



**FXTM**

Gives you more

# **CLIENT AGREEMENT**

**v. 18**





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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”, or “we” it refers to Forextime Limited, a company registered in the Cyprus and licensed by the Cyprus Securities and Exchange Commission (“CySEC”) under the Provision of Investment Services, the Exercise of Investment Activities, the Operation of Regulated Markets and Other Related Matters Law of 2017, Law 87(I)/2017 and entered on the CySEC’s Register of Cyprus Investments Firms (“CIF”), with CIF Number 185/12. Our company registration No. is HE 310361 and our registered address is FXTM Tower, Lamprou Konstantara 35, 4156, Limassol, Cyprus.
- 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 Privacy Policy Statement, the Agreement for Market Data Display Services, the NASDAQ Subscriber Agreement, the Customer Categorization Policy, Safeguarding of Clients Assets Policy, Conflict of Interest 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 offline registration form; 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 our 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 Cyprus or elsewhere for these actions.

### **3. CLASSIFICATION**

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- 3.1** Upon receipt of your application, we will categorise you as either an Elective Professional Client or Professional Client or Eligible Counterparty as defined in the Customer Categorization Policy. Based on the category assigned to you, you will be bound by the rules of the respective category in the Customer Categorization Policy.
- 3.2** You will inform us immediately if your personal circumstances that affect your category in Clause 3.1 change. We will frequently review your category to comply with the Applicable Regulations and where applicable, change your category if necessary.
- 3.3** You will not become a client of FXTM if you are a Retail Client as defined in the Customer Categorization Policy.

### **4. CAPACITY**

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- 4.1** 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.
- 4.2** 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.
- 4.3** 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.



- 4.4** Stock trading may not be available to you due to country-specific restrictions.
- 4.5** 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-8BEN-E status and re-submit the form to reflect these changes.
- 4.6** 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.

## 5. CLIENT ASSETS

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- 5.1** Your funds will be at all times segregated from our funds as provided for in the Applicable Regulations or Safeguarding of Clients Assets Policy. In case of our insolvency, your funds will not form a part of our proprietary assets under the Applicable Regulations or the laws of Cyprus on insolvency.
- 5.2** 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.
- 5.3** 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.
- 5.4** We may hold your funds in segregated omnibus accounts in banks located outside Cyprus or pass your funds to an intermediate broker, settlement agent or an over-the-counter counterparty located outside Cyprus 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 Cyprus.
- 5.5** The rules we follow when we safeguard and safekeep your Instruments can be found in the Terms of Business.
- 5.6** 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.
- 5.7** Your funds will not earn any interest and we will not pay any interest on any of your funds held by us.
- 5.8** You may agree to have your funds treated as collateral for your existing or future obligations by us under the Title Transfer Collateral Arrangement ("TTCA"). In this case, we will treat your



collateral (or margin) as our working capital and not your funds. We will not be obliged to segregate your margin and in case of FXTM's collapse, the TTCA can treat you as unsecured creditor of FXTM.

We will treat the transfer of your funds as a transfer of full ownership of funds to FXTM for the purpose of securing or covering your present, future, actual, contingent or prospective obligations, and we will not hold such money in accordance with the Safekeeping of Client Assets and Funds. You will not have an exclusive right over the funds transferred to us and we will deal with your funds in our own right, and you will rank as a general creditor. If we agree to accept your funds as collateral, you will transfer to us full ownership of such collateral so that all the rights, title and interest in such funds will completely pass to FXTM. Such collateral will not be held in accordance with the client money rules. This clause 5.9 will apply where you are categorised either as a Professional Client or Eligible Counterparty.

Your funds will be for purposes of carrying out transactions and securing or covering your present, future, actual, contingent or prospective obligations towards FXTM. Your funds that are subject to the TTCA will not exceed your obligations towards FXTM.

