



## Business to Client (B2C) Agreement General Terms & Conditions

FXPESA IS THE REGISTERED TRADING NAME FOR EGM SECURITIES LIMITED WHICH IS AUTHORISED AND REGULATED BY THE CAPITAL MARKETS AUTHORITY, KENYA

Effective from  
April 2020

Version 1.1

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THIS IS AN IMPORTANT DOCUMENT. ALONGSIDE THE FORMS WHICH REQUIRE YOUR SIGNATURE IN THE APPLICATION PROCESS, IT FORMS PART OF A LEGAL CONTRACT AND YOU MUST READ AND ENSURE THAT YOU UNDERSTAND ITS CONTENTS.

YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE IF THERE IS ANYTHING IN THESE TERMS THAT YOU DO NOT UNDERSTAND.

FOR ANY ENQUIRIES AND OTHER CLARIFICATIONS IN RELATION TO THESE TERMS, YOU MAY CONTACT OUR COMPLIANCE DEPARTMENT.

Services displayed on the website are provided by FXPesa (which is the registered trading name of EGM Securities Limited) and Card transactions are processed by Equiti Capital UK Limited.

FXPesa is the trading name of EGM Securities Limited (Company Registered No. PVT -AAAAFF7), which is authorised and regulated by the Capital Markets Authority, with its company registered address at 12th floor, Tower 2, Delta Corner Towers, Waiyaki Way, Westlands, Nairobi.

Equiti Capital UK Limited (Company No. 07216039) is authorised and regulated by the Financial Conduct Authority (firm reference no. 528328), with its company registered address at 69 Wilson Street, London, EC2A 2BB, UK.

## 1. INTRODUCTION

- 1.1 The terms and conditions (“**Terms**”) in this Client Agreement (“**Agreement**”) will govern the services that **FXPesa** (“**FXPesa**”, “**EGM**”, “**we**” or “**us**”), will provide to you. The principal registered address of EGM Securities Limited is 12th Floor, Tower 2, Delta Corner Towers, Waiyaki Way, Westlands, Nairobi, Kenya.
- 1.2 We will deal with you as principal unless we inform you that we are dealing with you as agent generally or with respect to any Transaction or class of Transactions. You will enter into Transactions as principal unless otherwise agreed in writing by us.
- 1.3 You acknowledge and agree that by opening an account via our Online Facility, your electronic acceptance of these Terms and your use or continued use of our services, you agree to be bound by these Terms (and any variation of these Terms as notified to you from time to time). A current and definitive copy of these Terms (as amended from time to time) will always be available to you on our Website.
- 1.4 You agree under these Terms to notify us, immediately in writing, of any changes to any material information you have provided to us in connection with these Terms.
- 1.5 One or more of our Group Companies may act as agents for us and we may act as agent for one or more of our Group Companies at our discretion. This will be disclosed at or before the time of executing a Transaction. It will also be recorded on the confirmation. These Terms shall apply unless one of our Group companies expressly requires otherwise.
- 1.6 In these Terms we have used defined words and terms, as set out in the body of this document or in the definitions’ section below, in order to make it easier to read. After a definition or an explanatory word or phrase, we have included the relevant defined word or term in bold. Unless the context requires otherwise, all other uses of a defined word or term will have the same meaning.
- 1.7 The Terms may be updated from time to time and we shall notify you of any updates before those changes become effective and in accordance with this Agreement.
- 1.8 You acknowledge and agree that we may (a) accept and act upon in good faith, without further enquiry and without incurring any liability or responsibility, any instructions believed by us in good faith and reasonable grounds to be

given by you and (b) authorise transmissions of transactions which lead to trades which we reasonably believe originated from you or on your behalf.

## 2. DEFINITIONS AND INTERPRETATION

### Definitions

#### 2.1 The following terms used within this Agreement shall, unless the context otherwise requires, have the following meanings:

**Act** – The Capital Markets Act, cap 485A, Laws of Kenya.

**Affiliate** – in relation to either party each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party or any business entity from time to time controlling, controlled by, or under common control with, either party.

**Application Form** – the account application form completed by you and accessed through our Website.

**Applicable Regulations** – for the purposes of these Terms, applicable regulations shall include the CMA Regulations, the rules of any other relevant regulatory authority or exchange and any applicable laws and regulations in force from time to time. Where these Terms conflict with Applicable Regulations, the latter shall prevail.

**Appropriateness Assessment** - the process we use to assess the appropriateness of the Services for you.

**Associate(s)** – (in relation to a person) (A): (i) an Affiliate of A; (ii) an appointed representative of A or of any Affiliate of A; or (iii) any other person whose business or domestic relationship with A or his Associate might reasonably be expected to give rise to an alignment of interests between them.

**Authorised Third Party** – has the meaning given to it in section 39.

**Base Currency** – the currency used to open your account, which may be the lawful currency of the Republic of Kenya (Kenya Shilling), the United States of America (United States Dollars), the United Kingdom (GBP Sterling) or the European Union (Euros).

**Business Day** – a day other than a Saturday or Sunday and which is not a bank holiday or public holiday in Kenya.

**Calculation Agent** – EGM Securities Limited.

**Charges** - means any Transaction or account costs, fees or other charges notified to you from time to time.

**Client Money** – money of any currency belonging to you that we receive or hold for you, or on your behalf in the course of providing the Services, that we treat as client money in accordance with the CMA regulations.

**Client Portal** – the client portal at [portal.fxpesa.com](http://portal.fxpesa.com)

**CMA** – Capital Markets Authority, Kenya

**CMA Regulations** – Capital Markets Regulations in Kenya on Online Foreign Exchange Trading, Licensing, Corporate Governance, Conduct of Business and any other regulations, rules, guidelines and directives as issued by the Authority and available at [www.cma.or.ke](http://www.cma.or.ke)

**Closing Date** – the date on which the close-out of an open Transaction is effective.

**Closing Level** – the level at which a Transaction is closed.

**Commission** – has the meaning given to it in section 15(4).

**Complaints Policy** – our complaints policy which is updated from time to time and can be found on our website for the use of clients.

**Complex Product(s)** – certain derivative products including, two day rolling spot futures, contracts for difference and options.

**CFDs** – Contracts for Difference.

**Contract Specifications** – the section of our Website designated as “Pricing”, as amended from time to time.

**Credit Support Document** – any document containing an obligation of a Credit Support Provider, including but not limited to a written communication with one of our Affiliates to consider your open positions or account balance with us as collateral to maintain margin with such entity of vice versa.

**Credit Support Provider** – with respect to you, a party providing credit support in respect of your obligations with us, which may include one of our Group Companies, if mutually agreed between you and us.

**Daily Financing Fee** – the charge which we apply daily to the Open Position. Details of the Daily Financing Fees are set out in the Contract Specifications.

**Electronic Trading Services** – any electronic services (together with any related software) including without limitation trading, direct market access order routing or information services that we grant you access to or make available to you either directly or through a third-party service provider and used by you to view information or enter into Transactions.

**Electronic Trading Supplement** – the supplemental terms relating to online trading which has been provided to you (a hard copy is available on request).

**Expiry Transaction** – a Transaction which had a set contract period at the end of which the Expiry Transaction expires automatically.

**Event of Default** – as defined below and specifically under section 32.

**FATCA** – the Foreign Account Tax Compliance Act of the United States of America.

**Force Majeure Event** - an event which is beyond the reasonable control of an “Affected Party” or the reasonable control of its suppliers and contractors including without limit any Market Disruption, acts or restraints of government(s) or public authorities, war, derelict weapons of war, nuclear, radioactive, biological, chemical, biochemical or electromagnetic weapons or contamination, revolution, strikes, lock-outs or other forms of industrial action, fire, flood, natural disaster, explosion, unavoidable accidents, terrorist action, failure of a utility service or transport network, the suspension or limitation of trading by any execution venue, or any breakdown, failure, defective performance or malfunction of any telecommunications, settlement or other equipment or systems.

**Forex** – margined two day rolling spot futures traded over the counter in foreign exchange, precious metals, indices or commodities.

**Financial Instrument** – options, futures and contracts for difference in foreign exchange offered for trading by FXPESA pursuant to these Terms.

**Group** – in relation to FXPESA, any subsidiary of Equiti Group Limited. In relation to you any entity to which you are an Affiliate. Each company in a Group is a member of the Group.

**Group Company** - in relation to a company, any member of its Group.

**Hedging Disruption** - means a situation where FXPESA cannot reasonably acquire, hold, replace or unwind any transactions hedging a security’s price risk, or realise, recover or pay the proceeds of any hedging transactions as applied under section 19.

**Last Dealing Time** - the last day and time before which a Transaction may be dealt in, as set out in the customer account application otherwise notified to you, or otherwise the last day and (as the context requires) time on which the underlying Financial Instrument may be dealt in on the relevant Underlying Market.

**Leverage (or Leveraged)** – the borrowing of capital in order to gain a greater exposure to Forex and CFDs.

**Limit Order** – an order to Buy or Sell an investment at its specified price limit or better and for a specified size.

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

**Liquidity Provider** - a bank or other financial institution that provides executable bid and offer prices in respect of foreign currencies on a continuous or regular basis.

**LPOA** – a limited power-of-attorney, which is a legal document whereby you grant another person access to your account and which we have agreed to in writing.

**Manifest Error / Manifestly Erroneous** - a manifest or obvious misquote by us based on a price source on which we have relied in connection with any Transaction, having regard to the current market conditions at the time a Transaction is entered into, as determined by us.

**Margin** - a deposit of funds or collateral acceptable to us, including but not limited to open positions or funds held by you with other Group Companies, posted by you to secure your liability to us for any losses which may be incurred in respect of the Transaction or where we determine in our sole and reasonable discretion that additional security is required from you where there is adverse movement in the price of a Transaction.

**Margin Call** - a call for additional Margin or collateral by FXPESA to secure your obligations in accordance with section 27.1.

**Market** - any market or multilateral trading facility subject to government or state regulation with established trading rules and trading hours including a Regulated Market and a Multilateral Trading Facility (MTF).

**Market Disruption** - any circumstance in which we reasonably believe the relevant market or exchange relating to a Transaction, our matching contract with our counterparty or any relevant foreign exchange related product is suspended, closed, materially impaired or cannot be relied upon.

**Market Rules** - the rules, regulations, customs and practices from time to time including but not limited to regulations on market abuse, any exchange, clearing house or other organisation or market involved in the conclusion, execution or settlement of a Transaction or any matching contract we enter into with a counterparty. This includes any exercise by any such exchange, clearing house or other organisation or market of any power or authority conferred on it.

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

**Money Laundering Requirements** - All applicable anti-money laundering laws and regulations to which FXPESA, the Equiti Group and you are subject.

**Negative Balance Protection** – protection given to retail clients ensuring that trading losses do not exceed the total sums invested for trading CFDs.

**Normal Market Size** – the maximum number of stocks, shares, contracts or other units that we reasonably believe the Underlying Market to be good in at the relevant time, having regard, if appropriate, to the exchange market size set by the London Stock Exchange or any equivalent or analogous level set by the Underlying Market on which the relevant instrument is traded.

**Online Facility** – Our website, online trading platform and account review facility.

**Open Position** – a Transaction which has not been closed in whole or in part under these Terms.

**Order Execution Policy** – the policy is available on the Website for clients' information.

**Payment Date** – the date on which you will settle the amount due to us under a Transaction(s) in the currency and to the account specified by us to you in advance of such payment becoming due.

**Platforms** – electronic trading platforms, access to which we may from time to time facilitate for you.

**Payment Services Provider** - a party providing online payment services for FXPESA with the ability to accept credit cards, debit cards and other payment methods through FXPESA's website or mobile application.

**Reference Asset** – property of any description or an index or other factor designated in a CFD or Margin Transaction to which reference is made to fluctuations in the value or price for the purpose of determining profits or losses under the CFD or Margin Transaction.

**Risk Warning** – the risk warning provided on the Website <https://www.fxpesa.com/legal-document/RiskWarningDisclosure>

**Rolling Daily Transaction** – a Transaction which does not automatically expire at the end of the Business Day but are automatically 'rolled over' to the next Business Day.

**Services** – the services we provide to you as set out in section 4.



**SOFR** - the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York, USA.

**Spread** - the difference between the lower and higher figures of a quoted two-way price for an Investment.

**Taxes** - means any taxes or levies including stamp duty, stamp duty reserve tax (SDRT), financial Transaction taxes and/or other applicable taxes or levies notified to you from time to time.

**Termination Payment** - an amount payable by you to us in accordance with section 48.

**Transaction** - a transaction in options, futures and contracts for difference in foreign exchange, precious metals or commodities entered into between you and us including any transaction liable to Margin, unless otherwise stated.

**Undated Transaction** - a Transaction with an indefinite contract period that is not capable of expiring automatically.

**Undated Buy Transaction** - a Transaction to Buy with an indefinite contract period that is not capable of expiring automatically.

**Undated Sell Transaction** - a Transaction to Sell with an indefinite contract period that is not capable of expiring automatically.

**Underlying Market** - means the exchange or other similar body or liquidity pool on which an Instrument is traded or trading in that Instrument as the context requires.

