

# HORIZON Direct - Standard Licensing Agreement

This Agreement is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Derivative Trading Systems Ltd (hereinafter referred to as DTS) whose registered address is 1 Bastwick Street, London EC1V 3NU and:

(Hereinafter referred to as "CUSTOMER") located at: \_\_\_\_\_

Whereas DTS provides a service (hereinafter referred to as the "SERVICE") consisting of its software (hereinafter referred to as the "LICENCED SOFTWARE") combined with information obtained, selected, consolidated and stored by DTS (hereinafter referred to as the "DATABASE"): and

Whereas CUSTOMER desires to utilise LICENCED SOFTWARE and DATABASE;

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

## 1. Software Licence Agreement

**A** Subject to the terms of this Agreement and in consideration of the fees and charges due, DTS hereby grants to CUSTOMER a non-exclusive, non-transferable licence, to use one copy of the LICENCED SOFTWARE, and use the DATABASE displayed via the LICENCED SOFTWARE, internally only and only for CUSTOMER's normal business purposes. This licence shall terminate with the termination of this Agreement.

**B** CUSTOMER may use the LICENCED SOFTWARE and the DATABASE only at the above specified location(s)

**C** Only the number of individuals specified in the Schedule (or as may be amended from time to time by agreement between DTS and CUSTOMER) at the above specified location(s) may use the LICENCED SOFTWARE and the DATABASE.

**D** CUSTOMER may not reverse engineer, decompile or disassemble the LICENCED SOFTWARE, and shall not tamper with the encryption of the files in the DATABASE.

**E** CUSTOMER shall not remove or destroy any copyright or other proprietary marking or label placed upon or contained within the LICENCED SOFTWARE or DATABASE or from the output of the LICENCED SOFTWARE or directly or indirectly disseminate, circulate, publish, copy, display or permit access to the LICENCED SOFTWARE or DATABASE to anyone not employed or engaged by CUSTOMER, or for any purpose other than its normal and legal business use.

## 2. Term

**A** The initial term of this Agreement shall be \_\_\_\_ months from its effective date. Neither DTS nor CUSTOMER shall terminate this Agreement except as follows.

**B** On the anniversary of the minimum term, this entire Agreement shall continue on a rolling monthly basis that corresponds with the initial term unless either party sends notice in writing to the other party at least \_\_\_\_ months in advance of the date of intended termination to the correspondence address indicated above expressing a desire to terminate the Agreement. Such termination shall be effective as of the last day of the month following the receipt of the termination notice by DTS.

**C** Notwithstanding the provisions of Clauses 2(A) and 2(B) above, either party may terminate this Agreement if the other party is in material breach of the terms of any licence or permission applicable to the LICENCED SOFTWARE or DATABASE, or of any term of this Agreement and, having been notified of its breach and in the event of such breach being capable of being remedied, the other party fails to remedy the breach within 14 days of such notification.

**D** Upon the termination of this Agreement for any reason, CUSTOMER will arrange for the deletion of the LICENCED SOFTWARE and any data copied from the DATABASE and the return of the LICENCED SOFTWARE media to DTS from CUSTOMER's installation or installations if there is more than one covered by this Agreement. Deletion shall mean the complete erasure of the DATABASE and LICENCED SOFTWARE in such a form that it cannot be recovered from the media on which it has been stored during the term of this Agreement. CUSTOMER shall not be entitled to continue to use the DATABASE or the LICENCED SOFTWARE following termination. CUSTOMER shall 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 this clause have been adhered to.

## 3. Payment

**A** CUSTOMER shall pay all DTS's invoices within 30 days of receipt from DTS of such invoice. If the LICENCED SOFTWARE 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 of any delay in payment interest will be charged at the Barclays Bank PLC base rate prevailing in the United Kingdom at the time plus 2% per annum.

**C** If any payment properly due is delayed beyond 30 days, DTS may suspend provision of any of the SERVICE to the CUSTOMER until such payment is received by DTS. Any invoice submitted by DTS shall be deemed to be correct unless

CUSTOMER advises DTS in writing within 10 days of the receipt of the invoice that it disagrees with the invoice and specifies the nature of the disagreement.

**D** The User Licence Fee is payable quarterly in advance. The User Licence Fee shall be fixed for an initial minimum period of six months for the version of the LICENCED SOFTWARE installed at CUSTOMER's site and for the data package(s) subscribed to. Thereafter DTS may vary the aforementioned fees and shall give CUSTOMER one month's prior written notice of such variation.

**E** Amendments to the number of users nominated in the Schedule and currencies installed shall require the payment of the additional User Licence Fee as determined by DTS's standard charges for additional users and currency packages at the time of the amendment of the Schedule.

