

AGREEMENT: TRADER VERSION 2008 WITH ORDER PASSING BROKER 2017¹

CAUTION: THIS AGREEMENT IS DESIGNED AS A BASIC DOCUMENT FOR MARKET PARTICIPANTS ENGAGING IN “GIVE-UP” TRANSACTIONS. IT IS NOT INTENDED TO SERVE AS AN ALL ENCOMPASSING DOCUMENT FOR USE BY ALL PARTIES UNDER ALL CIRCUMSTANCES. PARTIES SHOULD CAREFULLY CONSIDER THE FULL SCOPE OF REGULATORY (INCLUDING EXCHANGE) AND COMMERCIAL TERMS THAT MAY BE APPLICABLE TO THEIR PARTICULAR CIRCUMSTANCES AND MAY ELECT TO ENTER INTO MORE DETAILED CUSTOMER AGREEMENTS AT THE OUTSET OR DURING THE COURSE OF THEIR RELATIONSHIP.

Agreement made effective as of this _____ day of _____, 20_____, by and among

(“Executing Broker”)

(“Clearing Broker”)

(“Trader” on its own behalf and, if authorized, on behalf of “Customer”), and

(“Customer” if “Trader” is not authorized to sign on behalf of “Customer”).

and |

|

| (“Order Passing Broker”

1. All transactions executed orally, in writing or through an electronic order facility or cleared hereunder shall be subject to applicable laws, governmental, regulatory, self-regulatory, exchange or clearing house rules, regulations, interpretations, protocols and the customs and usages of the exchange or clearing house on which they are executed and cleared, as in force from time to time ("Applicable Law"). All disputes relating to transactions executed or cleared under this Agreement shall be governed by and settled pursuant to Applicable Law and shall be subject to the jurisdiction of the exchange (and, if applicable, its clearing house) upon which the dispute arises. The parties to this Agreement shall perform their respective obligations and exercise their respective rights under this Agreement (including, but not limited to, rejecting a Customer order, calling a Customer for margin or providing any notice specified herein) using commercially reasonable ~~judgement~~judgment, in a commercially reasonable manner under the circumstances, and consistent with Applicable Law.
2. Customer authorizes Executing Broker to execute orders for Customer as transmitted orally, in writing or through an electronic order facility by Trader to Order Passing Broker or Executing Broker, or, as permitted by Applicable Law, directly to an exchange. If Trader transmits an order to Order Passing Broker, then Order Passing Broker will transmit such order to Executing Broker orally, in writing or through an electronic order facility to Executing Broker, or, as permitted by Applicable Law, directly to an exchange. Executing Broker reserves the right to reject an order ~~that Trader may transmit~~transmitted to Executing Broker by Trader or Order Passing Broker for execution and shall promptly notify Trader or Order Passing Broker of any such rejection. If Order Passing Broker receives notice of rejection from Executing Broker, Order Passing Broker shall as soon as practicable after receipt of such notice, notify Trader. Clearing Broker may, upon prior notice to Executing Broker ~~and Trader~~, place limits or conditions on the positions it will accept for give-up for Customer's account. Executing Broker shall forward such notice to Order Passing Broker. In the event this Agreement is executed on behalf of Customer by Trader, Trader hereby represents and warrants that Trader is expressly authorized by Customer to enter into this Agreement on Customer's behalf, and that this authorization will remain effective unless Customer or Trader provides prior written notice to Executing Broker, Order Passing Broker and Clearing Broker.
3. Unless otherwise agreed in writing, each of the parties authorizes Executing Broker, Order Passing Broker and Clearing Broker to use the services of one or more other persons or entities in connection with their obligations under this Agreement; provided, however, that Executing Broker, Order Passing Broker and Clearing Broker remain responsible to Customer for the performance (or failure of performance) of their respective obligations and responsibilities under this Agreement.
4. Each of Trader and Order Passing Broker, whether placing orders orally, in writing or through an electronic order facility, will be responsible for accurate and valid placement of orders. If Trader transmits an order to Order Passing Broker, then Order Passing Broker, and not Executing Broker or Clearing Broker, will be responsible for determining that all orders are placed or authorized by Trader, and Executing Broker, and not Clearing Broker, will be responsible for determining that all orders are placed or authorized by Order Passing Broker. If Trader transmits an order to Executing Broker or directly to an exchange, then Executing Broker, and not Clearing Broker, will be responsible for determining that all orders are placed or authorized by Trader. Additionally, except as otherwise

