

Agreement



Smart Currency Options Limited (“SCOL”)

Last updated: 7th December 2015

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION CONCERNING THE LEGALLY BINDING TERMS AND CONDITIONS APPLICABLE TO YOU – PLEASE READ IT CAREFULLY

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1. INTRODUCTION

- 1.1 You should read this Agreement carefully before submitting Your Application Form. The meaning of certain words and phrases used in this Agreement are set out in the Definitions section at the end of this Agreement and You should refer to that section in order to ensure that You fully understand this Agreement and You will be required to formally confirm that You have done so as part of Your Application Form. We would always recommend that You consider obtaining Your own advice in relation to this Agreement, and Your legal and financial responsibilities under it to ensure that it is suitable for all of Your needs and requirements.
- 1.2 This Agreement includes and incorporates each of the following:
- (a) Your completed Application Form;
 - (b) SCOL's Order Execution Policy;
 - (c) SCOL's Margin Policy;
 - (d) SCOL's Privacy Policy; and
 - (e) in relation to each transaction undertaken for You by SCOL the Contract Confirmation for that transaction.
- 1.3 When SCOL receives Your completed Application Form and supporting evidence of identity SCOL will take steps to verify Your identity. Following its review of Your Application Form and its verification of Your identity and if SCOL at its absolute discretion consider that it is appropriate to open a Trading Facility for You, SCOL will notify You of this acceptance in writing and this Agreement will come into full force and effect at the date of that confirmation by SCOL and shall remain in full force and effect until or unless terminated in accordance with any part of clause 19.

2. REGULATORY INFORMATION ABOUT SCOL

- 2.1 SCOL is authorised and regulated in the conduct of investment business in the UK by the Financial Conduct Authority (“the FCA”) with registration number 656427. The FCA's register may be accessed at www.fca.gov.uk/register.
- 2.2 If SCOL confirms, in accordance with clause 1.3 that You are accepted as a Client, SCOL will also confirm the Client Categorisation which SCOL has assigned to You: whether Eligible Counterparty, Professional (including Elective Professional) or Retail. These Client Categorisations, impact on which parts of the FCA Handbook will apply to SCOL's management of Your Trading Facility.
- 2.3 SCOL will also ask You to confirm whether You wish to establish and use the Trading Facility wholly or mainly for the purposes of Your business, trade, profession or craft, and in so doing You agree that You acknowledge that You are not a consumer within the meaning of section 12 of the Unfair Contract Terms Act 1977, Regulation 2 of the Unfair Terms in Consumer Contracts Regulations 1994, Article 2 of the E-commerce directive (2003/31/EC), Article 2 of the Electronic Commerce (EC directive) Regulations 2002, Article 2 of the distance Selling 97/7/EC or any similar consumer protection legislation.
- 2.4 If You disagree with the Client Categorisation You must notify SCOL and must not use Your Trading Facility until You and SCOL have agreed Your Client Categorisation.

3. YOUR RELATIONSHIP WITH SCOL:

- 3.1 Unless SCOL informs You otherwise in Writing in advance, SCOL will act as principal in relation to any Contract and SCOL will not act as Your agent or otherwise act on Your behalf in relation to any Contracts. This means that every Contract is a bilateral contract between SCOL and You for the option to purchase the agreed amount of the Target Currency at the Strike Price in the Source Currency and in which SCOL acts as a principal counterparty to You. At the same time SCOL will enter into an offsetting trade with a Counterparty.
- 3.2 SCOL requires You to enter into every Contract as principal and You agree to do so. SCOL shall not be obliged to accept any dealings with You where You act as agent for a third party and shall not be obliged to accept any such third party as a client.
- 3.3 In accordance with clause 5, SCOL offers this Agreement on an execution only basis and does not, subject to clause 5 below offer You advice and/or recommendations in relation to any potential or actual transaction including any Contract.

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3.4 Except and only to the extent otherwise stated in any part of this Agreement, nothing in the Agreement shall give rise to any fiduciary, trustee, agency, joint venture or partnership relationship between SCOL on the one hand and You or any Authorised Person on the other.

4. RISK ACKNOWLEDGEMENTS

4.1 You acknowledge and agree that:

- (a) trading in Options, even when used to cover a commercial position, may involve a high degree of risk and is appropriate only for persons who are able to withstand the risk of loss;
- (b) under this Agreement the Contracts are not undertaken on a Recognised Investment Exchange and therefore You may be exposed to greater risks;
- (c) when You enter into a Contract with SCOL any profit or loss – realised or unrealised – arising as a result of a fluctuation in the value of the Contract will be entirely attributable to You;
- (d) the results of trading and / or investing can never be guaranteed and SCOL does not offer You and guarantee or assurance of any profit or any immunity from loss arising from Your use of Your Trading Facility including but not limited to any Contracts You enter into under this Agreement;
- (e) SCOL may report to the National Crime Agency or any other relevant regulatory authority any Contract undertaken by You or on Your behalf in accordance with the FCA Rules, Market Rules or Money Laundering Requirements; and
- (f) You accept that if SCOL were for any reason to default on its financial obligations or become insolvent Your investment would be at risk.

5. EXECUTION ONLY

5.1 SCOL will not provide advice or personal recommendations (as defined in the FCA Rules) to You on the merits of a Contract unless SCOL's Compliance & Data Security Manager has first agreed in Writing that SCOL will do so. SCOL's Compliance & Data Security Manager may be contacted at Smart Currency Options Limited, 1 Lyric Square, London, W6 0NB or **compliance@smartcurrencyoptions.com**.

5.2 You agree that each and every Contract is entered into by You with SCOL on an execution-only basis and that You retain full responsibility for assessing whether any particular Contract is suitable for Your needs and requirements and/or is consistent with Your appetite for financial risk.

5.3 SCOL may provide information to You from time to time about foreign exchange markets and related matters via, for example, the telephone or the Website. You agree that:

- (a) this information has not been prepared by SCOL and is not offered by SCOL as advice upon whether entering into any particular Contract or Contracts would meet Your needs and requirements or Your appetite for financial risk; and
- (b) You will not construe or rely on such information as legal or tax advice; and
- (c) You will not rely on such information as the sole source upon which to base an investment decision; and
- (d) You will at all times remain responsible for assessing Your need for advice, whether on legal, financial, tax or investment issues and for obtaining all such advice as You consider necessary.

5.4 Whilst, to the best of SCOL's knowledge and belief, unless otherwise stated by SCOL all information including any graphs, charts or market news SCOL supplies to You, is believed, at the time it is given, to be accurate and reliable, SCOL does not offer this information as any assurance or prediction or guarantee as to the expected outcome of any Contract or as advice as to whether to enter into or not enter into any Contract following a quotation or otherwise.

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- 5.5 You acknowledge and agree that:
- (a) Market conditions and prices including changes to foreign currency exchange rates, are subject to constant changes, outside of SCOL's control and may change between SCOL supplying You with information and the time You decide to and/or do enter into any Contract;
 - (b) past movements or trends in the movement of foreign currency exchange rates should not be taken as an indicator of future movements in such exchange rates.
- 5.6 Before entering into any Contract, You must therefore in accordance with clause 5.2 make Your own independent assessment as to whether it is appropriate for You to enter or decline to enter into that or any other Contract based upon Your own judgment and upon such advice as You consider necessary.

6. ENTERING INTO AN OPTIONS CONTACT

- 6.1 You may contact SCOL to request a Quote. SCOL may at its absolute discretion provide You with a Quote.
- 6.2 If You consider that any Quote You have received from SCOL is suitable for Your needs and requirements You may place an Order with SCOL for a Contract.
- 6.3 SCOL may, at its absolute discretion, accept or refuse to accept or refuse to act on or complete any Order from You in whole or in part.
- 6.4 Once You submit the Order to SCOL You may not amend, withdraw, cancel, or rescind that Order unless SCOL provides You with its prior Written consent to do so.
- 6.5 Upon receipt of Your Order SCOL will, subject to the terms of the SCOL Order Execution Policy, execute Your Order.
- 6.6 Each Contract will come into force and effect immediately upon SCOL's execution of the relevant Order and the dates, currencies and amounts of the Contract will be those stated in the Contract Confirmation dispatched by SCOL to You in relation to that Contract.

7. CANCELLATION OF A CONTRACT BY YOU

- 7.1 You may not cancel a Contract except with the prior Written Consent of SCOL, which may be given by SCOL entirely at SCOL's discretion.
- 7.2 In the event that SCOL grants consent for the cancellation of a Contract You agree that You shall be liable for all Losses, fees and/or other Expenses incurred by You and SCOL which arise from that cancellation.

8. ALTERATION OF THE CONTRACT BY YOU

- 8.1 Upon request from You, SCOL may, entirely at SCOL's own discretion, agree to amend the terms of a Contract. For example, You may request that SCOL 'roll' a Contract (meaning provide You with a Settlement Date later than originally agreed).
- 8.2 SCOL may in its absolute discretion agree to such a request subject to such conditions as SCOL may in its absolute discretion impose (including without limit You providing an administration fee, an additional Premium, a Margin or an increased Margin.)

9. EXECUTION POLICY

- 9.1 You agree that each Contract will be executed in accordance with the Order Execution Policy which forms part of this Agreement.

10. CONTRACT CONFIRMATIONS

- 10.1 Each Contract will be evidenced by a Contract Confirmation. SCOL will send You a Contract Confirmation as soon as possible following the Contract being entered into, and You should expect to receive the Contract Confirmation by 5 pm on the first Business Day following the Contract Date.

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- 10.2 If You do not receive a Contract Confirmation by the time stated in clause 10.1 above, or if You do receive a Contract Confirmation but consider that it contains an error You must notify SCOL in Writing as soon as possible and no later than 5pm (UK time) on the second Business Day after the Contract Date.
- 10.3 If SCOL does not receive notification from You in accordance with clause 10.2 You will be deemed at 5 pm on the Second Business Day following the Contract Date to have received and agreed that the Contract Confirmation is correct in its entirety.
- 10.4 You must keep the Contract Confirmation confidential and secure. Should You become aware of or suspect that a Contract Confirmation has been lost or stolen or that any of the information contained in it has been disclosed to a third party, You must inform SCOL immediately.
- 10.5 You agree that if for any reason, including any failure by SCOL to send it to You, You do not receive the Contract Confirmation this will not in any way invalidate any Contract entered into between You and SCOL and will not prejudice the rights and obligations of either party under that Contract.

11. PAYMENT OF PREMIUM

- 11.1 You may be required to pay a Premium pursuant to the terms of a Contract. An estimate of the likely Premium will be given in the Quote. When the Contract is entered into SCOL will confirm and agree with You the amount of the Premium and the time and date by which and the method by which You will be required to pay this Premium.

12. MARGINS FOR OPTIONS CONTRACTS

- 12.1 In accordance with the Margin Policy which forms part of this Agreement SCOL may in its absolute discretion and at any time before or after You and SCOL enter into a Contract require You to pay a Margin in relation to that Contract.
- 12.2 In the event that SCOL requires You to pay a Margin in relation to any Contract will pay that Margin in immediately accessible funds in the amount and at or before the time and date stated by SCOL when advising You of that requirement.

13. WHEN THE ADDITIONAL MARGIN PAYMENT HAS TO BE PAID

- 13.1 If You are an Eligible Counterparty Client or a Professional Client and at any time SCOL requires You to provide Additional Margin to SCOL, You must do so in immediately accessible funds by 5pm (UK time) on the Business Day on which SCOL gives notification of the additional Margin requirement, provided that such notification is given before 12.00 noon UK time on such Business Day. If notification of an additional Margin requirement is given after 12:00 noon UK time, You must provide the funds by 12:00 noon UK time on the next Business Day.
- 13.2 If You are a Retail Client, and SCOL requires You to provide initial or additional Margin to SCOL, You must do so in immediately accessible funds by 12 noon UK time on the third Business Day after the day on which SCOL gives notification of the Additional Margin requirement except for Contracts with a value of £500,000 or more where shorter time frames will apply as notified to You by SCOL in advance of entering in to the Contract.

14. EXERCISING OPTIONS

- 14.1 In relation to the Option(s) contained in a Contract during the Maturity Period, either SCOL or You are entitled to exercise their Option(s) if Your/ SCOL's (respectively) Option(s) is In-the-Money. If by the end of the Maturity Period You have not exercised Your Option(s) contained in a Contract and at that time Your Option(s) are In-The-Money, SCOL will automatically exercise the Option(s) for You.
- 14.2 All Options which are exercised will be, by default, “Cash Settled”, which means that SCOL or You as applicable will pay to the other only the amount of the Immediate Profit. When a Contract is Cash Settled or Delivery is made in accordance with clause 14.3 the Immediate Profit or Delivery Amount (as defined in clause 14.3) may, subject to clause 14.4 be paid in either the Target Currency or the Source Currency.

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- 14.3 When an Option is exercised by You or SCOL You may not make nor require that SCOL shall make payment to You of the full amount of the Option exercised (“Delivery”) unless and only to the extent that SCOL has granted its consent in Writing prior to the Settlement Date of that Contract. In the event that Delivery is agreed the payment will be of the total amount of the Option(s) exercised (“Delivery Amount”) and will not include any separate amount in relation to Immediate Profit. SCOL may grant such consent at its absolute discretion and may require pre-conditions to such consent, including but not limited to a requirement that You enter into a separate agreement in relation to that Delivery.
- 14.4 However in the event that for any reason in SCOL’s opinion the appropriate currency is not or may not be legally tendered for the purpose and or is not or may not be readily available for the purpose of Cash Settlement of for the purpose of Delivery in accordance with clause 14.3 (for instance where a currency has been withdrawn and or made subject to currency controls or is considered to be likely to be withdrawn and or become subject to currency controls) You agree that the Contract will be Cash Settled or Delivered in such currency as SCOL in their absolute discretion shall determine.
- 14.5 When in relation to a Contract You have an Immediate Profit, SCOL will, subject to clause 26 pay that Immediate Profit to You by bank transfer to Your bank account or at Your Written request to Your account with Smart Currency Exchange Limited.

