



**ONEXCHANGE BOARD OF TRADE, INC.**  
**AND**  
**ONEXCHANGE CLEARING CORPORATION**  
**TERMS AND CONDITIONS**  
**FOR**  
**SUBSCRIBERS**

THIS AGREEMENT DESCRIBES YOUR RIGHTS AND RESPONSIBILITIES. PLEASE READ IT CAREFULLY. ITALICIZED WORDS ARE DEFINED IN THIS AGREEMENT, PART 1 OF THE RULES OF ONEXCHANGE CLEARING CORPORATION, OR PART 1 OF THE RULES OF ONEXCHANGE BOARD OF TRADE, INC.

This *Subscriber Agreement* sets forth the terms and conditions under which onExchange Board of Trade, Inc. ("onExchange Board of Trade"), and onExchange Clearing Corporation ("onExchange Clearing") with their principal offices at 1601 Trapelo Road, Waltham, MA 02451 (collectively, "*onExchange*"), will open and maintain one or more accounts (collectively, the "*Trading Account*") in your name and grant you a non-exclusive license to access and use the Internet futures exchange provided by *onExchange*. This Agreement shall take effect upon your clicking on the words "I Accept" where indicated below. In addition, to maintain your *Trading Account*, you must sign and return to *onExchange* a physical copy of this Agreement.

BY CLICKING ON THE WORDS "I ACCEPT", ACCESSING OR USING THE WEBSITE YOU AGREE TO THE TERMS CONTAINED IN THIS AGREEMENT AND THEIR LEGALLY BINDING EFFECT ON YOU.

**1. Introduction**

A. *OnExchange* owns and operates an electronic futures exchange that includes electronic price quoting, order execution and trade settlement facilities, which allow qualified purchasers and sellers of commodities and services to trade futures contracts on such commodities and services ("*Contract*"). Pursuant to this Agreement, you and your *Authorized Traders*, if any, will be permitted to buy (sell) *Contracts* for your *Trading Account* and you will be admitted as a Member of onExchange Clearing in order to settle your transactions through *onExchange's* clearing house. All transactions are subject to the Bylaws, Rules, regulations, customs and usages of *onExchange* and to any applicable law, rule and regulation, including but not limited to the U.S. Commodity Exchange Act (the "*Act*"), and the rules and regulations of the U.S. Commodity Futures Trading Commission ("*CFTC*"), each as amended from time to time (together the "*Applicable Law*"), and *onExchange* shall not be liable to you as a result of any action it takes to comply with *Applicable Law*.

B. As a condition of your use of the *onExchange* system you:

(i) agree to observe the terms and conditions of this Agreement, the *onExchange* Board of Trade Bylaws and Rules; and the *onExchange* Clearing Bylaws and Rules, all of which are available on this website (collectively, "*Rules*");

(ii) understand and agree that *onExchange* may, in certain circumstances, suspend, condition or revoke your license and trading privileges; and

(iii) you authorize *onExchange* or its agents, in its sole discretion, to make and obtain reports concerning your credit standing and business conduct.

C. By checking the corresponding box in the accompanying electronic *Subscriber* application and filling out the corresponding information request, you have applied to become an *onExchange Subscriber* and a *Class B Member*, as defined in the *Rules*.

You will be notified within [ ] days of your application whether *onExchange* accepts you as a *Subscriber* and *Class B Member*.

## 2. Your General Obligations and Duties

A. *Applicable Law* -- You agree to adhere to the high industry standards and ethical conduct required and expected from *onExchange* market participants. This means that you will honor your trades and settlement obligations, supervise your *Authorized Traders*, if any, insure that all your orders are accurate and authorized and comply with *Applicable Law* and the *Rules*. Specifically, you understand that *Applicable Law* requires, among other things, that:

(i) except as permitted by the *Rules*, your transactions on *onExchange* be made without pre-arrangement among *Subscribers* or *Authorized Traders*;

(ii) your net position in any futures contract not exceed certain specified limits, unless you obtain a hedging exemption from *onExchange*;

(iii) you not manipulate, or attempt to manipulate, prices of any futures contract or underlying commodity by any means, such as using a shell or a secondary identity;

(iv) you not engage in any act or practice in connection with your *onExchange* activities that would cheat or defraud, or attempt to cheat or defraud, any other person; and

(v) *onExchange* is obligated to provide the *CFTC* with your identity or account information upon its request.

