

OANDA EUROPE LIMITED

Agreement governing your use of our technology

1. INTRODUCTION

- 1.1 This agreement sets out the legally binding terms and conditions between you and us, OANDA Europe Limited, which apply when you use our technology to access certain data and/or create your own software that interacts with our systems. Please read this document carefully. You should contact us if anything is unclear.
- 1.2 OANDA Europe Limited is a private limited company registered in England and Wales (company registration number 07110087). Our registered office is at Floor 9a, Tower 42, 25 Old Broad Street, London EC2N 1HQ.
- 1.3 OANDA Europe Limited is referred to in this agreement as "**OANDA**", "**We**", "**Our**" or "**Us**". The meanings of other words and phrases used in this agreement are set out in the glossary in Appendix 1 at the end of this agreement.

2. TERMS OF BUSINESS

This agreement applies in addition to our Terms of Business, which you can access via our website. If there are any contradictions between our Terms of Business and this agreement, the terms of this agreement will apply.

3. PERMISSION TO USE OUR TECHNOLOGY

We give you permission (by way of a licence) to use the Licenced Materials during the term of agreement, provided you comply with this agreement. By using the Licenced Materials in any way, you will be deemed to have agreed to these terms.

4. CONDITIONS OF USE

- 4.1 You can only use the Licenced Materials for the purposes of:
- (a) facilitating your own personal trading on your own personal FXTrade Accounts;
 - (b) creating custom interfaces to the FXTrade System;
 - (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.
- 4.2 You **must**:
- (a) maintain a log of the number of and location of all originals and copies of the Licenced Materials;
 - (b) include our copyright, trade mark and proprietary notices on any complete or partial copies of the Licenced Materials or Proprietary Information in the same form and location as they appear on original work; and
 - (c) use the FXTrade System and the Licenced Materials only for your own use.

4.3 You **must not**:

- (a) make more copies of the Licenced Materials than are necessary to enable you to install the relevant software and to create backup copies for archiving or emergency restart purposes;
- (b) modify any Documentation;
- (c) permit any other person to use the FXTrade System or the Licenced Materials;
- (d) disclose, in any form whatsoever, the FXTrade Rates to any other person;
- (e) modify, translate, reverse engineer, decompile or disassemble the Licenced Materials;
- (f) use the FXTrade System or the Licenced Materials in order to engage in any Unauthorised Activity (we may reverse any Transaction that we consider to be an Unauthorised Activity); or
- (g) sublicense, transfer, assign or rent the Licenced Materials, other than as permitted in this agreement.

5. **OWNERSHIP**

5.1 You acknowledge that we own the Licenced Materials or licence them from third parties. Our ownership includes any and all related copyright, patent, trade secrets, moral rights and other intellectual property rights in the Licenced Materials.

5.2 You have no right, title or interest in the Licenced Materials, except for the right to use them as permitted by this agreement. We will own any improvements or modifications to the Licenced Materials.

6. **INSTALLATION**

We will send the Licenced Materials to your email address within five business days of your consent to this agreement. You are responsible for the installation of the Licenced Materials.

7. **REPRESENTATIONS AND WARRANTIES**

7.1 It is a condition of this agreement that you agree with the confirmations ("**representations**") and statements ("**warranties**") below as we provide services to you in reliance on them. You must notify us immediately if any of them cease to be correct.

7.2 You make the following representations and warranties to us:

- (a) you are not in breach of our Terms of Business;
- (b) you have not breached, and will not breach, any applicable laws and regulations; and
- (c) you are sophisticated with respect to derivative trading and are capable of making your own trading decisions.

8. **RISK ACKNOWLEDGEMENT**

You acknowledge that:

- (a) there are serious risks associated with using an automated trading system ("**ATS**") for the purposes of trading in derivatives;

- (b) an ATS should only be designed, programmed and maintained by persons who are expert and qualified in these areas;
- (c) ATS design and / or programming errors can lead to undesired, erratic and / or unexpected trading behaviour, which can result in large trading losses up to and including the loss of all funds in your Account;
- (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.

9. **BEST EXECUTION**

We are required to execute Transactions at the best price available at the time in accordance with our Order Execution Policy, which is available on our website. However, we must follow any specific instructions that you give to us, even if this will not result in best execution. You acknowledge that we will follow any trade signals, orders or other instructions we receive from you through your use of the Licenced Materials and/or any ATS, which may result in you not receiving best execution.

10. **CONFIDENTIALITY**

10.1 You must keep all Proprietary Information confidential and not disclose it without our prior written consent, except as permitted by this agreement. You must:

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

10.2 You agree that a breach of your confidentiality obligations will cause immediate and irreparable monetary damage to us and we will be entitled to injunctive relief in addition to all other remedies.

11. **YOU USE THE LICENCED MATERIALS AT YOUR OWN RISK**

11.1 Except to the extent required by applicable law, we make 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 Licenced Materials, including but not limited to the FXTrade rates;
- (b) the results obtained by you or any third party from the use of the FXTrade system or the Licenced Materials; and
- (c) any information provided by third parties and accessible on or through the use of the FXTrade system or the Licenced Materials.

11.2 Except to the extent required by applicable law, we:

- (a) disclaim 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) do 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.

12. **SECURITY**

- 12.1 You are responsible for the control, operation and security of Transactions and communications made by accessing or using the FXTrade system and the Licenced Materials.
- 12.2 You acknowledge there are risks associated with using an internet-based deal execution trading system including, but not limited to, the failure of hardware, software, and internet connections. We do not control signal power, reception or routing via the internet, the configuration of your equipment or the reliability of its connection.
- 12.3 We shall not be responsible for any communication failures, disruptions, errors, distortions or delays you experience when trading via the internet using the FXTrade system or the Licenced Materials.

13. **TRADING RISK**

- 13.1 Derivative trading, including margined currency trading, is high risk. It is suitable for professional investors and sophisticated individual investors only. The FXTrade system and the Licenced Materials permit you to trade foreign currencies on a highly leveraged basis. Depending on the amount of leverage you use, a change in the instrument's price could cause you more than your initial investment.
- 13.2 In signing this agreement, you acknowledge that you are aware of the risks of engaging in derivative trading using the FXTrade system and the Licenced Materials and that you use these at your own risk.

14. **LIMITATION OF LIABILITY**

- 14.1 You use the FXTrade system and the Licenced Materials at your own risk. You are responsible for any loss you may suffer as a result of using or accessing the FXTrade system and Licenced Materials.
- 14.2 We (including our directors, officers and agents) shall not be responsible to you or any third party for:
 - (a) any loss, expense, cost or damages (together "**Loss**") you suffer or incur as a result of our/their acts or omissions unless and to the extent that such Loss is suffered or incurred as a result of our/their fraud, negligence or wilful default;
 - (b) any Loss which is not a foreseeable result of us breaching the agreement, including but not limited to, loss of future profit, loss of business, loss of goodwill or reputation, loss or corruption of data or loss of opportunity;
 - (c) any loss or damage arising as a result of information or prices (including without limitation FXTrade rate information) published on or furnished through the FXTrade system or the Licenced Materials;
 - (d) any errors or omissions of the FXTrade system or the Licenced Materials;
 - (e) any loss 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 Licenced Materials; and
 - (f) for any loss of any description that are directly or indirectly attributable to the use of, or the inability to use, the FXTrade system or the Licenced Materials, or any content, even if we have been informed of this possibility.

(g) officers, directors, employees, agents, vendors, suppliers or distributors

14.3 Nothing in this agreement excludes or limits our liability for death, personal injury caused by our negligence, fraud or fraudulent misrepresentation.

14.4 Nothing in this agreement excludes or restricts any duty or liability we owe you under any Applicable Law, and if there is any conflict between this agreement and the provisions of any Applicable Law, the provisions of the Applicable Law shall prevail.

14.5 Our total cumulative liability to you for any Loss arising out of or related to this agreement will not exceed £50 (fifty pounds).

15. **INDEMNIFICATION**

You are responsible for, and shall refund to us, any Loss we may incur if you fail to perform any of your obligations under this agreement, in relation to any Transaction or in relation to any false information or declaration made either to us or to any third party, or arising out of any act or omission by any person obtaining access to your FXTrade Accounts, whether or not you authorised such access. This responsibility extends to our legal and administrative costs and expenses incurred in respect of taking any legal or investigatory action against you, or instructing any debt collection agency, to recover monies owed by you to us. However, this responsibility does not extend to situations where we have acted negligently, fraudulently or with wilful default.

16. **CHANGES TO THE LICENCED MATERIALS**

16.1 We may change, suspend or discontinue any aspect of the Licenced Materials, including the availability of any services, information features or functions accessible by means of the Licenced Materials, by giving you at least one month's notice.

16.2 We may, from time-to-time, provide you with revisions to the Licenced Materials (the "**Revised Licenced Materials**"). If so, you shall discontinue use of all prior versions of the Licenced Materials in favour of the Revised Licenced Materials. We intend that the Revised Licenced Materials shall be backward-compatible with the immediately prior version of the Licenced Materials, but we do not guarantee this. We shall have no liability to you for any failure of the Revised Licenced Materials to be backward-compatible with any prior version of the Licenced Materials.

17. **TERM AND TERMINATION**

17.1 This agreement commences on the date on which both parties have signed this agreement and shall continue until terminated in accordance with this clause.

17.2 Either you or we may terminate this agreement by providing one month's written notice to the other.

17.3 We may suspend your FXTrade System Account or immediately terminate this agreement without giving you written notice in the following situations:

(a) where you are in breach of any covenant, obligation or condition contained in this agreement or our Terms of Business, and you fail to rectify this within ten days of receipt of written notice from us;

(b) where any representation or warranty you make in this agreement or in our Terms of Business is, or was, materially incorrect or misleading;

(c) you engage in any Unauthorised Activity;

(d) your use of the FXTrade API causes damage to the FXTrade System;

- (e) you contravene clause 18 of this agreement;
- (f) you make any assignment in bankruptcy or for the benefit of creditors, you are adjudged bankrupt, or you file 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 you or any substantial portion of your property or assets.

17.4 Immediately upon the termination of this agreement, for any reason whatsoever:

- (a) the license to use the Licenced Materials will end immediately;
- (b) you must destroy or return to us all Licenced Materials and Proprietary Information. Where you destroy any, you must provide with documentation certifying this;
- (c) you must pay us any outstanding amounts owed, including but not limited to the License Fees under this agreement; and
- (d) no refund will be payable in respect of any License Fees or other amounts we may owe you.

18. **USE OF DATA**

18.1 You will not communicate, resell or otherwise make available, or permit to be communicated or otherwise made available, any Licensed Material (or any part of) to any third party.

18.2 You will not re-transmit any Licenced Material (or any part of it) for any purpose, including re-transmission to any other premises, without written permission from us.

18.3 If you become aware of any unauthorised use by a third party of Licensed Material licensed to you, you will give promptly notify us. You will fully comply with any subsequent investigations we may undertake.

18.4 If at any time your use of Licensed Material exceeds the authorisation given under this agreement, we reserve the right to impose prevailing charges corresponding to your actual use of Licensed Material. You agree to pay any such charges. We may deem any violation of these provisions to be a material breach of the terms of this agreement.

18.5 You will not use any Licensed Material:

- (a) to defame, abuse, harass, threaten or otherwise violate the legal rights of any third party; or
- (b) in association with the sale of any service or product which is discriminatory, obscene, defamatory, indecent or unlawful, or which would reflect negatively upon the reputation of us or the Licensed Material.

18.6 Except where expressly permitted in this agreement, you will only use Licenced Material for Internal Use. **"Internal Use"** means access to and use of Licensed Material for the 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 you (or within your organisation) 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 you or any other persons or entities. If applicable, you shall advise each of your 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.

19. **ASSIGNMENT**

You may not assign this agreement without our prior written consent. If you assign this agreement, you will still be bound by it.

20. **DISPUTE RESOLUTION**

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

21. **GENERAL PROVISIONS**

21.1 **Currency**

All amounts stated in and payable under this agreement will be denominated and payable in Pounds Sterling.

21.2 **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 clauses 5 (Ownership), 9 (Confidentiality), 14 (Limitation of Liability), 15 (Indemnification), clause 20 (Dispute Resolution) and clause 21 (General Provisions).

21.3 **Severability**

If any court or relevant authority finds any part of this agreement to be invalid or unenforceable, the remaining parts of this agreement will remain in full force and effect.

21.4 **Exercising of Rights**

You have to comply with the terms of the Agreement even if we do not insist that you do something you are required to do under the Agreement, or if we delay in taking steps against you for breach of this contract. For example, if you miss a payment and we do not chase you but we continue to provide the services, we can still require you to make the payment at a later date.

21.5 **No Right to Set Off**

You agree that you have no right to set-off, at law or in equity.

21.6 **Notices**

21.7 All notices given by us to you will be given by email or by post to the address provided by you at registration or subsequently updated in your FXTrade Accounts.

21.8 You can submit notices to us by:

(a) Email: frontdesk@oanda.com; or

(b) Post: Floor 9a, Tower 42, 25 Old Broad Street, London EC2N 1HQ.

21.9 Communication will be considered to be received by us or you as follows:

- (a) if hand delivered, upon delivery;
- (b) if by email, on the next business day after transmission [provided no error or undelivered messages are received by the sender within that time period];
- (c) if sent by overnight courier, upon receipt and a signature will be proof of delivery; and
- (d) if sent by certified mail, the business day after the date of delivery indicated on the receipt issued by the relevant postal service

21.10 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

21.11 Force Majeure

We will not be liable to you for any failure or delay in fulfilling our obligations under this agreement for causes beyond our reasonable control, including, but not limited to, labour 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 body.

21.12 Capitalised Terms

Any capitalised terms not defined in this agreement shall have the meaning in our Terms of Business.

21.13 Counterparts

This agreement may be signed in counterparts, each of which will be deemed an original and which together will constitute one agreement.

21.14 Governing Law

This agreement, and all matters arising out of or related to this agreement, will be governed by the laws of England and Wales.

APPENDIX 1

Glossary

In this agreement the following words, expressions and abbreviations have the following meanings, unless the context otherwise requires:

"Documentation" means our standard documentation, in any medium, which is delivered to you under this agreement, including any manuals, specifications, instructions, forms, and complete or partial copies of them;

"FXTrade Practice" means the OANDA proprietary computer game which simulates the execution of derivative transactions and maintains virtual currency exchange accounts;

"FXTrade Accounts" means your FXTrade Practice account and FXTrade System account and sub-accounts;

"FXTrade API" means the OANDA proprietary software product for:

- (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;

"FXTrade Rate Feed" means the FXTrade System streaming real-time feed of FXTrade Rates;

"FXTrade Rates" means real-time derivative rates;

"FXTrade System" means the OANDA proprietary computer software system for executing Transactions and maintaining accounts;

"Licenced Materials" means:

- (a) the FXTrade API;
- (b) the FXTrade Rate Feed;
- (c) the FXTrade Rates;
- (d) the Documentation;
- (e) any other materials provided by us to you under this agreement; and
- (f) all upgrades, revisions, fixes, updates or enhancements to any of Licenced Materials.

"Proprietary Information" means the Licenced Materials, any third party software licensed with or as part of the Licenced Materials, and any information that is ours or related to us, 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;

"Terms of Business" means the agreement between you and OANDA under which you may operate an FXTrade Account on the FXTrade System;

"Transaction" means a derivative transaction for the purposes of speculative trading or for market-risk hedging; and

"Unauthorised Activity" means any money laundering, arbitrage, scalping or pip-hunting activities, or any other activity involving the purchase of an instrument on one account for the immediate resale on another account in order to profit from a price discrepancy or price error.