

# FX Analytics Terms of Service

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Welcome, and thank you for your interest in FX Analytics Corporation. (“FX Analytics,” “we,” “our,” or “us”) and our website at [www.fxanalytics.com](http://www.fxanalytics.com), and our Services (defined below). This Terms of Service is a legally binding contract between you and FX Analytics regarding your use of the Services.

**PLEASE READ THE FOLLOWING TERMS CAREFULLY.**

**BY CLICKING “I ACCEPT,” OR OTHERWISE BY ACCESSING OR USING THE SERVICES,** YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SERVICES, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING FX ANALYTICS’ PRIVACY POLICY (TOGETHER, THESE “TERMS”). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICES. YOUR USE OF THE SERVICES, AND FX ANALYTICS’ PROVISION OF THE SERVICES TO YOU, CONSTITUTES AN AGREEMENT BY FX ANALYTICS AND BY YOU TO BE BOUND BY THESE TERMS.

**ARBITRATION NOTICE.** WITH CERTAIN OTHER KINDS OF DISPUTES DESCRIBED IN SECTION 15, YOU AGREE THAT DISPUTES ARISING UNDER THESE TERMS WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION, AND BY ACCEPTING THESE TERMS, YOU AND FX ANALYTICS ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS UNDER THIS CONTRACT (EXCEPT FOR MATTERS THAT MAY BE TAKEN TO SMALL CLAIMS COURT). YOUR RIGHTS WILL BE DETERMINED BY A NEUTRAL ARBITRATOR AND NOT A JUDGE OR JURY. (SEE SECTION 15.)

**LEGAL DISCLAIMER.** YOU ACKNOWLEDGE AND AGREE THAT: (1) THE CONTENT PRESENTED ON THE SERVICES ARE NOT INTENDED TO PROVIDE YOU OR ANYONE ELSE WITH INVESTMENT, LEGAL, TAX, INSURANCE OR ANY OTHER KIND OF PROFESSIONAL ADVICE; AND (2) FX ANALYTICS IS NOT RESPONSIBLE

FOR AND DISCLAIMS ANY AND ALL LIABILITIES FOR ACTIONS TAKEN BY YOU BASED ON CONTENT PRESENTED ON THE SERVICES.

**ADDITIONAL TERMS.** Your use of the Services are subject to all additional terms and conditions, policies, rules, or guidelines applicable to the Services or certain features of the Services together with any that we may post on or link to from the Services including the disclosures made available here: <https://fxanalytics.com/disclosures> (collectively the “Additional Terms”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms. For the avoidance of doubt, if you are using our Service, you are subject to these Terms. To the extent that any Additional Terms conflict with these Terms, the terms contained in the Additional Terms will control.

- 1. FX Analytics Services Overview.** FX Analytics is a data analytics company. It creates and provides algorithms, analyzes market data and facilitates transactions between you and Proprietary Trading Firms. The “Public Service” includes our website at [www.fxanalytics.com](http://www.fxanalytics.com), general news and information, educational materials, data concerning foreign exchange markets. The Public Service does not, however, include our online product services (the “Product Service”) which includes our proprietary algorithms for trade execution, and transaction facilitation between you and proprietary trading firms. Together the Public Service and Product Service are referred to as the “Services”
  - 1.1.** FX Analytics acts as a technical facilitator between you and proprietary trading firms, enabling trade execution via our algorithms.
  - 1.2.** We are not a party to the transactions and bear no responsibility for disputes, losses, or issues between you and the proprietary trading firm beyond providing our products and data services to you.
- 2. Eligibility.** You must be at least 18 years old to use the Services. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old; (b) you have not previously been suspended or removed from the Services; and (c) your registration and your use of the Services is in compliance with any and all applicable laws and regulations. You may not authorize another user to use the Services on your behalf.
- 3. Accounts and Registration.** To access most features of the Services, you must register for an account. When you register for an account, you may be required to provide us with some information about yourself, such as your name, email address, phone number, or other contact information. You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all

activities that occur under your account. If you believe that your account is no longer secure, then you must immediately notify us at [support@fxanalytics.com](mailto:support@fxanalytics.com). For details about your FX Analytics account, see the FX Analytics Product Agreement.

