



Xena Exchange

Xena Exchange Terms of Use

Effective since **26 June**

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1. Introduction

Xena Exchange welcomes You ("Client") to use Xena Exchange's online software ("Xena Platform") described herein in accordance with the terms of this Agreement.

In this consent:

- "We," "us," "our," "Xena," and "Xena Exchange" means Swiss Capital Ltd., a company incorporated in St. Vincent and the Grenadines with the company number 24179 IBC 2017 and whose registered office is Suite 305, Griffith Corporate Centre, P.O. Box 1510, Beachmont, Kingstown, St. Vincent and the Grenadines, that operates the Xena Platform,
- "You", "your," and "Client" means the person or authorized member of an entity who creates the Client's Account, as well as each additional account owner, co-signer, authorized signer, authorized representative, and/or Client identified on any Xena software that you apply for, use, or access.

This **Xena Exchange Terms of Use** includes and hereby incorporates by reference the following applications: the **Fee Schedule** at <https://xena.exchange/platform-specification/fee-schedule>; the **Privacy policy** at <https://xena.exchange/docs/Xena%20Exchange%20Privacy%20Policy.pdf>; the **Rules of Operations** at <https://xena.exchange/docs/Rules-of-Operations.pdf>; the **Rules of Spot Trading** at <https://xena.exchange/docs/Rules%20of%20Spot%20Trading.pdf>; the **Rules of Xena Listed Perpetuals Trading** at <https://xena.exchange/docs/Rules%20of%20Xena%20Listed%20Perpetuals%20Trading.pdf> (collectively with this Terms of Use, "**the Xena Exchange Client Agreement**" or "**this Agreement**").

By registering on the Xena Platform and accessing any part of the Xena Platform described herein, the Client acknowledges and agrees that he or she fully and unconditionally accepts this Agreement without reservation or exception and consents to be bound by all of the terms of this Agreement.

The moment when this Agreement is concluded (the acceptance of this Agreement by Client) will be the moment of the Client's first access of the Xena Platform.

Xena Exchange may, at its sole discretion, amend this Agreement at any time by posting a revised version on the site at <https://xena.exchange> ("Xena's Website").

Any revisions to this Agreement will take effect on the noted effective date or when posted, if there is no noted effective date (each, as applicable, the "Effective Date"). If the change includes an increase of the fees charged by the Xena Exchange, it will take effect after seven (7) calendar days following its posting.

YOU UNDERSTAND THAT BY USING XENA EXCHANGE SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT ACCEPT THESE TERMS IN THEIR ENTIRETY, YOU ARE NOT PERMITTED TO CREATE A CLIENT ACCOUNT OR USE XENA EXCHANGE SERVICES.

IF YOU AGREE TO THESE TERMS ON BEHALF OF AN ENTITY OR AGENCY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY OR AGENCY TO THESE TERMS AND AGREE THAT YOU ARE BINDING BOTH YOURSELF AND THAT ENTITY OR AGENCY TO THE TERMS OF SERVICE. IN THAT EVENT, "YOU" AND "YOUR" WILL REFER AND APPLY TO BOTH YOU AND THAT ENTITY OR AGENCY.

Risk Statement: The Client hereby confirms to have read, understood, and accept the risk statements relating to the use of the Services.

Clients are to note the risks related to holding and trading cryptocurrencies, including but not limited to: (i) the risk of losing access to tokens due to the loss of private keys, (ii) risks associated with blockchain protocols, (iii) the risk of hacking and security weaknesses, (iv) the risk of uninsured losses, and (v) risks associated with uncertain regulations, enforcement actions, etc.

By accepting these Terms, the Client accepts that the Client has read and understood the information contained in these Terms and the Company's general description of the nature and risks of the Services found in the **Risk Warning**.

