



UPSWING TRADING CO. TRADER AGREEMENT

The Upswing Trading Trader Agreement (the “Agreement”) sets forth the terms and conditions governing your relationship with Upswing Trading Co. (the “Prop Company”) on this date of _____, _____, 2022. In this Agreement, the undersigned trader is referred to as “Trader” or “You.”

WHEREAS, the Prop Company is a proprietary trading company that invests its own capital in financial markets, and

WHEREAS, the Prop Company may, from time to time, allocate portions of its capital to be traded by You on terms contained herein or as posted with a feeder programs that evaluates traders who demonstrate sufficient skill and risk management.

NOW, THEREFORE, for good and valuable consideration the parties agree as follows:

1. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to set forth the terms and conditions under which the trader may trade the Prop Company capital.

2. SERVICES PROVIDED

Upon acceptance of Trader’s qualification after successful completion of an assessment or evaluation program, the Prop Company shall create and fund account (the “Account”) and provide the Trader with the credentials to access and trade the Account.

3. TRADER REPRESENTATIONS

3.1 The Trader is a natural person, of sound mind, legal age and legal competence.

3.2 The Trader is not relying on investment advice provided by the Prop Company or any other entity in making its trading decisions.

3.3 The activities of the Trader under this Agreement are not prohibited under any law or contract to which the Trader or the Prop Company is subject. In the event that such prohibitions come to light after the effective date of this Agreement, the Trader acknowledges that this Agreement may be terminated without notice.

3.4 The Trader acknowledges that the Account and trading platform are provided by a third party broker(s) and the Trader has no privity with the brokers used by the Prop Company to execute the trades and Trader may not contact said brokers directly regarding any trade dispute or other issue. All such matters must be directed to The Prop Company to resolve.

3.5 The Trader has full power and authority to execute this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Trader, enforceable in accordance with its terms.

4. THE ACCOUNT

Upon passing the Audition referenced in the Upswing Trading Terms & Conditions, Trader will need to provide The Prop Company with valid photo ID, and address verification document (bank statement or utility bill dated no more than 90 days prior) and wire details (inclusive of Bank name, Bank address, Trader name, Trader Address, Routing number or SWIFT, IBAN or account number) before Trader receives the Account. Trading profits will only be paid to Trader.

Upon creation of the Account, You will receive an email (the "Welcome Email") setting forth the following details:

- Account Login Credentials
- Allocated Capital
- Risk Management and Program Rules
- Trader Portal Credentials
- Profit Splits

You accept full responsibility for monitoring the Account to ensure that trades have been executed correctly and to ensure that no unauthorized trading is occurring in the Account. You may not give control over the Account to any other person or entity and you may not control the Account of any other The Prop Company authorized trader. You shall maintain the confidentiality of the Account credentials and prevent the unauthorized use thereof at all times. If You become aware of any deliberate or inadvertent disclosure, loss, theft or unauthorized use of the Account credentials, You must notify The Prop Company immediately and request a new password.

To maintain the Account and continue as a The Prop Company authorized trader, You must, at all times, adhere to the Risk Management and Program Rules. The Risk Management and Program Rules are an integral part of this Agreement. It is your responsibility as Trader to carefully read these Risk Management and Program Rules and to inform The Prop Company of any questions or objections that you may have regarding them before entering a trade in the Account. By entering your trading orders in the Account, you agree, represent, warrant and certify that you understand and accept these Risk Management and Program Rules, as they are set forth here and as may be amended from time to time by The Prop Company and sent to You by email. Any violation thereof will result in the closing of your account and termination as an authorized trader of The Prop Company. Additionally, the following actions may also result in the immediate closing of your account:

- Exploiting errors or latency in the pricing and/or platform provided by the broker
- Utilizing non-public and/or insider information
- Front-running of trades placed elsewhere
- Trading in concert with another person, another proprietary trading program or combination thereof

- Trading in any way that jeopardizes the relationship The Prop Company has with a broker or may result in the canceling of trades
- Trading in any way that creates regulatory issues for The Prop Company

5. PROFIT SPLITS & WITHDRAWALS

As an authorized trader for The Prop Company, The Prop Company agrees to pay you the percentage of profit generated on the account, as set forth in the Welcome Email. Withdrawal requests of profits will be processed on demand, but can be requested no more than once every 30 days. Withdrawals will be paid out via our accounts processing affiliate who will request certain documentation from You, including, but not limited to, valid government-issued photo ID, a recent address verification document and payment details. Upon processing of a withdrawal request, The Prop Company shall also withdraw its share of the trading profits from the account.

For example, let's assume the following:

- Beginning account balance - \$100,000
- Profit split 80%/20% in favor of You.
- Account equity one month later is \$120,000

You request a withdrawal of \$10,000. \$10,000 in profit will be withdrawn from the Account; Your \$5,000 and Prop Account's \$5,000. The new Account Balance High Water Mark will be adjusted back to \$110,000 for purposes of adherence to risk management and program rules going forward. Please note that upon requesting a withdrawal, your maximum trailing drawdown equity breach level will automatically lock in at your starting balance. Any profits above the highwater mark in the Account after a program rule is violated, will be distributed according to the established profit split.

6. TRANSMISSION OF ORDERS

The Prop Company shall have no responsibility for delays in the transmission of orders due to disruption, failure or malfunction of communications facilities and shall not be liable for any claims, losses, damages, costs or expenses, including attorneys' fees, to any person or entity arising other than as a direct result of The Prop Company's gross negligence.

7. POSITION & TRADING LIMITS

The Prop Company reserves the right to limit the number of open positions that Trader may enter or maintain in the Account. The Prop Company or the broker which The Prop Company designates reserve the right, to refuse to accept any order.

8. TRADING HOURS

All references to The Prop Company hours of trading are in U.S. Eastern Time ("ET") using a 12-hour format. Access to the market is typically available from 6:00 PM ET on Sunday to 4:00 PM ET on Friday, but The Prop Company reserves the right to suspend or modify its trading hours at any time and in such an event will inform clients in advance on a best-efforts basis of any changes in its operating hours. Trading hours by contract type may vary.

9. MODIFICATION OF TERMS

The Prop Company reserves the right to modify the terms and conditions of this Agreement or the risk management and program rules at any time and effective upon notice to You. Continued use of the Account after such notice shall constitute your acceptance thereof.

10. INDEPENDENT CONTRACTOR

The Trader shall perform its duties and otherwise conduct its trading activity in the Account as an independent contractor and not as an employee or agent of The Prop Company. Aside from adherence to the Risk Management and Program Rules, the Trader acknowledges that Trader, nor any of its officers or employees is an officer, director or agent of The Prop Company and that The Prop Company is not, and will not be, responsible for any trading decisions made on behalf of the Trader and may not commit the Trader to any action. The Trader represents that The Prop Company does not have the power either to control the Trader or to exercise any dominating influences over its activities. The parties hereto understand and acknowledge that this Agreement shall not create or imply any agency relationship among the parties, and the Trader will not commit The Prop Company in any manner except when a commitment has been specifically authorized in writing by The Prop Company.

11. INDEMNIFICATION

The Trader hereby agrees to indemnify, defend and hold The Prop Company and its officers, directors, employees, corporate affiliates, white label partners and agents harmless from any loss, damage, liability, claim, cost, awards and expenses, including but not limited to reasonable attorneys' fees, arising out of the Trader's illegal and/or wrongful actions and/or any breach of Agreement. Without limiting the foregoing, this indemnity clause shall apply to all allegations of wrongdoing including allegations of illegal use of insider information and all transactions requiring corrective action. If The Prop Company is informed of any pending action or possible loss against the Trader, The Prop Company may set off any monies due to the Trader in amounts sufficient to cover any pending arbitration, litigation, customer complaints, unsecured debits and unpaid expenses in connections with the Trader's trading.

12. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

All copyright, trademark, trade secret and other intellectual property rights ("IP") in and related to The Prop Company shall remain at all times the sole and exclusive property of The Prop Company and/or its 3rd party service providers and Traders shall have no right or interest in the IP, except for the right to access and use the Account as specified herein. Trader acknowledges that the IP is confidential and has been developed through the expenditure of substantial skill, time, effort and money. The Trader will protect the confidentiality of The Prop Company and/or its 3rd party service providers. Trader will not publish, distribute, or otherwise make information available to third parties any information derived from or relating to the IP. Trader will not copy, modify, de-compile, reverse engineer, and make derivative works of the IP or in the manner in which it operates.

13. INTERRUPTION OF SERVICE

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, ANY TECHNOLOGY, BROKERAGE OR TRADING PLATFORM (THE "TRADING ENVIRONMENT") UTILIZED BY THE PROP COMPANY, WHETHER DEVELOPED OR MAINTAINED BY IT OR A THIRD PARTY, IS PROVIDED "AS-IS" AND "WITH ALL FAULTS", AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PROP COMPANY, INCLUDING ITS AFFILIATES, SUBSIDIARIES, LICENSORS, SUBCONTRACTORS, DISTRIBUTORS, SERVICES PARTNERS, WHITE LABEL PARTNERS, AGENTS AND MARKETING PARTNERS AND EACH OF THEIR RESPECTIVE

EMPLOYEES, DIRECTORS AND OFFICERS (COLLECTIVELY, "RELATED PARTIES") DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE TRADING ENVIRONMENT, OR OTHERWISE RELATING TO THIS AGREEMENT, INCLUDING WARRANTIES AND CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, MERCHANTABLE QUALITY, NON-INFRINGEMENT AND ACCURACY AND NON-INTERFERENCE; (B) NEITHER THE PROP COMPANY, NOR ANY RELATED PARTY WARRANTS THAT (I) THE TRADING ENVIRONMENT IS OR WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS, (II) THE TRADING ENVIRONMENT WILL MEET YOUR REQUIREMENTS, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE TRADING ENVIRONMENT WILL BE ACCURATE OR RELIABLE, (IV) ANY ERRORS IN THE TRADING ENVIRONMENT WILL BE CORRECTED; (C) YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH ERRORS OR VIRUSES ARE THE DIRECT RESULT OF THE PROP COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (D) THE PROP COMPANY AND RELATED PARTIES, JOINTLY AND SEVERALLY, DISCLAIM AND MAKE NO WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF THE FORMS, DATA, REPORTS, RESULTS OR OTHER INFORMATION OBTAINED, GENERATED OR OTHERWISE RECEIVED BY YOU FROM ACCESSING AND/OR USING THE TRADING ENVIRONMENT OR OTHERWISE RELATING TO THIS AGREEMENT, AND (E) USE OF THE TRADING ENVIRONMENT IS ENTIRELY AT YOUR OWN RISK AND NEITHER THE PROP COMPANY NOR ANY OF THE RELATED PARTIES SHALL HAVE ANY LIABILITY OR RESPONSIBILITY THEREFROM.

14. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WHATSOEVER SHALL THE PROP COMPANY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOST TIME OR GOOD WILL, EVEN IF THE PROP COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE PROP COMPANY SHALL NOT BE LIABLE FOR ANY CLAIMS AGAINST YOU BY THIRD PARTIES. IN NO EVENT SHALL THE MAXIMUM CUMULATIVE LIABILITY OF THE PROP COMPANY IN CONNECTION WITH THE TRADING ENVIRONMENT AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EXCEED THE AMOUNT OF ANY PROFIT GENERATED BY YOU IN THE ACCOUNT. NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THE TRADING ENVIRONMENT MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR AFTER SUCH ACTION HAS ACCRUED.

