



## **XM AFFILIATION AGREEMENT**

### **PREAMBLE**

This agreement sets out the complete terms and conditions to apply for a membership to the XM Affiliate Program. Please read this agreement completely and carefully before enrolling in the XM Affiliate Program. You must agree with and accept all of the terms and conditions contained in this Agreement without modifications, which include those terms and conditions expressly set out below and those incorporated herein by reference, before you may become an Affiliate of XM.

### **PARTIES TO THE AGREEMENT**

(a) Trading Point of Financial Instruments Ltd, a limited liability company registered under the laws of Cyprus with registration number HE 251334, and regulated by the Cyprus Securities and Exchange Commission ("CySEC") under license number 120/10, having its registered office at 12 Richard and Verengaria Street, Araouzos Castle Court, 3<sup>rd</sup> Floor, 3042 Limassol, Cyprus, and any of its designated and permitted successors, hereinafter referred to as the "Company" or "XM"

and

(a) The "Affiliate" shall mean the individual or entity which applies for membership to the Affiliate Program in accordance with the terms and conditions set forth herein and agrees with and accepts these terms and conditions and the Company approves the former's application for membership.

And furthermore, may both hereinafter be referred to separately as the "**Party**" and jointly as the "**Parties**".

**WHEREAS** this Agreement sets out the terms and conditions upon which Clients may be referred to the XM Group by the Affiliate.

### **IT IS AGREED:**

#### **1. Definitions of terms**

<b>Account</b>	Means the uniquely assigned account that is created for a Client when such client opens a trading account with the XM Group.
<b>Affiliates Application Form</b>	Means the form of that name provided by the Company to the Affiliate.
<b>Affiliate's Commission</b>	Means the amount paid or payable to the Affiliate by the Company in accordance with the Cost Per Acquisition ("CPA") Plan and based solely and exclusively on the Company's tracking data, verification, checks and calculations, as specified in the Report. Such information shall be available to the Affiliate in the Affiliate Section.
<b>Affiliate Program</b>	Means the Company's Affiliate Program available to certain individuals or entities, pursuant to the terms and conditions of this Agreement.
<b>Affiliate Section</b>	Means the section of the Main Website(s) where each Affiliate may review the Report, update their profile, create additional Tracker IDs, select Banners and Text Links and other functions that may be added and/or removed at any time by the Company at its sole discretion.
<b>Applicable Laws</b>	Means the Cypriot Investment Services and Activities and Regulated Markets Law of 2017, as subsequently amended or replaced, the

Directives issued by virtue of this Law or any other rules of a relevant regulatory authority and any other applicable laws, rules and regulations as in force from time to time and to which this Agreement is subject (where relevant); the UK Financial Services and Markets Act 2000, the UK Financial Conduct Authority Rules (as set out in the FCA Handbook) or any other rules of a relevant regulatory authority, the rules of any relevant investment exchange and any other applicable laws, rules and regulations as in force from time to time and to which this Agreement is subject (where relevant); and the Australian Corporations Act of 2001, the Australian Securities and Investments Commission Act 2001 Act (“ASIC Act”), or any other rules of a relevant regulatory authority and any other applicable laws, rules and regulations as in force from time to time and to which this Agreement is subject (where relevant).

**Banners and Text Links**

Any means of graphics, pictures, animation, artwork or text provided by the XM Group that an Affiliate uses to solely promote the Affiliate Program and/or to refer Introduced Clients from the Affiliate’s website to the Main Website.

**Client**

Means any person whom the XM Group has approved to open one or more accounts subject to the Client Agreement/Terms and Conditions of Business and/or any person who opened one or more accounts with the XM Group via the Affiliate’s website subject to the Client Agreement/Terms and Conditions of Business.

**Client Agreement**

Means the XM Group’s Terms and Conditions that the Client accepts prior to opening an account with the XM Group.

**Cost per Acquisition (CPA) Plan**

Means the compensation plan (or “Commission Structure”), where the Affiliate shall receive its Affiliate’s Commission calculated on the basis of the number of Qualified Introduced Clients introduced by it to the Main Website(s) and the amount of the Affiliate’s Commission set out in Section C of Appendix 1 (Commission Structure), as updated from time to time at the Company’s sole discretion. The level of the Affiliate’s Commission varies depending on the country of residence and the total number of Clients introduced from that country.

**E-wallet**

Means the electronic wallet linked with the Affiliate Account, which is automatically created by the Company upon registration of the Affiliate Account.

**Financial Instruments**

Means the financial instruments presented on the Main Website.

**Fraud Traffic**

Any deposit or traffic generated at the Affiliate’s website(s) through illegal means or in bad faith to defraud XM Group, regardless of whether or not it actually causes harm to the XM Group.

Fraud Traffic includes, but is not limited to, spam, false advertising, deposits generated by stolen credit/debit cards, collusion between Affiliates as well as between Affiliates and Introduced Clients/Qualified Introduced Clients with the sole aim to generate commissions, manipulation of the service, system, bonuses or promotions, offers to

share the Affiliate's Commission (i.e. rebates) and any other unauthorised use of any third-party accounts, copyrights or trademarks.

Fraud Traffic also includes any activity in the Affiliate's account, or in any Client's account which appears to be related to and/or controlled/managed by the Affiliate, that is deemed suspicious at the XM Group's sole and reasonable determination.

**Introduced Clients**

Any user of the XM Group's trading platform, referred by the Affiliate, who may become a Qualified Introduced Client.

**Main Website**

Means the Company's domain name and/or any other domains that the XM Group operates (also including the official mobile application) mainly for informational, educational and promotional purposes.

**MiFID II**

Directive No. 2014/65/EU on Markets in Financial Instruments, EU Regulation No. 600/2014, applicable MiFID II level 2 legislation and successor legislation.

**Non-Active Affiliate**

An Affiliate as described in section 3.5 herein.

**Qualified Introduced Client**

Means an individual who was referred by an Affiliate and identified by means of a Tracker ID assigned to that Affiliate, provided that, on a cumulative basis:

- (i) the Affiliate is confirmed by the XM Group as included in the Program and is linked to the Main Website(s) in accordance with this Agreement;
- (ii) such individual is not already registered to the Main Website(s), including registration under, among others, a different name or through different identification details;
- (iii) such individual's registration and/or trading data do not correspond with another Introduced Client's respective information, including but not limited to the IP address; and
- (iv) all the qualification requirements set out in Section A of Appendix 1 are fulfilled.

Neither an Affiliate nor any of its Affiliated Parties are eligible to become Qualified Introduced Clients under such Affiliate's Tracker ID(s), and should an Affiliate or any of its Affiliated Parties do so register, the Affiliate shall not be eligible to receive the applicable commission or any other compensation whatsoever.

For the purposes hereof, the term "Affiliated Party" shall mean any of the following:

- (i) any member of the Affiliate's immediate family;
- (ii) any individual, corporation, partnership, joint venture, trust, and any other body corporate or unincorporated organization, directly or indirectly controlling, controlled by or under common control with an Affiliate; or
- (iii) any other person found by the XM Group to be associated with an Affiliate, for the sole purpose of generating Affiliate's Commissions

- or, in the XM Group's view, to conduct any form of fraudulent or inappropriate activity; or
- (iv) any individual/entity whose registration and/or trading data correspond with the Affiliate's respective information, including, but not limited to, the IP address.

**Regulatory authority**

Means Cyprus Securities and Exchange Commission ("CySEC"), UK Financial Conduct Authority ("FCA"), Australian Securities and Investments Commission ("ASIC") (whichever relevant) and any other regulatory authorities with competent authority over XM Group, and their successor(s).

**Report**

Information regarding the Affiliate's Commissions, the Introduced Client tracking and other information relevant to the Affiliate as provided by the XM Group in the Affiliate Section.

**Round Lot**

For forex instruments, a 'standard' round lot or an 'XM Zero standard' round lot is one hundred thousand (100,000) units of the base currency and for precious metal instruments is 100 oz of Gold and 5,000 oz of Silver.

Round lots shall be the lots whose duration from the time of opening of a trade to the time of closing of that same trade is at least five (5) minutes. Therefore, any lots that do not meet the aforementioned minimum duration shall not be accounted for in the calculation of the Affiliate's Commission.

In addition, any open trades that are closed by using the functions "close by" or "multiple close by" shall not be accounted for in the calculation of the Affiliate's Commission.

**Spam/Unsolicited Promotions**

Any emails, mailers or any other messages that are circulated by the Affiliate, directly or indirectly, including messages that are posted on social media networks, newsgroups, forums, chat boards and other types of online media and which:

- (i) are directed to third parties who have not consented in writing in advance to receiving promotional messages from such Affiliate; or
- (ii) contain false or misleading statements with regard to the XM Group and its services; or
- (iii) do not truthfully identify the source or the originating IP Address from which it was sent; or
- (iv) do not provide the recipient with an option to be easily removed from receiving future mailings or promotions.

**Tracker ID**

The unique Tracking ID, which is related to the Tracker URL that the XM Group provides exclusively to the Affiliate, through which the XM Group tracks and calculates the Affiliate's Commission.

**Tracking URL**

The unique hyperlink to the Main Website(s) enabling an Affiliate to refer potential Clients to the Main Website(s), which enables the XM Group to identify the Affiliate that has referred such specific Introduced Client for the purpose of calculating the Affiliate's Commission.

## **XM Group**

XM and its parent undertakings, subsidiary undertakings or subsidiary undertakings of its parent undertakings.

## **2. Electronic Signatures and Affiliate Program**

### **2.1. Participation**

- (a) In order to participate in the Affiliate Program, an applicant must submit the Affiliates Application Form to the Company, as well as identification and other documentation requested by the Company (e.g. Proof of Identity, Proof of Residency, etc.).
- (b) The Company shall assess each Affiliate's Application Form and documentation and it may, at its sole discretion, either accept or reject the application to join the Affiliate Program and inform the applicant accordingly.
- (c) The Affiliate hereby acknowledges and agrees to the terms of this Agreement when it completes and submits the Affiliates Application Form to the Company and clicks on the "I Accept" button or similar buttons or links as may be designated by the Company on the Main Website(s). The Affiliate acknowledges and agrees that it is entering into a legally binding contract and fully agrees to abide by and to be bound by all the terms and conditions set out in this Agreement, as they may apply.
- (d) The Affiliate hereby waives any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent permitted under Applicable Laws and regulations.

### **2.2. Appointment of Affiliate**

- (a) Upon acceptance of this Agreement and upon approval of the Affiliate's Application Form by the Company, the Affiliate shall refer potential Introduced Clients to the Main Website(s) and the Company grants the Affiliate a revocable non-exclusive, non-transferable, non-sub-licensable, and worldwide, limited right to refer potential Introduced Clients to the Main Website(s), subject to the terms and conditions of this Agreement.
- (b) The Affiliate shall have no claims to Affiliate's Commissions generated from Qualified Introduced Clients not referred solely by it to the XM Group.

### **2.3. Amendments to CPA Plan**

The Company may change the Affiliate's CPA Plan at any time and at its sole discretion, including, but not limited to, setting any baseline, threshold or minimum deposit(s) and/or other requirements and/or for receiving any Affiliate's Commission set forth hereunder. The Affiliate shall be notified of any material changes by email. In the event the Affiliate does not agree to such change, it shall notify the Company within three (3) business days of receiving such notice from the Company and the Agreement shall be terminated immediately. In the event the Affiliate does not notify the Company by email within three (3) business days from receipt of the notice, it shall be deemed as an approval by the Affiliate to such change in the CPA Plan. For the avoidance of doubt, the Affiliate shall receive a one-off payment with respect to Qualified Introduced Clients identified by a Tracker ID prior to the date of any such change in the CPA Plan, in accordance with the applicable Compensation Plan at the date such Qualified Introduced Clients register to the Main Website(s). Unless otherwise agreed by the parties in writing, any amendment(s) to the CPA Plan shall not apply retroactively.

## **2.4. Costs and Expenses**

The Affiliate shall bear all costs and expenses of any nature (including but not limited to marketing expenses) howsoever incurred in connection with this Agreement. Under no circumstances shall the Company be liable hereunder for any amounts other than the Affiliate's Commission.

## **2.5. Set-off**

The Company shall, at any time, have the right to set off any losses incurred in respect of, or any debit balances in, any accounts (including any account held with the XM Group) in which the Affiliate may have an interest against any sums held by the Company for or to such Affiliate's credit on any other account (including any account held with the XM Group) in which the Affiliate may have an interest. If any loss or debit balance exceeds all amounts so held, the Affiliate must forthwith pay such excess to XM whether demanded or not.

