Kenya.
- 1.3 This Agreement is not the only document that explains your relationship with FXTM. When you accept the terms and conditions of this Agreement you also accept the relevant Terms of Business, the Risk Disclosure, the Complaints Management Policy, the Privacy Statement, the Regulations for Non-Trading Operations, the Information on Anti-Money Laundering, the Agreement for Market Data Display Services, the NASDAQ Subscriber Agreement, the Cookie Policy as well as any other document in the “Policies & Regulation” section of the Website (collectively, the “Operative Agreements”). You should read each of them carefully before you start trading with us.
- 1.4 You can find definitions for any capitalized terms used in this Agreement in Annex A (“Interpretation of Terms”).
- 1.5 The defined terms used in this Agreement are set out in Appendix A (“Interpretation of Terms”). The effective date of any Operative Agreement is the day we notify you that your Trading Account has been activated. The Operative Agreements apply to you as long as you remain a client of FXTM. Some of your obligations will still apply even after the termination of the Operative Agreements.

## 2. ACCOUNT ACTIVATION

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- 2.1 You will receive notice that your Trading Account was activated after:
  - (a) you have properly completed the client registration form on the Website; and
  - (b) you have taken all steps required to allow us to establish and verify your identity.
- 2.2 Even if you comply with subparas 2.1.(a) and 2.1.(b) above, we will still have the absolute discretion to reject your application to become a client of FXTM.
- 2.3 To start using your Trading Account, you will be asked to make a deposit.
- 2.4 If there is a change in your name, address, nationality or gender, you should notify us of it within fourteen (14) calendar days from the date of the change.



- 2.5** Your application to become a client of FXTM will be rejected if you knowingly or unknowingly submit false information or make a false declaration to us. We may have to report you to the competent authorities in Kenya or elsewhere for these actions.

### 3. CAPACITY

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- 3.1** You can become our client only if:

- (a) you are an individual who is at least eighteen (18) years old or at least the legal age in your respective jurisdiction; or
- (b) you are a body corporate in good standing that has the legal capacity to enter into the Operative Agreements; and
- (c) you are domiciled, located, registered in a country where the distribution or use of our Instruments would not be contrary to local laws or regulations. It is your responsibility to know and comply with any local laws or regulations to which you are subject to; and
- (d) you are not domiciled, located, registered in a country where we do not accept clients from.

- 3.2** You will initiate each Transaction with us as a principal and not as an agent for any undisclosed person. This means that unless we have otherwise agreed in writing, we will treat you as our client for all purposes and you will be responsible for performing your obligations under each Transaction entered into by you. If you act in connection with or on behalf of someone else, whether or not you identify that person to us, we will not accept that person as an indirect client of ours and we will accept no obligation to them unless otherwise specifically agreed by us in writing.

- 3.3** In relation to any Transaction, we will either be on the other side of it as a principal or act as an intermediary for you.

- 3.4** Stock trading may not be available to you due to country-specific restrictions.

- 3.5** To access US stock trading, you will be prompted to complete form W-8BEN (if you are an individual) or form W-8BEN-E (if you are a corporate entity). These forms remain valid for 3 (three) calendar years from the signature date and should be re-submitted after this period expires. You have an ongoing obligation to inform us about any changes in your W-8BEN/W-8 BEN-E status and re-submit the form to reflect these changes.

- 3.6** To comply with our duties under the Foreign Account Tax Compliance Act ("FATCA") and the Common Reporting Standard ("CRS"), we can request that you provide any information or documentation reasonably required and you will provide it without any delay.

### 4. CLIENT ASSETS

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- 4.1** Your funds will be at all times segregated from our funds as provided for in the Applicable Regulations. In case of our insolvency, your funds will not form a part of our proprietary assets under the Applicable Regulations or the laws of Kenya on insolvency.



- 4.2** We are allowed to pool your funds with funds of our other clients and hold them in a segregated omnibus bank account that will be named in a manner that shows that this bank account does not hold our proprietary funds. We will use reasonable care when choosing a bank for safeguarding your funds.
- 4.3** We will reconcile our records of the client funds balances kept on the segregated omnibus bank accounts with those of the bank with a frequency that is necessary to comply with our safeguarding duties. If due to reconciliation a transfer of funds should be made to or from a segregated omnibus bank account, this transfer will be initiated on the same Business Day as the reconciliation was performed.
- 4.4** We may hold your funds in segregated omnibus accounts in banks located outside Kenya or pass your funds to an intermediate broker, settlement agent or an over-the-counter counterparty located outside Kenya to perform your Transaction. We will use reasonable care when choosing these third parties, however we cannot guarantee that your funds will receive the same level of protection as if they were held with or passed on to an entity in Kenya.
- 4.5** The rules we follow when we safeguard and safekeep your Instruments can be found in the Terms of Business.
- 4.6** At least once per year we will send you a statement of your funds and Instruments held by us unless this information has been provided to you in another periodic statement.

## **5. SERVICES. NO INVESTMENT ADVICE**

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- 5.1** When transacting with you, we provide the following Services:
- (a)** reception and transmission or execution (on own account) of your Orders as a principal or as an intermediary;
  - (b)** granting you credit to transact with an Instrument, provided that you are involved in this Transaction;
  - (c)** safekeeping and administrating Instruments for your account, including custody and related services;
  - (d)** providing you with access to investment research data which may be relevant to you.
- 5.2** We transact with you on an execution-only basis and will not:
- (a)** provide you with any form of investment advice for your planned Transactions or monitor the status of the current ones;
  - (b)** check the suitability of the Transaction for you;
  - (c)** make Margin Calls on your Open Positions; and
  - (d)** close your Open Positions on our own initiative unless this is allowed by the Applicable Regulations or an Operative Agreement. For the avoidance of doubt, we can, in our absolute discretion, close your Open Positions when a decision is made to stop offering a product pertaining to your Open Positions.