## 6. SERVICES. NO INVESTMENT ADVICE

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**6.1** When transacting with you, we provide the following services:

- (a) reception and transmission or execution of your Orders as a principal or as an intermediary;
- (b) foreign currency services, provided they are associated with services in Clause 6.1 (a);
- (c) granting credit to transact with an Instrument, provided that you are involved in this Transaction;
- (d) safekeeping and administrating Instruments for your account, including custody and related services;
- (e) providing you with access to investment research data and financial analysis which may be relevant to you;
- (f) investment advice provided you accept any additional agreement in this respect; and
- (g) dealing on own account.

**6.2** 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.



- 6.3** 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.
- 6.4** 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.
- 6.5** 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.
- 6.6** We give no representation or warranty as to the accuracy or the completeness of the information mentioned in Clause 6.5.
- 6.7** 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.
- 6.8** 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).

## 7. CONFLICTS OF INTEREST

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- 7.1** 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.
- 7.2** 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).
- 7.3** If there is a potential conflict of interest involving you or all of our clients, we may disclose the general nature and circumstances of this conflict before proceeding with the Transaction in question.
- 7.4** 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.

**7.5** 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.

**7.6** You acknowledge that you are aware of the possibility that the circumstances disclosed in this Clause 7 may result in a conflict of interest and authorize us to proceed with the Transaction in question notwithstanding such conflict.

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

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**8.1** 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.

**8.2** 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.

**8.3** 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.

**8.4** 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.

**8.5** 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.



## 9. CURRENCY

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- 9.1 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.
- 9.2 We will make any other currency conversions at any rate we find appropriate, but we will consider the prevailing rates for freely convertible currencies.
- 9.3 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.

## 10. PROVIDING QUOTES

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

## 11. OFF-HOURS EXECUTION

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- 11.1 We do not execute Orders outside normal trading hours.
- 11.2 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.
- 11.3 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.

## 12. INSTRUCTIONS

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

## 13. TRADING HISTORY

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- 13.1 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.



- 13.2** 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 five (5) years after the date you stop being a client of FXTM.
- 13.3** 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.

## 14. NETTING

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- 14.1** 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.
- 14.2** 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.
- 14.3** 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.

## 15. MARGIN REQUIREMENTS

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- 15.1** 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.
- 15.2** 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.
- 15.3** We may apply the new margin requirements to your future Positions as well as to the current Open Positions.
- 15.4** 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.



## 16. PAYMENTS

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- 16.1** You may deposit funds into your Trading Account at any time as per the payment instructions on MyFXTM. We will credit your deposit funds within one (1) Business Day after such funds are cleared by FXTM's bank.
- 16.2** You may withdraw funds from your Trading Account at any time provided that:
- (a) we will pay the withdrawn amount on the date of withdrawal or the next Business Day if your withdrawal request was received outside normal trading hours if; you have provided all necessary information, the recipient account belongs to you and your free margin exceeds the withdrawal amount (plus any payment charges);
  - (b) the expected destination of your outgoing withdrawal payments will be the same as the expected destination of incoming deposit funds (same country of origin unless you have submitted sufficient proof that you reside in a separate country);
  - (c) the means or mode of your withdrawal request will be the same as the original means or mode of your original deposit; and
  - (d) If we request you to provide proof that the receiving bank account belongs to you, you will submit all the necessary documents or information to FXTM.
- 16.3** We will not accept any deposit from or make any withdrawal payments to an anonymous or third party.
- 16.4** We will debit your Trading Account for all commission, charges and other costs as per Clause 8. In case you close your Trading Account, your net amount payable (provided there is a positive balance) will be the balance less any and all commissions, charges and other costs as per Clause 8. In case of a negative balance, we will close the account without any further transfer of funds to you.
- 16.5** If any commissions, charges and other costs as per Clause 8 due from you to FXTM exceed the Equity in your Trading Account, you undertake to pay the excess amount when the amount falls due.
- 16.6** We will ensure that your losses do not exceed the total available funds in your Trading Account (negative balance protection).