2. Definitions

- 2.1. For the purposes of this Agreement, the following terms have the following meanings:
- 2.1.1. "**Cryptocurrency**" means a peer-to-peer, decentralized, cryptographically secured digital representation of value (e.g., Bitcoin, Ether, etc.).
 - 2.1.2. "**Xena Platform**" means the online software located at the website <https://xena.exchange> that is accessible via the Client's Account and any Updates, Upgrades, or New Versions thereof.
 - 2.1.3. "**Xena's Technical Documentation**" means the technical documentation, service manual, and other materials relating to the Xena Platform as described herein.
 - 2.1.4. "**Update**" means a new release of the Xena Platform for additional functionality.
 - 2.1.5. "**Upgrade**" means a bug fix, workaround, or patch to correct any reproducible error on the Xena Platform.
 - 2.1.6. "**Client Account**" means an individual record with a unique Login and Password provided by the Client that Xena Exchange creates for the Client upon the Client's completion of the registration process.
 - 2.1.7. "**Xena Contracts**" means a derivative contract stipulated in the relevant Contract specifications.
- 2.2. Other terms and definitions used in these Terms have meanings and are subject to interpretation in accordance with:
- 2.2.1. the provisions of these Terms;
 - 2.2.2. the meaning of the term as defined on the Xena Exchange Website;
 - 2.2.3. the applicable law; and
 - 2.2.4. the current business practices of using these terms, definitions, and phrases on the Internet.

3. Scope of Services

- 3.1. During the Term and subject to the Client's compliance with this Agreement, the Client may use the Xena Platform to exchange Cryptocurrencies with other Clients and execute various transactions related to Cryptocurrencies. Xena Exchange provides the Client with: (i) the ability to store, track, transfer, and manage his or her balances of certain supported Cryptocurrencies, (ii) the necessary infrastructure (order book, market data, trade booking, settlement, account maintenance, risk management, etc.) to trade Xena Contracts by matching Client Orders in the opposite direction ("Services").
- 3.2. In order to provide the Client with the Platform's Services, Xena Exchange hereby grants the Client a personal, limited, non-exclusive, non-transferable license to use Xena Platform on a non-exclusive basis and provides the Client with a Client Account so long as the Client uses Xena Platform in accordance with the terms and conditions stipulated under this Agreement and subject to the applicable law.
- 3.3. Xena Exchange reserves the right to update Xena Platform at its sole discretion or to provide the Client with a new version or an Update, and the Client shall promptly cease use of the prior version of Xena Platform and instead shall incorporate and use the Update in connection with this Agreement.
- 3.4. Products offered by Xena Exchange may differ depending on the country of residence of the Client, his or her risk profile, whether the Client is a qualified investor, and other factors. Xena Exchange reserves the right to impose limits on the transactions of a Client in accordance with the Rules of Operations. The Client's transaction limits may vary depending on the account verification steps the Client has completed, as well as other factors.
- 3.5. The Company does not provide investment, tax, or trading advice. The Services include "execution only," meaning that the Company will act on your instructions and will not advise you on any transaction nor monitor your trading decisions to determine if they are appropriate for you or to help you avoid losses. You should obtain your own financial, legal, taxation, and other professional advice.
- 3.6. These Terms does not convey title or ownership of the Xena Platform from Xena Exchange to the Client but instead gives the Client only the limited rights and abilities set forth above.

4. Client Restrictions

- 4.1. The Client's use of the Xena Platform is limited as follows:
 - 4.1.1. The Client must be a fully legal natural person who has reached the age of maturity in accordance with the jurisdiction in which he or she resides, or be a legally incorporated company;
 - 4.1.2. The Client must have the capacity to enter into legally binding agreements (including this Agreement);
 - 4.1.3. The Client must not be (i) a citizen or resident of a geographic area in which access to or use of the Services is prohibited by applicable law, decree, regulation, treaty, administrative act, or requires licensing or accreditation, such as U.S., Canada, Bangladesh, Nepal and ect. (ii) a citizen or resident of, or located in, a geographic area that is subject to U.S. or other sovereign country sanctions or embargoes, such as Iran, Syrian Arab Republic (Syria), and

ect., or (iii) an individual, or an individual employed by or associated with an entity, identified on the U.S. Department of Commerce's Denied Persons or Entity List, the U.S. Department of Treasury's Specially Designated Nationals or Blocked Persons Lists, or the U.S. Department of State's Debarred Parties List. The Client agrees that if the Client's country of residence or other circumstances change such that the above representations are no longer accurate, that the Client will immediately cease using the Services.

- 4.2. The Client must not and must not allow any third party to:
 - 4.2.1. use the Xena Platform for illegal or unlawful actions or any other unauthorized purposes;
 - 4.2.2. insert into the Xena Platform any viruses, worms, date bombs, time bombs, or other code specifically designed to cause any software to cease operating or to damage, interrupt, or interfere with any data;
 - 4.2.3. disassemble, de-compile, or otherwise reverse-engineer the Xena Platform or otherwise attempt to learn the source code or algorithms underlying the Xena Platform;
 - 4.2.4. use the Xena Platform and Services in connection with any fraudulent, abusive, or illegal activity. Examples of such activity include but are not limited to using bugs of the Xena Platform for unjust personal enrichment or unreasonable gains, manipulating device IDs, misrepresenting geolocation data or other information or using stolen identities; or
 - 4.2.5. exceed the scope of any license granted to the Client hereunder.

5. Registration of Client Accounts

- 5.1. In order to use the Xena Platform, the Client must complete the registration process at <https://xena.exchange> and create a Client Account.
- 5.2. In order to use the Xena Platform, the Client must comply with the requirements of Article 4 of this Agreement.
- 5.3. Xena provides Clients with a Login and Password, API keys, and two-factor authentication codes.
- 5.4. The Client is strictly prohibited from providing access to the Xena Platform to any other person or entity.
- 5.5. The Client is solely responsible for all usage and activity on his or her Client Account and for any loss, theft, or unauthorized disclosure of Client's Login, Password, or API keys.
- 5.6. The Client must not disclose the passwords of his or her Accounts, 2FA codes, or API keys to any third parties, including anyone claiming to be a member of Xena's staff, under any circumstances.
- 5.7. So long as there are orders submitted through the Client Account of the Client, the Company shall reasonably assume that such orders were submitted by the Client, and the Company shall not be under any obligation to investigate the matter further.
- 5.8. The Client agrees to provide Xena Exchange with prompt notification of any known or suspected unauthorized use or any breach of the security of his or her Client Account.

6. Client Electronic Signatures

- 6.1. By using his or her Login and Password, API keys, or two-factor codes, the Client confirms the formation of the Client Electronic Signature, and information in electronic form signed by the

Client using the Electronic Signature is accepted by the Client and Xena Exchange to be an electronic document equal to a paper document signed with a handwritten signature.

- 6.2. Any operation made by the Client on the Xena Platform after a successful login with a valid Client Login and Password or signed by a valid API key, and any action confirmed by a valid 2FA code, is deemed to have been executed by the Client.
- 6.3. The Client's account registration constitutes an acknowledgement that the Client is able to electronically receive, download, and print this Agreement and any amendments.

7. Payment Terms

- 7.1. The Client must pay the fees for each of the Services of the Xena Platform in the amount specified in the **Fee Schedule**.
- 7.2. In addition to the listed fees, the Client must pay any applicable sales, use, value-added, personal property, or similar taxes, as well as all transfer charges, commissions, fees, and other expenses associated with payments under this Agreement.
- 7.3. The Client shall be solely responsible for all filings, tax returns, and reports that are to be made to any relevant authority, whether governmental or otherwise, and for the payment of all taxes (including but not limited to any transfer or value-added taxes) arising out of or in connection with the Services.

