

Approved by  
Kimbo LLC Director  
*(signature)* O.V. Volkov  
*July 16, 2020*

Round seal affixed: Kimbo \* Limited Liability Com-  
pany \* Minsk \* Republic of Belarus

**Agreement on the Performance of Transactions with Non-Deliverable OTC Financial Instruments**

**Minsk, 2020**

## **INTRODUCTION**

This Client Agreement (“Agreement”), including all the Appendices, as amended, is a document governing relations between the Client (also referred to as the “Client”, “your” and “you”, as the case may be) and Kimbo LLC (also referred to as “Kimbo”, the “Forex Company”, “we”, “us” and “our”, as the case may be) in respect of services provided by us.

“Kimbo” is a limited liability company registered in the Republic of Belarus under the registration number 193295922 at the address: 69a-2 Minskaya str., office 34, Kolodischi, Kolodischi R/C, 223050, Minsk Region, Republic of Belarus.

Kimbo LLC is entered on the Register of Forex Companies which is confirmed by Certificate of Inclusion on the Register of Forex Companies of 11.03.2020 No. 21 issued by the National Bank of the Republic of Belarus.

The Agreement available at fxpn.by is a public offer which shall be treated as an offer of the Forex Company to any fully legally capable person (hereinafter – the “Client”) to enter into the Agreement on the Performance of Transactions with Non-Deliverable OTC Financial Instruments (hereinafter – the “Agreement”) on the following terms and conditions. The Agreement shall be considered concluded at the time of acceptance by the Client of this public offer. Acceptance of this public offer shall mean the performance of all the following actions in the aggregate by the Client: registration at the Forex Company’s website in the Internet global computer network resulting in the formation of the Client’s Personal Virtual Cabinet; familiarization with and acceptance of the terms and conditions of this Agreement by checking the appropriate box during completion and sending by the Client of his/her personal and contact data in the Client’s Personal Virtual Cabinet on the Forex Company’s website in the Internet global computer network; familiarization with and acceptance of the content of the Terms and Conditions of Transactions with Non-Deliverable OTC Financial Instruments (hereinafter – the “Terms and Conditions of Transactions”), the Policy for Giving, Processing and Execution of Client Orders for Underlying Asset Price Fixing in Transactions with Non-Deliverable Over-the-Counter Financial Instruments (hereinafter – the Policy) and other legal documents not forming a part of this Agreement:

- Conflict of Interest Policy setting forth the rules of solving of any conflict of interest for fair work with the Client.
- Notice of Compensation to the Investors containing detailed information on mechanisms of compensation paying to the investors for the protection of our clients’ funds;
- Complaint Procedures explaining how the Client’s complaints are addressed;
- Privacy Policy explaining how the information provided by the Client is used by the Forex Company.
- different instructions, manuals and case examples.

In the case margin security is deposited before identification and verification, the Client’s funds will be held in waiting mode. The margin security will be reflected by the Client’s unique code (account) upon successful completion of identification and verification of the Client with a notice by email.

## **1. SUBJECT MATTER OF THE AGREEMENT**

1.1. The Forex Company undertakes to execute, on its own behalf and at its own expense, the transactions with non-deliverable OTC financial instruments at OTC Forex market (hereinafter – the “Transactions”) initiated by the Client via the Internet global computer network.

1.2. The Client undertakes to initiate the Transactions by giving an order for the underlying asset price fixing; pay a commission to the Forex Company, and perform other obligations set forth by

the Agreement. Kimbo offers to the Client a range of financial instruments specifications of which are available at our website fxpn.by.

1.3. As security for the performance of the obligations hereunder, the Client shall transfer funds in the foreign currency to the Forex Company's bank account (margin security) to secure opening and (or) and maintenance of his/her opened positions, including payment of commission to the Forex Company, repayment of negative financial results of the executed Transactions, payment of punitive sanctions, indemnification of the Forex Company for losses and performance of other obligations set forth by the Agreement.

1.4. No interest shall be accrued to the balance of funds deposited by the Client as margin security.

1.5. The Transactions provided for by this Agreement may be executed using leverage.

1.6. The Client shall pay a commission to the Forex Company for execution of the Transactions. List of types of commission for execution of the Transactions is given in the Agreement and the Terms and Conditions of Transactions.

1.7. Income tax on the income received by the Client under this Agreement shall be paid according to the law of the Republic of Belarus.

1.8. Information on the prices for underlying assets shall be received by the Client automatically via the Forex Terminal based on the data provided by the Forex Company's liquidity provider.

1.9. In respect of transactions with non-deliverable OTC financial instruments, the Forex Company performs execution only, without any trust management and recommendations to the Client. Information and analytical materials posted at the Forex Company's official website or otherwise provided to the Clients are not recommendations in respect of any possible decisions of the Client. The Client acts voluntarily, in his/her own interests and at his/her own discretion, and is fully liable for all transactions executed by him/her and his/her investment decisions.

1.10. We show all our obligations in the section "Legal Documents" and perform them, unless they are in conflict with the law of the Republic of Belarus.

## **2. RULES OF MARGIN SECURITY DEPOSITING BY THE CLIENT, ACCOUNTING THEREOF AND RETURN TO THE CLIENT. RULES AND TIMES OF SETTLEMENTS BETWEEN THE CLIENT AND THE FOREX COMPANY.**

2.1. The Client shall deposit margin security to the Forex Company's bank account by bank transfer, using a bank payment card or via payment services for which the Forex Company has respective effective agreements. Detailed instructions on transfer of funds, as well as a list of methods by which the Client may deposit margin security, can be found in the Client's Personal Virtual Cabinet.

2.2. Margin security may be accounted in the Forex Terminal in USD, Euro and pounds sterling, depending on the Client's account currency.

2.3. Accounting of margin security, including change of its size (balance) as a result of executed Transactions, shall be performed in the Forex Terminal by unique code (the Client's account number). The amount of margin security shall be increased by the amount of accrued positive price difference from the executed transactions but not received by the Client.

1.4. The minimum amount of funds initially deposited by the Client as margin security is established depending on the account type and pricing plan applied to it, and account currency, and can be found at the Forex Company's website. The times of accrual of margin security to the Forex Company's bank account and respective change of the Client's balance in the Forex Terminal depend on method of funds depositing, and can be found in the Client's Personal Virtual Cabinet.