## 17. LIMITATIONS OF LIABILITY AND INDEMNITY

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- 17.1** 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.
- 17.2** 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) any failure to get in touch with you regarding Margin Call on your Open Position;
- (h) currency risk;
- (i) Slippage and Gapping;
- (j) any risks applicable to trading your Instruments;
- (k) any changes in the rates of taxes applicable to you, other adverse tax implications of the Transactions;
- (l) your reliance on Stop Losses;
- (m) your reliance on information about normal trading hours for a particular Instrument;
- (n) any inability to execute an instruction or Order;
- (o) the effect of a corporate event or a corporate action;
- (p) the effect of your failure to comply with the Operative Agreements;
- (q) the effect of your Trading Account being disabled due to inactivity or Clearly Erroneous Order(s);
- (r) any failure of the whole or any part of our software or any systems or network links or any other means of communication;
- (s) any computer viruses, worms, software bombs or similar items being introduced into your computer or mobile hardware /software while using your Platform.

**17.3** 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.

**17.4** 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.

**17.5** 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.



- 17.6** 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.
- 17.7** 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.
- 17.8** 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.
- 17.9** 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.

## 18. COMPLAINTS MANAGEMENT PROCEDURE

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

## 19. COMMUNICATIONS

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- 19.1** 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.
- 19.2** 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.
- 19.3** 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.
- 19.4** You will notify us immediately of any change in your contact details.



**19.5** 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.

## 20. WRITTEN NOTICE

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**20.1** Any Written Notice given under the Operative Agreements may be communicated to you as provided for in Clause 19.1. A Written Notice is deemed served and received at the timepoints stated in Clause 19.3.

## 21. AMENDMENT AND TERMINATION

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**21.1** 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 20.

**21.2** Any party may terminate the Operative Agreements by giving Written Notice to the other party. You will not terminate this Agreement on the basis that it is a distance contract.

**21.3** 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.

**21.4** 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.

**21.5** 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.
- 21.6** 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 21.5.
- 21.7** We will close your Trading Account(s) after we have settled all amounts due by you to us under the Operative Agreements.
- 21.8** 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 21.5 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.
- 21.9** If the Balance under Clause 21.8 is equal to or less than any charges to be incurred for transferring your funds under your instructions, you agree to:
- (a) top up your Trading Account with an amount equal to or more than the difference of the Balance and such transfer charges in Clause 21.9; or
  - (b) authorize FXTM to transfer the Balance to any charitable organization at FXTM's sole discretion upon Written Notice and, write off such Balance.

## 22. HOW WE USE YOUR PERSONAL INFO

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- 22.1** FXTM will use, store, or otherwise process personal information provided by you in connection with the Services as set out in the Policy Statement on our Website.

## 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 Foreign Account Tax Compliance Act (FATCA), Common Reporting Standard (CRS), and Market in Financial Instruments Regulation (MiFIR);
- (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 the confidentiality obligations similar to ones in this Clause 22.

**22.4.** Notwithstanding anything to the contrary in this Agreement or in any non-disclosure, confidentiality or other agreement between the parties, each party consents to the disclosure of information:

- (a) to the extent required or permitted under, or made in accordance with, the provisions of EMIR and any applicable supporting law, rule or regulation ("EMIR and Supporting Regulation") which mandate reporting and/or retention of transaction and similar information or to the extent required or permitted under, or made in accordance with, any order or directive in relation to (and including) EMIR and Supporting Regulation regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency in accordance with which the other party is required or accustomed to act ("Reporting Requirements"); or
- (b) to and between the other party's head office, branches or Affiliates, or any persons or entities who provide services to such other party or its head office, branches or Affiliates, in each case, in connection with such Reporting Requirements.

Each party acknowledges that pursuant to EMIR and Supporting Regulation, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.

Each party further acknowledges that disclosures made pursuant hereto may include, without limitation, the disclosure of trade information including a party's identity (by name, address, corporate affiliation, identifier or otherwise) to any trade repository registered in accordance with Article 55 of EMIR or recognized in accordance with Article 77 of EMIR or one or more systems or services operated by any such trade repository ("TR") and any relevant regulators (including without limitation, the European Securities and Markets Authority and national regulators in the European Union) under EMIR and Supporting Regulation and that such disclosures could result in certain anonymous transaction and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, a party may use a third-party service provider to transfer trade



information into a TR and that a TR may engage the services of a global trade repository regulated by one or more governmental regulators. Each party also acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing party or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal data as the counterparty's home jurisdiction. For the avoidance of doubt, (i) to the extent that applicable nondisclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein will be a consent by each party for purposes of such law; (ii) any agreement between the parties to maintain confidentiality of information contained in this Agreement or in any non-disclosure, confidentiality or other agreement will continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Reporting Requirements as set out herein; and (iii) nothing herein is intended to limit the scope of any other consent to disclosure separately given by each party to the other party.

The consenting party represents and warrants that any third party to whom it owes a duty of confidence in respect of the information disclosed has consented to the disclosure of that information.

- 22.5.** 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 15, 16 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, swap arbitrage, 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 Cyprus 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) 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;
  - (l) 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;
  - (m) 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.
- 24.3.** Without prejudice to the rights, powers, remedies and privileges provided by law, failure by a party to take any actions required by or to otherwise comply with Clause 45 or any inaccuracy of the representation and warranty in Clause 23.2, in either case, will not constitute an Event of Default in respect of such party.
- 24.4.** You acknowledge that the Law on Distance Trading of Financial Services to Consumers of 2004 (Law 242 / (I) / 2004) (Cyprus) and the right therein to withdraw from contract, without penalty and without giving any justification does not apply to any relationship between the Client and FXTM.

## 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.** FXTM reserves the right to disable your Trading Account to close only mode if:

- (a) an Order submitted by you is a Clearly Erroneous Order and you have not resolved all Clearly Erroneous Orders within three (3) Business Days from the date of the Written Notice; or



- (b) you fail to provide valid and updated documents or information and you have not updated the same upon our Written Notice.
- 27.2.** 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.
- 27.3.** We may enable your Trading Account after you have resolved or updated the details in Clause 27.1.
- 27.4.** FXTM will terminate this Agreement as provided in Clause 21 if you fail to provide valid and updated documents or information under Clause 27.1(b) within sixty (60) days after your Trading Account has been transferred to close only mode.

## 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.** If you open a swap-free account, you agree that:
- (a) in case of an Event of Default, we may close all your Open Positions in your Trading Account and deduct or add a penalty (equivalent to the swap and/or any profit amount) for all Transactions made in the account(s) and decline your requests for exemption from any swaps;
  - (b) you will trade only with the applicable Instruments on the Website and, any swap free charge available on the Website will apply;
  - (c) we may amend the swap free charge, amend the applicable Instruments and/or discontinue the swap-free account without issuing any notice to you.
- 35.2.** Additional rules on swap-free accounts can be found on the Website or the Terms of Business.

## 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 including the Market Abuse Law of 2016 (Law 102(I)/2016) and (EU MAR) - Regulation 596/2014 on 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 may not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer your rights or obligations under the Operative Agreements without prior written consent of FXTM and any purported assignment, charge or transfer in violation of this term shall be void.
- 39.3.** 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.
- 39.4.** 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.
- 39.5.** 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. INVESTOR'S COMPENSATION FUND**

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- 41.1.** You will not be covered and entitled to compensation from the Investors Compensation Fund ("ICF") administered by the Cyprus Securities and Exchange Commission ("CySEC").



## 42. TAX FILINGS AND OTHER LEVIES

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**42.1.** 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.

## 43. GOVERNING LAW AND JURISDICTION

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**43.1.** This Agreement will be governed by and construed in accordance with the laws of Cyprus.

**43.2.** 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 in accordance with the Complaints Policy or as otherwise provided in this Agreement, respectively.

**43.3.** If the dispute is not satisfactorily settled in accordance with the Clause 43.2 above, then either party to the Agreement may commence proceedings in accordance with Clause 43.4 below.

**43.4.** With respect to any proceedings, you irrevocably:

- (a)** agree that the courts of Cyprus will have exclusive jurisdiction to settle any disputes in connection with the Agreement;
- (b)** submit to the jurisdiction of the courts of Cyprus;
- (c)** waive 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.