8. Representations and Warranties

- 8.1. Xena Exchange represents and warrants that:
 - 8.1.1. Xena Exchange and its licensors own or possess the necessary rights, title, and licenses in and to Xena Platform to provide the License hereunder; and
 - 8.1.2. Xena Exchange has the right to enter into this Agreement and to perform its obligations hereunder.
- 8.2. The Client represents and warrants that:
 - 8.2.1. the Client has read and understood this Agreement in full;
 - 8.2.2. the Client fully understands, acknowledges, and agrees with the information about the functionality, usage, storage, transmission mechanisms, and other material characteristics of Cryptocurrencies, blockchain technology, and blockchain-based software systems and their risks, and acknowledges the risks and implications of using and exchanging Cryptocurrencies;
 - 8.2.3. the Client acknowledges and agrees that Xena Exchange does not act as a counterparty to any Cryptocurrency transaction initiated by the Client and that Xena Exchange provides the Client with access to the Xena Platform and the ability to trade Cryptocurrency with other Clients at the Clients' own discretion;
 - 8.2.4. the Client acknowledges and agrees the Client shall be liable for all orders given through his or her Client Account and that any orders received in this manner by the Xena Exchange shall be considered to have been created by the Client. Xena Exchange shall not be liable for any operations conducted by the Client through the Client Account;
 - 8.2.5. the Client will not forge any personal or non-personal data requested by Xena Exchange in the process of the Client's registration (e.g., will not use a VPN or another means of

distorting data) or after its completion and will provide all necessary personal or non-personal data in the form and format requested by the Xena Exchange when such necessity arises in connection with the requirements of the anti-money laundering (AML) and "Know Your Customer" (KYC) frameworks of the Xena Exchange and in accordance with the applicable law; and

- 8.2.6. the Client is not a citizen or resident of a geographic area in which the exchange of Cryptocurrencies is prohibited by the applicable law, decree, regulation, treaty, or administrative act.
- 8.2.7. If the Client is registering to use the Services on behalf of a legal entity, the Client further represents and warrants that (i) such legal entity is duly organized and validly existing under the applicable laws of the jurisdiction of its organization, and (ii) the Client is duly authorized by such legal entity to act on its behalf.

9. Intellectual Property

- 9.1. The Client acknowledges and agrees that Xena Platform and the form of its source code; all enhancements, corrections, and modifications to the Xena Platform; and all copyrights, patents, trade secrets, trademarks, or other intellectual property rights protecting or pertaining to any aspect of Xena Platform are and shall remain the sole and exclusive property of Xena Exchange and, where applicable, Xena Exchange's current and future affiliates or licensors.

10. Privacy

- 10.1. Xena Exchange will protect all information collected from the Client during the use of the Xena Platform in accordance with the Privacy Policy.

11. Limited Liability

- 11.1. THE SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FUTURE PROFITS, FITNESS FOR A PARTICULAR PURPOSE, AND NON INFRINGEMENT. TO THE FULLEST EXTENT PERMISSIBLE BY THE APPLICABLE LAW, IN NO EVENT SHALL XENA EXCHANGE OR ITS FUTURE PARENT OR AFFILIATED COMPANIES, NOR THEIR DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS, BE LIABLE FOR ANY LOST PROFITS; THE COST OF SUBSTITUTE GOODS FOR SERVICE; THE LOSS OF DATA; THE LOSS OF GOODWILL; WORK STOPPAGE; COMPUTER, DEVICE, OR TECHNOLOGY FAILURE; MALFUNCTION; OR ANY FORM OF DIRECT OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM, OUT OF, OR IN CONNECTION WITH THE USE OF THE PLATFORM OR ANY ALLEGED FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, OR DELAY IN SERVICE, OPERATION OR ANY ALLEGED COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT, OR DESTRUCTION OF PROPERTY. YOU AGREE THAT THIS LIMITATION OF LIABILITY APPLIES WHETHER THE RELEVANT ALLEGATIONS ARE FOR A BREACH OF CONTRACT, TORTIOUS BEHAVIOUR, OR NEGLIGENCE OR FALL UNDER ANY OTHER CAUSE OF ACTION, REGARDLESS OF THE BASIS UPON WHICH THE LIABILITY IS CLAIMED AND EVEN IF XENA

EXCHANGE OR ITS FUTURE PARENT OR AFFILIATED COMPANIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

- 11.2. Xena Exchange endeavours to ensure that the Xena Platform is compliant with all relevant safety and performance standards. However, the Xena Platform may contain errors, bugs, and other problems that could cause the failure of the Xena Platform or other hardware or software used in connection therewith. Because the Xena Platform is subject to change, Xena Exchange reserves the right to alter the Xena Platform at any time, and any reliance on the Xena Platform is at Client's own risk.
- 11.3. The Client acknowledges and agrees that:
 - 11.3.1. The Xena Platform may contain bugs or minor mistakes, which Xena Exchange promises to correct if possible;
 - 11.3.2. Xena Exchange does not warrant the Client any financial or other type of outcome as a result of the use of the Xena Platform and Services;
 - 11.3.3. Xena Exchange does not act as a professional consultant, adviser, etc., and software-processed information provided to the Client does not constitute professional advice; and
 - 11.3.4. the Client will indemnify Xena Exchange for any losses, liabilities, costs (including reasonable legal costs), damages, or expenses arising from any breach by you of the terms of this Agreement, including any fraudulent, negligent, or reckless act, omission, default, or misuse of the Xena Exchange Platform.

12. Term and Termination

- 12.1. This Agreement between Xena Exchange and the Client shall commence upon acceptance by the Client of all terms of this Agreement by accessing any part of the Xena Platform and shall continue until terminated in accordance with the terms of this Agreement.
- 12.2. Either party may terminate this Agreement at any time upon thirty (30) days of prior written notice.
- 12.3. Xena Exchange reserves the right at its sole discretion to: (i) refuse to complete or block, cancel, or reverse a transaction you have authorized; (ii) suspend, restrict, or terminate your access to any part of the Xena Platform and Services, (c) deactivate or cancel your Client Account, and (d) terminate this Agreement with immediate effect for any reason without any prior written notice for reasons not limited to the following:
 - 12.3.1. the Client provided invalid data to complete the registration process;
 - 12.3.2. the Client failed to comply with the requirements of Articles 4, 5, or 10 of this Agreement;
 - 12.3.3. the Client has breached his or her obligations under this Agreement; or
 - 12.3.4. We have concerns that the Client's transactions are being used in a fraudulent or unauthorized manner or we suspect the Client of money laundering, financing terrorism, fraud, or any other financial crime.
- 12.4. Upon termination of this Agreement for whatever reason, all licenses granted by Xena Exchange to the Client under this Agreement will immediately be terminated.
- 12.5. Upon termination of this Agreement, each party will remain liable to the other for any amounts due and owing to the other party as of the date of termination, and the obligation to pay will survive the termination of this Agreement.

13. Miscellaneous

- 13.1. Notices: Any notice or other communication under these Terms must be in writing and must be considered as given when sent by email.
- 13.2. Complaints: In the event of a complaint, please set out the cause of your complaint, how you would like us to resolve the complaint, and any other information you believe to be relevant, and send it to the contact means published on the Xena Website. We will acknowledge receipt of your complaint if you contact us via our Customer Support webpage. Within 15 business days of our receipt of your complaint, we will address all points raised in your complaint by sending you an email.
- 13.3. Governing Law: These Terms, applying without limitation to matters of interpretation and/or disputes, shall be governed by the laws of St. Vincent and the Grenadines, without regard to principles of conflict or choice of laws, and the parties agree that all disputes relating to these Terms shall be resolved non-exclusively in the courts of St. Vincent and the Grenadines, unless Xena Exchange chooses to take proceedings against the Client in any other court of competent jurisdiction. The taking of proceedings by the Xena Exchange against the Client in one or more jurisdictions shall not preclude the taking of proceedings by Xena Exchange against the Client in any other jurisdiction, whether concurrently or not.
- 13.4. Force majeure: Neither Party shall be liable because of any failure or delay in the performance of its obligations hereunder for any case of «Force Majeure», which is understood as any unpredictable event external to a party and that is beyond its reasonable control.
- 13.5. Transfer/Assignment: The Client is not authorized to assign this Agreement (including sending or transmitting its ID and password to a third party) without the prior written permission of Xena Exchange. Xena Exchange may transfer or assign its rights and obligations hereunder and under these Terms, in whole or in part, at any time without the consent of the Client.
- 13.6. Severability: If any provision of this Agreement is held by any court of competent jurisdiction to be illegal, null, or void, all the remaining provisions of this Agreement shall remain in full force and effect.