

OANDA ASIA PACIFIC PTE. LTD. API LICENSE AGREEMENT

This API License Agreement (this “**Agreement**”) sets out the legally binding terms and conditions between you (“**Licensee**”) and OANDA Asia Pacific Pte. Ltd. (“**OANDA**”).

1. DEFINITIONS

- (a) “**Documentation**” means OANDA’s standard documentation, in any medium, which is delivered to Licensee under this Agreement, including any manuals, specifications, instructions, forms, and complete or partial copies of the foregoing.
- (b) “**FxTrade Practice**” means the OANDA proprietary computer game which simulates the execution of currency exchange transactions and maintains virtual currency exchange accounts.
- (c) “**FXTrade Accounts**” means the Licensee’s FxTrade Practice account and FXTrade System account and sub-accounts.
- (d) “**FXTrade API**” means the OANDA proprietary software product for:
 - i. creating custom interfaces to the FXTrade System;
 - ii. accessing the FXTrade Rate Feed in order to retrieve FXTrade Rates;
 - iii. accessing FXTrade Accounts information, including account transaction history; and
 - iv. creating automated trading systems for issuing Transactions to the FXTrade System or FxTrade Practice.
- (e) “**FXTrade Rate Feed**” means the FXTrade System streaming real-time feed of FXTrade Rates.
- (f) “**FXTrade Rates**” means real-time currency exchange rates.
- (g) “**FXTrade System**” means the OANDA proprietary computer software system for executing Transactions and maintaining currency exchange accounts.
- (h) “**FXTrade Customer Agreement**” means the agreement between OANDA and Licensee pursuant to which Licensee may operate an FXTrade Account on the FXTrade System.
- (i) “**License Fees**” mean the fees Licensee is required to pay to OANDA for licensing the Licensed Materials.
- (j) “**Licensed Materials**” means: (i) the FXTrade API; (ii) the FXTrade Rate Feed; (iii) the FXTrade Rates; (iv) the Documentation; (v) any other materials provided by OANDA under this Agreement; and (vi) all upgrades, revisions, fixes, updates or enhancements to any of the foregoing.
- (k) “**Proprietary Information**” means the Licensed Materials, any third party software licensed with or as part of the Licensed Materials, and any information of OANDA’s or relating to OANDA, including but not limited to any product or pricing information, business practices, installation techniques, maintenance procedures, services and support, methods, strategies, plans, and any other information identified or reasonably identifiable as confidential and proprietary.
- (l) “**Transaction**” means a derivative transaction for the purposes of speculative trading or for mark risk hedging.
- (m) “**Unauthorized Activity**” means any money laundering, arbitrage, scalping or pip-hunting

activities, or any other activity involving the purchase of currency on one market for the immediate resale on another market in order to profit from a price discrepancy or price error.

2. LICENSE GRANT, OWNERSHIP AND RELATED RIGHTS

2.1. License Grant.

Subject to this Agreement, OANDA grants Licensee a limited, non-exclusive, terminable license to use the Licensed Materials during the term of this Agreement, solely for the purposes of:

- (a) creating custom interfaces to the FXTrade System;
- (b) accessing the FXTrade Rate Feed in order to retrieve FXTrade Rates;
- (c) accessing FXTrade Accounts information, including account transaction history; and
- (d) creating automated trading systems for issuing Transactions to the FXTrade System or FxTrade Practice.

2.2. Limitations on Use.

Licensee agrees that Licensee will:

- (a) make no more copies of the Licensed Materials than are necessary for Licensee's installation of the Licensed Materials and to create back up copies for archival or emergency restart purposes;
- (b) maintain a log of the number of and location of all originals and copies of the Licensed Materials;
- (c) include OANDA's copyright, trade mark and proprietary notices on any complete or partial copies of the Licensed Materials or Proprietary Information in the same form and location as the notice on any original work;
- (d) not modify any Documentation, including any user manuals;
- (e) not modify, translate, reverse engineer, decompile or disassemble the Licensed Materials;
- (f) not sublicense, transfer, assign or rent the Licensed Materials, other than as permitted in this Agreement;
- (g) use the FXTrade System and the Licensed Materials for its own internal use only;
- (h) not permit any third party to use the FXTrade System or the Licensed Materials; and
- (i) not transmit, publish, disseminate, duplicate, display, disclose, offer or otherwise provide, in any form whatsoever, the FXTrade Rates to any third party.

2.3. Ownership.

OANDA represents that it has all necessary rights, title or interests in the Licensed Materials sufficient to grant Licensee the license set out in this Agreement. Licensee acknowledges that OANDA or OANDA's licensors own the Licensed Materials, including any and all related copyright, patent, trade secrets, moral rights and other intellectual property rights, and that Licensee has no right, title, or interest in the Licensed Materials, except for the right to use them as permitted by this Agreement. Licensee agrees that OANDA will own any improvements or modifications to the Licensed Materials. Licensee also acknowledges that OANDA may continue to make changes to and enhance the Licensed Materials and that those changes and enhancements will be owned by OANDA.

3. DELIVERY, INSTALLATION AND SUPPORT

3.1. Delivery and Installation.

Within five (5) business days of the Effective Date of this Agreement, OANDA shall electronically deliver the Licensed Materials to Licensee. All Licensed Materials will be sent to Licensee's designated email address as specified in the Section on (Notices). Licensee agrees to be responsible for installation of the Licensed Materials.

3.2. Support.

During the first sixty (60) days following the Effective Date (the "**Initial Period**"), OANDA will provide Licensee with up to two free hours of telephone support during OANDA's regular customer support hours. Additional telephone support during the Initial Period, and telephone support after the Initial Period, can be purchased from OANDA at the prevailing rate.

4. PRICE AND PAYMENT

4.1. License Fees.

In consideration for the license granted in this Agreement, Licensee agrees to pay to OANDA the License Fees, if any, in accordance with any terms set out therein.

4.2. Payment Terms.

All payments made under this Agreement are non-refundable. All amounts will be due at the time the applicable service is provided or expense is incurred. Amounts unpaid for thirty (30) days after the due date will bear interest from the due date at a rate of one and one-half percent (1.5%) per month. Time is of the essence for all payments due under this Agreement.

4.3. Taxes.

The License Fees and other amounts listed in this Agreement do not include any sales, use, property, excise, value added, gross receipts, or other taxes, or any import or export duties, all of which will be paid by Licensee. This section does not apply to taxes based on OANDA's net income or employer contributions.

5. LICENSEE WARRANTIES

Licensee represents, warrants and agrees that:

- (a) It is not in default of its FXTrade Customer Agreement;
- (b) Its operation of its business, if any, and its transactions with OANDA are in compliance with all applicable laws and regulations;
- (c) No governmental consents or approvals are required for the operation of its business, if any, or its transactions with OANDA or, if any such consents or approvals are required, all such consents and approvals have been obtained; and
- (d) It is sophisticated with respect to derivatives trading and is capable of making its own trading decisions.

6. RISK ACKNOWLEDGEMENT

Licensee acknowledges that:

- (a) there are serious risks associated with using an automated trading system (“**ATS**”) for the purposes of trading in derivatives;
- (b) developing and programming an ATS is a complex, subtle and painstaking process. ATS design and/or programming errors can lead to undesired, erratic and/or unexpected trading behaviour and can result in large trading losses, up to and including the loss of all funds in the FXTrade account;
- (c) an ATS should only be designed, programmed and maintained by persons who are expert and qualified in these areas;
- (d) an ATS must be fully verified and tested in the FxTrade Practice environment prior to its use in the FXTrade System; and
- (e) the performance of an ATS must be closely supervised and an ATS used in the FXTrade System should not be left to run unattended.

7. CONFIDENTIALITY

Licensee will maintain the confidentiality of, and will not disclose or use any Proprietary Information, without OANDA’s prior express written consent except as permitted by this Agreement. Licensee agrees that it:

- (a) will limit access to the Proprietary Information only to those of its employees, consultants and agents who require access to the Proprietary Information; and
- (b) will ensure that those persons are bound by confidentiality obligations no less strict than those set out in this Agreement.

Licensee agrees that a breach of its confidentiality obligations will cause immediate and irreparable monetary damage to OANDA and that the OANDA will be entitled to injunctive relief in addition to all other remedies.

8. DISCLAIMER OF WARRANTIES

8.1. Accuracy and Reliability of Information Disclaimer.

The Licensed Materials and the FXTrade System are provided “as is” except to the extent required by applicable law, OANDA makes no warranties or representations of any kind regarding: (a) the up-to-dateness, accuracy, timeliness or completeness of any information contained within or available through the use of the FXTrade System or the Licensed Materials, including but not limited to the FXTrade Rates; (b) the results obtained by licensee or any third party from the use of the FXTrade System or the Licensed Materials; and (c) any information provided by third parties and accessible on or through the use of the FXTrade System or the Licensed Materials.

8.2. Warranty Disclaimer.

Except to the extent required by applicable law, OANDA (a) disclaims any express or implied warranties and conditions, including without limitation any warranties as to non-infringement, merchantability or fitness for a particular purpose; and (b) does not warrant that the FXTrade System, the Licensed Material, or any content therein will be uninterrupted or error free, or that defects will be corrected.

8.3. Security Disclaimer.

Licensee acknowledges and agrees that Licensee is solely and exclusively responsible for the control, operation and security of Transactions and communications made through its access to or use of the FXTrade System and the Licensed Materials. Licensee acknowledges that there are risks associated with utilizing an internet-based deal execution trading system including, but not limited to, the failure of hardware, software, and internet connections. Licensee acknowledges that OANDA does not control signal power, its reception or routing via the internet, configuration of Licensee's equipment or reliability of its connection, and OANDA shall not be responsible for any communication failures, disruptions, errors, distortions or delays Licensee may experience when trading via the internet using the FXTrade System or the Licensed Materials.

8.4. Trading Risk Disclaimer.

Licensee acknowledges that derivatives trading is one of the riskiest forms of investment available in the financial markets and is suitable for institutions and sophisticated individual investors only. Licensee acknowledges that the FXTrade System and the Licensed Materials permit Licensee to trade derivatives on a highly leveraged basis. Licensee understands and acknowledges that depending on the amount of leverage Licensee is using, a change in the derivative's price could cause Licensee to lose some or all of its entire investment. Licensee acknowledges that it is aware of the risks of engaging in derivatives trading using the FXTrade System and the Licensed Materials and that it shall use and access the FXTrade System and the Licensed Materials at its own risk.

9. LIMITATION OF LIABILITY

9.1. Limitation of Liability.

The use of the FXTrade System and the Licensed Materials is at Licensee's own risk, and Licensee assumes full responsibility and risk of loss it may suffer as a result of using, or accessing the FXTrade System and Licensed Materials, or downloading any content thereon. Except to the extent that liability under any applicable law or regulation cannot be excluded: (a) OANDA is not liable for loss or damage of any kind whatsoever arising as a result of information or prices (including without limitation FXTrade Rate information) published on or furnished through the FXTrade System or the Licensed Materials, or any errors or omissions of the FXTrade System or the Licensed Materials; (b) OANDA shall have no liability arising from orders, investment decisions or purchases of third party goods or services (including financial instruments and currency) based on information published on or furnished through the FXTrade System or the Licensed Materials; and (c) under no circumstances shall OANDA or its officers, directors, employees, agents, vendors, suppliers or distributors be liable under this agreement

to Licensee or any third party for any indirect, special, incidental, punitive or consequential loss or damages or any other similar damages under any theory of liability (whether in contract, tort, strict liability or any other theory), that are directly or indirectly attributable to the use of, or the inability to use, the FXTrade System or the Licensed Materials, or any content contained thereon, even if OANDA has been informed of the possibility thereof.

9.2. Cumulative Liability.

OANDA's total cumulative liability to Licensee for any loss, costs, claim or damages of any kind arising out of or related to this agreement will not exceed the amount of the license fees paid by Licensee to OANDA under this agreement during the three months immediately preceding the date at which such cause of action first arose. This limitation on liability was and is an express part of the bargain between OANDA and Licensee and was a controlling factor in the setting of the fees payable to OANDA under this agreement.

10. INDEMNIFICATION

Licensee agrees to defend, indemnify and hold OANDA harmless against any and all claims, losses, liabilities, awards and costs (including legal fees and expenses) arising out of or related to: (a) Licensee's breach of this Agreement; (b) Licensee's use of the FXTrade System or Licensed Materials in breach of this Agreement; (c) Licensee's breach of any of OANDA's rights, including but not limited to any intellectual property rights; (d) Licensee's violation of any applicable law, rule or regulation; (e) any failure on Licensee's part to maintain the security of any security devices or procedures used in or in association with the FXTrade System or the Licensed Materials; and (f) any third-party claims arising out of, or relating to, Licensee's use of, or inability to use, the FXTrade System, the Licensed Materials or any Transaction resulting therefrom.

