

# OPEN HORIZON COM API Standard Licensing AGREEMENT

This AGREEMENT is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 200\_ by and between Derivative Trading Systems Ltd (hereinafter referred to as "DTS") whose registered address is 112-114 Goswell Road, London EC1V 7DP and:

(hereinafter referred to as "CUSTOMER") located at:

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Whereas DTS provides a service (hereinafter referred to as the "SERVICE") consisting of its software (hereinafter referred to as "OPEN HORIZON COM API") combined with information obtained, selected, consolidated and stored by DTS (hereinafter referred to as the "DATABASE"); and

Whereas CUSTOMER desires to utilise OPEN HORIZON COM API and the DATABASE;

Now, therefore CUSTOMER and DTS hereby agree to the following;

## 1. License

A Subject to the terms of this AGREEMENT and in consideration of the License Fee, DTS hereby grants to CUSTOMER a non-exclusive, non-transferable license, to:

- 1 use the number of copies of OPEN HORIZON COM API listed in Schedule A, and
- 2 use the data from the DATABASE ("DATA") displayed via OPEN HORIZON COM API, internally only for CUSTOMER's normal business purposes subject to Clause 2, such license to be for an initial minimum period of twelve months from the date of this AGREEMENT, and thereafter to terminate with the termination of the AGREEMENT.

## 2. Restrictions

A OPEN HORIZON COM API is provided on the basis that the CUSTOMER will nominate the name of the user(s) and provide the login name of those user(s) on CUSTOMER's computer network and/or user(s) workstations ("USER(S)") such that OPEN HORIZON COM API will be set up by CUSTOMER to allow only those USER(S) to run OPEN HORIZON COM API and to use the DATA in an un-encrypted form. The names of the nominated USER(S) are to be recorded in Schedule B. The use of OPEN HORIZON COM API and DATA shall be restricted to the named USER(S) and the DATABASE may only be accessed under this AGREEMENT by those named USER(S). The USER names associated with each license may be changed from time to time by notifying DTS. For the avoidance of doubt, only one USER is permitted per license subscribed to in Schedule A but subject to Clause 17B.

B OPEN HORIZON COM API is provided exclusively for the purposes of reading the DATABASE for use by CUSTOMER in performing research on the DATABASE. OPEN HORIZON COM API may not be used to reformat the DATABASE in any other form and can only be used within the confines of a SECURE OPERATING ENVIRONMENT to be established for the purposes of this AGREEMENT. The SECURE OPERATING ENVIRONMENT shall be set up by the CUSTOMER and may be reviewed by DTS from time to time. The SECURE OPERATING ENVIRONMENT shall provide the security necessary to ensure that the terms of this AGREEMENT are complied with. Such SECURE OPERATING ENVIRONMENT shall, subject to the other requirements of this AGREEMENT provide at least as much security as CUSTOMER would use to ensure that CUSTOMER'S own proprietary computer programs, research and/or data could not be copied or distributed either internally or externally to persons or other entities not authorised or licensed so to receive. For the avoidance of doubt the DATA and/or the DATABASE may not be copied or reproduced in any format outside the SECURE OPERATING ENVIRONMENT and is restricted to use by USER(S) licensed by this AGREEMENT. OPEN HORIZON COM API may not be used to print out the DATABASE in its unencrypted form other than within the confines of the SECURE OPERATING ENVIRONMENT.

C Except as permitted by law CUSTOMER may not reverse engineer, decompile or disassemble OPEN HORIZON COM API or the DATABASE, and shall not in any way tamper with the encryption of the DATABASE files.

D CUSTOMER shall not attempt to write or produce any computer program that is designed or purports to be designed to access the DATA files contained in the DATABASE other than by using the computer program listed in Schedule C and any additional computer programs up to the limit nominated in Schedule D.

E CUSTOMER shall not remove or destroy any copyright or other proprietary marking or label placed upon or contained within OPEN HORIZON COM API or DATABASE or from the output of OPEN HORIZON COM API or DATABASE

F DATA extracted from the DATABASE can only be used by the named USER(S) listed in Schedule B. DATA can be saved within the SECURE OPERATING ENVIRONMENT and may not be copied or distributed to any person who is not a named USER(S) whether an employee, contractor, director or other associate of CUSTOMER or any other person or entity. DATA which has been manipulated by a named USER such that it is in a form that cannot be reverse engineered back into the original DATA may be copied and/or distributed by the USER so long as neither the unmanipulated DATA nor manipulated DATA is not used in any manner that can be considered to be in competition with the services provided by DTS to its customers.

G In the event that DTS becomes aware that either OPEN HORIZON COM API, the DATA or the DATABASE is/are being used in a manner that breaches any of the restrictions in Clause 2, DTS shall notify CUSTOMER in writing and CUSTOMER shall immediately cease the use of OPEN HORIZON COM API, the DATA or the DATABASE in the manner that causes such breach to occur unless CUSTOMER can demonstrate to DTS's satisfaction that no breach has occurred.

### 3 Services

**A** DTS will provide technical support for OPEN HORIZON COM API and DATABASE up to a maximum of 5 man hours per OPEN HORIZON COM API license purchased per annum, during DTS's normal working hours and by means of telephone support. Should DTS determine that any problem cannot be rectified by means of telephone support then on site support will be provided only if the license is installed in a location at which DTS has on-site support facilities. In such instance DTS will respond to requests for technical support within eight working hours;

**B** Any errors in DATA that are transmitted to CUSTOMER which are notified to DTS will be promptly corrected by DTS at its central DATABASE and made available for downloading by CUSTOMER.

**C** Where DTS's Horizon Software (or its successors) has been installed at the location of CUSTOMER covered by this AGREEMENT (hereinafter referred to as the LOCATION) the updates to the DATABASE will be provided in accordance with the Horizon Software Agreement.

**D** CUSTOMER shall provide in accordance with any specification notified to it by DTS a dedicated telephone connection to enable downloading of daily updates to the DATABASE at the LOCATION. CUSTOMER shall use all reasonable endeavours to ensure that such telephone connection conforms to any local laws and regulations.

The installation and maintenance of the telephone connection at the LOCATION and the installation and maintenance of any associated modem equipment not supplied by DTS will be the sole responsibility of CUSTOMER and DTS does not accept liability for any non delivery of data that may occur as a result of the non performance of these facilities for whatever reason.

### 4. Supply of the Services

**A** If, in the sole opinion of DTS any reported error was due to improper use of OPEN HORIZON COM API or the DATABASE by CUSTOMER, or programming errors in other software, not OPEN HORIZON COM API, or a hardware fault, or any cause beyond the control of DTS, then DTS may charge to CUSTOMER, at DTS's charges for such services then current, any reasonable costs reasonably incurred by DTS in determining the nature and cause of the reported error and its correction.

**B** DTS may charge CUSTOMER at the rates per man hour or part thereof set out in the Schedule:

**1** for time spent determining the cause and rectification of any problem associated with the downloading of DATA if in the reasonable opinion of DTS the cause of the problem was due to any fault incurred as a result of any fault of or failure by CUSTOMER;

**2** for time spent determining the cause and rectification of any problem associated with the use of OPEN HORIZON COM API or the hardware on which OPEN HORIZON COM API operates or the modem equipment used for the download of data, if in the reasonable opinion of DTS the cause of the problem was not due to any fault of DTS. For the avoidance of doubt this sub-clause 2 shall apply, without limitation, to the time spent by DTS rectifying any problems relating to that part of OPEN HORIZON COM API that controls the licensed usage of OPEN HORIZON COM API caused by CUSTOMER attempting to alter the licensing control mechanism or to move such mechanism in any manner other than as described in the documentation accompanying OPEN HORIZON COM API; and

**3** for time spent configuring OPEN HORIZON COM API following a change in the operating system used and/or any software with which OPEN HORIZON COM API is intended to operate by CUSTOMER from the original operating system on which OPEN HORIZON COM API has been installed.

**C** If the cost to DTS of the performance of its obligations under this AGREEMENT are altered by reason of the coming into force any law or regulation relevant to the subject matter of this AGREEMENT (other than any tax upon profits or revenue), the amount of alteration shall, subject to the written consent of CUSTOMER, be added to or deducted from the Monthly License Fee as set out in Schedule A. Should such consent not be forthcoming within a reasonable time then DTS may terminate this AGREEMENT upon giving to CUSTOMER one month's written notice of its intention to terminate.

### 5. Customer's Obligations

**A** CUSTOMER shall comply with all DTS's reasonable instructions concerning the usage, modification, control and testing of OPEN HORIZON COM API and shall ensure that CUSTOMER's employees are adequately trained in the correct use of OPEN HORIZON COM API.

**B** CUSTOMER shall provide such reasonable access to the locations and facilities therein as DTS may require for the provision of the services.

**C** CUSTOMER shall ensure that all necessary operational and environmental conditions are maintained at the locations for the use of OPEN HORIZON COM API.

**D** CUSTOMER shall use all reasonable endeavours to ensure that an adequate SECURE OPERATING ENVIRONMENT and other security procedures are implemented at each of the LOCATION to ensure that OPEN HORIZON COM API is not able to be used by any person or persons not specifically authorised under this AGREEMENT and that the terms of this AGREEMENT are adhered to in full.

**E** CUSTOMER shall provide to DTS not later than 4 weeks after the commencement of this AGREEMENT a letter from an appropriately authorised representative of the CUSTOMER stating that they have reviewed the security procedures and they believe them to be satisfactory to comply with the terms of this AGREEMENT and that they will periodically review the aforementioned security arrangements to ensure that they are being adhered to for as long as this AGREEMENT is in force. A copy of this letter is to be provided to CUSTOMER's internal audit department or compliance officer as appropriate.

**F** DTS shall be entitled upon giving reasonable notice to attend CUSTOMER's premises for the purposes of inspecting the SECURE OPERATING ENVIRONMENT and ensuring that the terms of this AGREEMENT have been fulfilled. CUSTOMER agrees to provide an appropriately qualified person to demonstrate the SECURE OPERATING ENVIRONMENT to DTS and will provide such assistance as required by DTS for the purposes of the inspection.

**G** If upon inspection of the SECURE OPERATING ENVIRONMENT DTS is not reasonably satisfied with the procedures that have been put in place, CUSTOMER will use its best endeavours to amend the security in order to fulfil the obligations of this AGREEMENT.

### 6. Copyright

**A** CUSTOMER acknowledges that OPEN HORIZON COM API, the DATA and the DATABASE (including without limitation any updates to it) are and shall be the property of DTS and are protected by copyright laws. CUSTOMER agrees to treat OPEN HORIZON COM API, DATA and the DATABASE as copyright materials and acknowledges that provision of access to the DATABASE by means of OPEN HORIZON COM API does not infer any right or title to OPEN HORIZON COM API, the DATA or the DATABASE in its favour, and that no title to or ownership of OPEN HORIZON COM API or the DATA, including any patents, copyrights or trade secrets covering OPEN HORIZON COM API or DATA or any trademarks or service marks used in connection with OPEN HORIZON COM API or the DATA is

transferred to CUSTOMER by operation of the license granted.

**B** All modifications, changes, enhancements and improvements to OPEN HORIZON COM API made by or on behalf of DTS shall be owned exclusively by DTS, including any patents, copyrights or trade secrets which embody any such modifications, changes, enhancements or improvements.

**C** CUSTOMER may create its own products "NEW PRODUCTS" and create reports "NEW REPORTS" from the DATABASE which shall not include the DATA or the DATABASE by using OPEN HORIZON COM API and the DATABASE. CUSTOMER may use, reproduce, have away, or sell any of the NEW PRODUCTS or NEW REPORTS it creates or compiles using OPEN HORIZON COM API and the DATABASE, without license or fees, subject to all the conditions of this AGREEMENT. Copyright in the NEW PRODUCTS and NEW REPORTS shall be CUSTOMER's sole property. For the avoidance of doubt, such NEW PRODUCTS and NEW REPORTS shall not be in such format as to enable the recipient of these NEW PRODUCTS and NEW REPORTS to be able to reproduce the DATA or the DATABASE and shall not be in competition with any products or services supplied by DTS to its customers.

## **7. Indemnification**

**A** DTS will defend at its own expense any action brought against CUSTOMER by any third party based on infringement of any copyright, patent or other proprietary right arising out of the use of OPEN HORIZON COM API or any documentation provided by DTS to CUSTOMER relating to OPEN HORIZON COM API provided that:-

- 1 The use of OPEN HORIZON COM API and documentation by CUSTOMER has at all times conformed with the terms of this AGREEMENT;
- 2 CUSTOMER notifies DTS in writing of any threat of any claim as soon as reasonably practicable after becoming aware of the same;
- 3 The infringement does not arise out of any modification made by CUSTOMER to OPEN HORIZON COM API or documentation without the written consent of DTS;
- 4 Any such claim does not arise out of the use of OPEN HORIZON COM API in conjunction with other software not supplied by DTS.
- 5 Any such claim does not arise out of the use by CUSTOMER of DATA other than that data which has been provided to CUSTOMER by DTS

**B** In the event that it is held that the use of the whole or any part of OPEN HORIZON COM API by CUSTOMER infringes the intellectual property rights of a third party, DTS shall be entitled at its option and expense to either:-

- 1 procure for CUSTOMER the right to continue using OPEN HORIZON COM API; or
- 2 replace and/or modify OPEN HORIZON COM API such that it shall no longer infringe any such third party rights, provided that such replacement and/or modification shall not adversely affect the performance or functionality of OPEN HORIZON COM API.

## **8. Payment**

**A** CUSTOMER shall pay all DTS's invoices within 30 days of receipt from DTS of such invoice which shall be first delivered following the delivery of OPEN HORIZON COM API. If OPEN HORIZON COM API is delivered in instalments, invoices in respect of each instalment will be issued following the delivery of it. For the avoidance of doubt, installations or partial installations on a test network will be subject to invoicing in the same manner as installations on non test networks.

**B** All fees and charges payable under this AGREEMENT shall be net of any sales or other taxes that may apply, including VAT. In the event that payment is not made within thirty 30 days of the due date, interest will be charged at the Barclays Bank PLC base rate prevailing in the United Kingdom at the time plus 2% per annum.

**C** CUSTOMER shall pay any agreed additional charges falling due under the AGREEMENT within one month of receipt of an invoice by CUSTOMER.

**D** If any payment properly due is delayed beyond 60 days, DTS may suspend provision of any of the SERVICES under the terms of this AGREEMENT to CUSTOMER until such payment is received by DTS.

**E** The Monthly License Fee set out in Schedule A is payable quarterly in advance and shall be fixed for an initial minimum period of twelve months and is applicable to the DATABASE as it is installed plus the additional daily updates to that DATABASE. Thereafter in respect of any subsequent twelve month period DTS may vary the Monthly License Fee and shall give to CUSTOMER not less than three months' prior written notice of such variation. Any such variation in the Monthly License Fee shall be agreed in writing by CUSTOMER.

**F** Nothing in Clause 8(E) shall limit the ability for DTS to charge separately for any additions or modifications in the DATABASE, subject to the agreement of the CUSTOMER.

## **9. Warranties**

**A** DTS warrants that OPEN HORIZON COM API will perform substantially in accordance with its accompanying written materials for a period of 90 days from the date of installation.