15. FORCE MAJEURE

The Prop Company shall not be liable to Trader for any claims, losses, damages, costs or expenses, including attorneys' fees, caused, directly or indirectly, by any events, actions or omissions, including, without limitation, claims, losses, damages, costs or expenses, including attorneys' fees, resulting from civil unrest, war, insurrection, international intervention, governmental action (including, without limitation, exchange controls, forfeitures, nationalizations, devaluations), natural disasters, acts of God, market conditions, inability to communicate with any relevant person or any delay, disruption, failure or malfunction of any transmission or communication system or computer facility, whether belonging to The Prop Company, Trader, any broker, trading platform or third-party service provider.

16. MISCELLANEOUS

16.1 This Agreement between the Prop Company and the Trader constitutes the entire agreement and understanding of the parties hereto, and supersedes any and all previous agreements and understandings, whether oral or written, between the parties with respect to the matters set forth herein.

16.2 Any notice or communication permitted or required hereunder shall be in writing and shall be deemed sufficiently given if hand-delivered, sent postage prepaid by certified or registered mail, return receipt requested, or emailed to the respective parties as set forth below, or to such other address as either party may notify the other in writing:

If to Upswing Trading Co.- 120 Park Ave. Unit 101, Penthouse Suite, Manalapan Township, NJ 07726

16.3 This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors, legal representatives and assigns.

16.4 This Agreement may be executed in any number of counterparts, each of which together shall constitute one and the same original document.

16.5 This Agreement may be amended, modified or waived, at any time by The Prop Company.

16.6 This Agreement shall be governed by and construed in accordance with the laws of the United States. The venue for any proceedings arising out of or relating to this Agreement shall be in the United States. The prevailing party in any litigation arising out of or relating to this Agreement shall be entitled to an award of its reasonable attorneys' fees and costs.

16.7 This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

16.8 All section or paragraph titles or captions in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

16.9 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or entity may require.

16.10 If any provision of this Agreement, or the application of such provision, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

16.11 This Agreement may not be assigned by either party hereto without the written consent of the other, but shall be binding upon the successors of the parties.

17. EVALUATION ACCOUNT SELECTION

The Trader _____ has selected to be evaluated on an account size of _____.

The cost for the evaluation is \$_____.

The trader understands the evaluation fee is non-refundable.

The trader understands that by signing this agreement they have committed to our evaluation process and cannot cancel or receive a refund for any reason.

Trader understands they will be given **(2) two attempts** to pass our trading evaluation.

Trader understands they must reach a **10% Profit** in order to pass our evaluation.

Trader understands that if at anytime their daily loss exceeds **5%** they will fail the evaluation or be suspended from their live trading account. Additional evaluations will be required to regain live account access.

Trader understands that if at anytime their maximum drawdown exceeds **5% of the Original Account Balance of _____** they will fail the evaluation or be suspended from their live trading account. Additional evaluations will be required to regain live account access.

Trader understands they will be paid **80% of their profits**. 20% will be retained by Upswing Trading Co. to cover their "Fee".

Trader understands that withdraw requests will be processed on Fridays between the hours of 9:00am EST and 4:00pm EST. Withdraw requests **MUST** be received within this time frame in order to receive a profit withdraw for that week. Traders are allowed to make (1) request during the withdraw request time period.

Trader understands that once their withdraw has been processed, their account will be closed for maintenance for the week. Access will be regained on Sunday at 6pm EST for the next weeks session.

Trader understands they will be able to withdraw profit after their first **FULL WEEK** of trading. So if your **LIVE** account is opened on a Tuesday, you will be able to withdraw the following Friday. You can then withdraw each and every Friday thereafter.

Signed:

Trader

Upswing Trading Co. (Authorized Representative)

Signature: _____

Stephen Salvatore

Trader Name: _____

Date: _____

Date: _____