## 44. MISCELLANEOUS

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**44.1.** 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.

**44.2.** You agree that time shall be of the essence in the Operative Agreements.

**44.3.** 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.

**44.4.** 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.



## 45. AGREEMENT TO RECONCILE PORTFOLIO DATA

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- 45.1.** Both parties agree to reconcile portfolios as required by the Portfolio Reconciliation Risk Mitigation Techniques in case of:
- (a) one-way delivery of portfolio data; or
  - (b) exchange of portfolio data.
- 45.2. One-way Delivery of Portfolio Data:** If one party is a Portfolio Data Sending Entity and the other party is a Portfolio Data Receiving Entity in accordance with clause 45.1 (a) above:
- (a) on each Data Delivery Date, the Portfolio Data Sending Entity will provide Portfolio Data to the Portfolio Data Receiving Entity;
  - (b) on each PR Due Date, the Portfolio Data Receiving Entity will perform a Data Reconciliation;
  - (c) if the Portfolio Data Receiving Entity identifies one or more discrepancies which such party determines, acting reasonably and in good faith, are material to the rights and obligations of the parties in respect of one or more Relevant Transaction(s), it will notify the other party in writing as soon as reasonably practicable and the parties will consult with each other in an attempt to resolve such discrepancies in a timely fashion for so long as such discrepancies remain outstanding, using, without limitation, any applicable updated reconciliation data produced during the period in which such discrepancy remains outstanding; and
  - (d) if the Portfolio Data Receiving Entity does not notify the Portfolio Data Sending Entity that the Portfolio Data contains discrepancies by 4 p.m. local time in the place of business of the Portfolio Data Sending Entity on the fifth Joint Business Day following the later of the PR Due Date and the date on which the Portfolio Data Sending Entity provided such Portfolio Data to the Portfolio Data Receiving Entity, the Portfolio Data Receiving Entity will be deemed to have affirmed such Portfolio Data.
- 45.3. Exchange of Portfolio Data:** If both parties are Portfolio Data Sending Entities in accordance with clause 45.1 (b) above:
- (a) on each Data Delivery Date, each party will provide Portfolio Data to the other party;
  - (b) on each PR Due Date, each party will perform a Data Reconciliation; and
  - (c) if a party identifies one or more discrepancies which such party determines, acting reasonably and in good faith, are material to the rights and obligations of the parties in respect of one or more Relevant Transaction(s), it will notify the other party in writing as soon as reasonably practicable and the parties will consult with each other in an attempt to resolve any such discrepancies in a timely fashion for so long as such discrepancies remain outstanding, using, without limitation, any applicable updated reconciliation data produced during the period in which such discrepancy remains outstanding.



- 45.4. Change of Status:** Each party may change its own designation with the written agreement of the other party (such agreement not to be unreasonably withheld or delayed) and for this purpose the parties agree, without limitation, that it will not be unreasonable for a party to withhold agreement where agreement would result in the other party having different designations in respect of such party and one or more Affiliates of such party). No change of designation will be permitted where the result would be both parties are Portfolio Data Receiving Entities unless the parties also agree a process for reconciling Portfolio Data in order to meet the requirements of the Portfolio Reconciliation Risk Mitigation Techniques.

If a party believes, acting reasonably and in good faith, that the parties are required to perform Data Reconciliation at a greater or lesser frequency than that being used by the parties at such time, it will notify the other party of such in writing, providing evidence on request. From the date such notice is effectively delivered, such greater or lesser frequency will apply and the first following PR Due Date will be the earlier of the date agreed between the parties and the last Joint Business Day in the PR Period starting on the date on which the immediately preceding Data Reconciliation occurred (or, if no Joint Business Day occurs which is within such PR Period and is on or following the date such notice is effective, the first Joint Business Day following the later of the end of such PR Period and the date such notice is effective).

