

INTERNATIONAL UNIFORM EFP TRANSACTIONS AGREEMENT: CUSTOMER VERSION 2008¹

This Agreement made this _____ day of _____, 20____, by and among

_____ (“Customer”),

_____ (“Dealer”), and

_____ (“Customer’s Clearing Broker”).

WHEREAS, Customer and Dealer each desires to enter into exchange for physical transactions (“EFP Transactions”) with the other as principal;

WHEREAS, Customer desires its futures positions resulting from such EFP Transactions to be cleared by Customer’s Clearing Broker; and

WHEREAS, Customer’s Clearing Broker desires to enter into this Agreement pursuant to which it will perform its clearing function on the terms and subject to the conditions stated below;

NOW, THEREFORE, the parties agree as follows:

1. All EFP Transactions entered into and cleared hereunder shall be transacted in accordance with and subject to applicable domestic and foreign laws, governmental, regulatory, self-regulatory, exchange or clearinghouse rules, regulations, interpretations, protocols, and the customs and usages of the exchange or clearing house on which the futures side of such EFP Transactions are cleared, as in force from time to time (“Applicable Law”). All disputes relating to transactions entered into and/or cleared under this Agreement shall be governed by and resolved 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 using commercially reasonable judgement, in a commercially reasonable manner under the circumstances, and consistent with Applicable Law. With respect to each EFP Transaction, each of the parties shall create, maintain and/or provide upon request all documents required by Applicable Law, including, but not limited to, the documents relating to the cash transaction in the physical commodity underlying the futures transaction.
2. Customer represents and warrants that Customer (i) is authorized to enter into EFP Transactions; and (ii) is duly authorized to enter into this Agreement.
3. Unless otherwise agreed in writing, Customer authorizes Dealer and Customer’s 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 Dealer and Customer’s Clearing Broker remain responsible to Customer for the performance (or failure of performance) of their respective obligations and responsibilities under this Agreement.
4. Dealer will enter into EFP Transactions with Customer, and Customer’s futures positions resulting from such EFP Transactions shall be reported to Customer’s Clearing Broker, who, subject to Section 6 below, will carry Customer’s side of the futures positions. Notwithstanding the foregoing, Dealer is under no obligation, and reserves the right not to enter into any EFP Transaction presented by Customer. Dealer shall notify Customer promptly of any such rejection.

Dealer shall clear or cause its own clearing broker to clear Dealer’s side of the futures positions resulting from such EFP Transactions. To the extent Dealer serves as its own clearing broker, nothing herein shall be construed to create additional obligations on Dealer in its capacity as a clearing broker.
5. Dealer shall report, or shall cause to be reported, the futures component (and, where required, the cash component in the physical commodity underlying the futures component) of each completed EFP Transaction to Customer’s Clearing Broker as soon as possible after completion, but in no event later than the period mandated by Applicable Law. The futures component (and, where required, the cash component) of each EFP Transaction shall be posted at the appropriate exchange as required.
6. Customer’s Clearing Broker may, upon prior notice to Dealer and Customer, place limits or conditions on the futures positions it will accept for clearing. Subject to the foregoing, Customer’s Clearing Broker will clear the futures side of each EFP Transaction entered into by Dealer with Customer and reported to it by Customer or Dealer pursuant to this Agreement.
7. The parties hereto agree that neither Customer’s Clearing Broker nor Dealer shall be responsible or liable for losses or damages resulting from: (i) error, negligence or misconduct of Customer and/or any exchange or clearing house; (ii) failure of transmission or communication facilities; or (iii) any other cause or causes beyond their control.

¹ This Uniform Agreement was prepared in consultation with FIA, MFA, FOA, and several U.S. and U.K. futures exchanges to be used as an industry standard. 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 EFP Transactions Agreement: Customer Version 2008 and has not been modified in any respect.

8. In the event that Customer disputes or denies knowledge of any transaction confirmed to Customer, Customer's Clearing Broker and/or Dealer 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.
9. In the event that Customer's Clearing Broker does not, for any reason, accept the futures component of an EFP Transaction transmitted to it by Dealer, then Dealer shall notify Customer, if such notification is reasonable under the circumstances, and, at its option, shall be entitled to (i) deem the EFP Transaction to be void and (ii) take any commercially reasonable action to cancel or close out such EFP Transaction.

Customer shall be fully liable to Dealer for any and all loss, cost or expense (including reasonable attorneys' fees) Dealer may incur as a result of the refusal or inability of Customer's Clearing Broker to accept for clearing Customer's futures positions resulting from any EFP Transaction entered into by Customer with Dealer, including any loss, cost or expense resulting from the liquidation of applicable positions.
10. 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 EFP Transactions entered into pursuant to this Agreement prior to such termination.
11. 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.
12. This Agreement shall not amend or vary any clearing agreement between any of the parties hereto. In the event of a conflict between this Agreement and any other clearing agreement, such other clearing agreement will control with respect to the parties thereto.
13. EFP Transactions are priced "all in" and create no additional fees that will be billed by Dealer to Customer or Customer's Clearing Broker unless otherwise agreed.

However, unless otherwise agreed, Customer's Clearing Broker may charge Customer commissions and fees for clearing the futures components of EFP Transactions at a rate agreed upon between Customer's Clearing Broker and Customer.
14. 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.
15. This Agreement may be executed and delivered in counterparts (including by facsimile or other electronic transmission), each of which will be deemed an original.
16. 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 of the parties.
17. Conformed signatures were executed electronically in accordance with the FIA Electronic Give-Up Agreement System User Agreement.

Jurisdiction: *[insert governing law]*

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

[Name of Customer]

By: _____

[Print Name and Title]

[Name of Customer's Clearing Broker]

By: _____

[Print Name and Title]

[Name of Dealer]

By: _____

[Print Name and Title]

**ADDENDUM TO
INTERNATIONAL UNIFORM EFP TRANSACTIONS AGREEMENT
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 set forth below. Each party may change its operational contact at any time by written notice to the others, or by oral notice followed promptly by written confirmation.

Dealer

Name:
Attention:
Address:

Telephone:
Fax No.:
E-Mail:

Customer

Name:
Attention:
Address:

Telephone:
Fax No.:
E-Mail:

Customer's Clearing Broker

Name:
Attention:
Address:

Telephone:
Fax No.:
E-Mail: