

Background

- (a) These terms and conditions have been issued by EGM Securities Ltd, a company incorporated with limited liability in the Kenya, existing under the laws of Kenya, under registration number PVTAAAFFT7, whose registered address is at 12th Floor, Tower 2, Delta Corner Towers, Waiyaki Way, Westlands, Nairobi, Kenya which owns the registered trading name 'FXPesa' (**Equiti**).
- (b) Equiti operates in the business of brokerage and trading in financial products.
- (c) You (the **Introducing Broker**) propose to provide the Services to Equiti which entail soliciting and introducing Prospective Clients to Equiti and Equiti proposes to contract the Services from the Introducing Broker.
- (d) These terms and conditions govern the relationship between you and Equiti in relation to the provision of the Services.

1. Services

The Introducing Broker will solicit Prospective Clients in an effort to convert such Prospective Clients to Introduced Clients (the **Services**).

2. Accesses

- 2.1. Equiti will grant the Introducing Broker access to the Portal (the **Portal Access**), only to the extent necessary, to enable the Introducing Broker to maintain a record of the Introduced Clients and monitor the Remuneration.
- 2.2. For the avoidance of doubt, the Portal Access will enable the Introducing Broker to input the details of and monitor Prospective Clients and Introduced Clients only; and the Introducing Broker will have no right to input, edit, control or export any other data available on the Portal.

3. Introduced Clients

- 3.1. A Prospective Client will be deemed an Introduced Client, if that person satisfies the following conditions:

- (a) is introduced to Equiti by the Introducing Broker and applies for an Account through the referral link provided by Equiti to the Introducing Broker;
- (b) as determined by Equiti, in Equiti's sole discretion, successfully completes Equiti's Account opening process and agrees to the General Terms and Conditions; and
- (c) once the Account is open, sends a confirmation email or an introducing broker form to Equiti requesting Equiti to associate its Account with the account of the Introducing Broker.

- 3.2. In the event an Introduced Client requests Equiti to disassociate the Account of such Introduced Client from the Introducing Broker, Equiti will accede to that request and the Introducing Broker will not receive the Remuneration for that Introduced Customer.

4. Obligations of the Introducing Broker

For the duration of these terms, and in the provision of the Services, the Introducing Broker must:

- (a) act in good faith;
- (b) manage, supervise and complete the Services reliably and professionally, in accordance with these terms in all material respects;
- (c) meet any performance dates in relation to the Service to the best of its abilities;
- (d) provide the Services with reasonable skill, expertise and care and in accordance with best industry practice from time to time;
- (e) deal with Clients in a transparent manner and expressly inform Clients or Prospective Clients;
 - i. of the Introducing Broker's role as an introducing broker;
 - ii. that the Introducing Broker is entitled to receive commission or other benefits as part of the Introducing Broker's role as

- an introducing broker in accordance with these terms;
- iii. that the Introducing Broker and Equiti and any Affiliate of Equiti are separate and unaffiliated; and
 - iv. that a Client is a Client of Equiti and not a Client of the Introducing Broker;
- (b) in no capacity whatsoever bind or otherwise represent itself as able to bind Equiti in relation to trades with Clients or Prospective Clients nor act as an agent, appointed representative or as an authorised representative of Equiti;
 - (c) not register or operate for and on behalf a Client an Account or execute any Transaction in relation to which Equiti provides services to the Client pursuant to the General Terms and Conditions, unless the Introducing Broker is duly authorised by the Client pursuant to the Regulatory Rules and Equiti's procedures;
 - (d) not accept any funds from a Client or Prospective Client on behalf of Equiti;
 - (e) in no way represent to any Prospective Client or Client that Equiti will provide a guarantee against losses or limit the losses of a Client or that Equiti may waive any of its requirements in relation to an Account;
 - (f) not make misrepresentations to Clients, Prospective Clients or other persons relating to Equiti;
 - (g) not make any recommendation, including trading recommendations, give advice, accept any commitment or responsibility, or guarantee on any matter for or on behalf of Equiti;
 - (h) not issue, publish, distribute or utilise Promotional Material without the prior written consent of Equiti;
 - (i) adhere to Equiti's KYC and CDD checks in a timely manner provide
- the details and evidence of the Introducing Broker's business activities at Equiti's request; and
- (j) notify Equiti of any regulatory or legal investigation or illegal interference into the Introducing Broker or Equiti's commercial affairs, and disclose to Equiti details of any previous sanctions imposed on the Introducing Broker.
- ## 5. Remuneration
- 5.1. The parties agree that Equiti will compensate the Introducing Broker for the provision of the Services, by advancing to the Introducing Broker the Remuneration.
 - 5.2. All amounts payable by the parties under these terms, including the Remuneration, are stated inclusive of VAT or any other applicable tax.
- ## 6. Right to audit
- 6.1. Equiti will have the right to examine the Introducing Broker's books and records relating to the Remuneration or Services on reasonable grounds.
 - 6.2. For the purposes of clause 6.1, the Introducing Broker grants to Equiti and its professional advisers a right of access to the Introducing Broker's premises, systems, data storage, documents and information on the giving of reasonable notice during business hours.
 - 6.3. For the purposes of clause 6, Equiti and its professional advisers will use reasonable endeavours to ensure there is no interruption to the business of the Introducing Broker.
- ## 7. Confidential Information
- 7.1. Subject to clause 7.2, the Introducing Broker irrevocably agrees and undertakes, for the duration of these terms and after the termination thereof, to Equiti:
 - (a) to use its best endeavours to keep confidential, and its officers, employees, agents and professional and other advisers keep confidential, all Confidential Information; and

- (b) not to give, disclose, sell, transfer, charge or otherwise dispose of the whole or any part of the Confidential Information to any other person; or
- (c) not to use the Confidential Information other than for the purposes of the transactions contemplated under these terms.

7.2. Clause 7.1 does not apply to:

- (a) information which is or becomes publicly available (otherwise than as a result of a breach of clause 7.1); and
- (b) the disclosure of information to the extent such disclosure is required by law, any court of competent jurisdiction, any governmental, official or regulatory authority, or any binding judgment, order or requirement of any other competent authority.

8. Intellectual property

8.1. Under no circumstances will these terms be deemed to transfer any interest to the Introducing Broker in Equiti's IP.

8.2. Equiti may grant, in writing, to the Introducing Broker a non-exclusive, personal, royalty-free license to use some of Equiti's IP for the purpose of the Services. Such license will set out the conditions of use of Equiti's IP which the Introducing Broker must abide by. Such conditions of use may include, without limitation the manner, context, location and timeframe in which the Introducing Broker can use Equiti's IP.

8.3. The Introducing Broker:

- (a) understands and accepts that it has no right to use Equiti's IP unless Equiti grants the license described in clause 8.2 to the Introducing Broker and where such license is granted, will use Equiti's IP exactly and only as permitted within Equiti's conditions of use;
- (b) understands and accepts that it has no right to allow third parties to use Equiti's IP;

- (c) understands and accepts that it is not permitted to use any trademark or trade name of its own or of a third party in connection with the Services unless permitted by Equiti in writing;

- (d) undertakes not to create, use or register (or permit, authorise or cause a third party to create, use or register) any material including without limitation marketing material, branding, trademarks, trade names or get-up which resemble Equiti's IP in any way, or which would therefore be likely to confuse or mislead the public or any section of the public with respect to whether such branding, trademarks, trade names or get-up belong to, or are connected in any way with, Equiti.

8.4. Upon the termination of these terms, any license to use the Equiti's IP as granted by Equiti to the Introducing Broker under clause 8.2 will expire and the Introducing Broker will cease to use such Intellectual Property and will return any physical embodiment of the Intellectual Property (including any copies) in its possession or control to Equiti.

9. Data protection

Both parties will comply with all applicable data protection and privacy laws and regulations under Applicable Law.

10. Representations and warranties

For the duration of these terms, the Introducing Broker represents and warrants to Equiti, that:

- (a) if the Introducing Broker is a legal person:
 - (i) it is a company, duly incorporated and validly existing under the laws of the country or place of its current incorporation; and
 - (ii) it is not bankrupt and able to pay its debts as they fall due; or
- (b) if the Introducing Broker is a natural person:

- (i) it is a natural person having the full capacity to enter into these terms; and
- (ii) it is not insolvent and is able to pay its debts as they fall due; and
- (c) it has the legal right, full power and authority to enter into and perform its obligations under these terms;
- (d) these terms, when accepted, will constitute valid, legal and binding obligations on the Introducing Broker in accordance with its terms;
- (e) the acceptance of, and the performance by the Introducing Broker of these terms will not result in any breach of any provision of its constitutive documents or result in any claim by a third party against any other party or result in the breach of any law or regulation binding the Introducing Broker;
- (f) all authorisations required to enable that party to lawfully enter into, exercise its rights and comply with its obligations in these terms have been obtained and are in full force and effect;
- (g) if requested by a regulatory authority or law enforcement agency, the Introducing Broker will cooperate with any regulatory authority or law enforcement agency in relation to the provision of the Services to Equiti; and
- (h) in the course of providing the Services, it shall ensure compliance with Applicable Law and the Regulatory Rules, including:
 - i. maintaining adequate policies and procedures to ensure compliance with the relevant requirements;
 - ii. promptly report to Equiti any request or demand for any undue financial or other advantage of any kind received by the Introducing Broker in connection with the performance of these terms; and

- iii. ensuring that any officer, employee, agent, representative or such other person connected to the Introducing Broker complies with the relevant requirements.

11. Restrictive covenants

The Introducing Broker irrevocably agrees, undertakes and covenants with Equiti that, for the duration of these terms and for a period of two years after the termination thereof, the Introducing Broker will not, directly or indirectly, without the prior written consent of Equiti:

- (a) solicit or entice away, endeavour to solicit or entice away, or cause to be solicited or enticed away from Equiti any manager, employee of Equiti, whether or not such person would commit any breach of the contract of employment by reason of leaving the service with Equiti;
- (b) solicit or entice away, endeavour to solicit or entice away, or cause to be solicited or enticed away from Equiti any Client;
- (c) employ any person who is, or was, in the duration of these terms, directly or indirectly engaged by Equiti and who by reason of such engagement is or may be likely to be in possession of any Confidential Information or trade secrets relating to the business of Equiti; and
- (d) canvass, solicit, or entice away, endeavour to canvass, solicit or entice away, or have any business dealings with any person who is, or was, in the duration of these terms:
 - i. provided with goods or services related to the business of Equiti or any supplier of goods or services to Equiti related to the business of Equiti; or
 - ii. negotiating with Equiti in relation to any such supply by or to Equiti of goods or services related to the business of Equiti.

12. Liability

Equiti will not be liable to the Introducing Broker for costs, claims, demands, liabilities, damages and expenses (including legal costs and expenses) incurred by the Introducing Broker in connection with any prosecution or civil claims made by any third party, (including a Client or Prospective Client), against the Introducing Broker, or the defence of any such prosecution or civil claim, relating to the breach or alleged breach by the Introducing Broker of these terms.

13. Indemnity

Without prejudice to the rights and remedies of Equiti pursuant to these terms, the Introducing Broker will indemnify Equiti against:

- (a) all costs, claims, demands, liabilities, damages and expenses (including legal costs and expenses) incurred by Equiti in connection with any prosecution or civil claims made by any third party, including a Client or Prospective Client, against Equiti, or the defence of any such prosecution or civil claim; and
- (b) all costs and expenses (including legal costs and expenses) reasonably incurred by Equiti in connection with any claims or demands made by Equiti against the Introducing Broker,

in each case relating to the breach or alleged breach of any of the obligations of the Introducing Broker of these terms or of any other agreement that the Introducing Broker may have entered into with a Client.

14. Termination

- 14.1. These terms will come into force on the date that you accept these terms and remain in force until terminated in accordance with these terms.
- 14.2. Each of the parties will have the right at any time to terminate these terms, without cause, and without need for a judicial order, by giving five Business Days' notice in writing to the other party.
- 14.3. Equiti will have the right at any time to terminate these terms with immediate

effect, for any of the reasons listed in this clause 14.3, without the need for a judicial order and without the need for written notice to the Introducing Broker:

- (a) if Equiti, in its sole discretion, is of the opinion that the Introducing Broker to be in breach of any provision of these terms;
- (b) if Equiti, in its sole discretion, considers that the Introducing Broker will, for any reason, cease to be able to satisfy its obligations under these terms or be prevented from satisfying its obligations;
- (c) Equiti, in its sole discretion, is of the opinion that the Introducing Broker is acting in bad faith or the Introducing Broker, or its activities, are adversely affecting, damaging or harmful to:
 - i. the reputation of Equiti;
 - ii. a Prospective Client; or
 - iii. a Client;
- (d) if the Introducing Broker defaults to a material extent in the performance of the provisions of another agreement with Equiti;
- (e) the Introducing Broker, as applicable:
 - i. has entered into liquidation or receivership, or a court order has been made to that effect; or
 - ii. is insolvent and unable to pay its debts as they fall due.

- 14.4. Upon the termination of these terms for any reason whatsoever, the Portal Access and any other access granted by Equiti to the Introducing Broker, for the purpose of the Services, will be revoked.
- 14.5. The termination of these terms, in accordance with the provisions herein, is without prejudice to any of the rights and obligations of the parties under these terms existing immediately prior to the termination date.
- 14.6. Clauses 7, 8, 13, 21, 22, and 23 will survive the termination date and continue

to apply notwithstanding the termination of these terms.

15. Set off

Without prejudice to any other rights to which Equiti may be entitled, Equiti may at any time and without notice to the Introducing Broker set-off any amount (whether actual or contingent, present or future and whether arising under these terms or otherwise) owed by the Introducing Broker to Equiti against any amount (whether actual or contingent, present or future and whether arising under these terms or otherwise) owed by Equiti to the Introducing Broker. For these purposes, Equiti may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained.

16. Amendments

We may amend these Terms at our sole discretion, by posting the amended and restated Terms on our Website. We may notify you in writing of such amendments. The amendment to the Terms will be deemed effective and accepted by you within five Business Days of posting on our Website, unless you choose to terminate these terms.

17. Assignment

17.1. Equiti may without the prior written consent of the Introducing Broker assign, transfer, sub-contract in whole or in part any rights under these terms, to an Affiliate of Equiti.

17.2. The Introducing Broker may not without the prior written consent of the Equiti assign, transfer, sub-contract whole or in part any right under these terms, to a third party.

18. No agency, partnership or employment relationship

18.1. Nothing in these terms is intended, or will be deemed, to constitute a party the agent, employee or partner of the other party or authorise a party to make or enter into any commitments for or on behalf of the other party.

18.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19. Entire agreement

These terms constitute the entire agreement and understanding between the parties relating to its subject matter and supersede previous agreements, arrangements or understandings (whether written or oral) between the parties relating to such subject matter.

20. Force Majeure

Equiti will not be liable to the Introducing Broker for any failure, hindrance or delay in performing its obligations under these terms where such failure, hindrance or delay arises directly or indirectly from circumstances outside Equiti's control. Such force majeure events will include, any technical difficulties such as telecommunications or computer failures or disruptions, non-availability of Equiti's technical services, failure of any exchange, clearing house or settlement system, declared or imminent war, terrorism, civil unrest, catastrophes of nature, strikes, lock-outs, boycotts or blockades including cases where only part of the parties' functions are affected by such events.