**4. General Payment Terms.** Certain features of the Services may require you to pay fees. Before you pay any fees, you will have an opportunity to review and accept the fees that you will be charged. All fees are in U.S. Dollars and are non-refundable. The fees set forth in this Section 4 are independent from all brokerage fees and charges described in the FX Analytics Product Agreement.

**4.1. Price.** FX Analytics reserves the right to determine pricing for the Services. FX Analytics will make reasonable efforts to keep pricing information published on the website up to date. We encourage you to check our website periodically for current pricing information. FX Analytics may change the fees for any feature of the Services, including additional fees or charges, if FX Analytics gives you advance notice of changes before they apply. FX Analytics, at its sole discretion, may make promotional offers with different features and different pricing to any of FX Analytics's customers. These promotional offers, unless made to you, will not apply to your offer or these Terms.

**4.2. Authorization.** You authorize FX Analytics and its third party payment processors to charge all sums for the orders that you make and any level of Services you select as described in these Terms or published by FX Analytics, including all applicable taxes, to the payment method specified in your account. If you pay any fees with a credit card, FX Analytics or its third party payment processors may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase.

**4.3. Delinquent Accounts.** FX Analytics may suspend or terminate access to the Services, including fee-based portions of the Services, for any account for which any amount is due but unpaid. In addition to the amount due for the Services, a delinquent account will be charged with fees or charges that are incidental to any chargeback or collection of any unpaid amount, including collection fees.

**4.4. Profit Share Terms.** FX Analytics will receive a share of the net profits from trades executed by our algorithms on your behalf, as specified in the FX Analytics Product Agreement. This share will be deducted at the time of each withdrawal. 'Net profits' refers to profits after applicable trading fees and losses.

## **5. Licenses**

**5.1. Limited License.** Subject to your complete and ongoing compliance with these Terms, FX Analytics grants you, solely for your personal, non-commercial use, a

limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use of the Services.

- 5.2. License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the Services; (b) make modifications to the Services; or (c) interfere with or circumvent any feature of the Services, including any security or access control mechanism. If you are prohibited under applicable law from using the Services, you may not use it.
- 5.3. Feedback.** We welcome your feedback, comments and suggestions. If you choose to contribute by sending FX Analytics or our employees any ideas for products, services, features, modifications, enhancements, content, refinements, technologies, content offerings, promotions, strategies or product/feature names or any related documentation, artwork, computer code, diagrams or other materials (collectively “Feedback”), then regardless of what your accompanying communication may say, you hereby grant FX Analytics an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Services and create other products and services. Feedback is provided on a non-confidential basis, and FX Analytics is not under any obligation to keep any Feedback you send confidential or to refrain from using or disclosing it in any way. FX Analytics has no obligation to review, consider or implement your Feedback, or to return to you all or part of any Feedback for any reason.
- 6. Ownership; Proprietary Rights.** The Services are owned and operated by FX Analytics. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Services (“Materials”) provided by FX Analytics are protected by intellectual property and other laws. All Materials included in the Services are the property of FX Analytics or its third party licensors. Except as expressly authorized by FX Analytics, you may not make use of the Materials. FX Analytics reserves all rights to the Materials not granted expressly in these Terms.
- 7. Third Party.** The Services may include or incorporate third party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components (“Third Party Components”). Although the Services are provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third Party Components under the applicable third party licenses or to limit your use of Third Party Components under those third party licenses.
- 8. Prohibited Conduct.** In addition to any other restrictions set forth in these Terms, and without limiting those restrictions, when using the Services, you agree not to (and not to attempt to or assist or permit any person to):

- 8.1.** use the Services for any illegal purpose or violate any applicable federal, state, local, national, or international laws or regulations, or these Terms;
- 8.2.** violate any terms and conditions of any Additional Terms including the FX Analytics Product Agreement;
- 8.3.** using the services to bypass proprietary trading firm rules or agreements.
- 8.4.** attempting to reverse-engineer, modify, or misuse the services provided by FX Analytics.
- 8.5.** violate, or encourage others to violate, any right of a third party, including by (i) infringing or misappropriating any third party intellectual property right, (ii) use any trademarks, service marks, design marks, logos, photographs or other content belonging to FX Analytics or obtained from the Services, (iii) make unauthorized copies of any content made available on or through the Services;
- 8.6.** provide any false personal information to FX Analytics, create a false identity or impersonate another person or entity in any way or perform any fraudulent activity including claiming a false affiliation, accessing any other Services account without permission, or falsifying your age or date of birth;
- 8.7.** interfere with security-related features of the Services or any user's enjoyment of the Services, including by: (i) use any device, software or routine to interfere or attempt to interfere with the proper working of the Services, or any activity conducted on the Services, (ii) disabling or circumventing features that prevent or limit use or copying of any content, (iii) attempt to decipher, decompile, disassemble or reverse engineer any of the software or source code comprising or making up the Services except to the extent that the activity is expressly permitted by applicable law, (iv) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code, (v) disrupting any network, equipment, or server connected to or used to provide the Services, (vi) disable, overburden, impair, damage or hijack the operation of any hardware, software or telecommunications equipment or any other aspect of the Services or communications equipment and computers connected to the Services, (vii) access, tamper with or use non-public areas of the Services, FX Analytics's (and its hosting company's) computer systems and infrastructure or the technical delivery systems of FX Analytics's providers, (viii) create a new account with FX Analytics, without FX Analytics's express written consent, if FX Analytics has previously disabled or suspended an account of yours, or (ix) use the Services, without FX Analytics's express written consent, for any commercial or unauthorized purpose, including communicating or facilitating any commercial advertisement or solicitation or spamming, (x) gain unauthorized access to the Services, to other Users' accounts, names or personally identifiable information, or to other computers or websites connected or linked to the Services, (xi) bypass any approved software through which the Services is made available, (xii)

frame or link to any of the materials or information available on the Services, or (xiii) interfere with or disrupt the Services, networks or servers connected to the Services or violate the regulations, policies or procedures of those networks or servers;

**8.8.** sell or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 6) or any right or ability to view, access, or use any Materials;

**8.9.** any conduct that FX Analytics deems inappropriate;

## **9. Communications**

**9.1. Email.** We may send you emails concerning our products and services, as well as those of third parties. You may opt out of promotional emails by following the unsubscribe instructions in the promotional email itself.

**9.2. FX Analytics Account.** Any and all electronic communications and your Proprietary Trading Firm account documentation (and tax documentation) regarding your use of our algorithms on your proprietary trading firm account will be made available to you as set forth in the FX Analytics Product Agreement.

**10. Modification of these Terms.** We reserve the right to change these Terms on a going-forward basis at any time upon 7 days' notice. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we may require that you accept the modified Terms in order to continue to use the Service. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in this Section 10, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

## **11. Term, Termination and Modification of the Service**

**11.1. Term.** These Terms are effective beginning when you accept the Terms or first download, install, access, or use the Service, and ending when terminated as described in Section 11.2.

**11.2. Termination.** If you violate any provision of these Terms, your authorization to access the Services and these Terms automatically terminate. In addition, FX Analytics may, at its sole discretion, terminate these Terms or your account on the Service, or suspend or terminate your access to the Service, at any time for any reason or no reason, with or without notice. You may terminate your account and these Terms at any time by contacting customer service at [team@fxanalytics.com](mailto:team@fxanalytics.com).

- 11.3. Effect of Termination.** Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Service; (b) you will no longer be authorized to access your account or the Service; (c) you must pay FX Analytics any unpaid amount that was due prior to termination; and (d) all payment obligations accrued prior to termination. Sections 5.3, 6, 8, and 12 through 16 will survive expiration or termination of these Terms.
- 11.4. Modification of the Service.** FX Analytics reserves the right to modify or discontinue the Services at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. FX Analytics will have no liability for any change to the Services or any suspension or termination of your access to or use of the Services.
- 12. Disclaimers of Warranties** WITHOUT LIMITING ANY DISCLAIMER OF WARRANTIES MADE BY US IN ANY ADDITIONAL TERMS, THE SERVICES AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICES ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. FX ANALYTICS DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICES AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICES, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. FX ANALYTICS DOES NOT WARRANT THAT THE SERVICES OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND FX ANALYTICS DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICES OR FX ANALYTICS ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICES WILL CREATE ANY WARRANTY REGARDING ANY OF THE FX ANALYTICS ENTITIES OR THE SERVICES THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SERVICES AND YOUR DEALING WITH ANY OTHER SERVICES USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SERVICES AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE) OR ANY LOSS OF DATA, INCLUDING USER CONTENT.THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. FX ANALYTICS DOES NOT DISCLAIM ANY WARRANTY OR OTHER RIGHT THAT FX ANALYTICS IS PROHIBITED FROM DISCLAIMING UNDER APPLICABLE LAW.
- 13. Legal Disclaimer** FX ANALYTICS PROVIDES DATA ANALYTICS AND ALGORITHM-BASED TRADE EXECUTION TOOLS FOR SELF-DIRECTED FOREIGN

