

Terms of Use

Effective since 07 June 2018



Xena Exchange

FOR PROFESSIONALS BY PROFESSIONALS

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1. Introduction

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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 Xena Financial Systems UK, a private limited company incorporated in England and Wales with company number 11303245, that operates the Xena Platform,
- “You”, “your” and “Client” means the person or authorized member of an entity, creating the Client’s Account, and also each additional account owner, co-signer, authorized signer, authorized representative, and/or Client identified on any Xena’s 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/docs/legal/fee-schedule>, the **Privacy policy** at <https://xena.exchange/docs/legal/privacy-policy>, the **Rules of Operations** at <http://xena.exchange/docs/legal/rules> (collectively, with this Client Agreement, **‘this Agreement’**).

By registering in the Xena Platform and accessing any part of the Xena Platform described herein, Client acknowledges and agrees that 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), shall be the moment of the first access of the Xena Platform.

Xena Exchange may, in 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, such change will take effect after seven (7) calendar days after it was posted.

Client please notice that during the period from June 07, 2018 to July 15, 2018 the Xena Platform is in beta test form which may be extended at the discretion of the Xena. By registering in Xena Platform and accessing any part of the Xena Platform described herein, Client acknowledges and agrees that that use of such beta Beta Test Xena Platform is at Client’s own risk.

Client please notice the Risks Relating to holding and trading Cryptocurrencies, including but not limited to: (i) Risk of Losing Access to Tokens Due to Loss of Private Key(s), (ii) Risks Associated with the Blockchain-Protocol, (iii) Risk of Hacking and Security Weaknesses, (iv) Risk of Uninsured Losses, (v) Risks Associated with Uncertain Regulations and Enforcement Actions and etc.

If You do not agree to all of the terms of this Agreement, You may not access and use any part of Xena Platform.

2. Definitions

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2.1. For the purposes of this Agreement, the following terms shall have the following meanings:

2.1.1. **“Cryptocurrency”** means peer-to-peer decentralized cryptographically-secured digital representation of value (e.g. bitcoins, ethers, etc.).

2.1.2. **“Xena Platform”** means online software located at the website <https://xena.exchange> and accessible via 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 a reason of additional functionality.

2.1.5. **“Upgrade”** means a bug fix, workaround, or patch to correct any reproducible error in the Xena Platform.

2.1.6. **“Client’s Account”** means an individual record with its unique Login and Password provided by Client that Xena Exchange creates for the Client upon completing the registration process.

3. Scope of Services

3.3. Client may use Xena Platform to trade its Cryptocurrencies with other Clients. Xena Exchange provides Client the ability to store, track, transfer, and manage its balances of certain supported Cryptocurrencies (“Services”).

3.4. In order to provide Client with the Services Xena Exchange hereby grants Client a personal, limited, non-exclusive, non-transferable license to use Xena Platform on a non-exclusive basis and provides Client with Client’s Account so long as Client uses Xena Platform in accordance with the terms and conditions stipulated under this Agreement and pursuant to applicable law.

3.5. Xena Exchange reserves the right to update Xena Platform in its sole discretion, provides Client with a new version or an Update, and Client shall promptly cease use of the prior version of Xena Platform, and instead, shall incorporate and use such Update in connection with this Agreement.

3.6. Xena Exchange reserves the right to limit the amount of volume Client may trade in a given period (e.g., daily, monthly and ect.) in its sole discretion. Client’s transaction limits may vary depending on the Client’s account verification steps Client have completed, and other factors.

3.7. This Agreement does not convey title or ownership of Xena Platform from Xena Exchange to Client but instead gives Client only the limited rights and abilities set forth above.

4. Client restrictions

4.1. Client's use of the Xena Platform is limited as follows:

- 4.1.1. Client shall be a legally incorporated company or a person at least 18 years old;
- 4.1.2. Client shall have the capacity to enter into legally binding agreements (including this Agreement);
- 4.1.3. Client's usage of the Xena Platform shall comply with applicable laws and regulations in the Client's jurisdiction. Xena Exchange does not work with customers from the jurisdictions that require licensing or accreditation. Therefore, Client's eligibility to use Xena Platform also depends on the country in which Client resides.

4.2. Client shall not, and shall not allow any third party to:

- 4.2.1. use the Xena Platform for of illegal or unlawful actions or other unauthorized purposes;
- 4.2.2. insert into the Xena Platform any viruses, worms, date bombs, time bombs, or other code that is specifically designed to use 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: use bugs of Xena Platform for unjust enrichment or any unreasonable gains, manipulating device IDs; misrepresenting geolocation data or other information; use of stolen identities.
- 4.2.5. exceed the scope of any license granted to Client hereunder.

5. Registration of Client's Account

5.1. In order to use Xena Platform Client must complete the registration process at <https://xena.exchange> and create Client's Account.

5.2. In order to use Xena Platform Client must comply with the requirements of Article 4 of this Agreement.

5.3. Each Client is entitled to have only one Client's Account otherwise Xena Exchange reserves the right to deactivate and delete duplicated Client's Accounts without any prior notice.

5.4. Xena provides Clients with Login and Password, API keys and 2 factor authentication codes.

5.5. Client is strictly prohibited from providing access to Xena Platform to any other person or entity.

5.6. Client shall be solely responsible for all the usage and activity on its Client's account and for loss, theft or unauthorized disclosure of Client's Login, Password and API keys.

5.7. Client shall not disclose passwords of their Accounts, 2FA codes or API keys to any third parties, including anyone claiming to be a member of Xena's staff, under any circumstances.

5.8. Client agrees to provide Xena Exchange with a prompt notification of any known or suspected unauthorized use or any breach of the security of its Client's Account.

6. Client's Electronic signature

6.1. By using the Login and Password, or API keys, or 2 factor codes, Client confirms the formation Client's Electronic signature, and the information in electronic form, signed by Client using the Electronic signature, is accepted by Client and Xena Exchange to be an electronic document equal to a paper document signed by a handwritten signature.

6.2. Any operation made by Client in the Xena Platform after successful login with the valid Client Login and Password or signed by the valid API key, and any action confirmed by the valid 2FA code is deemed as executed by the Client.

6.3. Client's account registration constitutes an acknowledgement that Client is able to electronically receive, download, and print this Agreement and any amendments.

7. Payment terms

7.1. Client shall pay the fees for each Services of the Xena Platform in amount as described in the Fee Schedule at <https://xena.exchange/docs/fee-schedule>.

7.2. In addition to the listed fees, Client shall pay any applicable sales, use, value-added, personal property or similar taxes, all transfer charges, commissions, fees, and other expenses associated with payments under this Agreement.

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;

8.1.2. Xena Exchange has the right to enter into this Agreement and to perform its obligations hereunder.

8.2. Client represents and warrants that:

8.2.1. the Client have read and understand this Agreement in full;

8.2.2. Client fully understands, realizes and agrees with the information about the functionality, usage, storage, transmission mechanisms and other material characteristics of the Cryptocurrencies, blockchain technology, blockchain-based software systems and their risks, and appreciates the risks and implications of usage and exchange of Cryptocurrencies;

8.2.3. Client acknowledges and agrees that Xena Exchange does not act an intermediary or counterparty to any Cryptocurrency transaction initiated by Client, Xena Exchange provides Client with an access to Xena Platform and ability to trade Cryptocurrencies with other Clients at their own discretion;

8.2.4. Client will not forge any personal or non-personal data requested by the Xena Exchange in the process of the Client's registration (will not use the VPN or other means of distorting the 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 in the event when such necessity arises in connection within the requirements of anti-money laundering (AML) and "Know Your Customer" (KYC) frameworks of the Xena Exchange and in accordance with the applicable law;

8.2.5. the Client is not a citizen or resident of a geographic area in which exchange of Cryptocurrencies is prohibited by applicable law, decree, regulation, treaty, or administrative act.

9. Intellectual property

9.1. Client acknowledges and agrees that Xena Platform and its source code form, all enhancements, corrections and modifications to the Xena Platform, all copyrights, patents, trade secrets, or 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 Exchanges' current and future affiliates or licensors.

10. Privacy

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

11. Limited liability

11.1. XENA PLATFORM IS 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 NONINFRINGEMENT. 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, AGENTS, BE LIABLE FOR ANY LOST PROFITS, COST OF SUBSTITUTE GOODS FOR SERVICE, LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER, DEVICE OR TECHNOLOGY FAILURE OR MALFUNCTION OR FOR ANY FORM OF DIRECT OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM, OUT OF OR IN CONNECTION WITH 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 SUCH ALLEGATIONS ARE FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOUR, NEGLIGENCE, OR FALL UNDER ANY OTHER CAUSE OF ACTION, REGARDLESS OF THE BASIS UPON WHICH 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 is endeavoring to ensure that Xena Platform is compliant with all relevant safety and performance standards. However, the Xena Platform may contain errors, bugs and other problems which could cause 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. Client acknowledges and agrees that:

11.3.1. Xena Platform may contain bugs or minor mistakes, which Xena Exchange promises to correct if possible.

11.3.2. Xena Exchange does not warrant Client any financial or other type of outcome, which is the 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 Client do not constitute a professional advice.

11.4. Nevertheless, the Parties shall be responsible for compliance with the terms of this Agreement, for fulfillment of Client's commitments and guarantees in the manner and in the amount prescribed by this Agreement, in particular:

11.4.1. In case of filing accusations, claims or lawsuits to the Xena Exchange related to non-compliance by the Client of this Agreement, Client agrees to settle such claims or actions on his own and at his own expense, as well as fully compensate Xena Exchange all documented proven losses, court fees, legal costs, incurred in connection with the refusal of the Client or untimely fulfillment of his obligations by the Client.

11.4.2. In case of filing accusations, claims or lawsuits against Xena Exchange, related to non-compliance by Client with exclusive rights or other rights of third parties, Client agrees to settle such claims or actions on his own and at his own expense, as well as fully compensate Xena Exchange all documented proven losses, court fees, legal costs, incurred in connection with the refusal of the Client or untimely fulfillment of his obligations by the Client.

12. Term and Termination

12.1. This Agreement between Xena Exchange and Client shall commence upon acceptance by Client of all terms of this Agreement by accessing any part of 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 prior written notice.

12.3. Xena Exchange shall have the right at its sole discretion to: (i) refuse to complete or block, cancel or reverse a transaction you have authorised; (ii) suspend, restrict, or terminate your access to any part of the Xena Platform and Services, and/or (c) deactivate or cancel your Client's Account with immediate effect for any reason, including but not limited to and without any prior written notice if:

12.3.1. Client provided invalid data to complete the registration process;

12.3.2. Client failed to comply with the requirements of Articles 4, 5 or 10 of this Agreement;

12.3.3. Client is in breach of its obligations under this Agreement;

12.3.4. We have concerns that Client's transactions are being used in a fraudulent or unauthorised manner or we suspect Client in money laundering, terrorist financing, fraud, or any other financial crime.

12.4. Upon termination of this Agreement, for whatever reason, all licenses granted from Xena Exchange to Client under this Agreement shall immediately terminate.

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 such obligation to pay shall survive the termination of this Agreement.

13. Miscellaneous

13.1. Notices: Any notice or other communication under this Agreement shall be in writing and shall be considered 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 to the contact means published on the Xena's 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. Disputes: Any dispute exceeding £5,000 arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration ("LCIA"). The tribunal shall consist of a sole arbitrator, unless the LCIA determines that, in view of all the circumstances of the case, a three-member tribunal is appropriate. The place and seat of the arbitration shall be London, England. The language to be used in the arbitration proceedings will be English. You agree to use the complaints procedure set out at Section 13.2 of this Agreement before contacting the FOS or the LCIA. If you do not follow the procedures set out in this Section 13.2 before filing a claim in a court, we shall have the right to ask the court to dismiss your filing unless and until you complete the steps outlined above.

13.4. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of England and Wales. The Parties agree to submit to the non-exclusive jurisdiction of the Courts of England and Wales. Either Party shall comply with all laws, rules and regulations relevant to the activities undertaken pursuant to this Agreement or applicable to either of the Parties.

13.5. 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 which is beyond its reasonable control.

13.6. Transfer/Assignment: Client is not authorized to assign this Agreement (including sending, transmitting ID and password to the third party) without the prior written permission of Xena.

13.7. Severability: If any provision of this Agreement 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.