## **3. Reports & Payments**

### **3.1. Time of Payment**

- (a) The Affiliate's Commission shall be paid into the respective Affiliate's account the first working day of each calendar month in relation to the Qualified Introduced Clients of the previous calendar month. In the event that the total Affiliate's Commission(s) amount due is less than USD 500 (or currency equivalent), the Company reserves the right not to execute the payment and carry the balance forward to the next payment period. No payment will be executed for Affiliate's Commission(s) less than USD 500.
- (b) In the event that the Affiliate's Commission generated within a period of twelve (12) consecutive months is less than USD 500, the Company reserves the right to consider the Affiliate's Commission(s) amount due as void and will be forfeited. In the case that the Affiliate is Non-Active as determined in Section 3.5, the Company also reserves the right to terminate this Agreement with immediate effect, with no liability whatsoever to the Affiliate, by giving notice to the Affiliate in writing.
- (c) In the event that this Agreement is terminated for any reason, other than for cause, the Company shall pay the Affiliate the balance of the Affiliate's Commission(s) that is due and payable to the Affiliate at the time of termination of this Agreement, within sixty (60) calendar days of the end of the calendar month in which the Agreement is terminated by the Affiliate (following the Company's receipt of the Affiliate's written notice, including by email, to terminate the Agreement) or by the Company. The Affiliate is solely responsible for providing and maintaining accurate address and other contact information, as well as payment information associated with its Account.

### **3.2. Method of Payment**

All payments will be due and payable in United States Dollars (USD) only. Payment will be credited to the Affiliate's account, which has been registered when signing up to the Affiliate Program. At the Company's sole discretion, and if deemed appropriate, the Company may accommodate other methods of payment or currency. Any charges incurred for other methods of payment will be covered by the Affiliate and deducted from the Affiliate's Commission.

### **3.3. Payments for Qualified Introduced Clients only**

- (a) The Affiliate acknowledges and agrees that in order to comply with MiFID II requirements and any other equivalent legal and regulatory obligations pertaining to inducements or equivalent benefits and to ensure the Company's obligation to act honestly, fairly and professionally in accordance with the best interests of its

Clients, the Company shall only pay the Affiliate a one-off fixed payment for each Client introduction, as a means of compensation and no other payment shall be payable or paid.

(b) In addition to any other terms and conditions set forth anywhere in this Agreement or under any Applicable Laws, the Affiliate shall not be entitled to receive any Affiliate's Commission for any Introduced Client unless and until such Introduced Client has been approved as a Qualified Introduced Client.

### **3.4. Entitlement to the Affiliate's Commission**

Notwithstanding anything to the contrary, the Affiliate shall not be entitled to receive the Affiliate's Commission for any Introduced Client if the timeframe indicated in Appendix 1, as specified by the Company from time to time, is not met.

### **3.5. Non-Active Affiliate**

The Affiliate acknowledges and agrees that the Company may, without further notice, forfeit all funds, payments and other amounts related to this Agreement and that are due to the Affiliate (if any), but which the Company is unable to pay or deliver to the Affiliate because the Affiliate's account is non-active and terminate the business relationship with the Affiliate by disabling the Account and giving written notice to the Affiliate. For the purposes of this Agreement, "Non-Active Affiliate" shall mean an Affiliate who, based on the XM Group's records:

- (a) has not logged or has no other activity on the Affiliate Account(s) or has not requested to be paid his/her commissions generated for a period of two (2) years or more; and/or
- (b) the XM Group has been unable to reach or has not received appropriate payment instructions from the Affiliate, after contacting him/her at the contact details kept in the XM Group's records.

### **3.6. Dormant and Archiving Policy**

- 3.6.1. In the event that there is no activity (i.e., no commissions generated) in the E-wallet linked with the Affiliate Account for a set period of at least six (6) consecutive months, our Company will regard the E-wallet to be 'dormant'. An E-wallet shall be deemed as dormant by the last day of the six (6) consecutive months in which there has been no activity (i.e., from the last day where commissions were generated) in the E-wallet.
- 3.6.2. Dormant E-wallets will be charged with a monthly dormant fee of USD 10 (ten United States Dollars) or the full amount of the generated commissions if the available commissions are less than USD 10 (ten United States Dollars). There will be no charge if there are no generated commissions available in the E-wallet (i.e., zero balance).
- 3.6.3. E-wallets with zero (0) balance will be archived after a period of six (6) consecutive months of inactivity (i.e., no commissions generated and no withdrawals performed).

### **3.7. Holdover for non-compliance**

- (a) Without prejudice to any other clause in this Agreement or rights that the Company may have, the Company may, in its sole and absolute discretion, withhold, delay or deny payment of the Affiliate's Commission in any of the following events:

- (i) the Company believes or has reasons to believe that the Affiliate's activities are not in compliance with any Applicable Laws and regulations;
- (ii) the Company believes or has reason to believe that the payment of the Affiliate's Commission will breach Applicable Laws, including MiFID II;
- (iii) the Company has reasons to believe that the Affiliate's activity is in breach of this Agreement;
- (iv) the Company has been notified by any third party of the alleged infringement of property or rights (e.g. intellectual property rights) by the Affiliate or by the Affiliate's activities.

In case of any of the above events, the Affiliate hereby irrevocably waives any claim or demand against the Company, its directors, officers, shareholders, employees or against the Main Website(s) in respect of such action taken by Company.

- (b) Without prejudice to any other provision set out herein, in the event of any dispute with or complaint from an Introduced Client, the Company has the right to withhold any Affiliate's Commissions due to the Affiliate until such issues are resolved.

### **3.8. Holdover for Fraud Traffic**

- (a) Without prejudice to any other provision in this Agreement, in the event that any trading activity in the Affiliate's account or in any account which appears to be controlled/managed by the Affiliate or in any Introduced Client's account, is deemed suspicious by the XM Group, in its sole determination the Company may, at its sole and absolute discretion, delay the payment of the Affiliate's Commission(s) until it investigates and authenticates the relevant trading activity.
- (b) In the event that the XM Group determines that the activity constitutes Fraud Traffic, the Company, in its sole discretion, is entitled to terminate this Agreement and/or to re-calculate and/or withhold the Affiliate's Commission accordingly.
- (c) Notwithstanding clause 3.6 above, if the XM Group determines that the Affiliate is involved, whether directly or indirectly, in any fraudulent, deceptive, manipulative or otherwise illegal activity connected to the XM Group, including, without limitation, to the Main Website, Account(s) or Qualified Introduced Client(s), the XM Group shall have the right, in addition to any other right or remedy available to it under this Agreement or Applicable Laws, to render the Tracking URLs assigned to such Affiliate inoperative, and immediately block the Affiliate's access to the Affiliate's Program, with no compensation to the Affiliate. The Affiliate hereby irrevocably waives its rights to, and shall indemnify the XM Group for any claim or demand made against the XM Group, its directors, officers, shareholders, employees or against Main Website or other websites operated by the XM Group in respect of the exercise by the Company of its rights in this clause (i.e. clause 3.7).

### **3.9. Introduced Client Tracking**

The Affiliate hereby acknowledges that it is aware and agrees that each Introduced Client must register through a Tracking URL to enable such Affiliate to receive the Affiliate's Commission in relation to such potential Introduced Client(s). In no event shall the Company be liable, and the Affiliate specifically waives any claim or demand in relation to any commissions associated with any Tracking URL that has not been validly received by the Company by the end of the calendar month in which that Affiliate's Commission arose, or for failure of the Affiliate or any Introduced Client/potential Introduced Client to use the relevant Affiliate's Tracking URL.

### **3.10. Payment Disputes**



The acceptance of a payment made by the Company to the Affiliate will be deemed full and final settlement of the Affiliate's Commission due for the corresponding calendar month. In case the Affiliate disagrees with the Report or amount payable, the Affiliate must NOT accept payment for such amount and immediately send a written notice of dispute within thirty (30) calendar days of the end of each month for which payment is made, otherwise the right to dispute the Report or payment will be deemed waived and the Affiliate shall be deemed to have waived any and all rights in relation to such Report or such payment and have waived any claims of restitution and/or unjust enrichment.

### **3.11. Tax**

It is the Affiliate's sole responsibility to comply with any tax laws that apply to the Affiliate's Commission and the Affiliate consents that to the extent required by Applicable Laws and regulations, the XM Group may provide information regarding the Affiliate's Commission to any governmental and/or judicial body/authority.

**3.12.** The payments made under this Agreement are for use by the Affiliate only and shall NOT be transferred or in any other manner passed on to a third party.

## **4. Additional Terms of Participation in the Affiliate's Program**

### **4.1. Provision of Information**

(a) The Affiliate shall provide true and complete information to the Company at all times, as may be requested by the Company from time to time. The Affiliate acknowledges that it is aware that prior to receiving any Affiliate's Commission, the Affiliate must provide all information as may be requested by the Company, including any information required pursuant to Applicable Laws. Such information shall include, but is not limited to, the following:

#### **Individual**

- (i) Proof of Identity and Proof of Residence documents;
- (ii) Date of Birth;
- (iii) Contact Information;
- (iv) Location and nature of activities;
- (v) VAT registration and/or other tax reference;
- (vi) Bank details for Commission remittances.

#### **Company**

- (i) Registration name;
- (ii) Company's registration number;
- (iii) Country of registration;
- (iv) Registered office address;
- (v) Regulatory/Licensing registration number, if applicable;
- (vi) Proof of Identity and Proof of Residence documents for all of the ultimate beneficial owners;
- (vii) VAT and/or other sales tax reference;
- (viii) Bank details for Commission remittances.

(b) On the occurrence of failure to comply with the above, or in the case that any such documents appear to be/are digitally edited, the Company reserves the right to consider any Affiliate's Commission(s) generated as void and/or terminate the business relationship with the Affiliate.

### **4.2. Marketing Materials**

- (a) The Affiliate's marketing materials shall comply with the guidelines provided by the XM Group and the restrictions set forth herein.
- (b) The Affiliate is required to obtain the XM Group's written approval prior to uploading any information, marketing material or functionalities relating to the XM Group and its services. The Affiliates shall not be allowed to alter any of the marketing material provided by the XM Group. In circumstances where the Affiliate intends to change the XM Group's information, marketing material, or functionalities that were initially provided and approved by the XM Group, the Affiliate needs to obtain a new approval from the XM Group before it proceeds with such changes. The marketing material may be used by the Affiliate only upon receiving the explicit written approval by the XM Group, which may be denied at the XM Group's sole and exclusive discretion.
- (c) In the event that the Affiliate makes use of any marketing material not approved by the XM Group, the XM Group shall have the right, in addition to any other right or remedy available to it under this Agreement or Applicable Laws, to render the Tracking URLs assigned to such Affiliate inoperative, and immediately block the Affiliate's access to the Affiliate Program and deny any Affiliate's Commission, with no compensation to the Affiliate. The Affiliate hereby irrevocably waives any claim or demand against the XM Group, its directors, officers, shareholders, employees or against the Main Website(s) in respect of such action taken by the XM Group.

#### **4.3. Compliance with Product Governance and the Inducements Rule**

- (a) The Affiliate undertakes to comply with Applicable Laws including any applicable local Law while conducting marketing activities, including, but not limited to, MiFID II.
- (b) The Affiliate acknowledges that under MiFID II, the undertakings within the XM Group that are established and authorised in the European Union, in their capacity as manufacturers and/or distributors of Financial Instruments, are required to identify their target market of Clients (as defined in the Client Agreement/Terms and Conditions of Business between the Company and its Clients). Therefore, Affiliates shall ensure the following:
  - (i) the Financial Instruments promoted and/or marketed are compatible with the needs, characteristics and objectives of the Company's target market as set out in the Client Agreement/Terms and Conditions of Business between the Company and its Clients and as communicated to the Affiliate by the XM Group from time to time;
  - (ii) the Financial Instruments are promoted and/or marketed in a way that is compatible with the applicable requirements in MiFID II and specifically the target market;
  - (iii) the Affiliate undertakes that it will conduct marketing activities under this Agreement that are compatible with the target market; and
  - (iv) the Affiliate shall only undertake marketing activities in circumstances where the Affiliate considers it reasonable that such marketing activities will, generally and largely, only be seen by or engaged with by persons who comprise the target market.
- (c) The XM Group may require the Affiliate to provide information on its marketing activities and/or provide any other information as requested, to enable the XM Group to assess the Affiliate's compliance with its obligations under this Agreement, including its obligation under Clause 4.3.

#### **4.4. Restrictions**

- (a) All Affiliate's activities must be professional, proper and in full compliance with all Applicable Laws, including local Law, and the Affiliate will be solely responsible for its activities.

- (b) The Affiliate shall not hold itself out to be an undertaking of the XM Group or its agent. For the avoidance of doubt, nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- (c) The Affiliate cannot use any XM Group's logo in any correspondence, business cards or electronic transmissions etc., unless authorised to do so by the XM Group in writing.
- (d) The Affiliate acknowledges that it is not allowed to register a business that includes the wording "XM" or "Trading Point" in its name. Furthermore, the Affiliate acknowledges that it is not allowed to register and/or operate a domain name that includes the wording "XM" or "Trading Point" in its name.
- (e) An Affiliate and its website, to the extent the Affiliate operates through a website, shall not be engaged, directly or indirectly, in activities that the XM Group, at its sole discretion, deems to be illegal, improper, offensive, unfair or otherwise adverse to the operation or reputation of the Main Website(s) or detrimental to other users of the Main Website(s), including without limitation, to:
- (i) the operation of an illegal business, site or subscription email list;
  - (ii) engaging in any illegal activity of any type, including but not limited to, displaying illegal content on the Affiliate's website or in the Affiliate's subscription emails or offering any illegal good or service through the Affiliate's website or subscription emails;
  - (iii) the operation of a website that contains or promotes content that is libellous, defamatory, obscene, abusive, violent, bigoted, hate-oriented, illegal, pornographic, related to gambling or link to a website that does so;
  - (iv) promoting discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
  - (v) manipulating keyword searches on portals and/or search engines that conflict with the XM Group's ones;
  - (vi) misrepresenting themselves as the Main Website(s) by co-opting the visual "look and feel" of or text from the Main Website(s) or otherwise violate the XM Group's Intellectual Property rights, including, without limitation, "scraping" text or images from the Main Website(s) or the XM Group's managed Banners and/or Text Links, search marketing or all other online and offline campaigns;
  - (vii) including "XM" or "Trading Point" or variations or misspellings thereof in the Affiliate's domain names;
  - (viii) do not clearly make available an online privacy policy to visitors of its website;
  - (ix) engaging in indiscriminate or unsolicited commercial advertising emails;
  - (x) placing links to any Main Website(s) in spam or unsolicited promotions, banner networks, counters, guest books, IRC channels or through similar Internet resources;
  - (xi) causing or enabling any transactions to be made that are not in good faith, including among others by means of any device, program, robot, hidden frames and redirects, and "bogus" traffic (in each case without derogating from other remedies the XM Group may have in law, equity or otherwise);
  - (xii) offering any Introduced Client, whether directly or indirectly, any kind of rake-back deal, arrangement for payment or portion of the Affiliate Fee, or any other incentive which may be considered to be a 'fee-sharing arrangement', 'rebate', or 'soft dollar' compensation between Affiliate and Introduced Client.
  - (xiii) diluting, blurring or tarnishing the value of the XM Group's trademarks;
  - (xiv) unauthorized use of any third party's intellectual property (including, but not limited to, trademarks);  
or
  - (xv) completing any account opening questionnaire on behalf of any potential Clients and/or Introduced Client.

The XM Group shall have the right, in addition to any other right or remedy available to it under this Agreement or Applicable Laws, to render the Tracking URLs assigned to such Affiliate violating the restriction herein, as inoperative and immediately block the Affiliate's access to the Affiliate's Program, with no compensation to such Affiliate. The Affiliate hereby irrevocably waives any claim or demand against the XM Group, its directors, officers, shareholders, employees or against the Main Website(s) in respect of such action taken by the XM Group.

- (f) The Affiliate shall not authorise or encourage any third party to:
- (i) directly or indirectly generate the use of the online services offered by the XM Group through any automated, deceptive, fraudulent or other invalid means, including, but not limited to, through repeated manual clicks, the use of robots or other automated tools and/or computer-generated queries, and/or the unauthorized use of other search engine optimization services and/or software;
  - (ii) edit, modify, filter, truncate or change the order of the information contained in any part of the Main Website(s), or remove, obscure or minimize any part of the Main Website(s) in any way without authorisation from the XM Group;
  - (iii) frame, minimize, remove or otherwise inhibit the full and complete display of any Web page accessed by a Client after clicking on any part of the Main Website(s);
  - (iv) redirect any Client away from the Main Website(s);
  - (v) provide a version of any webpage of the Main Website(s) that is different from the page an end-user would access by going directly to the Main Website(s);
  - (vi) intersperse any content between the Main Website(s) and the applicable landing page on the Main Website(s) or otherwise provide anything other than a direct link from the Affiliate's website(s) to a relevant landing page on the Main Website(s), as approved by the Company in accordance with this Agreement;
  - (vii) "crawl", "spider", index or in any non-transitory manner, store or cache information obtained from or pertaining to any Client who has been or is identified as solicited by and introduced and/or referred to the Main Website(s) via his/her tracker(s), or any part, copy, or derivative thereto; or
  - (viii) act in any way that violates any various policies posted on the Main Website(s), as may be revised from time to time, or included in any other agreement between the Affiliate and the Company (including, without limitation in this Agreement);
  - (ix) disseminate malware; or
  - (x) engage in any action or practice that reflects poorly on the XM Group or otherwise disparages or devalues the XM Group's reputation or goodwill.
- (g) Except as expressly otherwise provided for in this Agreement, and only if and to the extent provided herein, the Affiliate is prohibited from sending e-mails to promote the XM Group, the Main Website(s), the Company's Affiliate Program and/or the products and services offered by the XM Group.

#### **4.5. Age**

In order to participate in the Affiliate Program, the Affiliate must be aged 18 years or older.

#### **4.6. Forbidden Countries**

- (a) The Affiliate may only actively target citizens or residents of the countries set out in Appendix 1 to this Agreement, as these may be updated from time to time by the Company in its sole and absolute discretion.
- (b) Any Affiliate interested in actively targeting a person who is a citizen or resident of any country not listed in Appendix 1 of the Agreement must first receive the Company's prior written approval and consent.

- (c) An Affiliate who is registered under Trading Point of Financial Instruments Pty Ltd (hereinafter be referred to as 'XM AU') is not allowed to refer and registered under his/her name any European residents or citizens.
- (d) In the event that an Introduced Client is a citizen or resident of a country other than those set out in Appendix 1, the Affiliate accepts and agrees that it will not be entitled to receive any Affiliate's Commission from the Company for such clients unless the Company has given its prior written consent to include that country within the scope of Appendix 1.

## **5. Links / Trademarks and Logos / Data Ownership**

- (a) Subject to the terms of this Agreement, the Company grants to the Affiliate a revocable, non-exclusive, non-transferable, non-assignable, non-sub-licensable, worldwide limited licence to display on such Affiliate's website the marketing material provided by the XM Group for the sole purpose of providing a link from such Affiliate's website, which website has been confirmed by the XM Group as included in the Affiliate's Program, to the homepage of the Main Website(s) (but no other page) via the Tracking URL(s) provided by the XM Group. No framing of any webpage or of the Main Website(s) is permitted.
- (b) The Affiliate, and anyone on the Affiliate's behalf, shall not assert the invalidity, unenforceability, or contest the ownership of any of the XM Group's trademarks, logos or other marks in any action or proceeding of whatever kind or nature, and shall not take any action that may prejudice the XM Group's rights in any of the XM Group's trademarks, logos or other marks, render the same generic, or otherwise weaken their validity or diminish their associated goodwill.
- (c) Except as explicitly permitted herein, nothing in this Agreement or on the Main Website(s), should be construed as granting, by implication, estoppel or otherwise, any licence or right to use any of the XM Group's trademarks, logos or other marks.
- (d) All Introduced Clients shall be considered as Clients of the XM Group only. The XM Group shall be the sole and exclusive owner of the database of names and contact information and any other data of all Introduced Clients, including Introduced Clients identified by a Tracker ID. The Affiliate may not contact an Introduced Client without receiving the XM Group's prior written approval for such contact. If, in the XM Group's opinion, the Affiliate either tries to, or does, make contact with an Introduced Client without its prior written approval, the Company shall be entitled to immediately terminate this Agreement and to withhold all Affiliate's Commissions owed to the Affiliate at such time. The Company reserves the right to withdraw such approval at any time and at its sole and absolute discretion if deemed necessary. The Affiliate agrees that the XM Group may access information from or about visitors to the Affiliate's website and may use such information for any purpose.

## **6. Non-Competitive Marketing**

It is hereby clarified that the Affiliate shall not be entitled to market to potential Clients:

- (a) on any internet site or social network on which the XM Group promotes the Main Website(s) (e.g. Facebook.com, Twitter.com, etc.);
- (b) on any internet search engine on which the XM Group promotes the Main Website(s) (e.g. Google.com, etc.);
- (c) in any other manner which results in the Affiliate competing with the XM Group in relation to the promotion of the Main Website(s) including, but not limited to, the promotion of your website(s) through other Affiliates;

- (d) any other online software, application, or other platform enabling online trading similar to and/or competitive with the XM Group's trading platform;

In the event that the Affiliate is in breach of the foregoing provisions, the XM Group reserves the right, in addition to any other right or remedy available to it under this Agreement or Applicable Law, to render the Tracking URLs assigned to the Affiliate inoperative and immediately block the Affiliate's access to the Affiliate Program. The Affiliate shall have no claims and/or demands against the XM Group, its directors, officers, shareholders or employees in respect of such action taken by the XM Group.

## **7. Warranties and Representations**

**7.1.** The Affiliate hereby warrants and represents the following:

- (a) it has and will have, at all times, the requisite capacity and authority to enter into this Agreement;
- (b) it does not require authorisation to provide the services, or, if it does, it already has the requisite authorisation, licence and permission and that it will promptly notify the XM Group in writing if there is any change in such authorisation, licence and permission;
- (c) all of its activities shall be conducted in a professional, proper and lawful manner, in full compliance with Applicable Laws and regulations and the terms of this Agreement;
- (d) it does not act as an agent or employee or representative of the XM Group. The Affiliate is independent of the XM Group and shall have no authority to bind the XM Group in any way;
- (e) it shall NOT provide any investment advice or discretionary management services to Clients;
- (f) it shall not issue any marketing, advertising or distribute any promotional material, whether on the internet or otherwise, about the XM Group (except for the marketing materials) without the XM Group's express prior written consent;
- (g) it shall not make any misrepresentations regarding the XM Group, its services and licenses;
- (h) it shall not receive and/or transmit orders to the XM Group for and/or on behalf of the XM Group's Clients;
- (i) it shall not direct or influence any Client with regards to his trading or funding preferences;
- (j) it shall not transmit any money to the Company for and/or on behalf of the XM Group's Clients;
- (k) it shall disclose to the XM Group promptly any information regarding a complaint, regulatory investigation, or disciplinary action or any other development that may have a material impact on the Affiliate's ability to provide the services hereunder in accordance with the Applicable Laws and regulations;
- (l) that it conducts its business in a manner that is consistent with the UK Modern Slavery Act 2015 (or similar legislation), where relevant.

**7.2.** The Affiliate hereby expressly acknowledges and agrees that upon reasonable written notice by the Company and, at its request, the Affiliate shall cooperate with the any relevant regulatory authority of the Company in relation to the matters covered by this Agreement.

**7.3.** The XM Group may, at its sole discretion, accept or reject any prospective Client introduced by the Affiliate and has the right to terminate the business relationship with any Client at any time.

**7.4.** This Agreement does not grant the Affiliate the right or privilege to assist the XM Group in the provision of services to any Clients including Qualified Introduced Clients arising from the Affiliate's referrals and introduction. The XM Group shall be responsible for all services to Clients. For the avoidance of doubt, the XM Group alone shall be responsible for setting and negotiating any fees, payments or commissions which it receives from its Clients.

**7.5.** The Company's Client Agreement/Terms and Conditions of Business are set out in the Main Website under Section - "About Us"; Subsection - "Legal Documents".

