

# User Agreement

Last Updated November 18, 2020.

## 1. Introduction

The following user agreement (the “**User Agreement**”) sets forth the terms and conditions governing the use of the Services by end user clients or visitors (“**Client**”, “**you**” or “**your**”) and constitutes a legally binding agreement between you and X-Margin Inc., a Delaware corporation (“**X-Margin**”, “**we**”, “**us**” or “**our**”). This User Agreement also applies to the purchase and sale of products and services by Clients through the Services and to any supplement, addendum, amendment or annex to this User Agreement. Any supplement, addendum, amendment or annex shall be incorporated into this User Agreement by reference upon your acceptance of the terms of such supplement, addendum, amendment or annex.

The services described herein (“**X-Margin Services**” or “**Services**”) are made available to you by X-Margin, including through X-Margin’s website located at <https://trade.xmargin.io> (the “**Site**”), X-Margin application(s), application program interface(s) and other mediums, all together or each separately are referred to as the “**Software**” and are included in the definition of Services. The Services also include related documentation, manuals and training materials.

**THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS. PLEASE READ THIS USER AGREEMENT CAREFULLY BEFORE ACCESSING OR USING THE SERVICES. BY ACCESSING OR USING THE SERVICES IN ANY MANNER YOU AGREE, REPRESENT, WARRANT AND CONFIRM THAT:**

- you have read, understood, and agreed to be legally bound by this User Agreement;
- you assume all the obligations set forth herein;
- you are at least eighteen (18) years old or of sufficient legal age and capacity to use the Services in your jurisdiction (if different than 18);
- you are not under the control of a jurisdiction that explicitly prohibits the use of similar software or services;
- you use the Services at your discretion and under your sole responsibility.

If you are creating a Client Account on behalf of a company, you agree, represent, warrant and confirm that:

- you have been duly authorized and have the necessary consents, power and authority to bind the such entity and its affiliates to this User Agreement, create the Client Account and transmit or receive information through the Software;
- your execution, delivery and performance under this User Agreement, supplement, addendum, amendment or annex hereto and our provision of the Services on your behalf do not and will not
  - conflict with, violate or result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under, any material contract, indenture, agreement, mortgage, deed of trust, or other

- instrument to which you are a party or by which you or any of your property is bound;
- violate your charter or bylaws or any other equivalent organizational document;
- require any consent of approval under any judgment, order, memorandum of understanding, writ, decree, permit or license to which you are a party or by which it or its assets are bound (including any agreement with a managed account); or
- require the consent or approval of any other party to any material contract, instrument, or commitment to which you are a party or by which it is bound.
- your use of the Services complies and will comply with
  - all applicable laws, rules or regulations;
  - this User Agreement and any other agreement between you and us, as may be amended or supplemented from time to time. You have all consents, rights, authority and have taken all actions necessary, to use the Services and to transmit or receive information through the Software, as set forth herein and any supplement, addendum, amendment or annex; and
- you agree to share all email addresses, passwords, and access credentials with other authorized users of your company.

To access and use the Services you must register for and maintain an active Client account (“**Client Account**”). By accessing or using the Services, you agree to be bound by this User Agreement. You should also read our Privacy Policy at [LINK], which is incorporated by reference into this User Agreement. If you do not wish to be bound by this User Agreement, please do not access or use the Services.

If you are entering into this User Agreement on behalf of a company, the terms “Client”, “you” and “your” shall refer to such entity and its affiliates and not to you personally. If you do not have such authority you must not accept this User Agreement and may not use the Services.

X-Margin may update or revise this User Agreement from time to time by providing notice of such updates or revisions. You agree that you will review this User Agreement periodically. If you do not agree to the terms of this User Agreement or any modified version of this User Agreement, your sole recourse is to terminate your use of the Services. If you breach any part of this User Agreement, your authorization to use the Services automatically terminates and you must discontinue all use of the Services.

## 2. The Services

The Services provide you with tools and Software that allow you to monitor the risk profile of your investment assets and trading positions – assets and liabilities – whether in a custodial account or other Funds Source (your “**Portfolio**”). The aforementioned tools and Software include but are not limited to tools that allow you to: (i) configure and view calculations of certain risk metrics calculated using your assets, spot and derivatives trading, and financing – borrowing and lending - activities (“**Risk Metrics**”); (ii) send your Risk Metrics to other users and receive Risk Metrics from other users; (iii) use X-Margin application programming interfaces and related specification documents (“**X-Margin API**”) to consume the information, or communicate

with X-Margin new information which may impact the calculation of certain Risk Metrics, and to share such information with other users or third-party services approved by you. The Services may also include a web-based, mobile, or desktop graphical user interface (“**X-Margin GUI**”). The metrics calculated shall be specified on the software interfaces. “**Funds Source**” means any source of your Portfolio, whether held and custodied directly by you or in wallets, exchange accounts, brokerage account, bank accounts, vaults, escrow agents, custodians or similar accounts.

### **3. Accounts**

To use the Services, you must register for a Client Account and complete a profile.

By creating a Client Account, you agree that you may receive communications from X-Margin, such as notices, newsletters, special offers, and account reminders and updates. You also understand that you can remove yourself from these communications by clicking the "Unsubscribe" link in the footer of the actual emails.

As part of the registration process, you may be required to provide us with certain information. The information we request may include certain personal information, including, but not limited to:

#### **For Individuals**

Your name, address, telephone number, e-mail address, date of birth, and information regarding your bank account (such as the name of the bank, the account type, routing number, and account number) or another payment method.

#### **For Corporate Entities**

Company name, entity type, address, telephone number, e-mail address, and information regarding your bank account (such as the name of the bank, the account type, routing number, and account number) or another payment method. We may also request certain limited information about your authorized signatories and users.

For more information about the information that we collect, please see our Privacy Policy at [LINK]. You agree that you will provide accurate, current, and complete information about yourself and promptly update all information in your Client Account to ensure that your Client Account is accurate, current, and complete. You may update or change your Client Account settings at any time.

At X-Margin's request, you agree to provide X-Margin with a complete list of your authorized users and their countries of domicile. You acknowledge that, at X-Margin's discretion, X-Margin may deny access to the Services to any of your authorized users, at any time and for any reason.

#### **3.1 Account Confidentiality**

Any username, password, or any other piece of information chosen by you or provided to you as part of our security procedures, must be treated as confidential, and you must not disclose it to any other person or entity, except for your authorized users. You are responsible for safeguarding such information and must exercise caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. You understand and agree that, should you be provided a Client Account, your Client Account is only for you and your authorized users and you agree not to provide any

other person with access to the Services or using your username, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your username or password or any other breach of security. You also agree to ensure that you logout from your account at the end of each session. You are responsible for any password misuse or any unauthorized access.

You acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by, or in connection with the unauthorized use of your Client Account arising from a failure on your part to maintain the confidentiality and security of your password.

For purposes of this subsection 3.1, “you” includes your authorized users.

### **3.2 Client Account Features; Free Services**

After successful registration, certain features of the Services may be available to you free of charge. Any functionality that carries a fee will be explicitly stated [\[here\]](#).

### **3.3 Account Termination and Cancellation**

You have the right to close your Client Account at any time once all obligations associated with the Client Account have been completed. Please see Section 16 for more details.

You acknowledge and agree that if we disable access to your Client Account, you may be prevented from accessing the Services.

## **4. Provision of the Services**

For Services for which there is a monetary charge, you agree that your order for such offerings is an offer to buy, under this User Agreement, all Service offerings listed in your order. All orders must be accepted by us or we will not be obligated to sell the products or services to you. We may choose not to accept orders at our sole discretion, even after we send you an order confirmation email or other messages.

After successful registration—and for any paid Services, upon accepting your order—and subject to and conditioned on your compliance with all terms and conditions set forth in this User Agreement, X-Margin grants you a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to access and use the Services and only as permitted by this User Agreement.

You acknowledge and agree that the form and nature of the Services (or any features within the Services) may change from time to time without prior notice to you.

You acknowledge and agree that we may stop (permanently or temporarily) providing the Services (or any features within the Services) to you or users generally, at our sole discretion, upon five days’ prior notice, unless you have breached this User Agreement, in which case no notice shall be required. You may stop using the Services at any time in accordance with the terms of this User Agreement.

You acknowledge that X-Margin API is an integral part of the Services and is subjected to all the provisions of this User Agreement, including the liability for illegal use of the Services. Please be informed that access to documented features of the X-Margin API become available after registering your Client Account. Upon permission from another user, you may also receive view access for another X-Margin user’s Risk Metrics. You agree to use the X-Margin API solely for

viewing and sharing Risk Metrics (whether your own or of a Sending User, as defined in Section 6) with yourself, your authorized users, or with third-parties approved by you or the Sending User, and communicating information regarding your portfolio or interaction with another user to X-Margin. You agree that you shall not

- (i) disclose or provide the X-Margin APIs and the information transmitted from them to any person or entity other than to your employees (or if you are an entity that has retained independent contractors, you may disclose the X-Margin APIs to them provided (a) such independent contractors enter into an agreement with you at least as protective of X-Margin's rights as this User Agreement, and (b) you hereby agree to be responsible for, and liable to X-Margin for, any breaches of such agreements by your independent contractors);
- (ii) use the X-Margin APIs for any illegal, unauthorized or otherwise improper purposes, or in any manner which would violate this User Agreement or breach any laws or regulations, or violate the rights of Sending Users or third parties. Your X-Margin API key may be revoked at any time by us upon five days' notice in the absence of breach and without notice if you are in breach of this User Agreement.

Furthermore, in order for Risk Metrics to be calculated, you agree to provide X-Margin, through the Software, API access to your Funds Sources. You understand and agree that the calculations are made in a privacy-preserving, zero-knowledge system wherein X-Margin does not view the raw data accessible via Funds Sources API, unless otherwise permissioned.

## **5. Prices, Payment Terms, and Refunds**

For paid Services, fees payable by you to X-Margin in respect of the Services will be as agreed from time to time by you and X-Margin.

If we change our prices, such changes will only apply to transactions made after the date the increase comes into effect. To the extent any prices are displayed on the Site or through the Software, such prices may not include applicable discounts or taxes relevant to you.

Additional charges or taxes may be applied by your Funds Source, payment service provider, issuer bank, or other intermediaries that are beyond our control.

X-Margin will indicate on the Site or through the Software which payment methods it accepts. However, X-Margin does not guarantee the availability of any payment method at any moment. X-Margin may add, remove or suspend any payment method temporarily or permanently in its own discretion.

Any payments you make for the Services may be subjected to sales tax (or depending on your jurisdiction, value-added tax) under California law and/or the law of your state or jurisdiction.

Unless otherwise required by law, we have no obligation to provide a refund or a credit. Due to the nature of the Services as a digital product, no refunds are granted without clear, justified, and legitimate reasons. We will assess any refund request for fees payable in advance on its merits and in the manner set forth in this User Agreement and as specified elsewhere on the Site.

## **6. Use of the Services by You**

As a Client, you can use the Services to calculate and monitor the risk of your Portfolio, send your Risk Metrics to other users and receive Risk Metrics from other users. To the extent you interact with other users in exchanging Risk Metric information, you may fall into one or both of the following categories of users:

- A Client who sends their Risk Metrics to other X-Margin users (“**Sending User**”):

You may use the Services to input certain information about your Portfolio to generate Risk Metrics. Through the Services, you can share certain Risk Metrics with potential counterparties with whom you have a bilateral relationship. For example, you become a Sending User when you are considering borrowing funds from a counterparty who wishes to view your Risk Metrics to evaluate the potential transaction. To send Risk Metrics to another party, such a party must be a client registered with X-Margin and subject to this User Agreement.

If you (i) shared your Risk Metrics with a potential counterparty (a Receiving User, as defined below) for purposes of allowing them to evaluate entering into a transaction with you (e.g. a loan), and (ii) you have not yet entered into any transaction with them, you will have the right to terminate such Receiving User’s access to your information. Once you have entered into the transaction with the Receiving User, and that transaction is registered in X-Margin’s system, you will not be able to revoke access to your Risk Metric information without such Receiving User’s consent.

- A Client who receives Risk Metrics from other X-Margin users (“**Receiving User**”):

You may use the Services to view the Risk Metrics of other clients that have agreed to share certain Risk Metrics with you. For example, you may become a Receiving User when you are considering lending in a bilateral relationship, and wish to view your potential counterparty’s Risk Metrics.

After the Sending User has authorized your access, you will receive a token or password that enables you to view the relevant data via the X-Margin GUI or receive information via API.

If you (i) received a Sending User’s Risk Metric information for purposes of allowing you to evaluate a transaction with such a Sending User, and (ii) you do not have a live transaction with them, the Sending user can unilaterally withdraw your access.

Regardless of which type of Client you are, your use of the Services is subject to all applicable local, provincial, and federal laws and regulations. You agree to comply with all local laws including, without limitation, those covering securities, commodities, lending, anti-money laundering, the internet, data, email, export, or privacy. You agree to comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which you reside. Notwithstanding the above, we reserve the right to limit the availability of the Services or the provision of any Services to any person, geographic area, or jurisdiction, at any time and in our sole discretion. You acknowledge and agree that you will not have any right to obtain access to the underlying information supporting our calculations, or complete access to the methodologies for certain Risk Metric calculations, but only provide input thereto and receive the output thereof through usage of the Services.

Unless you have been specifically permitted to do so in a separate agreement with us, you agree that you will not reproduce, duplicate, copy, sell, trade, or resell the Services or any of its Contents (defined below in Section 11) or any of our products and services for any purpose.

You agree that you will not use the Services to:

- violate, or assist in the violation of, any law, statute, ordinance, or regulation, sanctions programs administered in the countries where X-Margin conducts business or in your jurisdiction. For example, you agree that you will not use the Services to conduct any transactions that would violate securities, commodities, lending, or other laws relevant to the transaction.
- engage in any transaction involving proceeds of any unlawful activity; or to publish, distribute or disseminate any unlawful material or information;
- access content and data that is not intended for you;
- restrict, disrupt or disable service to users, hosts, servers or networks or otherwise attempt to interfere with the proper working of the Services;
- promote or engage in internet abuse, including unsolicited advertising and spam;
- promote, upload, post, or otherwise make available any material that is abusive, harassing, obscene, vulgar, hateful, sexually explicit, invasive of another's privacy, defamatory or otherwise objectionable or illegal, or that discriminates based on race, gender, religion, nationality, disability, sexual orientation, age, family status or any other legally protected class;
- upload, post, or otherwise make available any material that contains viruses, worms, malware, or other malicious software;
- engage in transactions involving, upload, post, or otherwise make available any material that you do not have a right to make available or that infringes any patent, trademark, trade secret, copyright, right of publicity, or other proprietary rights of any person or entity, without the appropriate authorization from the rights holder. You shall be solely liable for any damage resulting from any infringement of the intellectual property of any third-party;
- create a false or fictional profile or attempt to cloak or conceal your identity or when requesting authorization to use the Services;
- engage in any activity that interferes with or disrupts the use of the Services, including but not limited to hacking or bypassing any measures we may use to prevent unauthorized access to the Services;
- use the Services to operate in or as a time-sharing, outsourcing, or service bureau environment, or as an application service provider, or in any way allow others to use the Services for the benefit of any third party;
- engage in any activity that attempts to reverse engineer, disassemble, decompile, hack or extract any proprietary software used to maintain the Services;
- track, trace, or harvest any information on the Services or any other person who visits the Services; or
- sell, distribute, copy, sub-license, loan, transfer, duplicate, reproduce, trade, resell, or otherwise monetize the Services without our consent.

YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR (AND THAT WE HAVE NO RESPONSIBILITY TO YOU OR ANY THIRD PARTY FOR) ANY BREACH OF YOUR OBLIGATIONS UNDER THIS USER AGREEMENT AND FOR THE CONSEQUENCES (INCLUDING ANY LOSS OR DAMAGE WHICH WE MAY SUFFER) OF ANY SUCH BREACH.

When inputting data for the Risk Metric calculations and otherwise, you agree to provide true, accurate, complete, and current information about your relevant Client Accounts, Funds Sources, Portfolio, and all other relevant transactions and other data requested by X-Margin or by your transaction counterparty and to continually update such information. You shall also disclose and input any outstanding transaction or other related information that impacts your Risk Metrics for the relevant accounts and that the X-Margin Software might not be able to automatically detect, read or process from your exchange accounts, wallets, or other Fund Sources.

You understand and agree that X-Margin is entitled to rely upon any such data, information, or instructions as provided by you and that accurate adverse information on your risk metrics report cannot be changed. If you are a Sending User, you understand and agree that the Receiving User of your Risk Metrics is entitled to rely upon any such data, information, or instructions as provided by you. If you are a Receiving User, you acknowledge and agree that you are reliant solely on Sending User—and not X-Margin—regarding the accuracy, completeness and timeliness of any Risk Metrics, data, information, or instructions provided to you by a Sending User.

If any error results from incorrect data supplied by you, you shall be responsible for discovering and reporting such error to X-Margin—and any Receiving User, if applicable—and supplying the data necessary to correct such error. You are solely responsible for and you agree to defend, indemnify, and hold harmless the Receiving User and X-Margin for any Losses that may result from any errors, inaccuracies or omissions in data supplied by you. If you omitted any of the aforementioned requested information or if any information that you provide is untrue, inaccurate, incomplete, or not current, or if X-Margin has reasonable grounds to suspect that such information is untrue, inaccurate, incomplete or not current, X-Margin, at its sole discretion, has the right to suspend or terminate your Client Account(s), or order of, use of, and/or access to, the Services, and refuse all current or future orders of, use of, and/or access to, any Services or suspend or terminate any portion thereof. X-Margin will not be responsible or liable for any Losses that may result from any errors, inaccuracies or omissions in data supplied by a Sending User.

In certain cases, the information provided by or on your behalf (including as a Sending User) may entail making legal determinations or otherwise interpreting contracts to which you are party or rules of exchanges on which you trade. You shall be responsible for the making of all such legal determinations, interpreting contracts and the rules of exchanges or other platforms on which you trade. None of the Services or any other content made available by X-Margin constitutes the provision of legal advice by X-Margin to you. You are solely responsible for and you agree to defend, indemnify, and hold harmless the Receiving User and X-Margin for any Losses that may result from any incorrect legal determinations or contract interpretation made by you or on your behalf.

In some instances, you may enter into a transaction with a counterparty that is an X-Margin client. You agree to use your bests efforts to cooperate and act in good faith with such counterparty on the correct input of the terms of the transaction in the Software to calculate Risk Metrics. Similarly, you shall act in good faith to continually update the status of the transaction.

You shall be solely responsible for and you agree to defend, indemnify, and hold harmless X-Margin from any Losses that may result from a dispute between you and your counterparty.

### **Data Not Guaranteed**

You understand that Risk Metric calculations are dependent on information (e.g. asset prices, account balances etc.) from external third parties ("**Disseminating Party**"), including but not limited to digital asset exchanges ("**External Data**"). You understand that X-Margin does not and cannot guarantee the timeliness, sequence, accuracy, completeness, reliability, or content of External Data or other market information or messages disseminated to or by any Disseminating Party. You understand that X-Margin does not warrant that the service provided by any such Disseminating Party will be uninterrupted or error-free. NEITHER X-MARGIN, ANY OF ITS AFFILIATES, THEIR RESPECTIVE OFFICERS OR EMPLOYEES, SHALL BE LIABLE IN ANY WAY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF, (I) ANY EXTERNAL DATA, INFORMATION OR MESSAGE, OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH DATA, INFORMATION OR MESSAGE; OR (B) ANY LOSS (AS DEFINED IN THIS USER AGREEMENT) OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE OR (III) INTERRUPTION IN ANY SUCH EXTERNAL DATA, INFORMATION, OR MESSAGE, WHETHER DUE TO ANY ACT OR OMISSION BY X-MARGIN, ANY OF ITS AFFILIATES, THEIR RESPECTIVE OFFICERS OR EMPLOYEES, OR ANY DISSEMINATING PARTY, OR TO ANY "FORCE MAJEURE" (E.G., FLOOD, EXTRAORDINARY WEATHER CONDITIONS, EARTHQUAKE OR OTHER ACT OF GOD, FIRE, WAR, INSURRECTION, RIOT, LABOR DISPUTE, ACCIDENT, ACTION OF GOVERNMENT, OR COMMUNICATIONS OR POWER FAILURE, EQUIPMENT OR SOFTWARE MALFUNCTION) OR ANY OTHER CAUSE BEYOND THE REASONABLE CONTROL OF X-MARGIN, ITS AFFILIATES, THEIR RESPECTIVE OFFICERS AND EMPLOYEES, OR ANY DISSEMINATING PARTY.

## **7. Use of the Services through Mobile Devices**

You may access and use the Services through a mobile device. You are solely responsible for any prerequisite software and hardware requirements and for any data fees associated with accessing and using the Services through a mobile device.

## **8. Client Data**

### **8.1 Ownership of Client Data**

As between X-Margin and Client, Client exclusively owns all rights, title, and interest in and to all data submitted by or for Client to the Software for account registration and as inputs for calculation of Risk Metrics in using the Services ("**Client Data**"). X-Margin does not acquire any rights, title, or ownership interest of any kind whatsoever, express or implied, in any of the Client Data, other than those specified herein and in the Privacy Policy. However, the Risk Metrics, which are outputs of such inputted information, are the property of X-Margin. X-Margin grants you a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to view and share the Risk Metrics, subject to the provisions of this User Agreement. Notwithstanding the foregoing, X-Margin will not send your Risk Metrics in a manner that is tied to your identity without your express instruction.

Furthermore, Client acknowledges and agrees that X-Margin may, in its sole discretion, retain certain Client Data, including:

- subject to applicable law, information about Client's identity and payment or other information obtained in connection with Client's registration for a Client Account and/or the provision of any Services.
- a history of transactions between you and another X-Margin client-inputted into the Software, whether manually or via API.
- Aggregated Risk Metrics calculated based on the information you input through the Software (See 8.2 below).

If X-Margin does retain any such information, you acknowledge it is not obligated to retain that information for any specified period.

## **8.2 Aggregated Data**

You acknowledge and agree that as owner of the Risk Metrics, X-Margin may create aggregated and de-identified Risk Metrics ("**Aggregated Data**") and to use Aggregated Data, and all modifications thereto and derivatives thereof, for any purpose, including, without limitation, to improve the Services, conduct research, advertising calculation volume or other statistical information various marketing materials and publications, develop new products and services and understand usage and for predictive analytics and insights. X-Margin shall own all Aggregated Data and may transfer or assign any of its rights in the Aggregated Data to any third party. X-Margin represents and warrants that it is using methods and processes that are meant to ensure the irreversibility of the Aggregated Data. X-Margin may resell, distribute, market or license any or all Aggregate Data and shall have the right to obtain additional fees from such usage fit and retain all compensation related thereto; provided that, X-Margin shall not identify you or any of your authorized users in connection therewith, except: (a) as required pursuant to applicable law; (b) for dispute resolution purposes with you or any other person; or (c) to legal or accounting advisors on a confidential basis.

## **9. Third-Party Platforms**

Use of certain hyperlinks on the Services may direct you to third party feeds, services, Funds Sources, software, websites, desktop or mobile applications (collectively, "**Third Party Platforms**"). In addition, APIs may be called to read and receive information from Third Party Platforms. Such Third Party Platforms are not under the control of X-Margin, and X-Margin is not responsible for the functionality or contents of any such Third Party Platforms or any hyperlink contained in such Third Party Platform. Hyperlinks to Third Party Platforms included on the Services are provided for your convenience, and the inclusion of such hyperlinks does not imply a recommendation or endorsement by us of any such Third Party Platform or the products or services or information offered therein. If you decide (i) to provide X-Margin with access to API call any Third Party Platform or (ii) consume information that relies on data from the third party API, you do so entirely at your own risk. You acknowledge and agree that X-Margin shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by, or in connection with the use of or reliance on any such Third Party Platform or information. See also Section 6 "Data Not Guaranteed."

## **10. Privacy and Personal Information**

By accessing or using the Services, you understand that we will collect and use certain information about you, including personal information of the type mentioned above in Sections 3 and 10. For more information about our collection, use, disclosure, and protection of your

personal information, please read our Privacy Policy at []. Questions or requests concerning your personal information may be sent via email to support@xmargin.io.

## 11. Ownership of Intellectual Property Rights

The contents of the Services include, without limitation, the Software, all information, data, products, materials, services, applications and tools, APIs, documentation, manuals and training materials, design elements, text, images, photographs, illustrations, audio and video contents, artwork and graphics contained therein or otherwise made available to you in connection therewith (collectively the “**Contents**”) and, unless the context clearly requires otherwise, or we explicitly say so in writing, the term Services includes all of the Contents.

X-Margin and its successors, assigns, licensors, partners, and/or suppliers own all rights, title and interest in the Services together with all Intellectual Property of and displayed, distributed, or otherwise made available via the Services. Third party marks and logos belong to their respective owners and not to X-Margin. Except as set forth herein, nothing in this User Agreement gives you a right to use any of the Contents, X-Margin Intellectual Property of X-Margin. You may not assign or transfer any of the Contents and you may not grant a license to use or access the Services to any party.

Except as explicitly stated herein, no information or statement contained in this User Agreement or the Services shall be construed as conferring, directly or by implication, estoppel or otherwise, any license or right under any patent, copyright, trademark, or other Intellectual Property rights of X-Margin or any third party. We reserve all rights that are not expressly granted. You must not alter, delete, or conceal any copyright or other notices contained on the Services, including notices on any of the Contents that you are permitted to download, transmit, display, print, or reproduce from the Services.

Any unauthorized or prohibited use of any Contents may subject you to civil liability, criminal prosecution, or both, under applicable federal, provincial, state and local laws. You further agree that any derivative works, improvements, inventions or works developed by you based upon or relating to the Services that involve a breach of this User Agreement shall be owned by X-Margin, and you hereby assign and agree to assign to X-Margin such derivative works, improvements, inventions or works. All software used on the Site or otherwise under the Services is the property of X-Margin or its software suppliers and is protected by United States and international copyright laws. Reproduction, preparation of derivative works, and distribution of copies of such content, in whole or in part, is prohibited without prior consent.

The limited rights granted to you under this User Agreement may be revoked by us at any time for any reason whatsoever.

You agree to use commercially reasonable efforts to safeguard the Services, and any Intellectual Property rights in it, (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. You will promptly notify us if you become aware of any infringement of any Intellectual Property rights in the Services and will fully cooperate with us, in any legal action taken by us to enforce our Intellectual Property rights. “**Intellectual Property**” means all intellectual property rights, comprising, arising from or associated with the following: (a) internet domain names; (b) trademarks, service marks, certification marks, logos, symbols and any other indicia of origin and any registrations or applications therefor, together with any goodwill symbolized by the foregoing; (c) patents and patent applications, inventions and discoveries (whether or not patentable); (d) works of authorship and copyrights (including rights in computer software) whether registered or

unregistered and any applications therefor; (e) trade secret rights in information and know-how, including trade secret rights in any formula, pattern, compilation, program, device, method, technique, or process, that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and (f) all other intellectual property or proprietary rights that may be protectable under applicable Law (including with respect to data and databases).

If you or any of your employees, contractors, and agents sends or transmits any communications or materials to us by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), all such Feedback is and will be treated as non-confidential; provided that, we will not reveal your personal information in using the Feedback. You hereby assign to us on your behalf, and on behalf of your employees, contractors, and agents, all right, title, and interest in, and we are free to use, without any attribution or compensation to you or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although we are not required to use any Feedback.

## **12. Third-Party Information**

Any third-party content, data, information, or publications made available through the Services are furnished by us on an as-is basis for your convenience and information. Any opinions, advice, statements, services, offers, or other information made available by third parties are those of the respective author(s) or publisher(s), partner(s) and not of X-Margin. X-MARGIN DISCLAIMS ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, THAT THE INFORMATION IN SUCH PUBLICATIONS IS ACCURATE OR COMPLETE. SEE ALSO, SECTION 6 "DATA NOT GUARANTEED."

## **13. Disclaimer**

Through the X-Margin Services, Risk Metric calculations are generated based on the data you provide and rely on price information from the external, third party sources that provide the price information of the assets reflected in your Portfolio. The Risk Metric calculations use (i) X-Margin's proprietary privacy-preserving calculators and cryptographic proofs and/or other calculators of X-Margin and (ii) X-Margin's other proprietary infrastructure and technology, networks, servers, and application systems and software, which may be used to provide the Services.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED HEREIN, YOUR USE OF THE SERVICES IS PROVIDED TO YOU "AS IS" AND "AS AVAILABLE". X-MARGIN, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS EXPRESSLY DISCLAIM ALL OTHER REPRESENTATIONS, ENDORSEMENTS, WARRANTIES, AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION, WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, COMPLETENESS, SECURITY, RELIABILITY, SUITABILITY, ACCURACY, CURRENCY OR AVAILABILITY, ERROR-FREE, UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SERVICES OR THE SERVER THAT MAKES IT AVAILABLE ARE

FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR ANY WARRANTY ARISING FROM A COURSE OF DEALING, PERFORMANCE, OR TRADE USAGE. YOUR SOLE AND EXCLUSIVE REMEDY, AND OUR SOLE OBLIGATION TO YOU OR ANY THIRD PARTY FOR ANY CLAIM ARISING OUT OF YOUR USE OF THE SERVICES, IS THAT YOU ARE FREE TO DISCONTINUE YOUR USE OF THE SERVICES AT ANY TIME.

X-MARGIN, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS PROVIDE NO WARRANTIES OR REPRESENTATIONS REGARDING THE SERVICES INCLUDING BUT NOT LIMITED TO THAT (I) THE SERVICES WILL MEET YOUR REQUIREMENTS; (II) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR DEFECTS-FREE; (III) THE RESULTS OBTAINED FROM USE OF THE SERVICES WILL BE CORRECT, ACCURATE OR RELIABLE; OR (IV) THAT ANY AS WELL-KNOW AS STILL NOT DETECTED DEFECTS WILL BE CORRECTED.

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X-MARGIN IS NOT A CREDIT REPAIR ORGANIZATION, AND IS NOT OFFERING TO SELL, PROVIDE OR PERFORM ANY SERVICE TO CLIENT FOR THE EXPRESS OR IMPLIED PURPOSE OF EITHER IMPROVING CLIENT'S CREDIT RECORD, CREDIT HISTORY OR CREDIT RATING OR PROVIDING ADVICE OR ASSISTANCE TO CLIENT ABOUT IMPROVING CLIENT'S CREDIT RECORD, CREDIT HISTORY OR CREDIT RATING.

YOU ACKNOWLEDGE AND AGREE THAT X-MARGIN, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS ARE NOT RESPONSIBLE FOR YOUR USE OF OR RELIANCE ON ANY (I) INFORMATION, INCLUDING RISK METRICS, THAT YOU OBTAIN USING THE SERVICES OR (II) TRANSACTION DECISIONS YOU MAKE THEREON. YOUR DECISIONS MADE IN RELIANCE ON THE PRODUCTS OR SERVICES OR YOUR

INTERPRETATIONS OF THE DATA ARE YOUR OWN FOR WHICH YOU—NOT X-MARGIN—HAVE FULL AND SOLE RESPONSIBILITY. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. X-MARGIN WILL NOT BE LIABLE, WHETHER IN TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY OR OTHERWISE, IN RESPECT OF ANY DAMAGE, EXPENSE OR OTHER LOSS YOU MAY SUFFER ARISING OUT OF SUCH INFORMATION, INCLUDING RISK METRICS, OR ANY RELIANCE YOU MAY PLACE UPON SUCH INFORMATION OR ANY TRANSACTION THAT YOU ENTER INTO BASED ON THE FOREGOING.

FOR THE AVOIDANCE OF DOUBT, X-MARGIN AND THE SERVICES DO NOT HOLD CUSTODY OF YOUR ASSETS.

#### **14. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW YOU EXPRESSLY UNDERSTAND AND AGREE THAT X-MARGIN AND ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, WHETHER UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, WHICH MAY BE INCURRED BY YOU IN CONNECTION WITH YOUR USE OF THE SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF PROFIT, LOST OPPORTUNITIES, TRADING LOSSES, INVESTMENTS OR COMMITMENTS, WHETHER MADE IN THE ESTABLISHMENT, DEVELOPMENT OR MAINTENANCE OF BUSINESS REPUTATION OR GOODWILL, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, LOSS OR CORRUPTION OF DATA SUFFERED, OR OTHER INTANGIBLE LOSS OR FOR ANY OTHER REASON WHATSOEVER. NONE OF X-MARGIN AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL BE RESPONSIBLE FOR ANY LOSSES RESULTING FROM ALTERATION OR UNAUTHORIZED USE OF THE SERVICES OR FROM THE UNINTENDED AND UNFORESEEN RESULTS OBTAINED BY CLIENT OR ANY AUTHORIZED USERS RESULTING FROM SUCH USE.

X-MARGIN MAXIMUM AGGREGATE LIABILITY TO YOU SHALL BE LIMITED TO \$100.00.

THE LIMITATIONS ON OUR LIABILITY TO YOU IN THIS SECTION SHALL APPLY WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR WHETHER OR NOT WE HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

#### **15. Indemnification**

To the maximum extent permitted by applicable law, you agree to defend, indemnify, and hold harmless X-Margin, its affiliates, and their respective directors, officers, employees, agents, service providers, contractors, licensors, suppliers, successors, and assigns from and against any all claims, liabilities, losses, penalties, fines, costs, damages, judgments, awards, amounts paid in settlements and offsets and any reasonable out-of-pocket costs, expenses, attorneys' fees, and interest ("**Losses**") arising out of or relating to your breach of this User Agreement or your use or misuse of the Services, including, but not limited to, your submissions, Third Party Platforms, any use of the Content, Services, and products other than as expressly authorized in this User Agreement or any supplement, addendum, amendment or annex and any violation of

or noncompliance with applicable law by you or any authorized user. X-Margin shall notify you reasonably promptly in writing of any such claim or suit; provided, that the failure to so notify you shall not limit your indemnification obligations under this Section, unless you are materially adversely prejudiced thereby. X-Margin shall be entitled to defend any such claim or suit as it determines in its sole discretion. You agree to provide X-Margin with full information and assistance in settling and/or defending such a claim or suit.

We reserve the right, at our option and in our sole discretion, to assume full control of the defense of claims with legal counsel of our choice. You may not enter into any third-party agreement that would, in any manner whatsoever, constitute an admission of fault by us or bind us in any manner, without our prior written consent. In the event we assume control of the defense of such claim, we will not settle any such claim requiring payment from you without your prior written approval.

## **16. Term, Termination, and Cancellation**

The term of your subscription and the license granted hereunder will remain in effect until terminated by either you or X-Margin.

We may terminate your use of the Services and/or access to the Software, Contents, APIs, features, functionality, products and services made available in connection therewith, at any time and for any reason, with or without cause, upon five days' notice to you and without any liability or further obligation of any kind whatsoever to you or any other party. In event that you are in breach of this User Agreement, then no notice period shall be required.

If X-Margin detects unauthorized or suspicious actions with your Client Account, X-Margin may temporarily block your Client Account until all the circumstances have been clarified. A Client Account can also be terminated if you do not provide the required clarifications within the time requested.

If you want to terminate your Client Account, you may do so by closing your Client Account, where we have made this option available to you. Your Client Account will be closed within thirty (30) days provided that: (i) any disputes in which you have been involved have been satisfactorily resolved; and (ii) you have completed any other obligation(s) associated with your use of the Services, including paying any outstanding fees to X-Margin.

Termination of this User Agreement shall not relieve either party of liability for any act, omission, occurrence or liability occurring before the expiration or termination of this User Agreement. Section 1, 3.1, 5, 8 to 18 shall survive expiration or termination of this User Agreement for any reason.

## **17. Support and Reporting**

We only provide support for the operation of the Services. Should you become aware of misuse of the Services including libelous or defamatory conduct, you must report it to X-Margin. We recommend contacting us for assistance if you experience any issues regarding the Services in the following ways:

1. by requesting via "**Support**" form embedded into the Software (when logged in to your Client Account);
2. by sending email to [support@xmargin.io](mailto:support@xmargin.io).

## 18. General

1. This User Agreement, including the Privacy Policy and any other supplement, addendum, amendment, annex or URL incorporated by reference in this User Agreement or set forth on the Website or X-Margin GUI, constitutes the entire agreement between you and X-Margin relating to your use and our provision of the Services.
2. The parties agree that if a party does not exercise or enforce any contractual or legal right or remedy which is contained in this User Agreement (or which it has the benefit of under any applicable law), this will not be taken to be a formal waiver of its rights and that those rights or remedies will still be available to the party.
3. If any provision of this User Agreement is held to be illegal, invalid or unenforceable, this will not affect any other provision of this User Agreement and the agreement between you and us will be deemed amended and/or interpreted to the extent necessary to make it legal, valid, and enforceable.
4. The parties hereto confirm that they have requested that this User Agreement and all related documents be drafted in English. Any translation hereof has been provided for information purposes only and does not have any legal value nor create any contractual relationship between the parties.
5. The relationship between the parties is that of independent contractors. Nothing contained in this User Agreement shall be construed as creating any agency, partnership, joint venture or other forms of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
6. The laws of the State of California govern this User Agreement and the parties' relationship as if you signed this User Agreement in California, without regard to California State's conflicts of laws rules. If any provisions of this User Agreement are inconsistent with any applicable law, those provisions will be superseded or modified only to the extent such provisions are inconsistent. Subject to the mandatory arbitration provision herein, the parties agree to submit to the federal or state courts in San Francisco, California for the exclusive jurisdiction of any dispute arising out of or related to your use of the Services or your breach of this User Agreement. You waive any objection based on lack of personal jurisdiction, place of residence, improper venue, or forum non conveniens in any such action.

The Services of X-Margin may be hosted in a number of locations, including outside of your jurisdiction. If you are a user accessing the Site from the European Union, Asia, or any other region with laws or regulations governing personal data collection, use, and disclosure that differ from United States laws, please be advised that through your continued use of the Site, which is governed by United States law, you are transferring your personal information to the United States and you consent to that transfer.

7. The parties agree to arbitrate any dispute arising from this User Agreement or your use of the Site on an individual basis. ARBITRATION PREVENTS YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL. THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY. The parties agree that: (i) any arbitration will occur in San Francisco, CA; and, (ii) the arbitration will be conducted confidentially by a single

arbitrator in accordance with the rules of American Arbitration Association for arbitration of consumer-related disputes, in the English language, and with limited discovery. At your request, hearings may be conducted in person or by telephone and the arbitrator may provide for submitting and determining motions on briefs, without oral hearings. Other than class procedures and remedies discussed below, the arbitrator has the authority to grant any remedy that would otherwise be available to a court or other tribunal. THE PREVAILING PARTY IN ANY ACTION OR PROCEEDING TO ENFORCE THIS USER AGREEMENT SHALL BE ENTITLED TO COSTS AND ATTORNEYS' FEES. THE ARBITRAL DECISION MAY BE ENFORCED IN ANY COURT. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AND X-MARGIN WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION, OR REPRESENTATIVE ACTION OR PROCEEDING. You will not assign any of your rights or delegate any of your obligations under this User Agreement without our prior written consent. Any purported assignment or delegation in violation of this subsection is null and void. No assignment or delegation relieves you of any of your obligations under this User Agreement.

8. Notices; Electronic Communications.

1. You hereby consent to the delivery of any required or optional communication under this User Agreement or under any applicable law, including changes in the terms and conditions of this User Agreement, via the Software, by e-mail, website or other electronic means, subject to compliance with any applicable law. Any such documents that are delivered electronically are deemed to be "in writing." If a signature or acknowledgment is required or requested with respect to any such document and any authorized user "clicks" in the appropriate space, or takes such other action as may be indicated on the Software, you will be deemed to have signed or acknowledged the document to the same extent and with the same effect as if you had signed the document manually. You acknowledge that we may modify any of the terms set forth in this User Agreement via any of the notification methods set forth above. If you do not consent to any such modifications, your sole right will be to terminate this User Agreement in accordance with Section 3.
  2. Notices to You. We may provide any notice to you under this User Agreement by: (i) sending a message to the email address you provide to us and consent to us using; or (ii) by posting to the Software, including any interfaces. Notices sent by email will be effective when we send the email and notices we provide by posting will be effective upon posting. It is your responsibility to keep your email address current and check for incoming messages regularly.
  3. Notices to Us. To give us notice under this User Agreement, you must contact us by email at [support@xmargin.io](mailto:support@xmargin.io), or as made available through the Software, including any interfaces.
9. To request the consent of X-Margin for any of the actions for which such consent is required under this User Agreement, please send an email to [support@xmargin.io](mailto:support@xmargin.io). X-Margin reserves the right to refuse any such requests in its sole discretion.