

## FXDD SERVICES AGREEMENT

This VPS Services Agreement (the "**Agreement**") is entered into by and between FXDD Malta, Ltd. ("FXDD") with its principal place of business at K2, First Floor, Forni Complex, Valletta Waterfront, Floriana FRN1913, Malta and "Customer and/or User" on the date on which Customer signs and dates the agreement ("Effective Date"). Both FXDD and Customer and/or User may be referred to herein individually as a "**Party**" and/or collectively as the "**Parties**."

### RECITALS

**WHEREAS**, FXDD provides a certain **third-party**, proprietary, hosted remote-access application, known as "FXDD Cloud" to its Customers

**WHEREAS**, the Customer and/or User desires to obtain the FXDD Cloud service.

**NOW, THEREFORE**, in consideration of the foregoing, and in reliance on the mutual agreements and covenants contained herein, the Parties agree as follows:

### ARTICLE I. USE OF THE SERVICE.

**1.1 Assumption of the Risk.** This is a third party system which FXDD is providing to you, the Customer and/or User, for your convenience. However, as a third party system, FXDD does not have control over, and is not responsible for, any issues which Customer and/or User may encounter, including, but not limited to, loss of account or user information, trading positions, and/or trading profits, or security.

**1.2 Disclosure of Settings Risks.** Settings risks include, but are not limited to:

- (a) Log-out settings: Users can log out of accounts at anytime and leave their trading applications actively trading on the cloud. The FXDD Cloud system will log out users automatically after 20 minutes of inactivity.
- (b) Reformatting the FXDD Cloud system. This option will reformat the Metatrader program back to factory settings, which means that this option will **erase all user information such as saved reports, expert advisors, libraries, templates, presets and log files**. Customer service should be contacted prior to reformatting for any backup of reports or log files that may be necessary.
- (c) Switching between languages. For certain languages, changing the language via the "Change Platform" option will **erase all the existing settings on the trading application** and reinstall the trading application.
- (d) Uploading an Expert Advisor and/or Algorithm. This option allows the user to upload expert advisors (EA), scripts, indicators, trade copiers, etc. Uploading an EA can cause the Metatrader application to restart improperly. Note: By default, ".exe" file types are not allowed on the VPS to prevent unauthorized programs being executed in a trading environment. Additionally, because FXDD does not pre-approve Expert Advisors and/or Algorithms, use of an Expert Advisor and/or Algorithm is always at your own risk.
- (e) Use of FXDD Cloud recommended browsers and/or operating system. Use of a browser and/or operating system that is not recommended is at your own risk.
- (f) Security. FXDD cannot guarantee the security of the FXDD Cloud system, as FXDD Cloud is a third-party system.

**1.3 Operation.** Customer and/or User shall be solely responsible for using the Service in connection with the terms of this Agreement, and shall be responsible for the use of the Service. The terms of this Agreement shall include any and all Manuals governing Service. All updated Manuals, amendments to Manuals and all manuals (or other user instruction) accompanying the Service delivered to Customer and/or User shall form part of the Manuals provided by FXDD to Customer and/or User under this Agreement and shall be provided to Customer and/or User in accordance with the terms of this Agreement.

**1.4 Authorized Users.** Customer and/or User shall (i) use the Service strictly in accordance with this Agreement and the Manuals and (ii) be responsible to FXDD for any acts or omissions relating to the Service. Customer and/or User shall use reasonable efforts to prevent any and all unauthorized use of the Service.

**1.5 Restriction on Use.** Customer and/or User will not (i) use, sell or disclose to any third party any information obtained through or from the Service other than for the purpose of undertaking Transactions; or (ii) allow any third-party to access or use the Service or Manuals, or any part thereof.

**1.6 Provision of the Service.** Customer and/or User acknowledges that FXDD is providing only a hosting service and hosted software to facilitate remote access to Customer and/or User's trading platforms and systems.

**1.7 Further restrictions.** Except to the extent that such action is expressly authorized by this Agreement or may not be restricted or excluded by law, Customer and/or User:

- (a) May not use or permit any unauthorized person to use the Service;
- (b) May not rent, loan, distribute or otherwise deal in the Service.

## **ARTICLE II. INTELLECTUAL PROPERTY RIGHTS.**

**2.1** All Intellectual Property Rights in the Service, all specifications and other documents to the Service supplied by FXDD and each part thereof (the "**Supplied Materials**") and all Intellectual Property Rights created in the course of providing the Service are and shall remain the sole and exclusive property of the Third Party Provider and its licensors, as applicable, unless otherwise agreed to in writing signed by both parties. Customer and/or User shall not acquire any Intellectual Property Rights, in or to the Supplied Materials or in any products or documents created by the Third Party Provider during the performance of the Service. Customer and/or User shall not (and shall use commercially reasonable efforts to ensure that Users do not) remove or alter any notices of the Third Party Provider's Intellectual Property Rights from the Supplied Materials or the Service. Customer and/or User is prohibited from copying the Manuals or using them for any purpose other than to use the Service. If Customer and/or User becomes aware of any use by a third party of the Supplied Materials which is unauthorized or which would constitute an infringement of or interference with any of the Third Party Provider's Intellectual Property Rights, it shall promptly notify FXDD and reasonably cooperate with the Third Party Provider, at the Third Party Provider's expense, with respect to any legal action which the Third Party Provider may undertake in response to such infringement.

## **ARTICLE III. FEES AND PAYMENT.**

**3.1 Fees.** For the use of the Service, Customer and/or User shall pay FXDD the Fee in accordance with the payment terms set forth below.

**3.2 Payment.** User and/or Customer will be charged a "Fee", dependent on their VPS package level, at the beginning of the following month of service use. If there are insufficient funds in the User and/or Customer's Account to pay the Fee, FXDD shall be entitled to immediately suspend the Service and/or the Maintenance Services, as applicable, without notice. Upon receipt of the Fee, FXDD may reinstate the Service and/or Maintenance Services. However, such reinstatement may disqualify User and/or Customer from receipt of a fee waiver, pursuant to Section 3.4.

**3.3 Fee.** A \$30, \$40 or \$85 fee (or equivalent in account denomination and with respect to the VPS package level) will be charged to a Customer and/or User's account in the month following use of service, if Customer and/or User does not maintain a minimum deposit of \$2,500.00 in Customer and/or User's account throughout the entire preceding month (beginning the first *Trading* day of the month, and ending the last *Trading* day of the month), **and** trades a minimum of five (5), seven (7) or ten (10) standard lots, round-turn, (with respect to the VPS package level) in that preceding month.

**3.4 Disqualification from Fee Waiver.** Commencement of and/or withdrawal from the FXDD Cloud System between the first and/or last business days of the month may cause you to be disqualified from the opportunity to waive the above-discussed fee, as you may not have the opportunity to maintain the minimum required deposit and/or number and size of lots, *both of which are required to waive the fee.*

## **ARTICLE IV. TERM, WITHDRAWAL, MODIFICATION, SUSPENSION OF SERVICE.**

**4.1 Term.** The term of this Agreement ("Term") shall commence on the Effective Date and continue on a month to month basis, unless written notice of nonrenewal is received by FXDD at least 10 business days prior to the last business day of the month.

**4.1 Withdrawal.** FXDD may withdraw the Service and/or terminate this Agreement if: (i) any supply or service which FXDD uses or requires to provide the Service becomes unavailable or is not supplied to FXDD for whatever reason and for whatever period; (ii) any contract or arrangement necessary to the provision of the Service is terminated or suspended; (iii) FXDD reasonably considers it appropriate to do so for the purpose of complying with any law, rule or regulation or any request of any authority or organization relevant to the Service; (iv) in FXDD's and/or the Third Party Provider reasonable determination doing so is necessary or desirable for technical or operational reasons or to correct or avoid any delays, unavailability or faults in the Service; or (v) the Third Party Provider discontinues the Service to all other clients to the Service. FXDD will

give as much notice as reasonably practicable to withdraw the Service and/or terminate this Agreement (which may include immediate withdrawal or termination without notice in the case of an emergency).

**4.2 Modification.** FXDD and/or the Third Party Provider may at any time modify the Service including, without limitation, screendisplays (both as to form and content), operating procedures, currencies and instruments available for trading. If FXDD and/or the Third Party Provider modifies the Service to Client's material detriment, Client may, as its sole remedy, terminate this Agreement.

**4.3 Suspension.** If FXDD and/or the Third Party Provider determines that a technical or other problem of any nature has arisen with respect to the Service during Market Hours, FXDD and/or the Third Party Provider may suspend the provision of the Service here-under entirely or with respect to one or more locations for the period necessary to correct or avoid the problem.

## **ARTICLE V. MAINTENANCE AND SUPPORT.**

**5.1 Maintenance Services.** From time to time, and in the Third Party Provider's sole discretion, the Third Party Provider may provide minor enhancements, operating system upgrades, patches and bug fixes to the Service. The maintenance services may render the Service inoperable for a period of time while the maintenance is being performed.

**5.2 Support.** Information technology support is available via telephone beginning each week Sunday 5:00 pm EST and ending on each Friday at 5:00 pm EST.

**5.3 Limitation.** FXDD EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED (IN LAW OR IN FACT), ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SATISFACTORY QUALITY. FXDD FURTHER EXPRESSLY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ALL CREDIT, MARKET AND SETTLEMENT RISK WITH RESPECT TO ANY TRANSACTION MADE OR CARRIED OUT THROUGH THE USE OF THE SERVICE AND OTHER FXDD SERVICES.

## **ARTICLE VI. LIMITATION OF LIABILITY.**

**6.1 GENERAL LIMITATIONS.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL CONDITIONS, WARRANTIES AND REPRESENTATIONS EXPRESSED OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE WITH RESPECT TO THE PRODUCTS OR SERVICES OR ANY CORRECTIONS, UPDATES, MODIFICATIONS, TRANSLATIONS OR ENHANCEMENTS THERETO THAT FXDD OR ITS AGENTS MAY PROVIDE ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. EVEN IF FXDD IS ADVISED OF THE POSSIBILITY OF LOSS, LIABILITY, DAMAGE OR EXPENSE, FXDD SHALL NOT BE LIABLE IN ANY RESPECT UNDER OR IN CONNECTION WITH THIS AGREEMENT:

- (a) FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS, LIABILITY, DAMAGE OR EXPENSE WHATSOEVER, WHICH CUSTOMER AND/OR USER OR ITS COUNTERPARTIES OR ANY OTHER THIRD PARTY MAY SUFFER AS A RESULT OF OR IN CONNECTION WITH THE SERVICE AND OTHER FXDD'S SERVICES, OR
- (b) FOR ANY NEGLIGENCE OR TORTIOUS LOSS NOR FOR ANY OF THE FOLLOWING LOSSES OR DAMAGE (WHETHER SUCH LOSSES OR DAMAGE WERE FORESEEN, FORESEEABLE, KNOWN OR OTHERWISE) WHICH CUSTOMER AND/OR USER OR ITS COUNTERPARTIES OR ANY OTHER THIRD PARTY MAY SUFFER AS A RESULT OF OR IN CONNECTION WITH THE SERVICE AND OTHER FXDD'S SERVICES: (i)

LOSS OF REVENUE;

(ii) LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING FOR LOSS OF PROFITS ON CONTRACTS);

(iii) LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; (iv) LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION;

(v) LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; OR (vi) ANY DAMAGE HOWSOEVER CAUSED.

**6.2 Exclusions from Liability - Transaction Loss.** Even if FXDD is advised of the possibility of loss, liability, damage or expense, FXDD shall not be liable for any damages, expenses or losses involving errors in Transactions conducted by Customer and/or User, any Counterparty, or any inability of Customer and/or User, or any Counterparty, to execute Transactions, including, without limitation, any such error or inability due to: (i) any error, failure, malfunction, delay, non-performance or omission in the Service or the Manuals; (ii) any error or omission in data results or information provided by the Service; (iii) any inability to use the Service; and/or (iv) any failure, delay, corruption, error, inaccuracy, discrepancy, incompleteness, or omission in or to any instruction, message (including any offer or acceptance) made through the Service, any Transactions or any Deal Tickets or the generation or transmission thereof and/or (v) any of the foregoing that may occur within or be caused by Third Party Systems or between Third Party Systems and the Service (including any associated communications or the means by which users of Third Party Systems connect to such systems or such systems connect to the Service).

**6.3 Exclusions from Liability - Other Loss.** Even if FXDD is advised of the possibility of loss, liability, damage or expense, FXDD shall not be liable for any damages, expenses or losses resulting directly or indirectly from: (i) the acts or omissions of Customer and/or User, Third Party Systems or of any third party whether authorized or unauthorized to access the Service; (ii) any data, information or instructions (including Prices and rates) provided by Customer and/or User or any third party whether through the Service or otherwise; (iii) one or more of the causes identified in clauses (i) through (vi) of Section 6.2 hereof and/or (iv) any suspension or termination of the Services under Article IV.