11. CHANGES TO THE LICENSED MATERIALS

11.1. Changes to the Licensed Materials.

OANDA may change, suspend, terminate or discontinue any aspect of the Licensed Materials, including the availability of any services, information features or functions accessible by means of the Licensed Materials, on no less than one (1) business day advance notice to Licensee.

11.2. Revisions to the FXTrade API.

OANDA may, from time-to-time, provide Licensee with revisions to the Licensed Materials (the "Revised Licensed Materials"). Licensee shall discontinue its use of all prior versions of the Licensed Materials in favour of the Revised Licensed Materials. While it is OANDA's intention that the Revised Licensed Materials shall be backward-compatible with the immediately prior version of the Licensed Materials, OANDA does not guarantee or warrant that this shall be so, and OANDA shall have no liability whatsoever to Licensee for any failure of the Revised Licensed Materials to be backward-compatible with any prior version of the Licensed Materials.

12. TERMINATION

12.1. Termination Upon Notice.

Either party may terminate this Agreement upon no less than one (1) business day written notice to the other party.

12.2. Termination For Cause.

If:

- (a) Licensee is in default or breach of any covenant, obligation or condition contained in this Agreement or in the FXTrade Customer Agreement, and if such default is not cured within ten (10) days of receipt of written notice from OANDA;
- (b) any representation or warranty made by Licensee in this Agreement or in the FXTrade Customer Agreement, shall prove to be or have been incorrect or misleading in any material respect;
- (c) Licensee engages in any Unauthorized Activity;
- (d) Licensee's use of the FXTrade API causes damage to OANDA's platform;
- (e) Licensee contravenes the provision of Section on (Use of Data) hereof;
- (f) Licensee makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, is adjudged bankrupt or files a petition or proposal to take advantage of any act of insolvency; or
- (g) a trustee, receiver, receiver and manager, interim receiver or other entity with similar powers is appointed in respect of Licensee or in respect of all or all of any substantial portion of its property or assets,

then OANDA may, at its option, forthwith suspend Licensee's use of its FXTrade System Account and/or terminate this Agreement without further written notice.

12.3. Effect of Termination

Immediately upon termination of this Agreement for any reason whatsoever:

- (a) the license to use the Licensed Materials will be immediately revoked;
- (b) Licensee will forthwith destroy or return to OANDA all Licensed Materials and Proprietary Information, and in the event of destruction, Licensee will provide OANDA with documentation certifying such destruction;
- (c) Licensee will pay to OANDA any unpaid amounts owing to OANDA, including but not limited to the License Fees; and
- (d) no refund will be payable in respect of any License Fees or other amounts paid hereunder.

13. NO ARBITRAGE

Licensee agrees and acknowledges that it shall not use the FXTrade System or the Licensed Materials in order to engage in any Unauthorized Activity. OANDA reserves the right to reverse any Transaction, where in OANDA's reasonable opinion, such Transaction involved any Unauthorized Activity.

14. USE OF DATA

- (a) Licensee agrees that it will not communicate, resell or otherwise make available, or permit to be communicated or otherwise made available, any Licensed Material (or any part thereof) to any third party, and that it will not re-transmit the same from its premises for any purpose, including re-transmission to other premises of the Licensee, without written permission from OANDA.
- (b) In the event Licensee becomes aware of any unauthorized use by a third party of Licensed Material licensed to Licensee, Licensee will give OANDA prompt notice thereof. Licensee will, thereafter, cooperate with OANDA in investigating the same.
- (c) To the extent Licensee's actual usage of Licensed Material at any time exceeds the authorization specified hereunder, OANDA reserves the right to impose, and Licensee hereby agrees to pay, OANDA's prevailing charges corresponding to Licensee's actual usage of Licensed Material. Any violation of these provisions may be deemed by OANDA to be a material breach of the terms of this Agreement.
- (d) Licensee agrees that it shall not use the Licensed Material:
 - (i) to defame, abuse, harass, threaten or otherwise violate the legal rights of any third party; or
 - (ii) in association with the sale of any service or product which is discriminatory, obscene, defamatory, indecent or unlawful, or which in the reasonable opinion of OANDA, would reflect negatively upon the reputation of OANDA or the Licensed Material.
- (e) Licensee agrees not to reverse engineer the Licensed Material and shall not sell, resell or otherwise convey any or all of the information comprising Licensed Material, except as expressly permitted herein. Licensee represents and warrants that, except as permitted above, it will limit its use of Licensed Material solely for the Internal Use (as defined below) of Licensee. "Internal Use" shall mean access to and use of Licensed Material for performance of research and analysis, preparation of hard-copy research documents and reports (which may incorporate insubstantial amounts of data comprising Licensed Material as an incidental part of such research documents) and for other data processing use, analysis and distribution to the Licensee (if an individual) or within Licensee's own organization (if an entity) but not for redistribution of, or the provision of access to, Licensed Material to any third-party including but not limited to any clients or customers of Licensee or to any other non-Licensee persons or entities. If an entity, Licensee shall advise each of its employees having access to Licensed Material of the proprietary nature of Licensed Material and shall direct such employees to treat such information pursuant to the terms of this Agreement.

15. ASSIGNMENT

This Agreement may not be assigned by Licensee without OANDA's prior written consent. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of each party and its respective successors and permitted assigns.

16. DISPUTE RESOLUTION.

Except for the right of OANDA to apply to a court for injunctive relief or other such provisional remedy to prevent irreparable harm and for OANDA's right to file a suit against Licensee for any amounts owed under this Agreement, OANDA and Licensee agree that with respect to any controversy or claim arising out of or relating to this Agreement that OANDA and Licensee will first work together in good faith to resolve the matter internally by escalating it to higher levels of management.

17. GENERAL PROVISIONS

17.1. Compliance with Laws.

Each party agree to comply with the local laws applicable to it.

17.2. Currency.

All amounts stated in and payable under this Agreement will be denominated and payable in Singapore Dollars.

17.3. Language of Agreement.

Should a counterpart to this Agreement be prepared in a language other than English, then English will be the language of this Agreement and the English language counterpart will govern all disputes, performances and interpretations, and the counterpart in another language will be for convenience only and will not affect the performance or interpretation of this Agreement.

17.4. Entire Agreement.

Subject to the Section on (Incorporation by Reference), Licensee agrees that this Agreement comprises the entire understanding between Licensee and OANDA, and supersedes any prior written or oral agreements, representations and communications between Licensee and OANDA with respect to the subject-matter of this Agreement. OANDA and Licensee both agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

17.5. Survival.

The terms and conditions of this Agreement that by their sense and context are intended to survive will survive the termination of this Agreement, including but not limited to the respective Sections on (Ownership), (Licensee Warranties), (Confidentiality), (Disclaimer of Warranties), (Limitation of Liability), (Indemnification), (Effect of Termination), (Dispute Resolution) and (General Provisions).

17.6. Severability.

If any provision or part of any provision in this Agreement is held to be invalid or unenforceable, the remaining provisions will remain in full force.

17.7. Waiver.

OANDA and Licensee agree that the waiver of one breach under this Agreement by either of OANDA or Licensee will not constitute the waiver of any other breach or subsequent breach.

17.8. Governing Law.

The laws of Singapore will govern this Agreement, and all matters arising out of or related to this Agreement.

17.9. No Right to Set Off.

Licensee agrees that Licensee has no right to set-off, at law or in equity.

17.10. Notices.

OANDA and Licensee agree that notices under this Agreement will be in writing and be delivered by personal delivery, by overnight or express courier service, or by email, addressed to the attention of that party's primary contact as set out below. A notice will be deemed delivered upon personal or email delivery or one business day after delivery by overnight or express courier service.

To OANDA:

OANDA Asia Pacific Pte. Ltd.

1 Raffles Place

#26-02 One Raffles Place Tower 1

Singapore 048616

Phone: +65 6579-8289

Email: api@oanda.com

To Licensee:

To the address on file.

17.11. Incorporation by Reference.

This Agreement incorporates by reference the terms and conditions of the FXTrade Customer Agreement. In the event of any inconsistency between this Agreement and the FXTrade Customer Agreement, this Agreement shall govern.

17.12. Headings for Convenience Only.

The headings in this Agreement are intended solely for convenience and will be given no effect in the construction of this Agreement

17.13. Force Majeure.

OANDA shall not incur any liability to Licensee for any failure or delay in fulfilling its obligations under this Agreement for causes beyond its reasonable control, including, but not limited to, labor or industrial disturbances, acts of God, floods, lightning, utility or communication failures, earthquakes, acts of the public enemy, riots, insurrection, embargoes, blockages, actions, restrictions, regulations or orders of any government, agency or subdivision thereof.

17.14. Capitalized Terms.

Any capitalized terms not defined in this Agreement shall have the meaning ascribed thereto in the FXTrade Customer Agreement.