15. TRADE REPORTING AND LEGAL ENTITY IDENTIFIER

- 15.1 Each of SCOL and You are required, under the provisions of EMIR, to report details of Contracts concluded between You and SCOL into a trade repository. SCOL may, at Your request, report details of the Contracts You enter into with SCOL, on Your behalf. Please note that such reporting of these details by SCOL on Your behalf does not remove or in any way relieve You of Your regulatory responsibility to report Your Contracts or otherwise.
- 15.2 You need an LEI to report details of the Contracts You enter into to a trade repository. If You do not have an LEI at the time a Contract is entered into, SCOL may, at Your request, apply to obtain an LEI on Your behalf. If SCOL obtains an LEI on Your behalf and You enter into a Contract with SCOL within one month of the LEI being obtained, You will not be charged separately for SCOL’s costs of obtaining the LEI on Your behalf.
- 15.3 If SCOL obtains an LEI on Your behalf and You do not enter into a Contract with SCOL within one month of the LEI being obtained, You shall pay SCOL for its costs in obtaining that LEI.
- 15.4 You will be required to pay a maintenance fee to maintain Your LEI. SCOL will not pay this maintenance fee on Your behalf. Accordingly, You must make Your own arrangements for the payment of this maintenance fee.

16. PORTFOLIO RECONCILIATION

- 16.1 You and SCOL are each required to reconcile Contracts which have not been fulfilled, i.e. the Option has not been exercised and the timeframe within which the Option can be exercised has not yet passed (“Contract Reconciliation”). How often this Contract Reconciliation is required will depend upon the type of client You are categorised as for the purposes of EMIR.
- 16.2 If there are any unfulfilled Contracts at the time when the Contract Reconciliation is required SCOL will send You a document containing the details of those unfulfilled Contracts. This will be sent to You by email and You shall check the details of those unfulfilled Contracts and, inform SCOL within 5 Business Days of the date of SCOL’s email to You if You consider that any of the information is incorrect. If SCOL does not hear from You within those 5 Business Days, then You will be deemed to have confirmed at the end of the 5th Business Day following the date of SCOL’s email to You, that all the information provided is correct.

17. EXPENSES

- 17.1 Subject to clause 15 (Trade Reporting and Legal Entity Identifier) SCOL will charge You for any Expenses. SCOL may deduct its Expenses from any Margin or / or other money SCOL is transferring and/or holding for You.
- 17.2 If Expenses are expressed in different currencies to the Margin and/ or other money SCOL is transferring, SCOL may convert the money to be deducted at a rate of exchange which SCOL determines to be reasonable for the purposes of making the deduction.

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- 17.3 Where following a Contract any payment is made or arranged for You by SCOL to a Beneficiary, whether or not that is You, the Beneficiary's bank may impose a charge for receipt of that payment. SCOL recommends that You ensure the Beneficiary (whether or not You) checks directly with the bank concerned. You confirm that SCOL will not be liable to pay or refund any such charges on behalf of or to the Beneficiary, whether or not it is You.
- 17.4 In addition to any Premium and Margin, You shall pay:
- (a) all applicable Value Added Tax; and
 - (b) all other applicable taxes in any relevant jurisdiction, currency payable or imposed at any time in the future (except any tax that SCOL is obliged to pay on SCOL's income); and
 - (c) all and any costs and charges in relation to any Contract which are imposed by any relevant third party; and
 - (d) any other expenses (including, without limitation, legal fees) which are imposed upon SCOL and/or which SCOL incurs as a result of the non-performance by You of any of Your obligations under any part of this Agreement.
- 17.5 Except where SCOL has specifically agreed otherwise in Writing, all monies owed to it under this clause, should be paid in Pounds Sterling, or any other currency specified by SCOL, by electronic transfer within 24 hours of notification by SCOL that such amount is due. If payment is not made in the currency specified by SCOL, SCOL may convert the money owed at a rate of exchange which SCOL determines to be reasonable. Under no circumstances will cash payments be accepted.

18. SAFEGUARDING AND TERMS UPON WHICH SCOL HOLDS FUNDS RECEIVED FROM YOU

- 18.1 SCOL will be the owner of any Premium You pay to SCOL and accordingly SCOL will not hold any Premium in a designated segregated account.
- 18.2 Subject to Clause 18.1 SCOL will hold any Margin and /or other monies received from You, in a designated segregated account with its bank, which means that You will continue to be the beneficial owner of such Margin, unless or until such time as:
- (a) SCOL incurs any Loss(es) in connection with or arising out of any outstanding Contract(s) in which case SCOL will automatically and immediately become the beneficial owner of that proportion of the Margin held in this way which is equal to its Loss (es), without notice or demand to You from SCOL; or
 - (b) SCOL places any or all of Your Margin with a Counterparty as collateral for SCOL's obligations to them under its matching back-to-back contract relating to any Contract, in which case You will cease to be the beneficial owner of this money whilst it is held as collateral;
 - (c) SCOL will not be obliged to pay You interest on any such money received from and/or held on Your behalf.
- 18.3 Without limiting the fact that the Margin shall be treated as an advance payment for Your Contracts, You hereby charge to SCOL, by way of first fixed charge as a continuing security for the payment and discharge of any Loss, all Your rights, title and any interest in and to the Margin and all interest from time to time accrued on the Margin.
- 18.4 You shall not, without SCOL's prior Written consent, assign, mortgage, charge or otherwise dispose of, create a security interest in respect of or deal with Your right, title or interest in the Margin.

19. SECURITY

- 19.1 You must take all reasonable steps to keep Your Telephone Answers safe. For the avoidance of doubt this includes, but is not limited to, not writing down or telling anyone the Telephone Answers. If You are a Business Client it is Your responsibility to ensure that the Telephone Answers are known by Your Authorised Persons only and You must procure that the Authorised Persons do not disclose the Telephone Answers to anyone.
- 19.2 If at any time You suspect or know that any of the Telephone Answers have been lost, stolen or any other person knows any of the Telephone Answers, You must let SCOL know immediately by telephone on +44 (0) 207 898 0541 during Business Hours or via e-mail at compliance@smartcurrencyoptions.com. Please note that if You email SCOL on a day which is not a Business Day or outside of Business Hours, then the email will not be deemed to have been received by SCOL until the following Business Day.

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19.3 SCOL may suspend Your access to Your Trading Facility if SCOL has concerns over the security of any of the Telephone Answers. In such an event, unless SCOL reasonably considers that it is unlawful for SCOL to do so, SCOL shall inform You by telephone or by email of the suspension of the relevant service and the reason for the suspension as soon as reasonably practicable..

20. AVAILABILITY AND FURTHER SECURITY MEASURES

20.1 In order to protect You and SCOL, SCOL may call You at any time during Business Hours to confirm the details of any Contract which SCOL believes You have entered into or any Order which You have submitted. It is an express term of this Agreement that You will be contactable during Business Hours on Your Registered Numbers.

20.2 You agree that if SCOL is unable to contact You immediately on Your Registered Numbers for any reason, SCOL will not be able to process the relevant Contract and will not be liable for any losses and/or any other expenses which You may incur as a result.

21. VERIFICATION OF YOUR IDENTITY

21.1 The UK Money Laundering Regulations 2007 (Money Laundering Regulations) require SCOL to implement certain due diligence procedures including verifying the identity of each client and the nature of each client’s business (referred to as Customer Due Diligence or CDD). You agree to provide SCOL with all the information it requires as part of SCOL’s CDD procedures. You agree that SCOL may withhold any monies due to You until SCOL has received and at its sole discretion considers that it is satisfied with all requested CDD documentation.

21.2 You hereby authorise SCOL or any person acting on SCOL’s behalf to verify Your identity (and if appropriate carry out a credit check) and in connection therewith to contact such banks, financial institutions, electronic identification agencies and credit agencies as SCOL or they shall deem appropriate for the purposes of the Money Laundering Requirements or other Applicable Laws.