**7.6.** The Affiliate hereby consents that the XM Group may disclose certain information about the Affiliate, including, but not limited to, the Affiliate's Commission(s) and performance statistics:

- (a) where it is required to by Applicable Laws;
- (b) to regulatory authorities upon their reasonable request, pursuant to Applicable Laws and regulations;
- (c) to such third parties as the Company sees fit to assist in enforcing its legal or contractual rights against the Affiliate, including but not limited to, legal advisors.

**7.7.** The Affiliate acknowledges and agrees that any attempted participation or violation of any of the foregoing, as well as any deviation from the standard interpretation of this Agreement, is a material breach of this Agreement and that the Company may pursue, at the Company's sole discretion, any applicable legal and equitable remedies against the Affiliate, including, but not limited to, the immediate suspension of the Affiliate's Account(s) with the Company and/or the withholding/cancellation of any Affiliate's Commission(s) generated and/or the immediate termination of this Agreement, without prior notice being required and/or the pursuit of all available civil or criminal remedies. Under no circumstances shall the Company be held responsible and/or liable for any deviation from the Terms and Conditions by the Affiliate, including, but not limited to, the provisions regarding marketing/promotions made by the Affiliate.

## **8. Limitation of Liability**

**8.1.** In no event shall the XM Group, its officers, directors, shareholders, employees, service providers or suppliers be liable for:

- (a) lost profits or data; or
- (b) any special, incidental or consequential damages,

which arise out of (or in connection with) the Main Website(s), the XM Group's services and/or its trading platforms, or this Agreement (however arising, including negligence) and including, without limitation, as a result of any failure or malfunction of any software, hardware, communication technology or other system.

**8.2.** Subject to clause 8.3, in aggregate, the Company's liability to the Affiliate in any circumstance is limited to the greater of:

- (a) the aggregate of the fees paid by the Company to the Affiliate in the twelve (12) months prior to the act or omission giving rise to liability; or
- (b) USD 2,000.

**8.3.** Nothing in this Agreement shall limit or exclude the liability of either party for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
- (b) fraud or fraudulent misrepresentation.

## **9. No Warranties; Indemnification**

**9.1.** To the fullest extent permitted under Applicable Laws, notwithstanding anything to the contrary, the XM Group disclaims all warranties, express or implied, including but not limited to all implied warranties of non-infringement, merchantability and fitness for a particular purpose, with respect to the Affiliate Program, the Main Website(s), links in the Main Website(s), or the Main Website(s) being accessible or free of errors, viruses or security threats.

**9.2.** The Affiliate agrees to indemnify, defend and hold harmless the XM Group, its directors, officers, shareholders, employees, service providers and suppliers from and against any and all liability, claims, costs,

expenses, injuries and losses, including reasonable legal fees and costs, arising directly or indirectly in connection with the Affiliate's breach of any terms of this Agreement, operations or website or out of any disputes between the Affiliate and any other party relating to this Agreement, the Main Website(s), the Affiliate's activity or to services provided by the XM Group. The Company may deduct such amounts to indemnify the XM Group, its directors, officers, shareholders, employees, service providers and suppliers for any claims arising, or resulting from, or relating, to the matters brought forth in this clause, from any outstanding Affiliate's Commission due to the Affiliate and held by the Company and/or any other funds whatsoever due to the Affiliate and held by the Company.

**9.3.** The Company shall not be in breach of this Agreement and shall not be liable or have responsibility of any kind for any loss or damage incurred by the Affiliate as a result of any total or partial failure, interruption or delay in the performance of this Agreement occasioned by any act of God, fire, war, civil commotion, labour dispute, act of government, state, governmental or supranational body or authority, or any investment exchange and/or clearing house, inability to communicate with market makers for whatever reason, failure of any computer dealing system or any other breakdown or failure of transmission in communication facilities of whatever nature between the XM Group and the Affiliate or any other third-party whatsoever, or any other reason (whether or not similar in kind to any of the above) beyond the XM Group's reasonable control (a "*Force Majeure Event*").

## **10. Confidentiality and Personal Data Protection**

**10.1.** The Affiliate shall keep all information confidential and shall not disclose to any third party any of the terms of this Agreement or any information incidental or related thereto the business of the XM Group (other than such terms or information which comes into the public domain), unless it is required under any Applicable Law or by any regulatory or governmental body or obtained by the XM Group's written consent. Notwithstanding anything to the contrary in this Agreement or the termination of this Agreement, this clause shall continue to have effect and be binding on the Affiliate without any time limit.

**10.2.** The Affiliate hereby expressly acknowledges, agrees and undertakes not to attempt to access or access any personal data in relation to Clients (i.e. potential, new or existing Clients), without the express prior written consent of the XM Group.

**10.3.** The Affiliate expressly acknowledges, agrees and undertakes that it shall comply at all times with all applicable data protection laws and regulations.

**10.4.** In the event that personal data are collected by the Affiliate, he/she shall provide the relevant data subjects (i.e. Clients) with the information required by all Applicable Laws and regulations pertaining to personal data protection and where required, shall obtain the prior written consent of all "Data Subjects" concerned.

## **11. Notices and Communication**

**11.1.** Unless otherwise specified, the Affiliate shall send any notice, instruction, request or other communication in writing via email to [ib@xm.com](mailto:ib@xm.com).

**11.2.** Information may be provided by the XM Group to the Affiliate in paper format or by email to the Affiliate's email address provided during his/her registration.

**11.3.** All notices/information provided by the XM Group or received from the Affiliate should be in the English language.



## **12. Independent Investigation**

The Affiliate acknowledges that the Affiliate has read this Agreement and agrees to all its terms and conditions. The Affiliate has independently evaluated the desirability of participating in the Affiliate Program and is not relying on any representation, guarantee or statement other than as set forth in this Agreement.

## **13. Termination**

**13.1.** Any changes to the Agreement shall not apply to the Affiliate's Commissions earned in relation to transactions performed prior to the date on which the changes become effective unless specifically agreed otherwise. The Company shall notify the Affiliate of any changes in the Agreement at least five (5) business days prior to the amendments coming into force. Should the Affiliate disagree with the changes, it may terminate the Agreement in accordance with paragraph 13.2 below.

**13.2.** Either Party (i.e. Company or Affiliate) can terminate the Agreement by giving five (5) business days written notice to the other party.

**13.3.** The Company reserves the right to terminate or suspend without notice, this Agreement or any rights of the Affiliate that it may possess under the provisions of this Agreement due to any malpractice, breach of any provisions of this Agreement, failure of compliance with Applicable Laws and regulations or other significant event, including liquidation or insolvency on the part of the Affiliate. Such termination will be at the sole discretion of the Company.

**13.4.** Upon termination of the Agreement, the Affiliate is obliged to return to the Company any XM Group's materials used to promote his business (e.g. newsletters, banners, text, etc.). In the case where the Affiliate maintains a website and is using any XM Group's materials, it is obliged to immediately withdraw all such materials upon termination of said Agreement.

**13.5.** Upon termination of this Agreement, the Company shall pay the Affiliate all the Affiliate's Commission due as set out in this Agreement.

**13.6.** Without prejudice to any other provisions set out herein, the Company may terminate this Agreement forthwith for cause, upon written notice to the Affiliate, if:

- (a) it becomes unlawful for the Company and/or the Affiliate to perform or comply with any one or more of the Affiliate's obligations under this Agreement; or
- (b) in the event of any change in Applicable Laws or regulations.

## **14. Governing Language and Jurisdiction**

**14.1.** This Agreement, as well as any additional agreement hereto (both present and future) is made in English. Any other language translations are provided as a convenience only. In the case of any inconsistency or discrepancy between the original English texts and their translation into any other language, the original versions in English shall prevail.

**14.2.** This Agreement and all transactional relations between the Affiliate and the Company are governed by the Laws of the country of incorporation of the Company and the relevant Courts in this country shall have exclusive jurisdiction.

## Appendix 1

### A. Qualified Introduced Client

1. Subject to the definition in Section 1 herein above, the following additional conditions shall also be met, on a **cumulative basis**, in order for an Introduced Client to be approved as a “*Qualified Introduced Client*”:

- (i) the individual has been approved by the XM Group and has made total deposits of at least \$150 (or currency equivalent), or such other minimum amount as may be specified by the Affiliate Program from time to time; **and**
- (ii) the individual has traded:
  - (a) at least five (5) ‘standard’ round lots in forex instruments or equivalent number of ‘standard’ round lots in other financial instruments, or
  - (b) at least fifteen (15) ‘XM Zero standard’ round lots in forex instruments or equivalent number of ‘XM Zero standard’ round lots in other financial instruments, or
  - (c) a combination of ‘standard’ and ‘XM Zero standard’ round lots whose sum results to an equal number of standard lots as in point a) or b); **and**
- (iii) the conditions in points (i) and (ii) above are being met within a period of twelve (12) months, or such other time period as may be specified by the Affiliate Program from time to time from the date the Introduced Client opened a trading account with the XM Group.

2. Subject to point 1 above, all of the trading accounts of an Introduced Client are taken into consideration for the fulfilment of the qualification criteria set out in this Agreement.

3. Subject to the respective requirements, only unique new Clients (i.e. without any registered active trading accounts with the XM Group) are eligible to be approved as Qualified Introduced Clients.

4. An Introduced Client, whose first trading account was registered through another Affiliate’s website, shall not be able to open any additional trading accounts through the Affiliate’s website. Consequently, all of the trading accounts of such Introduced Client’s will be connected with only one Affiliate, i.e. the Affiliate through which the Client opened his/her first trading account with the XM Group.

5. Where any of the criteria set out in Section 1 of this Agreement and in Part A of its Appendix 1 are not being met, such Introduced Client will not be approved as a Qualified Introduced Client and the Affiliate shall not be entitled to receive any Affiliate’s Commission in relation to such Client.

### B. Commissions Structure

The Affiliate’s payment depends on the country of residence of the Qualified Introduced Client. For example, you will receive a different payment for a Qualified Introduced Client residing in Germany than for such Client residing in Austria. Please refer to the list below and to the examples in Section C hereunder:

Country of client’s residency	Affiliate’s Commission
Switzerland	\$650
Italy	\$650
Spain	\$650

Germany	\$650
United Kingdom	\$650
Australia	\$650
Austria	\$650
Ireland	\$650
Liechtenstein	\$550
Cyprus	\$550
Malta	\$550
Luxembourg	\$550
Finland	\$550
Greece	\$550
Portugal	\$550
Denmark	\$550
Norway	\$550
Sweden	\$550
Netherlands	\$550
Croatia	\$450
Estonia	\$450
Hungary	\$450
Slovenia	\$450
Poland*	\$450
Bulgaria	\$450
Czech Republic	\$450
Slovakia	\$450
Romania	\$250

\* Affiliates are only allowed to refer Clients residing in Poland to the Main Website through their **website**. As such, face-to-face solicitation or telephone communications are prohibited and in the event that a Client registers a trading account with the XM Group in a way other than through the Affiliate's website, the Affiliate shall not be eligible to receive any Affiliate's Commission for such Client.

### **Additional restrictions**

1. Affiliates are prohibited to address any electronic marketing communications to, undertake face-to-face solicitation with, or conduct telephone communications with residents of Belgium. As such, the Affiliate shall **not** be eligible to receive any Commission for Clients residing in Belgium who registered through such means.
2. Affiliates residing in Poland are only allowed to offer their service(s) through a **website** and **not** by any other means (e.g. face-to-face solicitation, telephone communications, etc).

### C. Examples on Calculation of Commission Amount

#### Example 1

An Affiliate refers twelve (12) Clients to the XM Group in December, all of which reside in Germany, and all met the qualification criteria as set out in this Agreement and have been approved by the XM Group as “Qualified Introduced Clients”. The Affiliate shall be entitled to receive payments for this month as follows:

- $12 * 650 = \$7,800$

Therefore, the total amount due to the Affiliate for December is: **\$7,800**.

#### Example 2

An Affiliate refers fifteen (15) Clients to the XM Group in April, only ten (10) met all the qualification criteria as set out in this Agreement and have been approved by the XM Group as “Qualified Introduced Clients”. The country of residence of four (4) of the Qualified Introduced Clients is Spain and the other six (6) are based in Portugal. The Affiliate shall be entitled to receive payments for the month of April as follows:

- For the Qualified Introduced Clients from Spain:  $4 * 650 = \$2,600$ ; and
- For the Qualified Introduced Clients from Portugal:  $6 * 550 = \$3,300$

Therefore, the total amount due to the Affiliate for April is: **\$5,900**.