EXCHANGE TRADERS. WE DO NOT MAKE TRADING RECOMMENDATIONS OR OFFER FINANCIAL ADVICE OF ANY KIND. OUR ALGORITHMS ARE TOOLS DESIGNED TO ASSIST IN YOUR TRADING DECISIONS, BUT THE ULTIMATE RESPONSIBILITY FOR ANY TRADES EXECUTED USING THESE TOOLS LIES SOLELY WITH YOU.

YOU ARE SOLELY RESPONSIBLE FOR EVALUATING THE MERITS AND RISKS ASSOCIATED WITH THE USE OF ANY INFORMATION, MATERIALS, CONTENT, OR THIRD-PARTY CONTENT (COLLECTIVELY "CONTENT") PROVIDED THROUGH THE SERVICES BEFORE MAKING ANY DECISIONS BASED ON SUCH CONTENT. AS A USER OF THE SERVICES, YOU ALONE ARE RESPONSIBLE FOR DETERMINING WHETHER ANY CONTENT, PRODUCT, OR SERVICE MENTIONED ON THE PUBLIC SERVICE IS SUITABLE FOR YOUR PERSONAL FINANCIAL PURPOSES.

THE CONTENT PRESENTED ON THE SERVICE IS NOT INTENDED TO PROVIDE YOU OR ANYONE ELSE WITH FINANCIAL, LEGAL, TAX, INSURANCE, OR ANY OTHER KIND OF PROFESSIONAL ADVICE. YOU SHOULD CONSULT WITH A FINANCIAL, TAX, OR LEGAL PROFESSIONAL FOR ADVICE REGARDING YOUR SPECIFIC FINANCIAL, TAX, OR LEGAL POSITIONS AND CIRCUMSTANCES. ANY AND ALL CONTENT PROVIDED TO YOU IS EXCLUSIVELY FOR INFORMATIONAL, PERSONAL, AND NONCOMMERCIAL ACCESS AND USE.

OUR ALGORITHMS ARE PROVIDED 'AS IS,' AND FX ANALYTICS DOES NOT GUARANTEE THEIR PERFORMANCE, PROFITABILITY, OR SUITABILITY FOR YOUR TRADING GOALS. PAST PERFORMANCE OF OUR ALGORITHMS IS NOT INDICATIVE OF FUTURE RESULTS. YOU ASSUME ALL RISKS ASSOCIATED WITH THEIR USE. FOREIGN EXCHANGE TRADING CARRIES A HIGH LEVEL OF RISK AND MAY NOT BE SUITABLE FOR ALL TRADERS. YOU MAY LOSE SOME OR ALL OF YOUR CAPITAL.

FX ANALYTICS IS NOT A BROKER, DEALER, OR INVESTMENT ADVISOR, AND DOES NOT ENGAGE IN ANY ACTIVITIES THAT WOULD REQUIRE SUCH REGISTRATION. YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR USE OF THE SERVICES COMPLIES WITH ALL APPLICABLE LAWS AND REGULATIONS IN YOUR JURISDICTION.

BY USING THE SERVICES, YOU REPRESENT AND WARRANT THAT YOU HAVE READ, UNDERSTAND, AND ACCEPT THE DISCLAIMERS AND RISKS ASSOCIATED WITH USING OUR ALGORITHMS AND DATA ANALYTICS TOOLS.

ADDITIONALLY, BY USING OUR SERVICES, YOU REPRESENT AND WARRANT THAT, FOR ANY PROPRIETARY TRADING FIRM ACCOUNTS FACILITATED BY FX ANALYTICS, YOU AUTHORIZE FX ANALYTICS' ALGORITHMS TO EXECUTE TRADES ON YOUR BEHALF THROUGH THOSE ACCOUNTS.



**14. Limitation of Liability** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE FX ANALYTICS ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICES OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY FX ANALYTICS ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE. EXCEPT AS PROVIDED IN SECTION 15.5 AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE FX ANALYTICS ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE THE SERVICES OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF: (A) THE AMOUNT YOU HAVE PAID TO FX ANALYTICS FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO THE EVENT OR CIRCUMSTANCE GIVING RISE TO CLAIM; OR (B) \$100. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 14 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**15. Dispute Resolution and Arbitration**

**15.1. Generally.** In the interest of resolving disputes between you and FX Analytics in the most expedient and cost effective manner, and except as described in Section 15.2 and 15.3, you and FX Analytics agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND FX ANALYTICS ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

- 15.2. Exceptions.** Despite the provisions of Section 15.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.
- 15.3. Opt-Out.** If you do not wish to resolve disputes by binding arbitration, you may opt out of the provisions of this Section 15 within 30 days after the date that you agree to these Terms by sending a letter to FX Analytics Corporation., Attention: Legal Department – Arbitration Opt-Out, 5473 Blair Road, STE 100Dallas, Texas that specifies: your full legal name, the email address associated with your account on the Service, and a statement that you wish to opt out of arbitration (“Opt-Out Notice”). Once FX Analytics receives your Opt-Out Notice, this Section 15 will be void and any action arising out of these Terms will be resolved as set forth in Section 16.2. The remaining provisions of these Terms will not be affected by your Opt-Out Notice.
- 15.4. Arbitrator.** Any arbitration between you and FX Analytics will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (“AAA”) under its Consumer Arbitration Rules (collectively, “AAA Rules”) as modified by these Terms. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting FX Analytics. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.
- 15.5. Notice of Arbitration; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“Notice of Arbitration”). FX Analytics’ address for Notice is: FX Analytics Corporation, 5473 Blair Road, STE 100Dallas, Texas. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“Demand”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or FX Analytics may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by you or FX Analytics must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by FX Analytics in settlement of the dispute prior to the award, FX Analytics will pay you the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000.

- 15.6. Fees.** If you commence arbitration in accordance with these Terms, FX Analytics will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Dallas, Texas, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse FX Analytics for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.
- 15.7. No Class Actions.** YOU AND FX ANALYTICS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and FX Analytics agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.
- 15.8. Modifications to this Arbitration Provision.** If FX Analytics makes any future change to this arbitration provision, other than a change to FX Analytics' address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to FX Analytics' address for Notice of Arbitration, in which case your account with FX Analytics will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.
- 15.9. Enforceability.** If Section 15.7 or the entirety of this Section 15 is found to be unenforceable, or if FX Analytics receives an Opt-Out Notice from you, then the entirety of this Section 15 will be null and void and, in that case, exclusive jurisdiction and venue described in Section 16.2 will govern any action arising out of or related to these Terms.

## **16. Miscellaneous**

- 16.1. General Terms.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and FX Analytics regarding your use of the Services. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word “including” means “including but not limited to”. If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
- 16.2. Governing Law.** These Terms are governed by the laws of the State of Texas without regard to conflict of law principles. You and FX Analytics submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Dallas, Texas for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Service from our offices in Texas, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.
- 16.3. Privacy Policy.** Please read the FX Analytics Privacy Policy (link here: <https://fxanalytics.com/privacy-policy>) carefully for information relating to our collection, use, storage, disclosure of your personal information. The FX Analytics Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
- 16.4. Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
- 16.5. Contact Information.** The Services are offered by FX Analytics Corporation, located at 5473 Blair Road, STE 100, Dallas, Texas. You may contact us by sending correspondence to that address or by emailing us at [team@fxanalytics.com](mailto:team@fxanalytics.com).
- 16.6. Notice to California Residents.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs

in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of the Service.

- 16.7. No Support.** We are under no obligation to provide support for the Service. In instances where we may offer support, the support will be subject to published policies.