- 45.5. Use of Agents and third-party service providers:** To perform all or part of the actions under Clauses 45.1 – 45.4, each party may appoint:
- (a) an Affiliate to act as Agent, immediately on written notice to the other party; and/or
  - (b) subject to the other party's agreement (such agreement not to be unreasonably withheld or delayed) and which may include any such agreement existing prior to 4<sup>th</sup> of April 2014
    - (1) an entity other than an Affiliate as Agent and/or
    - (2) a qualified and duly mandated third-party service provider.
- 45.6. Dispute Identification and Resolution Procedure:** The parties agree that they will use the following procedure to identify and resolve Disputes between them:
- (a) either party may identify a Dispute by sending a Dispute Notice to the other party;
  - (b) on or following the Dispute Date, the parties will consult in good faith in an attempt to resolve the Dispute in a timely manner, including, without limitation, by exchanging any relevant information and by identifying and using any Agreed Process which can be applied to the subject of the Dispute or, where no such Agreed Process exists or the parties agree that such Agreed Process would be unsuitable, determining and applying a resolution method for the Dispute; and
  - (c) with respect to any Dispute that is not resolved within five Joint Business Days of the Dispute Date, refer issues internally to appropriately senior members of staff of such party or of its Affiliate, adviser or Agent in addition to actions under (b) immediately above (including actions under any Agreed Process identified and used under (b) immediately above) and to the extent such referral has not occurred as a result of action under (b) immediately above (including any Agreed Process).



- 45.7. Internal processes for recording and monitoring Disputes:** Each party agrees that, to the extent the Dispute Resolution Risk Mitigation Techniques apply to each party, it will have internal procedures and processes in place to record and monitor any Dispute for as long as the Dispute remains outstanding.
- 45.8. Relationship to other portfolio reconciliation and dispute resolution processes:** This Clause 45 and any action or inaction of either party in respect of it are without prejudice to any rights or obligations the parties may possess in respect of each other under any Agreed Process or other contractual agreement, by operation of law or otherwise. Action or inaction by a party in respect of this Clause 45 will not be presumed to operate as an exercise or waiver, in whole or part, of any right, power or privilege such party may possess in respect of each other under any Agreed Process or other contractual agreement, by operation of law or otherwise. In particular, but without limitation, (a) any valuation in respect of one or more Relevant Transactions for the purposes of this Clause 45 will be without prejudice to any other valuation with respect to such Relevant Transaction(s) made for collateral, close out, dispute or other purpose; (b) the parties may seek to identify and resolve issues and discrepancies between themselves before either party delivers a Dispute Notice; and (c) nothing in this Clause 45 obliges a party to deliver a Dispute Notice following the identification of any such issue or discrepancy (notwithstanding that such issue or discrepancy may remain unresolved) or limits the rights of the parties to serve a Dispute Notice, to commence or continue an Agreed Process (whether or not any action under Clause 45.6 has occurred) or otherwise to pursue any dispute resolution process in respect of any such issue or discrepancy (whether or not any action under Clause 45.6 has occurred).

## **46. ACKNOWLEDGMENT FOR MARKET DATA PURPOSES**

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- 46.1.** 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: Definitions and 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.

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

**“Applicable Regulations”** means the rules, relevant regulations, rules, circulars, guidelines and Directives of the Cyprus Securities and Exchange Commission (“CySEC”) and any other applicable laws of Cyprus, 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.

**“Client’s Terminal”** will mean the trading software used by the Client to obtain information of financial markets in real-time, to make technical analysis of the markets, make Transactions, place/modify/delete Orders, as well as to receive notices from FXTM.

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

**“Data Delivery Date”** means each date agreed as such between the parties provided that, in the absence of such agreement, the Data Delivery Date will be the Joint Business Day immediately prior to the PR Due Date.

**“Data Reconciliation”** means, in respect of a party receiving Portfolio Data, a comparison of the Portfolio Data provided by the other party against such party’s own books and records of all outstanding Relevant Transactions between the parties in order to identify promptly any misunderstandings of Key Terms.