- 5.3** You will not receive any investment, legal, regulatory, tax or other form of advice from us. You should seek independent advice or rely on your own judgement, market knowledge and experience when evaluating the merits of a Transaction.
- 5.4** If an employee or a representative of FXTM expresses an opinion regarding any Instrument or Transaction, you agree that you cannot rely on such opinion, and that it will not constitute investment advice.
- 5.5** We may provide factual information about the market; or about matters of process and risk related to Transactions or Instruments which we may post on our Website. This information:
- (a)** is provided solely to enable you to make your own investment decisions;
  - (b)** may be intended for a restricted category of addressees and you cannot pass it on to any person outside that category;
  - (c)** is subject to change and may be withdrawn by us at any time without notice.
- 5.6** We give no representation or warranty as to the accuracy or the completeness of the information mentioned in Clause 5.5.
- 5.7** We may offer you the option to open and trade on a demo account. Execution in a demo account environment might lead to a different outcome than in a live one. We are not liable for any loss or other damage you may incur because of these differences in execution.
- 5.8** Upon our request, you will submit and resubmit information about yourself that we have to keep on file due to our reporting obligations to tax authorities under the relevant common reporting standard regime (incl., your address, your jurisdiction of residence, your tax identification number).

## 6. CONFLICTS OF INTEREST

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- 6.1** When FXTM deals with you or on your behalf, FXTM itself (or and FXTM employee, officer or an associate affiliated with FXTM), may have a material interest in the outcome of your Transaction that conflicts with your interest.
- 6.2** A conflict of interest involving our clients may arise, between:
- (a)** our client and us;
  - (b)** two of our clients;
  - (c)** our client and our employees (officers, associates).
- 6.3** If there is a potential conflict of interest involving you or all of our clients, we will disclose the general nature and circumstances of this conflict before proceeding with the Transaction in question.
- 6.4** A potential conflict of interest exists in the following circumstances:
- (a)** we are on the other side of your Transaction as a principal trading on its own account;
  - (b)** we may match your Transaction with that of another client by acting on his/her/its behalf as well as yours;



- (c) we may deal in an Instrument which we could have covered in our factual information about the market we communicate to clients on our Website;
- (d) we may provide Services to other clients concerning Transactions in a market that might be against your interests;
- (e) if you were introduced to us by an associate of ours, we may pay a fee to this associate depending on the volume of your Transactions, or under a different fee arrangement;
- (f) we may receive inducements (incl., non-monetary) from persons other than our clients if they are designed to enhance the quality of our Services and do not impair our ability to act in the best interests of our clients.

- 6.5** We do not receive any remuneration, discount or non-monetary benefit from third parties for routing your Orders to a particular trading venue or execution venue which would infringe the requirements on conflicts of interest or inducements.
- 6.6** You acknowledge that you are aware of the possibility that the circumstances disclosed in this Clause 6 may result in a conflict of interest and authorize us to proceed with the Transaction in question notwithstanding such conflict.

## 7. COMMISSIONS, CHARGES AND OTHER COSTS

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- 7.1** You will pay us commissions, charges and other costs (including Spread) as they are shown in the "Trading Accounts" section of the Website. You will also cover any stamp or similar expenses related to your Transactions.
- 7.2** It is your responsibility to make yourself aware of the latest commissions, charges and other costs that we will apply as a result of your Transaction.
- 7.3** We may change commissions, charges and other costs without giving you any prior Written Notice by simply publishing the updated rates on our Website. The new rates will apply immediately after they are published.
- 7.4** We may also charge you for the provision of Market Data or any other Trading Account feature, custody and settlement services. Additional charges may be disclosed in other Operative Agreements.
- 7.5** In case you initiate a withdrawal request without any activity from the latest deposit on your Trading Account we may:
- (a) charge you an equivalent amount of any deposit fees we have incurred, or
  - (b) 3 (three) % of the total withdrawal amount.

## 8. CURRENCY

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- 8.1** The amounts payable to you under the Operative Agreements are automatically converted by FXTM into the currency you chose when opening the Trading Account. For these conversions, we use the relevant exchange rate for spot dealings in the foreign exchange market.





- 8.2** We will make any other currency conversions at any rate we find appropriate, but we will consider the prevailing rates for freely convertible currencies.
- 8.3** All foreign currency exchange risks arising from any of your Transactions, or the performance of the Operative Agreements by both parties, will be borne by you.

## 9. PROVIDING QUOTES

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- 9.1** The rules for providing Quotes for your Transactions can be found in the relevant Terms of Business.

## 10. OFF-HOURS EXECUTION

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- 10.1** We do not execute Orders outside normal trading hours.
- 10.2** You can find normal trading hours per Instrument available on our Website. It is your responsibility to check what normal trading hours apply to your planned Transaction.
- 10.3** We may proceed to provide a Quote and execute your Order for an Instrument out of its normal trading hours, but it is your responsibility to assess how off-hours execution will impact your planned Transaction.

## 11. INSTRUCTIONS

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- 11.1** We will process your instructions in accordance with the relevant Terms of Business.

## 12. TRADING HISTORY

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- 12.1** Your Trading Account Balance as well as any other information connected to your Transactions will be available at all times on MyFXTM. By accepting this Agreement, you agree that you will have sufficient information to manage your Trading Account and that we comply with the Capital Markets Authority, Kenya rules on client reporting requirements.
- 12.2** All records related to your instructions, Transactions, Orders as well as any other of your activities as our client will be maintained by us for seven (7) years after the date you stop being a client of FXTM.
- 12.3** We may without any Written Notice, or your consent archive the records showing your month-long trading activity into a single summarized line accessible to you on MyFXTM. We may also delete your record for any cancelled Pending Order that is older than one (1) month.



## 13. NETTING

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- 13.1** If the aggregate amount payable by you to us under the Operative Agreements equals the aggregate amount payable by us to you under the same, our mutual obligations to pay can be matched and discharged.
- 13.2** If the aggregate amount payable by you to us under the Operative Agreements exceeds the aggregate amount payable by us to you under the same, we can net our mutual obligations to pay and claim the difference you owe us.
- 13.3** In case you have multiple Trading Accounts with us, we may discharge the amounts due to us under one Trading Account by transferring funds from the Balance of any other Trading Account you have with us. As a result of this transfer, you may suffer losses due to Margin Calls, triggered Stop Outs and your Trading Account may go into negative Balance, for which we will not be liable.