22. YOUR PERSONAL INFORMATION

22.1 SCOL is registered with the Information Commissioner’s Office as a Data Controller for the purposes of the Data Protection Act 1998 (as amended and supplemented by other legislation in relation to data protection.)

22.2 SCOL’s Privacy Policy, which forms part of this Agreement sets out how SCOL handles Your personal data.

22.3 You agree that where You are a partnership, company or any other legal entity other than one person that the consents and agreements which You provide to SCOL in clause 21 and in this clause 22 are also provided on behalf of each of Your directors and officers, members, and in the case of a general partnership of the partners that comprise You and that where the consent of any such individual is required You have obtained that consent.

22.4 You agree that SCOL may hold and process and transfer Your personal information in accordance with the Privacy Policy including but not limited to the holding, processing and transferring of Your personal data for the following purposes:

- (a) to verify Your identity in accordance with clause 21 and/or to perform its obligations under this Agreement;
- (b) to allow SCOL to provide You with the Services in accordance with this Agreement;
- (c) to assess SCOL’s risks in providing those services and/or to enable SCOL to enforce its rights under this Agreement if necessary; and
- (d) to offer you other services which SCOL and/or its Group Companies may from time to time consider may be of interest to You.

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- 22.5 You agree that in holding and processing and transferring Your personal data in accordance with the Privacy Policy:
- (a) SCOL may process or transfer Your personal data to third party service providers to SCOL or SCOL’s agents, on the understanding that they keep it confidential; and
 - (b) SCOL may share Your personal data with companies that are associated with SCOL, which means its subsidiaries, parent and any subsidiaries of its parent; and
 - (c) SCOL will disclose Your personal data to Smart Currency Exchange Limited which provides various services to SCOL and is also under an obligation to process personal data in accordance with the Data Protection Act 1998; and
 - (d) SCOL may be required to and may provide access to Your personal data to third parties with an interest in SCOL’s business, such as its regulators, auditors, professional advisers, agents or subcontractors and/or potential purchasers of SCOL or all or any part of its business;.
- 22.6 You agree that SCOL may transfer, hold and process Your personal data outside the European Economic Area (EEA) to jurisdictions which may not have an equivalent standard of data privacy laws as that in Europe or the EEA.
- 22.7 You agree that SCOL may conduct searches through credit or identity-referencing agencies and other sources of information and use scoring methods to verify Your identity, and/or credit rating. SCOL shall be entitled to maintain a record of this process which may be used to help other companies to verify Your identity.
- 22.8 You agree that:
- (a) information including personal data may also be passed to financial and other organisations to prevent fraud;
 - (b) if You have been referred to SCOL by a third party, SCOL may provide them (or any party to whom they assign their rights under their agreement with SCOL) with information including personal data relating to Your Contracts in which they are interested by virtue of SCOL’s agreements with them;
 - (c) SCOL may from time to time – by telephone, email or other electronic communication, fax or post – provide You with information relating to other services that SCOL, or selected third parties connected with SCOL’s business can offer; and
 - (d) SCOL may call You by telephone at a reasonable hour or otherwise communicate with You in Writing without an express invitation.

23. CONFIDENTIALITY

- 23.1 SCOL shall treat all Confidential Information which it holds about You, including information about Your account and/or Your Contracts as confidential and save as expressly provided in this Agreement SCOL shall not disclose that Confidential Information to any third party without Your prior written consent.
- 23.2 You are required to treat SCOL’s Confidential Information confidentially and not to disclose it to any third party without SCOL’s prior written consent.
- 23.3 Each party undertakes to:
- (a) disclose the other party’s Confidential Information only to those of its officers, employees, agents and contractors (including Supplier personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and
 - (b) to procure that such persons are made aware of and agree in Writing to observe the obligations in this clause;
 - (c) give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party’s Confidential Information immediately upon becoming aware of the same.

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- 23.4 The provisions of this clause 23 shall not apply to information which:
- (a) is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - (b) is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
 - (c) is independently developed by the recipient, without access to or use of such information;
 - (d) is sent by either party to a trade repository or other party in accordance with EMIR including, without limitation, information sent by SCOL on behalf of You to fulfil Your reporting obligations; or
 - (e) is sent by SCOL to HMRC or other competent regulator or authority to comply the International Tax Compliance (United States of America) Regulations 2014 or any similar regulations relating to tax compliance; or
 - (f) is otherwise required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 23.5 The obligations under this clause shall survive for a period of 5 years following the expiry or termination of this Agreement.

24. DECLARATIONS, REPRESENTATIONS AND WARRANTIES

- 24.1 When SCOL does business with You, SCOL will be relying on the following declarations, representations and warranties and SCOL shall deem that You will be repeating them every time You give SCOL an Order and on each occasion that You enter into a Contract with SCOL.
- 24.2 You declare, represent and warrant that on the date this Agreement comes into effect and on the date of each Order and each Contract:
- (a) that You have all necessary power, consents and/or licences as You may require to make this Agreement and each Order and to perform each Contract;
 - (b) that in making an Order and/or performing any Contract, You will not breach any law in England and Wales or any other relevant jurisdiction;
 - (c) that You are the legal and beneficial owner of any Premium, Margin, Balance and any other money sent by You or on Your behalf to SCOL and that these monies are not and shall not become subject to any charge or other security or encumbrance (other than in favour of SCOL);
 - (d) that all information supplied to SCOL is true, complete and accurate in all material respects and You will not omit or withhold any information which would render the information so supplied false, incomplete or inaccurate in any material respect;
 - (e) that You will inform SCOL as soon as practicable if any of the information provided becomes incomplete, and/or untrue and/or needs to be updated;
 - (f) that You are contracting as principal and not as agent;
 - (g) that You has and will maintain in effect all necessary consents, authorisations and approvals to enter into a Contract;
 - (h) that each of Your Authorised Persons has full authority and power to act on Your behalf in connection with this Agreement and that You will be liable for the actions and or omissions of each Authorised Person as if they were You;
 - (i) that You are making Your own decisions about entering into a Contract and You are not relying on any communications (Written or verbal) from SCOL as investment advice or as a recommendation to enter into a Contract, it being understood that information and explanations related to the terms and conditions of a Contract shall not be considered investment advice or a recommendation to enter into a Contract;
 - (j) that You have not received from SCOL any assurance or guarantee as to the expected results of the Contract;
 - (k) that You are capable of and take full responsibility for evaluating and understanding (whether on Your own behalf and/ or through independent professional advice), and understand and accept, the terms, conditions and risks of this Agreement and each Contract;

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- (l) that SCOL is not acting as a fiduciary or an adviser for You in respect of a Contract;
- (m) that You have reached Your own conclusions about the Contract and any legal, regulatory, tax, accounting or economic consequences arising from the Contract, and has concluded that the Contract is suitable in light of Your own investment objectives, financial capabilities and expertise;
- (n) that before entering into any Contract You have reviewed the specific terms and provisions of the Contract in respect of prevailing industry practice and have concluded that such terms and provisions and the rights, duties and obligations imposed hereunder, are commercially reasonable as a general matter and specifically in light of such industry practice;
- (o) that You are not an undischarged bankrupt, or, where relevant, insolvent, and will not be rendered bankrupt or, where relevant, insolvent by entering into and making any payments in connection with any Contract ; and
- (p) that You are not a politically exposed person (as defined in the Money Laundering Requirements) or if You are or You become a politically exposed person You will notify SCOL immediately.

24.3 If at any time You are unable to make the representations and warranties set out in clause 24.2 You will inform SCOL prior to making any further Order.

25. INDEMNITY, LIMITATION AND LIABILITY

25.1 You agree that will be responsible for all Losses (including, without limit, any Losses resulting from the termination of any Contract) and that You will shall immediately and fully indemnify SCOL and continue keep SCOL fully indemnified immediately upon demand in relation to all such Losses and all and any related costs and expenses (including legal fees) incurred by and or imposed upon SCOL.

25.2 You agree that in the event that SCOL needs to and/ or is entitled to take any steps to recover any payment from You under this Agreement and or to enforce any part of this Agreement upon You, You shall indemnify SCOL for all the costs and expenses including legal fees incurred by SCOL in relation to those steps.

25.3 In respect of amounts due and payable to SCOL under any Contract or otherwise under this Agreement, SCOL may charge interest at 3% per annum above the base rate, from time to time in force, of the central bank of the country in whose currency the amount due is owed or such other statutory or court rate as may apply from the date payment is due until the date payment is made. Amounts due under this clause may at SCOL's reasonable discretion be converted to Pounds Sterling or any other currency at a rate to be reasonably determined by SCOL at its absolute discretion.

25.4 You will not be liable for losses relating to any Contract entered into by an unauthorised person owing to the loss of a Telephone Answers after You have informed SCOL of the loss of the Telephone Answers except where You has acted fraudulently. If You inform SCOL of the loss outside Business Hours then You will not be deemed to have informed SCOL of the loss until 9am on the next Business Day.

25.5 Nothing in this Agreement excludes or limits either party's liability for:

- (a) fraudulent misrepresentation; or
- (b) death or personal injury; or
- (c) any other liability that cannot be excluded and/or limited by law or in the case of SCOL which is an obligation imposed upon SCOL in relation to You by FCA regulation.

25.6 None of SCOL and/or any of its directors , officers and/or employees, or agents shall be liable to You or any other person for:

- (a) any Tax implications and/or impositions upon You or any other person in connection with or arising from any part of this Agreement, any action or inaction connected with this Agreement including but not limited to any Contract; or
- (b) any delay or changes in the Market; or

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Smart Currency Options Limited (“SCOL”)

- (c) Market Price, Market Rate and/or Market Rules between the time at which any Quote is provided to You by SCOL and Your Order is submitted to SCOL and/or Your Order is completed by SCOL and/or a Contract Confirmation is delivered to You by SCOL; or
- (d) any losses and/or expenses incurred by and/or imposed upon You arising from the use of Your Telephone Answers and/or other Security details by an unauthorised person at any time before You have notified SCOL of the loss of those Telephone Answers and/or security details; or
- (e) any partial or complete non-performance of SCOL's obligations under this Agreement arising from any cause beyond the reasonable control of SCOL, including, but not limited to failure of transmission or communication, breakdown and/or malfunction of computer or communications system or facilities; industrial action, riot, civil war or Act of God and/or regulations of governmental bodies or authorities; or
- (f) any losses, damages, claim or expenses (including legal expenses) imposed upon or incurred by You or any other person where those losses, damages claim or expenses (including legal expenses) do not arise as a reasonably foreseeable consequence of or directly from the gross negligence, wilful default or fraud of SCOL's or any of its directors, officers and/or employees or agents.

25.7 None of SCOL and/or any of its directors, officers and/or employees, or agents shall be liable to You or any other person whether by reason of breach of contract and/or negligence, misrepresentation or otherwise for:

- (a) indirect or consequential damages;
- (b) loss of profit;
- (c) loss of opportunity;
- (d) loss of goodwill;
- (e) any loss and/or expenses arising from the failure or delay of any Payment or delay arising from any such failure or delay.

26. RIGHT OF SET-OFF

26.1 SCOL may at any time or times, without notice to You, set off any amount SCOL owes to You against any amount (including without limit any loss) You owe to SCOL and or any SCOL Group Company, including but not limited to Smart Currency Exchange Limited whether or not any such amount is present or future, liquidated or unliquidated, under this Agreement and irrespective of the currency or its denomination. If the amounts to be set off are expressed in different currencies, SCOL may convert any such amount at a rate of exchange which SCOL determines to be reasonable for the purpose of set off. Any exercise by SCOL of SCOL's rights under this clause shall be without prejudice to any other rights or remedies available to SCOL and or any other SCOL Group Company under this Agreement or otherwise.

27. CONFLICTS OF INTEREST

27.1 The circumstances of SCOL's business can occasionally lead to situations where the interests of SCOL and/or any of its directors, staff or their agents may conflict with Your interests. Equally, Your interests may occasionally conflict with those of other clients.

27.2 Where SCOL is aware that it is faced with a situation of conflicting interests, SCOL will undertake all reasonable steps to protect Your interests and where a conflict of interests arises SCOL reserves the right to decline to accept any particular and/or any more Orders from You.

28. COMMUNICATIONS

28.1 The main form for communication between SCOL and You in relation to Quotes and Orders shall be by telephone with SCOL communicating with You at Your Registered Numbers. For the avoidance of doubt, You will be liable for any instructions You give to SCOL verbally or otherwise.

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- 28.2 You may only request Quotes and/ or place Orders by telephone unless SCOL has agreed in Writing that You may do so in Writing using one or more of Your Registered Email Address(es).
- 28.3 You will be required to provide SCOL with the Telephone Answers before SCOL can talk to You about Your Trading Facility via telephone.
- 28.4 Generally, all communications between You and SCOL shall take place in English and nothing stated in this Agreement shall oblige SCOL to communicate with You in any other language. For the avoidance of doubt, even if SCOL agrees to communicate with You in another language all communications in relation to any Complaint or Dispute will be in English only.
- 28.5 SCOL shall be entitled to act on Your behalf upon any Order or instruction SCOL reasonably believes to have been given or purporting to be given by You or any other person on Your behalf without further enquiry as to the authenticity of the order or the instruction or the authority or identity of any such person giving or purporting to give such order or instruction.

29. RECORDING TELEPHONE CONVERSATIONS

- 29.1 SCOL may record telephone conversations with or without use of a warning tone or message and SCOL may use these recordings as evidence of instructions and/ or information received from You and/ or Contracts entered into and/ or in relation to Disputes and/ or Complaints as well as for SCOL's ongoing quality control and training programme. SCOL may also maintain a record of all electronic messages sent by or to SCOL. Subject to FCA Rules, all those recordings and records will be maintained at SCOL's absolute discretion and are SCOL's property and can be used by SCOL in the case of a dispute. SCOL does not guarantee that it will maintain such recordings or records or that it will make them available to You.

30. ABILITY FOR SCOL TO TAKE ACTION

- 30.1 Notwithstanding any other provision of this Agreement, in providing the Services, SCOL shall be entitled to take any action SCOL considers necessary in its reasonable discretion to ensure compliance with Applicable Laws and all other applicable laws, rules, regulations and regulatory decisions including selling or closing any or all Contracts that You may have open.