1.5. Return of free margin security, not used for opening and (or) maintenance of open positions, shall be performed against the Client's written application, in which case applications (requests) sent via the Client's Personal Virtual Cabinet shall be deemed made in the

written form. Return of margin security results in respective reduction of the Client's account balance in the Forex Terminal.

2.6. Margin security shall be returned by transfer of funds to the Client's bank account or to the bank payment card details provided by the Client in the written application for the return of margin security. The bank account to which the funds will be returned shall be opened exclusively in the name of the Client (bank card shall be issued in the name of the Client). Transfer of funds in favor of third persons is not permitted.

1.7. The Forex Company shall pay funds to the Client as specified in clause 2.6 hereof within 5 (five) banking days from the date of the Client's respective application.

1.8. In the event the amount claimed by the Client for the return is used in maintaining of the Client's open positions, the return application shall be rejected, and the Client may either close open positions or apply for the return of the amount of funds available for the return.

1.9. Information on depositing and withdrawal of funds is displayed in the Forex Terminal and the Client's Personal Virtual Cabinet.

1.10. All expenses (commissions, bank fees, charges, payments and other expenses) related to depositing and return of margin security shall be paid by the Client, unless the Forex Company elects at its own discretion to pay such expenses fully or partially. Please note that such opportunity is a right, not an obligation of the Forex Company.

1.11. For more detailed information on the rules of depositing and withdrawal of funds, as well as criteria of suspiciousness and signs of doubtful financial transactions, see the Terms and Conditions of Transactions.

### **3. LEVERAGE DETERMINATION PROCEDURE**

3.1. Leverage – a ratio of the amount specified in the Client's order for the underlying asset price fixing during the position opening to the amount of margin security – is set in the scale of 1:1 to 1:500 depending on the category of the Client, financial instrument type, and size of balance. Maximum size of leverage for Clients: category "client" - 1:100; category "qualified client" - 1:200; category "professional client" - 1:500.

3.2. At the time of this Agreement conclusion any Client is classified by default as "client" as set out in the Terms and Conditions. The Client may apply to the Forex Company in free form for a transfer to one of the following categories: "professional client" or "qualified client". The rules of such transfers are set forth by the Terms and Conditions.

3.3. For individual financial instruments a special leverage not exceeding the maximum value may be set for each category of the Clients.

3.4. The Forex Company may change the size of leverage unilaterally without prior notice to the Client.

3.5. The Forex Company may change the size of leverage in respect of both already open positions and newly opened ones.

### **4. RULES OF CALCULATION OF THE FOREX COMPANY'S REMUNERATION. ITS PAYMENT PROCEDURE AND TERMS.**

1.1. For the Transactions executed by the Client the Forex Company may charge the following types of remuneration from the Clients: commission, swap and spread. The remuneration shall be paid to the Forex Company at the cost of the Client's margin security.

1.2. Commission.

1.1.1. The commission calculation procedure depends on the type of underlying asset and the Client's Account. The commission may be set as a fixed amount in the Client's account currency as percentage of the position size (in lots); in points as percentage of the position size in lots; as percentage of the amount of the position being opened; or as a fixed amount

for the transaction. The position amount or size (number of lots) shall be determined by the Client at the time of giving the order for the underlying asset price fixing.

- 1.1.2. The size of commission and its calculation rules depending on the type of underlying asset and (or) the Client's shall be posted at the Forex Company's website fxpn.by in the Internet global computer network. Detailed commission calculation procedure is given in the Terms and Conditions of Transactions.
- 1.1.3. The Client agrees that the Forex Company may, at its own discretion and without prior notice, change the size of commission by posting the changed size of commission on its website fxpn.by in the Internet global computer network. New size of commission shall be applied upon their posting on the Forex Company's website and only in respect of newly opened positions of the Client. The Forex Company shall notify the Client of any changes in the rules of calculation of the commission not later than 10 calendar days before the effective date of such changes by posting respective information on its website fxpn.by in the Internet global computer network.
- 1.1.4. The amount of commission shall be accrued by the Forex Company and paid by the Client at the moment of the position opening (closing), unless other procedure of commission accrual and payment is established due to functional peculiarities of the Forex Terminal. For the transactions with certain types of underlying assets an additional commission may be charged. Such commission shall be calculated upon the position closing and written off from the Client's Account not later than the following working day after the transaction.
- 1.1.5. If the commission is charged in the main foreign currency of the underlying asset, it shall be converted into the foreign currency of the Client's Account at the current rates established at the international exchange market.

#### 4.3. Swap.

4.3.1. Swap is a payment for the open position rollover to the following operation day. Swap may be both positive and negative. Swap is established separately for long and short positions. The swap size depends on multiple factors the main of which are: current market interest rates for credits of central banks in national currencies, price dynamics of the underlying asset the Transaction is executed with, state of forward market, and swap size established by liquidity provider. The Forex Company may change the size of swap and its calculation procedure unilaterally taking into account the current saturation at the market, liquidity provider's swap size, the Forex Company's risk management policy, etc. Depending on the underlying asset, swap at triple rate shall be calculated overnight Wednesday into Thursday morning (normally when the underlying asset is foreign currency and precious metals) and Friday into Saturday morning. In the rest of cases, when open positions are rolled over to the following operation day, swap is charged as for one day.

4.3.2. Swap is established as percentage of the open position amount or in points. The position amount is determined by the Client at the time of giving the order for the underlying asset price fixing.

4.3.3. Swap size, calculation method and the day of calculation at triple rate depend on the type of underlying asset in respect of which the position is open; are set on the Forex Company's server; are specified in the Forex Terminal; and are posted on the Forex Company's website.

4.3.4. The amount of swap shall be calculated at the moment of open position rollover to the following trading day, but it shall be made due to and paid by the Client at the moment of position closing, unless other procedure of swap accrual and payment is established due to functional peculiarities of the Forex Terminal.

#### 1.4. Spread.

1.1.1. Spread is a difference between the underlying asset price for the transaction with positive financial result achieved through the positive change (increase) of the underlying asset price (Ask price) and the underlying asset price for the transaction with positive financial

result achieved through the negative change (decrease) of the underlying asset price (Bid price) at the same moment.

- 1.1.2. Spread may be of two types: fixed and floating.
- 1.1.3. The type of spread used in Transactions depends on the type of underlying asset and (or) category of the Client, or shall be selected by the Client based on the price plan before start of the Transactions, when such selection option is provided by the Forex Company. Information on types of spread applied to specific type of underlying asset, category of the Client and (or) price plan shall be posted on Forex Company's website fxpn.by in the Internet global computer network.
- 1.1.4. The size of spread is displayed in the Forex Terminal when order is given for the underlying asset price fixing at the moment of position opening and is taken into account when calculating the financial result from the executed Transaction at the moment of position closing.
- 1.1.5. The Client agrees that the Forex Company may, at its own discretion and without prior notice, change the type and size of spread applied to specific type of underlying asset and (or) price plan of the Client by posting respective information on the Forex Company's website (spread type) and (or) in the Forex Terminal (spread type and size). Changed types and sizes of spread shall be applied upon their posting in the Forex Terminal and (or) on the Forex Company's website and only in respect of newly opened positions of Clients.

## **5. RULES OF INITIATING OF TRANSACTIONS BY THE CLIENT. REPORTING PROCEDURE AND TIME**

- 5.1. The Client shall initiate transactions by means of the Forex Terminal.
- 5.2. Communication between the Client and the Forex Company with the aim to agree the material conditions of Transactions in the Forex Terminal takes place in the form of requests, suggestions and/or confirmations sent by the Client, and replies to requests, as well as confirmations, reports and abstracts sent by the Forex Company. The documents and messages specified in this clause shall be formed, delivered and logged with the help of the Forex Terminal.
- 5.3. Reports on the transactions executed by the Client, expenses and earnings shall be provided to the Client in the Forex Terminal or via the Personal Cabinet on the day of request for such report by the Client.

## **6. RULES OF CLOSING A POSITION BY THE FOREX COMPANY WHEN THE CLIENT'S MARGIN SECURITY IS INSUFFICIENT TO MAINTAIN AN OPEN POSITION**

- 6.1. The Forex Company may forcibly close certain or all positions of the Client, without the Client's consent and without any prior notice to the Client, when Margin Security Level has dropped to or become lower than the minimum value (Stop-out level) established by the Forex Company. In this case position closing is performed by the Forex Company on its own without receipt of the Client's order for the underlying asset price fixing. Margin Security Level (pledge level) is a ratio of the current amount of funds of the Client, being understood as a sum of the Client's margin security and the current financial result of the open positions (in which case the current financial result is summed up with the sign "-"), to the size of margin security used for open positions.
- 6.2. Stop-out levels shall be established by the Forex Company at its own discretion and may be altered from time to time. Information on the current Stop-out levels is available to the Client at the Forex Company's website fxpn.by in the Internet global computer network.
- 6.3. Forcible closing of the Client's position by the Forex Company shall be accompanied by respective note in the Forex Terminal in respect of this position and the comment "so" with an indication of values of the Margin Level estimated parameters.
- 6.4. When upon reaching the Stop-out level the Client has more than one open position, the first position to be closed is the one with the largest amount of accrued negative difference of the

underlying asset price at the current moment. If upon forcible closing of the Client's position by the Forex Company the Margin Level does not exceed the Stop-out level, forcible closing of the next open position of the Client shall take place according to the rules set out in this clause.

6.5. Information on other cases of possible forcible closing of the Client's positions is given in other sections of the Agreement, as well as in the Terms and Conditions of Transactions available at the Forex Company's website [fxpn.by](http://fxpn.by) in the Internet global computer network.

## **7. RIGHTS AND OBLIGATIONS OF THE PARTIES**

7.1. The Forex Company is obliged to:

- 1.1.1. execute the Client's orders in the manner and under the terms and conditions set forth by the Agreement, the Terms and Conditions of Transactions, the Policy and other legal documents of the Forex Company;
- 1.1.2. accept the margin security to its bank account and transfer the accepted amount of margin security to the Client's account to the extent and under the terms and conditions set forth by the Agreement, the Terms and Conditions of Transactions and other regulatory documents of the Forex Company;
- 1.1.3. return the margin security at the request of the Client according to the rules set forth by this Agreement, provided that the Client has no outstanding liabilities to the Forex Company, as well as when such funds are not required to maintain open positions of the Client;
- 1.1.4. use, for the purposes of this Agreement, software that is tested and approved by the National Forex Center as meeting the requirements to software established by the National Bank of the Republic of Belarus;
- 1.1.5. post information about conditions and manner of execution of Transactions and about the size of remuneration on the Forex Company's website;
- 1.1.6. provide the Client with reports on the history of executed Transactions in the electronic form;
- 1.1.7. keep the information which has become known to the Forex Company during performance of this Agreement confidential;
- 1.1.8. display the text of the Terms and Conditions of Transactions in the place available to the Client for review and familiarization, as well as at its website.

7.2. The Client is obliged to:

- 7.2.1. familiarize with the provisions of the Agreement, the Terms and Conditions of Transactions, the Policy and the Notice of Risks and follow the changes published at the Forex Company's website;
- 7.2.2. take into account possible risks that may occur during Transactions for the purposes of efficient activity at OTC Forex market;
- 7.2.3. give the Forex Company at least 10-days' notice of changes in any information previously provided to the Forex Company during registration (contact details, personal ID document details, etc.);
- 7.2.4. transfer funds to the Forex Company's account as a security of own obligations under this Agreement;
- 7.2.5. pay remuneration to the Forex Company as set forth by this Agreement;
- 7.2.6. carry out a regular check of reports, history of Transactions and relevant documentation available online, and promptly notify the Forex Company of any errors or discrepancies. Unless such notice is given within 48 hours after the Transaction, such Transactions shall be deemed irrevocably and finally accepted by the Client with all of its conditions.

7.3. The Forex Company has the right to:

- 7.3.1. refuse to execute separate Transactions for the Client if they fail to meet the provisions of the Terms and Conditions and the Policy;

7.3.2. postpone execution, correct or reject the request for margin security return in the event that the Client has open positions (open position), or as otherwise provided for by law of the Republic of Belarus;

7.3.3. control and modify, at its own discretion, from time to time, the Forex Terminal functionality, configuration, interface and content;

7.3.4. temporarily suspend the provision of services under this Agreement due to force majeure circumstances, technical failures, and as otherwise determined by the Forex Company at its own discretion, when such actions by the Forex Company are necessary and (or) preferable, including where provided for by law of the Republic of Belarus;

7.3.5. monitor the Transactions at the Client's Accounts, as well as suspend the provision of services under this Agreement pursuant to the Law of the Republic of Belarus of June 30, 2014 No. 165-Z *On Measures to Prevent Money Laundering, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction*;

7.3.6. provide information on the Client (including the Client's personal data) to authorized bodies and persons where and as provided for by law;

7.3.7. request the Client to provide information and documents necessary and sufficient for proper identification of the Client;

7.3.8. cancel or revise the results of the Client's executed Transaction(s) when the Transaction is executed at non-market price (quotation) of the underlying asset;

7.3.9. refuse to execute the Client's orders, at any time and unilaterally, by reason of the following circumstances: breach by the Client of his/her obligations hereunder; availability of information on the Client's attempts of unlawful use of software provided by the Forex Company; the Client's failure to comply with the current law; other circumstances under which the Transactions may result in additional losses for the Client and the Forex Company.

7.4. The Client has the right to:

7.4.1. refill the account as provided for by the Agreement and the Terms and Conditions;

7.4.2. use free funds available at his/her investment account, at any time and at his/her own discretion, as set out in the Agreement and the Terms and Conditions;

7.4.3. receive reports on the Transactions as set out in the Agreement and the Terms and Conditions;

7.4.4. contact the Forex Company with requests and suggestions;

7.4.5. appeal the Forex Company's actions in the prescribed manner.

## **8. CONFIDENTIALITY**

8.1. The Forex Company warrants that all personal information received from the Client, information concerning the Client's account, information providing access to this account, such as login and password, as well as other access and authorization codes necessary for depositing/withdrawal of funds to/from the investment account, for execution of operations with non-delivery OTC financial instruments or for acquisition of information about the account, is strictly confidential and is not subject to unauthorized disclosure to any third party, except as provided for by law of the Republic of Belarus.

8.2. The Client agrees not to disclose to third parties personal data providing access to the Forex Terminal and the account, as well as other access and authorization codes necessary for depositing/withdrawal of funds to/from the account.

8.3. The Client acknowledges that he/she may not be requested to partially or fully disclose confidential information. The Client is also aware that violation of confidentiality on his/her part may lead to unauthorized access to his/her account and, as a consequence, possible financial losses.

8.4. The Client acknowledges and agrees that the Forex Company is not responsible for the Client's financial losses resulting from disclosing of confidential information by the Client. The Forex



Company strongly recommends the Client to change the received access passwords from the Account in the Forex Terminal during the first logging in to the Forex Terminal.

8.5. The Client agrees to notify the Forex Company promptly after he/she has become aware or suspects that his/her Access Data could become known to an unauthorized person. The Forex Company shall take measures to prevent further use of such Access Data and issue replacement Access Data. In this case, the Client will be unable to execute Transactions and send requests until he/she receives new Access Data.

8.6. The Client acknowledges that the Forex Company is not responsible for access of unauthorized third persons to the Client's personal information, including his/her email addresses, electronic correspondence, personal data and Access Data, when such information is transmitted between the parties or a party and unauthorized third persons via the Internet global computer network, other means of network communication, SMS, telephone or any other electronic means.

8.7. If the Forex Company finds out that the Client's Access Data might have been received by unauthorized third persons, the Forex Company may deactivate the Client's Account in the Forex Terminal and (or) a login record of the Client in the Personal Cabinet. In such a case, the Forex Company is not liable to the Client and the third persons for possible losses caused by such actions of the Forex Company, since in this case such actions are performed under extreme necessity conditions.

8.8. The Client agrees that the Forex Company may receive information about the Client both directly from the Client him-/herself while filling in various applications, checklists, questionnaires, electronic registration cards and other documents and from the third persons lawfully providing such data.

8.9. The Forex Company may disclose information about the Client (including confidential information, including without limitation personal data) in the following cases:

8.9.1. if such disclosure arises immediately from statutory requirements;

8.9.2. if so required by criminal prosecution authorities or a court in connection with a pre-trial investigation, or court proceedings;

8.9.3. if so required by the National Bank of the Republic of Belarus, tax authorities, other government authority or other organization authorized to supervise the activity of the Forex Company and (or) the Client;

8.9.4. to competent authorities (organizations) in relation to investigation and (or) prevention of money laundering, terrorist financing and financing of proliferation of weapons of mass destruction, possible fraud or other illegal activity.

## **9. RISKS. RESPONSIBILITY OF THE PARTIES**

9.1. Possibility of profit gaining from the Transactions at OTC Forex market is inextricably linked with a risk of loss, so the Forex Company is not responsible for: losses incurred by the Client due to the use/alteration of leverage and (or) caused by alteration of prices for underlying assets unfavorable to the Client; for forcible closing of the Client's position caused by reaching of the minimum value (Stop-out Level) of Margin Security Level; the Client's losses caused by insufficient level of margin security in respect of his/her open positions; absence of liquidity at OTC Forex market at any time, i. e. possibility to accept for execution and execute the Client's orders for the underlying asset price fixing; unavailability of the underlying asset prices at any time; the Client's losses caused by decreasing or absence of liquidity, for which reason the Client was unable to close the position and had to accept the price considerably different from the position closing price desired by the Client; loss incurred by the Client due to execution of order with a certain price slippage; the Client's losses caused by wild swing of the market, as well as for predictions made by the Client without regard to market volatility; moral harm and (or) any losses, including, in particular, any loss of profit which may directly or indirectly result from the use of previous strategies, tactics, methods or from relying on the information about the results of Transactions in the

past and prediction of the same results by the Client in the future; the Client's losses resulting from hacker attacks, accident (failure) with computer networks, power lines or electric communication system used immediately for agreement of material conditions of Transactions or for support of the Forex Company's procedures which occurred not through the fault of the Forex Company; communication equipment failure, disconnection of the Client from the Forex Terminal, hindrances or delays during execution of Transaction by the Client via the Internet global computer network; outcomes of Transactions executed by the Client's decision based on the analytical materials provided by the Forex Company and/or third persons; loss incurred by the Client as a consequence of incorrect interpretation of information posted on the Forex Company's website in the Internet global computer network; loss caused to the Client by the use of the Client's login and password by third persons to whom such accounting information was provided by the Client, or who received it in an illegal/fraudulent manner; losses incurred by the Client resulting from exercise by the Forex Company of its rights under this Contract.