**B** DTS's entire liability and CUSTOMER's exclusive remedy shall be, at DTS's option, either:

- 1 return of the price paid; or
- 2 repair or replacement of OPEN HORIZON COM API that does not meet DTS's warranty and which is returned to DTS with all accompanying documentation.

**C** This limited warranty shall be void if failure of OPEN HORIZON COM API has resulted from any accident, abuse or misapplication not entirely caused by DTS. Any replacement Software provided pursuant to this Clause 9 will be warranted for the remainder of the warranty period or 30 days, whichever is the longer.

## **10. Liability**

**A** Each party shall be liable for and shall indemnify and keep indemnified the other, against death or injury to any person for loss of, or damage to, any physical property which may arise out of its act, default or negligence or of its employees or agents and nothing in this AGREEMENT shall be taken as seeking to exclude.

**B** In no event shall DTS be liable for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other economic, financial or pecuniary loss) arising out of the use of or inability to use OPEN HORIZON COM API, DATA or the DATABASE, even if DTS has been advised of the possibility of such damages. CUSTOMER acknowledges that the information in the DATABASE provided via OPEN HORIZON COM API is subject to interpretation by CUSTOMER and that this interpretation and any actions taken resulting from this are the sole responsibility of CUSTOMER and that the provision of the DATABASE, DATA and OPEN HORIZON COM API does not constitute the provision of advice to CUSTOMER.

**C** The provisions of Clause 7A excepted, the maximum liability of DTS under this AGREEMENT shall be limited to the

annual fees and charges set out in the Schedule in respect of any single event or series of connected events.

## **11. Duration and Termination**

**A** This AGREEMENT comes into force as of its date and shall continue until terminated in accordance with the provisions of this Clause.

**B** Either party may terminate this AGREEMENT by giving to the other three months' prior written notice to take effect at the end of the first twelve months of installation of OPEN HORIZON COM API or such extension of this period as may be agreed.

**C** This AGREEMENT may be terminated forthwith by DTS if CUSTOMER is in breach of the terms of any license or permission applicable to OPEN HORIZON COM API or the SERVICES, or of any term of this AGREEMENT and, having been notified of its breach by DTS and in the event of such breach being capable of being remedied, CUSTOMER fails to remedy the breach within 14 days of such notification.

**D** Either party may terminate the AGREEMENT forthwith on written notice if the other party shall become insolvent or bankrupt or make an arrangement with its creditors or go into liquidation.

**E** Termination of the AGREEMENT shall not prejudice any rights of either party which have arisen on or before the date of termination.

**F** Should the AGREEMENT be extended the period of any such extension shall be 12 months. Where the Schedule has been amended in accordance with Clause 17B the extension of the term shall be 12 months from the date of such amendment. Where no notice of termination has been sent, extension of the AGREEMENT shall be by continuation of the use of OPEN HORIZON COM API.

**G** Upon the termination of this AGREEMENT for any reason, CUSTOMER will arrange for the deletion of the DATABASE and the return of OPEN HORIZON COM API and DATABASE stored on any media to DTS. Deletion shall mean the complete erasure of the DATABASE and OPEN HORIZON COM API in such a form that it cannot be recovered from all of the media on which it has been stored. This shall include the deletion of the DATA extracted by OPEN HORIZON COM API into CUSTOMER's other applications. CUSTOMER shall not be entitled to continue to use the extracted DATA, the DATABASE or OPEN HORIZON COM API following termination.

**H** CUSTOMER shall further provide DTS with a letter from a representative empowered to represent CUSTOMER in such a capacity within 14 days of the date of termination stating that the provisions of Clause 11(G) have been adhered to.

## **12. Confidentiality**

**A** Each party undertakes to keep and treat as confidential and not to disclose to any other third party any information relating to the business or trade secrets of the other ("CONFIDENTIAL INFORMATION"), or to make use of any such information for any purpose whatsoever, save as specified in this AGREEMENT.