31. INTELLECTUAL PROPERTY RIGHTS

- 31.1 All intellectual property rights in SCOL's Services, the Website, any advertising material issued by or on SCOL's behalf, all information, materials, prices or charts, business methods, databases or settlement specifications relevant to this Agreement or otherwise used or arising in connection with this Agreement will remain SCOL's property or the property of any third party which provides it to SCOL.
- 31.2 Subject to clause 31.3 You will have no rights to distribute, republish, copy, reproduce, sell, sub-license or otherwise transfer or disseminate any of the above unless You have SCOL's prior written consent.
- 31.3 You are permitted to download or print single copies of web pages only when and where that facility is explicitly offered by SCOL on the page concerned and only for Your own internal record-keeping purposes, provided You comply with all instructions given in that regard by SCOL whether on the Website or otherwise.

32. DISPUTES AND COMPLAINTS

- 32.1 If either You or SCOL consider that there are grounds for a Dispute, then the following procedure will be used to resolve this Dispute:
- (a) if You wish to raise the Dispute You should send a Dispute Notice to SCOL by writing to the Compliance & Data Security Manager at Smart Currency Options Limited, 1 Lyric Square, London, W6 0NB or **compliance@smartcurrencyoptions.com**;
 - (b) if SCOL wishes to raise a Dispute SCOL shall send a Dispute Notice to You by writing to You at Your Registered Address or at one of Your Registered Email Addresses.

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- (c) on or following the Dispute Date, the parties will consult in good faith in an attempt to resolve the Dispute in a timely manner; and
 - (d) if the Dispute is not resolved within five Business Days of the Dispute Date, then the Dispute shall be referred to senior members of staff of each of the parties to deal with the complaint (if this has not already been done).
- 32.2 If You wish to make a Complaint (other than a Dispute) then the following procedure will be used to investigate and if possible resolve the Complaint. You should:
- (a) write to the Compliance & Data Security Manager at Smart Currency Options Limited, 1 Lyric Square, London, W6 0NB or **compliance@smartcurrencyoptions.com**; or
 - (b) make the complaint verbally via telephone on +44 (0)20 7 898 0541; and in either case
 - (c) clearly indicate that You wish to make a Complaint to SCOL. This helps SCOL to distinguish a complaint from a mere query;
 - (d) SCOL will within 2 Business Days of receiving Your Complaint send You a Written acknowledgement of Your Complaint in accordance with SCOL's Complaints Policy;
 - (e) within 8 weeks SCOL will send You with a final Written response to Your Complaint or a letter explaining why the final response has not been completed. Should this not be possible due to unforeseen circumstances or lack of information, SCOL will contact You.
- 32.3 If after having received SCOL's final response to a Complaint You are still unhappy or dissatisfied and You are (a) a consumer; (b) a microenterprise; (c) a small charity or (d) a small trust, then You may be eligible to take Your Complaint to the Financial Ombudsman Service (FOS) details of which are available on their website. You can also call the FOS on 0300 123 9123 or write to: Financial Ombudsman Service, Exchange Tower, London, E14 9SR.
- 32.4 You may request a copy of SCOL's Complaints Policy at any time from the Head of Compliance at the address set out above.

33. FINANCIAL SERVICES COMPENSATION SCHEME

- 33.1 SCOL is covered by the Financial Services Compensation Scheme in relation to the provision of some of the Services it provides under this Agreement. You may be entitled to compensation from the scheme if SCOL cannot meet its obligations. Your eligibility and the level of compensation that may be available will vary according to the circumstances of Your claim and the way in which You are categorised as a potential claimant by The Financial Services Compensation Scheme. Further information about compensation arrangements is available from their official website. The postal address is: The Financial Services Compensation Scheme, 10th Floor, Beaufort House, 15 St Botolph Street, London EC3A 7QU.

34. MORE THAN ONE LEGAL PERSON

- 34.1 If You are comprised of two or more persons (legal or natural) then each of those persons shall be jointly and severally liable for all of Your obligations arising under and or in connection with this Agreement.

35. TERMINATING THIS AGREEMENT AND CONTRACTS

- 35.1 Subject to clause 35.3 You may terminate this Agreement by giving one month's notice in Writing to SCOL and or SCOL may terminate this Agreement by giving You two months' notice in Writing.
- 35.2 In the case of termination in accordance with either clause 35.1 or clause 35.3 this Agreement shall terminate with effect from the final date stated in that notice.
- 35.3 SCOL may terminate this Agreement or terminate any Contract(s) with immediate effect by giving notice to You if:
- (a) You fail to provide SCOL with material information when required or such information that You do provide is in SCOL's reasonable determination materially incorrect or misleading; or
 - (b) You fail to make a payment to SCOL when due; or

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- (c) You fail to provide a sufficient Margin or additional Margin when required under the terms of this Agreement; or
- (d) You otherwise commit a material breach of any part of this Agreement or the Contract in question (in respect of termination of that Contract) and (if such breach is remediable) fails to remedy such breach within a reasonable time after being notified in Writing to do so; or
- (e) SCOL reasonably determines that You will be unable to fulfil all or any of Your obligations under any Contract or this Agreement; or
- (f) on the occurrence of a Force Majeure Event, for SCOL to continue any Contract would expose SCOL to a liability against which it is not protected; or
- (g) SCOL suspects fraud; or
- (h) SCOL is required to do so on the instruction of any court, law enforcement or regulatory agency or other body with appropriate authority (in which case SCOL shall be entitled to retain or otherwise deal with all or any of Your money as SCOL is required to do so by such agency or body); or
- (i) You suspend, or threaten to suspend, payment of your debts or are unable to pay your debts as they fall due or admit inability to pay your debts or are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986; or
- (j) You commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors other than for the sole purpose of a scheme for a solvent amalgamation of You with one or more other companies or the solvent reconstruction of You; or
- (k) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of You other than for the sole purpose of a scheme for a solvent amalgamation of You with one or more other companies or the solvent reconstruction of You; or
- (l) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over You; or
- (m) a creditor or encumbrancer of You attaches or takes possession of, or a distress, execution, sequestration or other such process is levied, or enforced on or sued against the whole or any part of Your assets and such attachment or process is not discharged within fourteen (14) days; or
- (n) the holder of a qualifying floating charge over Your assets has become entitled to appoint or has appointed an administrative receiver; or
- (o) a person becomes entitled to appoint a receiver over Your assets or a receiver is appointed over the Your assets; or
- (p) You suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of Your business;
- (q) the withdrawal of any government, state or federal authority approval, or the imposition of any law or regulation, which means that this Agreement or any Contract is substantially unable to be performed in the manner contemplated; or
- (r) any representation warranty or statement made or deemed to be made by You under this Agreement or a Contract is or proves to have been incorrect or misleading in any material respect when made or deemed to be made and the circumstances giving rise to such fact are not remedied within seven (7) days; or
- (s) SCOL believes at its discretion that there has been a material adverse change in Your financial condition, business prospects or trading performance or those of any person providing any credit support in respect of Your obligations.

35.4 In the event of a termination under this clause, any or all Contracts will be treated as being part of a single Contract and SCOL will calculate and net-off the gains and losses on all Contracts to determine a single net sum owing by You to SCOL or by SCOL to You (as the case may be) as a result of such netting-off.

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35.5 Termination of this Agreement or any Contract, for whatever cause, shall be without prejudice to the rights of either Party accrued prior to that termination, including without limitation any right to payment of any sum and any right to sue in respect of any antecedent breach of this Agreement or any Contract, and termination shall not affect any provision of this Agreement or Contract which, in order to give full effect to its meaning, needs to survive such termination (and all such provisions shall survive such termination to the extent necessary to give full effect to their meanings).