9.2. The parties shall be relieved from responsibility for non-fulfillment (improper fulfillment) of their respective obligations hereunder, including an obligation to reimburse possible losses caused by such non-fulfillment (improper fulfillment), resulting from the circumstances beyond the parties' reasonable control (force majeure circumstances) thought of as any action, event or phenomenon outside the party's control, i. e. which the party could neither foresee nor prevent, including without limitation: strikes, mass disturbances or civil unrest, terrorist acts, wars, acts of God, accidents, fires, floods, storms, hurricanes, power interruptions, as well as events listed in clause 9.3 hereof. The Party prevented from fulfillment or proper fulfillment of obligations under this Agreement by circumstances mentioned in this clause shall notify the other party of such circumstances within 5 (five) calendar days from the moment of their occurrence. In the event of force majeure circumstances (including when only the Client refers to them), the Forex Company may, without giving a prior notice to the Client, take any or all of the following actions: increase margin security; reduce leverage; close any or all open positions of the Clients at such a price as the Forex Company reasonably thinks fair; increase spreads; suspend the work of the Forex Terminal and its mobile version or limit functionality of the Forex Terminal and its mobile version providing to the Client only an opportunity to close open positions without providing a right to correct them or open new positions; refuse to accept and (or) execute the Client's orders; deactivate the Client's account; suspend one or more provisions of this Agreement as long as force majeure circumstances are in force; take any other actions (or abstain from any actions) if the Forex Company reasonably considers it to be expedient under the given circumstances.

9.3. The Forex Company is not responsible for non-fulfillment (improper fulfillment) of the obligations hereunder caused by one or more following events: breakdown of communication or other equipment or software failure, unless resulting from fraudulent or willful acts of the Forex Company; suspension of transactions at the market, liquidation or closing of any underlying asset market, or absence of any event upon which the Forex Company bases its prices of underlying assets, or introduction of restrictions or special or non-standard conditions of transactions at any underlying asset market; issuance by authorized government bodies, self-government organizations or other authorized organizations of acts (ordinances, prohibitions, etc.) suspending, prohibiting or preventing execution of the Client's orders during Transactions.

## **10. TERMS OF USE OF THE FOREX TERMINAL**

10.1. Subject to this Agreement, the Forex Company grants the Client a free-of-charge limited single-user license which is non-assignable, non-exclusive and fully revocable, for the use of the Forex Terminal for execution of Transactions. Within its activity, the Forex Company may use different types of Forex Terminals, including their mobile and web versions, and grant the right to use them to its Clients.

10.2. Except as expressly set out in the Agreement, the Forex Company may, at any time, suspend access of the Clients to the Forex Terminal and (or) the Forex Company's Server for the purposes of maintenance, troubleshooting and (or) software modification. Such actions shall be performed by the Forex Company exclusively to increase the quality of services or prevent or minimize possible losses for the Client, the Forex Company and (or) third persons. The Forex Company shall make every effort to carry out maintenance of the server only at non-operating time; however, it may derogate from this provision, if necessary.

10.3. The Client acknowledges and agrees that he/she is solely responsible for availability and operability maintenance of respective equipment required for the use of the Forex Terminal which includes at least a personal computer or a mobile phone or tablet (depending on the type and version of the Forex Terminal used) with access to the Internet global computer network (hereinafter in this section – the Internet) and fixed telephone network (for giving orders by phone). Access to the Internet is necessary in any case for execution of Transactions, so the Client shall take the necessary preliminary actions to setup his/her equipment to provide access to the Internet, as well as maintain the necessary balance on the personal account with the Client's Internet provider in order to prevent disconnection of the Client's equipment from the network due to insufficient balance. All expenses related to the Internet connection shall be the Client's sole responsibility. The Forex Company is not responsible for delays in the work of the Forex Terminal and (or) the Forex Company's website caused by incorrect configuration or misuse of the Client's hardware, or faults in the work of communication or other equipment of the Client and (or) the Client's Internet access provider, or failure in the software used by the Client and (or) the Client's Internet access provider.

10.4. The Client warrants that before the start of the Forex Terminal use he/she will install relevant software safeguards to provide safety and integrity of the data on his/her computer or mobile phone or tablet, and take other necessary measures to protect his/her operational system and other software from computer viruses or other similar malicious software, information or data which may potentially harm the Forex Terminal, the Forex Company's website, Server and other systems of the Forex Company. Further on, the Client undertakes to protect the Forex Company from any unlawful transmissions of computer viruses or other malicious data from his/her personal computer, mobile phone or tablet to the Forex Terminal, the Forex Company's website, Server and other systems of the Forex Company. The Forex Company will not be liable to the Client if his/her operational system and other software on personal computer, mobile phone or tablet damages, destroys and/or formats his/her reports on the Transactions and (or) other data about the Transactions.

## **11. PROHIBITED ACTIONS**

1.1. While working with the Forex Terminal and (or) the Forex Company's website, as well as while communicating with other systems of the Forex Company, the Client is strictly prohibited to carry out any of the below listed actions:

- 1.1.1. use any software to analyze operability (functionality) of the Forex Company's systems, including the Forex Terminal, Server and (or) website of the Forex Company with the aim to find drawbacks in such system and use such drawbacks for own purposes, including without lucrative interest, without prior written consent of the Forex Company;
- 1.1.2. pick up, trace, modify or damage any messages or other information to which he/she is not a recipient, except when such information is received due to technical failure of the Forex Company's system not through the Client's fault. In the latter case the Client shall immediately notify the Forex Company about this fact and remove the information received by error from all his/her data media where it could be saved, as well as from email archives;

- 1.1.3. use any virus software which may steal information, change its contents, or otherwise damage or remove information, as well as cause other harm to the Forex Terminal, Server, the Forex Company's website, and (or) other systems of the Forex Company;
- 1.1.4. carry out any actions which may disintegrate the Forex Company's computer systems, including the Forex Terminal, or make such system work with failures, or stop the work of such systems;
- 1.1.5. attempt to get access to and exercise unauthorized access to safety systems installed by the Forex Company, including to connection safety facilities used during the work of the Forex Company's Clients with the Forex Terminal, the Forex Company's website, and (or) other systems of the Forex Company;
- 11.1.6. carry out actions which may lead to an unauthorized access to the Forex Terminal and (or) its unauthorized use;
- 11.1.7. send mass requests to the Server which may cause delays in the time of execution thereof and (or) other delays in the Server operation.