B. Authorized Persons -- You will designate and communicate to *onExchange* in writing the names of such persons, agents or employees who are authorized by you to access and/or enter trades for your *Trading Account* on *onExchange* (each an "Authorized Trader"). You agree to be fully and solely responsible for the supervision of your *Authorized Traders*. IF YOU DO NOT DESIGNATE AN *AUTHORIZED TRADER*, YOU WILL BE THE SOLE PERSON PERMITTED TO ENTER TRANSACTIONS FOR YOUR *TRADING ACCOUNT*.

C. Password Security -- You agree to maintain the security of the information contained in the *onExchange* quote and execution system, including your user identifications and the passwords provided to you and your *Authorized Traders* by *onExchange*. You will immediately notify *onExchange* of any unauthorized use of your passwords or security procedures, including notification to revoke access of any of your *Authorized Traders*. *onExchange* may refuse to accept any further orders on your *Trading Account* until *onExchange* is satisfied that security has been re-established.

ALL INSTRUCTIONS TRANSMITTED BY OR RECEIVED FROM ANYONE PRESENTING YOUR USERNAME AND PASSWORD ON THE *ONEXCHANGE* WEBSITE SHALL BE DEEMED IRREVOCABLE AND BINDING ON YOU.

D. Financial Obligations -- To assure the financial integrity of your *Trading Account* at *onExchange*, you agree to:

(i) deposit and maintain required margin in a designated *Subcustody Account* of *onExchange* Clearing Corporation at a *Custody Bank*, pursuant to the *Rules*;

(ii) maintain such letter of credit from an *Approved Financial Institution* ("AFI"), cash, unencumbered securities or other margin as *onExchange* Clearing in its discretion requires from time to time;

(iii) pay on demand any debit balance in your *Trading Account*;

(iv) provide *onExchange* with any information it reasonably requires to confirm your compliance with its financial requirements; and

(v) provided that if any part of your margin obligations are satisfied by means of a letter of credit drawn on an *AFI*, you will replace such letter of credit in the event that the *AFI* shall cease to be such.

E. *onExchange's* Fees -- You agree to pay *onExchange's* transaction fees in accordance with the accompanying Fee Schedule. Such fees to be either debited from the Subscriber's *Subcustody Account* by *onExchange* or invoiced to you, separately.

F. Disciplinary, Trade, Financial and Market Surveillance -- You acknowledge that:

(i) *onExchange* is a federally regulated futures market, where *Applicable Law* prohibits certain misconduct. As a regulated market, *onExchange* and its agents conduct routine trade practice, financial and market surveillance of *Subscribers* and *Authorized Traders* and their transactions, including, on-site visits by *NFA*; and

(ii) if *onExchange* has reason to believe that you and/or your *Authorized Trader* has violated its *Rules* or *Applicable Law*, it may bring disciplinary proceedings against you pursuant to its rules governing disciplinary proceedings. By entering into this Agreement and trading on the exchange, you agree that you shall be subject to such disciplinary procedures and you further agree that in connection with such procedures, and any investigation of your or your *Authorized Traders*' conduct, you will produce business records reasonably requested of you, permit on-site visitations by *NFA*, accept service of process and subpoenas, and abide by *onExchange*'s final decision. You and your *Authorized Traders* may be suspended and barred from *onExchange* if either of you violate this Agreement, the *Rules* or *Applicable Law*. Serious misconduct could also result in your, or your *Authorized Traders*' conduct being reported to the *CFTC*, which maintains its own investigatory staff and has its own disciplinary powers.

### 3. Your Representations

You represent and warrant as of the date of this Agreement and on the date of each transaction executed hereunder that to the best of your knowledge:

A. Eligible Swap Participant -- You are an Eligible Swap Participant, pursuant to Regulation 35(b)(2) of the *CFTC*;

B. Lawful Agreement --

(i) you and each of your *Authorized Traders* are duly authorized and empowered to execute and deliver this Agreement and to effect purchases and sales of *Contracts* through *onExchange*;

(ii) your transactions with and through *onExchange* and this Agreement do not and will not violate any *Applicable Law*, or any judgment, order or agreement to which you or any of your *Authorized Traders* are subject;

(iii) this Agreement is a valid and binding agreement, enforceable against you in accordance with its terms;

(iv) you have made and will make any disclosure regarding your and your *Authorized Traders*' trading of *Contracts* that are required by the *Rules* or *Applicable Law*;

C. Interest in or Control of *Trading Account*

(i) no person or entity other than you has, nor during the term of this Agreement will have, any ownership interest in any *Trading Account*, except as disclosed to *onExchange* in writing;

(ii) no person other than you and your *Authorized Trader(s)* has or will have any control over the *Trading Account*, except as disclosed to *onExchange* in writing.

D. Financial Information -- any financial or other information provided to *onExchange* in connection with this Agreement, pursuant to the *Rules* or otherwise is and will be accurate and complete in every material respect;

E. Material Adverse Effect -- you will promptly notify *onExchange* in writing of any changes in such information or any change in circumstances which would have a material adverse effect upon the representations and information given *onExchange* or which would in any way affect your ability to make any transactions contemplated by this Agreement.

F. Registration Requirements -- You have reviewed the registration requirements of the *Act* and the *NFA* and you have determined that you are in compliance with such requirements; and

G. Employees of Futures Commission Merchants, Self-Regulatory Organizations or the *CFTC* -- if you are a partner, officer, director, employee or owner of more than a ten percent equity interest in a Futures Commission Merchant, an Introducing Broker or any Self-Regulatory Organization, or an employee of the *CFTC*, you shall disclose such relationship or ownership, as the case may be, to *onExchange* in writing.

**4. *OnExchange's* Services and Rights**

A. Scope of Services -- *OnExchange* will make available to you a user interface, which will allow you to:

(i) enter orders for the purchase and sale of futures contracts via the Internet;

(ii) match your orders with eligible contra orders;

(iii) execute and settle your orders; and

(iv) enable you to store certain information concerning your futures holdings, orders, indications of interest, executed orders, and settlements.

B. Emergencies and Changes to User Interface -- Notwithstanding the generality of sub-section A, above, *onExchange* may in *Emergency* circumstances, or otherwise:

(i) change, suspend, or discontinue its user interface or any aspect thereof at any time, including the availability of any services accessible by means of the user interface; and

(ii) impose limits on certain features or services, or restrict access to parts or all of the user interface without notice or liability.

C. Security Interest and Lien -- As security for the payment of all of your obligations and liabilities to *onExchange* Board of Trade and *onExchange* Clearing:

(i) all your funds, securities, credit balances, futures contracts and other property that may from time to time be held by, to the order of, or on behalf of *onExchange* Board of Trade and *onExchange* Clearing, and all proceeds thereof, shall be subject to a security interest and lien, which you do hereby grant, in favor of *onExchange* Clearing to secure all your obligations pursuant to this Agreement and the *Rules*; and

(ii) in the event of your breach or default under this Agreement, *onExchange* Board of Trade and *onExchange* Clearing shall have all rights and remedies available to a secured creditor in addition to the rights and remedies provided herein and in the *Rules*.

D. *OnExchange* Clearing Guarantee -- Provided you are not in default with respect to any of your obligations hereunder, *onExchange* Clearing agrees to guarantee the financial performance of any *Contract* listed on *onExchange*, as such performance is defined in the particular *Contract's* rules; or alternatively, to pay you the in-the-money value of such *Contract*; provided, however, that with respect to any contract that settles by means of physical delivery, *onExchange* Clearing's guaranty shall be limited to the lesser of the difference between the delivery price of such commodity and the fair market value of such commodity at the time delivery and payment are required; or the delivery margin on deposit or obligated with respect to such commodity.

## 5. *OnExchange's* Rights in the Event of Your Default

A. In the event that:

(i) you, any of your *Authorized Traders*, the *Custody Bank* or your *AFI* breach or fail to timely and fully perform any of their obligations under this Agreement or the *Rules*, or otherwise in respect of any futures contract;

(ii) you, the *Custody Bank* or your *AFI*, acting on your behalf, fail to deposit or maintain any required margin or fail to make any other payment required hereunder or otherwise in respect of any *Contract*;

(iii) any representation you made hereunder is not or ceases to be accurate and complete in any material respect;

(iv) a case in bankruptcy is commenced or a proceeding under any insolvency or other law for the protection of creditors or for the appointment of a receiver, trustee or similar officer is filed by or against you, the *Custody Bank* or your *AFI*, or you, *Custody Bank* or your *AFI* make or propose to make any arrangement or composition for the benefit of your, *Custody Bank's* or your *AFI's* creditors, or you, *Custody Bank* or your *AFI* or any of your, *Custody Bank's* or your *AFI's* property is subject to any agreement, order or judgment providing for dissolution, liquidation, reorganization, or for the appointment of a receiver, trustee or similar officer for you, *Custody Bank* or your *AFI* or your, *Custody Bank's* or your *AFI's* property;

(v) the *Custody Bank* or your *AFI* fails to make timely payment to onExchange with respect to the account of another Subscriber;

(vi) any warrant or order of attachment is issued against any of your *Subcustody Accounts* or a judgment is levied against any such *Subcustody Account*; or

(vii) onExchange, after notifying you and offering you the opportunity to provide adequate assurances acceptable to onExchange within a reasonable period of time under the circumstances, reasonably considers it necessary for its protection;

then onExchange Board of Trade and onExchange Clearing, as the case may be, shall have the right, without limitation, to:

- (A) close out any or all of your open *Contracts*;
- (B) cancel any or all of your or your *Authorized Traders'* outstanding orders;
- (C) treat any or all of your obligations due to onExchange as immediately due and payable;
- (D) set off any obligations of onExchange to you against any of your obligations to onExchange;
- (E) sell any *Margin-Eligible Assets* on deposit at onExchange Clearing and/or set off and apply any *Margin-Eligible Assets* or the proceeds of the sale of any *Margin-Eligible Assets*, to satisfy any of your obligations to onExchange;

(F) terminate any or all of *onExchange*'s obligations for future performance with respect to your *Trading Account*; and

(G) terminate your access to the user interface.

B. In the event of your default, *onExchange* and its affiliates reserve the right to sell, upon reasonable prior notice to you, any and all property in which you have an interest held by or through *onExchange* or its affiliates, to cancel any or all outstanding transactions and/or to purchase or sell any other property to offset market risk, and to offset any indebtedness or position you may have, including by means of an exchange for physicals transaction, after which you shall be liable to *onExchange* for any remaining deficiencies, losses, costs or expenses sustained by *onExchange* in connection therewith. Such sales may be effected publicly or privately without notice or advertisement in such manner as *onExchange* may in its sole discretion determine. At any such sale, *onExchange* may sell the property free of any right of redemption. In addition, *onExchange* shall have the right to set off and apply any amount owing from its affiliates to you against any indebtedness in your *Trading Account*, whether matured or unmatured. You are unconditionally obligated to pay *onExchange* the amount of any debit balance in your *Trading Account*, however incurred, plus interest on such debit balance at an interest rate equal to or less than the highest rate permitted by applicable law.

## 6. Disclaimer and Limitation of Liability

### A. Accuracy and reliability of information

THE *ONEXCHANGE* USER INTERFACE, INCLUDING ALL CONTENT AND INFORMATION AVAILABLE ON OR ACCESSED BY MEANS THEREOF, IS PROVIDED "AS IS." TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, *ONEXCHANGE* MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER FOR (1) THE CURRENCY, ACCURACY, OR COMPLETENESS OF ANY INFORMATION AVAILABLE BY MEANS OF THE *ONEXCHANGE* USER INTERFACE, INCLUDING PRICES, (2) THE RESULTS TO BE ATTAINED BY *SUBSCRIBER* OR ANYONE ELSE FROM TRANSACTIONS OR THE USE OF THE *ONEXCHANGE* USER INTERFACE, (3) ANY INFORMATION PROVIDED BY THIRD PARTIES AND ACCESSIBLE ON OR THROUGH THE *ONEXCHANGE* USER INTERFACE, (4) ANY "VIRUSES" OR MALICIOUS COMPUTER CODE TRANSMITTED ON OR THROUGH THE *ONEXCHANGE* USER INTERFACE, OR (5) ANY BREACH OF SECURITY OR UNAUTHORIZED ACCESS TO THE *ONEXCHANGE* USER INTERFACE OR OF YOUR INFORMATION.

*ONEXCHANGE* (1) DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES AND CONDITIONS, INCLUDING WITHOUT LIMITATION, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND (2) DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE *ONEXCHANGE* USER INTERFACE OR ANY SERVICES OR CONTENT THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE *ONEXCHANGE* USER INTERFACE, THE SERVER ON WHICH THE LATTER IS MADE

AVAILABLE, OR ANY CONNECTED SYSTEM IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

B. Computer and the Internet

CONDITIONS AFFECTING YOUR ABILITY TO ENTER ORDERS AND/OR TRADE MAY INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: (1) A DISRUPTION TO THE HARDWARE SYSTEMS OF *ONEXCHANGE* CAUSING MALFUNCTION; (2) A MALFUNCTION OF THE SOFTWARE SUPPORTING, AND THUS DISRUPTING, *ONEXCHANGE* TRADING AND CLEARING CAPABILITIES; (3) A PROBLEM WITH THE INTERNET CAUSING THE SLOWING, DISRUPTION OR TERMINATION OF INFORMATION FLOW; (4) AN INABILITY TO ACCESS THE *ONEXCHANGE* WEBSITE DUE TO YOUR INTERNET SERVICE PROVIDER; (5) A TELEPHONE LINE DISRUPTION AT YOUR LOCATION OR AT *ONEXCHANGE*; OR (6) *ONEXCHANGE'S* PERIODIC SYSTEMS MAINTENANCE AND UPGRADE.

THE SPEED OF YOUR ORDER ENTRY MAY BE AFFECTED BY A NUMBER OF FACTORS INCLUDING BUT NOT LIMITED TO THE FOLLOWING: (1) YOUR CONNECTION SPEED; (2) YOUR INTERNET SERVICE PROVIDER'S LOAD; (3) YOUR COMPUTER PROCESSOR'S SPEED; AND (4) YOUR COMPUTER'S RAM MEMORY.

*ONEXCHANGE* ACCEPTS NO LIABILITY FOR THESE RISKS, OR ANY OTHER RISKS NOT MENTIONED, THAT MAY AFFECT YOUR ABILITY TO TRADE ON *ONEXCHANGE*. YOU ACCEPT THE RISK THAT, IF YOU ARE UNABLE TO TRADE ON *ONEXCHANGE* OR YOUR CAPACITY TO TRADE IS SERIOUSLY IMPAIRED, THE VALUE OF YOUR ACCOUNT MAY BE ADVERSELY AFFECTED.

C. Limitation of Liability

USE OF THE *ONEXCHANGE* USER INTERFACE IS AT *SUBSCRIBER'S* OWN RISK AND *SUBSCRIBER* ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM YOUR DOWNLOADING, USE OF, OR ACCESS TO DATA, FILES, INFORMATION, CONTENT, OR OTHER MATERIAL (INCLUDING WITHOUT LIMITATION SOFTWARE) ON OR THROUGH THE *ONEXCHANGE* USER INTERFACE.

*SUBSCRIBER* ACKNOWLEDGES THAT THE *ONEXCHANGE* USER INTERFACE IS COMPLEX AND CONTINUALLY DEVELOPING AND FOR THIS REASON *ONEXCHANGE* CANNOT GUARANTEE THAT ITS USER INTERFACE WILL BE ERROR FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED.

EXCEPT IN THE EVENT OF *ONEXCHANGE'S* WILLFUL AND WANTON ACTS OR OMISSIONS, *ONEXCHANGE*, ITS EMPLOYEES, CONSULTANTS AND AGENTS ARE NOT LIABLE FOR LOSS OR DAMAGE OF ANY KIND WHATSOEVER WHETHER DIRECT, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL, EVEN IF *ONEXCHANGE* IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE FORESEEABLE ARISING AS A RESULT OF:

(1) INFORMATION EXPRESSLY OR IMPLIEDLY PUBLISHED ON THIS WEBSITE;

(2) ANY ERRORS IN, DISRUPTIONS OF, MALFUNCTIONS OF, OR OMISSIONS FROM THE *ONEXCHANGE* USER INTERFACE;

(3) THE USE OF, OR THE INABILITY TO USE, THE *ONEXCHANGE* USER INTERFACE;

(4) SUBSCRIBER OR AUTHORIZED TRADER ORDERS AND INVESTMENT DECISIONS;

(5) THE CONDUCT OF AN AUTHORIZED TRADER WHICH MAY CAUSE DAMAGE TO ANY SUBSCRIBER OR AUTHORIZED TRADER; AND

(6) PURCHASES OF THIRD PARTY GOODS OR SERVICES (INCLUDING FINANCIAL INSTRUMENTS AND CURRENCY) BASED ON THE INFORMATION PROVIDED ON THE *ONEXCHANGE* USER INTERFACE.

NOTWITHSTANDING ANY OF THE FOREGOING PROVISIONS OF THIS PARAGRAPH 6(C), THIS LIMITATION OF LIABILITY SHALL IN NO WAY LIMIT THE APPLICABILITY OF ANY PROVISION OF THE ACT OR THE COMMISSION'S REGULATIONS THEREUNDER.

