

## Customer Futures Account Agreement

In consideration of the acceptance by optionsXpress, Inc., its agents and assigns (collectively "optionsXpress"), of one or more accounts of the undersigned customer ("Customer") (if more than one account is carried by optionsXpress, all are covered by this Agreement and are referred to collectively as the "account") and optionsXpress' agreement to act as Customer's broker for the execution, clearance and/or carrying of transactions for the purchase and sale of commodity futures contracts, forward contracts, commodity options and physical commodities (collectively, "commodity interests"), Customer agrees as follows:

### 1. PAYMENTS TO optionsXpress;

Customer agrees to pay to optionsXpress

- commission and service charges at rates established by optionsXpress from time to time and applicable exchange, clearing organization and regulatory fees for each transaction in connection with the account;
- funds which may be advanced by optionsXpress for the account, and any other costs incurred by optionsXpress occasioned by effecting commodity interest transactions for Customer or carrying the account;
- the amount of any debit balance or any other liability that may result from transactions executed for the account; and
- interest on any funds advanced by optionsXpress at the rates then charged by optionsXpress and service charges, together with any reasonable costs and attorneys fees incurred in collecting any such debit balance or liability.

optionsXpress may debit the account to collect such payments and if, in the sole discretion of optionsXpress, the account is not sufficient for such purpose, Customer shall make such payments immediately following optionsXpress' request for payment. Payments shall be made in immediately available U.S. dollars to optionsXpress at the address shown at Section 8 herein or as optionsXpress shall notify Customer. Customer acknowledges that optionsXpress does not have any obligation to establish uniform commission rates and that optionsXpress therefore determines such commission rates in such manner as it may determine.

### 2. MARGINS; PREMIUMS;

Customer agrees at all times to maintain adequate margins in the account so as continually to meet the original and maintenance margin requirements established by optionsXpress in its sole discretion from time to time. optionsXpress' margin requirements may exceed the margin requirements set by any exchange or other regulatory authority and need not be uniform as among customers or commodities. Customer agrees to pay to optionsXpress the amount of the premium for every option purchased for the account. Customer agrees to deposit margins and pay premiums immediately upon optionsXpress' request. Payments shall be made in immediately available U. S . dollars to optionsXpress at the address shown at Section 8 herein or as optionsXpress shall notify Customer. optionsXpress shall have the right to retain any interest with respect to any cash margins deposited in the account.

### 3. DELIVERY; OPTION EXERCISE;

- Customer acknowledges that making or taking delivery on a commodity interest contract may involve a much higher degree of risk than liquidating a position by offset and that optionsXpress has no control over and makes no warranty with respect to grade, quality of tolerances of commodities to and for the account of Customer delivered or to be delivered.
- Customer agrees that it will take whatever actions are necessary to prevent making or taking physical delivery of any commodity interest contracts through optionsXpress and acknowledges and agrees that optionsXpress may take such actions it deems necessary, in its sole discretion, to prevent the physical delivery of any futures contracts through optionsXpress, including, without limitation, offsetting open futures positions or rolling forward such open

position to a deferred contract month. Notwithstanding the foregoing, in the event that optionsXpress, in its sole discretion, agrees to make or take physical delivery under any commodity interest contract on Customer's behalf, Customer shall, upon optionsXpress' request, provide optionsXpress with timely and satisfactory assurances that Customer can fulfill Customer's obligation to make or take delivery under any such contract. Customer shall furnish optionsXpress with property deliverable by it under any such contract in accordance with optionsXpress' instructions and shall deposit with optionsXpress the full dollar value of commodities or securities to be delivered immediately upon demand therefore.

- optionsXpress shall not have any obligation to exercise any long option contract unless Customer has furnished optionsXpress with exercise instructions and sufficient initial margin with respect to each underlying futures contract not less than two (2) business days prior to the last day of trading in such option.