## **12. CONSULTATIONS. INVESTMENT ADVICE**

12.1. The Client acknowledges and agrees that within this Agreement the Forex Company has no obligations to the Client to give him/her any advice or consultations in respect of the Client's transactions with non-deliverable OTC financial instruments, including in respect of selection of types of underlying assets, expected time of opening and (or) closing of positions, and use of this or that investment strategy. The Client shall decide on how to manage his/her account, as well as when and which orders to give to the Forex Company, at his/her sole discretion and under his/her sole responsibility.

12.2. The Forex Company may, from time to time and at its sole discretion, give information messages personally to the Client (or to the public) by posting them on its website in the Internet global computer network or in the Forex Terminal, or send market news, comments of specialists and other information by email or in some other way. At the same time, provision of such information will not be deemed a part of the Forex Company's services rendered to the Client, and in any case:

12.2.1. the Forex Company is not be responsible for the use of such information by the Clients during Transactions;

12.2.2. the Forex Company does not give any warranties as to accuracy, correctness or completeness of such information or as to financial or legal consequences of the use of such information during Transactions;

12.2.3. this information is provided only to help the Client make own investment decisions, and shall not be deemed a consultation by the Forex Company on investments or Transaction execution advice;

12.2.4. if such information is sent to a certain addressee or to a group of persons it is intended for, the Client agrees not to transfer such information further to any other third person;

12.2.5. the Forex Company shall not cause such information to be received by the Client by certain time and shall not warrant that the Client will receive such information at the same time as other client or any other persons;

12.2.6. market news, comments of specialists and other information provided or made public by the Forex Company may be altered, removed or withdrawn by the Forex Company at any time and without any notice.

## **13. PERSONAL DATA SAFETY. CONFIDENTIALITY**

13.1. The Client agrees to keep confidential and not disclose to anyone his/her personal data for the use in the Forex Terminal and (or) the Client's Personal Virtual Cabinet (Personal Cabinet), which, for the purposes of this Agreement, mean the Client's login (user name) in the Personal

Cabinet, the Client's unique code, as well as access passwords (hereinafter in this section collectively and individually referred to as the Access Data). The Forex Company strongly recommends the Client to change the received access passwords from the Account in the Forex Terminal during the first logging in to the Forex Terminal.

13.2. The Client shall not write his/her Access Data on paper, or keep them in unprotected files on personal computer, mobile phone or tablet. When the Client receives a written notice (including electronic) containing his/her Access Data, he/she memorize them and immediately destroy the notice.

13.3. The Client agrees to notify the Forex Company promptly after he/she has become aware or suspects that his/her Access Data could become known to an unauthorized person. The Forex Company shall take measures to prevent further use of such Access Data and issue replacement Access Data. In this case, the Client will be unable to execute Transactions and send requests until he/she receives new Access Data.

13.4 The Client agrees to cooperate with the Forex Company in any investigation it may initiate at any time to identify and (or) suppress illegal use of the Access Data.

13.5. The Client acknowledges that the Forex Company is not responsible for access of unauthorized third persons to the Client's personal information, including his/her email addresses, electronic correspondence, personal data and Access Data, when such information is transmitted between the parties or a party and unauthorized third persons via the Internet global computer network, other means of network communication, SMS, telephone or any other electronic means.

13.6. If the Forex Company finds out that the Client's Access Data might have been received by unauthorized third persons, the Forex Company may deactivate the Client's Account in the Forex Terminal and (or) a login record of the Client in the Personal Cabinet. In such a case, the Forex Company is not liable to the Client and the third persons for possible losses caused by such actions of the Forex Company, since in this case such actions are performed under extreme necessity conditions.

13.7. The Client agrees that the Forex Company may receive information about the Client both directly from the Client him-/herself while filling in various applications, checklists, questionnaires, electronic registration cards and other documents and from the third persons lawfully providing such data.

13.8. The Forex Company may disclose information about the Client (including confidential information, including without limitation personal data) in the following cases:

13.8.1. if such disclosure arises immediately from statutory requirements;

13.8.2. if so required by criminal prosecution authorities or a court in connection with a pre-trial investigation, or court proceedings;

13.8.3. if so required by the National Bank of the Republic of Belarus, tax authorities, other government authority or other organization authorized to supervise the activity of the Forex Company and (or) the Client;

13.8.4. to competent authorities (organizations) in relation to investigation and (or) prevention of money laundering, terrorist financing and financing of proliferation of weapons of mass destruction, possible fraud or other illegal activity;

13.8.5. if reasonably required for execution of Transactions by the Client or provision of auxiliary services by the Forex Company under this Agreement;

13.8.6. when the Forex Company examines the Client for presence of his/her personal data in respective databases of government authorities (agencies, bureaus, services), and other organizations collecting and providing information on persons to prevent money laundering, terrorist financing and financing of proliferation of weapons of mass destruction, combating fraud and other illegal activity;

13.8.7. to professional consultants of the Forex Company, including, in particular, auditors, lawyers, tax consultants, security specialists, provided that in each case respective professional consultant will be informed about confidential nature of the provided information and about necessity for such persons to respect confidentiality of the information received;

13.8.8. to third-party organizations providing services of formation, storage and (or) processing of databases (including in the electronic form), or accounting records maintenance to the Forex Company; postal services, message services and other similar services; mobile operators and other organizations engaged by the Forex Company for proper provision of services, exercise of its rights and fulfillment of obligations under the Agreement. In this case, information will be provided only to the extent required for the provision of respective services;

13.8.9. where it is necessary for the Forex Company to exercise or protect its legal rights and interests in court, arbitration, government authority or other organization;

13.8.10. at the Client's request or with his/her consent;

13.8.11. to its separate business units or other organizations affiliated with the Forex Company in a holding, or in respect of which the Forex Company is a subsidiary business unit;

13.8.12. about persons who are US tax residents, to tax authorities of the Republic of Belarus which, in their turn, will provide this information to IRS for compliance with the provisions of the Foreign Account Tax Compliance Act (FATCA) USA and respective Agreement between the Government of the Republic of Belarus and the US Government on improvement of compliance with international tax regulations and implementation of the US Foreign Account Tax Compliance Act.

13.9. The Forex Company may record telephone conversations between the Client and the Forex Company staff and store such records for an unlimited period of time. The specified records of conversations shall be exclusive property of the Forex Company and may be used by it as evidence of both facts of presence of such conversations and actions of Clients (for example, giving orders for the underlying asset price fixing in telephone mode).

13.10. The Forex Company shall keep record of its obligations to each client and store this information, including information containing the Client's personal data, for at least two years from the date of the parties' compliance with all their obligations hereunder.

## **14. TAXATION**

14.1. Investments in financial instruments may be subject to tax depending on jurisdiction of the country of the Client's residence. The Client shall seek independent taxation advice in his/her country of residence. The Forex Company does not give any advice to clients about taxation.

14.2. The Client acknowledges and agrees that the Forex Company may incur some costs due to payment of certain taxes for the Client (stamp tax, transfer tax or other taxes which may occur in relation to transfer of funds to the Client) and agrees that such taxes will be written off from the Client's Account.

14.3. In addition, depending on jurisdiction of the country of the Client's residence, transactions with non-delivery instruments may be subject to individual types of taxes. The Client agrees that such taxes will be written off from the Client's Account.

## **15. RULES OF DETERMINATION OF PRICES FOR UNDERLYING ASSETS**

15.1. The source of information for determination of quotations is information about quotations from the liquidity provider – Leverate Financial Services Ltd, Zavos City Center, 4th Floor 88 Ayias Fylaxeos St. Limassol 3025 P.O.B 56942, Limassol 3311, Cyprus

15.2. The Forex Company shall execute the Client's orders for the underlying asset price fixing during transactions with non-deliverable OTC financial instruments under the best terms and conditions for the Client at the current moment.

15.3. All quotations the Client receives via the terminal are indicative and show the best available Bid market price and best available Ask market price received from liquidity providers.

15.4. The Forex Company may delete the non-market quotation information from the server quotation base. Transactions made at non-market quotations shall be cancelled.

15.5. Upon receipt of quotations from the liquidity provider, the Forex Company may change the received quotations before provision thereof to the Client in the Forex Terminal by the amount of its remuneration (spread).

## **16. REPRESENTATIONS AND WARRANTIES**

16.1. The Client represents and warrants to the Forex Company that:

16.1.1. the Client is at least 18, or is recognized to be fully legally capable as prescribed by law before this age;

16.1.2. the Client is in his/her right senses, able to make own decisions and be responsible for them, not limited in legal capacity, or not recognized as legally incapable;

16.1.3. there are no restrictions, including those established by court or arising out of nationality, citizenship or religion of the Client, for participation of the Client in transactions with financial instruments;

16.1.4. all actions performed under the Agreement will not violate the laws applicable to the Client or the laws of jurisdiction where the Client lives (or is a resident of) or related to the funds used by the Client for execution of Transactions;

16.1.5. the Client does not act on behalf or to the benefit of a third person, and all Transactions will be executed solely on behalf and to the benefit of the Client. The Client may act on behalf and (or) to the benefit of a third person only when the Forex Company gives express written consent to it, and the Client, in his/her turn, provides all the necessary documents confirming his/her powers, as well as relevant information about the person on behalf and (or) to the benefit of which the Transactions will be executed under the Agreement;

16.1.6. all information provided by the Client as required by this Agreement, including in the Client electronic registration card, is true, accurate and complete in all aspects, while the documents provided are official and valid. The Client undertakes to keep the provided information up to date within the whole term of the Agreement;

16.1.7. the Client has read the Agreement, the Terms and Conditions of Transactions and the Policy, understood the text thereof, and agrees to be guided by them when performing Transactions;

16.1.8. the funds used by the Client for execution of Transactions are not the proceeds from the criminal activity;

16.1.9. the Client has never been involved, directly or indirectly, and is not involved now in terrorist financing and (or) financing of proliferation of weapons of mass destruction;

16.1.10. the Client is not a US tax resident;

16.1.11. the Client is not a foreign public official, an official of public international organizations, a person holding any position included into the list of public positions of the Republic of Belarus determined by the President of the Republic of Belarus, a family member and (or) an attendant of such persons (hereinafter – the Public Figure). In the event the Client becomes the Public Figure in the course of this Agreement, he/she shall immediately notify the Forex Company of this fact;

16.1.12. the Client sees the financial point of Transactions he/she executes;

16.1.13. the Client is aware of a risky nature of Transactions, has read the Notice of Risks and agrees to accept them;

16.1.14. the Client has regular access to the Internet global computer network, and the Client agrees to receive information related to this Agreement by posting it on the Forex Company's official website in the Internet global computer network or by e-mail. This provision is applicable to any information, including without limitation information about amendments to the Agreement,

the Terms and Conditions of Transactions, change of types and (or) size of the Forex Company's remuneration, the Forex Company's operation mode, and suspension of functioning of the Forex Terminal.

## **17. TERM OF THE AGREEMENT AND TERMINATION**

17.1. The Agreement shall enter into force as soon as the Client has performed all the necessary actions required for acceptance of the Forex Company's public offer mentioned in the Agreement, and remains valid until the parties have fully performed the obligations assumed hereunder.

17.2. The Agreement may be terminated by agreement of the parties.

17.3. The Forex Company may repudiate the Agreement unilaterally in the event of: its decision to terminate its activity at OTC Forex market; alteration of legislation preventing the parties from further performance of the Agreement; the Client's default on his/her obligations set forth by the Agreement; the Client's breach of representations and warranties given in clause 16.1. hereof; the Client's failure to provide documents (information) required for identification of participants of financial transaction for the purposes of anti-money laundering and anti-terrorist financing laws and laws on non-proliferation of weapons of mass destruction, as well as when the Forex Company reasonably suspects that the Client participates in money laundering, terrorist financing or financing of proliferation of weapons of mass destruction; the Client's failure to provide a personal data form required for his/her data updating according to the Terms and Conditions of Transactions within 3 months from the date of respective request; absence of transactions with the Client's account during the last calendar month;

17.4. Subject to compliance with all his/her obligations hereunder, the Client may repudiate this Agreement: when the Client does not agree with amendments to the Agreement, including concerning types and (or) size of the Forex Company's remuneration; when the Client does not agree with amendments to the Terms and Conditions of Transactions; for other reasons consistent with the Agreement, subject to a prior notice (application) sent to the Forex Company not later than 15 (fifteen) working days before the date of expected termination of the Agreement. In the event of repudiation of the Agreement, the Client shall close all the positions and comply with other obligations set forth by the Agreement. The Agreement shall be deemed terminated only after the Client has complied with all his/her obligations hereunder.

17.5. In the event of repudiation of the Contract by the Forex Company or the Client in the cases provided by clauses 17.3 or 17.4 of this section, from the moment of receipt by the other party of respective notice of repudiation of the Agreement:

17.5.1. all continuing and current obligations of the Client to the Forex Company shall be deemed mature, and all the amounts to be paid by the Client to the Forex Company shall become due immediately;

17.5.2. the Client shall close all his/her open positions not later than the next working day. Upon expiration of this time, all the Client's open positions will be forcibly closed by the Forex Company;

17.5.3. the Forex Company may limit functionality of the Forex Company making it possible for the Client to only close the open positions without the right to adjust them or to open new ones, while upon expiration of the time specified in sub-clause 16.5.2. of this clause – terminate the Client's access to the Forex Terminal.

17.5.4. the Forex Company has the right not to accept and (or) not to execute the Client's orders for opening of new positions, as well as on changes to the open positions, except for orders to close them;

17.5.5. the Forex Company may withhold the funds deposited by the Client as margin security until the Client has complied with all his/her obligations hereunder, including as regards settlements under the Transactions being executed. In these circumstances, for the purpose of settlements the Forex Company may combine the Client's liabilities and the Client's margin security



kept with different accounts of the Client into a single balance and perform mutual settlements with it;

17.5.6. the Forex Company may, at its own discretion, write off the funds due from the Client from the Client's margin security. In these circumstances, for the purpose of settlements the Forex Company may write off the funds both in the liability currency and in other foreign currency of the margin security, other than the foreign currency of the Client's liabilities, at the conversion rate calculated against the official rate of the Belarusian ruble to the foreign currency established by the National Bank of the Republic of Belarus as of payment date.

17.6. Unless otherwise determined by the parties hereto in writing, the Forex Company shall return to the Client the funds remaining upon compliance by the Client with all his/her obligations hereunder (hereinafter in this clause – the obligations compliance moment) within 10 (ten) working days from the obligations compliance moment. The bank account to which the funds are returned shall be opened exclusively to the name of the Client. Transfer of funds in favor of third persons is not allowed. When the Agreement is terminated by reason of inclusion of the Client into the list of organizations and natural persons involved in terrorist activity determined in the prescribed manner, the Forex Company shall freeze the funds of this Client.

## **18. SPECIAL CONDITIONS**

18.1. The Client acknowledges that he/she gives consent to participation in promotional games, promotional campaigns and other similar events held by the Forex Company.

18.2. The Forex Company may amend the terms and conditions of this Agreement unilaterally. When the Forex Company unilaterally amends the text of the Agreement, it shall notify the Client of this fact as follows:

18.2.1. by posting of amendments to the terms and conditions to the public offer for an agreement on the performance of transactions with non-deliverable OTC financial instruments by natural person (hereinafter – the Public Offer) or by posting of a new version of the said Public Offer (as amended) on the Forex Company's website in the Internet global computer network;

18.2.2. in the event at the moment of conclusion of the Agreement by the Client on the Forex Company's website in the Internet global computer network, alongside with the current version of the Agreement (Public Offer), there is a text of amendments to the Agreement (Public Offer) or a new version of the Agreement (Public Offer) (as amended) subject to a proviso that they enter into force upon conclusion of the Agreement in the current version, no separate notice of amendments to the Agreement is needed to be given to the Client;

18.2.3. unless otherwise established by individual provisions of the Agreement, amendments made by the Forex Company unilaterally to the text of the Agreement shall enter into force from the moment of posting thereof on the Forex Company's website in the Internet global computer network or at later date specially fixed by the Forex Company at the time of making such amendments or bringing thereof to the notice of clients.

18.3. The Forex Company may amend the Terms and Conditions of Transactions unilaterally. This being the case, the Forex Company shall notify the Client about such amendments by posting information on the Forex Company's website or by notification of the Client by e-mail not later than 10 (ten) calendar days before such amendments enter into force.

18.4. The Client agrees that the Forex Company and/or the third party which has concluded respective agreement with the Forex Company may send SMS messages and e-mails of promotional and informational nature, including in automatic mode, respectively to the phone numbers (including mobile ones) and e-mail addresses of the Client.

18.5. The Client acknowledges that he/she is aware of his/her right to claim that the Forex Company immediately stops placing (distribution) of advertisement in respect of the Client by submission of respective application to the Forex Company.

18.6. All disputes and conflicts between the Forex Company and the Client arising in the course of the Agreement shall be resolved by negotiation. The Client and the Forex Company shall use their best efforts for amicable, fair and constructive settlement of any dispute. Pre-court dispute settlement procedure is mandatory. A written complaint shall be considered within 30 calendar days from the date of receipt. If the parties fail to come to an agreement, disputes shall be settled by court at the Forex Company's location as set forth by law of the Republic of Belarus.

18.7. In all other respects not regulated by the Agreement, the parties shall be governed by the current law of the Republic of Belarus and international business practices applicable to the activity at OTC Forex market.

#### DETAILS

Kimbo LLC

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