

# SOFTWARE END USER LICENSE AGREEMENT

This Software End User License Agreement sets forth the terms and conditions under which XCM Capital Markets shall permit you to access one or more trading platform terminals, including terminal access through your internet browser, for the electronic transmission of orders and/or transactions, for your accounts held with XCM Capital Markets. This Agreement also sets forth the terms and conditions under which XCM Capital Markets shall permit you electronically to monitor the activity, orders, and/or transactions in your account (collectively, the “**Online Service**”). Solely for purposes of this End User License Agreement, the term “Online Service” includes all software and communication links, and in consideration thereof, Customer agrees to the following:

## 1. LICENSE GRANT AND RIGHT OF USE

By this Agreement, where XCM Capital Markets supplies you with software for use with the Online Service, you may use the Software solely for your affairs. You agree to use the Online Service and the software strictly abiding by the provisions of the **Terms and Conditions**, as published on [www.tradeberry.com](http://www.tradeberry.com) website and amended occasionally. You also agree to be bound by any rules, procedures, and conditions established by XCM Capital Markets concerning using the Online Service provided by XCM Capital Markets.

## 2. ACCESSES AND SECURITY

The Online Service may be used to transmit, receive, and confirm the execution of orders, subject to prevailing market conditions and applicable rules and regulations. XCM Capital Markets consent to your access and use in reliance upon your having adopted procedures to prevent unauthorized access to and use of the Online Service. In any event, you agree to any financial liability for trades executed through the Online Service.

You acknowledge, represent, and warrant that:

- a) You have received a number, code, or other sequence which provides access to the Online Service (the “**Password**”);
  - b) You are the sole and exclusive owner of the Password;
  - c) You are the sole and exclusive owner of any identification number or Login number (the “**Login**”); and
  - d) You accept full responsibility for the use and protection of the Password and the Login as well as for any transaction occurring in an account opened, held, or accessed through the Login and/or Password. You accept responsibility for the monitoring of your account(s).
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You will immediately notify XCM Capital Markets in writing if you become aware of any of the following:

- a) Any loss, theft or unauthorized use of your Password(s), Login and/or account number(s); or
- b) Any failure by you to receive a message indicating that an order was received and/or executed; or
- c) Any failure by you to receive an accurate confirmation of execution; or
- d) Any receipt of confirmation of an order and/or execution, which you did not place; or
- e) Any inaccurate information in your account balances, positions, or transaction history.

### **3. RISKS OF ONLINE TRADING**

Your access to the Online Service, or any portion thereof, may be restricted or unavailable during periods of peak demands, extreme market volatility, systems upgrades, or other reasons. XCM Capital Markets make no express or implied representations or warranties to you regarding the usability, condition, or operation thereof. We do not warrant that access to, or use of the Online Service will be uninterrupted or error-free or that the Online Service will meet any particular criteria of performance or quality. Under no circumstances, including negligence, shall XCM Capital Markets or anyone else involved in creating, producing, delivering, or managing the Online Service be liable for any direct, indirect, incidental, special, or consequential damages that result from the use of or inability to use the Online Service, or out of any breach of any warranty, including, without limitation, those for business interruption or loss of profits. You expressly agree that your use of the Online Service is at your sole risk. You assume full responsibility and risk of loss resulting from the use of or materials obtained through the Online Service. Neither XCM Capital Markets nor any of XCM Capital Markets's directors, officers, employees, agents, contractors, affiliates, third-party vendors, facilities, information providers, licensors, exchanges, clearing organizations, or other suppliers providing data, information, or services warrant that the Online Service will be uninterrupted or error-free; nor does XCM Capital Markets make any warranty as to the results that may be obtained from the use of the Online Service or as to the timeliness, sequence, accuracy, completeness, reliability or content of any information, service, or transaction provided through the Online service. By placing an order through the Online Service, you acknowledge that your order may not be reviewed by a registered representative before execution; you agree that XCM Capital Markets is not liable to you for any losses, lost opportunities, or increased commissions that may result from your inability to use the Online Service to place orders or access information.

### **4. MARKET DATA AND INFORMATION**

Neither XCM Capital Markets nor any provider shall be liable in any way to you or to any other

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person for:

- a) any inaccuracy, error, or delay in, or omission of any such data, information, or message or the transmission or delivery of any such data, information, or message; or
- b) any loss or damage arising from or occasioned by any such inaccuracy, error, delay, omission, non-performance, interruption in any such data, information, or message, due to either to any negligent act or omission or to any condition of force majeure or any other cause, whether or not within XCM Capital Markets's or any provider's control.

XCM Capital Markets shall not be deemed to have received any order or communication transmitted electronically by you until XCM Capital Markets has actual knowledge of such order or communication.

## **5. REPRESENTATIONS**

You acknowledge that from time to time, and for any reason, the Online Service may not be operational or otherwise unavailable for your use due to servicing, hardware malfunction, software defect, service or transmission interruption, or other causes. You agree to hold XCM Capital Markets and any provider harmless from liability for any damage resulting from the Online Service's unavailability. You represent and warrant that you are fully authorized to enter into this Agreement and under no legal disability which prevents you from trading. You shall comply with all laws, rules, and regulations applicable to your business. You agree that you are familiar with and will abide by any rules or procedures adopted by XCM Capital Markets and any provider in connection with the use of the Online Service. You have provided the necessary training in its use. You shall not (and shall not permit any third party) to copy, use, analyse, modify, decompile, disassemble, reverse engineer, translate, or convert any software provided to you in connection with the use of the Online Service or distribute the software or the Online Service to any other third party.

## **6. TERMINATION**

Subject to any legal restrictions and rights, XCM Capital Markets may, in its sole discretion and in line with the Terms and Conditions, terminate or restrict your access to the Online Service and may terminate this Agreement at any time. Upon termination, any software license granted to you herein shall automatically terminate.

## **7. INDEMNITY**

You agree to indemnify and hold harmless XCM Capital Markets and each provider and their respective principals, affiliates, and agents from and against all claims, demands, proceedings, suits, and actions and all losses (direct, indirect, or otherwise), liabilities, costs and expenses (including attorney fees and disbursements), paid in settlement, incurred or suffered by XCM

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Capital Markets and/or providers and/or XCM Capital Markets's or provider's respective principals, affiliates and agents arising from or relating to your use of the Online Service or the transactions contemplated hereunder. This indemnity provision shall survive the termination of this Agreement.

## **8. MISCELLANEOUS**

You may not amend the terms of this Agreement. XCM Capital Markets may amend the terms of this Agreement upon notice to you (including electronic delivery). By continued access to and use of the Online Service, you agree to any such amendments to this Agreement. This Agreement is the entire Agreement between the parties relating to the subject hereof. Except concerning the Terms and Conditions agreed between the parties and published on [www.tradeberry.com](http://www.tradeberry.com), all prior negotiations, and understandings between the parties, whether written or oral, are merged into this Agreement. Nothing in this Agreement shall be deemed to supersede or modify a party's right and obligations under the Terms and Conditions. The laws of Mauritius shall govern this Agreement without reference to its conflict of laws principles, and the competent courts of Mauritius shall have exclusive jurisdiction to entertain any dispute or difference whatsoever that may arise between the parties hereto.

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