## **ARTICLE VII. CUSTOMER AND/OR USER INDEMNITY.**

**7.1** Customer and/or User shall defend, indemnify and hold FXDD and FXDD's Affiliates harmless from and against all claims, liability, damages, losses, costs and expenses (including reasonable legal fees), arising or resulting from or in connection with: (i) any breach of any duty owed to any third party; (ii) any failure to perform its obligations, howsoever arising, in relation to or in connection with any Transaction, arrangement, contract or trade (in each case, whether actual or alleged); (iii) any act or omission of either FXDD and FXDD's Affiliate based upon or made or omitted in reliance on or consequence of any instruction, message or information made or provided by or on behalf of Customer and/or User; (iv) the use of any trademark, service mark, trade name or logo (other than FXDD or FXDD's Affiliates) in connection with the Service; and/or (v) the use of the Service by Counterparty, Customer and/or User, or other third party. Customer and/or User must give reasonably prompt notice of any such claim.

## **ARTICLE VIII. MISCELLANEOUS.**

**8.1 Force Majeure.** FXDD shall not be liable for any failure or delay in the performance of its obligations hereunder due to (directly or indirectly) any cause outside of its reasonable control, including but not limited to labor disputes, failure or unavailability of equipment, systems, software, networks, supplies or services and changes of law or regulations and the acts of any government or authority.

**8.2 Notices.** Any notice or other communication given by Customer and/or User in connection with this Agreement (except for routine communications between FXDD and Customer and/or User) shall be in writing in the English language and shall be delivered by courier or certified first class mail (postage prepaid) return receipt requested to FXDD. A notice sent by electronic mail shall not be valid of itself and must be confirmed in hard copy form by courier or by mail. Any notice given pursuant to this Subsection shall be deemed to have been received:

(a) If delivered by courier, at the time of delivery;

(b) If sent by mail: (i) where mailed in the country of the addressee, on the third business day following the day of mailing, and (ii) where mailed in any other country, on the sixth business day following the day of mailing;

(c) If sent by electronic mail, upon acknowledgment of receipt by the intended recipient via receipt by sender of the "read receipt" from the electronic mail provider of the recipient; or if no such acknowledgement is given upon the time of successful transmission of the electronic mail to the recipient's electronic mail address.

**8.3 No Waiver.** FXDD shall not be deemed to have waived any of its rights or remedies whatever unless the waiver is made in writing and signed by a duly authorized representative of the party charged with the waiver. No delay or failure of FXDD in exercising or enforcing any of its rights or remedies whatever shall operate as a waiver of those rights or remedies. No single or partial exercise or enforcement of any right or remedy by FXDD shall preclude or impair any other exercise or enforcement of that right or remedy by FXDD.

**8.4 Severability.** If any part of this Agreement is or becomes or is declared illegal, invalid or unenforceable in any jurisdiction for any reason, it shall be severed from this Agreement in the jurisdiction in question and that illegality, invalidity or unenforceability shall not in any way whatsoever impair or affect the remaining parts of this Agreement which shall continue in full force and effect; provided however that where any illegality, invalidity or unenforceability relates to the limitations or exclusions of liability of FXDD, the relevant limitation or exclusion of liability shall, if possible, be modified or amended to such extent as may be necessary to make it legal, valid and enforceable.

**8.5 Modification of Agreement.** No variation, amendments, modification or supplement to this Agreement shall be valid unless agreed in writing and signed by a duly authorized representative of FXDD.

#### **8.6 Governing Law.**

Except as provided otherwise herein, the laws of Malta (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. All Parties explicitly submit to the jurisdiction of the Courts of Malta.

**8.7 Time Limitation.** No claim, regardless of form, arising out of or pertaining to this Agreement may be brought by either party unless:

- (a) Such party has provided the other written notice of the event which gives rise to the claim within thirty (30) days after the date on which such party first became aware or could reasonably have become aware of the event, and
- (b) Such party has also provided to the other written notice of the claim within thirty (30) days after the date on which such party first became aware or could reasonably have been expected to become aware of the cause of action.

**8.8 Construction.** In this Agreement unless the context otherwise requires: (i) the masculine gender includes the feminine and neuter and the singular number include the plural, and vice versa; and (ii) headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**8.9 Relationship of the Parties.** This Agreement does not create a partnership or joint venture between the parties and neither party shall have the power to obligate or bind the other in any manner.

**8.10 Entire Agreement.** This Agreement, together with the Attachments hereto, constitutes the entire, final agreement between the parties and supersedes all prior oral or written understandings, arrangements, representations or agreements between them relating to its subject matter. In the event of any inconsistency between any of the Attachments and the body of the Agreement, the Attachment shall govern with respect to the point(s) of inconsistency. The parties acknowledge that no claims shall arise in respect of any understandings, arrangements, representations or agreements so superseded. No officer, director, employee or agent of any party is authorized to make any representation or warranty to another party not contained in this Agreement, and each party acknowledges that it has not relied on any such oral or written representations or warranties.

**8.11 Third Party Beneficiaries.** Except as expressly specified herein, no person is a third party beneficiary of this Agreement. No person who is not a party to this Agreement shall have the right to enforce any term of this Agreement.

#### **ARTICLE IX. DEFINITIONS.**



The following terms, together with additional terms defined throughout the Agreement, have the following meanings for the purposes of this Agreement:

- 9.1 "Acceptance Date"** With respect to Customer and/or User, the date by which the Service is accepted or deemed accepted, whichever comes first
- 9.2 "Affiliate"** Any entity, which is controlled by a party, which controls a party or which is under common control with a party. For this purpose, control shall be presumed to exist where one entity owns at least 30% of any class of the capital stock of another entity. Notwithstanding anything to the contrary in this Agreement, the term "Affiliate" shall not include any entity that (a) currently is a Competitor of the other party or (b) will in the future become a Competitor of the other party as reasonably determined by such party.
- 9.3 "Control"** The possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or other ownership interests, by contract or otherwise).
- 9.4 "Counterparty"** A third party (which for the purposes of this Agreement includes a liquidity provider and Affiliate of Customer and/or User) with whom Customer and/or User carries on business using the Service.
- 9.5 "Customer and/or User"** Any person who has entered a Customer and/or User agreement to use the Service.
- 9.6 "Deal Ticket(s)"** The document(s) or electronic message(s) which sets forth the details of the Transactions effected through the Service.
- 9.7 "Delivery Date"** The date seven (7) calendar days or sooner from the Effective Date.
- 9.8 "Delivery"** The delivery of and provision of access to the Service for the Customer and/or User.
- 9.9 "Fees"** The amounts set out in Attachment "A" herein, and any additional fees for such software that may become payable under the Agreement.
- 9.10 "Intellectual Property Rights"** All patents, copyrights, trade secrets, trademarks, service marks, trade names and all other intellectual property rights.
- 9.11 "Manuals"** The most current manuals as provided to Customer and/or User from time to time, in electronic format only, describing the operation and/or use of the Service.
- 9.12 "Permissions"** Permissions in respect of Customer and/or Users and other matters (if any) granted by FXDD to use the Service under this Agreement. A foreign exchange or money market price.
- 9.13 "Prices"** Use of all or part of the Service to process an actual business transaction of Customer and/or User, or the use of all or part of the Service in any way by Customer and/or User
- 9.14 "Productive Use"**

**9.15 "Service"**

The service known as the FXDD Cloud, together with the software developed by the Third Party Provider, applicable Manuals, Maintenance and Hosting Services. Use of all or part of the Service to process an actual business transaction of Customer and/or User, or the use of all or part of the Service in any way by Customer and/or User.

**9.16 "Site"**

The hosting premises operated by the Third Party Provider from time to time at the location chosen by the Third Party Provider in its sole discretion.

**9.17 "Term"**

The term of this Agreement.

**9.18 "Third Party Provider"**

A third party engaged by FXDD to provide the Services. Please contact customer support on [support@fxdd.com.mt](mailto:support@fxdd.com.mt) for further details.

**9.19 "Third Party Software"**

Software owned by third parties and incorporated in, made a part of or otherwise utilized in the Service, including without limitation the software that Customer and/or User obtains through FXDD when using the Service.

**9.20 "Trading Day"**

A day on which trading is available, but not necessarily a business day (i.e., a Sunday or holiday).

**9.21 "Transaction"**

A foreign exchange transaction made through the Service between User and a Counterparty, including but not limited to foreign exchange, futures, commodities, contracts for difference and other transactions.

**9.22 "Usage Rights"**

Right to use the Service conferred by FXDD.

**9.23 "User"**

(i) Any employee, agent or other individual representing the Customer who Customer duly authorizes to use the Service in accordance with the Permissions and who have each been given a unique user identification number and password; and/or (ii) Any other person who uses the Service with that unique user identification number and password.

**IN WITNESS WHEREOF**, the parties, intending to be legally bound, have duly executed and delivered this Agreement as of the Effective Date.

**ACCEPTED:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Trading account login: \_\_\_\_\_

Email Address: \_\_\_\_\_

**ACCEPTED:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_