**SCHEDULE: GIVE-UP AGREEMENT**

**PHYSICAL EXECUTION SERVICES (“GIVE-UP”) AGREEMENT**

**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.**

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| --- | --- | --- | --- | --- | --- | --- | --- |
| **Agreement made this** |  | **day of** |  | **, 20** |  | **, by and among** | |
|  | | | | | | |  | |
|  | | | | | | | (“Executing Broker”) | |
|  | | | | | | |  | |
| **emsTradepoint Limited** | | | | | | | (“Exchange”) | |
|  | | | | | | |  | |
|  | | | | | | | (“Customer”) | |

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 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 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, in a commercially reasonable manner under the circumstances, and consistent with Applicable Law.
2. Customer authorises Executing Broker to execute orders for Customer as transmitted orally, in writing or through an electronic order facility by Customer to Executing Broker. Executing Broker reserves the right to reject an order that Customer may transmit to Executing Broker for execution and shall promptly notify Customer of any such rejection. Exchange may, upon prior notice to Executing Broker and Customer, place limits or conditions on the positions it will accept for give-up for Customer’s account.
3. Unless otherwise agreed in writing, each of the parties authorises Executing Broker and Exchange 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 and Exchange remain responsible to Customer for the performance (or failure of performance) of their respective obligations and responsibilities under this Agreement.
4. Customer, whether placing orders orally, in writing or through an electronic order facility, will be responsible for accurate and valid placement of orders. Executing Broker, and not Exchange, will be responsible for determining that all orders are placed or authorised by Customer. Additionally, except as otherwise agreed in writing, Executing Broker will: (a) upon placement of orders by Customer, confirm the terms of the orders with Customer if customary and practicable; (b) be responsible for the accurate execution of all orders; (c) confirm the execution of such orders to Customer as soon as is practicable thereafter; and (d) transmit such executed orders to Exchange as soon as practicable, but in no event later than the period mandated by Applicable Law. Subject to Section 2 herein, Exchange shall be responsible for clearing all executed orders transmitted to Exchange. Unless otherwise provided by Applicable Law, neither Executing Broker nor Exchange shall be responsible or liable for losses or damages resulting from: (x) error, negligence or misconduct of Customer; (y) failure of transmission, communication or electronic order facilities; or (z) any other cause or causes beyond their control.
5. In the event that Customer disputes or denies knowledge of any transaction, Exchange or Executing Broker shall be authorised 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.
6. In the event that Exchange does not, for any reason, accept a trade transmitted to it by Executing Broker, Exchange shall promptly notify Customer and Executing Broker of such non-acceptance, and Executing Broker shall at its option be entitled 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 Customer of such close out. Any balance resulting from such close out shall be promptly settled between Executing Broker and Customer.
7. Customer acknowledges that all notices and disclosures that are provided by Exchange to Customer (or Customer’s representative) pursuant to Applicable Law, will be deemed, for purposes of Section 6 of this Agreement, as if received by Customer from Executing Broker as well as from Exchange.
8. 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.
9. This Agreement shall be exclusively governed by, and construed in accordance with, the laws of­ New Zealand without regard to principles of choice of law.
10. This Agreement shall not amend or vary any clearing or electronic services agreement between Exchange and Customer or Executing Broker and Customer, or any brokering agreement between Exchange and Executing Broker. In the event of a conflict between this Agreement and such other clearing or electronic services agreement or brokering agreement with respect to the execution, clearing or carrying of Customer’s trades, such other clearing or electronic services agreement or brokering agreement will control with respect thereto.
11. 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.
12. Unless otherwise prohibited by Applicable Law, any party to this Agreement, from time to time, may add additional accounts of Customer 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 valid clearing accounts for such accounts exist at the Exchange.
13. This Agreement may be executed and delivered in counterparts (including by facsimile or other electronic transmission), each of which will be deemed an original.

**Jurisdiction:** New Zealand

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

|  |  |  |
| --- | --- | --- |
| **SIGNED** on behalf of **[Broker]** by:    Signature of authorised representative    Name of authorised representative |  | **SIGNED** on behalf of **emsTradepoint Limited** by:    Signature of authorised representative    Name of authorised representative |

**SIGNED** on behalf of **[Customer]** by:

Signature of authorised representative

Name of authorised representative

**ADDENDUM TO BROKERAGE EXECUTION SERVICES (“GIVE-UP”) 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 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.*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ***For Executing Broker*** | | ***For Exchange*** | | |
| ***For Trading*** |  | ***For Trading*** | |  |
| Name: |  | Name: | | **emsTradepoint Limited** |
| Name of Person: |  | Name of Person: | |  |
| Address: |  | Address: | | Waikoukou, 22 Boulcott Street |
|  |  |  | | Wellington, New Zealand |
| Telephone No.: |  | Telephone No.: | |  |
| Email |  | Email: | |  |
|  |  |  | |  |
| ***For Documentation*** | | ***For Documentation*** | | |
| Name of Person: |  | Name of Person: | | Quintin Tahau |
| Address: |  | Address: | | Waikoukou, 22 Boulcott Street |
|  |  |  | | Wellington, New Zealand |
| Telephone No.: |  | Telephone No.: | | +64 21 707 114 |
| Email: |  | Email: | | quintin.tahau@emstradepoint.co.nz |
|  |  |  | |  |
| ***For Customer*** |  |  | |  |
| ***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 number with Exchange (if applicable)*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*