**Website** – [www.fxpesa.com](http://www.fxpesa.com) or such other website as FXPESA may maintain from time to time.

### *Interpretation*

- 2.2 Section, section, sub-section and paragraph headings shall not affect the interpretation of the terms of this Agreement.
- 2.3 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural shall include the singular.
- 2.4 Any reference to a person shall include bodies corporate, unincorporated associations, partnerships and individuals.
- 2.5 Words and expressions used in this Agreement (unless the context otherwise requires) have the same meanings as in the CMA Act and Regulations.
- 2.6 Reference to notice or notifications shall include emails, website notices and messages through the trading Platforms.
- 2.7 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.8 The Risk Notice, Order Execution Policy, Conflicts of Interest Policy and the Electronic Trading Supplement form part of this Agreement. We may add a Schedule or amend this Agreement by giving advanced written notice to you. The Schedule or amendment shall take effect as at the date stipulated in the notice but within not less than Ten (10) Business Days from receipt by you of the notice. If you do not wish to accept any Schedule or amendment you may close any open transactions and terminate this Agreement by written notice to us prior to the date stipulated for the corresponding Schedule or amendment to take effect.

## 3. RISK WARNING

- 3.1 We provide services for trading over the counter financial contracts in derivatives. Our contracts are traded on a margin or leverage basis, a type of trading which carries a high degree of risk to your capital. Trading in options, futures and contracts for difference in foreign exchange, precious metals, bourse indexes, single stocks and commodities is high risk and not suitable for everyone. You should carefully consider your investment objectives, level of experience and risk appetite before making any decision to trade with us. Most importantly, do not invest money you cannot afford to lose.

- 3.2 There is considerable exposure to risk in any off-exchange Transaction, including, but not limited to, Leverage, creditworthiness, limited regulatory protection and market volatility that may substantially affect the price, or liquidity of the markets that you are trading. Please read the Risk Warning notice carefully to understand the risks of trading on a margin or leverage basis: <https://www.fxpesa.com/legal-document/RiskWarningDisclosure>
- 3.3 Our Services will not be appropriate for you unless you are knowledgeable and experienced in the financial services market and in the types of transactions described in this Agreement.
- 3.4 By entering into this Agreement you acknowledge and agree that you have the appropriate knowledge and experience to use our Services, that you understand the risks involved and that you have provided us with all the information necessary for us to confirm our Services are appropriate for you. If you are unsure about whether our Services are appropriate for you then you should consult an independent financial adviser.

## 4. OUR SERVICES

- 4.1 Subject to these Terms and the acceptance of your application to open an account with us, we will maintain one or more accounts in your name and will provide you with execution-only dealing services in relation to leveraged Forex contracts (“FX”) and Contracts for Difference (“CFDs”) where the underlying investments or products include foreign exchange contracts, metals, equity indices and commodities. Our offering will also include any other financial products we may offer through the Online Facility from time to time (“Services”).
- 4.2 Orders for execution of a Transaction, unless otherwise agreed by us, are to be given to us electronically through our Online Facility to Buy at the quoted offer price (“long position”) or Sell at the quoted bid price (“short position”) for the relevant Reference Asset.
- 4.3 We may receive and transmit orders or deal as agent on your behalf (as a riskless principal, matched principal or otherwise) only for the purposes of the execution of transactions.
- 4.4 You acknowledge and agree that unless otherwise agreed in a formal written instrument you will not be entitled to delivery of, or be required to deliver, any Reference Asset nor will you acquire any interest in any Reference Asset.
- 4.5 You acknowledge and agree that we have the right to close any Transaction in our sole and absolute discretion without notice.
- 4.6 We will not provide you with (and will not be under any duty to provide) any advice on the merits of a particular Transaction or provide you with personal recommendations (as defined by the CMA) in relation to any Transaction. This means that you should make your own assessment of any Transaction that you are considering or of the composition of your account(s) and should not rely on any opinion, research or analysis expressed or published by us or our Group Companies as being a recommendation or advice in relation to that Transaction.
- 4.7 You should bear in mind that merely explaining the terms of a transaction or investment or its performance characteristics does not itself amount to advice on the merits of the investment.
- 4.8 Any legal, accounting, tax or other adviser retained by us shall be the legal, accounting, tax or other adviser to us alone. You have the sole responsibility for selecting, retaining and remunerating any legal, accounting, tax or other adviser that may advise you. We or any of our Group Companies or any legal, accounting, tax or other adviser retained by us will in no circumstances be deemed to be a provider of legal, accounting, tax or other advice to you, any Group Company of yours or any other person.
- 4.9 Provision of the Services will not, unless specifically agreed between us in writing, give rise to any fiduciary or equitable duties on our part or that of our Group Companies. You agree that nothing contained in these Terms shall create any fiduciary, trustee, agency, joint venture or partnership relationship between us or any Group Company of ours, on the one hand, and you or any Group Company of yours on the other.

- 4.10 Before opening an account for you, we will need to assess, based on your knowledge and experience, whether the type of margined trading you wish to conduct is appropriate for you. We rely on you to provide us with the correct information of your knowledge and experience in connection with the products and services we offer, and you warrant to us that it is accurate and complete.
- 4.11 On the basis of the information you provide, if we believe the type of margined trading you wish to conduct is not appropriate for you, we will notify you via e-mail during the account opening process.
- 4.12 Although we have an obligation to assess the appropriateness of our products and services, we have no obligation to monitor your margined trades nor to advise you on the appropriateness of each individual trade you place.
- 4.13 Depending on your knowledge and experience and the type of Transactions you generally place with us, some of our account types may not be available to you. We reserve the right to close your account or convert your account into a different account type if, acting reasonably, we determine that a different type of account is more appropriate for you. We also reserve the right to change the features and eligibility criteria of our accounts at any time and we will provide prior notification of such changes.
- 4.14 You acknowledge and agree that you are capable of assessing the merits of and understand and accept the nature and risks of transactions entered into under this Agreement. You also acknowledge and agree that you do not rely on advice from FXPESA (or its Affiliates) in relation to the merits of any such transaction.

## 5. INCIDENTAL INFORMATION

- 5.1 Where we do provide general trading recommendations, market commentary or other information:
  - 5.1.1 this is incidental to your dealing relationship with us. It is provided solely to enable you to make your own investment decisions and does not amount to a personal recommendation or to advice;
  - 5.1.2 we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the legal, tax or accountancy consequences of any transaction; and
  - 5.1.3 where information is in the form of a document containing a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on contrary to that restriction.

## 6. COMMENCEMENT

This Agreement supersedes any previous agreement between us on the same subject matter and takes effect when you signify your acceptance of this Agreement by signing the Application Form or signing this Agreement in the space provided or confirm the acceptance of the Terms on Website or, if amended, in accordance with section 46 below.

## 7. APPLICABLE REGULATIONS

This Agreement and all transactions with you are subject to Applicable Regulations so that:

- (i) we may take or fail to take any action we consider necessary to ensure compliance with any of the Applicable Regulations;
- (ii) all Applicable Regulations and whatever we reasonably do or fail to do in order to comply with them will be binding on you; and
- (iii) neither we nor any of our directors, officers, employees, contractors or agents shall be responsible if we reasonably take or fail to take any actions in order to comply with any Applicable Regulations.

## 8. REGULATORY INFORMATION

EGM is authorised and regulated by the Capital Markets Authority (**CMA**) under the Firm's license certificate number 107 and is subject to the CMA Regulations. The CMA's contact address is 3<sup>rd</sup> Floor, Embankment Plaza, Longonot Road, Upper Hill Nairobi.

## 9. ACCOUNT ACTIVATION

### 9.1 Activation preconditions and our obligation to know our client:

- 9.1.1. By law we are obliged to establish your identity before we can take you on as our client. We may, at our reasonable discretion, use various agencies to verify your details before activating your account. When you accept the terms of this Agreement, you warrant and represent that you (or anyone you appoint under a LPOA) are not a US Person as defined under FATCA; that is not a US resident, US citizen or a company registered in the US (as applicable).
- 9.1.2. If at any time you (or anyone you appoint under a LPOA) become a US Person (as applicable), you will notify FXPESA immediately.
- 9.1.3. We are also required to identify the nature of each client's business and other details relating to Transactions, referred to as 'Customer Due Diligence' or 'Know Your Customer' ("**CDD**").
- 9.1.4. You agree to provide us with all the information we require as part of our CDD procedures.
- 9.1.5. You authorise us or any agent to investigate your identity, credit standing and any current and past investment activity, and in connection with such investigations, to contact such banks, brokers and others as we shall deem appropriate.
- 9.1.6. You agree that we may withhold any monies due to you until we have received all requested CDD documentation to our reasonable satisfaction.
- 9.1.7. You agree and authorise us to update your personal details pursuant to the identification document provided to us by you, such as (without limitation) a passport or a national identity card, to ensure that we hold the correct and complete information to prevent any discrepancies in your identification.

9.2 While reviewing your application we will need to perform an Appropriateness Assessment since you are proposing to trade a Complex Product. Once the assessment is finished and we have received the completed Application Form, a completed, signed or electronically executed copy of this Agreement and the Electronic Trading Supplement, the account will be activated.

### 9.3 Account password

- 9.3.1. Your access to the Online Facility is subject to the creation of a password which is private, confidential and not to be shared with third parties save for an Authorised Third Party.
- 9.3.2. We recommend that you choose an account entry password of reasonable length and complexity.
- 9.3.3. We do not recommend use of save password feature (which enables the management of automatic log-in to the Online Facility) in your browser or on your device.
- 9.3.4. You agree and acknowledge that you must inform us without undue delay if you suspect or reasonably believe that your account entry password has been misappropriated, compromised or otherwise improperly accessed by calling us on **+ 254 20 7643 972** or emailing us at [support@fxpesa.com](mailto:support@fxpesa.com).

## 10. TRANSACTION REPORTING

10.1 Where we are required under Applicable Regulations to report Transactions with you to the CMA via our Authorised Reporting Mechanism ("**ARM**"), or otherwise, you will need to obtain and provide us with an active Legal Entity Identifier ("**LEI**") for relevant legal entities, or your national identifier code if an individual, in order to identify your

primary national identifier under Applicable Regulations, before you can place an order for execution of a Transaction with us.

- 10.2 You acknowledge and agree that we are entitled to disclose such information and that such information held by us shall be our sole and exclusive property.
- 10.3 Portfolio Reconciliation:
- 10.3.1 The parties agree to reconcile portfolios as required by the CMA. FXPESA shall provide you with portfolio data and general account information through the Platforms or a secure website. Account information shall include transaction data, ticket numbers, rates, margin, profit and loss statements and any other information required by the Conduct of Business Regulations (“**Confirmations**”).
  - 10.3.2 Account information shall be updated within twenty-four hours of any activity on your account. You acknowledge and accept that the posting of Confirmations will be deemed delivery of trading Confirmations by FXPESA to you. You may request receipt of the Confirmations at any time in hard copy or email by submitting a written request to [support@fxpesa.com](mailto:support@fxpesa.com). Such Confirmations shall be binding on you, unless subject to a manifest error or unless you notify FXPESA of your complaint regarding the Confirmations. Any complaints regarding Confirmations shall be dealt with fairly and promptly in line with the regulations and internal policies and procedures.
  - 10.3.3 You can generate daily, monthly and yearly reports of your account through the Platforms or a secure website. The provision of such information coupled with your ability to generate such reports will be deemed delivery of account statements by FXPESA to you.
  - 10.3.4 You must generate an Account Statement at least once a month, to be done on the first day of each month for the preceding month and to perform data reconciliation in accordance with your portfolio reconciliation requirements.
  - 10.3.5 You may request at any time your Account Statements in hard copy or via email by submitting a written request to [support@fxpesa.com](mailto:support@fxpesa.com).

## 11. CLIENT CATEGORISATION

- 11.1 We shall treat you, alone, as our client (as defined by the CMA Regulations). Where you are acting as an agent, we accept no responsibility towards your principal(s) (even where such principal(s) have been identified to us) unless, at our discretion, we choose to enter into a separate relationship with them.
- 11.2 Unless we notify you otherwise, we will classify you as a Retail Client, for the purpose of CMA Regulations. In certain circumstances we may wish to re-categorise you, but if we do so, we will explain clearly why we are doing this and the effect this will have on your protections and compensation rights.
- 11.3 You may request to be classified differently than a Retail Client. If you are eligible, we may agree to do so, but if so, you will lose certain protections under the CMA Regulations. If you are classified as a non-retail client we will provide you with a summary of the protections afforded to you in accordance with the relevant classification and you will be bound by a different set of terms and conditions applicable to non-retail clients.

## 12. INTRODUCED ACCOUNTS

- 12.1 If you were introduced to FXPESA by a broker you acknowledge and agree that FXPESA is responsible only for execution services as set out above and that we have no responsibilities or obligations regarding any conduct, action, representation, advice, recommendation or statement of any third party investment manager, investment adviser or broker in connection with your investment transactions with us.
- 12.2 By accepting the terms of this Agreement, you confirm that you understand that FXPESA makes no warranties or representations concerning third party investment managers, investment advisers or brokers and that FXPESA shall

not be responsible for any loss to you caused by the actions or omissions of any third party investment manager, investment adviser or broker, and that FXPESA does not, by implication or otherwise, endorse or approve of the operating methods or investment strategy of any third party investment manager, investment adviser or broker.

12.3 You further acknowledge and agree that:

- 12.3.1. Any third-party investment manager, investment adviser or broker acts as an independent intermediary for you;
- 12.3.2. Unless you have been expressly advised otherwise in writing by FXPESA, such person is not an affiliate, employee or agent of FXPESA; and
- 12.3.3. No such person is authorized to make any representations concerning FXPESA or the services to be provided by FXPESA hereunder except as may be expressly authorized in writing by FXPESA.

12.4 You acknowledge and agree that the use of any third-party trading system, course, program, research or recommendation provided, directly or indirectly, by an investment manager, investment adviser or broker will not necessarily result in profits, avoid losses or limit losses.

## 13. PROVIDING A QUOTE

- 13.1 Upon your request we may (at our absolute discretion) provide you with a relevant non-binding quotation and details of charges for each Transaction. Such quote will be either the bid/offer prices in the Underlying Market or our own bid/offer prices and details of which basis will apply may be found in the Contract Specifications or may be obtained from our dealers on request. We will charge you for opening and closing a Transaction in accordance with the type of account that you choose. For the latest details of our account structures, please visit our Website.
- 13.2 The rates quoted are relevant at the moment when we provide the quotation to you. Such rates are subject to change. You acknowledge that both our Spreads and Market Spreads can widen significantly in some circumstances, that they may not be the same size as the examples given in the Contract Specifications and that there is no limit on how large they may be. You acknowledge that when you close a Transaction, the Spread may be larger or smaller than the Spread when the Transaction was opened. For Transactions transacted when the Underlying Market is closed or in respect of which there is no Underlying Market, the figures that we quote will reflect what we believe the market price in such Financial Instrument is at that time. You acknowledge that such figures will be set by us at our reasonable discretion. The Spread quoted by us will reflect our view of prevailing market conditions.
- 13.3 You may request a quote to open a Transaction or to close all or any part of a Transaction at any time during our normal hours of trading for the corresponding Financial Instrument in respect of which you wish to open or close the Transaction.
- 13.4 If we choose to provide a quote, we may provide a quote either orally by telephone, electronically via our Online Facility or by such other means as we may from time to time notify to you. The quote we provide is not an offer to open or close a Transaction at those levels. You will need to initiate a Transaction to offer to close or open a Transaction and we, acting reasonably, may accept or reject your offer at any time until the Transaction has been executed or we have acknowledged that your offer has been withdrawn. A Transaction will be opened or, as the case may be, closed only when your offer has been received and accepted by us. Our acceptance of an offer to open or close a Transaction, and thus the execution of the Transaction, will be evidenced by our confirmation of its terms to you.
- 13.5 In any event, we reserve the right to reject your offer at the level quoted if:
  - 13.5.1 the quote has not been obtained from us in accordance with these Terms;
  - 13.5.2 the quote is expressed as being given on an 'indicative only' or similar basis;

- 13.5.3 you obtain the quote by telephone, it must be given by a person who is a dealer, employed by us; and your offer to open or close the Transaction must be given during the same telephone conversation; and the dealer giving the quote must not have informed you, before you make the offer to open or close the Transaction and that offer has been confirmed as accepted by us, that the quote is no longer valid;
  - 13.5.4 you obtain the quote electronically via our Online Facility, your offer to open or close the Transaction, and our acceptance of your offer, must be given while the quote is still valid;
  - 13.5.5 the quote is Manifestly Erroneous;
  - 13.5.6 when you offer to open a Transaction, the number of shares, contracts or other units in respect of which the Transaction is to be opened is either smaller than the Minimum Size or larger than the Normal Market Size;
  - 13.5.7 when you offer to close part, but not all, of an open Transaction, both the part of the Transaction that you offer to close and the part that would remain open, if we accepted your offer, are smaller than the Minimum Size;
  - 13.5.8 a Force Majeure event has occurred;
  - 13.5.9 when you offer to open a Transaction, an Event of Default occurred in respect of you, or you have acted in such a way as to trigger an Event of Default;
  - 13.5.10 the telephone or Electronic conversation in which you offer to open or close the Transaction is terminated before we have received and accepted your offer; or
  - 13.5.11 when you offer to open or close any Transaction, the opening of the Transaction results in your exceeding any credit or other limit placed on your dealings.
- 13.6 We reserve the right to refuse any offer to open or close a Transaction larger than the Normal Market Size. Our quotation for a Transaction equal to or greater than Normal Market Size is not guaranteed to be within any specific percentage of any Underlying Market or related market quotation and our acceptance of your offer may be subject to special conditions and requirements that we will advise to you at the time we accept your offer. We will inform you of the Normal Market Size for a particular Financial Instrument on request.
- 13.7 If, before your offer to open or close a Transaction is accepted by us, our quote moves to your advantage (for example, if the price goes down as you Buy or the price goes up as you Sell) you agree that we may (but are not required) pass such price improvement on to you.
- 13.8 Where a Financial Instrument trades on multiple Underlying Markets, one of which is the primary Underlying Market, you agree that we may, but are not required, to base our bid and offer prices on the aggregate bid/offer prices in the Underlying Markets.

## 14. DEALING PROCEDURES

- 14.1 If a Transaction has been executed, in whole or in part, it will not be possible for you to cancel the Transaction to the extent that the Transaction has been executed.
- 14.2 Once given, instructions may only be withdrawn or amended with our express consent, which will not be unreasonably withheld.
- 14.3 We reserve the right to limit the number of open positions you may enter or maintain in your Account. We also reserve the right, in our sole discretion, to refuse to accept any Transaction opening a new position or increasing an open position.
- 14.4 We may, at our sole discretion, refuse any order or instruction from you, provided that we inform you of our refusal as soon as reasonably practicable. We will endeavour to provide you with a reason for refusal.



## *Electronic Trading*

- 14.5 We have no obligation to accept, or to execute or cancel, all or any part of a Transaction that you seek to execute or cancel through an Electronic Trading Service. Without limitation of the foregoing, we have no responsibility for transmissions that are inaccurate or not received by us, and we may execute any Transaction on the terms actually received by us.

## *Agents*

- 14.6 We will not be under any duty to open or close any Transaction or accept and act in accordance with any communication by an agent if we reasonably believe that such agent may be acting in excess of its authority. In the event that we have opened a Transaction before coming to such a belief we may, at our absolute discretion, either close such a Transaction at our then prevailing price or treat the Transaction as having been void from the outset. Where the agent perpetuates an illegality; the principal shall bear losses and other liabilities or be subject to the retention of undue profits arising from the actions of the agent. Nothing in this section 14.6 will be construed as placing us under a duty to enquire about, or otherwise verify, the authority of an agent who purports to represent you.

## *Infringement of law*

- 14.7 We will not be under any duty to open or close any Transaction if we reasonably believe that to do so may not be practicable or would infringe any Applicable Regulation, law, rule, regulation or Term. In the event that we have opened a Transaction before coming to such a belief we may, at our absolute discretion, either close such a Transaction at the then prevailing bid price (in the case of Sell Transactions) or offer price (in the case of Buy Transactions) or treat the Transaction as having been void from the outset.

## *Situations not covered by these Terms*

- 14.8 In the event that a situation arises that is not covered under these Terms or the Contract Specifications, we will resolve the matter on the basis of good faith and fairness and, where appropriate, by taking such action as is consistent with market practice or paying due regard to the treatment we receive from any hedging broker with which we have hedged our exposure to you arising from the Transaction in question.

## *Borrowing charges and Transactions becoming un-borrowable*

- 14.9 Where you have opened a Sell in respect of a particular Financial Instrument, we reserve the right to pass on to you any stock borrowing charges incurred by us. If you do not pay any stock borrowing charges that become payable after you have opened such a Transaction, or we are unable to continue to borrow that Financial Instrument in the Underlying Market (and we give you notice to that effect), we will be entitled to close your Transaction in respect of that Financial Instrument with immediate effect. This may result in you incurring a loss on the Transaction. Further, you agree to reimburse us for any fine, penalty, liability or other similar charge (such as Buy back fees) imposed on us for any reason by any exchange, Underlying Market or any other regulatory authority that relates in any way to your opening or closing a Transaction or any related transaction by us to hedge your Transaction.
- 14.10 In the event that you open a Transaction in relation to an underlying Financial Instrument that is a share, and that underlying share becomes un-borrowable (either from the outset or our brokers/agents have recalled from us a stock that we have already borrowed against) so that we are unable to hedge against losses that we may incur in relation to that Transaction we may, at our absolute discretion, take one or more of the following steps:

14.10.1 increase your Margin requirements;

14.10.2 close the relevant Transactions at such Closing Level as we reasonably believe to be appropriate;

14.10.3 alter the Last Dealing Time for the relevant Transaction.



## 15. OPENING A TRANSACTION

- 15.1 You will open a Transaction by 'Buying' or 'Selling'. In these Terms a Transaction that is opened by:
- 15.1.1 'Buying' is referred to as a 'Buy' and may also, in our dealings with you, be referred to as 'long' or 'long position'; and
  - 15.1.2 'Selling' is referred to as a 'Sell' and may also, in our dealings with you, be referred to as 'short' or 'short position'.
- 15.2 A Transaction must always be made for a specified number of shares, contracts or other units that constitute the underlying Financial Instrument.
- 15.3 Each Transaction opened by you will be binding on you notwithstanding that by opening the Transaction you may have exceeded any credit or other limit applicable to you or in respect of your dealings with us.
- 15.4 When you open and when you close a Transaction, you may be required to pay us a commission (“**Commission**”) that is calculated as a percentage of the value of the opening or closing Transaction (as applicable) or as an amount per equivalent Financial Instrument or Instruments on the Underlying Market or on any other basis agreed between ourselves in writing. Our commission terms will be notified in writing to you and will be available on our Website or through our Online Facility, however, in the event that we do not notify you of the commission terms, we will charge the standard commission rate as published on our Website or, if no rate is published, 0.01% of the value of the opening or closing Transaction (as applicable).
- 15.5 Unless we agree otherwise, all sums payable by you pursuant to these Terms upon opening a Transaction are due and must be paid upon the opening level of your Transaction being determined by us.

## 16. MULTIPLE TRANSACTIONS

### MT4

- 16.1 In the case of trading on the MT4 platform:
- 16.1.1 where you have entered a Buy Transaction and you subsequently open a Sell Transaction in respect of the same Financial Instrument at a time when the Buy Transaction remains open, then both Transactions will exist simultaneously on the trading system including relevant margin requirements;
  - 16.1.2 where you have opened a Sell Transaction and you subsequently open a Buy Transaction in respect of the same Financial Instrument at a time when the Sell Transaction remains open, then both Transactions will exist simultaneously on the trading system including relevant margin requirements.

### MT5

- 16.2 In the case of trading on the MT5 platform, where you have entered a Buy Transaction and you subsequently open a Sell Transaction in respect of the same Financial Instrument at a time when the Buy Transaction remains open, then:
- 16.2.1 if the size of the Sell order is less than the size of the Buy Transaction, we will treat the offer to Sell as an offer to partly close the Buy Transaction to the extent of the size of the Sell Transaction;
  - 16.2.2 if the size of the Sell Transaction is the same as the size of the Buy Transaction, we will treat the offer to Sell as an offer to close the Buy Transaction entirely;
  - 16.2.3 if the size of the Sell Transaction exceeds the size of the Buy Transaction, we will treat the offer to Sell as an offer to close the Buy Transaction entirely and open a Sell Transaction position equal to the amount of such excess.

- 16.3 In the case of trading on the MT5 platform, where you have opened a Sell Transaction and you subsequently open a Buy Transaction in respect of the same Financial Instrument at a time when the Sell Transaction remains open, then unless you instruct us to the contrary:
- 16.3.1 if the size of the Buy Transaction order is less than the size of the Sell Transaction, we will treat the offer to Buy as an offer to partly close the Sell Transaction to the extent of the size of the Buy Transaction;
  - 16.3.2 if the size of the Buy Transaction order is the same as the size of the Sell Transaction, we will treat the offer to Buy as an offer to close the Sell Transaction entirely;
  - 16.3.3 if the size of the Buy Transaction order exceeds the size of the Sell Transaction, we will treat the offer as a Buy.

## 17. CLOSING A TRANSACTION

- 17.1 In relation to trading on the MT4 platform and MT5 platform, to close any Transaction in whole or in part you must enter into a second Transaction in relation to the same Reference Asset as the first Transaction but you must Sell if the first Transaction was a Buy and you must Buy if the first Transaction was a Sell.
- 17.2 In addition, when trading on the MT5 platform, we will net your first and second Transaction, and the aggregate position shall be displayed on your trading platform.
- 17.3 Spreads, including market Spreads, can and do widen significantly in some circumstances; they may not be the same size and there is no limit on how large they may be. You acknowledge that when you close a Transaction, the Spread may be larger or smaller than the Spread when the Transaction was opened. For Transactions effected when the Market or Underlying Market of any Reference Asset is closed or in respect of which there is no Market or Underlying Market for the Reference Asset, the bid and offer price figures that we quote will reflect what we believe the market price in an investment would be at that time. Such figures will be set by us at our reasonable discretion. Our quotation is not guaranteed to be within any specific percentage of the quotation of the Market or Underlying Market of the Reference Asset, and the Spread quoted by us will reflect our view of prevailing market conditions. You agree not to use our bid and offer prices for any purpose other than for your own trading purpose, and you agree not to distribute our bid and offer prices to any other person whether such redistribution be for commercial or other purposes.
- 17.4 If you approach us to close out a Transaction which has been entered into between us, we are under no obligation to do so. Where we agree to do this, we will calculate the close out value of the Transaction based on prevailing market conditions and may include associated costs arising from the close out in this figure. The close out value may be due from you to us or from us to you depending on the Transaction and may be substantial.
- 17.5 We may close any Transaction in our sole discretion at any time without notice in the event that:
- 17.5.1 if it is a 'Sell' Transaction, and due to illiquidity in the relevant Reference Asset, we are unable to borrow a sufficient number of such Reference Asset to settle any underlying hedge position in respect of the Transaction; or
  - 17.5.2 if we are required, at any time, by a lender to return any Reference Asset borrowed by us which relates to a Transaction and we are then unable to maintain a hedge position in respect of that Transaction; or
  - 17.5.3 if at any time we are otherwise unable to establish or maintain a hedge position or any other hedging disruption occurs in respect of a Transaction or the continuation of any such hedge or hedging disruption is likely, in our reasonable judgment, to become more burdensome to us; or
  - 17.5.4 in respect of unfunded accounts.