¹ ~~This Uniform Agreement was prepared in consultation with the FIA, FOA and MFA.~~ Any changes or additions to the wording of this standard document must be clearly indicated. Failure to do so constitutes a representation that the document is the International Uniform Brokerage Execution Services ("Give-Up") Agreement: Trader Version ~~2008~~with Order Passing Broker 2017 and has not been modified in any respect. ⁴

agreed in writing, Executing Broker will: (a) upon placement of orders with Executing Broker by Trader or Order Passing Broker, as applicable, confirm the terms of the orders with ~~Trader~~the party communicating the order if customary and practicable; (b) be responsible for the accurate execution of all orders; (c) confirm the execution of such orders to ~~Trader~~the party communicating such orders as soon as is practicable thereafter; and (d) transmit such executed orders to Clearing Broker as soon as practicable, but in no event later than the period mandated by Applicable Law. If Executing Broker confirms the execution of an order to Order Passing Broker, then Order Passing Broker shall confirm the execution of such order to Trader as soon as practicable after receipt of confirmation from Executing Broker. Subject to Section 2 herein, Clearing Broker shall be responsible for clearing all executed orders transmitted to Clearing Broker. Unless otherwise provided by Applicable Law, none of Executing Broker, Order Passing Broker, Clearing Broker or Trader shall be responsible or liable for losses or damages resulting from: (x) error, negligence or misconduct of Customer and/or exchange or clearing house; (y) failure of transmission, communication or electronic order facilities; or (z) any other cause or causes beyond their control.

5. Executing Broker will, where applicable, bill commissions for executing trades, as elected in Section 12 below, on a monthly basis. Trader or Clearing Broker, as elected in Section 12 below, shall be responsible for verifying billing and making payment, except where Order Passing Broker and Executing Broker have agreed that Executing Broker will pay the Order Passing Broker applicable fees charged by the Order Passing Broker. Clearing Broker will, where applicable, pay floor brokerage fees, as well as any exchange or clearing house fees, incurred for all transactions executed by Executing Broker for and on behalf of Customer and subsequently accepted by Clearing Broker. In the event Clearing Broker is billed and remitting payment to Executing Broker, Clearing Broker is acting as payment agent by collecting fees at the instruction of Customer.
6. In the event that Trader or Order Passing Broker disputes or denies knowledge of any transaction, Clearing Broker ~~or~~ Executing Broker, or solely in the case of a dispute or denial by Trader, Order Passing Broker shall be authorized to liquidate or otherwise offset the disputed position. Where practicable, prior notice of such liquidation or offset shall be provided to the other parties to this Agreement.
7. In the event that Clearing Broker does not, for any reason, accept a trade transmitted to it by Executing Broker, Clearing Broker shall promptly notify ~~Trader and~~ Executing Broker of such non-acceptance, and Executing Broker, or its designated clearing broker if applicable, shall notify the party communicating the order and Executing Broker, at its option shall be entitled:
 - (a) to close out Customer's trade by such sale, purchase, disposal or other cancellation transaction as Executing Broker may determine, whether on the market, by private contract or any other appropriate method. Executing Broker shall promptly notify ~~Trader~~the party communicating the order of such close out. Any balance resulting from such close out shall be promptly settled between Executing Broker and Customer; or
 - (b) to transfer Customer's trades to another clearing broker as instructed by Customer or Trader; or
 - (c) to clear Customer's trade in accordance with the following terms:
 - i. Customer shall be fully liable for any and all obligations arising out of or related to transactions entered into or carried in Customer's account by Executing Broker, including, but not limited to: 1) debit balances, 2) exchange or clearing house fees, and 3) brokerage, commissions, and applicable fees charged by Executing Broker and/or Order Passing Broker;
 - ii. Executing Broker shall have the right to call Customer for margin in such amounts, in such form, by such time and in such manner as may be required by Executing Broker. If Customer fails to meet such margin call within such specified time, or if Executing Broker, in its discretion, otherwise deems it appropriate for Executing Broker's protection, Executing Broker may close out Customer's trade pursuant to sub-paragraph (a) above;
 - iii. Customer acknowledges that Customer's trades may be subject to exercise or delivery assignments, where applicable.

In the event that Order Passing Broker receives any notice from Executing Broker under this Section 7, Order Passing Broker shall as soon as practicable after receipt of such notice, forward such notice to Trader.

8. Customer acknowledges that all notices and disclosures that are provided by Clearing Broker to Customer (or Customer's representative) pursuant to Applicable Law will be deemed, for purposes of Section 7 of this Agreement, as if received by Customer from Executing Broker and Order Passing Broker, as applicable, as well as from Clearing Broker. Clearing Broker represents warrants and covenants to Executing Broker and Order Passing Broker that it has provided, and will provide, all required notices and disclosures to Customer (or Customer's representative). Customer acknowledges that, subject to the limitations and conditions of Applicable Law, the Executing Broker and its agents may act on the other side of a Customer order by the purchase or sale for an account in which the Executing Broker, an affiliate or a related person has a direct or indirect interest or may engage in pre-execution discussions in executing any order. In the event that at any time Customer and/or Trader, as the case may be, must meet specific criteria or have a specified status in order to trade in a certain product, Customer and/or Trader, each on its own behalf, represents and warrants that it meets such criteria and/or specified status (as applicable). The consent from Customer and representations and warranties from Customer and/or Trader shall be deemed repeated each time Customer and/or Trader enters a new transaction.