## 7. Indemnification

*Subscriber* agrees to indemnify, defend, and hold harmless *onExchange* and its directors, officers, employees, and agents from and against any and all claims, losses, liabilities, damages, costs and expenses (including, to the extent permitted by any applicable law or regulation, attorneys' fees) arising out of or relating to (i) your and/or your *Authorized Trader's* breach of any provision of this Agreement, (ii) your and/or your *Authorized Trader's* use of the *onExchange* user interface and/or its content in violation of this Agreement, (iii) your and/or your *Authorized Trader's* violation of *onExchange's* rights (including without limitation copyright, patent, trade secret, trademark, or other intellectual property rights), (iv) your and/or your *Authorized Trader's* violation of any *Applicable Law* or the *Rules*; (v) any failure to maintain the security of *Subscriber* names or passwords; (vi) any third party claims arising out of or relating to your and/or your *Authorized Trader's* use of, or inability to use, the *onExchange* user interface, and (vii) inaccuracy, incompleteness or incorrectness of prices or related information provided by you and/or your *Authorized Trader*.

## 8. Summary Termination

You may terminate this Agreement at any time upon written notice of termination to *onExchange*. *OnExchange* may terminate this Agreement immediately, and without prior notice

to you, if *onExchange* determines in its sole discretion that your use of the *onExchange* system jeopardizes the proper and efficient operation of the *onExchange* system, and *onExchange* may otherwise terminate this Agreement as a non-exclusive remedy in the event of your or your *Authorized Trader's* breach of this Agreement, the *Rules*, or *Applicable Law*. You agree that if *onExchange* terminates this Agreement, you and your *Authorized Trader's* open orders may be canceled and you and your *Authorized Trader* may remain subject to disciplinary action of *onExchange* and/or the *CFTC*. Otherwise, termination of this Agreement shall not affect any transactions entered into before receipt of notice of termination and shall not relieve any party hereto of any obligations incurred before such receipt; provided that *onExchange* may require you and your *Authorized Traders* to trade for liquidation only following any notice of termination. In the event that this Agreement is summarily terminated, you shall have a right to appeal such determination, however, your trading privilege may be suspended during such appeal.

## 9. Communications

A. Unless otherwise specified in this Agreement, all reports, instructions, and other communications by any party to another under this Agreement may be made via email, or other electronic means, to the addresses provided by each party.

B. Any report, instruction or other communication transmitted pursuant to this Agreement shall be transmitted to you at the email, or other electronic, address provided to *onExchange*.

## 10. Miscellaneous

A. Severability -- If any provision of this Agreement is or at any time becomes inconsistent with or invalid under any present or future *Applicable Law*, such inconsistent or invalid provision shall be deemed to be superseded or modified to conform to such *Applicable Law*, but in all other respects this Agreement shall continue in full force and effect.

B. Entire Agreement -- This Agreement, if applicable, constitutes the entire agreement between you and *onExchange* with respect to the subject matter hereof and supersedes any prior agreements between the parties with respect to such subject matter.

C. Amendment or Waiver -- No provision of this Agreement shall in any respect be waived or modified unless such waiver or modification is in writing and signed by authorized representatives of each party. The rights and remedies of *onExchange* and you under this Agreement are cumulative and no waiver or modification of this Agreement or of any such right or remedy may be inferred from any failure by you or *onExchange* to exercise any right or remedy under this Agreement.

### D. Successors; Binding Effect

(i) This Agreement shall inure to the benefit of, and be binding upon, each of the parties and their successors and assigns.

(ii) This Agreement and the obligations hereunder may not be assigned or delegated by you without the prior written consent of *onExchange*, and any purported assignment or delegation without consent shall be void.

## 11. Governing Law and Consent to Arbitration

A. The construction, validity, performance and enforcement of this Agreement shall be governed by the laws of the State of New York (without giving effect to conflicts of laws principles.)

B. Consent to Jurisdiction -- Except with respect to disciplinary proceedings and such other matters as to which *onExchange* may take summary action as set forth in the *Rules*, any controversy or dispute (i) between *onExchange* and the *Subscriber*, arising out or relating to *Subscriber's Trading Account*, shall be resolved by arbitration pursuant to the Member Arbitration Rules of the *NFA*; or (ii) between the *Subscriber* and another *Subscriber(s)*, arising out or relating to *Subscriber's Trading Account*, shall be resolved by arbitration pursuant to the Code of Arbitration of the *NFA* except that Section 11, Arbitration Fees, of the Member Arbitration Rules of the *NFA* shall apply. Any award rendered in such arbitration shall be final and binding on the parties and enforceable in accordance with the laws of any court having jurisdiction. Disciplinary proceedings shall be resolved in accordance with Part 7 of the Rules of *onExchange* Board of Trade.

*End Draft*

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