- 17.6 With respect to any Transaction that is closed out by us pursuant to or as contemplated by the terms of these Terms:
- 17.6.1 except as may be otherwise specified in these Terms, the Closing Date will be the date designated by us to you and at a closing price as determined by us;
  - 17.6.2 no further payments or deliveries are required to be made on or after the Closing Date, except for settlement payments as provided below; and
  - 17.6.3 any and all amounts payable by either party in settlement of such Transaction are immediately due and payable.
- 17.7 Any and all obligations arising or existing between us as a result of the close-out of one or more Transactions will be satisfied by the net settlement (whether by payment, set-off or otherwise) of all amounts due and payable between us, and the net amount determined to be payable by either party will be immediately due and payable.
- 17.8 In the event of any dispute regarding any Transaction, we may in our absolute discretion cancel, terminate, reverse or close out the whole or part of any position resulting from or relating to such Transaction.

### *Undated Transactions*

- 17.9 Subject to these Terms and any requirement we may specify in relation to any Linked Transactions, you may close an open Undated Transaction or any part of such open Undated Transaction at any time.
- 17.10 Subject to these Terms, when you close an Undated Transaction, the Closing Level will be, if you are closing an Undated Buy Transaction, the lower figure then quoted by us and, if you are closing an Undated Sell Transaction, the higher figure then quoted by us.

### *Expiry Transactions*

- 17.11 Unless otherwise informed, if you do not close an Expiry Transaction on or before the Last Dealing Time, then we will close your Expiry Transaction as soon as we have ascertained the price of the Expiry Transaction. The price of the Expiry Transaction will be (a) the last traded price at or prior to the close or the applicable official closing quotation or value in the relevant Reference Asset as reported by the relevant exchange, errors and omissions excluded; plus or, as the case may be, minus (b) any Spread that we apply when such an Expiry Transaction is closed. Details of the Spread that we apply when a particular Expiry Transaction is closed are available on request.
- 17.12 It is your responsibility to make yourself aware of the Last Dealing Time and of any Spread that we may apply when you close an Expiry Transaction.
- 17.13 We do not automatically roll over to the next contract period those of your Transaction(s) which at the end of its set contract period will expire automatically. You acknowledge that it is your responsibility to make yourself aware of the next applicable contract period for a Transaction and that effecting the rollover of a Transaction may result in you incurring losses on your account. Any agreement as to roll over is entirely at our discretion and we reserve the right to refuse to rollover a Transaction or Transactions, despite any instruction you have given us. Where we do effect a rollover, the original Transaction will be closed at or just prior to the Last Dealing Time and become due for settlement and a new Transaction will be created; such closing and opening trades will be on our normal terms.

## 18. AGGREGATION OF ORDERS

We reserve the right to aggregate the instructions we receive from our clients to close Transactions. Aggregation means that we may combine your instruction with those of other clients of ours for execution as a single order. We may combine your instruction to close with those of other clients if we reasonably believe that this is in the overall best interests of our clients as a whole. However, on occasions, aggregation may result in you obtaining a less favourable price once your instruction to close has been executed. You acknowledge and agree that we shall not have any liability to you as a result of any such less favourable price being obtained.

## 19. HEDGING DISRUPTION

- 19.1 Notwithstanding anything to the contrary in these Terms, if we determine that a hedging disruption has occurred, or may occur, including a hedging disruption which is a result of any actual or imminent delay, disruption, suspension, or reduction in any payment or settlement in respect of any transaction or asset we may deem necessary to hedge our Transaction price risk.
- 19.2 Irrespective of whether such hedging disruption arises directly or indirectly from the failure of a hedging counterparty to perform its obligations or otherwise, you will be liable to us for any increased costs or expenses resulting from such hedging disruption (including any costs of unwinding, establishing or re-establishing a hedge). We may, upon notification of such costs to you, deduct such amounts from your account or demand payment where there are insufficient funds in your account. Your failure to comply fully with the obligation to make payment, by or before the required time, will constitute an Event of Default.

## 20. MARKET SUSPENSION AND DELISTING

- 20.1 If at any time trading on a Regulated Market (as defined in the CMA Regulations) is suspended in any Reference Asset which is listed on a Market, we shall calculate the value of the Transaction with reference to the last traded price before the time of suspension, or a closing price as reasonably determined by us if no trading in that Reference Asset is undertaken during the Business Day on which a suspension occurs.
- 20.2 In the event that the aforesaid suspension continues for Five (5) Business Days, we may in good faith agree on a Closing Date and a value of the Transaction. In the absence of such agreement, the Transaction shall remain open in accordance with the provisions of this section until such time as the suspension is lifted or the Transaction is otherwise closed. During the term of a Transaction where a Reference Asset is suspended we have the right to terminate the Transaction at our discretion and to amend or vary Margin requirements and Margin rates.
- 20.3 If a Regulated Market on which a Reference Asset is principally traded announces that pursuant to the rules of such Market the relevant Reference Asset has ceased (or will cease) to be listed, traded or publicly quoted on the Market for any reason and is not immediately re-listed, re-traded or re-quoted on the Market or quotation system located in the same country as the Market (or where the Market is within the European Union, in any Member State of the European Union), or already so issued, quoted or traded the day on which such event occurs, or (if earlier) is announced shall be the Closing Date. The closing price will be such price as notified by us to you.

## 21. PAYMENTS

- 21.1 On each Payment Date you will, subject to the conditions precedent that:
- 21.1.1 no Event of Default (as defined below) with respect to the other party has occurred and is continuing; and
  - 21.1.2 no Early Termination Date (as defined below) has occurred or been effectively designated,
- make the payments specified due to us in respect of one or more Transaction(s) in the currency and to the account specified by us in advance of such payment becoming due.
- 21.2 On each Payment Date, each party's obligation to make payment of any amount will be automatically satisfied and discharged and replaced by an obligation upon the party by whom the larger amount is payable, so that only the excess of the larger amount over the smaller amount is due. If the amounts payable by each party on any Payment Date are the same, then no payment shall be made by either party on such Payment Date.
- 21.3 All payments made pursuant to a Transaction will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any governmental revenue authority, then in effect. If a party is required to deduct or withhold it shall:
- 21.3.1 promptly notify the other party;

- 21.3.2 pay to the relevant authorities the full amount to be deducted or withheld promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against it; and
  - 21.3.3 promptly forward to the other party an official receipt (or certified copy), or other documentation reasonably acceptable to the other party, evidencing such payment to such authorities.
- 21.4 To facilitate payments pursuant to the Transactions, you may be required to use a Payment Services Provider. You acknowledge that Payment Services Providers have been engaged by FXPESA as independent contractors. In this regard, FXPESA will not take responsibility for any loss, claims, disputes, or liabilities arising out of any services provided by the Payment Service Provider(s).

## 22. SETTLEMENT

Unless we have agreed otherwise in writing, settlement of Transactions shall be on a delivery versus payment basis. All payments and other documents required to settle your Transactions must be delivered by you in time to enable us to complete settlement promptly. Where relevant documents and cleared funds are not held by us, we are not obliged to settle any Transaction. If either party defaults in paying any amount when it is due to the other, then (unless otherwise agreed) interest will be payable by the defaulting party at the overdraft rate of the relevant correspondent bank at which the default occurs. We may purchase investments to cover your liability to deliver investments to us and may debit any of your accounts to cover any losses we suffer. In the event of any dispute regarding any Transaction, we may in our absolute discretion cancel, terminate, reverse or close out the whole or part of the position resulting from such Transaction.

## 23. NETTING AND SET-OFF

- 23.1 In addition to any other right to withhold payment, we shall be entitled (but not obliged), at any time and without notice to you, to net-off and set-off any liability we have to you or one of your Group Companies or your agents towards the full or partial settlement of any liability (including without limitation any loss incurred by us or one of our Group Companies in connection with your Account or your trading activities) you owe to us or to any of our Group Companies, whether any such liability is present or future, liquidated or unliquidated, under these terms or not and irrespective of the currency or its denomination, and against any account (including joint account, corporate account or other accounts which you may hold with us or any of our Group Companies) in which you may have financial interest.
- 23.2 If we exercise the rights of net-off or set-off and it shows that the amounts due to us or one of our Group Companies exceed the amount due to you, we will give you notice of this and you shall immediately pay such shortfall to us.
- 23.3 If the liabilities to be set-off are expressed in different currencies, we may convert either liability at a rate of exchange which we determine to be reasonable for the purpose of netting or set-off, and you shall be liable for any currency exchange fees and costs. Any exercise by us of our rights under this section shall be without prejudice to any other rights or remedies available to us or any of our Group Companies under these Terms or otherwise.
- 23.4 If an obligation due to us or one of our Group Companies by you or one of your Group Companies or agents, cannot be reasonably ascertained, we may, at our sole discretion and in good faith, estimate that obligation and set-off in respect of that estimate.

## 24. CONFIRMATIONS

- 24.1 After we have executed a Transaction, we shall confirm the details of that Transaction to you (the confirmation may be in electronic format or made available on the Online Facility, in which case such electronic format shall have the same effect as if served on you in written hard copy) as soon as possible after execution. The content of our confirmations will, in the absence of a clear and manifest error, be deemed conclusive and binding on you unless you object in writing to us as soon as possible, and at latest within Two (2) Business Days of dispatch (such

objection shall be dealt with in accordance with section 24.4 below). Any error or inaccuracy relating to a confirmation shall not affect the validity of the underlying Transaction.

- 24.2 Where agreed in writing with you, we will send you a monthly statement (the “Account Statement”) in respect of each of your accounts within Ten (10) Business Days after the end of each calendar month. Such confirmations and statements may be sent electronically, or we may provide you with online access to them as stored in a secure FXPESA website account for you or on the Platforms.
- 24.3 Unless we receive written notice from you within Two (2) Business Days of delivery of a confirmation to you or we notify you of an error in the confirmation, we shall be entitled to conclude that the confirmation is conclusive and accepted by you.
- 24.4 Any dispute on the accuracy of the confirmation should be dealt with in accordance with the dispute procedures contained in this Agreement.

## 25. MANIFEST ERROR

- 25.1 From time to time it is possible that errors may occur in the pricing of contracts. Notwithstanding the rights that you have under Applicable Regulations or law, we reserve the right to void, or to amend the terms of, any Transaction that we reasonably believe, at our sole reasonable discretion, to contain or be based on an obvious or palpable error (a “**Manifest Error**”). In deciding whether an error is a Manifest Error we may take into account any relevant information including: the state of the Underlying Market at the time of the error and any error within, or lack of clarity of, any information source or pronouncement. In deciding whether or not there has been a Manifest Error, we will make reasonable efforts to take into account any financial commitments that you have made or refrained from making in reliance on a Transaction.
- 25.2 In the absence of fraud, wilful default or negligence, we will not be liable to you for any loss, cost, claim, demand or expense following a Manifest Error (including where the Manifest Error is made by any information source, commentator or official on whom we reasonably rely).
- 25.3 If a Manifest Error has occurred and we choose to exercise any of our rights under this section 25, and if you have received any monies from us or one of our Group Companies in connection with the Manifest Error, you agree that those monies are due and payable to us or such Group Company and you agree to return an equal sum to us or to our Group Company without delay.
- 25.4 We reserve the right to, without notice to you or your consent, either to void from the outset or amend the terms of any Transaction containing or based on any Manifest Error. If, in our reasonable discretion, we choose to amend the terms of any such Manifest Error, the amended level will be such level as we reasonably believe would have been fair at the time the Transaction was entered into.

## 26. FUNDING YOUR ACCOUNT AND PAYMENTS

- 26.1 You represent and warrant that all deposits and payments made on your account are authorised by you, and that you shall not unlawfully reverse such deposits or payments or initiate or prompt any such action which may cause such a remittance to be reversed by a payment provider or card issuer.
- 26.2 You acknowledge and agree that we may routinely monitor all deposits and payments in respect of funding applied to or from your trading account, and that we may at any time, at our sole reasonable discretion, request that you send documentary evidence of your source of funding. In such cases, you will be expected to produce a clear copy of both the front and back of your payment card, evidence from e-money issuers or payment institutions and documentary proof that your funds derive from a legitimate source.
- 26.3 The funding of your account using third party payments is strictly prohibited, and you agree and acknowledge that we may:
  - 26.3.1 return any denied payments to the source of funding; and.

26.3.2 return any unclaimed or unallocated payments in line with our regulatory obligations.

- 26.4 You acknowledge and agree that we shall not be under any obligation to accept deposits and funding applied to your account, and that you will indemnify and hold us harmless in respect of any losses resulting from a decision not to accept deposits or payments.
- 26.5 You acknowledge and agree that, in the event of your failure to provide payment in respect of a transaction, we may, in our sole reasonable discretion, close out, replace or reverse such Transaction or close out any account prior to providing the corresponding notice to you.
- 26.6 You acknowledge and agree that we may disclose data and associated information concerning deposits and payments associated with the funding of your trading account, with competent authorities where we reasonably suspect or have legitimate concern that the account has been linked to suspicions of illegal activity, in line with relevant laws and regulations.

## 27. MARGIN MAINTENANCE

- 27.1 We may enter into Transactions in options, futures or contracts for difference which will, or may, result in you having to provide margin payments, being a deposit of cash or posting of other valuable security at our sole discretion, to cover any unrealised losses which have occurred or may occur in relation to your investments.
- 27.2 To enter a Leveraged Transaction, you may need to deposit money with us as Margin. Margin is typically a relatively small proportion of the overall contract value. For example, a contract trading on Leverage of 30:1 will require Margin of just 3.33% of the contract value. This means that a small price movement in the underlying will result in large movement in the value of your trade – this can work in your favour or result in substantial losses.
- 27.3 Payments may be required both on entering into a Transaction and on a daily basis thereafter, throughout the life of the Transaction, if the value of the Transaction moves against you. The movement in the market price of your investment will affect the amount of margin payment you will be required to make.
- 27.4 FXPESA may from time to time, and in its sole reasonable discretion, call upon you to deposit additional Margin or collateral to secure your obligations. Any Margin Call, without closing your account or liquidating your positions, shall not be deemed precedent for future Margin Calls. FXPESA is not obliged to make a Margin Call on you at all or within any specific time period, and any failure or delay on its part to make any Margin Call at any time will not operate as a waiver of any of its rights or remedies under or in connection with this Agreement, whether in respect of such Margin Call or otherwise.
- 27.5 FXPESA shall be deemed to have made a Margin Call on you if we have left a message requesting you to contact us, or if we are unable to leave a message and have used reasonable endeavours to contact you by telephone or electronic means via our Website or by e-mail. Any message left for you requesting you to contact us should be regarded as extremely urgent.
- 27.6 FXPESA shall not be liable for any losses you may suffer as a result of your failure to respond to an actual or deemed Margin Call. FXPESA may in its sole reasonable discretion close or terminate your transactions without notice to you immediately and decline to enter into any further transactions with you if you fail to honour any Margin Call and this shall constitute an Event of Default and we may exercise the rights in sections 33 and 48 of this Agreement.
- 27.7 Any requirement for Margin must be satisfied in such currency and within such time as may be specified by us (in our reasonable discretion) or, if none is specified, immediately. One Margin demand does not preclude another. It is your responsibility to monitor your trading account and you should not rely on our right to call you for margin as a means of monitoring your account. Margin calls are made as a matter of courtesy and we are not obliged to make Margin Calls to clients.
- 27.8 You may lose your initial deposit and be required to deposit additional Margin in order to maintain your position. If you fail to meet any Margin requirement your position will be liquidated and you will be responsible for any resulting losses.



- 27.9 Margin may be provided in the form of cash or other assets acceptable to us, which may include cash or open transactions held by you with us or one or more of our Group Companies, at our discretion.
- 27.10 If you fail to provide Margin when required to do so we (or any applicable exchange, clearing house or counterparty) may close out your positions and exercise the rights described in section 17 above. Failure to provide Margin may lead to us closing out any or all of your trading positions and call upon our Group Companies to close out any or all of your trading positions with them. We will have the right to do this at any time when you fail to provide Margin. We will additionally have the right to close out your positions and call upon our Group Companies to close out your positions held with them in any other circumstances provided in these Terms.
- 27.11 You acknowledge and agree that you are solely responsible to ensure adequate funds are available in your trading account to maintain and support your positions.
- 27.12 You acknowledge that, while we shall make reasonable endeavours to warn you before your equity falls to 50% of the required margin, we have no obligation to do so and disclaim any liability in respect of failure to do so.
- 27.13 You acknowledge and agree that if the equity on your account falls below 50% of the required margin, your positions shall be closed out by our automated risk management system, starting with the position carrying the greatest loss first, in order to bring the account equity back to above 50%, and that subsequent positions carrying losses may also be closed out by our automated risk management system.

### *Negative Balance Protection*

- 27.14 As a Retail Client, we shall provide you with Negative Balance Protection. Negative Balance Protection seeks to ensure your maximum losses, inclusive of applicable costs, are limited to prevent a deficit, shortfall, negative balance or trading loss that may exceed your account equity during certain market conditions or cause further financial liability.
- 27.15 We shall make reasonable efforts to close out your open positions upon identifying the risk of your trading account going negative, as soon as reasonably practicable.

## 28. MARKET CONDUCT

- 28.1 Notwithstanding any other provision of these Terms, in providing the services, we shall be entitled to take any action we consider necessary, in our reasonable discretion, to ensure compliance with Market Rules, CMA Regulations and the Money Laundering Requirements and all other applicable laws, rules, regulations and regulatory decisions including Selling or closing any or all Transactions that you may have open and withholding any Realised Profits to the extent that we have reasonable grounds for believing that they are related to a regulatory breach.
- 28.2 We may report to the CMA or any other relevant regulatory authority any Transaction entered into by you or on your behalf in accordance with the CMA Regulations or Market Rules.
- 28.3 We may hedge our liability to you by opening analogous positions with other institutions or in the Underlying Market. The result of our doing this is that when you open or close a Transaction relating to a share or other Financial Instrument with us, your Transactions may, through our hedging, exert a distorting influence on the Underlying Market for that Financial Instrument, in addition to the impact that it may have on our own prices. For the avoidance of doubt, in such situations, the purpose is not to distort the Underlying Market, but to hedge our liability.

## 29. IMPROPER TRADING

- 29.1 Latency trading is characterised by a high volume of Transactions which are opened and closed within an unusually short period of time as compared to the 'average' client, with a disproportionate number placed advantageously between price of trade and price of Underlying Market instead of the 'random distribution' that would be expected when the trading platform is used 'fairly'. Where we believe, in our reasonable judgment, that latency in the trading



platform is being unfairly exploited by you ("**Latency Exploitation**"), we may at our absolute discretion void all trades and return to you only funds deposited net of any earlier withdrawals - and then close your account.

- 29.2 Where we believe, in our reasonable judgment, that you (or other parties) may have engaged or may be engaging in improper, unlawful or unfair trading activity, we may immediately suspend your (and or other) trading account(s) in order to investigate.
- 29.3 We cannot and do not guarantee the speed at which our online trading platform (MT4/MT5) operates or that it will not be subject to system or internet failure. To the fullest extent permitted under Kenyan law, we exclude all liability for: (i) any direct or indirect loss or damage incurred by you as a result of any delay or system suspension/default experienced by you, for however long, in your use of our online trading platform; (ii) any direct or indirect loss or damage incurred by you by reason of any improper, unlawful or unfair trading activity (as reasonably determined by FXPESA) perpetrated by you or by any third party; and (iii) any direct or indirect loss or damage incurred by you by reason of a failure on your part to use the most current online trading platform.

## 30. EXPERT ADVISORS

- 30.1 You may choose to trade on our online trading platform (MT4/MT5) using an Expert Adviser, being a robotic algorithmic trading system, which trades the market on behalf of customers. Trading with an Expert Adviser is inherently risky by virtue of the robotic nature of the trading system and we do not encourage or endorse it as a practice.
- 30.2 Should you choose to trade using an Expert Adviser, to the fullest extent permitted under Kenyan law, we exclude all liability for any direct or indirect loss or damage incurred by you by reason of:
- (i) your use of an Expert Adviser or
  - (ii) any fault or failure on the part of the Expert Adviser.

## 31. SYSTEM MAINTENANCE

- 31.1 From time to time we will need to carry out certain system maintenance on the online trading platform. We shall endeavour to do this out of trading hours when the market is closed, but we reserve the right to conduct such system maintenance, in our reasonable discretion, at any time.
- 31.2 In the event that we need to conduct such system maintenance when the market is open, we shall notify you of this but we shall not be liable for any direct or indirect loss or damage incurred by you by reason of the system maintenance or any suspension of the online trading platform.

## 32. EVENTS OF DEFAULT

- 32.1 The occurrence of any one or more of the following in respect of either party ("**Defaulting Party**") shall be an Event of Default:
- 32.1.1 either party not making any payment when due under the Transaction and these Terms and such failure is not remedied on or before the Third (3<sup>rd</sup>) Business Day after notice of such failure is given;
  - 32.1.2 either party being in default of any other obligation under the Transaction and these Terms, which is capable of remedy, is not remedied within Thirty (30) Business Days after notice by the other party;
  - 32.1.3 any representation or warranty given by you, us or any Credit Support Provider of either party in the negotiation and execution of these Terms or otherwise is, when given, incorrect or misleading in any material respect;
  - 32.1.4 either party or its Credit Support Provider:
    - 32.1.4.1 is dissolved (other than pursuant to a consolidation, amalgamation or merger);

- 32.1.4.2 becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- 32.1.4.3 makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- 32.1.4.4 institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it. Such proceeding or petition:
  - (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (b) is not dismissed, discharged, stayed or restrained in each case within Thirty (30) Business Days of the institution or presentation thereof;
- 32.1.4.5 seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- 32.1.4.6 has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- 32.1.4.7 causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in sections 32.1.4.1 to 32.1.4.6 (inclusive).

32.2 The occurrence of the following in respect of you or your Credit Support Provider shall constitute an Event of Default:

- 32.2.1 any sums due from you or your Credit Support Provider, whether such sum is due to us or to any other person or entity, by way of borrowing or under any obligation of any description for the payment of money on the part of you or your Credit Support Provider:
  - 32.2.1.1 are not paid when due and demanded nor within any applicable grace period; or
  - 32.2.1.2 become due and payable prior to the scheduled due date or become capable of being declared, due and payable prior to the scheduled due date, in either case by reason of default or Event of Default (howsoever described) on the part of the Counterparty or its Credit Support Provider.
- 32.2.2 you or your Credit Support Provider shall be in default of any other obligation under:
  - 32.2.2.1 any Transaction now existing or hereafter entered into between us, which is:
    - (a) a rate swap transaction, basis swap, forward rate transaction, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions); or
    - (b) which is a type of transaction that is similar to any transaction referred to in section 32.2.2.1(a) above that is currently, or in the future becomes, recurrently entered into in the financial markets, or
  - 32.2.2.2 any combination of these transactions.

### 33. RIGHTS ON EVENT OF DEFAULT

- 33.1 Upon occurrence of an unspecified Event of Default, we may specify a date for the termination of any or all outstanding Transactions by notice to you.
- 33.2 The occurrence of an Event of Default of a type specified under section 32 above will result in the automatic termination of all outstanding Transactions. If any or all outstanding Transactions are terminated pursuant to the forgoing, we will be entitled, without prior notice to you and without limitation of any other rights or remedies we may have under this Agreement or otherwise, to take any or all of the following actions:
- 33.2.1 instead of returning to you assets equivalent to those credited to your account, to pay to you the fair market value of such assets at the time such termination is effective;
  - 33.2.2 to Sell or otherwise liquidate, or to cause to be sold or otherwise liquidated, any or all of your collateral (whether or not constituting Margin) in our possession or in the of any nominee or third party appointed under or in connection with this Agreement, including but not limited to one of our Group Companies, in each case as we may in our sole and absolute discretion select and at such price or prices, at such time or times and in such manner as we in our sole and absolute discretion think fit (without being responsible for any diminution in price or other loss), in order to realise funds sufficient to cover any amount due by you to us, including any and all costs related to the sale or other liquidation, which will be borne by you;
  - 33.2.3 to treat any or all Transactions then outstanding as having been repudiated by you, to close out, replace or reverse any or all such Transactions, to Buy, Sell, borrow or lend any underlying asset, to enter into any other Transaction or to take, or refrain from taking, such other action, all at such price or prices, at such time or times and in such manner as we in our sole and absolute discretion consider necessary or appropriate to cover, reduce or eliminate our actual or potential loss or liability under or related to any of your contracts, positions or commitments;
  - 33.2.4 to make a claim under, enforce, or exercise any other right or remedy under or in connection with, any Credit Support Document; to enforce any charge, security interest or lien created or otherwise contemplated by this Agreement or to exercise our right of set-off provided in this Agreement or any other right of set-off or similar right we may have, whether as a matter of contract, law, or otherwise; and
  - 33.2.5 to close any or all of your accounts.
- 33.3 We will not lose any of our rights or remedies under or referenced in this section 33 by reason of any failure or delay on our part in exercising them in full or in part, and no such failure, delay or partial waiver will constitute a waiver of any such right or remedy. Under no circumstances will we be under any obligation to exercise any such right or remedy in full or in part or, if we do exercise any such right or remedy, to do so at a time or in a manner that takes into account your interests or is otherwise beneficial to you.
- 33.4 Any action taken or not taken by us in connection with or pursuant to any transaction at any time after the occurrence of any Event of Default (whether or not we have knowledge of such event) will be entirely without prejudice to our right to take or not take any similar action or to refuse to take any further action at any time thereafter, and does not in any circumstances constitute as a waiver of that right or any other rights or remedies of ours should any such Event of Default have occurred.
- 33.5 You agree to give us notice of any Event of Default immediately upon becoming aware of its occurrence.
- 33.6 Notwithstanding anything in this Agreement to the contrary, we will not be obliged to make any payment or delivery otherwise required to be made by us to you pursuant to or in connection with this Agreement or any transaction for as long as an Event of Default has occurred and is continuing.
- 33.7 Rights of FXPESA under this section shall be in addition to, and will not act to limit or exclude, any other rights which we may have (whether by agreement, operation of law or otherwise).

- 33.8 This section applies to each transaction entered into or remaining unsettled between FXPESA and you on or after the date this Agreement takes effect.
- 33.9 Unless otherwise agreed in writing between us, or the rules of any relevant Market provide otherwise, if FXPESA enters into any transaction with you in order to close out any existing transaction between you and FXPESA then the parties respective obligations under both such transactions shall automatically and immediately be terminated upon entering into the second transaction, except for any settlement payment due from one of us to the other in respect of such close-out.

## 34. OUR FEES AND CHARGES

- 34.1 Our fees and charges shall be made available to you on our Website, through the Online Facility or on request if you contact one of our employees at [support@fxpesa.com](mailto:support@fxpesa.com). Charges and expenses incurred by us pursuant to these Terms (including but not limited to applicable taxes and duties) are payable by you and by such payment arrangements at such times as we shall determine. For Transactions denominated in foreign currency, charges may be levied on you in that currency at prevailing rates. You may incur costs or taxes associated with your Transactions that are not paid through us or imposed by us.
- 34.2 In the event that you have an Open Position at the daily close of business, we will charge you a Daily Financing Fee. The basis of calculation of Daily Financing Fees is set out in the Contract Specifications. We may vary the method of calculating the Daily Financing Fees and Commission. When we do so we will give you notice in accordance with section 52.
- 34.3 We may share fees and charges with a Group Company or third party and, where appropriate, we will provide you with information on such fees and charges. Details of shared fees and charges will also be made available to you upon request.
- 34.4 You acknowledge and agree that, under Applicable Regulations, we may make or receive a payment of a fee, commission or non-monetary benefit to or from a third party (“**Inducement**”) provided that such Inducement does not impair our obligation to act honestly, fairly, professionally and in accordance with your best interests. Pursuant to Applicable Regulations, if you have been introduced to us for trading purposes, we will clearly disclose to you the existence, nature and amount of any Inducement. Where the amount of the Inducement cannot be ascertained, we will disclose the method for its calculation.
- 34.5 Depending on the type of account you hold with us, the Inducements described in section 34.4 above will be calculated on the following basis. If you have been introduced to us for trading purposes, we will pay to a third party:
- 34.5.1 a cost per acquisition fee, such fee to be paid as a one-off payment;
  - 34.5.2 an ongoing fee that relates to an ongoing benefit that you receive, such benefit to meet a quality enhancement test, and such quality enhancement test to be determined by us in our absolute discretion on a case by case basis and in accordance with Applicable Regulations; or
  - 34.5.3 on a daily basis, an additional performance or management fees on your account.

## 35. INACTIVITY FEE AND CLOSURE OF ACCOUNT

- 35.1 Where no activity has occurred on your account for 180 calendar days or more, your account will be deemed inactive.
- 35.2 Activity relates to the placing or closing of a trade or maintaining an open position on your account.
- 35.3 Upon your account being deemed inactive we will email you for you to either activate or close your account. If our attempts to contact you at your disclosed email address go unanswered for a period of three consecutive

months, we may apply a monthly inactivity fee to your account equivalent to SOFR 30-day rate published for such calendar month plus three basis points. We will notify you in advance upon such a fee becoming payable.

- 35.4 Accounts that remain dormant for 12 consecutive months shall be closed and any balances therein (if any) sent to the Unclaimed Financial Assets Authority in accordance with section 20 of the Unclaimed Financial Assets Act, 2011.

## 36. OUR AUTHORITY AND OUR DUTIES

- 36.1 These Terms do not impose any obligation on us to enter into any Transactions with you or to accept any instructions from you and we are not obliged to give our reasons for declining to do so. We may accept and act upon, without further enquiry, any instructions believed by us in good faith and on reasonable grounds to be genuine. Nothing in these Terms shall oblige us to do anything that we believe to be contrary to law or any Applicable Regulations.
- 36.2 You acknowledge and accept that in the ordinary course of business, we will deal with you as principal and that we may provide you with two-way price quotes where we acknowledge that you may rely upon us to provide or display bid and offer prices which are the best available prices for retail investors on a consistent basis.
- 36.3 We will take all reasonable steps to provide you with best execution in accordance with the Applicable Regulations including CMA Regulations. Your Transactions will be handled in accordance with our Order Execution Policy available separately on our Website. While we seek to ensure that the prices we display are competitive, we are not able to give a warranty, express or implied, that the bid and offer prices displayed on our trading systems always represent the best prevailing market prices for retail investors. Our quoted prices may reflect market volatility or additional costs and charges which may result in an increase in the Spread as well as per Transaction. All such costs shall be disclosed to you on our Website.
- 36.4 Unless you notify us to the contrary, you will be deemed to consent to our Order Execution Policy when these Terms come into effect. If you do not consent, we reserve the right to refuse to provide our services to you. We may amend our Order Execution Policy from time to time and may notify you of any material amendments by giving written notice as per section 52 below or posting them on our Website or through our Online Facility.
- 36.5 By entering into this Agreement, you agree that we may execute as your agent an order outside a Market.
- 36.6 Depending on your knowledge and experience, which we will assess during your application process, we may reject your application to open an account with us. In the event you already have an account with us, we reserve the right to convert your account into a different account type if, acting reasonably, we determine that a different type of account is more appropriate for you, more appropriate in the market circumstances or our risk appetite changes in relation to offering that account type. We also reserve the right to change the features and eligibility criteria of our accounts at any time and we will provide prior notification of such changes on our Website, by e-mail or through our Online Facility.
- 36.7 We may employ agents or contractors on such terms as we think fit.
- 36.8 Any information we provide to you relating to Transactions is, to the best of our knowledge and belief at the time it is given, to be accurate and reliable. No further representation is made, nor is any warranty given or liability accepted, as to its completeness or accuracy. Such information does not constitute an assurance or a guarantee as to the expected outcome of any such Transaction.
- 36.9 You should also be aware that market conditions and pricing may change between the time we provide you with information and the time you approach us with a view to entering into a trade.

## 37. EXCLUSION OF LIABILITY / INDEMNITIES

- 37.1 Nothing in this Agreement shall exclude or restrict any duty or liability owed by FXPESA to you under the Act or the CMA Regulations (as may be amended or replaced from time to time). Apart from the foregoing, and to the extent

possible under applicable law, neither FXPESA nor its directors, officers, employees or agents shall be liable to you or any third party for any losses, damages, costs or expenses (including direct, indirect, special, incidental, punitive, or consequential loss, loss of profits, loss of goodwill or reputation, loss data, loss of use of the Platforms, business interruption, business opportunity, costs of substitute, service or downtime costs), whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by you under this Agreement (including any transaction or where we have declined to enter into a proposed transaction) unless such losses arise directly from FXPESA's wilful misconduct or fraud.

37.2 Without limitation, we do not accept liability for:

- 37.2.1 any loss that you suffer in an event where any computer viruses, worms, bugs, software bombs, or similar items are introduced into your computer hardware or software via the Platforms, provided we have taken reasonable steps to prevent any such introduction;
- 37.2.2 any error or failure in the operation of the Platforms or any delay caused by the Platforms;
- 37.2.3 any failure by us to perform any of our obligations under this Agreement as a result of a cause beyond our control;
- 37.2.4 the acts, omissions or negligence of any intermediate broker or settlement agent;
- 37.2.5 any actions we may take pursuant to our rights under this Agreement;
- 37.2.6 any losses or other costs or expenses of any kind arising out of or in connection with the placement of orders by you or the execution of Transactions with FXPESA;
- 37.2.7 any adverse tax implication of any Transaction whatsoever;
- 37.2.8 any delay or change in market conditions before any particular transaction is affected; and/or
- 37.2.9 communication failures, distortions or delays when using the Platforms.

37.3 Nothing in this Agreement shall limit FXPESA's liability for death or personal injury resulting from its negligence.

37.4 You will pay us for any losses we may incur if you fail to perform any of your obligations under this Agreement or a Transaction, or from your use of the Platform.

## 38. YOUR AUTHORITY AND YOUR OBLIGATIONS

You represent and warrant to us from the date on which you agree to these Terms, and on an ongoing basis, that:

- 38.1 where you are a company or a partnership, you have full power and authority (corporate and otherwise) to enter into the Transaction and to exercise your rights and perform your obligations hereunder and have obtained all authorisations and consents necessary so to enter, exercise rights and perform obligations and such authorisations and consents are in full force and effect;
- 38.2 where you are an individual, you are an adult of legal age and sound mind and have full capacity to enter into the Transaction(s) and to exercise your rights and perform your obligations. The normal minimum age for trading in such Transactions is 18 years of age;
- 38.3 the obligations expressed to be assumed by you under the Transaction are legal and valid obligations binding on you in accordance with their terms;
- 38.4 all payments to be made by you under the Transaction may be made free and clear of, and without deduction for, or on account of, any taxes whatsoever;
- 38.5 all information that is furnished in writing by or on behalf of you to us in respect of these Terms is, as of the date such information is furnished, true, accurate and complete in every material respect;

- 38.6 in entering into the Transaction, you are not relying upon us in relation to any advice or forecast or estimate of future trends in relation to interest rates or otherwise, nor in relation to the fiscal consequences of the Transaction;
- 38.7 you are acting for your own account and have made your own independent decisions to enter into the Transaction(s) and as to whether the Transaction(s) is appropriate or proper for you based upon your own judgement and upon advice from such advisers as you have deemed necessary. You are not relying on any communication (written or oral) from us as investment advice or as a recommendation to enter into the Transaction. It is understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction. You understand that no communication (written or oral) received from us can be considered to be an assurance or guarantee as to the expected results of the Transaction;
- 38.8 you are capable of assessing the merits of and understanding (on your own behalf or through independent professional advice), and understand and accept, the terms, conditions and risks of the Transaction. You are also capable of assuming, and assumes, the risks of the Transaction;
- 38.9 you are entering into the Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- 38.10 you are aware of all Applicable Regulations that apply to Electronic Trading Services that you use and that your use of the Electronic Trading Services will comply with all Applicable Regulations and these Terms as amended from time to time;
- 38.11 Tax regulations may change at any time. You will be responsible at all times for the payment of all taxes due and for providing any relevant tax authority with any information relating to your dealings with us. You agree that if we provide you with any information or express any opinion in relation to the tax treatment of your dealings with us it will not be reasonable for you to rely upon any such statement and it will not constitute tax advice;
- 38.12 you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this section;
- 38.13 you will promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to you or any Credit Support Provider;
- 38.14 you will take all reasonable steps to comply with all Applicable Regulations in relation to this Agreement and any Transaction, so far as they are applicable to you or us;
- 38.15 you will not send orders or take any action that could create a false impression of the demand for or value of a Financial Instrument or send orders which you have reason to believe are in breach of the Applicable Regulations. You shall observe the standard of behaviour reasonably expected of persons in your position and not take any step which would cause us to fail to observe the standard of behaviour reasonably expected of persons in our position; and
- 38.16 upon demand, you will provide us with any information that we may reasonably require as evidence of your compliance with the matters referred to in this section or any Applicable Regulations.

## 39. AUTHORISED THIRD PARTY

- 39.1 We recognise that in some circumstances it may be necessary or desirable for you to authorise someone to manage your account ("**Authorised Third Party**"). You do so at your own risk and both you and the person you wish to authorise to operate your account will be required to submit a signed form which is a special power-of-attorney authorising and appointing an Authorised Third Party to operate your account.
- 39.2 You understand and agree that if your account at FXPesa is managed by an Authorised Third Party, then FXPesa is authorised by you to provide your account information, including but not limited to address, phone number, and



email address, to that person to enable them to provide on-going training, assistance, updates on services as it relates to the trading activities in your FXPesa account.

- 39.3 You will be liable for any act or omission by an Authorised Third Party, and we may rely on any instructions given by the Authorised Third Party on your behalf. We are not responsible for monitoring the activities of the Authorised Third Party.
- 39.4 If you have opened an account electronically, and we do not have an original of your signature, you will need to provide an identity document such as a copy of your passport, national identity card or driving licence in order to be able to appoint an Authorised Third Party.
- 39.5 By entering into these Terms with us, you authorise us to deduct any fees, commission or other remuneration ("**Third-Party Fees**") which you have agreed with your Authorised Third Party and which are payable by you to your Authorised Third Party from any money held by us in respect of your account and pay this to the Authorised Third Party on your behalf.
- 39.6 Any deductions will be made inclusive of all Taxes, duties or levies, however designated or computed, including but not limited to value added taxes (or similar).
- 39.7 It is your responsibility to ensure that there are sufficient funds in your account to pay any Third-Party Fees due to the Authorised Third Party in full.
- 39.8 We will disclose to you the amount of Third-Party Fees paid to the Authorised Third Party and such disclosure will be availed to you via your registered email address.
- 39.9 The following is the basis on which the Third-Party Fees are calculated:
- 39.9.1 as set out in section 34.5 above; or
  - 39.9.2 we will facilitate the payment of performance fees (in %) and/or management fees (in %) to the Authorised Third Party, as follows:
    - 39.9.2.1 the performance fee (%) shall be based on a high watermark and the profits made by the Authorised Third Party on your account, payable Authorised Third Party monthly, quarterly or yearly; and/or
    - 39.9.2.2 the management fee (%) shall be based on the equity in your account and payable to the Authorised Third Party monthly, quarterly or yearly

## 40. CLIENT MONEY

- 40.1 Any money received by us in respect of your account with us shall be treated as Client Money except where you separately agree with us to transfer full ownership of money to us for, amongst other things, the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such as Margin posted with relevant liquidity providers at an equivalent value, in which circumstances such money will not be regarded as Client Money.
- 40.2 In relation to Client Money unless you notify us in writing, or otherwise, we will promptly pay any Client Money received to our Client Money bank accounts. Our Client Money accounts will be identified and designated separately from any accounts used to hold other money belonging to us. Interest will not be paid on the money held in Client Money bank accounts and by entering into these Terms you acknowledge that you waive any entitlement to interest on such money under the CMA Regulations or otherwise.
- 40.3 We will exercise all due skill, care and diligence, in accordance with the CMA Regulations when selecting which third party bank to use. We will periodically (at least annually) review the adequacy and appropriateness of any bank where your money is or may be deposited and of the arrangements for holding your money, in accordance with the CMA Regulations. We will not be responsible for any acts, omissions or default (including the insolvency,



administration, bankruptcy or similar event) of the third-party bank or for any resulting shortfall or loss in the return of your money.

- 40.4 The Client Money account will be a pooled account and holds the Client Money relating to a number of clients. Claimants to money held in pooled accounts have a claim to a rateable proportion of the money held in that pool.
- 40.5 We may pass money received from you to a third party (e.g. a market, intermediate broker, OTC counterparty or clearing house) to hold or control in order to make a transaction through or with that person or to satisfy your obligation to provide a deposit (such as an initial requirement that you provide margin) in respect of a transaction. Although we will remain responsible for money received from you even if we pass it to a third party, you may be exposed to the additional risk that, in the event of an insolvency or similar in relation to that third party, the amount of money received by us from the third party may not be sufficient to satisfy your claims.
- 40.6 We may transfer any money we hold for you as Client Money (after deduction of any amounts permitted by the provisions of these Terms) to another legal entity (including any of our Group Companies), where we transfer all or part of our business to that entity and your Client Money relates to the business transferred. Where we transfer your Client Money to another legal entity under this section 40.6, we shall ensure that such Client Money will be held by that entity for you in accordance with the CMA Regulations
- 40.7 You consent to us releasing any Client Money balances, for or on your behalf, from Client Money bank accounts and for us to treat as Client Money any unclaimed Client Money balance where:
- 40.7.1 we have determined that there has been no movement on your balance for a period of six years (notwithstanding any payments or receipts of charges, interest or similar items); and
  - 40.7.2 we have written to you at your last known address and on a regular basis informing you of our intention of no longer treating that balance as Client Money, giving you Twenty-eight (28) Business Days to make a claim, provided we shall make and retain records of all balances released from our Client Money bank accounts in respect of your Client Money and undertake to make good any valid claims against any released balances.

## 41. CURRENCY

- 41.1 We shall be entitled, without giving notice to you first, to make any currency conversions we consider reasonably necessary or desirable for the purposes of complying with our obligations or exercising our rights under this Agreement or any Transaction. Any currency conversion shall be made by us in the manner and at the rates we determine to be appropriate, having due regard to the current market rates for currencies.
- 41.2 Where it is necessary to make a currency conversion, you will bear all foreign currency exchange risk arising from any contract or from the compliance by us with our obligations or the exercise by us of our rights under this Agreement.
- 41.3 If you trade in any transaction denominated in a currency other than a Base Currency, FXPesa will automatically convert the total sum of the transaction into the Base Currency applicable to your account at the time of the Transaction. The exchange rate for all types of currency conversion will be based on the mid-market exchange rate. Exchange rates fluctuate and may change between the time that the indicative exchange rate is quoted and the time that the amounts are converted. Where applicable the confirmation of the conversion will show the exchange rate used.

## 42. OVERNIGHT FINANCING AND ROLLOVER

Rolling Daily Transactions and Undated Contracts for CFDs are available in a variety of Markets and Underlying Markets. Each Market and Underlying Market has its own conditions and spread which may vary at our discretion. Such contracts automatically roll into the next trading session. A Daily Financing Fee debit/credit will be made to your account if you hold a Transaction open from one trading session to the next.

## 43. CREDIT

Details of any credit arrangement that may be available to you are or will be set out in, and will be subject to, such terms, conditions and limits as may be agreed in separate correspondence. We reserve the right to alter any credit arrangements agreed with you at any time. You acknowledge that when you deal with us on credit, neither any limit set on your account nor any amount of Margin you have paid puts any limit on your potential losses in respect of a Transaction. You acknowledge and agree that your financial liability to us may exceed the level of any credit or other limit placed on your account.

## 44. CONFLICTS OF INTEREST AND A MATERIAL INTEREST

- 44.1 Your attention is drawn to the fact that when we deal with you or for you, we or an Affiliate or some other person connected with us may have another interest, relationship or arrangement that is material. Without limiting the nature of such interests, examples include where we or an Affiliate could be:
- 41.1.1. dealing or quoting prices to the markets, in the investment or a related investment, as principal for our (or its) own account or that of someone else. This could include Selling to you or Buying from you and also dealing with or using the services of an intermediate broker or other agent who may be an Affiliate;
  - 41.1.2. matching (e.g. by way of a cross) your transaction with that of another customer by acting on his behalf as well as yours;
  - 41.1.3. Buying from you and Selling immediately to another customer, or vice versa; or
  - 41.1.4. in a contractual or agency relationship with marketing agents or introducing brokers who may solicit investment business from you for our benefit in consideration for commission rebate or similar remuneration payable to such agents or brokers.
- 44.2 You accept that we and our Affiliates may have interests which conflict with your interests and may owe duties which conflict with duties which would otherwise be owed to you, and consent to our acting in any manner which we consider appropriate in such cases subject to Applicable Regulations.
- 44.3 We will comply with Applicable Regulations binding on us, but we shall be under no further duty to disclose any interest to you, including any benefit, profit, commission or other remuneration made or received by reason of any transaction or any related transaction or position.
- 44.4 Where necessary we maintain arrangements which restrict access by our employees to information relating to areas of our business (and that of Affiliates) with which, and the affairs of clients with whom, they are not directly concerned. Accordingly, we shall not be required to have regard to or disclose to you or make use of any information which belongs to or is confidential to another client or to us or any Affiliate, and we may be unable to advise or deal with you in relation to particular investments without disclosing the reason for this.
- 44.5 Where a material connection exists between us and a connected broker, you hereby agree that you do not require us to give you notice of that.
- 44.6 We are required to have arrangements in place to manage conflicts of interest between us and our clients and between different clients. We operate in accordance with a conflicts of interest policy we have put in place for this purpose in which we have identified those situations in which there may be a conflict of interest, and in each case, the steps we have taken to manage that conflict. A summary of our conflicts policy is available on the Website.
- 44.7 We shall not be obliged to disclose to you or take into consideration any fact, matter or finding which might involve a breach of duty or confidence to any other person, or which comes to the notice of any of our directors, officers, employees or agents but does not come to the actual notice of the individual or individuals dealing with you.
- 44.8 The relationship between you and us is as described in this Agreement. Neither that relationship, nor the services we provide nor any other matter, will give rise to any fiduciary or equitable duties on our part or on the part of any of our Affiliates. As a result, we or any of our Affiliates involved in doing business with or for you, may act as both

broker, principal and agent and we or any of our Affiliates may do business with other clients and other investors whether for our own or such Affiliate's own account.

- 44.9 You accept that we and our Affiliates may either: (i) have interests which conflict with your interests; or (ii) owe duties which conflict with duties which would otherwise be owed to you, and in either case (i) or (ii) you consent to our acting in any manner which we consider appropriate in such cases subject to Applicable Regulations.

## 45. COMPLAINTS

- 45.1 We have a written a Complaints Policy to ensure that complaints regarding our services are dealt with fairly and promptly and in accordance with the CMA Regulations. A copy of this is available on our Website.
- 45.2 If you have a complaint about our Services, you should direct that complaint to our client services department or to our Compliance Department, via the methods listed below, whom will investigate the nature of the complaint to try to resolve it.

E-mail: [Support@fxpesa.com](mailto:Support@fxpesa.com) or [Compliance@egmsecurities.com](mailto:Compliance@egmsecurities.com)

Attention: **Compliance Department**  
12<sup>th</sup> Floor, Delta Towers, Tower 2 Waiyaki  
Way, Westlands  
Nairobi

Telephone: **+ 254 20 7643 972**

- 45.3 If having filed a complaint with us you are dissatisfied with our response, you are normally entitled (depending on the nature of your complaint) to refer the matter to the CMA.
- 45.4 The CMA also investigates and adjudicates on disputes. The CMA will, however, not become involved in disputes until such time as our own complaints process has been exhausted and no resolution can be agreed upon. CMA contact details:

**3<sup>rd</sup> Floor, Embankment Plaza**  
**Longonot Road, UpperHill**  
**Nairobi**  
**Telephone: (+254) 20 2264900**  
[www.cma.or.ke](http://www.cma.or.ke)

## 46. AMENDMENTS

- 46.1 We may amend these Terms by giving you reasonable advanced written notice by e-mail or on the Online Facility, which may include the publishing of the amended Terms on our Website. Any such amendment will come into effect on the date specified by us, and if not specified, within Ten (10) Business Days from the date of our amendment notice. Where advance notice is unreasonable (e.g. due to a sudden change in commercial terms with a liquidity provider or regulatory changes) we reserve the right to provide notice of such change with immediate effect.
- 46.2 Subject to section 46.1 above, each amendment will become effective on the date specified in the notice and you will be bound by the amended terms on the earlier of: a) Ten (10) Business Days after we have e-mailed you or published notice of such amendment to the Website; or b) the date you place an Order (other than liquidating Order) via System.

- 46.3 Any amendment requested by you must be agreed in a formal amendment agreement previously executed by us.
- 46.4 If you do not wish to accept our amended terms or any arrangements made hereunder, you must notify us in writing within Ten (10) Business Days of the date of the amendment notice. If you object to the amended terms, the amendment will not be binding on you, but your Account will be suspended, and you must close any of your open Transactions and your account immediately in accordance with these Terms by providing specific written notice to us. Failing to do so, we may close any or all of your Open Positions without any further notice to you. You must withdraw all funds remaining to the credit of your Account after payment of any amounts due to us or any Group Company and close your Account.

## 47. TERMINATION

- 47.1 You may terminate these Terms immediately by giving written notice to us. You agree that at any time after the termination of these Terms we may, without notice to you, close out any or all your Open Positions.
- 47.2 We may suspend or terminate these Terms and your Account for any reason or no reason by providing you with at least Thirty (30) days written notice of termination unless circumstances require us to provide a shorter notice period. You agree that at any time after the termination of these Terms, we may, without notice to you, close out any or all of your Open Positions. You further agree that we may, at our sole and absolute discretion, suspend your Account and restrict your trading activities during the notice period mentioned in this section. Where we suspend your Account, we may prevent you from opening any new positions.
- 47.3 We may terminate the arrangements set out in these Terms immediately and without notice to you:
- 47.3.1 if you admit to your inability to pay your debts as they fall due or enter into any scheme or arrangement with your creditors or, in the case of a company, file or have filed against you a petition for winding up, pass all or any part of your assets or undertaking or, in the case of an individual, a bankruptcy petition is presented or a trustee in bankruptcy is appointed or an order is made under the provisions of the Mental Health Act, No. 248 of 1989 [Rev. 2012] Laws of Kenya.
  - 47.3.2 if you are, in our opinion, in material breach of the obligations owed by you, whether arising under these Terms, any supplementary or separate terms that we have entered into with you in respect of Transactions in investments, the rules and regulations of any regulatory authority or under applicable law;
  - 47.3.3 in instances of Latency Exploitation; or
  - 47.3.4 on the occurrence of a Force Majeure Event.
- 47.4 The termination of this Agreement will not affect any rights which may already have arisen or obligation which may already have been incurred by either of us under this Agreement.

## 48. PAYMENTS ON TERMINATION

- 48.1 The Calculation Agent, in good faith and acting reasonably, will determine an amount, if any, (the Close-out Amount) that would be paid by (expressed as a positive) or to (expressed as a negative) the non-Affected Party in consideration of an agreement between the non-Affected Party and a third party that would have the effect of preserving for the non-Affected Party the economic equivalent of any payment in respect of the Transaction that would, but for the occurrence of the Early Termination Date, have been required after that date.
- 48.2 An amount (the "**Termination Payment**") will be payable equal to the Close-out Amount plus any amounts which have fallen due but remain unpaid as at the Early Termination Date owing to the non-Affected Party, and less any amounts which have fallen due but remain unpaid as at the Early Termination Date owing to the Affected Party, together with, to the extent permitted under applicable law, any interest owing pursuant to the terms of these Terms.

- 48.3 If the Termination Payment is a positive number, the Affected Party will pay it to the non-Affected Party; if it is a negative number then the non-Affected Party will pay it to the Affected Party.
- 48.4 The Termination Payment will, at the option of the non-Affected Party, be reduced by its set-off against any amounts payable (whether at such time or in the future or upon the occurrence of a contingency) by or to, as appropriate, the non-Affected Party (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the parties or instrument(s) or undertaking(s) issued or executed by one party to, or in favour of, the other party.
- 48.5 The parties agree that an amount recoverable under this section 48 is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in these Terms neither party will be entitled to recover any additional damages as a consequence of the occurrence of the Early Termination Date.
- 48.6 In determining the Close-out Amount, the Calculation Agent may consider any relevant information, including, without limitation, one or more of the following types of information:
- 48.6.1 quotations (either firm or indicative) for replacement Transactions supplied by one or more third parties that may take into account the creditworthiness of the non-Affected Party at the time the quotation is provided and the terms of any relevant documentation, including a Credit Support Document, between the non-Affected Party and the third party providing the quotation;
  - 48.6.2 information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
  - 48.6.3 information of the types described in section 48.6.1 or 48.6.2 above from internal sources if that information is of the same type used by the non-Affected Party in the regular course of its business for the valuation of similar Transactions.
- 48.7 Without duplication of amounts calculated based on information described in sections 48.6.1, 48.6.2 or 48.6.3 above, or other relevant information, and when it is commercially reasonable to do so, the Calculation Agent may in addition consider in calculating the Close-out Amount any loss or cost incurred in connection with the non-Affected Party terminating, liquidating or re-establishing any hedge related to the Transaction.

## 49. CALCULATION AGENT

We shall be the Calculation Agent. Whenever the Calculation Agent is required to act or exercise judgment in any other way, it will do so in good faith and in a commercially reasonable manner.

## 50. PERSONAL DATA

Where applicable, we may use, store or otherwise process personal information provided by you in connection with the provision of the Services. If you are an individual you are entitled to be informed on the use of your data, access copies of your personal data in our possession, correct as well as delete any misleading information. Please be advised that by signing this Agreement, you are freely giving consent to the transmittal of your personal data (and/or have obtained consent from individuals working on your behalf) in order to ensure that the level of protection of individuals afforded by the Data Protection Act, No. 24 of 2019, Laws of Kenya. You agree that we may pass information about you which you have provided to our Group Companies and to external companies to help us to process or analyse this information as part of the provision of Services to you. We may transfer personal data where the organisation (data processor) receiving the personal data has provided adequate safeguards to protect the personal data.

## 51. MONITORING AND RECORDING

You agree that we may record all telephone conversations and any communications by other means between you and us (including face to face meetings) without use of a warning tone, and use such recordings, or transcripts of such recordings, as well as any e-mails, recorded chat messages or other communications you send to us, for training purposes, for the purposes of investigating any complaint you may make, or for any other legal or regulatory purposes, including as evidence in any dispute or anticipated dispute between you and us. We shall retain records of all telephone and any communications by other means for the duration required by Applicable Regulations. We will provide a copy of such records to you within a reasonable period of your request and may charge a fee for such provision of records. Such records will also be accepted by you as evidence of orders placed or other instructions given.

## 52. NOTICES AND ELECTRONIC COMMUNICATIONS

52.1 Any notice or other communication given under this Agreement must be in writing and may be:

- 52.1.1 made by electronic means, including e-mail;
- 52.1.2 delivered personally;
- 52.1.3 sent by prepaid recorded delivery or registered post, or registered airmail in the case of an address for service outside Kenya; or
- 52.1.4 by fax with a confirmatory copy sent by post (as above), to your or our address as specified in this Agreement or to such other address, the e-mail address or fax number as either you or we may have last notified to the other, as applicable.

52.2 Any such notice will be considered to have been served:

- 52.2.1 if delivered by hand, at the time of delivery;
- 52.2.2 if sent by prepaid recorded delivery or registered post, Two (2) clear Business Days after the date of posting (i.e. not including the day of posting itself);
- 52.2.3 if sent by registered airmail, Five (5) clear Business Days from the date of posting (i.e. not including the day of posting itself);
- 52.2.4 if sent by fax, at the completion of transmission during business hours at its destination or, if not within business hours, at the opening of the next period of business hours, but subject to:
  - a. proof by the sender that it holds a printed transmission report confirming despatch of the transmitted notice;
  - b. the sender not receiving any telephone calls from the recipient, to be confirmed in writing, that the fax has not been received in a legible form; and
  - c. dispatch of the notice by post in accordance with section 52.1.4 on the same day as its transmission;
- 52.2.5 if sent by e-mail, one hour after sending during business hours at its destination or, if not within business hours, at the opening of the next period of business hours, but subject to no “not sent” or “not received” message being received from the relevant e-mail providers.

52.3 E-mail may be used to enable us to communicate with you. You agree that we may record all such communications (see section 51). As with any other means of delivery, this carries with it the risk of inadvertent misdirection or non-delivery. It is your responsibility to carry out a virus check on any attachments received. As internet communications are capable of data corruption, we do not accept any responsibility for changes made to such communications after their despatch. For this reason, it may be inappropriate to rely on the content of an e-mail without obtaining written confirmation of it. All risks connected with sending confidential information relating to

you are borne by you and are not our responsibility. If you do not accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.

- 52.4 It is your responsibility to notify us immediately if any of the contact details provided by you change, and we are not responsible for any communication which you do not receive for failure to do so, and until such time as we receive actual notice informing us of these changes.
- 52.5 From time to time, we may decide to provide you with information by online newsletters, which we may post on our Website or provide to you in any other manner. We will make all reasonable efforts to ensure the accuracy and completeness of this information, but it will not amount to investment advice or recommendation and if you have any doubts as to the effect or consequences of the information for you, you should contact your independent financial adviser. We reserve the right to charge a fee for subscription to our newsletter, as detailed from time to time on our Website. If we do so, you are entitled to refuse subscription to the newsletter if you notify us in writing.
- 52.6 You should communicate with us in English. All FXPESA standard documents (including this Agreement) will be available in English. If a document is translated into another language this will be for information purposes only and the English original version will prevail in the event of any conflict or inconsistency.
- 52.7 Subject to Applicable Regulations, any communications between us using electronic signatures will be binding to the same extent as if they were in writing. By signing this Agreement, you give your consent to the receipt of communications by electronic means, notwithstanding that certain communications would otherwise be required to be made using a durable medium under Applicable Regulations. Without limiting the generality of the foregoing, orders placed, or other instructions given by electronic means will constitute evidence of such orders or instructions. If you no longer wish to communicate in this way, you must revoke your consent in writing in accordance with section **Error! Reference source not found.**. If you do not wish to communicate via electronic means at all, you must inform us of your wishes prior to you signing this Agreement. You agree that we may record all such communications (please refer to section 51).

## 53. DISPUTE RESOLUTION

- 53.1 The parties agree to use the following procedure to identify and resolve disputes between them:
- 53.1.1 Either party may identify a dispute by sending a dispute notice in writing (“**Dispute Notice**”) to the other party. Each Dispute Notice will be effectively delivered if delivered in accordance with section 52.
  - 53.1.2 On or following the date that the dispute has been instigated by either party (the “**Dispute Date**”), the parties will consult in good faith in an attempt to resolve the dispute in a timely manner, including but not limited to, 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.
  - 53.1.3 With respect to any dispute that is not resolved within Thirty (30) Business Days of the Dispute Date, parties will refer issues internally to the appropriate senior members of staff of EGM in addition to the actions stipulated under section 53.1.2.
  - 53.1.4 Each party agrees that, to the extent that this resolution process applies to each party, it will have procedures and processes in place to record and monitor any dispute for as long as the dispute remains outstanding.
- 53.2 Nothing in this section 53 obliges either party to deliver a Dispute Notice following the identification of any issue or discrepancy (notwithstanding that such issues or discrepancy remain unresolved) or limits the rights of the parties to service a Dispute Notice, to commence or continue an agreed process (whether or not any action



under this section 53 has occurred. Nothing in this section 53 restricts you from instigating a complaint in accordance with section 45.

## 54. INTELLECTUAL PROPERTY

All intellectual property rights in the Online Facility, any advertising material issued by or on behalf of us, all information, materials, prices or charts, business methods, databases or settlement specifications relevant to these Terms of otherwise used or arising in connection herewith will remain our property or any third party which provided it to us and you will have no rights to distribute, republish, copy, reproduce, Sell, sub-license or otherwise transfer or disseminate any of the foregoing unless otherwise expressly agreed by us in writing.

## 55. CONFIDENTIALITY

The information we hold about you is confidential and will not be used for any purpose other than in connection with the provision of the Services, or as permitted under these Terms. Information of a confidential nature will be treated as such provided that such information is not already in the public domain. Information of a confidential nature (including information relating to your Transactions) will only be disclosed outside our Group Companies in the following circumstances: (i) where required by law, or if requested by any regulatory authority or exchange having control or jurisdiction over us (or any respective Associate); (ii) to investigate or prevent fraud or other illegal activity; (iii) to any third party in connection with the provision of Services to you by us; (iv) to intermediate brokers or settlement agents; (v) for purposes ancillary to the provision of the Services or the administration of your account, including, without limitation, for the purposes of credit or identification enquiries or assessments; (vi) if it is in the public interest to disclose such information; or (vi) at your request or with your consent.

## 56. THIRD PARTIES

The provisions of these Terms will not be enforceable by any person (other than the custodian or its affiliates) who is not a party to it, but this does not affect any right or remedy of a third party that exists or is available.

## 57. GENERAL

- 57.1 **Entire Agreement.** This agreement, as well as the forms which require your express consent or signature in the application process, constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 57.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 57.3 **Website.** We have taken reasonable measures to ensure the accuracy of the information on the Website. The content on the Website is subject to change at any time without notice.
- 57.4 **Severability.** Each provision of these Terms is severable. This means that if any provision of these Terms is or becomes invalid, illegal or unenforceable or contravenes Applicable Regulations, the remaining provisions shall not be affected and shall remain in full force. Where any term or other provision is invalid, illegal or unenforceable, the parties agree to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.
- 57.5 **Our duties.** We are required by law to provide you with certain information about us, our services, our transactions, our commission, spread, charges and taxes along with copies of our Order Execution Policy and Conflicts Policy. You specifically consent to us providing you with this information by means of our Website. Commission, spread, charges and taxes (if any) will be disclosed in our Client Portal. Our Order Execution Policy, Conflicts Policy, Privacy



Notice and Risk Notice will be provided on our Website. Alternatively, details are available by calling one of our employees. It is your responsibility to make sure that you read all notices posted on our Website or through the Online Platform from time to time in a timely manner.

- 57.6 **Change of address.** You agree to immediately notify us in writing of any change of your address or other contact details, such notification to be given in accordance with section 52.
- 57.7 **Assignment.** This Agreement is for the benefit of and binding upon both parties and their respective successors and permitted assigns. You may not and will not assign, charge or otherwise transfer, or purport to assign, charge or otherwise transfer this Agreement, any rights or obligations hereunder or any interest herein (including any indirect, beneficial, synthetic or economic interest), in each case without FXPESA's prior written consent (which may be withheld or delayed in the sole and absolute discretion of FXPESA), and any attempted or purported assignment, charge or transfer in violation of this sentence will be void. No assignment, charge or transfer by you will relieve you of any of your obligations or liabilities hereunder. We may transfer this Agreement or any rights or obligations hereunder to any of our Affiliates or to any third party which acquires the business of FXPESA, without your consent or prior notice to you.
- 57.8 **Our records.** Our records will be evidence of your dealings with us in connection with our services. You will not object to the admission of our records as evidence in any proceeding because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with any of your record keeping obligations, notwithstanding the fact that records may be made available to you on request in our sole and absolute discretion, and for an additional fee as set out under section 51 above.
- 57.9 **Your records.** You agree to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of orders submitted and the time at which such Orders are submitted.
- 57.10 **Co-operation for proceedings.** You agree to co-operate with us to the full extent possible in the defence or prosecution of any legal or regulatory proceedings.
- 57.11 **No waiver.** The granting by you or us of any time or concession in respect of any breach of this Agreement by the other will not be considered to be a waiver of that breach.
- 57.12 **Partial invalidity.** If, at any time, any provision of this Agreement is or becomes invalid or unenforceable in any respect, under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected.

## 58. FORCE MAJEURE

We shall not be responsible for or liable to you for any liability, loss, damage, cost or expense of any nature whatsoever incurred or suffered by you or any person claiming through you as a result of any Force Majeure Event.

## 59. GOVERNING LAW AND JURISDICTION

These Terms and any non-contractual disputes or claims arising under them and all Transactions under or pursuant to them are governed by and shall be construed in accordance with the laws of the Republic of Kenya and the courts of Kenya shall have exclusive jurisdiction.