**F** All payments made pursuant to this Agreement shall be in British Pounds.

#### **4. Support**

**A** Technical support for problems encountered in the use of the LICENSED SOFTWARE and DATABASE will be provided by means of telephone support except as outlined in Clause 4(B).

**B** Where a technical support problem cannot be resolved by means of telephone support as outlined in Clause 4(A) and where DTS has an established permanent office in the city from which the technical support request has originated, DTS may at its own discretion provide on-site support in order to resolve any outstanding problem.

**C** Technical support will only be provided during normal business hours of the offices of DTS.

#### **5. Services Supply**

**A** If in the sole opinion of DTS any reported error was due to improper use of the LICENSED SOFTWARE by the CUSTOMER, or to programming errors in other software not the LICENSED SOFTWARE, or to 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. DTS may also charge for time spent configuring the LICENSED SOFTWARE following a change in the operating system used by CUSTOMER from the original operating system on which the LICENSED SOFTWARE has been installed or the hardware used by CUSTOMER.

**B** DTS may charge CUSTOMER at DTS's charges for such services then current for time spent determining the cause and rectification of any problem associated with the downloading of data if in the sole 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.

#### **6. Copyright**

CUSTOMER acknowledges that the LICENSED SOFTWARE is and shall be the property of DTS and is protected by copyright laws. CUSTOMER agrees to treat the LICENSED SOFTWARE and the DATABASE (including without limitation any updates to it) as copyright material and acknowledges that provision of the use of the DATABASE by means of the LICENSED SOFTWARE does not infer any right or title to the LICENSED SOFTWARE or the DATABASE in its favour, and that no title to or ownership of the LICENSED SOFTWARE or the DATABASE, including any patents, copyrights or trade secrets covering the LICENSED SOFTWARE or DATABASE or any trademarks or service marks used in connection with the LICENSED SOFTWARE or DATABASE is transferred to CUSTOMER by operation of the licence granted. All modifications, changes, enhancements and improvements to the LICENSED SOFTWARE 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.

#### **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 LICENSED SOFTWARE or any documentation provided by DTS to CUSTOMER relating to LICENSED SOFTWARE provided that such claim succeeds and that:-

1 The use of LICENSED SOFTWARE 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 LICENSED SOFTWARE or documentation without the written consent of DTS;

4 Any such claim does not arise out of the use of LICENSED SOFTWARE 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 LICENSED SOFTWARE 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 LICENSED SOFTWARE; or

2 replace and/or modify LICENSED SOFTWARE 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 LICENSED SOFTWARE.

## 8. Warranties

**A** DTS warrants that the LICENSED SOFTWARE will perform substantially in accordance with the description of the application detailed on its web site [www.derivs.com](http://www.derivs.com) for the version of the LICENSED SOFTWARE being installed (and revisions thereto) 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 return of the price paid or, repair or replacement of the LICENSED SOFTWARE that does not meet DTS's guarantee and which is returned to DTS with all accompanying documentation.

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

**D** It is expressly understood and agreed by the parties hereto that EXCEPT AS SPECIFICALLY PROVIDED HEREIN, ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED.

## 9. Liabilities

**A** 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 the LICENSED SOFTWARE 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 the LICENSED SOFTWARE 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 and the LICENSED SOFTWARE does not constitute the provision of advice to CUSTOMER.

**B** 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.

**C** 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.

## 10. 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 10(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** The provisions of this Clause 10 shall survive termination of this Agreement for any reason.

## 11. 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 licence granted to it in Clause 1 is personal to it, and that it may not purport to transfer the licence or to grant any sub-licence or otherwise deal with the licence nor permit any use of the LICENSED SOFTWARE 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 the LICENSED SOFTWARE or the DATABASE or supply of any Services.

## 12. Notices

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

## 13. 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.

## 14. Amendments

**A** Subject to Clause 14(B) no modification or amendment to this Agreement shall be effective unless in writing and

**and Modifications** signed by both parties. Any notice or waiver required under this Agreement must be in writing.

**B** Amendments to the Schedule to add additional licenced users or additional currencies 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.

**15. 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.

**16. 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

**APPENDED SCHEDULE** The following Schedule(s) of Services, Fees and Charges are appended to this Agreement:

TYPE OF LICENSE	Number of licensed users at each Location	Initial Licensing Fee (once only)	Currencies entitled for:	User Licence Fee (per month)
Horizon Direct License				
Totals				

**IN WITNESS WHEREOF**, the parties hereby execute this Agreement. *(Only one authorised signatory need sign)*

AGREED TO: Derivative Trading Systems Ltd	AGREED TO: CUSTOMER
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:
	By:
	Name:
	Title:
	Date: