

Terms of Business and End User Licence Agreement

IMPORTANT: PLEASE READ THIS AGREEMENT BEFORE USING ANY SERVICES OF SMARTCHARTS. INITIATION OF SERVICE INDICATES YOUR ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

THESE TERMS OF BUSINESS ARE APPLICABLE TO ALL SMART CHARTS PRODUCTS AND SERVICES INCLUDING SUBSCRIPTIONS FOR SOFTWARE AND DIGITAL CONTENT.

BY REGISTERING FOR THE SERVICES, YOU REPRESENT AND WARRANT TO SMARTCHARTS THAT (A) ALL REGISTRATION INFORMATION YOU SUBMIT TO SMARTCHARTS IS ACCURATE AND THAT YOU WILL MAINTAIN THE ACCURACY OF SUCH INFORMATION AND NOTIFY SMARTCHARTS FORTHWITH IF ANY INFORMATION CEASES TO BE ACCURATE, (B) YOU ARE EIGHTEEN (18) YEARS OF AGE OR OLDER, (C) YOUR USE OF THE SERVICES WILL NOT VIOLATE ANY APPLICABLE LAW OR REGULATION, AND (D) YOU HAVE THE RIGHT AND AUTHORITY, TO ENTER INTO THIS AGREEMENT AND PERFORM HEREUNDER.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement: -

- (a) **"Account Information"** means Subscriber's name, account numbers, passwords, customer numbers and other information necessary for Subscriber's access to and use of the Services.
- (b) **"Administrative Fees"** means additional fees that may be charged by SmartCharts in connection with additional Services requested by the Subscriber from time to time.
- (c) **"Affiliate"** means any person or entity that directly or indirectly controls, is controlled by, or is under common control with such person or entity, where "Control" means ownership of more than 50% of the voting stock or other equity interests of an entity, or the right to direct the management of such entity.
- (d) **"Agreement"** means the terms and conditions set out in this document.
- (e) **"Applicable Law"** means each law, enactment, order, regulation, regulatory policy and mandatory or generally recognized industry code of conduct or guidelines in any applicable jurisdiction relating or applicable to a party or any of its activities.
- (f) **"Approved Third Party Application"** means a third-party software application approved by the vendor of that application for use in conjunction with the Services and made available by SmartCharts as part of the Services.
- (g) **"Customer Account"** means Subscriber's subscription account with SmartCharts in relation to the Services, including identifying the particular Services to which Subscriber has subscribed.
- (h) **"Data"** means contact details including name, postal address, email address, telephone number,

- (i) **"Data Provider Fees"** means Fees charged by the Data Providers for their content which is passed on by SmartCharts to Subscriber. Data Provider Fees may also incur an additional SmartCharts Administrative Fee.
- (j) **"Data Providers"** means third parties providing data to SmartCharts or its Affiliate for distribution to Subscribers, including, but not limited to, stock exchanges.
- (k) **"Default"** means the occurrence of any of the following events: (i) Subscriber fails to pay any amount when due; (ii) any Data Provider revokes Subscriber's right to receive the applicable Services or directs SmartCharts to discontinue Services to Subscriber; (iii) Subscriber fails to comply with any of the terms and conditions of this Agreement; or (iv) breach by Subscriber of any other duty or obligation or any default or negligence of Subscriber in connection with or in relation to the subject matter of this Agreement.
- (l) **"Direct Access Broker"** has the meaning ascribed to it in Section 11.7 of this Agreement.
- (m) **"Live Events"** means the **3 Day Live Learn Forex Course** as described in Schedule 2.
- (n) **"Digital Content"** is the content described at Schedule 2.
- (o) **"Enrolment Date"** means the date on which you purchased the Services.
- (p) **"Fees"** means all Service Fees, Premium Service Fees, Data Provider Fees, Software Product Fees and Administrative Fees.
- (q) **"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights (including copyright in software), trademarks, service marks, trade, business and domain names, IP addresses, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- (r) **"Materials"** means all documents, information and materials provided or made available by or on behalf of SmartCharts to Subscriber or its representatives relating to the Services, including any software documents, manuals, reports, know-how, instructions, guidance, response to queries, support, processes, training materials, brands, logos, designs, software and tools and any other Intellectual Property Rights, in each case in all languages, formats, and media throughout the world.
- (s) **"Monthly Subscription"** is given the meaning ascribed to it in Section 6.2 of this Agreement.
- (t) **"Order Confirmation"** the SmartCharts email confirmation which sets out (amongst other things) the terms of the Agreement, the Services and the associated Service Fees.
- (u) **"Permitted Purpose"** is given the meaning ascribed to it in Section 2.1 of this Agreement.

- (v) "**Premium Services**" means the Premium Services offered by SmartCharts and/or third parties (e.g., additional coaching or a third-party add-on), which include enhanced information and operates in conjunction with the other Services.
- (w) "**Premium Service Fees**" means Fees applicable to Premium Services, which are in addition to the base Service Fees.
- (x) "**Real-Time Information**" means the processing and transmission of data and information that is initiated by SmartCharts in "real time" upon receipt of a Request from Subscriber, subject to processing requirements, transmission methods, facilities, and Subscriber equipment.
- (y) "**Request**" means those orders that Subscriber may make electronically regarding modifications to Subscriber's Customer Account, including, but not limited to, requests for additional Services, Service cancellation and Customer Account cancellation.
- (z) "**Risk Manager**" means a risk manager appointed by SC from time to time.
- (aa) "**Service Facilitator Product**" means any products or services provided by a Service Facilitator to the Subscriber. Subscriber acknowledges that it will need to agree to separate terms of the Service Facilitator in respect of the Service Facilitator Product.
- (bb) "**Service Facilitators**" means any (i) third party software provider that makes its software technology available to facilitate linkage between the Services and any Direct Access Brokers, futures commission merchants or any other entity providing online order execution services; (ii) third party software provider that makes its software and technology available to Subscriber and through which the Subscriber can use the Services; (iii) third party software provider that makes its software and technology available to Subscribers to be used in conjunction with the Services and/or Data, but which are not part of the Services provided by SmartCharts; or (iv) any third party providing products or services that may be accessible by Subscriber through the System, but which are not part of the Services.
- (cc) "**Service Fees**" means any fees charged by SmartCharts related to the Services (exclusive of Administrative Fees, Software Product Fees, Data Provider Fees and Premium Service Fees).
- (dd) "**Services**" means the services offered by SmartCharts on the System, including any and all Data and other financial, commentary, and news related data and other services and information offered by SmartCharts (and/or its Affiliate) and, if applicable together with any related services provided by or through SmartCharts and/or Affiliate including support services, webinars, training, manuals, documentation or related materials, and communication, transmission or delivery services offered by or through SmartCharts. The Services exclude all products, services and other offerings of Service Facilitators and Direct Access Brokers.
- (ee)
- (ff) "**SmartCharts**", "**SC**", "**we**", "**our**" or "**us**", means Smart Charts Software Pty Ltd, a company registered in New south Wales, Australia, under ABN 62602459414 with a registered office at 1275 141 Walker Street North Sydney NSW 2060.
- (gg) "**SmartCharts Software**" means all software related to the System and the software used by SmartCharts to provide the Service, including SmartCharts'