**“Dispute”** will mean either:



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

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

**"Dispute Notice"** means a notice in writing which states that it is a dispute notice, and which sets out in reasonable detail the issue in dispute (including, without limitation, the Relevant Transaction(s) to which the issue relates).

**"Dispute Resolution Risk Mitigation Techniques"** means the dispute resolution risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of EMIR as supplemented by Article 15 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 and published on 23 February 2013 in the Official Journal of the European Union

**"Eligible Counterparty"** means an "Eligible Counterparty" for the purposes of the Applicable Regulations.

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

**"EMIR"** means Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012.

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

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

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





- e) a significant variance from marketing pricing FXTM has the right to delete an Error Quote (Spike) from the Server's Quotes Base.

**"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 contract for differences (CFDs) on various underlying assets and stocks. The full list of Instruments currently offered by FXTM can be found on the Website.

**"Joint Business Day"** means a day that is a Local Business Day in respect of each party.

**"Key Terms"** means, with respect to a Relevant Transaction and a party, the valuation of such Relevant Transaction and such other details the relevant party deems relevant from time to time which may include the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the contract and currency of the Relevant Transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates of the Relevant Transaction. For the avoidance of doubt, "Key Terms" does not include details of the calculations or methodologies underlying any term.

**"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.

**"Local Business Day"** will mean a day on which commercial banks and foreign exchange markets settle payments and are open for general business in Cyprus.

**"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.

**"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.

**“Over-the Counter” “OTC”** security will mean a security traded in some context other than on a formal exchange. OTC occurs with commodities, Financial Instruments (including stocks) and derivatives of such products.

**“Pending Order”** will mean an instruction from the Customer to the Company to open a position once the price has reached the level of the Order.

**“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.

**“Portfolio Data”** means, in respect of a party providing or required to provide such data, the Key Terms in relation to all outstanding Relevant Transactions between the parties in a form and standard that is capable of being reconciled, with a scope and level of detail that would be reasonable to the Portfolio Data Sending Entity if it were the receiving party. Unless otherwise agreed between the parties, the information comprising the Portfolio Data to be provided by a party on a Data Delivery Date will be prepared as at the close of business on the immediately preceding Local Business Day of, and as specified in writing by, the party providing the Portfolio Data.

**“Portfolio Reconciliation Requirements”** means the requirements one or both parties are subject to in accordance with the Portfolio Reconciliation Risk Mitigation Techniques.

**“Portfolio Reconciliation Risk Mitigation Techniques”** means the portfolio reconciliation risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of EMIR as supplemented by Article 13 of Chapter VIII of the Commission Delegated Regulation (EU) No



149/2013 of 19 December 2012 and published on 23 February 2013 in the Official Journal of the European Union.

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

**“PR Due Date”** means each date agreed as such between the parties provided that the PR Due Date will be the PR Fallback Date where either (a) no date is agreed or (b) the agreed date occurs after the PR Fallback Date.

**“PR Fallback Date”** means: (a) in respect of the PR Period starting on the PR Requirement Start Date, the last Joint Business Day in such PR Period; and, otherwise, (b) the last Joint Business Day in the PR Period starting on the calendar day immediately following the last calendar day of the immediately preceding PR Period. If there is no Joint Business Day in a PR Period, the PR Due Date will be the first Joint Business Day following the end of the PR Period.

**“PR Period”** means, with respect to the parties:

- a) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur each business day, one Joint Business Day;
- b) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur once per week, one calendar week;
- c) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur once per quarter, three calendar months; or
- d) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur once per year, one calendar year.

**“PR Requirement Start Date”** means the first calendar day on which the Portfolio Reconciliation Requirements apply to one or both of the parties.

**“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.

**“Relevant Transaction”** means any Transaction which is subject to the Portfolio Reconciliation Risk Mitigation Techniques and/or the Dispute Resolution Risk Mitigation Techniques.

**“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/eu](http://www.forextime.com/eu) 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:



**FXTM**

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- (a) this Agreement;
- (b) Terms of Business;
- (c) other Operative Agreements;
- (d) any other ancillary documents referred to in this Agreement.