## 14. MARGIN REQUIREMENTS & MARGIN CALLS

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- 14.1** We will establish the Initial Margin and the Hedged Margin (the 'margin requirements') in such limits as we may require. You can find the currently applicable margin requirements for each Instrument on our Website (see the Contract Specifications). Any new margin requirements will apply from the moment they are published on our Website with no additional Written Notice.
- 14.2** You pay the Initial Margin or the Hedged Margin at the moment you open the Position. It is your responsibility to ensure that you understand how Initial Margin and the Hedged Margin are calculated.
- 14.3** We may apply the new margin requirements to your future Positions as well as to the current Open Positions.
- 14.4** We have no duty to make Margin Calls on your Open Positions. It is your responsibility to notify us as soon as you realize that you will not be able to meet a margin payment when due. If we decide to make a Margin Call on your Open Position, we will not be liable for any failure on our side to get in touch with you regarding the matter.

## 15. PAYMENTS

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- 15.1** All deposits to or withdrawals from your Trading Accounts will be done in accordance with the Regulations for Non-Trading Operations that you can find on our Website.

## 16. LIMITATIONS OF LIABILITY AND INDEMNITY

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- 16.1** Nothing in the Operative Agreements will exclude or restrict any duty or liability owed by us to you under the Applicable Regulations, including liability for your personal injury or death.



- 16.2** We will not, in the absence of fraud, wilful default or gross negligence on our side, be liable for any of your losses, costs, expenses or damages, any consequential special or indirect losses, loss of profits, loss of opportunity (including in relation to subsequent market movements), failure to avoid a loss, loss or corruption of data, loss of goodwill or reputation, directly or indirectly arising from:
- (a) any inaccuracy or mistake in any information, including Market Data, made available to you by us in relation to your Transactions or otherwise;
  - (b) any error, failure or delay on your Platform;
  - (c) any Transactions you have made on your Platform;
  - (d) any failure by us to perform any of our obligations under the Operative Agreements as a result of a Force Majeure or otherwise;
  - (e) any acts, omissions or negligence of any third party; including an unauthorized third person's access to your personal data or Access Data;
  - (f) any Order placed by you on your Platform and the delay in this Order's execution; our inability to modify and cancel your Order;
  - (g) currency risk;
  - (h) Slippage and Gapping;
  - (i) any risks applicable to trading your Instruments;
  - (j) any changes in the rates of taxes applicable to you, other adverse tax implications of the Transactions;
  - (k) your reliance on Stop Losses;
  - (l) your reliance on information about normal trading hours for a particular Instrument;
  - (m) any inability to execute an instruction or Order;
  - (n) the effect of a corporate event or a corporate action;
  - (o) the effect of your failure to comply with the Operative Agreements;
  - (p) the effect of your Trading Account being disabled due to inactivity or Clearly Erroneous Order(s);
  - (q) any failure of the whole or any part of our software or any systems or network links or any other means of communication;
  - (r) any computer viruses, worms, software bombs or similar items being introduced into your computer or mobile hardware /software while using your Platform.
- 16.3** We will not be liable for the solvency, acts or omissions of any third party referred to in the Operative Agreements, including a custodian, sub-custodian, credit or financial institution, market data provider in circumstances where we have taken reasonable care in selecting and appointing this third party in accordance with the Applicable Regulations.
- 16.4** We may at our sole discretion indemnify you by:
- (a) crediting your Trading Account (with explanation);
  - (b) reopening erroneously closed Positions;
  - (c) deleting erroneously opened Positions or placed Orders.
- 16.5** You are responsible for all liabilities, losses or costs of any kind or nature that may be incurred by us as a result of any failure by you to perform any of your obligations under the Operative Agreements, and as a result of any false information or declaration made by you either to us or to any third party.
- 16.6** Any of your liability to FXTM under the Operative Agreements may in whole or in part be released, compounded, compromised or postponed by FXTM in its absolute discretion without affecting any



rights in respect of that or any liability not so waived, released, compounded, compromised or postponed.

- 16.7** You will indemnify us and keep us indemnified on demand in respect of all liabilities, costs (including, any legal cost, penalties and any interest), claims, damages, demands, losses and expenses of any nature whatsoever which we suffer or incur as a direct or indirect result of any failure by you to perform any of your obligations under the Operative Agreements or which may arise in relation to the execution or as a result of the execution of any of your Transactions.
- 16.8** A waiver by FXTM of a breach of any of the terms of the Operative Agreements does not constitute a waiver of any other breach of those terms and will not prevent FXTM from subsequently requiring compliance with the waived obligation.
- 16.9** The rights and remedies provided to FXTM under the Operative Agreements are cumulative and are not exclusive of any rights or remedies provided by law.

## 17. COMPLAINTS MANAGEMENT PROCEDURE

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- 17.1** To file a complaint with us you should follow the rules of the Complaints Management Policy that is available on our Website.

## 18. COMMUNICATIONS

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- 18.1** In order to communicate with you, we may use MyFXTM, in-app messages and push and mobile notifications, e-mail, telephone, our Website, web notifications, SMS and instant messaging platforms.
- 18.2** The contact details you provided during the opening of your Trading Account (if not subsequently updated) will be used by us to contact you and you agree to accept any notices, including Written Notices, or messages from us at any time.
- 18.3** Any communications sent to you are deemed served and received:
- (a) if sent as an in-app message or push notification or message on/in MyFXTM, immediately after sending the message or notification;
  - (b) if sent by e-mail, after the mail system has recorded that the outgoing e-mail was sent;
  - (c) if by telephone, once the telephone conversation where the communication has been made was finished;
  - (d) if posted on our Website, immediately after it was posted;
  - (e) if sent by Web or mobile notifications, immediately after sending it;
  - (f) if sent by SMS or through an instant messaging platform, within one hour after sending it.
- 18.4** You will notify us immediately of any change in your contact details.
- 18.5** Any telephone conversation between you and us may be recorded. Any recordings are and will remain the sole property of FXTM and will be accepted by you as conclusive evidence of your



instructions or conversations. You agree that we may deliver copies of transcripts of these recordings to any court, regulatory or government authority.

## 19. WRITTEN NOTICE

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**19.1** Any Written Notice given under the Operative Agreements may be communicated to you as provided for in Clause 18.1. A Written Notice is deemed served and received at the timepoints stated in Clause 18.3.

## 20. AMENDMENT AND TERMINATION

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**20.1** We have the right to unilaterally amend the terms of the Operative Agreements at any time by giving you Written Notice. The amendments take effect immediately after the Written Notice is deemed served to and received by you under Clause 19.

**20.2** Any party may terminate the Operative Agreements by giving Written Notice to the other party.

**20.3** Any such termination of the Operative Agreements will not affect any obligation which has already been incurred by either you or FXTM in respect of any Open Position or any legal rights or obligations which may already have arisen under the Operative Agreements.

**20.4** Upon termination of the Operative Agreements, we may without prior Written Notice to you to:

- (a) discontinue your access to Platform;
- (b) discontinue your access to Market Data;
- (c) close your Trading Account(s);
- (d) perform any currency conversion to enable the termination of the Operative Agreements;
- (e) suspend, freeze or close any Open Positions;
- (f) reject new Orders;
- (g) take any other necessary actions as we deem appropriate to terminate the Operative Agreements with you.

**20.5** Upon termination of the Operative Agreements, all amounts payable by you to FXTM will become immediately due, including:

- (a) all outstanding commissions, charges and costs;
- (b) any charges and additional expenses incurred or to be incurred by FXTM as a result of the termination of the Operative Agreements and any charges incurred for transferring your funds or Instruments elsewhere under your instructions;
- (c) any losses and expenses from closing out any Open Positions or settling any outstanding obligations incurred by Exinity on your behalf and for your benefit;
- (d) any damages that arose during the arrangement or settlement of pending obligations.

**20.6** Upon termination of the Operative Agreements, FXTM reserves the right to consolidate the Balances of your Trading Accounts and keep your funds as long as necessary to close your Open Positions and cover any expenses FXTM occurs as listed in Clause 20.5.



- 20.7** We will close your Trading Account(s) after we have settled all amounts due by you to us under the Operative Agreements.
- 20.8** If there is Balance in your favour upon termination, FXTM will pay out such Balance as soon as practicable, subject to any deductions FXTM might make under Clause 20.5 and provide you with a statement showing how that Balance was arrived at and, where appropriate, instruct any third-party custodian or other intermediary to also pay out any applicable amounts that are due to you. When making this pay out, we will follow the rules of the Operative Agreements and your instructions where feasible.

## 21. HOW WE USE YOUR PERSONAL INFO

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- 21.1** FXTM will use, store, or otherwise process personal information provided by you in connection with the Services as set out in the Privacy Statement on our Website.
- 21.2** You agree that we, for the purpose of marketing our Services and products, may make direct contact with you by telephone or otherwise upon your explicit consent as set out in the Policy Statement. In this case, you agree that you will not consider our direct communications a breach of any of your rights under any relevant data protection or privacy regulations.
- 21.3** You may opt out of receiving such communications as set out in the Privacy Statement.

## 22. CONFIDENTIALITY

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- 22.1.** The information which FXTM holds about you is confidential and will not be used for any purpose other than providing Services to you.
- 22.2.** Your confidential information will be treated as such provided:
- (a) it is not already in the public domain or in the legal possession of FXTM;
  - (b) it was subject to an obligation of confidentiality by FXTM;
- at the moment of its receipt by FXTM.
- 22.3.** Confidential information may only be disclosed in the following circumstances:
- (a) in compliance with our FATCA and CRS duties;
  - (b) where required by law or as requested by regulatory and enforcement authorities, courts and similar bodies which have jurisdiction over FXTM;
  - (c) to investigate or prevent fraud or other illegal activity;
  - (d) to those members of FXTM's personnel who require access to confidential information for the performance of their duties or to any third party in connection with the provision of the Services to you by FXTM;
  - (e) for purposes ancillary to the provision of the Services (e.g., credit checks or identification enquiries);



- (f) at your request or with your consent;
- (g) to FXTM's consultants, lawyers, auditors, provided that in each case the relevant professional will be informed about the confidential nature of such information and commit to confidentiality obligations similar to ones in this Clause 22.

**22.4.** You will at all times keep confidential information about our business, incl., information about our operations, processes, products and technology, FXTM's IP, Access Data, affairs, trading, transactions, strategies, clients and suppliers.

## 23. EVENTS OF DEFAULT

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**23.1.** Each of the following constitutes an "Event of Default":

- (a) your failure to provide any amounts due to us under the Operative Agreements;
- (b) your failure to perform any obligations due to FXTM;
- (c) your breach of Clauses 14, 15 or 22;
- (d) the launch of proceedings for your bankruptcy (for individuals); or for your winding-up, or for the appointment of an administrator or receiver in respect of you or any of your assets (for corporates); or (in both cases) if you make an arrangement with your creditors or any procedure which is similar to any of the above;
- (e) any representation or warranty made by you in Clause 24 is or becomes untrue;
- (f) your death or incapacity;
- (g) your actions were determined by FXTM as fraud, manipulation, Market Abuse or other forms of deceitful or fraudulent activity on your Trading Account;
- (h) you have carried out trading while relying on price latency or arbitrage opportunities; during Abnormal Market Conditions;
- (i) a material violation by you of the requirements established by laws of the Republic of Kenya or other countries, where such materiality is determined in good faith by FXTM;
- (j) FXTM suspects that you are engaged in money laundering activities or terrorist financing or other criminal activities;
- (k) any other event, where Exinity believes that it would be reasonable to take any action set out in Clause 23.3 to remedy the aftermath of this event.

**23.2.** In case of an Event of Default described in subpara 23.1 (f), the remaining Balance will be sent to the next of kin or other qualifying person as provided in the applicable laws after we receive the necessary evidence showcasing the right to claim the Balance.

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

- (a) terminate the Operative Agreements without Written Notice;
- (b) close out any of your Open Positions at current Quotes or unwind them;
- (c) debit your Trading Account(s) for the amounts which are due to FXTM;
- (d) suspend or close any of your Trading Accounts held with FXTM;
- (e) refuse to open new Positions or Trading Accounts;
- (f) adjust the Balance to remove illicit Profit;
- (g) convert any currency if necessary to deal with the aftermath of the Event of Default.





## 24. REPRESENTATIONS AND WARRANTIES

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**24.1.** You represent and warrant to FXTM, and agree that each such representation and warranty is deemed repeated each time you give an instruction by reference to the circumstances prevailing at such time, that:

- (a) the information provided by you to FXTM is true, valid, authentic, accurate and complete in all material respects;
- (b) you have read and fully understood the terms of the Operative Agreements;
- (c) you are duly authorized to enter into the Operative Agreements, open a Trading Account, give instructions and perform your obligations thereunder;
- (d) you act as a principal and not as an agent or representative or trustee or custodian on behalf of someone else (unless otherwise agreed with us in writing);
- (e) you meet the capacity requirements of Clause 3.1;
- (f) all actions performed by you under the Operative Agreements will not violate the Applicable Regulations or any law, ordinance, charter, by-law or rule applicable to you, or any agreement by which you are bound or by which any of your assets are affected;
- (g) your funds and Instruments are not in any direct or indirect way the proceeds of any illegal activity or used or intended to be used for any illegal activity;
- (h) your funds and Instruments are owned by you and are free of any lien, charge, pledge or other encumbrance or claim by any third party;
- (i) you have chosen the particular type of Service and Instrument taking your total financial circumstances into consideration and you consider this choice reasonable under such circumstances;
- (j) you have declared when prompted if you are a Politically Exposed Person and will notify FXTM if at any stage during the course of the duration of the Operative Agreements you become a Politically Exposed Person;
- (k) the purpose of your Transactions with FXTM is one or more of the following:
  - (i) speculative trading;
  - (ii) hedging;
  - (iii) investments;
  - (iv) intraday trading;
  - (v) manage risk.

In the event where the purpose is other than the above you will notify FXTM;

- (l) you are entering into the Operative Agreements for one or more of the following reasons:
  - (i) trading in Contracts for Differences ("CFDs") on various eligible underlying assets;
  - (ii) trading in Stock.

In the event where the nature is other than the above, or at any stage during the course of the Operative Agreements the nature changes, you will notify FXTM;

- (m) you will not use (or allow another person to use) any software, algorithm, application or device to access information available on your Platform to automate the process of trading, engage in any trading strategies or arbitrage practices or otherwise; or to violate the integrity of your Platform or cause them to malfunction;
- (n) you have disclosed that you are an employee, associate or contractor of a business that is entitled to control your financial transactions due to this status and have disclosed the relevant limitations;





- (o) you will not use the Market Data made available to you for any purpose other than for your own trading, and you agree not to redistribute this Market Data to any other person for commercial or other purposes.

**24.2.** you acknowledge that FXTM is not required to assess the appropriateness or suitability of the Instruments or Services provided to you and you will not benefit from the corresponding protections.

## 25. FORCE MAJEURE

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**25.1.** FXTM may, in its reasonable opinion, determine that a Force Majeure Event exists, in which case FXTM will take reasonable steps to inform you about this.

**25.2.** A Force Majeure Event is:

- (a) any act, event or occurrence (incl., any national emergency, strike, riot or civil commotion, government actions, acts of terrorism, outbreak or threat of war or hostilities, act of God, earthquake, epidemic, accident, fire, flood, storm, breakdown, interruption or malfunction of power supply, electronic, communication equipment or supplier failure, civil unrest, statutory provisions, lock-outs, or any other international calamity, economic or political crisis, or natural disaster) which, in the FXTM's reasonable opinion, prevents FXTM from complying with its obligations under the Operative Agreements;
- (b) the suspension, liquidation or closure of any market or the abandonment or failure of any event to which FXTM relates its Quotes, or the imposition of limits or special or unusual terms on the trading in any such market or on any such event;
- (c) Abnormal Market Conditions; or
- (d) any event, act or circumstances not reasonably within the FXTM's control and the effect of that event(s) is such that FXTM is not in a position to take any reasonable action to cure the default.

**25.3.** If FXTM determines that a Force Majeure Event exists (without prejudice to any other rights under the Operative Agreements) FXTM may without prior Written Notice and at any time take any of the following steps:

- (a) increase margin requirements;
- (b) close out any Open Positions at such prices as FXTM considers in good faith to be appropriate;
- (c) suspend or modify the application of any terms of the Operative Agreements to the extent that the Force Majeure Event makes it impossible or impractical for FXTM to comply with them;
- (d) take or omit to take all such other actions as FXTM deems to be reasonably appropriate in the circumstances with regard to FXTM and its clients;
- (e) increase Spreads;
- (f) decrease Leverage.

## 26. SUSPENSION & OTHER REMEDIES

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**26.1.** FXTM has the right to suspend your Trading Account at any time for any reasonable ground (incl. Abnormal Market Conditions, erroneous Order, Stop Loss, Take Profit set-ups, instructions made in absence of sufficient Balance, any actions that create a negative trading experience for other clients) with or without a Written Notice to you until and if an alternative remedy is chosen.



- 26.2.** FXTM may suspend, close or unwind any Transaction which is a result from any technical misconfiguration, technical error, human error on FXTM's or your side.

## 27. CLOSE ONLY MODE

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- 27.1.** In the event that FXTM determines that an Order submitted by you is a Clearly Erroneous Order, FXTM reserves the right to disable the relevant Trading Account to close only mode.
- 27.2.** FXTM will give you a Written Notice of its intention to disable the account to close only mode. You will have three (3) Business Days from the date of the Written Notice to resolve all Clearly Erroneous Orders.
- 27.3.** If your Trading Account is in close only mode you will not be permitted to open any new Positions or increase exposure under the existing ones, but you will be permitted to close, part close or reduce your exposure.

## 28. JOINT ACCOUNTS

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- 28.1.** Where the client comprises two or more individuals, the liabilities and obligations under the Operative Agreements will be joint and several.
- 28.2.** Any warning or other notice given to one of the persons which form the client will be deemed to have been given to all the persons who form the client.
- 28.3.** Any Order given by one of the persons who form the client will be deemed to have been given by all the persons who form the client.
- 28.4.** In the event of the death or incapacity of one of the persons which form the client, all funds held by FXTM or a third party, will be for the benefit and at the order of the other individual and all obligations and liabilities owed to Exinity will be owed by such other individual.

## 29. INACTIVE ACCOUNTS

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- 29.1.** FXTM may suspend or deactivate your Trading Account where there are no funds (your Balance is zero) and no trading activity on the Trading Account for a period of thirty (30) calendar days. In this case, you may regain access to your Trading Account by making a deposit.
- 29.2.** If you have not transacted with FXTM for a period of six (6) consecutive months on the Trading Account; FXTM may:
- (a) close your Trading Account (if your Balance is zero); or
  - (b) charge a handling fee (if you have a positive Balance).

FXTM may in its absolute discretion waive any handling fees which are charged on your Trading Account if you resolve your Balance.



## 30. MARKET DATA

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- 30.1.** You will have access to Market Data which is data produced by market data providers and made available to you by us in order to trade Instruments on your Platform. You must consult the Website of the relevant market data provider for full details of the rules applicable to the Market Data you see.
- 30.2.** You agree:
- (a) that Market Data will be made accessible to you in order to assist you to make your own investment decisions and will not amount to investment advice by FXTM;
  - (b) that Market Data is valuable confidential information and belongs exclusively to the market data providers and cannot be published, transmitted or otherwise reproduced by you in any format, partially or in full scope;
  - (c) to provide FXTM, immediately upon request, information about your use or intended use of Market Data;
  - (d) to immediately inform FXTM in case you are no longer a Non-Professional User;
  - (e) that FXTM may monitor your use of Market Data in any format it deems appropriate;
  - (f) that FXTM may at its discretion suspend your access to Market Data at any time and has no obligation to justify this decision;
  - (g) that, when necessary, FXTM may enter into any agreement on your behalf with a market data provider to enable your access to Market Data.

## 31. USE OF PROPRIETARY CONTENT AND IP RIGHTS

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- 31.1.** You are permitted to store, display, analyse, modify, reformat, and print the information made available through MyFXTM only for your trading purposes.
- 31.2.** You are not permitted to publish, transmit, or otherwise reproduce information made available through your Platform, in whole or in part, in any format to any third party without FXTM's consent or the consent of the owner of that information.
- 31.3.** You may not alter, obscure, or remove any copyright, trademark or any other notices that are provided on your Platform.
- 31.4.** You have no right to use "FXTM" as part of or a sole word while registering domain names or as a nickname or alias in any public forum, or due to any other unauthorized usage.
- 31.5.** All copyrights, trademarks, trade secrets, and other intellectual property rights and proprietary rights to the Website, MyFXTM and your Platform in their totality, their contents, and any related materials ("FXTM's IP") will remain at all times the sole and exclusive property of FXTM or its Affiliates and you will have no right to copy, modify, decompile, reverse engineer, or make derivative works of FXTM's IP unless otherwise specified in the Operative Agreements.

## 32. ACCESS DATA

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- 32.1.** You will notify FXTM immediately if you know or suspect that your Access Data has or may have been disclosed to any third person.



- 32.2.** In case we suspect unauthorized access to (due to your actions or not) or the use of your access codes, any login code, passwords ("Access Data") for your Platform, we will terminate access to your Trading Account to investigate.
- 32.3.** You agree to co-operate with any investigation FXTM may conduct into any misuse of your Access Data.
- 32.4.** You will be liable for all Orders given through and under your Access Data and any such Orders received by us will be considered as given by you, unless establish that the Orders in question were a result of unauthorized access at no fault on your side.
- 32.5.** You are solely responsible for providing and maintaining the compatible equipment necessary to access and use your Platform.

### **33. RISK DISCLOSURE**

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- 33.1.** FXTM discloses and you acknowledge that you run a great risk of incurring losses and damages as a result of the purchase or sale of any Instrument, and you are willing to undertake this risk. Risks are fully disclosed in the Risk Disclosure on the Website.

### **34. TRADING BENEFITS**

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- 34.1.** When you agree to participate in a bonus scheme, or other promotion, or contest which offers a trading benefit ("Trading Benefits Scheme"), the following rules will apply:
- 34.2.** you will not be entitled to participate in more than one Trading Benefit Scheme at a time, unless otherwise explicitly provided in the terms of the Trading Benefit Scheme(s) in question;
- 34.3.** FXTM will not be liable for any Margin Calls or losses (incl. due to Stop Outs) that you may suffer, if the trading benefit is withdrawn for any reason pursuant to the rules of the Trading Benefit Scheme;
- 34.4.** FXTM reserves the right to alter, amend, suspend, cancel or terminate the Trading Benefit Scheme, or any aspect of it, at any time without any prior Written Notice. FXTM will not be liable for any consequences of any alteration, amendment, suspension, cancelation or termination of the Trading Benefit Scheme;
- 34.5.** FXTM reserves the right, at its sole discretion, to disqualify you from any Trading Benefit Scheme if it suspects a misuse or an attempt to misuse a Trading Benefit Scheme on your side and cancel all of your profits. In these circumstances, FXTM will not be liable for any consequences of this Trading Benefit Scheme's cancellation and your disqualification.

### **35. SWAP-FREE ACCOUNT**

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- 35.1.** The rules on swap-free accounts can be found on the Website.



## 36. MARKET ABUSE

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- 36.1.** You will not arrange or execute or place an Open Position, or Order that contravenes any law or regulatory rules in relation to Market Abuse. You will find more rules about how we will proceed if we suspect a case of Market Abuse on your side in the relevant Terms of Business.

## 37. CORPORATE ACTIONS

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- 37.1.** When you trade stocks, CFDs on stocks and Indices, we may (but have no obligation to) reflect the corporate actions that apply to these Instruments. You will find more rules about corporate actions in the relevant Terms of Business.