proprietary software and software that is provided to SmartCharts by third parties (other than Service Facilitators).

- (hh) "**SmartCharts Subscription**" means the ongoing monthly licence fee to the software for webinars with a trader, a strategy scanner, 5 strategies, built in news and trading journal.
- (ii) "**Software Partner**" means any third party providing an Approved Third-Party Application.
- (jj) "**Software Product Fees**" means any fees: (i) separately charged by SmartCharts for an Approved Third-Party Application; and/or (ii) charged by a Service Facilitator in respect of a Service Facilitator Product which is to be collected by SmartCharts from Subscriber on behalf of a Service Facilitator.
- (kk) "**Subscriber**" means the individual registering for a Customer Account and who is bound by this Agreement.
- (ll) "**Subscriber's Credit Card**" is given the meaning ascribed to it in Section 4.3 of this Agreement.
- (mm) "**Subscribers Read Only Historical Live Trading Account Information**" means Subscribers historical live trading information from a Direct Access Broker Account.
- (nn) "**System**" means SmartCharts' computer and software platform on and from which the Services are provided, including all applications (desktop and mobile), programs, source code, object code, hardware, systems and equipment.
- (oo) "**Taxes**" means all applicable taxes, including, but not limited to, sales, use and VAT taxes.
- (pp) "**Trader Mentor**" means the Subscribers one to one trader mentor who will provide mentoring sessions.
- (qq) "**You**" or "**Your**" means the customer who has entered into this Agreement

1.2 Clause and paragraph headings shall not affect the interpretation of this Agreement.

2. **LICENSE.**

2.1 Subject to the Subscriber complying with all of the terms and conditions of this Agreement and subject to Section 3, SmartCharts hereby grants Subscriber a non-exclusive, non-transferable, limited license for the duration of this Agreement only to use the Services for its own internal private use (the "**Permitted Purpose**") and not for further dissemination or redistribution.

2.2 In consideration of the Services provided or to be provided to Subscriber (including Services which Subscriber may elect to receive in the future), Subscriber shall pay the applicable Fees to SmartCharts in accordance with the provisions of this Agreement.

3. **RESTRICTIONS AND SCOPE.**

3.1 Subscriber undertakes to SmartCharts that it shall not: (i) make any use of the Services other than as permitted under this Agreement; (ii) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit or otherwise make the Services available to any third party; (iii) except to the extent permitted by any Applicable Law which cannot be waived by agreement of the parties, attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any

part of the System; (iv) attempt to modify, duplicate, create derivative works from, republish, transmit, or distribute the Data in any form or media or by any means; (v) make any copies of the Data except to the extent reasonably necessary for the Permitted Purpose and for purposes of back up and disaster recovery; (vi) remove, amend, add to or otherwise tamper with any trade marks, identifiers, notices, legends or disclaimers added by, or on behalf of, SmartCharts; (vii) use the Services in any way in a manner or for a purpose that violates any Applicable Law; and/or (viii) access, store, distribute or transmit any viruses or any material during the course of its use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing, racially or ethnically offensive or causes damage or injury to any person or property.

- 3.2 Contingencies: Subscriber acknowledges and agrees that notwithstanding any other provision of this Agreement: (i) SmartCharts' ability to grant Subscribers rights relating to the Services is contingent upon all rights, titles, licenses, permissions and approvals obtained by SmartCharts pertaining thereto remaining in full force and effect during the term of this Agreement; (ii) in the event of SmartCharts rights, titles, licenses, permissions or approvals pertaining to the Services are varied, cancelled, terminated, rescinded or not renewed, Subscribers' rights to use the affected portions of the Services shall automatically terminate upon written notice by SmartCharts, and SmartCharts shall not have any liability for such termination; (iii) this Agreement is subject to any requirements of the Data Providers and Software Partners under SmartCharts agreements with such Data Providers and Software Partners, including such additional financial and contractual requirements as may be imposed by such Data Providers and Software Partners from time to time; (iv) SmartCharts may be obligated to disclose the existence of this Agreement to certain Data Providers and Software Partners, which disclosure may result in, among other things, the imposition on Subscriber of additional financial and contractual obligations by such Data Providers and Software Partners.
- 3.3 Use of the Services on multiple devices at the same time with a single username, password or similar identifier is strictly prohibited. Subscribers are only permitted to access the System from one device at a time per subscription.
- 3.4 Subscriber acknowledges and agrees that SmartCharts is not responsible for and shall have no liability in respect of any:
- (a) acts or omissions of Data Providers, Service Facilitators, Software Partners or any other third-parties;
 - (b) Approved Third Party Application, Service Facilitator Product or any other third-party software, third party hardware, or communication method or delay or interruption;
 - (c) adverse impact on the Services in connection with the acts and omissions referred to in section 3.4(a)(a).
- 3.5 SmartCharts reserves the right at any time to:
- (a) add or delete Data from the Services as it deems appropriate to service all of its Subscribers; or
 - (b) suspend, withdraw, change or add to any part of the Services. SmartCharts has the right to suspend Services for the purposes of maintenance, repair, upgrade or any other purpose that it reasonably deems appropriate.
- 3.6 Subscriber shall be solely responsible for procuring and maintaining any necessary equipment, network connections and telecommunications links to enable the Services to be provided and Subscriber shall be responsible for all problems, conditions, delays, delivery

failures and all other loss or damage arising from or relating to its equipment, network connections or telecommunications links or caused by the internet.

- 3.7 SmartCharts shall not be responsible for the compatibility or reliability of equipment, systems or software used in conjunction with the Services, whether owned by Subscriber or supplied to Subscriber by third parties.
- 3.8 If there has been any breach of any part of this Section 3 or any other unauthorized acts or omissions in relation to the Services, without prejudice to any other right or remedy SmartCharts may have, SmartCharts may:
- (a) suspend availability of the Services until the breach or unauthorized act or omission has been remedied; and/or
 - (b) charge Subscriber for an amount equal to the fees SmartCharts would have charged if such act or omission had been authorized; and/or
 - (c) terminate this Agreement forthwith.

4. **FEES AND PAYMENT.**

- 4.1 In consideration for the Services, Subscriber shall pay SmartCharts the Fees as set out on their receipt.
- 4.2 All Fees are due in advance. Service Fees (and Premium Service Fees applicable to the Services) for any partial month shall be prorated on a thirty (30) day per month basis. All Data Provider Fees payable to SmartCharts in connection with new subscriptions shall be due and payable in advance for the full calendar month, regardless of when the Services begin during such month. Data Provider Fees applicable to new content added by existing Subscribers shall be payable in advance, pro-rated on a thirty (30) day per month basis from the date such content is added; thereafter, such Data Provider Fees shall be due and payable in advance commencing with the Subscriber's next billing cycle. SmartCharts may also invoice Subscriber on behalf of the Service Facilitators for the products and services offered by such Service Facilitators in conjunction with the Services. SmartCharts reserves the right to charge Administrative Fees from time to time. SmartCharts also reserves the right to pass on to the Subscriber any additional third-party costs and fees where incurred following a Request from Subscriber.
- 4.3 Payment by Credit Card: Subscriber hereby authorizes SmartCharts to use the credit card information furnished by Subscriber to SmartCharts for purposes of fulfilling Subscriber's payment obligations under this Agreement. Subscriber further represents and warrants that (i) the credit card information provided to SmartCharts (including, but not limited to, card number, expiration date and card holder's name) is valid in all respects and lawfully authorized for use, and (ii) that such credit card belongs to Subscriber or has been authorized for use by Subscriber by the valid cardholder ("**Subscriber's Credit Card**"). Upon expiration of the Subscriber's Credit Card, Subscriber shall notify SmartCharts of a valid replacement credit card and all relevant information pertaining to the new credit card.
- 4.4 Failed Payments: SmartCharts reserves the right to make continuous attempts, using the Subscriber Credit Card details provided, to collect any due fees. Access to Services (including content provided by third parties through the System (regardless of any additional Premium Service Fees that may have been paid for that element of the Service)) will be restricted until all outstanding amounts are paid. SmartCharts shall not be liable for such restrictions in Services and no credit or pro rata adjustments for such restricted periods will be due to Subscriber.
- 4.5 Fee Changes: All Fees are subject to change at any time upon thirty (30) days prior notice. Subscriber agrees to pay any increases in applicable Fees, plus applicable Taxes. For Monthly Subscriptions, Fee changes will take effect at the beginning of Subscriber's next

billing cycle; such changes shall not apply to Annual Subscriptions or Bi-Annual Subscriptions until their respective contract roll dates.

- 4.6 Disputes: All invoices/statements will be deemed correct and final unless disputed in good faith for reasonable cause in writing by Subscriber within ten (10) days after the invoice/statement date. Any such dispute must be raised in writing setting out the element disputed and providing full details of the reason of the dispute. All correspondence regarding disputed invoices/statements must include Subscriber's name, address and telephone number. All correspondence should be sent to info@smartchartsfx.com. All amounts of the invoice/statement that are not in dispute shall be fully paid. For any good faith disputes, the parties will endeavour to resolve the dispute in good faith within ten (10) days of the written notice and any payment of the disputed sum shall be made promptly after expiry of such period.
- 4.7 Specials; Bundled Service Discounts: Any pricing discounts that may be offered for "bundled Services" (i.e., subscriptions to multiple specified Services) may be extinguished in the event Subscriber cancels a Service included in the bundled offer. In such event, pricing will automatically revert to SmartCharts then current pricing structure.
- 4.8 Non-Refundable: Except to the extent expressly set forth in this Agreement regarding Service Fees, all Fees are non-refundable.
- 4.9 Unless expressly stated otherwise, all Fees are exclusive of any and all applicable Taxes. Subscriber is responsible for any Taxes.
- 4.10 Without prejudice to any other rights and remedies available to SmartCharts, SmartCharts shall be entitled to charge Subscriber interest under The Late Payment of Commercial Debts (Interest) Act 1998 (as may be amended or replaced from time to time) on any overdue amount under the Agreement, accruing on a daily basis from the due date until the date of actual payment of the overdue amount whether before or after judgment and compounding every 30 days.
- 4.11 If Subscriber fails to pay any fees, charges or payments due in accordance with this Agreement, we reserve the right to pass your account to a 3rd party collections agency.

5. TRIAL PERIODS

- 5.1 If the Services include a trial period of SmartCharts Software (or any version of thereof, including SmartCharts Lite) either as a free trial period or for a fee then the SmartCharts Software will be available to Subscriber for the duration of the trial period only. At the end of the trial period, the Subscriber will be automatically entered into a rolling monthly subscription, ensuring continued access to the SmartCharts Software. The applicable subscription fee will be charged unless the Subscriber cancels before the trial period expires. Cancellation can be made at any time before the next billing cycle to avoid further charges.

6. SUBSCRIPTION OPTIONS AND DURATION

- 6.1 Available subscription options are set forth below; but some of the Services are not available for one or more of the options, which will be made clear at the time of subscription. Regardless of the subscription option chosen, Premium Service Fees, Data Provider Fees, Administrative Fees and Taxes are always billed and payable monthly in advance.
- 6.2 "**Monthly Subscription**": In a Monthly Subscription, Subscribers sign up for Services on a month-to-month basis, and all Fees are due monthly in advance. All Monthly Subscriptions shall automatically renew for subsequent terms equal to the initial subscription term unless terminated in accordance with this Agreement. Subject to clause Subscriber can terminate a Monthly Subscription by giving SmartCharts notice of cancelation in writing to enrolment@smartchartsfx.com or by using the form provided at Schedule 1. Upon receipt of the cancellation your subscription will be set to expire on the day before the next renewal

date meaning you will not be charged further. For the avoidance of doubt on the expiration of your subscription you will no longer have access to the Services covered by the cancelled subscription.

- 6.3 **Service Reactivation:** Subscribers may reactivate previously cancelled Services (if then available) at any time, subject to payment in full of at least one (1) month of applicable Fees and any past due balance remaining on the Customer Account. Reactivated Services are not eligible for any promotions that may otherwise apply to new Subscribers to such Services.
- 6.4 **Additional Services:** Subscriber may from time to time subscribe to additional Services, subject to Subscriber properly entering into any additional contracts and/or related amendments (if applicable) and paying any additional applicable Fees. All additional Services provided by SmartCharts in response to Subscriber's request(s) shall be governed by the terms and conditions of this Agreement.

7. **ONLINE EVENTS**

- 7.1 If Subscriber's Services include any 'online events' then:
- (a) To attend any online workshop bonus events, Subscriber must have an active SmartCharts Subscription and Subscriber has 4 weeks from their Enrolment Date to book onto and attend each online workshop. Subscriber may change their chosen online workshop date a maximum of once.
 - (b) To attend any Bonus Online Trader Mentoring, Subscriber has 6 weeks from their Enrolment Date to book and complete the mentoring.
- 7.2 SmartCharts reserves the right to make reasonable alterations to the presenter, date, time and/or content of online bonus events without liability to Subscriber. SmartCharts will endeavour to give reasonable prior notice of such changes to Subscriber.
- 7.3 SmartCharts reserves the right at its discretion to exclude Subscriber from any online workshop event (or any part thereof) for any reason deemed appropriate (acting reasonably).

8. **PROFESSIONAL/NON-PROFESSIONAL STATUS.**

- 8.1 Non-Professional Status: With respect to Services involving the receipt of financial market information, unless otherwise indicated by Subscriber during the registration process, Subscriber represents and warrants to SmartCharts that he/she meets and complies with all requirements for qualification as a "Non-Professional Subscriber" (or equivalent) as currently in effect and which may be issued from time to time by NYSE, AMEX, NASDAQ and any other Data Providers that may issue Non- Professional Subscriber criteria. Subscriber further represents and warrants to SmartCharts that the following statements are true and accurate and shall continue to be true and accurate for as long as Subscriber receives Services hereunder:
- (a) Subscriber makes this Agreement in his/her own individual capacity and not on the behalf of any firm, corporation, partnership, trust, association or other entity.
 - (b) Subscriber shall use the Services solely in connection with his/her own individual personal investment activities and not in connection with any trade or business activities.
 - (c) Subscriber is not a securities broker-dealer, investment advisor, futures commission merchant, commodities introducing broker or commodity trading advisor, registered representative of any of the foregoing, member of a securities

exchange or association or futures contract market, or an owner, partner or associated person of any of the foregoing.

- (d) Subscriber is not employed or otherwise engaged by a bank, financial institution or an insurance company or an Affiliate of any of them or any other organization that performs business functions related to securities or commodity futures investment or trading activity.

8.2 Professional Status: Professional Subscribers must register as such as part of the subscription process. Professional Subscribers may also be required to execute hard copy contracts with the Data Providers, as required by the Data Providers from time to time.

8.3 Status Changes: If Subscriber's status with respect to any of the above statements is affected or changed in any way, Subscriber shall immediately notify SmartCharts in writing of such change. In addition to any other remedies available to SmartCharts, Subscriber shall be liable to SmartCharts and the Data Providers for the difference between any Fees paid by the Subscriber as a Non-Professional Subscriber and the Fees applicable to Professional Subscribers for the same type of Services. Further, Professional Subscribers who identify themselves as Non-Professional Subscribers will have their Customer Account cancelled by SmartCharts and risk further action by appropriate regulators and exchanges, including professional exchange fee penalties.

9. **SECURITY AND CONFIDENTIALITY.**

9.1 Subscriber shall take all reasonable precautions to safeguard access to the Services, including protecting against unauthorized access.

9.2 Subscriber shall ensure that confidential information (which includes but is not limited to Account Information, any confidential information concerning the business, affairs, customers, clients or suppliers of SmartCharts (including information learnt and all Materials)) is kept secure and confidential and shall not disclose, use or copy such details to any other person except where it may be required by law, court order or any governmental or regulatory authority or agreed in writing with SmartCharts in advance of such disclosure. Information shall not be deemed confidential where it is or becomes generally available to the public (save by breach of any duty of confidence) or in respect of which the parties agree in writing is not confidential or may be disclosed.

9.3 Subscriber shall not allow any other person to use the Account Information. If, in SmartCharts' reasonable opinion, it suspects that Subscriber has disclosed its Account Information to any third party, without prejudice to any other remedy, SmartCharts may suspend or terminate access to the Services without any liability.

9.4 Subscriber accepts responsibility for the confidentiality and use of all Account Information and all Requests placed through or under Subscriber's Account Information. All Requests received by SmartCharts will be deemed to have been received from, and with the authorization of Subscriber. All Requests shall be deemed to be made at the time received by SmartCharts and in the form received.

9.5 Subscriber shall notify SmartCharts immediately if Subscriber becomes aware of any:

- (a) loss, theft or unauthorized use of Subscriber's Account Information;
- (b) failure by Subscriber to receive an electronic message that a Request initiated by Subscriber has been received and/or executed (Subscriber must provide SmartCharts with a current e-mail address and notify SmartCharts of any changes);
- (c) failure by Subscriber to receive accurate confirmation of a Request or its execution within five (5) business days after submitting the Request; or

- (d) receipt of confirmation or electronic message of a Request that Subscriber did not place, or any similarly inaccurate or conflicting report or information.

9.6 SmartCharts is not responsible in the event Subscriber suffers any loss or damage following any third-party use or misuse of the Account Information.

10. INTELLECTUAL PROPERTY AND OWNERSHIP.

10.1 All rights, title, and interest in the Services, the System, the Data, the Materials and the Recordings, including all Intellectual Property Rights related thereto, existing now or in the future, are and shall continue to be the exclusive property of SmartCharts, the Data Providers, the Software Partners, the Service Facilitators and/or other third party suppliers. Subscriber shall not have any rights in the System, Data or Materials other than the limited right granted for the duration of this Agreement as set out in Section 2. Subscriber shall not reproduce, retransmit, disseminate, sell, publish, broadcast, circulate, provide or redistribute the Services or information in any manner or for any purposes (personal or business) without the prior express written consent of SmartCharts and where required, the relevant Data Providers.

10.2 Subscriber shall immediately notify SmartCharts upon becoming aware of any unauthorized access to or use of the Services or any claim that any part of the Services infringes upon any Intellectual Property Rights of a third party.

10.3 Subscriber shall comply with all reasonable requests by SmartCharts to protect the respective rights of SmartCharts, the Data Providers, the Software Partners and the Service Facilitators.

11. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.

11.1 Nothing in this Section 11 shall exclude or limit SmartCharts' liability for death or personal injury resulting from SmartCharts' negligence or for fraud or fraudulent misrepresentation, in each case if and to the extent such exclusion or limitation is not permitted by Applicable Law. For the avoidance of doubt, the application of this Section shall be subject to Sections 18.7 and 18.8.

11.2 The Services are provided on an "as is" basis. Neither SmartCharts, the Data Providers, the Service Facilitators, the Software Partners nor any officer, director, employee, agent, representative or Affiliate of any of the foregoing make any warranty of merchantability, fitness for a particular purpose or use, or any warranty on the completeness, accuracy or quality of the Services (including, but not limited to, information access, accuracy of trade signals generated by our proprietary strategies, risk sizing calculations etc). Subscriber recognizes that the accuracy of the information should be checked before Subscriber relies on it. News stories reflect only the author's opinion and not that of SmartCharts.

11.3 SmartCharts shall not be liable to Subscriber or any other third parties, in contract, tort (including negligence), misrepresentation or otherwise arising in connection with this Agreement, for any loss or damage (including, without limitation, damage for loss of business or loss of profits or anticipated savings) arising directly or indirectly from Subscriber's use of the Materials or which was not reasonably foreseeable when this Agreement was entered into, or which in any event was not caused by any breach by SmartCharts.

11.4 Subscriber acknowledges and agrees that SmartCharts disclaims all liability and responsibility for, and that neither SmartCharts, the Data Providers, the Service Facilitators, the Software Partners nor any officer, director, employee, agent, representative or Affiliate of any of the foregoing shall have any liability, whether direct, contingent or otherwise, for any delays, interruptions, errors, omissions, malfunctions, or inaccuracies in the Services, or for any decision made or action taken by Subscriber in reliance upon the Services, or for

any interruption, delay, damage or corruption of any Data, information, or any other aspect of the Services.

- 11.5 Subscriber understands and agrees that any material downloaded, or otherwise obtained by or through the Services, is done at Subscriber's own discretion and risk and that Subscriber will be solely responsible for any damages to Subscriber's computer system or loss of Data that results from the download of such material. Subscriber expressly understands and agrees that SmartCharts disclaims any and all responsibility or liability for the accuracy, content, completeness, legality, reliability, operability or availability of the Services. SmartCharts disclaims any responsibility for the deletion, failure to store, misdelivery or untimely delivery of any of the Services. SmartCharts disclaims any responsibility or liability for any harm resulting from downloading or accessing any Data, information or material through the Services, including, without limitation, for harm caused by viruses or similar contamination or destructive features.
- 11.6 Subscriber acknowledges and agrees that neither the Services nor any of the information obtained by or through the Services are intended to supply investment, financial, tax or legal advice nor do they constitute a recommendation or endorsement. Subscriber is responsible for its own decision making. SmartCharts offers no advice regarding the nature, potential value, or suitability of any particular security, transaction, investment or investment strategy. Subscriber acknowledges and agrees that the use of the Services and information, and any decisions made in reliance upon the Services and information, are made at Subscriber's own risk.
- 11.7 Any online order execution services Subscriber may utilize in connection with the Services are provided by independent broker-dealers and similar entities (collectively, "**Direct Access Brokers**") and not by SmartCharts. In order to utilize such services, Subscriber must have an existing account with a Direct Access Broker or subsequently establish an account with a Direct Access Broker. SmartCharts is not a Direct Access Broker. The Direct Access Broker Subscriber selects is solely responsible for its services to Subscriber and Subscriber agrees that neither SmartCharts, the Data Providers, the Service Facilitators nor any officer, director, employee, agent, representative, or Affiliate of any of the foregoing shall be liable for any damages or liability of any type whatsoever arising out of or in any way connected with Subscriber's use of such services, including, but not limited to, trading losses and delays, interruptions, errors, omissions, or malfunctions in respect to the orders transmitted by Service Facilitators or Data distributed by Data Providers. In addition, Subscriber acknowledges that SmartCharts may collect information about Subscriber's trading activity for use solely in administering SmartCharts' relationship with the Direct Access Broker. For Australian residents - in addition to the above provisions of this clause, Subscriber agrees that SmartCharts does not arrange any dealing in financial products by Subscriber that Subscriber may initiate through an online order execution service provided by Direct Access Brokers utilized through a software link that Subscriber uses in connection with the Services. Subscriber acknowledges that SmartCharts, is not a broker or investment adviser and that SmartCharts and its agents have not represented to Subscriber that a profit can be made from any investment activity whatsoever. Any investment examples cited by SmartCharts, are for illustration purposes only and are not recommendations. Any decision to invest in any finance or investment product is made solely by Subscriber, and SmartCharts and its agents have no liability to Subscriber in respect of any such activities or the consequences thereof. Subscriber should consider seeking advice from a regulated financial adviser or stockbroker should Subscriber wish to make investments.
- 11.8 No action, regardless of form, arising from or pertaining to this Agreement may be brought by subscriber more than one (1) year after such action has accrued.
- 11.9 This Agreement sets out the full extent of SmartCharts' obligations and liabilities in respect of or in connection with this Agreement and the Services. Except as expressly stated in this Agreement, any other conditions, warranties, representations or other terms that may have been expressly given or which might otherwise be implied into, or incorporated in, this

Agreement whether by statute, common law or otherwise, are all excluded to the fullest extent permitted by Applicable Law.

- 11.10 In no event will SmartCharts, the Data Providers, the Service Facilitators, the Software Partners or any officer, director, employee, agent, representative or Affiliate of any of the foregoing be liable to Subscriber or any other party for any (i) loss of profits; (ii) loss of business; (iii) loss of goodwill; (iv) loss of or damage to Data, equipment or systems; or (v) any indirect, consequential, incidental or special damages or claims arising in relation to any part of this Agreement or the Services howsoever arising, whether in contract, tort (including negligence) or any other cause of action, even if SmartCharts, the Data Providers, the Service Facilitators, the Software Partners or other third party suppliers have been advised of or are otherwise aware of the possibility of such damage or claim.
- 11.11 Subscriber's maximum recovery for any damages arising out of or related to this Agreement, regardless of the form of action that imposes liability, whether in contract, tort (including negligence) or otherwise, shall be limited to and not exceed, in the aggregate for all claims, actions, and causes of action of every kind and nature, the lesser of:
- (a) the amount of the Service Fees (including Premium Service Fees applicable to SmartCharts' products) under this Agreement for the most recent twelve (12) months prior to the time such liability arose; and
 - (b) two thousand US dollars (\$2,000 USD).
- 11.12 The terms of this Agreement do not affect your statutory rights.

12. INDEMNIFICATION AND RELEASE.

- 12.1 Subscriber shall defend, indemnify and hold harmless SmartCharts, the Data Providers, the Service Facilitators, the Software Partners and their respective officers, directors, employees, agents, representatives and Affiliates from and against any and all claims, losses, liabilities, costs, and expenses (including, but not limited to, reasonable legal fees) arising from or relating to:
- (a) Subscriber's use of the Services;
 - (b) Subscriber's breach or violation of this Agreement; or
 - (c) Subscriber's infringement of any third-party's Intellectual Property Rights or privacy rights.
- 12.2 By using the Services, Subscriber hereby releases SmartCharts, the Data Providers, the Service Facilitators, the Software Partners and their respective officers, directors, employees, agents, representatives and Affiliates from any and all claims, demands, debts, obligations, damages costs, and expenses of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, that Subscriber may have against them arising out of or in any way related to Subscriber's use and reliance on the Services. For U.S. residents – Subscriber hereby waives all laws that may limit the efficacy of such releases. For example, Subscriber expressly waives any rights or benefits under California Civil Code Section 1542 or any equivalent or similar statute. California Civil Code Section 1542 provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favour at the time of executing the release, which if known by him or her, must have materially affected his or her settlement with the debtor."
- ## **13. DATA PROVIDERS AND/OR SERVICE FACILITATORS AND THIRD-PARTY RIGHTS**
- 13.1 Third Party Enforcement Rights. The Data Providers, Software Partners and/or Service Facilitators and any of their Affiliates and any Affiliates of SmartCharts may enforce this Agreement against Subscriber in their own capacity.

- 13.2 Notwithstanding 13.1 SmartCharts and Subscriber may terminate or vary this Agreement in any way without the consent of any third-party beneficiary, notwithstanding that such termination or variation may extinguish or alter that person's entitlement under this Agreement.
- 13.3 Except as set out in this Section 13, this Agreement does not create and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this Agreement.
- 13.4 SmartCharts may from time to time have agreements with third party software providers that make their technology available to SmartCharts to facilitate linkage between the Services and any Direct Access Brokers or any other entity providing online order execution services. Such access arrangements may be varied or terminated by SmartCharts or by the third-party software providers without notice to Subscriber. Subscriber acknowledges that SmartCharts does not act as Subscriber's agent in any transactions using online trading services accessed through the Services. The Direct Access Broker Subscriber selects is solely responsible for its services to Subscriber, and Subscriber agrees that
- 13.5 SmartCharts is not responsible for and shall not be liable for any damages or costs of any type whatsoever arising out of or in any way connected with Subscriber's use of such services.
- 13.6 Third Party Software Access Fees. Subscriber agrees that SmartCharts is entitled to receive and may retain for its own use and benefit in addition to the Fees, any remuneration agreed to be payable by any third party in connection with Subscriber's use of the Services, including any technology software linkage between the Services and any Direct Access Brokers.

14. **DATA PROTECTION**

- 14.1 We are committed to ensuring we treat personal Data lawfully and place high importance on the correct, lawful, and fair handling of all personal Data, respecting the legal rights, privacy, and trust of all individuals with whom it deals. By entering into this agreement Subscriber agrees to provide us with such information as we reasonably request from time to time to assist us with provision of the products and services under the Agreement.
- 14.2 Subscriber's personal Data may be transferred or disclosed to any Affiliate and to the Direct Access Broker for the purpose of providing the Smart Charts Demo Trading Account or, subject to appropriate agreements and arrangements to ensure data protection, to third parties, for the processing of that personal information based on our instructions and in compliance with appropriate confidentiality and security measures and as further set out in our Privacy Notice: <https://www.smartcharts.net/privacy>.

15. **TERMINATION.**

- 15.1 **By SmartCharts.** SmartCharts may immediately terminate this Agreement in whole or in part (which includes all or any Services under the same Customer Account) or otherwise restrict, terminate, suspend or cancel any Service or any part at any time without liability on giving notice to Subscriber in the following circumstances:
- (a) In the event of Subscriber's Default, including (without limitation) Subscriber's failure to pay any Fees by their due date.
 - (b) If Subscriber is insolvent or takes formal steps to commence its liquidation or bankruptcy or makes or proposes any arrangement with its creditors or the appointment of a receiver or similar officer in respect of its assets or any steps to commence an insolvency process or any analogous event or proceeding in any other jurisdiction.

- (c) At SmartCharts' discretion (without any cause) upon giving at least five (5) days written notice to Subscriber.
- (d) Immediately on notice at SmartCharts' discretion (without any cause) if SmartCharts, in its opinion, considers that the continuation of the Service to Subscriber may harm the interests of SmartCharts in any way.
- (e) If any of the Data furnished by a Data Provider and utilized in the Services is no longer available in a manner that is compatible with the System.
- (f) In the event Subscriber is using an Approved Third-Party Application, upon any termination of or material variation to SmartCharts' Agreement with the Software Partner providing the Approved Third-Party Application.
- (g) If a Software Partner or Service Facilitator requests that SmartCharts terminates this Agreement.

- 15.2 **By Subscriber.** Subscriber may terminate this Agreement or any Service by giving the minimum notice of cancellation in writing as set out in Section 6.2 or Section 15.3. Such termination must be notified by written notice to SmartCharts, by emailing enrolment@smartchartsfx.com, although certain Services may also be cancelled by Subscriber electronically through the System.
- 15.3 **Right to cancel.** Subscriber may cancel this Agreement on or before the 14th day from their Enrolment Date (the "Cancellation Period") by e-mailing enrolment@smartchartsfx.com with the subject 'Cancellation' or Subscriber may use the form at Schedule 1 which should be completed and sent to the e-mail address above. If Subscriber cancels within this fourteen-day period, Subscriber's relevant Fees will be refunded to Subscriber in full, save as set forth in Section 15.4.
- 15.4 If Subscriber wishes to receive the Services during the Cancellation Period, Subscriber will be required to first give their express consent to the immediate provision of the Services. By giving such consent, Subscriber loses their right to be refunded for the Services supplied by SmartCharts prior to it receiving Subscriber's notice of cancellation under Section 15.3. Those parts of the Fees will become non-refundable.
- 15.5 Please note that spaces for Live Events are limited. If Subscriber has consented to such Services being provided during the Cancellation Period, does not attend the Live Event (or attends only part of it) and then cancels the Agreement (or that part of the Agreement) under section 15.3 then Subscriber is not entitled to a refund of the price of those Services.
- 15.6 Cancellation or termination of this Agreement shall be without prejudice to any rights which have accrued prior to such date.
- 15.7 **Effect of Termination.** Upon termination (howsoever caused) of any part of this Agreement or any Service (i) all accrued and unpaid Fees applicable to such Service shall become immediately due and payable. SmartCharts may at its discretion apply any unpaid balance to any other active Customer Account held by Subscriber; and (ii) Subscriber's rights in relation to the terminated part will cease and
- 15.8 Supplier shall immediately stop using such Services, including the Data, and will promptly delete or destroy all copies it may have of any Data, Materials or any of SmartCharts' Intellectual Property Rights (including all hard copy and soft copy versions), including purging such materials from Subscriber's computer systems and destroying any copies. Upon request, Subscriber shall produce written certification confirming that this section has been complied with.
- 15.9 **Limited Refund of Applicable Fees.** Except in an event of Default, upon termination of Subscriber's Customer Account or partial termination of this Agreement due to acts of Data

Providers, SmartCharts shall refund to Subscriber any prepaid Service Fees or Premium Service Fees for which Subscriber has not received corresponding Services. The amount of such refund shall be pro-rated based on the number of days during which Subscriber has already received Services, based upon a thirty (30) day month. Other than the refund of prepaid Fees for Services not received, in the event of termination by SmartCharts as herein provided, neither SmartCharts nor the Data Providers shall have any liability to Subscriber in connection with such termination. No Fees shall be refunded in the event of termination by SmartCharts due to Subscriber's Default.

- 15.10 Survival. The termination of this Agreement or any part (howsoever caused), shall not affect the rights and obligations of the parties that have accrued prior to termination or those clauses which are intended to continue or take affect after termination which shall survive the termination.

16. **AUDIT**

- 16.1 Subscriber agrees to keep complete and accurate books, records and related documentation concerning Subscriber's use of the Services. During the term of this Agreement and for a period of three (3) year period after the termination of this Agreement (howsoever caused), SmartCharts, the Service Facilitators, the Software Partners and/or the Data Providers shall have the right, during normal business hours and upon at least 24 hours' notice to Subscriber, to (i) audit the books, records and documentation, (ii) audit the manner of use of and access to the Services by Subscriber, in each case to confirm Subscriber's compliance with any part of this Agreement. The costs of such audit shall be borne by the auditing party unless such audit reveals a material variance in the use of and access to the Services from the use and access contemplated by this Agreement, in which case Subscriber shall pay to the auditing party (i) all Fees and charges relating to the unauthorized use of the Services discovered during such audit and (ii) all reasonable audit expenses incurred by the auditing party.

17. **FORCE MAJEURE.**

- 17.1 Neither SmartCharts, nor any of the Data Providers, Service Facilitators or Software Partners nor any of their respective officers, directors, employees, agents, representatives or Affiliates shall be liable for any loss resulting from any interruption and/or delay due to any cause over which such entities do not have direct control, including, but not limited to, acts of God, acts of any government, terrorism, war or other hostility, civil disorder, the elements, fire, earthquake, explosion, power failures, equipment failure, industrial or labour dispute and SmartCharts' performance under this Agreement shall be excused for the duration of any such event.

18. **MISCELLANEOUS.**

- 18.1 Modifications to this Agreement. SmartCharts reserves the right to change or modify any and all of the terms of this Agreement upon notice to Subscriber. Subscriber's use of the Services following any such change or modification constitutes Subscriber's express Agreement to be bound by this Agreement as so changed or modified.
- 18.2 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.3 Incorporated Terms. For Services provided to Subscriber by or through any website owned by SmartCharts, the Website Terms and Conditions posted at <http://www.smartcharts.net> are hereby incorporated into this Agreement by reference. If and to the extent that there is

any conflict between such incorporated terms and those set forth herein, the terms specified in this Agreement shall prevail.

- 18.4 **Electronic Communications and Records.** Subscriber agrees that any use of the Service and any communications with SmartCharts and/or SmartCharts Affiliates with respect to the Service may be conducted electronically. Subscriber agrees that all agreements, notices, disclosures and other communications that SmartCharts and/or SmartCharts Affiliates provides electronically, satisfy any legal requirement that such communications be in writing. SmartCharts and/or SmartCharts Affiliates will communicate with Subscriber by e-mail or by posting notices that may be viewed through the Service or on the SmartCharts public Internet website.
- 18.5 **Entire Agreement.** This Agreement (including all documents incorporated herein by reference) constitutes the entire understanding between the parties with regard to its subject matter and supersedes any and all prior discussions, representations and agreements, oral or written. Each party acknowledges that in entering into this Agreement, it has not relied on and shall have no right or remedy in respect of any statement, representation (save for any fraudulent misrepresentation) assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement.
- 18.6 **Headings.** The headings appearing herein are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of the applicable clause of this Agreement.
- 18.7 **Reasonableness.** The parties consider and hereby acknowledge and agree that the restrictions, limitations and exclusions contained in this Agreement are reasonable in the context of the commercial arrangement agreed by the parties. If any such restrictions, limitations or exclusions are held to be unenforceable but would be valid if any part of it were deleted or the amount, period or area of application reduced (as the case may be), such provision shall apply with such modification as may be necessary to make it valid and effective.
- 18.8 **Severability.** Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, such provision shall be valid and enforceable to the extent permitted by Applicable Law and the validity and enforceability of the other provisions shall not be affected thereby. Each provision of this Agreement is separate and independent. Subject to Section 18.7, if any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remainder of the provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the parties amend the provision to the minimum extent necessary to remedy such invalidity. Neither party shall unreasonably withhold or delay their agreement to any such matters.
- 18.9 **Assignment and Transfer.** Subscriber may not assign, sub-license, sub-contract or otherwise transfer any of its rights or obligations under this Agreement, by operation of law or otherwise without prior written consent of SmartCharts.
- 18.10 **SmartCharts reserves the right to assign, sub-contract or sub-licence its rights and obligations under this Agreement and this Agreement shall be binding upon its successors and assigns.**
- 18.11 **Notices.** Notices by SmartCharts to Subscriber may be delivered to the postal or email address currently recorded for Subscriber in the records of SmartCharts. Subscriber hereby expressly consents to electronic delivery of notices hereunder. It is the responsibility of Subscriber to keep Subscriber's email address current at all times.

- 18.12 Notices by Subscriber. Except as otherwise provided herein, all written notices shall be given by a Subscriber to SmartCharts in the English language by e-mail to the following e-mail address: info@smartchartsfx.com.
- 18.13 Relationship of the Parties: The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating an agency, partnership or joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.
- 18.14 Controlling Language. English is the controlling language of this Agreement. Any version of this Agreement appearing in any other language shall be for accommodation only and shall not bind the parties.
- 18.15 Governing Law and Jurisdiction. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of New South Wales, and each party irrevocably agrees to the fullest extent permitted by Applicable Law that the courts of New South Wales, Australia shall have exclusive jurisdiction to settle any such dispute or claim.
- 18.16 General Risk Warning:
- (a) Trading and investing in financial instruments involve a high risk of loss and are not suitable for every investor.
 - (b) CFDs and other leveraged products are complex instruments and come with a high risk of losing money rapidly due to leverage. Between 70-80% of retail investor accounts lose money when trading CFDs. You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.
 - (c) Demo trading may create false expectations due to the absence of real financial risk. If you transition to live trading, you could lose more than your initial investment. Seek professional financial advice before trading with real funds."

SCHEDULE 1 – CANCELLATION REQUEST FORM

**TO: SMART CHARTS SOFTWARE PTY LTD, LEVEL 12/141 WALKER STREET, NORTH SYDNEY,
NSW 2060, AUSTRALIA**

EMAIL: learnforex@smartchartsfx.com

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods
[*]/ for the supply of the following service [*],

Ordered on [*] received on [*],

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date:

[*] Delete as appropriate"

SCHEDULE 2

NAME	FEATURES
Smart Charts Pro	<ul style="list-style-type: none">▪ Three Day Live Learn Forex Online Webinar including Breakthrough to Live Trading Analysis Day▪ Three 1-2-1 30 minute coaching sessions <p>DIGITAL CONTENT</p> <ul style="list-style-type: none">▪ E-learning suite including Learn the Basic and Learn Forex Digital▪ 6 Trading Strategies▪ Breakfast Breakout Live Streams▪ Daily Webinars
Smart Charts Standard	<ul style="list-style-type: none">▪ Three Day Live Learn Forex Online Webinar including Breakthrough to Live Trading Analysis Day <p>DIGITAL CONTENT</p> <ul style="list-style-type: none">▪ E-learning suite▪ 6 Trading Strategies▪ Breakfast Breakout Live Streams▪ Daily Webinars