36. ASSIGNMENT

36.1 This Agreement and all Contracts are personal to You and You may not transfer or assign any of Your rights and/or obligations hereunder to any other person without the prior Written consent of SCOL.

36.2 SCOL may, at any time, assign (absolutely or by way of security and in whole or in part), transfer, mortgage, charge or deal in any other manner with the benefit of any or all of its rights and/or obligations arising under or out of this Agreement. SCOL may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent

37. NOTICES

37.1 Each notice or other communication, other than any request for an Order and an Order, which is required to be made in accordance with this Agreement, will be required to be given in Writing under this Agreement and shall:

- (a) in the case of notices or other communications to be given by You to SCOL, be delivered personally, sent by pre-paid first-class post, recorded delivery or by commercial courier, fax or email to SCOL's Registered Address or by email to the email address provided to You in Writing by SCOL of Your usual contact within SCOL or the Compliance and Data Security Manager at **compliance@smartcurrencyoptions.com** ;
- (b) in the case of notices or other communications to be given by SCOL to You, be delivered personally, sent by pre-paid first-class post, recorded delivery or by commercial courier, fax or email to Your Registered Address or one of Your Registered Email Addresses. You are responsible for notifying SCOL of any changes to such Registered Address or Registered Email Addresses SCOL shall be entitled to serve notice on You (including the issue of legal proceedings) using the last known contact details or Registered Email Address or Registered Address that You have provided to SCOL for the purposes of this Agreement or any Contract.

37.2 Any such notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause 37; or
- (b) if sent in the United Kingdom by pre-paid first-class post or recorded delivery, at 9am (UK Time) on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- (d) if delivered by fax or email, when a delivery confirmation or receipt is received by the delivering party.

37.3 For the service of any proceedings or other documents in any legal action, any statutory provisions in the relevant jurisdiction shall prevail.

38. ENTIRE AGREEMENT

38.1 This Agreement including the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

38.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

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39. RIGHTS OF THIRD PARTIES

39.1 With the exception of any SCOL Group Company, each of which may enforce this Agreement as if it were SCOL this Agreement does not confer any benefit on any third party and no third party shall have the right to enforce this Agreement or, for the avoidance of doubt, any Contract, whether under the Contract (Rights of Third Parties) Act 1999 or otherwise.

40. COSTS

40.1 Each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this Agreement and any documents referred to in it.

41. VARIATION

41.1 Subject to clause 41.2 no variation of this Agreement shall be effective unless it is in Writing and signed by each of the parties (or their authorised representatives).

41.2 Each of the policies listed at clause 1.2(b) to clause 1.2(d) may be varied by SCOL upon the posting by SCOL of a notice on **www.smartcurrencyoptions.com** and the varied version shall come into force and effect and shall replace the previous version 2 calendar months following the date upon which it was first posted.

42. WAIVER

42.1 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.

43. RIGHTS AND REMEDIES

43.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

44. SEVERANCE

44.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

44.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

45. COUNTERPARTS

45.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

45.2 Transmission of the executed signature page of a counterpart of this Agreement by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

45.3 No counterpart shall be effective until each party has executed at least one counterpart.

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46. GOVERNING LAW AND JURISDICTION

- 46.1 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 England.
- 46.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 46.3 Nothing in this clause 46 shall limit the right of SCOL to take proceedings against You in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

47. INTERPRETATION

- 47.1 References to any law, statute or statutory provision shall include any subordinate legislation made from time to time and any such references to a law, statute, statutory provision or subordinated legislation is a reference to it as it is amended, restated or in force from time to time.
- 47.2 Words in the singular shall where appropriate include the plural and vice versa.
- 47.3 References to one gender or the neuter are to any gender.
- 47.4 Any headings used in this Agreement are for ease of reference only and should not be used in the interpretation or construction of this Agreement.
- 47.5 Where relevant, references in these terms and conditions to “You” shall include Authorised Persons.

48. DEFINITIONS

- 48.1 When used in this Agreement, unless stated otherwise, the following words and phrases will have the following meanings:

“Additional Margin” means any Margin other than the Initial Margin required from You by SCOL in relation to any Contract

“Applicable Laws” means all applicable laws, rules and regulations including the Financial Services and Markets Act 2000, the Market Rules, Money Laundering Requirements and the relevant rules of the FCA or any other competent authority.

“Application Form” means the account opening documentation which must be completed by You, as part of SCOL’s registration procedure.

“Authorised Person”, applicable to Business Clients only, means a person authorised and empowered by You to act and otherwise conduct business on Your behalf in relation to this Agreement, including but not limited to entering into Contracts in accordance with this Agreement;

“Balance” means all and any money which You are liable for and or required from time to time to pay to SCOL, under a Contract, aside from the Premium and the Margin.

“Beneficiary” means the payee in any Payment made by SCOL.

“Business Day” means any day which is not a Saturday, a Sunday or a bank holiday in England.

“Business Hours” means between the hours of 9 am and 5pm in the United Kingdom.

“Cash Settled” means in relation to a Contract that is exercised the payment by SCOL or You as the case may be to the other of the Immediate Profit in accordance with clause 14.2;

“Client” means the person, legal or otherwise for example a company, LLP or individual(s), which places Orders and enters into Contracts with SCOL.

“Client Categorisation” means the various categories of clients identified for the purposes of COBS;

“Client Reference” means Your unique reference number with SCOL.

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“**COBS**” means the Conduct of Business Sourcebook contained in the FCA Handbook as amended and or replaced from time to time

“**Complaint**” means any complaint from You about the services or product provided by SCOL.

“**Complaints Policy**” means the internal policy and procedure of SCOL for the management of the investigation and response to any Complaints;

“**Confidential Information**” means any and all confidential information (whether in verbal, written or electronic form), including information imparted in confidence or disclosed by one party to the other, or otherwise obtained by one party relating to the other’s business, finance or technology, know-how, intellectual property, assets, strategy, products, services, customers, former customers, clients and former clients, including without limitation information relating to any person, firm, or organisation associated with that party.

“**Contract**” means a contract entered into between SCOL and You which contains an Option to buy or sell an amount of the Target Currency at a quoted foreign exchange rate subject to all the terms and conditions of this Agreement.

“**Contract Confirmation**” means the document produced by SCOL which outlines the details of the Contract that has been entered into.

“**Contract Date**” means the day upon which the Contract is entered into. If the Contract is entered into (a) on a day which is not a Business Day; or (b) after 4pm (UK time) on a Business Day, then the Contract Date will be deemed to have been entered into on the next Business Day.

“**Counterparty**” means the bank or financial institution with whom SCOL enters into a matching contract back-to-back with the Contract with You.

“**Dispute**” means any complaint relating to the recognition of a Contract, the valuation of a Contract or the payment of Margin by You;

“**Dispute Date**” means, with respect to a Dispute, the date on which a Dispute Notice is effectively delivered by one party to the other party save that if, with respect to a Dispute, both parties deliver a Dispute Notice, the date on which the first in time of such notices is effectively delivered will be the Dispute Date. Each Dispute Notice will be effectively delivered if delivered in the matter set out in clause 17.

“**Dispute Notice**” means a notice in Writing which states that it is a dispute notice and which sets out in reasonable detail the issue in dispute (including, without limitation, the relevant Contract to which the issue relates.)

“**Elective Professional Elective**” means a client categorised as an elective professional client in accordance with COBS 3.5;

“**Eligible Counterparty Client**” means a client categorised as a per se eligible counterparty or an elective eligible counterparty in accordance with COBS 3.6.1 “EMIR” means the European Market Infrastructure Regulations (Regulation (EU) No 648/2012 of the European Parliament and of the Council) and its implementing Reporting Technical Standards.

“**Expenses**” means transfer fees, registration fees for obtaining an LEI on behalf of You, maintenance fees for the LEI, taxes or other reasonable out-of-pocket costs or expenses (including without limit a handling charge if SCOL accepts, at its discretion, card payments) that SCOL may incur a connection with a Contract or this Agreement (“Expenses”).

“**FCA**” means the Financial Conduct Authority authorised pursuant to the Financial Services & Markets Act 2006, and/or any successor regulator;

“**Force Majeure Event**” means an event which is beyond the reasonable control of an affected party including without limit any market disruption, acts or restraints of government(s) or public authorities, war, revolution, strikes or other industrial action, fire, flood, natural disaster, explosion, terrorist action, the suspension or limitation of trading by any execution venue, or any breakdown, failure, defective performance or malfunction of any telecommunications settlement or other equipment or systems.

“**Agreement**” means these Terms, You Application Form, the Margin Policy, the Order Execution Policy and any and all Contracts;

“**Immediate Profit**” means the profit made by the relevant Party on each Option contained in a Contract referencing the Strike Price and the Market Price;

Agreement



Smart Currency Options Limited (“SCOL”)

“Initial Margin” means any Margin required by SCOL as a pre-condition of any Contract or at the commencement of any Contract;

“In-The-Money” means when the Option’s Strike Price is more advantageous to the buyer of the Option than the Market Price;

“LEI” means the legal entity identifier which is required to report the details Contracts under EMIR;

“Loss” or “Losses” means any loss (including loss of profit), tax, cost, expense (including without limit legal expenses incurred in recovering any money due to SCOL), damage or liability (howsoever arising and whether actual or contingent, joint or several, present or future) that SCOL may incur on Your behalf with a third party in connection with an Order or a Contract or otherwise as a result of or in connection with Your default or failure to comply with the terms of this Agreement (including, without limit, Your failure to fulfil its obligations under a Contract) or any other agreement SCOL has with You provided that the same are not a direct result of SCOL’s wilful default or fraud;

“Market Price” means the price or rate at which a person could on the relevant date purchase or sell the relevant currency using the Market Rate;

“Market Rate” means the reference exchange rate agreed between the Parties prior to entry into each Contract

“Margin” means the advance payment of such amount as SCOL may determine at its absolute discretion. This is to provide SCOL with security in respect of the risk SCOL is incurring on Your Contract prior to You making full payment;

“Margin Policy” means SCOL’s policy on the amounts of Margin required for different types and value of Contract, including when any additional Margin is required as same may be amended from time to time;

“Market Rules” means the rules, regulations, customs and practices from time to time of any exchange, clearing house or other organisation or market involved in the conclusion, execution or settlement of a Contract or any matching contract SCOL enters into with a Counterparty. This includes any exercise by any such exchange, clearing house or other organisation or market of any power or authority conferred on it;

“Maturity Period” means in relation to any Contract the period stated as such in the Contract Confirmation for that Contract;

“Money Laundering Requirements” means applicable laws, regulations and guidance for the prevention of money laundering and terrorist financing and similar activities and the provision of the financial and other services;

“Option” means the right, but not the obligation, to buy or sell an agreed amount of currency at a later date at an agreed exchange rate;

“Order” means a request from You to SCOL to enter into a Contract;

“Order Execution Policy” means SCOL’s order execution policy which sets out how SCOL complies with its best execution obligations under the FCA Rules;

“Payment” means an electronic transfer of Your funds that SCOL processes on Your behalf;

“Per Se Professional Client” means a client categorised as a professional client for the purposes of COBS 3.5 that is not an elective Professional Client.

“Premium” mean the amount (if any) You are required to pay to enter into a Contract;

“Privacy Policy” means the SCOL’s and SCEL’s privacy policy which can be found at www.smartcurrencyexchange.com or www.smartcurrencybusiness.com and which forms part of this Agreement;

“Professional Client” means a client that is categorised either as a per se professional client or an elective professional client in accordance with COBS 3.5.;

“Quote” means an indicative price to enter into a Contract;

“Retail Client” means a client that is categorised as a retail client in accordance with COBS

“Registered Address” means in relation to You the most recent postal address within the United Kingdom registered by You with SCOL for the purposes of receiving notices and or other communications in relation to this Agreement; and in relation to SCOL the registered office address of SCOL from time to time;

Agreement



Smart Currency Options Limited (“SCOL”)

“Registered Email Address(es)” means at any time the most recent email address(es) which You have notified to SCOL as the email address(es) from which You will send and to which SCOL should send all email communications in relation to Your Trading Facility and this Agreement provided always that none of Your Registered Email Addresses may be addresses which:

- (a) operate through or in any way including social media; or
- (b) are email accounts provided in connection with any social media account; or
- (c) are or can be used to generate instant messages (IM / SMS or similar).

“Recognised Number(s)” means at any time the most recent phone numbers which You have notified to SCOL as the telephone numbers [from which You will contact SCOL and] which SCOL should use to contact You in relation to Your Trading Facility and this Agreement;

“SCOL” means Smart Currency Options Limited, being a private company limited by shares which is incorporated in England & Wales with company no. 09034947 and whose registered office address is One Lyric Square, Hammersmith, London, W6 0NB. SCOL is regulated by the Financial Conduct Authority (FCA number 656427);

“SCOL Group Company” means any parent or subsidiary company of SCOL or any other subsidiary of SCOL’s parent company;

“Services” means SCOL’s non-advisory, execution-only service whereby You and SCOL enter into Contracts;

“Settlement Date” means the date upon which a Contract matures and if the Options is In-the-Money, when the Immediate Profit will be ready to be sent to You;

“Source Currency” means the currency which You use to buy or sell an amount of the Target Currency under a Contract.

“Strike Price” means the price or rate at which You or SCOL can insist on the currency being bought or sold in accordance with an Option contained in a Contract;

“Target Currency” means the currency You obtain if You exercise the Option under any Contract

“Telephone Answers” means Your reference number and answers to questions based on the personal information You and or any of Your Authorised Person(s) have provided to SCOL;

“Terms” means these terms and conditions;

“Trading Facility” means Your account with SCOL which allows You to place Orders and enter into Contracts with SCOL;

“Website” means SCOL’s general website, the web address of which is www.smartcurrencybusiness.com; and

“Written” or **“Writing”** includes, unless the contrary is expressed, by email from an email account sent from and to an email client facility or phone but not including any email, instant message or other communication (including but not limited to any “tweet”, “like” or link) sent from or to any social media account. In the case of emails to SCOL it must be email addressed to or sent from an email account on the domain name www.smartcurrencyoptions.com and in the case of any email to or from You it must be to or from one of Your Registered Email Address (es).

“You” or **“you”** means that individual, partnership, company or other legal entity that has completed and submitted the Application Form;

“Your” or **“your”** means belonging or attributed to or in the possession of You