## 38. SECURITY INTEREST

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- 38.1.** In order to ensure your compliance with the Operative Agreements, you grant us a first fixed charge on, a general lien over, and a right of set-off in respect of all stocks held on or due to be delivered to your Trading Account by us on your behalf and for your benefit ("Security"). You appoint us as your agent to take any actions necessary to perfect this Security.
- 38.2.** If you fail to comply with any provisions of the Operative Agreements, the Security will be enforceable against you by FXTM. We may, accordingly, while acting in good faith, without any notice to you, cancel, close out or reverse any stock Transaction we have entered into for your benefit and on your behalf, and sell or otherwise dispose of any stocks subject to Security at any available price.
- 38.3.** We will apply the proceeds of disposing stocks subject to Security (net of costs) towards your liabilities to us and will pay you the remaining balance, if any. If these proceeds do not discharge all of your liabilities to us, then you will remain liable for the difference.

## 39. ASSIGNMENT AND THIRD PARTIES

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- 39.1.** FXTM has the right, subject to the Applicable Regulations and with Written Notice, to assign any and all of its rights or obligation under the Operative Agreements to another regulated or non-regulated third party.
- 39.2.** You acknowledge that FXTM may arrange for an Order to be executed with or through a third-party which may be an unaffiliated company, or an Affiliate of FXTM.
- 39.3.** You accept that, to the degree allowed by the Applicable Regulations, some of the Services may be outsourced to agents, Affiliates or service providers of FXTM.
- 39.4.** Any authority granted by you to FXTM, or any limitation of liability of FXTM, will also extend to include the grant of authority to and limitation of liability of its Affiliates, agents and any service providers.



## 40. CONFIRMATIONS

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- 40.1.** Information on your Transactions, Trading Account and confirmations will be sent to your e-mail address on record or communicated via MyFXTM.
- 40.2.** It is your responsibility to inform us of any change to your email, the non-receipt of a confirmation, or whether any confirmations are incorrect before settlement of your Transaction occurs.
- 40.3.** If you have a reason to believe that the confirmation is inconsistent or if you do not receive any confirmation (though the Transaction was made), you should contact us.
- 40.4.** Confirmations will, in the absence of manifest error, be deemed conclusive unless you notify FXTM in writing to the contrary within two (2) Business Days following the day of receipt of the said confirmation with error.

## 41. TAX FILINGS AND OTHER LEVIES

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- 41.1.** You are solely responsible for all tax filings, returns and reports on any Transactions which is relevant to any authority, whether governmental or otherwise, and for payment of all taxes (including any transfer or value added taxes), arising in connection with any Transaction.

## 42. GOVERNING LAW AND JURISDICTION

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- 42.1.** This Agreement will be governed by and construed in accordance with the laws of the Republic of Kenya.
- 42.2.** In the event of a dispute arising out of or relating to the Operative Agreements, you irrevocably agree to first seek settlement of that dispute with FXTM under the Regulations for Non-Trading Operations or in accordance with the Complaints Management Policy, respectively.
- 42.3.** Any the dispute is not satisfactorily settled in accordance with the Clause 42.2 above, then either party to the Agreement may commence proceedings in accordance with Clause 42.4 below.
- 42.4.** With respect to any proceedings, you irrevocably:
  - (a)** agree that the courts of the Republic of Kenya will have exclusive jurisdiction to settle any disputes in connection with the Agreement;
  - (b)** submit to the jurisdiction of the courts of the Republic of Kenya;
  - (c)** waives your right to any objection which you may have at any time to the filing of any legal cases in any such courts;
  - (d)** agree not to claim that such proceedings have been brought in an inconvenient forum or that such court does not have jurisdiction over you.
- 42.5.** You irrevocably waive to the fullest extent permitted by law, with respect to you and your revenues and assets, all immunity from:
  - (a)** jurisdiction of any courts or arbitral proceedings;
  - (b)** relief by way of injunction, orders for specific performance, or for recovery of property;



- (c) attachment of your assets (whether obtained before or after judgment or award); and
- (d) the execution or enforcement of any judgment to which you or your revenues or assets might otherwise be the subject matter in any proceedings in arbitration or in courts.

### 43. MISCELLANEOUS

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- 43.1. In the event of a negative Balance in your Trading Account, we will not file a claim against you for that amount, unless it is as a result of your illicit activities.
- 43.2. You agree that time shall be of the essence in the Operative Agreements.
- 43.3. If any term of the Operative Agreements (or any part of any term) will be held by a tribunal or court to be unenforceable for any reason then such term will, to that extent, be deemed severable and not form part of the Operative Agreements, but the enforceability of the remainder of Operative Agreements will not be affected.
- 43.4. FXTM's official language is English, and you should always read and refer to the main Website for all information and disclosures about FXTM and its activities in English. If any translation or information is provided in languages other than English, it is for informational purposes only and do not bind FXTM or have any legal effect whatsoever.

### 44. ACKNOWLEDGMENT FOR MARKET DATA PURPOSES

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- 44.1. By executing this Agreement, you (known as "Subscriber" in the NASDAQ Global Subscriber Agreement) agree:
  - (a) that you have read and agree to be bound by the NASDAQ Global Subscriber Agreement, a copy of which is attached hereto;
  - (b) that [FXTM] as Distributor is not an agent of NASDAQ and is not authorized to add to or delete from the NASDAQ Global Subscriber Agreement and is not authorized to modify any provision of the NASDAQ Global Subscriber Agreement; and
  - (c) that no provision has been added to or deleted from the NASDAQ Global Subscriber Agreement and that no modifications have been made to it. Both [you] as the Subscriber and the person executing on behalf of the Subscriber warrant that the Subscriber is legally able to undertake the obligations set forth in and the signatory is duly authorized to bind the Subscriber to the NASDAQ Global Subscriber Agreement.



## A. APPENDIX A: Interpretation of Terms

I. In the Operative Agreements, the words shall have the following meaning:

**“Abnormal Market Conditions”** include low liquidity in the market, rapid price movements in the market, considerable breaks in the Quotes Flow in MyFXTM, fast price movements; and large Price Gaps.

**“Affiliate”** will mean in relation to FXTM, any entity controlled directly or indirectly by FXTM, any entity that controls directly or indirectly FXTM, or any entity directly or indirectly under common control with FXTM.

**“Applicable Regulations”** means the Capital Markets Act (Cap 485A of the Laws of Kenya), relevant regulations, circulars, guidelines and Directives of the Capital Markets Authority and any other applicable laws of Kenya, as amended from time to time.

**“Ask”** will mean the higher price in the Quote being the price at which the Client may buy.

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

**“Bid”** will mean the lower price in the Quote being the price at which the Client may sell.

**“Business Day”** will mean any day between Monday and Friday, inclusive, other than the 25th of December, or the 1st of January or any other holiday announced by FXTM on its Website.

**“Clearly Erroneous Order”** an order at a price substantially different from the prevailing market for any given Instrument on a trading day or outside the traded range for any given tradeable Instrument for a particular moment in time that may be in question.

**“Contract Specifications”** will mean principal trading terms for each Instrument, displayed on FXTM’s Website under the section with the same name.

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

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

**“Gapping”** happens when the price of an instrument or asset opens above or below the previous day’s close with no trading activity in between.

**“Hedged Margin”** will mean the margin required to open and maintain Matched Positions. The details for each Instrument are in the Contract Specifications.

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

**“Initial Margin”** will mean the margin required to start an Open Position.

**“Instrument”** will mean CFDs on various underlying assets and stocks. The full list of Instruments currently offered by FXTM can be found on the Website.

**“Leverage”** will mean a ratio (e.g., 1:20, 1:25, 1:40, 1:50, 1:100, 1:200, 1:500, 1:1000, 1:2000 and etc.) in respect of Transaction size and Initial Margin. 1:100 ratio means that in order to open a Position, the Initial Margin is one hundred times less than Transaction Size.





**“Long Position”** will mean a buy position that appreciates in value if market prices increase.

**“Margin Call”** will mean the term for when Equity on your Trading Account drops below your margin requirement and your Open Position are at risk of being automatically closed. To prevent automatic closure of your Open Position you can add funds to increase your Equity or close some of your Open Position to reduce the margin requirements.

**“Margin Level”** will mean the correlation between Equity and the Necessary Margin shown as a percentage.

**“Market Abuse”** will mean any dishonest behavior related to trading as described in the Applicable Regulations.

**“Market Data”** will mean information that we or any third-party service provider provide to you in connection with your use of our Services.

**“Market Opening”** will mean the time at which the market opens after weekends, holidays or trading session time gaps.

**“Market Order”** is a type of Order that executes at the best available price on the market, so it generally executes immediately during trading hours.

**“Market Snapshot”** will mean Quotes for instruments at a particular moment in time.

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

**“MyFXTM”** will mean the client’s official private and personal space and gateway to the Services including but not limited to any trading and/or non-trading activity.

**“Necessary Margin”** will mean the margin required by FXTM to maintain Open Positions.

**“Non-Professional User”** will mean any natural person who receives market data solely for his/her personal, non-business use and who is not classified as a “securities professional” under Applicable Regulations.

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

**“Order”** will mean an instruction from the Client to FXTM to open or close a position when the price reaches the amount indicated in the Order and includes Market Order, Stop Loss and Take Profit orders.

**“Platform”** will mean all programs and technical facilities which provide real-time Quotes and allow Transactions to be made, Orders to be placed/modified/deleted/executed and calculate all mutual obligations between the client and FXTM.

**“Position”** means expression of a market commitment, or exposure, held by a trader.

**“Price Gap”** will mean the following: the current Quote Bid is higher than the Ask of the previous Quote; or the current Quote Ask is lower than the Bid of the previous Quote.

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

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

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



“**Server**” will mean the MetaTrader Server program used to execute the client’s instructions, to provide trading information in real-time mode.

“**Short Position**” will mean a sell position that appreciates in value if market prices fall.

“**Slippage**” happens when a Market Order is executed, or a Stop Loss closes the Position at a different rate than set in the Order due to high volatility of the Instrument.

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

“**Stop Limit**” will mean either an order to place a place a buy or sell limit Order at specified level if the future ask or bid price reaches the value indicated in the Order.

“**Stop Loss**” is an Order used to limit risk, by automatically closing the client’s Open Position once it reaches a certain level of loss predefined by the client.

“**Stop Out**” is an instruction to close the client’s Open Position without the consent of the client or any prior notice in a case of insufficient funds required for maintaining Open Positions.

“**Take Profit**” is an Order to close an Open Position once it reaches a certain level of profit or better predefined by the client.

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

“**Transaction**” will mean any contract entered into or executed by the client or on behalf of the client arising under the Operative Agreement.

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

- II. All references to a statutory provision include references to:
  - (a) any statutory modification, consolidation or reenactment of it, whether before or after the date of the Operative Agreements, for the time being in force;
  - (b) all statutory instruments or orders made pursuant to it; and
  - (c) any statutory provision of which that statutory provision is a re-enactment or modification.
- III. All references to “includes,” “including,” “including but not limited to,” “including without limitation” and words or phrases of similar import will be deemed to have the same meaning and the words “includes(s)” and “including” will not be deemed to be terms of limitation but rather be deemed to be followed by the words “without limitation.”
- IV. Words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include individuals, corporations, partnerships, other unincorporated bodies and all other legal entities.
- V. Unless otherwise stated, a reference to a clause, subpara, party or an annex is a reference to a clause, subpara in, or a party or an annex to, this Agreement. The clause headings are inserted for ease of reference only and do not affect the construction of the terms of this Agreement. All annexes referred to herein form an integral part of this Agreement.
- VI. In the event of any conflict between this Agreement and any other agreements, annexes or ancillary documents referred to in this Agreement, the order of precedence for the purpose of construction shall be:
  - (a) this Agreement;
  - (b) Terms of Business;
  - (c) other Operative Agreements;



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(d) any other ancillary documents referred to in this Agreement.