#### **4. FOREIGN CURRENCY;**

If optionsXpress, Inc. enters into any commodity interest transaction for an account which is effected in a foreign currency:

- Any profit or loss caused by changes in the rate of exchange for such currency shall be for Customer's account and risk; and
- unless another currency is designated in the confirmation for such transaction, all margin for such transaction, any profit or loss on the liquidation of such transaction and any other payment between the Customer and optionsXpress under this Agreement shall be in United States dollars at a rate of exchange determined by optionsXpress in its sole discretion on the basis of then prevailing market rates of exchange for such foreign currency.
- You agree that optionsXpress, Inc. or its clearing firm may convert foreign currency to and from US dollars at prevailing exchange rates in our sole discretion without prior notice to you. You agree that actual conversions of foreign currencies to US dollars and US dollars to foreign currencies may occur at rates which may differ from the rates displayed in your online account. You further agree that such rates are subject to daily fluctuation.

#### **5. POSITION LIMITS;**

Customer acknowledges and agrees that optionsXpress has the right at its sole discretion to limit the number of open positions (net or gross) which Customer may execute, clear and/or carry with or acquire through it. Customer agrees

- not to make any trade which would have the effect of exceeding the limitations thus imposed on it and
- that optionsXpress may require Customer to reduce open positions carried with optionsXpress or may refuse to accept any order from Customer which establishes a new position.

optionsXpress may require such limitation, reduction or refusal whether or not such limitation, reduction or refusal is required by applicable regulations or exchange rules (as defined in Section 22). Customer shall comply with all position limits established by any regulatory or self-regulatory authority or any exchange. In addition, Customer agrees to notify optionsXpress promptly if Customer is required to file position reports with any regulatory or self-regulatory authority or with any exchange.

#### **6. optionsXpress DUTIES; LIABILITY;**

Customer acknowledges and agrees:

- That the commissions which optionsXpress receives are consideration solely for the execution, clearance and reporting of Customer's trades and the carrying of positions resulting from those trades until they are liquidated. optionsXpress assumes no other duty or responsibility, fiduciary or otherwise, to Customer, except with respect to the safekeeping of Customer's funds, securities or other property deposited with optionsXpress;

- That the agency relationship between Customer and optionsXpress extends only to the foregoing and that, as to margins, value of commodities bought and sold, and all other sums due, or which may become due, to optionsXpress from Customer, the relationship of Customer to optionsXpress is that of debtor and creditor;
- To waive any claims, rights or causes of action which Customer has or may have against optionsXpress and its partners, directors, officers, employees and agents arising in whole or in part, directly or indirectly, out of any act or omission of optionsXpress, its agents or any person, whether or not legally deemed an agent of optionsXpress, who refers or introduces Customer to optionsXpress or places orders with optionsXpress for Customer;
- To waive any claims or rights it may have against optionsXpress and its partners, directors, officers, employees or agents for any punitive damages and to limit any claims or rights arising out of this Agreement or the account to direct consequential damages;
- That if Customer has authorized any third party or parties to place orders or effect transactions in the account, such party has been selected by Customer based on its own evaluation and assessment of such party and that such party is solely the agent of Customer: any designation or change of designation by Customer or persons authorized to trade for the account or otherwise to give instructions to optionsXpress with respect to the account, shall be effective only when given by Customer in writing and acknowledged by optionsXpress in writing;
- That any trading recommendations or market or other information furnished to Customer by optionsXpress are incidental to the conduct of optionsXpress' business as a futures commission merchant and do not constitute an offer to sell (or buy) or the solicitation of an offer to buy (or sell) any commodity interest; any such recommendation and/or information, although based upon sources deemed by optionsXpress to be reliable, may be incomplete or unverified and may be changed by optionsXpress without notice to Customer, and accordingly, optionsXpress makes no representation, warranty or guaranty as to the accuracy or completeness of any trading recommendation or other information furnished to Customer,
- That optionsXpress, and its partners, directors, officers, employees and agents may have a position in and may buy or sell commodity interests which are the subject of information or recommendations furnished to Customer, and that the position or transactions of optionsXpress or any such persons may or may not be consistent with recommendations furnished to Customer by optionsXpress: and
- That Customer will not commence any legal proceeding against optionsXpress or its partners, directors, officers, employees and agents arising directly or indirectly out of this Agreement until all debit balances in the account have been paid to optionsXpress; provided that such payment shall be without prejudice to Customer's right to claim that such debit balance is not correct.

## **7. EXTRAORDINARY EVENTS;**

Customer shall have no claim against optionsXpress or its agents for any loss, damage, liability, cost, charge, expense, penalty, fine or tax caused directly or indirectly by

- Governmental, court, exchange, regulatory or self-regulatory restrictions or rulings,
- suspension or termination of trading,
- war, civil or labor disturbance,
- delay or inaccuracy in the transmission or reporting of orders due to a breakdown or failure of transmission or communication facilities,
- the failure or delay for any reason of any broker selected by optionsXpress on behalf of Customer to fulfill its obligations or to pay in full amounts owed to optionsXpress in respect to contracts,
- failure or delay by any exchange or related clearing organization to enforce its rules or to pay to optionsXpress any margin due in respect of Customer's account, or
- any other cause or causes beyond optionsXpress' or its agents control.

## **8. COMMUNICATIONS;**

Any notice, instruction or other communication required or permitted to be given hereunder (other than orders to buy or sell a commodity interest which may be oral) shall be in writing, unless expressly provided otherwise in this Agreement, and addressed to the respective parties as follows:

- If to the Customer: As set forth in the Customer's profile as indicated on optionsXpress's website.
- If to optionsXpress:

Attention: Compliance Department  
optionsXpress, Inc.  
311 W. Monroe Street, Suite 1000  
Chicago, Illinois 60606

Telephone: **(888) 280-8020**

or to such other address as optionsXpress herewith shall specify in writing.

## **9. CONFIRMATION CONCLUSIVE;**

Confirmation of trades, statements of account, and any other notices sent to Customer shall be conclusive and binding on Customer unless Customer notifies optionsXpress to the contrary (i) in the case of an oral report, at the time received by Customer or his agent or (ii) in the case of a written report, prior to opening of trading on the business day next following receipt of the report. In addition, if within three business days after Customer has placed an order to buy or sell a commodity interest, and has been informed or believes that such order has been or should have been executed, but has not received a written confirmation thereof, Customer shall immediately communicate by telephone such fact to optionsXpress and further shall immediately send written notification of such fact, and the details thereof, to optionsXpress by hand delivery, telex or telegram. Failing in this regard, Customer shall conclusively be deemed estopped to object and to have waived any such objection to the failure to execute or cause to be executed any transaction for any account of Customer. Nothing in this Section 9 withstanding, Customer and optionsXpress shall not be bound by any transaction or price reported in error.

## **10. SECURITY INTEREST;**

Customer hereby grants to optionsXpress a continuing lien, as security for the performance of its obligations to optionsXpress, upon all monies, securities, financial instruments, futures contracts, precious metals and other property, including, but not limited to, any credit balance (collectively, "property"), now or at any future time in Customer's account with or held for Customer by optionsXpress, by any optionsXpress affiliate or subsidiary or by any clearing futures commission merchant or organization through which trades of such Customer are executed by or on behalf of optionsXpress and any income and proceeds of any property. Any property may at any time or from time to time without notice or compliance with any condition precedent (which is hereby expressly waived) be set off, appropriated and applied by optionsXpress against any and all such obligations, including, but not limited to, any deficit balance in Customer's account, in such manner as optionsXpress in its sole discretion may determine.

## **11. BACKGROUND CHECK;**

Customer authorizes optionsXpress and any service provider, which may include its affiliates, to use, verify and confirm any of the information that Customer provides, including obtaining reports concerning Customer's (and Customer's spouse's if Customer lives in a community property state) background, credit standing and business conduct and to share all such information with their successors, assigns, affiliates, agents and service providers to determine Customer's eligibility for an account or any feature or otherwise. Upon Customer's written request, optionsXpress will inform Customer whether optionsXpress has obtained credit reports, and, if so, optionsXpress will provide Customer with the name and address of the reporting agency that furnished the reports. Customer agrees that, without notifying Customer, optionsXpress may request a new credit report in connection with any review,

extension, or renewal of the account. Customer further agrees that optionsXpress may submit information reflecting on Customer's credit record to a credit reporting agency. Customer authorizes optionsXpress to share with its affiliates credit bureau information, information contained in Customer's application to open an account, information obtained from third parties and similar information, or to use such information consistent with optionsXpress' privacy policy.

## **12. LIQUIDATION OF CUSTOMER POSITIONS - If;**

- optionsXpress is directed or required by a regulatory or self-regulatory body or exchange on or subject to the rules of which commodity interests are traded for Customer;
- optionsXpress, in its sole discretion, considers it necessary for its protection because of margin requirements or otherwise;
- Customer repudiates, violates, breaches or fails to perform on a timely basis any term, covenant or condition on its part to be performed under this Agreement;
- Customer dies or becomes incompetent or mentally disabled;
- 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, liquidator, trustee, conservator, custodian or similar officer is filed by or against Customer or any affiliate of Customer, or any affiliate of Customer makes or proposes to make any arrangement or composition for the benefit of its creditors, or Customer (or any such affiliate) or any or all of its property is subject to any agreement, order, judgment or decree providing for Customer's dissolution, winding-up, liquidation, merger, consolidation, reorganization or for the appointment of a receiver, liquidator, trustee, conservator, custodian or similar officer of Customer, such affiliate or such property; or
- if an attachment or similar order is levied against an account or any other account maintained by Customer or any affiliate of Customer with optionsXpress;

then optionsXpress shall have the right to (i) satisfy any obligations (either directly or by way of guaranty or suretyship) due optionsXpress out of any Customer's property in optionsXpress' custody or control, (ii) liquidate any or all of Customer's commodity interest positions, (iii) cancel any or all of Customer's outstanding orders, (iv) treat any or all of Customer's obligations due optionsXpress as immediately due and payable, (v) sell any or all of Customer's property in optionsXpress' custody or control in such manner as optionsXpress determines to be commercially reasonable, and/or (vi) terminate any or all of optionsXpress' obligations for future performance to Customer, in each and every such case without any notice of default, demand for margin or additional margin, notice to Customer of sale or purchase, or other notice or advertisement and whether or not the ownership interest shall be solely Customer's or held jointly with others. It is understood that, in all cases, a prior demand, call or notice of the time or place of sale or purchase shall not be considered a waiver of optionsXpress' right to sell or buy without demand or notice as herein provided, that Customer shall at all times be liable for the payment of any debit balance owing in each account upon demand whether occurring upon a liquidation as provided under this Section 12 or otherwise under this Agreement, and that in all cases Customer shall be liable for any deficiency remaining in each account in the event of liquidation thereof in whole or in part together with interest thereon and all costs relating to liquidation and collection (including reasonable attorneys' fees). Customer agrees that optionsXpress, in its sole discretion, may delegate any or all of its rights to take action under this Section 12.

## **13. CUSTOMER REPRESENTATIONS, WARRANTIES AND AGREEMENTS;**

Customer represents and warrants to and agrees with optionsXpress that:

- Customer has full power and authority to enter into this Agreement and to engage in the transactions and perform its obligations hereunder and contemplated hereby and (i) if a corporation or a limited liability company, is duly organized under the laws of the jurisdiction set forth in Customer's application or (ii) if a partnership, is duly organized

pursuant to a written partnership agreement and the general partner executing this Agreement is duly authorized to do so under the partnership agreement, and (iii) the execution, delivery and performance of this Agreement by Customer require no action by or in respect of or filing with any governmental body, agency or official;

- neither Customer nor any partner, director, officer, member, manager or employee of Customer nor any affiliate or member of Customer's household is a partner, officer, director, member, manager or employee of a futures commission merchant, exchange or self-regulatory authority or an employee or commissioner of the Commodity Futures Trading Commission ("CFTC"), except as previously disclosed in writing to optionsXpress;
- except as disclosed in writing to optionsXpress, Customer is acting solely as principal and no one other than Customer has any interest in any account of Customer;
- all information provided by or on behalf of Customer to optionsXpress in connection with the opening of the account is true, complete and correct and optionsXpress may cause an investigation to be made concerning Customer's credit standing and reputation;
- Customer has determined that trading in commodity interests is appropriate for Customer, is prudent in all respects and does not and will not violate Customer's charter or by-laws (or other comparable governing document) or any law, rule, regulation, judgment, decree, order or agreement to which Customer or its property is subject or bound;
- Customer recognizes that representations or guarantees of profit or freedom from loss are impossible in trading commodity interests and acknowledges that it has received no such guarantees from or on behalf of optionsXpress and has not entered into this Agreement and shall place no order hereunder in consideration of or in reliance upon any such guarantee or representation;
- optionsXpress, for and on behalf of Customer, is authorized and directed in its sole discretion to select floor brokers and, on markets where optionsXpress is not a clearing member, clearing brokers which will act as Customer's broker and agent in the execution, clearing and/or carrying of transactions for Customer, which brokers may be affiliates of optionsXpress or may be non-affiliated agents, and optionsXpress shall be responsible only for using good faith and reasonable care in the initial selection of such brokers;
- Unless optionsXpress is a party to a written give-up agreement, optionsXpress in its sole discretion, may, but shall not be obligated to, accept from other brokers contracts executed by such brokers on an exchange or market for Customer and proposed to be "given-up" to optionsXpress for clearance and/or carrying in the account;
- if Customer is subject to the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the certified resolutions set forth following this Agreement have been caused to be reflected in the minutes of Customer's board of directors (or other comparable governing body) and this Agreement is and shall be, continuously from the date hereof, an official record of Customer;
- Customer consents to the electronic recording, at optionsXpress' sole discretion, of any or all telephone conversations with optionsXpress (without automatic tone warning device), the use of same as evidence by either party in any action or proceeding arising out of the Agreement and in optionsXpress erasure, at its sole discretion, of any recording as part of its regular procedure for handling of recordings;
- Customer shall furnish such financial statements and other information to optionsXpress as optionsXpress reasonably requests from time to time, including, if applicable, written authorization to maintain an account at optionsXpress if Customer is an Associated Person of an FCM or otherwise affiliated with a Member firm;
- Customer shall furnish a certificate of all persons who are authorized to furnish instructions to optionsXpress hereunder and optionsXpress shall be fully protected in relying upon any instructions whether oral or written received from any such person without any duty to make inquiry as to the genuineness of the instructions and, further, optionsXpress shall also be entitled to rely on instructions received from (i) any person identifying himself or holding himself out as or stating that he is such a person, regardless of whether said instructions are actually given by such a person and (ii) optionsXpress' determination of the contents of any oral instructions shall be conclusive and binding on Customer;
- optionsXpress shall have no responsibility for compliance by Customer with any law or regulation governing Customer's conduct;
- optionsXpress, for and on behalf of Customer, is authorized and empowered to place orders for commodity interest transactions through one or more electronic or automated trading systems (each a "system") maintained or operated by or under the auspices of an exchange and that optionsXpress shall not be liable or obligated to Customer for any loss, damage, liability, cost or expense (including but not limited loss or profits, loss of use or incidental or

consequential damages) incurred or sustained by Customer and arising in whole or in part, directly or indirectly, from any fault delay, omission, inaccuracy or termination of a system or optionsXpress' inability to enter, cancel or modify an order on behalf of Customer on or through a system;

- Customer (and each person acting on Customer's behalf) agrees that any assets pledged as collateral by Customer in connection with any transaction entered into under this Account Agreement will not constitute "plan assets" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or Section 4975 of the Internal Revenue Code of 1986 (the "Code").
- Customer (i) is aware that CFTC Regulation § 1.35(a-2) (2) requires Customer to create, retain and produce upon the request of the CFTC, the United States Department of Justice and the applicable exchange documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions.