**B** No obligation of confidentiality shall arise pursuant to Clause 12(A) above if the information is:-

- 1 published or otherwise generally available to the public, other than by breach of this AGREEMENT; or
- 2 rightfully in the possession of both parties and was rightfully in their possession prior to the commencement of negotiations leading to this AGREEMENT; or
- 3 received *bona fide* by one party from a third party not acting in violation of any written agreement with the originator.

**C** Disclosure of CONFIDENTIAL INFORMATION shall not be a breach of the obligations imposed under Clause 12A hereof, provided that such disclosure is made pursuant to any judicial or governmental request, requirement or order.

**D** The provisions of this Clause 12 shall survive termination of this AGREEMENT for any reason.

## **13. Assignment**

**A** CUSTOMER shall not assign, pledge or transfer any of its rights or obligations under this AGREEMENT without the prior written consent of DTS.

**B** CUSTOMER acknowledges that the license granted to it in Clause 1 is personal to it, and that it may not transfer the license or to grant any sub-license or otherwise deal with the license nor permit any use of OPEN HORIZON COM API or the DATABASE to any third party. DTS entirely reserves to itself the right to negotiate or contract with any third party concerning licensing of OPEN HORIZON COM API or the DATABASE or supply of any Services.

## **14. Force Majeure**

No party to this AGREEMENT shall be responsible for any failure to perform any of its obligations hereunder provided that:

- 1 such failure is beyond its reasonable control; and
- 2 such failure is not caused, in whole or in part, by its negligence or wilful misconduct; and
- 3 it has used all reasonable endeavours to arrange for an alternate means of performing its obligations.

## **15. Notices**

Any notice to be given hereunder shall either be delivered personally or sent by first class recorded delivery post.

## **16. Entire Agreement**

This AGREEMENT contains the entire understanding between the parties with respect to the subject matter hereof and representations or statements, oral or written, not contained herein, shall not be binding upon the parties, save as provided herein. This AGREEMENT hereby amends and supersedes any previous agreements between the parties hereto with respect to the subject matter hereof.

## **17. Amendments and Modifications**

**A** Subject to Clause 17(B) no modification or amendment to this AGREEMENT shall be effective unless in writing and signed by both parties. Any notice or waiver required under this AGREEMENT must be in writing.

**B** Amendments to the Schedule to add additional licensed users may be made either by a purchase order from CUSTOMER or a letter from CUSTOMER authorising the purchase of such additional users. Such purchase order or letter shall serve to amend the Schedule and shall be attached to the Schedule.

## **18. General**

If any part of this AGREEMENT is declared invalid or unenforceable by a court, the remaining provisions shall remain in full force. The waiver of any breach or default shall not constitute a waiver of any other rights or any subsequent breach or default. All rights and remedies, whether conferred by this AGREEMENT or by any other instrument or by law shall be cumulative, and may be exercised either alone or concurrently.

## **19. Governing Law**

This AGREEMENT shall be governed by and construed in accordance with the laws of England and Wales, and both parties agree to submit to the non-exclusive jurisdiction of the courts of England.

IN WITNESS WHEREOF, the parties hereby execute this AGREEMENT.

AGREED TO: DTS	AGREED TO: CUSTOMER
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

## SCHEDULE A

The following Schedule(s) of Services, Fees and Charges are appended to this AGREEMENT:

	Number of licensed users at each LOCATION	Monthly License Fee £ per license	Initial Licensing fee	Currency fee (see Currencies order form)
Totals				

DTS's hourly charge rate £100.00 per man hour or part thereof or as agreed between DTS and CUSTOMER

## SCHEDULE B

Named User	Title

## SCHEDULE C

Program Name	Version
Microsoft Excel	2000 and subsequent

## SCHEDULE D

Number of additional computer programs in addition to the program listed in Schedule C licensed to access the DATABASE
1