21. General

21.1. These terms may be provided to you in a language other than English. In case of any inconsistency between the non-English and English version of these terms, the English version shall prevail.

21.2. The rights and remedies provided in these terms are cumulative and not exclusive of any rights or remedies provided by law.

21.3. Notwithstanding that any provision of these terms may prove to be illegal or unenforceable, the remaining provisions of these terms will continue in full force and effect.

21.4. These terms are not exclusive, and Equiti retains the right to enter into similar agreements with other introducing brokers at any time.

22. Notices

22.1. All notices required to be given or information supplied by either of the parties to the other pursuant to the provisions of these terms must be in writing and must be sent either:

- (a) by hand with a copy sent by registered post;
- (b) by registered post;
- (c) by email; or
- (d) through the Portal,

in each case, to the address or email address given in these terms for the purpose and marked for the attention of the person so given, or to such other address or email address as may from time to time be notified in writing by either of the parties to the others.

In the case of service on Equiti to:

12th Floor, Tower 2, Delta Corner Towers, Waiyaki Way, Westlands, Nairobi, Kenya

Email address:
legal@equiti.com

or such other address as communicated by Equiti to the Introducing Broker from time-to-time.

In the case of service on the Introducing Broker to:

Such person, at such address, and for the attention of and to the email address of such person as registered on the Introducing Broker's Account.

22.2. A notice given under these terms will be deemed to have been received:

- (a) delivered by hand, upon delivery to the address referred to in clause 22.1;
- (b) if sent by registered post, seven Business Days after the date it is posted; and
- (c) if sent by email or through the Portal, when confirmation of its delivery has been recorded by the sender's computer.

23. Governing law and jurisdiction

These terms, and any non-contractual rights and obligations arising out of or in connection with them, will be governed by, construed, interpreted and applied in accordance with the laws of Kenya. Any dispute arising out of or in connection with these terms including any dispute regarding the existence, formation, performance, interpretation, nullification, termination or invalidation of these terms, will be referred to and finally resolved by the courts of Nairobi.

24. Definitions and interpretation

24.1. Definitions

In these terms, unless the context otherwise requires, the following definitions apply:

Account means a Client's trading account with Equiti as is subject to the General Terms and Conditions;

Affiliate means, in relation to a person, another person that directly or indirectly owns or controls, is directly or indirectly owned or controlled by, or is directly or indirectly under common ownership or control with such person;

Applicable Law means:

- (a) means all laws, decrees, directives, orders, regulations, circulars or rules in force from time to time in Kenya;
- (b) the Regulatory Rules;
- (c) all applicable anti-money laundering legislation and regulation; and
- (d) all other applicable laws, rules, procedures, guidance and regulations (including accounting rules and anti-money laundering/sanctions legislation, directives or circulars) and agreements enacted, implemented or entered into by with, or between, any governmental authority, in each case as determined by Equiti from time to time.

Business Day means a day, when banks are open for business, on the same day, in the jurisdiction of incorporation or establishment of Equiti;

Confidential Information means (without limitation) the existence and contents of these terms, the transactions conducted under these terms, including the Services, any audits, Equiti's IP and any other information which a reasonable businessperson would regard as confidential including information relating to the parties, an Affiliate, a Client or Prospective Client;

Client means an Existing Client or an Introduced Client;

Equiti's IP means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered, which belongs to Equiti. For the avoidance of doubt, this includes, without limitation, all intellectual property developed or created by either party in connection with these terms;

Existing Client means a person holding an Account and which is not an Introduced Client;

General Terms and Conditions means one or more agreements entered into between a Client and Equiti setting out, among others things, the terms pursuant to which a Client is granted access to and permitted to utilise the Platform, and will be deemed to include any addendums, schedules and risk disclosure notice, accessible through Equiti's website;

Introduced Client means a Prospective Client that has satisfied the eligibility criteria set out in clause 3.1;

KYC and CDD means such know your customer and customer due diligence identification and verification information and documentation as Equiti may require in respect of Clients from time to time;

Platform means the electronic trading platform, such as MT4, MT5 and/or the Equiti Trading App, that Equiti may use from time to time for the provision of its services;

Portal means a messaging portal facilitated through the Website and accessible through an Account enabling instantaneous communication between a person with access to an Account and Equiti;

Portal Access has the meaning ascribed to it in clause 2;

Promotional Material means any verbal, written, visual, or audio communication or representation, directly or indirectly relating to the Platform or Equiti's business, directed at any person, including Clients or Prospective Clients;

Prospective Client means a person that is not a Client;

Regulatory Rules means the Capital Markets Authority rules and guidance, as amended from time to time;

Remuneration is detailed in Schedule 1;

Services has the meaning ascribed to it in clause 1;

Transaction means a financial product transaction entered into or executed by or on behalf of a Client in accordance with the General Terms and Conditions;

VAT means value added tax; and

Website means the internet domain <https://www.fxpesa.com/ke-en> and any sub-domains.

24.2. Interpretation

Unless the context otherwise requires, references to:

- (a) month, monthly, year and yearly and any other references in time will be construed by reference to the Gregorian calendar;
- (b) writing or written includes any mode of representing or reproducing words in a legible and

- non-transitory form including documents and information sent by email;
- (c) duly authorised representative means a person that is authorised by a party to act for, in the name of and on behalf of, that party for a specific purpose, where such authorisation is valid for all relevant purposes (including as evidence before a court) under the laws applicable to the party granting such authority;
- (d) words in the singular include the plural and vice versa;
- (e) any phrase introduced by the term including, include, in particular or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term;
- (f) persons include individuals, firms, partnerships, limited liability partnerships, companies, bodies corporate, corporations, unincorporated associations, governments, authorities, agencies and trusts (in each case, whether or not having separate legal personality);
- (g) Equiti includes its Affiliates, its employees, directors or agents, as the case may be;
- (h) clauses are to clauses of these terms;
- (i) the Background and any Schedules attached to these term and conditions (including their respective attachments, if any) form an integral part thereof;
- (j) Clause headings are included for ease of reference only and will not affect the interpretation of these terms;
- (k) a statute or statutory provision will include all sub-ordinate legislation made from time to time under that statute or statutory provision; and
- (l) a statute or statutory provision is a reference to it as amended or
- extended from time to time, or as replaced with equivalent or similar provisions.

Schedule 1
(the Remuneration)

1. Equiti will compensate the Introducing Broker for the Services. Subject to paragraph 2 below, details of the Remuneration will be communicated to the Introducing Broker in writing.
2. The Remuneration may comprise, at Equiti's sole discretion, of one or more of the following:
 - (a) a part or the whole of the spread applied to a financial product quoted on the Platform and executed by, or on behalf of, Introduced Clients; and/or
 - (b) a part or the whole of the commission applied to a financial product quoted on the Platform and executed by, or on behalf of, Introduced Clients.
3. Equiti, at its sole discretion, reserves the right to refuse compensating the Introducing Broker with the Remuneration if the Introducing Broker is in breach of these terms.
4. Equiti reserves the right, to, at its sole discretion, amend this Schedule, and the Remuneration, without prior notice to or consent of the Introducing Broker, provided that Equiti will notify the Introducing Broker within fifteen Business Days of such amendment.
5. Equiti will not be liable to compensate the Introducing Broker for any fee arrangements agreed between the Introducing Broker and a Client, including in the event a Client does not remunerate the Introducing Broker in accordance with such fee arrangements agreed between the Introducing Broker and a Client.
6. Where an Introduced Client does not have a verified Account (i.e. the Introduced Client has not yet provided KYC and CDD documents), payment of the Remuneration applicable to such Introduced Client will be conditional upon that Introduced Client's Account becoming verified. For the avoidance of doubt, and while the applicable Remuneration may appear in the Introducing Broker's Portal, such Remuneration will not be payable until the Introduced Client's Account becomes verified.