Customer shall promptly notify optionsXpress in writing if any of the warranties or representations contained in this Section 13 or if any information contained in the accompanying New Account Application or otherwise provided by or on behalf of Customer to optionsXpress becomes inaccurate or in any way cease to be true, complete and correct.

#### **14. CONTRACT TERMS AND CONDITIONS;**

The Customer acknowledges responsibility for acquainting itself with the material terms and conditions of any commodity interest contracts which may be traded in the account. The Customer should consult with the relevant exchange or optionsXpress concerning these terms and conditions, particularly the exercise, expiration and related contract provisions which may be subject to exception or modification by the rules or procedures of the exchange or optionsXpress.

#### **15. INDEMNIFICATION OF optionsXpress;**

Customer hereby agrees to indemnify, defend and hold harmless optionsXpress and its partners, directors, officers, employees and agents from and against any loss, cost, claim, damage (including any consequential cost, loss or damage), liability or expense (including reasonable attorneys' fees) and any fine, sanction or penalty made or imposed by any regulatory or self-regulatory authority or any exchange as the direct or indirect result of:

- Customer's failure or refusal to comply with any provision of this Agreement or perform any obligation on its part to be performed pursuant to this Agreement;
- Customer's failure or refusal to deliver any security, commodity or other property previously sold, or subject to any call option sold, by optionsXpress for the account: or
- Any decline in value, for whatever reason, of any security or commodity of which optionsXpress takes delivery for the account.

#### **16. MODIFICATION OF AGREEMENT;**

This Agreement may only be altered, modified or amended by written agreement of the parties, except that if optionsXpress notifies Customer of any amendment to this Agreement, including but not limited to by posting any such amendment on optionsXpress' website, and if Customer continues to retain or thereafter places trades in accounts subject to this Agreement, Customer agrees that such action or inaction by Customer will constitute consent by Customer to such amendment. No employee or agent of optionsXpress has any authority to alter, modify, or amend in any respect any of the terms of this Agreement and no supplemental or special understanding shall be binding upon optionsXpress unless one of optionsXpress' duly authorized officers shall have agreed thereto in writing. The rights and remedies conferred upon each of optionsXpress shall be cumulative, and its forbearance to take any remedial action available to it under this Agreement shall not waive its right at any time or from time to time thereafter to take such action.

#### **17. SUCCESSORS AND ASSIGNS;**

This Agreement shall inure to the benefit of optionsXpress, its successors and assigns, and shall be binding upon Customer and Customer's executors, trustees, administrators, successors and assigns. This Agreement may be assigned by optionsXpress with or without notice, however, that this Agreement shall not be assignable by Customer without the written consent of optionsXpress, without which consent any purported assignment shall be void.

#### **18. SEVERABILITY;**

If any term or provision hereof or the application thereof to any persons or circumstances shall to any extent be contrary to any exchange, government or self-regulatory regulation or contrary to any federal, state or local law or otherwise be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is contrary, invalid or unenforceable, shall not be affected thereby.

#### **19. CAPTIONS;**

All captions used herein are for convenience only, are not a part of this Agreement, and are not to be used in construing or interpreting any aspect of this Agreement.

#### **20. TERMINATION;**

This Agreement shall continue in force until written notice of termination is given by Customer or optionsXpress. Termination shall not relieve either party of any liability or obligation incurred prior to such notice. Customer, upon giving or receiving notice of termination, promptly will take all action necessary to transfer all open positions in each account to another futures commission merchant. All applicable provisions contained herein shall survive termination of Customer's account and this Agreement, including, but not limited to the limitation of liability and Customer's indemnification obligations pursuant to Sections 6 and 15, respectively.

#### **21. ENTIRE AGREEMENT;**

This Agreement constitutes the entire agreement between Customer and optionsXpress with respect to the subject matter hereof and supersedes any prior agreements between the parties with respect to such subject matter.

#### **22. APPLICABLE RULES AND REGULATIONS;**

The account and each transaction therein shall be subject to the terms of this Agreement and to (a) all applicable laws, the regulations, rules and orders of all regulatory and self-regulatory organizations having jurisdiction (collectively "regulations"), and (b) the constitution, by-laws, rules, regulations, orders, resolutions, interpretations and customs and usage's (collectively 'rules') of the contract market, board of trade, other market and any associated clearing organization (each an 'exchange"), if any, on or subject to the rules of which such transaction is executed and/or cleared and optionsXpress, and their respective partners, directors, employees, officers or agents shall not be liable to Customer for any action taken in compliance with applicable regulations or exchange rules. The reference in the preceding sentence to applicable regulations and exchange rules is solely for the protection of optionsXpress and their failure to comply therewith shall not constitute a breach of this Agreement or relieve Customer of any obligation or responsibility under this Agreement.

#### **23. GOVERNING LAW; CONSENT TO JURISDICTION;**

In case of a dispute between Customer and optionsXpress arising out of or relating to the making or performance of this Agreement, any transaction pursuant to this Agreement, or otherwise in connection with all legal proceedings arising directly, indirectly or otherwise in connection with, out of, related to or from Customers account(s), transactions contemplated by this Agreement or breach thereof, or appeal from or motion on an arbitration award relating to Customers accounts (a) this Agreement and its enforcement shall be governed by the laws of the State of

Illinois, without regard to principles of conflicts of law, and (b) If Customer has not signed the Arbitration Agreement set forth below or if such Arbitration Agreement is otherwise invalid or unenforceable, Customer will bring any legal proceeding Customer may initiate against optionsXpress in, and Customer hereby consents in any legal proceeding by optionsXpress to the jurisdiction of, any local, state or federal court located within the State of Illinois and City of Chicago. Customer hereby waives any and all objections Customer may, at any time, have as to the propriety of the court in which any such legal proceedings may be commenced. Customer also agrees that any service of process mailed to Customer at any address specified to optionsXpress shall be deemed a proper service of process on Customer. In any event, Customer agrees that if any dispute or controversy between Customer and optionsXpress involves or includes futures contracts transactions which are directly or indirectly incidental to or related to any transactions in which are the subject of a dispute or controversy arising under this Agreement, then both such disputes or controversies shall be heard and determined in the same forum.

If customer signs the Futures Arbitration Agreement, then Customer agrees that any question relating to whether Customer or optionsXpress has commenced an arbitration proceeding in a timely manner, whether a dispute is subject to the Futures Arbitration Agreement or whether a party (other than Customer or optionsXpress) has consented to arbitration and all proceedings to compel arbitration and to confirm or set aside an arbitration award shall be determined by a court as specified in Section 23(b).

#### **24. AUTHORIZATION TO TRANSFER FUNDS.**

optionsXpress and its clearing agent(s), including but not limited to R. J. O'Brien & Associates ("Clearing Agent"), is hereby authorized, at any time, and from time to time, without prior notice to Customer, to transfer from/to the Customer's regulated commodity account(s) carried by optionsXpress to/from any other account the Customer maintains with (a) optionsXpress or (b) Clearing Agent (including without limitation Customer's securities account(s)), in each case such amount of excess funds which in optionsXpress' or Clearing Agent's judgment may be reasonably required to avoid margin calls or to reduce a debit balance in such accounts. It is understood that optionsXpress or Clearing Agent, as applicable, will, within a reasonable time thereafter, confirm in writing to the Customer any such transfer.

Each night funds from Customer's commodity account(s) will be swept to your securities account held with optionsXpress. Customer may be eligible to automatically sweep funds from Customer's optionsXpress securities account into money market funds managed by Reich & Tang Management LLC. Visit our [website](#) for further details. By electing an automatic sweep option for your excess funds in your securities account, Customer's account may not receive preferential treatment afforded funds held in a customer regulated commodity account, but may receive certain other protections in the event of a bankruptcy. Further details are available [here](#).

#### **25. AUTHORIZATION TO CROSS TRANSACTIONS.**

Customer authorizes optionsXpress, any subsidiary or affiliate of optionsXpress, and their partners, directors, officers, employees, agents, and any floor broker acting on Customer's behalf in any transaction for the account, without prior notice to Customer, to take the other side of Customer's transaction through any account of such person subject to its being executed at prevailing prices in accordance with the Commodity Exchange Act and the rules and regulations promulgated thereunder, and applicable exchange rules.

#### **26. NOTICE TO FOREIGN TRADERS.**

If Customer is not a United States citizen, Customer has read, understood and agreed to the following additional Notice to Foreign Traders: (a) Customer is not a United States citizen and will notify optionsXpress immediately should Customer obtain such status; (b) If Customer is not fluent in the English language, these Terms and Conditions, other disclosures, agreements and documents relating to Customer and optionsXpress have been accurately and independently translated for Customer into Customer's native language; (c) optionsXpress is Customer's Agent for purposes of accepting delivery and service of any communication issued by or on behalf of the Commodity Futures Trading Commission ("CFTC") to Customer as a foreign trader or broker with respect to any

futures or options contracts maintained in Customer's accounts carried by optionsXpress. Service or delivery of any communication issued by or on behalf of the CFTC to optionsXpress is valid and effective service or delivery to Customer unless Customer currently maintains an agency agreement with a person domiciled in the United States and provides optionsXpress with a copy of this agreement; (d) CFTC regulations require that both Customer and optionsXpress respond to special calls by the CFTC seeking information regarding Customer's domestic or foreign futures and options trading. Customer, as a foreign trader or broker, is required to provide the CFTC with the information specified in such a special call, and optionsXpress will be considered Customer's Agent, and may also be required to respond to special calls (unless Customer has designated an Agent by an agreement and provided optionsXpress with a copy). Customer may look to CFTC Regulation 21.03 for a more complete description of special calls; (e) Customer agrees that Customer has read, understands and agrees to be bound by these Terms and Conditions and this Notice to Foreign Traders and has decided, not as a result of solicitation by optionsXpress, to conduct business with optionsXpress.

## **27. JOINT ACCOUNTS.**

The following additional terms and conditions shall apply to a joint account: (a) each of the undersigned shall have authority on behalf of all of the undersigned and without notice to any other of the undersigned to purchase, sell (including short sales), or otherwise effect transactions in commodity interests on margin or otherwise in the account; to receive confirmations, reports, notices and any other communications; to receive and dispose of any securities and other property; to make and terminate agreements relating to these matters and to waive or modify provisions thereof; and to deal with optionsXpress as if such party is the sole party having any interest in the account; (b) optionsXpress is authorized, empowered and directed to follow the instructions of any of the undersigned concerning the account and pay money and deliver property in the account upon the instructions of any of the undersigned without inquiring into the purpose of any such payments or delivery and without being bound to see the application or disposition of any such money and or property delivered; (c) the liability of each of the undersigned to optionsXpress with respect to the account shall be joint and several; (d) in the event of the death of any of the undersigned, the survivors shall immediately give written notice to optionsXpress, the estate of any of the undersigned who had died and each survivor shall be jointly and severally liable to optionsXpress for any debt or loss in the account resulting from completing transactions initialed prior to optionsXpress' receipt of the written notice of such death, from liquidating the account or from adjusting the interests of the parties. Any taxes or other expenses chargeable against the account as a result of such death shall also be chargeable against the survivors; provided, however, that this provision shall not release the decedent's estate from any liability provided for in this Agreement. In addition, before or after receiving such written notice of a death, optionsXpress may take such actions, including but not limited to requesting documents and restricting transactions in the account as optionsXpress deems advisable to protect itself against any tax, liability or loss.

Ver.: optionsXpress\_FUT\_AA\_122008