9. This Agreement may be terminated by any of the parties hereto upon prior written notice to the other parties. Any such termination shall have no effect upon any party's rights and obligations arising out of transactions executed prior to such termination.
10. This Agreement shall be exclusively governed by, and construed in accordance with, the laws of the jurisdiction specified below without regard to principles of choice of law.
11. This Agreement shall not amend or vary any clearing or electronic services agreement between ~~(i) Clearing Broker and Customer or~~ Executing: (ii) Executing Broker and Order Passing Broker: (iii) Executing Broker and Trader and/or Customer or (iv) Order Passing Broker and Trader and/or Customer. In the event of a conflict between this Agreement and such other clearing or electronic services agreement with respect to the execution, clearing or carrying of Customer's trades, such other clearing or electronic services agreement will control with respect thereto.
12. Executing Broker, where applicable, will bill commissions per contract, per half turn, and through electronic brokerage settlement platforms where possible, as specified on attached Addendum, electronic rate schedule, or as separately agreed.. In the event of a conflict between rate documents, the electronic rate schedule shall govern.

~~Customer's Name or Account Number:~~ _____

13. Each party consents to the electronic recording, without the use of an automatic warning tone, of all telephone conversations between or among the parties and their representatives.
14. Unless otherwise prohibited by Applicable Law, any party to this Agreement, from time to time, may add additional accounts to be governed by this Agreement by prior written notice (which may be by facsimile or other electronic transmission) to the other parties, *provided that* (i) Customer's authorized signatory is authorized to enter into and sign this Agreement on behalf of such accounts, (ii) the same fees agreed to herein apply, and (iii) valid clearing accounts for such accounts exist at the Clearing Broker.
15. Where this Agreement is executed by Trader on behalf of more than one Customer, it is understood and agreed that (i) this Agreement shall constitute a separate agreement with each such Customer, as if each such Customer had acknowledged and executed a separate Agreement naming only itself as the party thereto and (ii) no Customer shall have any liability under this Agreement for the obligations of any other Customer.
16. This Agreement may be executed and delivered in counterparts (including by facsimile or other electronic transmission), each of which will be deemed an original.
17. Any party that has manually executed this Agreement represents, covenants and agrees that the version electronically executed by the other parties and stored on EGUS is the final version and sets forth the complete terms and conditions as agreed to by all the parties.
18. Conformed signatures were executed electronically in accordance with the FIA Electronic Give-Up Agreement System User Agreement.

Jurisdiction: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized ~~officers~~ persons on the date set forth below and effective as of the date set forth above.

[Name of Trader: on its own behalf, and unless signs below, as Customer's authorized agent] By: _____	[Name Broker]	<u>[Name of Clearing Broker]</u> By: _____
[Print Name and Title]	[Print Name]	<u>[Print Name and Title]</u>
If Trader is not authorized to sign on behalf of Customer hereby consents to be bound by this	[Name Broker]	<u>[Name of Executing Broker]</u>
[Name of Customer]	By: _____	By: _____

By: | _____
[Print Name and Title]

[Name of Order Passing Broker]

By: | _____
[Print Name and Title]

**ADDENDUM TO
INTERNATIONAL UNIFORM BROKERAGE EXECUTION SERVICES (“GIVE-UP”) AGREEMENT
TRADER VERSION WITH ORDER PASSING BROKER 2017**

MADE THIS _____ DAY OF _____, 20____

CONTACT PERSONS

Any notices or problems regarding these transactions should immediately be brought to the attention of the contact persons of each of the parties hereto, whose names, addresses, and numbers are set forth below. Each party may change its operational contact by notice to the others.

Executing Broker

For Trading

Name:
Name of Person:
Address:

Telephone No.:
Fax No.:
Email:

For Documentation

Name of Person:
Address:

Telephone No.:
Fax No.:
Email:

Trader

For Trading:

Name:
Name of Person:
Address:

Telephone No.:
Fax No.:
Email:

For Documentation

Name of Person:
Address:

Telephone No.
Fax No.
Email:

Clearing Broker

For Trading

Name:
Name of Person:
Address:

Telephone No.:
Fax No.:
Email:

For Documentation

Name of Person:
Address:

Telephone No.:
Fax No.:
Email:

Customer

For Trading:

Name:
Name of Person:
Address:

Telephone No.:
Fax No.:
Email:

For Documentation:

Name of Person:
Address:

Telephone No.:
Fax No.:
Email:

Order Passing
For Trading:
Name:
Name of Person:
Address:

Telephone No.:
Fax No.:
Email:

For Documentation

Name of Person:
Address:

Telephone No.
Fax No.
Email:

CUSTOMER’S ACCOUNT

Customer’s account name and/or number with Clearing Broker.

BILLING ADDRESS

Invoices to be sent to the address set forth below.

Name:

Address:

Attention: