

# CUNNINGHAM COMMODITIES, LLC

440 S. LASALLE STREET, SUITE 2930  
CHICAGO, ILLINOIS 60605-5035

## ACCOUNT

Office / Salescode / Account

IB APPROVAL \_\_\_\_\_

DATE \_\_\_\_\_

CC APPROVAL \_\_\_\_\_

DATE \_\_\_\_\_

## CORPORATE ACCOUNT AGREEMENT

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### ACCOUNT AGREEMENT

This agreement must be completed and executed before commencement of trading in your account. Please read and review the contents of this agreement, complete the information sections and sign where applicable. **INFORMATION COLLECTED IN THIS APPLICATION WILL BE USED TO VERIFY YOUR IDENTITY, AS REQUIRED UNDER FEDERAL LAW.**

### FUNDING

#### WIRE

Wire instructions will be provided upon customer request.

#### CHECK

Payable to: Cunningham Commodities, LLC

Note: Check must be drawn from an account in the name of the corporation.

#### TRANSFER LETTER

Complete and sign the transfer letter. Your positions and funds from the other firm will be transferred to your Cunningham account.

### STATEMENT VERIFICATION

Review your statement for accuracy. Immediately report any discrepancies to your broker or contact Cunningham at 312-939-8950.

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*\*Signature pages*

\_\_\_\_\_ RISK DISCLOSURE (pages 2-3)\*

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\_\_\_\_\_ ACCOUNT AGREEMENT (pages 5-13)\*

\_\_\_\_\_ VOLUNTARY ARBITRATION AGREEMENT (page 14)\*

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\_\_\_\_\_ PERSONAL GUARANTEE (page 19)\*

\_\_\_\_\_ CORPORATE RESOLUTION (page 20)\*

\_\_\_\_\_ ATTACHED DOCUMENTS (page 21)

\_\_\_\_\_ PRIVACY POLICY (page 22)

Attach copy of corporate articles and minutes – See Page 21

Include current (unexpired) photo IDs for all officers & employees controlling trading

**RISK DISCLOSURE STATEMENT**

The risk of loss in trading commodity futures contracts can be substantial. You should, therefore, carefully consider whether such trading is suitable for you in light of your circumstances and financial resources. You should be aware of the following points:

(1) You may sustain a total loss of the funds that you deposit with your broker to establish or maintain a position in the commodity futures market, and you may incur losses beyond these amounts. If the market moves against your position, you may be called upon by your broker to deposit a substantial amount of additional margin funds, on short notice, in order to maintain your position. If you do not provide the required funds within the time required by your broker, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.

(2) The funds you deposit with a futures commission merchant for trading futures positions are not protected by insurance in the event of the bankruptcy or insolvency of the futures commission merchant, or in the event your funds are misappropriated.

(3) The funds you deposit with a futures commission merchant for trading futures positions are not protected by the Securities Investor Protection Corporation even if the futures commission merchant is registered with the Securities and Exchange Commission as a broker or dealer.

(4) The funds you deposit with a futures commission merchant are generally not guaranteed or insured by a derivatives clearing organization in the event of the bankruptcy or insolvency of the futures commission merchant, or if the futures commission merchant is otherwise unable to refund your funds. Certain derivatives clearing organizations, however, may have programs that provide limited insurance to customers. You should inquire of your futures commission merchant whether your funds will be insured by a derivatives clearing organization and you should understand the benefits and limitations of such insurance programs.

(5) The funds you deposit with a futures commission merchant are not held by the futures commission merchant in a separate account for your individual benefit. Futures commission merchants commingle the funds received from customers in one or more accounts and you may be exposed to losses incurred by other customers if the futures commission merchant does not have sufficient capital to cover such other customers' trading losses.

(6) The funds you deposit with a futures commission merchant may be invested by the futures commission merchant in certain types of financial instruments that have been approved by the Commission for the purpose of such investments. Permitted investments are listed in Commission Regulation 1.25 and include: U.S. government securities; municipal securities; money market mutual funds; and certain corporate notes and bonds. The futures commission merchant may retain the interest and other earnings realized from its investment of customer funds. You should be familiar with the types of financial instruments that a futures commission merchant may invest customer funds in.

(7) Futures commission merchants are permitted to deposit customer funds with affiliated entities, such as affiliated banks, securities brokers or dealers, or foreign brokers. You should inquire as to whether your futures commission merchant deposits funds with affiliates and assess whether such deposits by the futures commission merchant with its affiliates increases the risks to your funds.

(8) You should consult your futures commission merchant concerning the nature of the protections available to

safeguard funds or property deposited for your account.

(9) Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit ("limit move").

(10) All futures positions involve risk, and a "spread" position may not be less risky than an outright "long" or "short" position.

(11) The high degree of leverage (gearing) that is often obtainable in futures trading because of the small margin requirements can work against you as well as for you. Leverage (gearing) can lead to large losses as well as gains.

(12) In addition to the risks noted in the paragraphs enumerated above, you should be familiar with the futures commission merchant you select to entrust your funds for trading futures positions. The Commodity Futures Trading Commission requires each futures commission merchant to make publicly available on its Web site firm specific disclosures and financial information to assist you with your assessment and selection of a futures commission merchant. Information regarding this futures commission merchant may be obtained by visiting our Web site, [www.cunninghamllc.com](http://www.cunninghamllc.com).

ALL OF THE POINTS NOTED ABOVE APPLY TO ALL FUTURES TRADING WHETHER FOREIGN OR DOMESTIC. IN ADDITION, IF YOU ARE CONTEMPLATING TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS, YOU SHOULD BE AWARE OF THE FOLLOWING ADDITIONAL RISKS:

(13) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange, whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery, and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

(14) Finally, you should be aware that the price of any foreign futures or option contract and, therefore, the potential profit and loss resulting therefrom, may be affected by any fluctuation in the foreign exchange rate between the time the order is placed and the foreign futures contract is liquidated or the foreign option contract is liquidated or exercised.

THIS BRIEF STATEMENT CANNOT, OF COURSE, DISCLOSE ALL THE RISKS AND OTHER ASPECTS OF THE COMMODITY MARKETS.

I (We) hereby acknowledge that I (we) have received and understood this risk disclosure statement.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
AUTHORIZED SIGNATURE(S)/TITLE(S)

\_\_\_\_\_  
DATE

LEGAL ACCOUNT NAME \_\_\_\_\_

ACCOUNT OWNER \_\_\_\_\_

TAX # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ INCORPORATION DATE \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

STREET ADDRESS (NOT PO BOX) \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

PHONE (WORK) \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

PHONE (FAX) \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ EMAIL \_\_\_\_\_

NATURE OF BUSINESS \_\_\_\_\_

BROKER who solicited you \_\_\_\_\_

TYPE OF ACCOUNT \_\_\_\_\_ SELF-DIRECTED TRADING \_\_\_\_\_ DISCRETIONARY via POWER OF ATTORNEY \_\_\_\_\_ IRA with CUSTODIAN

TYPE OF ACCOUNT \_\_\_\_\_ SPECULATOR \_\_\_\_\_ HEDGER ( IF HEDGE, SIGN HEDGE LETTER – PAGE 16 )

ANNUAL INCOME \_\_\_\_\_ NET WORTH \_\_\_\_\_ LIQUID NET WORTH \_\_\_\_\_

BANKING INFORMATION \_\_\_\_\_

CITY \_\_\_\_\_ ACCOUNT# \_\_\_\_\_

INVESTMENT EXPERIENCE

FUTURES \_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_ YEARS \_\_\_\_\_ FIRM/ACCOUNTS
FUTURES OPTIONS \_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_ YEARS \_\_\_\_\_ FIRM/ACCOUNTS
COMMODITY FUNDS \_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_ YEARS \_\_\_\_\_ FIRM/ACCOUNTS
STOCKS / BONDS \_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_ YEARS \_\_\_\_\_ FIRM/ACCOUNTS

\_\_\_\_\_ YES \_\_\_\_\_ NO Do you have an existing Securities or Forex account?
Type \_\_\_\_\_ Brokerage Firm \_\_\_\_\_ Account \_\_\_\_\_

\_\_\_\_\_ YES \_\_\_\_\_ NO Do you have any unsatisfied debit balance with CC or with any other commodities/securities firm?

\_\_\_\_\_ YES \_\_\_\_\_ NO Does any other person have authority to trade this account? (IF YES, COMPLETE MANAGED LETTER)

\_\_\_\_\_ YES \_\_\_\_\_ NO Are you or a direct relative a "control person" or "affiliate" of a public company as defined in SEC Rule 144? This would include, but is not necessarily limited to, 10% shareholders, policy-making executives, and members of the Board of Directors.

\_\_\_\_\_ YES \_\_\_\_\_ NO Are you an employee or member of any futures or securities exchange, NFA, NASD; a member firm of either of those entities or an employee of Cunningham?

\_\_\_\_\_ YES \_\_\_\_\_ NO Does this account owner control or have a financial interest in any other account with this firm? If yes, list:

\_\_\_\_\_ YES \_\_\_\_\_ NO Have you ever been subject to bankruptcy proceedings, receivership or similar actions, voluntarily or involuntarily?
If yes, list reason and date cleared: \_\_\_\_\_

\_\_\_\_\_ YES \_\_\_\_\_ NO Have you ever been in a legal dispute or involved in arbitration proceedings, arising from a commodities or securities dispute?

\_\_\_\_\_ YES \_\_\_\_\_ NO Do you understand the Basics of Futures Trading, Risks of Loss and the Possibility of Incurring a Debit, and Cunningham's Margin Policy?

\_\_\_\_\_ YES \_\_\_\_\_ NO Is Futures Trading Suitable for you?

COMPANY NAME

AUTHORIZED SIGNATURE(s)/TITLE(s)

DATE

### 1. ACCOUNT STATUS

This Account Agreement ("Agreement") sets forth the terms and conditions upon which Cunningham LLC ("Cunningham") will accept and maintain for the undersigned Customer one or more accounts and act as broker or dealer for Customer in the execution and clearance of orders for transactions (whether domestic or foreign) involving the purchase and sale of futures contracts; options on futures contracts; commodities and forward contracts, security futures contracts ("SSF"); option, spot and forward foreign exchange transactions; exchange for physicals ("EFPs"); and any other cash transaction or derivative, or any similar instruments which may be purchased, sold or cleared by or through an FCM (individually, a "Contract" and collectively, "Contracts"). Customer hereby represents that all responses made in connection with the Account Application and this Agreement are complete and correct, and that Cunningham will be informed of any material change in such data, including financial information.

If this account has been introduced to us, all references to us in this Agreement shall include your broker, and your broker shall enjoy all benefits and rights hereunder. Customer agrees and acknowledges that broker and Cunningham may share information with each other regarding or relating to Customer and/or Customer's account(s). Customer warrants to Cunningham that if Customer is an individual or if this is a joint account, Customer(s) is of legal age and of sound mind. Unless otherwise indicated in the Application, no one except the Customer(s) identified in the Account Application has an interest in the account(s). Customer agrees to permit verification of relevant information by Cunningham through third parties (including credit reporting entities). In any event, this Agreement and the account(s) permitted hereunder become effective only upon acceptance by an authorized representative of Cunningham at its principal office in Chicago, Illinois.

### 2. ACCOUNT RISKS

- A.) TRADING IN CONTRACTS IS HIGHLY SPECULATIVE AND IN NO SENSE MAY BE CONSIDERED A CONSERVATIVE INVESTMENT;
- B.) BECAUSE OF THE LOW MARGIN DEPOSITS NORMALLY UTILIZED AND THE VOLATILE PRICE MOVEMENTS WHICH CAN OCCUR IN THE MARKETS FOR CONTRACTS, THE POSSIBILITY OF RAPID AND SUBSTANTIAL LOSSES IS CONTINUALLY PRESENT;
- C.) TRADING IN CONTRACTS IS APPROPRIATE ONLY FOR THOSE PERSONS FINANCIALLY ABLE TO WITHSTAND SUBSTANTIAL LOSSES, SOMETIMES GREATLY EXCEEDING THE VALUE OF THEIR MARGIN DEPOSITS; AND
- D.) NO ONE (INCLUDING FUTURES COMMISSION MERCHANTS, ASSOCIATED PERSONS, INTRODUCING BROKERS, FUND MANAGERS, COMMODITY TRADING ADVISORS, OR POOL OPERATORS) CAN GUARANTEE PROFITS OR THE ABSENCE OF LOSSES. CUSTOMER AGREES TO PROMPTLY NOTIFY THE CUNNINGHAM COMPLIANCE DEPARTMENT IF ANY SUCH GUARANTEE IS SUGGESTED.

### 3. MARGINS

All checks and funds from Customer, to be credited to Customer's account(s), must be payable only to "Cunningham". Customer agrees at all times to maintain such margin in his account(s) as Cunningham may from time to time (at its sole discretion) require, and will meet all margin calls in a reasonable amount of time. Customer agrees that, if requested to do so, Customer will promptly wire transfer such funds. Market conditions permitting, Cunningham agrees to make reasonable efforts to notify Customer of margin calls and/or deficiencies and to allow a reasonable period for Customer to provide funds.

**FOR PURPOSES OF THIS AGREEMENT, A REASONABLE AMOUNT OF TIME SHALL BE DEEMED TO BE ONE (1) HOUR, OR LESS THAN ONE HOUR IF, IN CUNNINGHAM'S BUSINESS JUDGMENT, MARKET CONDITIONS WARRANT.**

Customer further agrees that, notwithstanding anything in this Agreement to the contrary, in the event that the account(s) is under margined, has zero equity or is equity deficit at any time, or in the event that Cunningham is unable to contact Customer due to Customer's unavailability or due to a breakdown in electronic communications, Cunningham shall have the right to liquidate all or any part of Customer's positions through any means available, without prior notice to the Customer.

Cunningham may require margin in excess of that required by applicable law, regulation, exchange or clearinghouse minimums. Customer acknowledges that Cunningham has no obligation to establish uniform margin requirements among products or customers that margins required by Cunningham may exceed the minimum margin requirements of the applicable exchange or clearinghouse, and that margin requirements may be increased or decreased from time to time in Cunningham's discretion, without advance notice to Customer. All deposits shall be deemed made only when cleared funds are actually received by Cunningham. If a check is not honored or paid by a bank upon presentment, Cunningham will immediately debit Customer's account for the amount of the returned check as well as any fees incurred.

Any failure by Cunningham to call for margin at any time shall not constitute a waiver of Cunningham's right to do so any time thereafter, nor shall such failure create any liability to the Customer. Cunningham shall not be liable to Customer for the loss or loss of use of any margin deposits option premiums, or other property, which is caused, directly or indirectly, by the failure or delay by any bank, trust company, exchange, clearing organization, other clearing broker or entity that is holding funds, securities, or other property to pay or deliver the same to Cunningham. Cunningham may, for any reason, require Customer to transfer its account(s) to another firm. If Customer does not transfer its positions promptly upon demand by Cunningham, Cunningham may liquidate the positions and Customer agrees to indemnify and hold Cunningham harmless from any and all losses resulting from such liquidation.

Customer acknowledges that Cunningham is hereby authorized, for Customer's account and benefit, from time to time and without notice to Customer, either separately or with others, to lend, pledge, re-pledge, hypothecate or re-hypothecate, sell or purchase, either to itself or to others, any and all property (including, but not limited to, securities, commodities warehouse receipts or other negotiable instruments) held by Customer in any of its accounts and Cunningham shall not at any time be required to deliver to Customer such identical property, but may fulfill its obligation by delivery of property of the same kind and amount.

#### 4. LIQUIDATION OF ACCOUNTS

In the event of: (a) the death or judicial declaration of incompetency of Customer; (b) the filing of a petition in bankruptcy, or a petition for the appointment of a receiver; (c) the filing of an attachment against any of the Customer's account carried by Cunningham; (d) insufficient margin as determined by Cunningham in its sole discretion, or Cunningham's determination that any collateral deposited to protect one or more accounts of customer is inadequate, regardless of current market quotations, to secure the account; or (e) any other circumstances or developments that Cunningham deems to require action necessary for its protection, Cunningham is hereby authorized, according to its judgment and in its sole discretion, to take one or more of any portion of the following actions: (1) satisfy any obligation Customer may have to Cunningham, either directly or by way of guaranty or surety ship, out of any of Customer's funds or property in the custody or control of Cunningham, (2) sell any or all futures contracts, commodities, or securities held or carried for Customer or purchase any or all futures contracts, commodities, or securities held or carried as short position for Customer; (3) cancel any or all outstanding orders, Contracts or any other commitments made on behalf of Customer.

Any of the above actions may be taken without demand for margin or additional margin, without prior notice of sale or purchase or other notice or advertisement to Customer, his personal representatives, heirs, executors, administrators, legatees, or assigns, and regardless of whether ownership interest shall be solely Customer's or held jointly with others. In liquidating Customer's long or short position, Cunningham, in its sole discretion, may sell or purchase in the same contract month or initiate new long or short positions in order to establish a spread or straddle which in Cunningham's judgment may be necessary or advisable to protect existing positions in Customer's account, including by means of an EFP, EFS, EFO, or EFR or similar transaction.

#### 5. CUSTOMER DEFAULT

In the event that: (i) Customer defaults on any obligations to Cunningham hereunder or otherwise in respect of any transaction or agreement; (ii) Customer fails to deposit or maintain required margin, fails to pay required premiums or fails to make any other payments required hereunder or otherwise in respect of any Contract; (iii) any representation made by Customer 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 Customer, or Customer makes or proposes to make any arrangement or composition for the benefit of its creditors, or Customer or any of its property is subject to any agreement, order or judgment providing for Customer's dissolution, liquidation or reorganization, or for the appointment of a receiver, trustee or similar officer of Customer or such property; (v) any warrant or order of a attachment is issued against any Account or a judgment is levied against any Account; or (vi) Cunningham reasonably considers it necessary for its protection; then, Cunningham shall have the right, without limitation, to (A) close out any or all of Customer's open Contracts; (B) cancel any or all of Customer's outstanding orders; (C) treat any or all of Customer's obligations due Cunningham as immediately due and payable; (D) set off any obligations of Cunningham to Customer against any obligations of Customer to Collateral or the proceeds of the sale of any Collateral to satisfy Cunningham; (E) sell any Collateral and/or set off and apply any obligations of Customer to Cunningham; (F) borrow or buy any options, securities, Contracts or other property for any Account; and/or (G) terminate any or all of Cunningham's obligations for future performance to Customer. So long as Cunningham's rights or position would not be jeopardized thereby, Cunningham shall make a good faith effort to notify Customer of its intention to take any of the actions specified in (A) through (G) above before taking any such action, provided that Cunningham shall not be deemed to have breached any obligation to Customer if no such notice is given. Any sale or purchase hereunder may be made in any manner determined by Cunningham to be commercially reasonable. It is understood that, in all cases, a prior demand or notice shall not be considered a waiver of Cunningham's right to take any action provided for herein and that Customer shall be liable for the payment of any deficiency remaining in each Account after any such action is taken, together with interest thereon and all costs relating to liquidation and collection (including reasonable attorneys' fees).

#### 6. SECURITY

As security for the payment or performance of all obligations to Cunningham or any of its affiliates now or hereafter existing (collectively, the "Cunningham Entities;" singularly, "Cunningham Entity") presently outstanding or to be incurred under this or any other agreement or otherwise, Customer grants the Cunningham Entities a security interest in and right of setoff against any and all property belonging to Customer or in which Customer may have an interest, and the proceeds thereof, held by any Cunningham Entity or carried in any account of Customer with any Cunningham Entity, or which are, or may become, due to Customer or to any of the Cunningham Entities for any of Customer's accounts (including amounts from any exchange or clearing broker in respect of any Contracts) and all rights Customer may have against any of the Cunningham Entities (collectively, the "Collateral"). The Collateral shall be subject to such security interest and right of setoff to discharge all obligations of Customer to any of the Cunningham Entities, wherever or however arising and without regard to whether or not any Cunningham Entity has made loans with respect to such Collateral.

The Cunningham Entities are authorized to sell and/or purchase any and all property in any account or to liquidate open Contracts or redeem money market or cash deposit investments in any account of Customer without notice in order to satisfy such obligations. In enforcing its security interest, the Cunningham Entities shall have the discretion to determine the amount, order and manner of property to be sold and shall have all the rights and remedies available to a secured party under applicable law. Without the consent of Cunningham, Customer will not cause or allow any of the collateral held in any Customer account, whether now owned or hereafter acquired, to be or become subject to liens, security interests, mortgages or encumbrances of any nature other than the security interest in favor of the Cunningham Entities. Customer acknowledges that Cunningham and each of its affiliates act as agents for each other in respect of the Collateral subject to the security interest, lien and right of setoff described above.

## 7. DEBIT BALANCES, COMMISSIONS, FEES AND OTHER COSTS

Customer agrees to pay (i) the amount of any trading loss, debit balance or deficiency in any of Customer's accounts; (ii) all commissions, fees and other costs incurred in connection with contracts executed, carried and/or cleared by Cunningham, including but not limited to, introducing broker and floor brokerage, clearing, exchange and NFA fees and (iii) all regulatory, exchange and other self-regulatory fees, fines, penalties and charges, and any taxes, incurred or imposed with respect to Contracts or other transactions in or for Customer's accounts and any other service-related fees charged to your account, including, but not limited to, wire transfer fees, statement fees and transaction fees. In the event that Customer's account is transferred to another broker, transfer commissions and/or service fees may be charged.

Any interest accrued in any account on excess cash balances shall be retained by Cunningham. Cunningham shall be under no obligation to pay or account to Customer for any interest income or benefits that may be derived from or use of client monies, reserves, deposits, cash equivalents or any other property. If Customer does not promptly pay a debit in Customer's account (s) and Cunningham deems it necessary to take collection action, Customer will hold Cunningham harmless for all losses and expenses and will reimburse Cunningham for the debit and all costs incurred, including reasonable attorneys' fees, in connection with such collection actions. Customer agrees to pay interest on debits and deficiencies at the greater of 2% per month or at an annual rate of 2% over the prime rate at the Lakeside Bank of Chicago.

Cunningham is authorized to transfer among your regulated account and any of your other account(s), including foreign exchange account(s) and non-regulated accounts(s) and vice versa, such excess funds as may be required for any reason Cunningham deems appropriate in Cunningham's sole and absolute discretion.

## 8. FOREIGN EXCHANGE RISK

If Customer directs Cunningham to enter into any transaction which is effected in a foreign currency or if funds provided by Customer involve the use of a foreign currency, any profit or loss arising as a result of a fluctuation in the exchange rate affecting such currency will be entirely for Customer's account and risk. All initial and subsequent deposits for margin purposes shall be made in U.S. dollars, unless otherwise requested in writing by Customer, and written approval from Cunningham is obtained. Cunningham is authorized to convert funds in Customer's account (s) into and from the relevant foreign currency at the rate of exchange plus appropriate fees, obtained from Cunningham or Cunningham's banker.

## 9. EXCHANGE AND FEDERAL RULES

All transactions handled by Cunningham on Customer's behalf shall be subject to the constitution, regulations, customs and interpretations of each exchange or market (and its clearing house, if any), on which the trades are executed, and to all applicable statutes and governmental regulations. Cunningham shall not be liable to Customer as a result of any action taken by Cunningham to comply therewith. Cunningham's violation of any exchange or other self-regulatory organization's regulations shall not provide Customer with either a defense to a claim by Cunningham or the basis of a claim against Cunningham. Cunningham has no obligation to ensure that Customer abides by the rules and regulations pertaining to it.

## 10. POSITIONS AND DELIVERIES

Customer acknowledges Customer's reporting obligations (regarding certain sized positions) under CFTC Regulations, including the obligation to complete Form 40 upon request by the CFTC. Customer acknowledges that the making or accepting of delivery pursuant to a futures contract may involve a much higher degree of risk than liquidating a position by offset. Cunningham has no control over and makes no warranty with respect to grade, quality, or tolerances of any commodity delivered in fulfillment of a contract. Customer understands that, unless the contract specifications state to the contrary, every futures contract contemplates delivery and Customer shall promptly advise Cunningham if Customer intends to make or take delivery. When Customer intends to take delivery, Customer shall deposit with Cunningham the full value of the commodity at least one (1) business day prior to the first notice day and, in the case of short positions, at least four (4) business days prior to last trading day. Alternatively, sufficient funds to take delivery or the necessary documents must be in the possession of Cunningham within the same periods described above. If Cunningham does not receive the aforementioned instructions, funds or documents, Cunningham is authorized, at its discretion, to borrow or buy any property necessary to honor such obligation, and customer shall pay and indemnify Cunningham for any costs, losses, penalties or damages (including, but not limited to delivery and storage costs) which Cunningham may incur in fulfilling this responsibility.

Customer agrees that Cunningham, at its discretion, may establish trading limits for Customer's account and may limit the number of open positions (net or gross) which Customer may execute, clear, and/or carry with or acquire through it. Customer agrees (i) not to make any trade which would have the effect of exceeding such limits, (ii) that Cunningham may require Customer to reduce open positions carried with Cunningham, and (iii) that Cunningham may refuse to accept orders to establish new positions. Cunningham may impose and enforce such limits, reduction, or refusal whether or not they are required by applicable law, regulations, or rules. Customer shall comply with all position limits established by any regulatory or self-regulatory organization or any exchange. In addition, Customer agrees to notify Cunningham promptly if Customer is required to file position reports with any regulatory or self-regulatory organization or with any exchange and agrees to provide Cunningham with copies of any such report. Cunningham expressly disclaims any liability for Customer's losses related to Customer's exceeding applicable limits.

Customer understands that if Customer does not liquidate a position prior to the end of trading on the last day before expiration of a security futures contract ("SSF"), Customer will be obligated to either make or accept a cash payment for cash settled contracts, or make or accept delivery of the underlying securities in exchange for final payment of the settlement price for SSF contracts settled by physical delivery. Unless the SSF contract specifications state to the contrary, every SSF contract contemplates delivery. Before a Customer will be allowed to make or take delivery of an SSF, Customer must provide Cunningham with information relating to the broker deal through

which Customer will affect delivery. In this regard Customer will identify the name of the broker-dealer, the broker dealer's Depository Trust Number, the broker Dealer's Institutional ID number, and the Customer's account number on the books of the broker-dealer.

When a customer intends to take delivery, Customer shall provide notification and deposit with Cunningham the full value of the underlying securities subject to the SSF at least five (5) business days prior to the last trading day of the contract. When the customer holds a short position and intends to make delivery, Customer shall provide notification and tender the underlying securities subject to the SSF to Cunningham at least five (5) business days prior to the last trading day. If Cunningham does not receive the aforementioned instructions, funds or stocks, Cunningham is authorized, at its discretion, to borrow or buy any stock necessary to honor such obligation, or to liquidate or otherwise offset the position, and Customer shall pay and indemnify Cunningham for any costs, losses, penalties or damages (including, but not limited to settlement and transaction costs) which Cunningham might incur in fulfilling this responsibility.

Approval for hedge margins does not exempt an account from speculative positions limits. To be exempt from speculative position limits requires application and approval of a hedge exemption from the CFTC and the contract's respective exchange.

#### **11. OPTIONS**

CUSTOMER WILL NOT PURCHASE A PUT OR CALL UNLESS CUSTOMER IS ABLE TO SUSTAIN THE TOTAL LOSS OF THE PREMIUM AND RELATED TRANSACTION COSTS. CUSTOMER WILL NOT SELL (WRITE) A CALL OR PUT OPTION UNLESS CUSTOMER EITHER HAS AN OFFSETTING POSITION IN THE UNDERLYING FUTURES CONTRACT OR IS ABLE TO WITHSTAND SUBSTANTIAL FINANCIAL LOSSES.

Customer recognizes that Customer is fully responsible for taking action to exercise an option contract. Cunningham shall not be required to take any action with respect to an option contract, including any action to exercise a valuable option prior to its expiration date, except upon express instructions from Customer. In this connection, Customer understands that exchanges have established exercise cut-off times for the tender of exercise instructions, and that Customer's options may become worthless in the event that Customer does not provide instructions promptly. Customer also understands that some exchanges may automatically exercise long in the money options pursuant to the regulations of such exchange. Customer further understands that Cunningham cut-off times may differ from the times established by the exchanges, and hereby agrees to waive any and all claims for damage or loss which might arise out of an option not being exercised. Cunningham will not be responsible for information regarding option expiration dates and assignment notification. Additionally, Cunningham will not be responsible for any errors or omissions regarding such information. Customer understands that short option positions are subject to assignment at any time, including positions established on the same day that exercises are assigned. Notices of assignment are allocated on a random basis among all customers' short option positions which are subject to exercise.

#### **12. LIMITATION OF LIABILITY OF CUNNINGHAM**

Customer authorizes Cunningham to purchase and sell Contracts, in accordance with Customer's oral or written instructions. In executing transactions on an exchange, Cunningham will not be responsible to Customer for negligence or misconduct of an independent floor broker selected by Cunningham will not be responsible to Customer in the event of error, failure, negligence, or misconduct on the part of any non-guaranteed Introducing Broker, Commodity Trading Advisor, or other person acting on Customer's behalf and, without limiting the foregoing, Cunningham has no obligation to investigate the facts surrounding any transaction in Customer's Account (s) which is introduced by such non-guaranteed Introducing Broker, Commodity Trading Advisor, or other person.

Customer shall have no claim against Cunningham for any loss, damage, liability, cost, charge, expense, penalty, fine, or tax caused directly or indirectly by (a) governmental, court, exchange, regulatory or self-regulatory organization restrictions, regulations, rules, decisions, or orders, (b) suspension or termination of trading, (c) war or civil or labor disturbance, (d) delay or inaccuracy in the transmission or reporting of orders due to a breakdown or failure of computer services, transmission, communication or execution facilities, (e) the failure or delay by any exchange or clearinghouse to enforce its rules or to pay to Cunningham any margin due in respect of Customer's account, (f) the failure or delay by any bank, trust company, clearing organization, or other person which, pursuant to applicable exchange rules, is holding Customer funds, securities, or other property to pay or deliver the same to Cunningham, (g) any other cause or causes beyond Cunningham's control; (h) as a result of any action taken by Cunningham or its agents to comply with applicable law (including for this purpose the rules of exchanges, clearinghouses and other self-regulatory organizations); (i) as a result of any actions taken by Cunningham in connection with the exercise of the available remedies pursuant to Section 4; or (j) for acts or omissions of those neither employed nor supervised by Cunningham. Cunningham shall not be responsible for any loss, liability, damage or expense except to the extent that such loss, liability, damage or expense arises from its gross negligence or willful misconduct. In no event will Cunningham or any of its service providers be liable to Customer for consequential, incidental or special damages, even if advised of the possibility of such damages.



### 13. COMMUNICATIONS AND ORDERS

Since contracts may experience rapid movements in price, Customer's attention is required in the placement of orders and execution of the same by Cunningham. Unless a managed (discretionary) account has been arranged through the execution of a written trading authorization, each order should be communicated to Cunningham by the Customer or Customer's duly authorized broker. Instructions should include, but may not necessarily be limited to, the commodity involved, quantity, price, and delivery month. Any trade not specifically authorized by Customer must be immediately reported by Customer directly to Cunningham's Compliance Department. Customer will be financially responsible for all trades not so reported and for any losses arising by virtue of a course of dealing involving his grant of de facto control over the account to broker. Cunningham makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy or completeness of, any information or trading recommendations furnished to Customer by its employees or agents.

Orders are good for one day only (regular day trading session) unless specified and accepted as being "open", in which case the order will remain open until filled or the Customer specifies otherwise. In some circumstances, Cunningham may be on the other side of Customer's trade. The price at which an order is actually executed shall be binding, even if incorrectly reported. Similarly, an order actually executed but in error reported as not executed is also binding.

Customer agrees that when Cunningham executes sell or buy orders on Customer's behalf, Cunningham, its directors, officers, employees, agents, affiliates, and any floor broker or terminal operator may take the other side of Customer's order for the account of such person subject to such order being executed in accordance with and subject to the limitations and conditions, if any, contained in applicable rules and regulations.

Cunningham offers certain Internet-based, electronic order entry platforms for the purpose of facilitating the entry of customer orders trading in Contracts ("CTS Platform(s)"). Customer understands that while the Internet and the World Wide Web generally are dependable, technical problems or other conditions may delay or prevent Customer from entering or canceling an order on a CTS Platform, or likewise may delay or prevent Cunningham from executing an order on a CTS Platform. Cunningham shall not be liable for, any technical problems, system failures and malfunctions, communication line failures, equipment or software failures or malfunctions, system access issues, system capacity issues, high Internet traffic demand, security breaches and unauthorized access beyond the reasonable control of Cunningham, or other similar computer problems and defects relating to a CTS Platform. Cunningham does not represent, warrant or guarantee that Customer will be able to access or use an CTS Platform at times or locations of Customer's choosing, or that Cunningham will have adequate capacity for an CTS Platform as a whole or in part by Cunningham's or Customer's use of or reliance on a CTS Platform or its content or in otherwise performing its obligations under or in connection with this Agreement. Cunningham reserves the right to suspend service and deny access to any CTS Platform without prior notice during scheduled or unscheduled system maintenance or upgrading.

In the event that Customer is unable to transmit an order through an CTS Platform, or is unable to confirm that an electronic order has been received by Cunningham, Customer should follow these procedures: (i) if Customer's account is introduced to Cunningham by an Introducing Broker, Customer must contact the Introducing Broker, notify the Introducing Broker of the exact nature of the problem and, if appropriate, place the order by phone through the Introducing Broker; (ii) if Customer is unable to contact his Introducing Broker by telephone, or, if Customer's account is not an introduced account, Customer must contact Cunningham at (312) 939-8950 and notify Cunningham of the exact nature of the problem including, but not limited to, the details of the order (including the contract, quantity and whether the order was to buy or sell). Customer agrees that any order placed through this number shall be for liquidation of existing positions only. This number is not to be called by customer for customer support. Customer agrees that when following these procedures, Customer shall be liable for any losses arising out of any order that has previously been transmitted by electronic means, as well as the order placed orally through Cunningham or Customer's Introducing Broker.

### 14. REPORTS AND NOTICES

SHOULD INACCURACIES OR DISCREPANCIES APPEAR ON CUSTOMER'S STATEMENTS OF ACCOUNT(S), MARGIN CALLS, OR NOTICES CUSTOMER AGREES THAT IT IS CUSTOMER'S DUTY TO INFORM CUNNINGHAM OF THE PROBLEM BY TELEPHONE OR FACSIMILE IMMEDIATELY UPON THE EARLIER OF ACTUAL RECEIPT OF THE STATEMENT BY CUSTOMER, OR THE TIME THE STATEMENT IS DEEMED RECEIVED BY CUSTOMER PURSUANT TO THIS PARAGRAPH 14. IN THE EVENT THAT CUSTOMER DOES NOT RESPOND IMMEDIATELY, EXECUTED ORDERS AND STATEMENT REPORTS SHALL BE CONSIDERED RATIFIED BY CUSTOMER AND SHALL RELIEVE CUNNINGHAM OF ANY RESPONSIBILITY WHATSOEVER RELATIVE TO THE TRANSACTION(S) IN QUESTION. ALL REPORTS OF INACCURACIES OR DISCREPANCIES MUST BE MADE TO CUSTOMER'S BROKER AND TO CUNNINGHAM'S COMPLIANCE DEPARTMENT.

Customer has the responsibility to maintain contact with Customer's individual broker at all times that Customer has market positions or has placed orders but is not available at Customer's regular address or telephone number to receive reports. Customer authorizes Cunningham to transmit electronically, (which may include electronic mail) to Customer or post on an CTS Platform all statements, compilations and details of transactions, and other notices, and Customer hereby consents to such methods of receiving such information. There will not be any additional cost or fee for this service. If Customer requests a hard copy of any of these documents, other than by downloading or printing such information or documents from a CTS Platform, there will be a charge as established by Cunningham from time to time. This consent to receiving such information electronically shall be effective until revoked by Customer in writing and delivered to Cunningham. It shall be Customer's responsibility to check Customer's electronic mail and a CTS Platform site on a regular basis, and no less than daily, to receive statements, compilations and details of transactions, and other notices from Cunningham. Customer agrees to download or print such statements, compilations and details of transactions, and other notices if such statements or information are available for downloading or printing. Information sent by electronic mail shall be deemed received by Customer by 10:00 a.m. (Central Time) the next business day after Cunningham sends the electronic mail. Information and

notices posted on an CTS Platform shall be deemed received by Customer by 10:00 a.m. (Central Time) after Cunningham posts such information and notices. Customer shall promptly notify Cunningham of any difficulty in accessing, opening or otherwise viewing an electronically transmitted document or information.

Upon Customer's request, Cunningham will use an alternative method of delivering such document or information to Customer, at Customer's sole expense. Such alternative means of delivery shall not affect the date such document or information is deemed received by Customer, as set forth above. Details of trades and any other similar information or notices either sent to Customer or posted on an CTS Platform shall be conclusive and binding unless Customer notifies Cunningham to the contrary, (i) where a report or notice is sent electronically, posted on an CTS Platform or made orally, then, as the case may be, at the earlier of the time actually received, or deemed to be received pursuant to this paragraph 13 by Customer, or (ii) where a report or notice is in writing by 8:00 a.m. (Central Time) on the next Business Day following receipt of such report.

#### 15. CUSTOMER REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Customer represents and warrants to and agrees with Cunningham that:

- A) Customer, if an individual, represents that he or she is of legal age and competence to enter into this Agreement and that transactions in Contracts as contemplated by this Agreement are appropriate for Customer and consistent with Customer's investment objectives;
- B) Customer, if a legal entity, represents that it is duly organized, validly existing, and empowered to enter into this Agreement, to establish the Account, to enter into transactions in Contracts as contemplated hereby and that such transactions are suitable for Customer and do not violate any of Customer's constituent documents. Customer further represents that the person executing this Agreement on its behalf has been duly and validly authorized to do so;
- C) Neither Customer nor any partner, director, officer, member, manager, or employee of Customer nor any affiliate of Customer is a partner, director, officer, member, manager, or employee of a futures commission merchant, broker-dealer, introducing broker, or regulatory of self-regulatory organization except as previously disclosed in writing to Cunningham;
- D) except as disclosed on the accompanying General Account Application or otherwise provided in writing, (i) Customer is not a commodity pool operator or is exempt from registration under CFTC rules, and (ii) Customer is acting solely as principal and no one other than Customer has any interest in any Account of Customer. Customer agrees to notify Cunningham of the identity of any other person or entity that controls the trading of the Account, has a financial interest of 10% or more in the Account or the identity of any other account in which the Customer controls or has a 10% or greater ownership interest;
- E) If Customer's account has been designated as a "hedge account", and unless Customer notifies Cunningham to the contrary at the time it places an order with Cunningham, Customer represents that each such order will be a bona fide hedging transaction as defined in CFTC Regulation 1.3(z);
- F) Customer represents that it will maintain its Account in accordance with and shall be solely responsible for compliance with laws and with rules, regulations, and/or guidelines issued by federal, state, or administrative bodies having oversight or regulatory authority over its activities;
- G) 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;
- H) As required by CFTC regulations, Customer shall create, retain, and produce upon request of the applicable contract market, the CFTC or the United States Department of Justice documents (such as contracts, confirmations, telex printouts, invoices, and documents of title) with respect to cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions;
- I) Absent a separate written agreement between Customer and Cunningham with respect to give-ups, Cunningham, in its discretion, may, but shall have no obligation to, accept from other brokers contracts executed by such brokers on an exchange for Customer and proposed to be "given up" to Cunningham for clearance and/or carrying in the Account; if Cunningham does accept such Contracts, Customer authorizes Cunningham to pay and charge to Customer's Account any give-up or give-in fee that may be charged by any exchange or clearing house or by executing firm or broker whom Customer or its agents have authorized to execute transactions for Customer's Account;
- J) If Customer is subject to the Financial Institution 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; and
- K) The accompanying General Account Application (including any financial statements furnished in connection therewith) is true, correct, and complete.

Customer agrees to promptly notify Cunningham in writing if any of the warranties and representations contained in this Section 15 becomes inaccurate or in any way ceases to be true, complete, and correct.

#### 16. TAPE RECORDING

Customer hereby authorizes Cunningham to make recordings of telephone conversations between Customer and Cunningham regardless of whether a periodic tone signal is used. Customer consents to the use of such tape recording in any forum in connection with resolving disputes. Cunningham and its affiliates may also, at their discretion, utilize a telephone recording system to place Customer's orders. Cunningham may erase or dispose of such tapes in accordance with its normal procedures.

#### 17. AMENDMENTS AND GUARANTEES

This Agreement, reflects the entire agreement between Cunningham and Customer and supersedes all prior oral and written agreements between the parties relating to the subject matter hereof. No provision hereof shall in any respect be waived, augmented or modified unless in writing and signed by an official so authorized in Cunningham's office headquarters.

## 18. GOVERNING LAW AND WAIVER OF STATUTES OF LIMITATIONS

This Agreement shall be governed by the internal laws of the State of Illinois, excluding conflict-of-laws principles. Customer agrees that no law suit, arbitration proceeding or other claim or action relating to this Agreement or the transactions in Customer's account may be initiated by Customer unless commenced within one year from the date of the disputed transaction; provided, however, that any action brought under the provisions of Section 14 of the Commodity Exchange Act, may be brought at any time within two years after the cause of action accrues.

## 19. INDEMNIFICATION

Customer agrees to indemnify, defend and hold harmless Cunningham and its 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 result, directly or indirectly, of: (a) Customer's failure, breach, or refusal to fully and timely comply with any provision of this Agreement or perform any obligation on its part to be performed pursuant to this Agreement; (b) any actions of any third party selected by Customer which affect Customer's Account; or (c) Customer's failure to timely deliver any security, commodity, or other property previously sold by Cunningham on Customer's behalf. Customer additionally agrees to pay promptly to Cunningham all reasonable attorney's fees incurred by Cunningham (i) in the enforcement of any of the provisions of this Agreement, or (ii) in any action, claim or demand filed by Customer arising out of this Agreement or any other Agreements between Cunningham and Customer where Cunningham is not found to be liable or responsible.

## 20. ELECTRONIC TRADING AND ONLINE SERVICES

Cunningham will provide Customer with an individual password and a unique user identification (together, the "Access Codes"). The Access Codes will enable Customer to access its account and enter orders for its account through a CTS Platform. Customer is responsible for maintaining adequate security measures to ensure that the Access Codes are kept confidential at all times. Customer accepts full responsibility for the use and protection of the Access Codes, which includes, but is not limited to, all orders entered into a CTS Platform using the Access Codes and changes in Customer's account information that are entered using the Access Codes.

Customer shall take reasonable and appropriate steps to reduce or limit trading errors resulting from the Customers' access to a CTS Platform. Such measures may include placing limits on the number of contracts placed per order or placing limits on the price at which an order may be placed.

Customer accepts full responsibility for monitoring its account (s) with Cunningham. Should Customer become aware of any loss, theft or unauthorized use of its Access Codes, Customer shall notify Cunningham immediately. Customer shall notify Cunningham within one (1) business day of discovering any failure to receive compilations and details of transactions or other communications from Cunningham. Under either situation, Customer shall provide written notice to Cunningham's Compliance Director at Cunningham's office, and such notice will be deemed received only if actually delivered, sent by electronic mail to [contactus@cunninghamllc.com](mailto:contactus@cunninghamllc.com), Attention: Compliance Department, or by fax to 312-662-1429, Attention: Compliance Department.

Any and all materials that Cunningham provides to Customer in connection with a CTS Platform are (i) provided on a non-exclusive non-transferable basis, (ii) the property of Cunningham and (iii) intended for Customer's use only. Customer shall not resell or permit access to a CTS Platform to others and agrees not to copy any materials appearing on a CTS Platform for resale to others. Customer further agrees not to delete any copyright notices or other indications of protected intellectual property rights from materials that Customer prints or downloads from a CTS Platform. Customer shall not obtain any intellectual property rights in or any right or license to use such materials on a CTS Platform other than as set out herein. Customer agrees to use a CTS Platform at Customer's own risk. Customer shall be responsible for providing and maintaining the means by which to access a CTS Platform, which may include without limitation a personal computer, modem and telephone or other access line. Customer shall be responsible for all access and service fees necessary to connect to a CTS Platform and assumes all charges incurred in accessing such system. Customer further assumes all risks associated with the use and storage of information on Customer's personal computer. A CTS Platform may contain links to websites controlled or offered by third parties. The existence of such links should not be construed as an endorsement, approval or verification by Cunningham of any content available on third party sites.

## 21. TERMINATION

This Agreement may be terminated by Cunningham or the Customer immediately upon written notice to the other party. In the event of such termination, Customer shall immediately liquidate positions in Customer's account (s), or transfer such open commodity interest positions to another FCM. Notwithstanding any termination, Customer shall satisfy all liabilities to Cunningham arising hereunder (including, but not limited to, payment of applicable debit balances, commissions and fees, including fees with respect to the transfer of positions to another FCM). This Agreement shall be binding upon Customer's personal representatives and legal successors, and shall inure to the benefit of Cunningham's successors by merger, assignment, consolidation or otherwise. In the event of Customer's bankruptcy proceedings, death, incompetence, dissolution, or failure to provide adequate margin, Cunningham is authorized to terminate account in the fashion described elsewhere in this Agreement, without prior notice to the Customer. The termination of this Agreement shall not affect the obligations of the parties arising from transactions entered into prior to such termination. Cunningham reserves the right to terminate any Customer account at any time, for any reason. Connect to a CTS Platform and assumes all charges incurred in accessing such system. Customer further assumes all risks associated with the use and storage of information on Customer's personal computer. A CTS Platform may contain links to websites controlled or offered by third parties. The existence of such links should not be construed as an endorsement, approval or verification by Cunningham of any content available on third party sites.

## 22. OFFSETTING POSITIONS

If Customer maintains separate accounts in which pursuant to Commodity Futures Trading Commission Regulation 1.46, offsetting positions are not closed out, Cunningham hereby advises Customer that (if held open) offsetting long and short hedge positions in the separate accounts may result in the charging of additional fees and commissions and the payment of additional margin, although offsetting positions will result in no additional market gain or loss.

## 23. CFTC Reg. § 15.05 -DESIGNATION OF CUNNINGHAM AS AGENT OF FOREIGN BROKERS, CUSTOMERS OF A FOREIGN BROKER AND FOREIGN TRADERS; AND REG § 21.03 SELECTED SPECIAL CALLS – DUTIES OF FOREIGN BROKERS, DOMESTIC AND FOREIGN TRADERS, FUTURES COMMISSION MERCHANTS (FCM) AND CONTRACT MARKETS

If Customer is a foreign broker it understands that pursuant to CFTC Regulation §15.05, Cunningham is Customer's agent (and in the case of a foreign broker, the agent of its customers) for purposes of accepting delivery, and service of any communication upon Cunningham shall constitute valid and effective service or delivery upon Customer (and if it is a foreign broker, upon its customers). Customer understands that said regulation requires Cunningham to transmit the communication promptly to it (or its customer) in a manner which is reasonable under the circumstances or specified by the CFTC. Customer also understands CFTC Regulation §21.03 requires it to provide to the CFTC upon special call, market information concerning its options and futures trading (or its customers') as outlined in the regulation. If Customer fails to respond to the special call, the CFTC may direct the appropriate contract market and all brokers to prohibit further trades for or on its behalf (or for its customers) in the contract specified in the call unless such trades offset existing open contracts. Special calls are made where the information requested would assist the CFTC in determining whether a threat of market manipulation, corner, squeeze or other market disorder existed. Under Regulation §21.03(g) if Customer believes it is aggrieved by the action taken by the CFTC it shall have the opportunity for a prompt hearing after the CFTC acts (Customer understands that copies of CFTC Regulations §§ 15.05 and 21.03 are available from Cunningham).

## 24. MARKET INFORMATION

Exchange and Cunningham brochures and research are often provided as trading tools. In addition, a CTS Platform may also contain certain market information. Customer acknowledges that: (a) any information Cunningham's research department may communicate to Customer does not constitute an offer to sell or a solicitation of any offer to buy any Contract; (b) such recommendations and information, although based upon information obtained from sources believed by Cunningham to be reliable, are incidental to Cunningham's business as a futures commission merchant, may be incomplete and not subject to verification, and will not serve as the primary basis for any decision by Customer; (c) Cunningham makes no representation, warranty, or guarantee as to, and shall not be responsible for, the accuracy or completeness of any information or trading recommendation furnished to Customer; (d) recommendations to Customer as to any particular transaction at any given time may differ among Cunningham's personnel due to diversity in analysis of fundamental and technical factors and may vary from any standard recommendation made by Cunningham in its market letters or otherwise; and (e) Cunningham has no obligation or responsibility to update any market recommendations or information it communicates to Customer. Customer understands that Cunningham and its officers, directors, affiliates, stockholders, representatives, or associated persons may have positions in and may intend to buy or sell Contracts which are the subject of market recommendations furnished to Customer, and that the market positions of Cunningham or any such officer, director, affiliate, stockholder, representative, or associated person may or may not be consistent with the recommendations furnished to Customer by Cunningham.

## 25. CONSENT TO JURISDICTION

Customer agrees that all disputes, claims, actions or proceedings arising directly, indirectly, or otherwise in connection with, out of, related to or from this Agreement shall be litigated or arbitrated exclusively in a court or arbitration forum located in Chicago, Illinois, unless otherwise agreed by Cunningham. Customer consents and submits to the jurisdiction of any state or federal court or arbitration forum located within the Northern District of Illinois. Customer hereby waives any right Customer may have to transfer or change the venue of any litigation brought against Customer by Cunningham or by Customer against Cunningham. Customer acknowledges and consents to Cunningham's election to instigate legal action to collect any debit balance in Customer's account(s) in any court located in the Northern District of Illinois.

Customer appoints and designates Cunningham (or any other party whom Cunningham may from time to time hereinafter designate) as Customer's true and lawful attorney-in-fact and duly authorized agent for service of legal process and agrees that service of such process upon such attorney-in-fact shall constitute personal service of such process upon Customer; provided, that Cunningham or such other party shall, within five days after receipt of any such process, forward the same by air courier or by certified mail, together with all papers affixed thereto, to Customer at Customer's mailing address. If any provision of this paragraph shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this paragraph.

## 26. WAIVER, AMENDMENT AND ASSIGNMENT

The failure of Cunningham to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision nor in any way to affect the validity of this Agreement or the right of Cunningham thereafter to enforce each and every provision hereof. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach. No waiver or amendment shall be implied from any conduct, action, or inaction. No provision of this Agreement may be waived or amended by customer unless such waiver or amendment is in writing and signed by an authorized officer of Cunningham. Cunningham may assign, transfer, sell or otherwise convey its rights and obligations hereunder to another futures commission merchant upon notice to you.

**27. FACSIMILE EXECUTION**

Customer agrees any records stored by printed media storage method shall be deemed complete, true and genuine record of your account documents and signatures. If the Customer elects to open an account through the use of an electronic signature under the federal E-SIGN legislation, such electronic signature will meet the requirements of an original signature. However, at the sole discretion of Cunningham, documents signed and transmitted by facsimile machine or electronic mail may be accepted as original documents. The signature of any person or entity thereon, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of Cunningham, any facsimile or telecopy document must be re-executed in original form by the persons or entities who executed the facsimile or telecopy document. No party hereto may raise the use of a facsimile or telecopy machine as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this section. Customer attests that if Customer has downloaded this Agreement from the internet or any electronic message, Customer has printed it directly from the PDF or other electronic file provided by Cunningham without modification.

**28. ELECTRONIC SIGNATURE**

Customers consent and agree that their use of a key pad, mouse or other device to select an item, button, icon or similar act/action while using any electronic service Cunningham offers, or in accessing or making any transactions regarding any agreement, acknowledgment, consent, terms, disclosures or conditions constitutes such Customer's signature, acceptance and agreement as if actually signed by such Customer in writing. Further, Customers agrees that no certification authority or other third party verification is necessary to the enforceability of their signature or any resulting contract between them and Cunningham.

**29. SEVERABILITY**

If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity ascend, without invalidating the remaining provisions of this Agreement.

THIS ACCOUNT AGREEMENT CONTAINS A CONTRACTUAL AGREEMENT. DO NOT SIGN UNTIL YOU HAVE READ IT CAREFULLY. BY SIGNING BELOW, THE UNDERSIGNED REPRESENTS AND WARRANTS TO CUNNINGHAM THAT ALL INFORMATION CONTAINED HEREIN, OR IN ANY OTHER ACCOUNT FORM OR OTHER DOCUMENT FROM THE UNDERSIGNED IS TRUE AND CORRECT AND THAT IF ANY CHANGES TO SUCH INFORMATION OCCUR, THE UNDERSIGNED WILL IMMEDIATELY INFORM CUNNINGHAM, IN WRITING, OF SUCH CHANGES. BY SIGNING BELOW, THE UNDERSIGNED ACKNOWLEDGES THAT (S)HE HAS READ AND UNDERSTANDS ALL OF THE TERMS AND CONDITIONS OF THE COMMODITY CUSTOMER AGREEMENT AND SHALL BE BOUND BY THEM.

**I agree to be bound by the terms of the Account Agreement. I represent that this is a Corporate account.**

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 COMPANY NAME

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 AUTHORIZED SIGNATURE(S)/TITLE(S)

---

 DATE

This Voluntary Arbitration Agreement will be deemed a part of, and incorporated into the Account Agreement with Cunningham & Associates, LLC ("Cunningham") when signed below whereby the undersigned consents to and agrees to abide by the provisions hereof. If you sign this Voluntary Arbitration Agreement you agree that any controversy, claim or grievance between you and Cunningham relating to your account(s) shall, except as provided below, be resolved by arbitration before a forum chosen in accordance with the procedures described herein. Any award rendered thereon by the arbitrators shall be final and binding on each and all of the parties thereto and their personal representatives and judgment may be entered in any court having jurisdiction.

Notification of your intent to arbitrate must be sent by certified mail to Cunningham at its Chicago office. At such time as you notify Cunningham that you intend to submit a claim to arbitration, or at such time as Cunningham notifies you of its intention to submit a claim for arbitration, you will have the opportunity to elect a qualified forum for the conducting of the proceeding. Please note that, in the Account Agreement, you have agreed that the venue for all arbitration proceedings shall be within the City of Chicago, State of Illinois. Within ten business days after receipt of a notice from you or at the time Cunningham so notifies you, Cunningham will provide you with a list of three organizations whose procedures qualify them to conduct arbitrations in accordance with CFTC Rule 166.5, together with a copy of the rules of each forum listed. If you fail to make such selection within forty-five days, then Cunningham shall have the right to make such election. If Cunningham notifies you of its intent to submit a claim for arbitration, it shall designate a qualified forum for conducting the proceedings.

Cunningham will pay any incremental fees which may be assessed by a qualified forum for provision of a mixed panel, unless the arbitrators in a particular proceeding determine that you have acted in bad faith in initiating or conducting that proceeding. If, by reason of any applicable statute, regulation, exchange rule or otherwise (other than by reason of your entitlement to commence reparation proceedings under Section 14 of the Commodity Exchange Act and Part 12 of the regulations promulgated there under), your advance agreement to submit a controversy to arbitration would not be enforceable by Cunningham, then this provision shall not permit you to enforce Cunningham's advance agreement to submit to arbitration.

THREE FORUMS EXIST FOR THE RESOLUTION OF COMMODITY DISPUTES: CIVIL COURT LITIGATION, REPARATIONS AT THE COMMODITY FUTURES TRADING COMMISSION (CFTC) AND ARBITRATION CONDUCTED BY A SELF-REGULATORY OR OTHER PRIVATE ORGANIZATION. THE CFTC RECOGNIZES THAT THE OPPORTUNITY TO SETTLE DISPUTES BY ARBITRATION MAY IN SOME CASES PROVIDE MANY BENEFITS TO CUSTOMERS, INCLUDING THE ABILITY TO OBTAIN AN EXPEDITIOUS AND FINAL RESOLUTION OF DISPUTES WITHOUT INCURRING SUBSTANTIAL COSTS. THE CFTC REQUIRES, HOWEVER, THAT EACH CUSTOMER INDIVIDUALLY EXAMINE THE RELATIVE MERITS OF ARBITRATION AND THAT YOUR CONSENT TO THIS ARBITRATION AGREEMENT BE VOLUNTARY.

BY SIGNING THIS AGREEMENT, YOU: (1) MAY BE WAIVING YOUR RIGHT TO SUE IN A COURT OF LAW; AND (2) ARE AGREEING TO BE BOUND BY ARBITRATION OF ANY CLAIMS OR COUNTERCLAIMS WHICH YOU OR CUNNINGHAM MAY SUBMIT TO ARBITRATION UNDER THIS AGREEMENT. YOU ARE NOT, HOWEVER, WAIVING YOUR RIGHT TO ELECT INSTEAD TO PETITION THE CFTC TO INSTITUTE REPARATIONS PROCEEDINGS UNDER SECTION 14 OF THE COMMODITY EXCHANGE ACT WITH RESPECT TO ANY DISPUTE THAT MAY BE ARBITRATED PURSUANT TO THIS AGREEMENT. IN THE EVENT A DISPUTE ARISES, YOU WILL BE NOTIFIED IF CUNNINGHAM INTENDS TO SUBMIT THE DISPUTE TO ARBITRATION. IF YOU BELIEVE A VIOLATION OF THE COMMODITY EXCHANGE ACT IS INVOLVED AND IF YOU PREFER TO REQUEST A SECTION 14 "REPARATIONS" PROCEEDING BEFORE THE CFTC, YOU WILL HAVE 45 DAYS FROM THE DATE OF SUCH NOTICE IN WHICH TO MAKE THAT ELECTION.

YOU NEED NOT SIGN THIS AGREEMENT TO OPEN OR MAINTAIN AN ACCOUNT WITH CUNNINGHAM. (SEE 17 CFR 166.5.)

You are advised that if you seek reparations under Section 14 of the Commodity Exchange Act and Part 12 of the regulations promulgated there under, and the CFTC declines to institute reparation proceedings, claims or grievances may be subject to this Arbitration Agreement

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
AUTHORIZED SIGNATURE(s)/TITLE(s)

\_\_\_\_\_  
DATE

Upon receipt of Customer’s consent, Cunningham will provide daily confirmation and P&S statements and monthly statements of activity (“Statements”) by electronic transmission to the email address indicated below.

Customer warrants and represents that the below-referenced email will promptly print out the relevant Statements in the form transmitted by Cunningham. Customer acknowledges its understanding that there is a risk of failure of any electronic transmission, and will not hold Cunningham liable directly or indirectly for such failure. If Customer fails to receive any Statement that reflects activity of which you are aware of in the account, Customer agrees to contact an Cunningham customer service representative by 8:00 a.m. (Central Time) on the business day following the day of such activity.

This consent shall be effective until revoked in writing, signed by the undersigned and delivered to Cunningham at 141 West Jackson Blvd, Suite 211A, Chicago, IL 60604. In addition, Customer agrees and acknowledges that for its protection and the protection of Cunningham, any request to change the email address listed below must be in writing and bear the signature of the undersigned.

\_\_\_\_\_ Customer authorizes Cunningham to provide all Statements solely by electronic transmission.

\_\_\_\_\_ Customer will access statements of activity and status online, as provided by Cunningham Commodities, LLC.

\_\_\_\_\_  
**EMAIL ADDRESS**

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**EMAIL ADDRESS**

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**EMAIL ADDRESS**

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**EMAIL ADDRESS**

\_\_\_\_\_  
**COMPANY NAME**

\_\_\_\_\_  
**AUTHORIZED SIGNATURE(s)/TITLE(s)**

\_\_\_\_\_  
**DATE**

In order to induce Cunningham to open and maintain the undersigned's account, the undersigned represents that the transactions identified below in this account are for hedging or recognized risk management purposes only and shall be entered into solely for the purpose of protection against losses which may be incurred in a cash position in a specific commodity, or with respect to derivatives such as financial, interest rate or stock index futures, to protect against losses that may be incurred in an existing financial portfolio.

The following commodities are for bona fide hedging purposes.

Commodity	Economic Justification
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The undersigned is familiar with all laws, rules and regulations concerning hedging in such contracts and has not relied upon Cunningham for any related advice. This notification is a continuing one and shall remain in force until cancelled in writing. The undersigned acknowledges that Cunningham shall rely upon this representation and shall notify Cunningham immediately if this representation does not remain true and correct. Commodity Futures Trading Commission Regulation 190.06(d) requires that a broker must provide an opportunity for each customer to specify when undertaking its first hedging contract whether, in the event of the broker's bankruptcy, such customer prefers that open commodity contracts held in a hedging account be liquidated by the trustee. Accordingly, please indicate below your preference for open contracts in your account if such an event were to occur.

I instruct, that in the event of bankruptcy of the broker, the trustee . . .

**Liquidate** \_\_\_\_\_

**Not Liquidate** \_\_\_\_\_

open commodity positions in my hedge account without seeking my instructions.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
AUTHORIZED SIGNATURE(s)/TITLE(s)

\_\_\_\_\_  
DATE



To: Cunningham Commodities, LLC

Please be advised that any funds deposited in this corporate trading account (and any related accounts) are company funds. Any additional funds used for trading this account will not be solicited from a third party.

\_\_\_\_\_  
**COMPANY NAME**

\_\_\_\_\_  
**AUTHORIZED SIGNATURE(s)/TITLE(s)**

\_\_\_\_\_  
**DATE**

**FEDERAL EMPLOYER ID NUMBER** \_\_\_\_\_ - \_\_\_\_\_

**LEGAL ACCOUNT NAME** \_\_\_\_\_

If you have NOT furnished Cunningham with your taxpayer identification number (usually your Social Security number) and do NOT sign below, Cunningham must generally withhold 20% of certain income from your account. I hereby certify under penalties of perjury that I am not subject to backup withholding under the provisions of Section 3406 (a)(1)(c) of the Internal Revenue Code

\_\_\_\_\_  
**AUTHORIZED SIGNATURE**

\_\_\_\_\_  
**DATE**

Please note that all required regulatory information reporting applicable to activity within this account (including Internal Revenue Service reporting) will be submitted with the legal name and Federal Tax Identification Number stated above.

Please note that all Foreign Accounts must fill out a form W-8 which can be found on the Cunningham website at [www.cunninghamllc.com](http://www.cunninghamllc.com). In addition, this account form must be accompanied by a copy of your passport or other governmental identification.

The undersigned (jointly and severally if there is more than one) hereby unconditionally and irrevocably guarantees full and prompt payment to Cunningham of all sums owed to Cunningham by Customer pursuant to the forgoing Account Agreement, whether such sums are now existing or are hereafter created. The undersigned waives any notice of default or dishonor of pre-sentiment of payment, notice of non-payment protest or any other notice and agrees that Cunningham shall have no obligation at any time to resort payment from Customer, or from any other person, firm or corporation liable for the guaranteed debt before proceeding on this Guarantee. The undersigned agrees to pay all reasonable attorneys' fees and court costs, if any, incurred by Cunningham in connection with the enforcement of this Guarantee and Customer's obligations under the Account Agreement.

All monies, securities, negotiable instruments, open positions on futures contracts, options premiums, commodities or other property belonging to the undersigned now or at any future time that are on deposit with Cunningham, for any purpose, are hereby pledged to Cunningham for discharge of all of the undersigned's obligations hereunder, and Cunningham may, in its discretion, transfer any of such property from any of the undersigned's accounts to Cunningham to offset and credit against any of the undersigned's obligations to Cunningham under this Guarantee.

Guarantor agrees to permit verification of relevant information by Cunningham through third parties (including credit reporting entities.)

This Guarantee is a continuing one and shall remain in full force and effect until revoked by the undersigned by a written notice to Cunningham, but such revocation shall not, in any way, affect any liability for losses sustained prior to such revocation.

\_\_\_\_\_  
**NAME OF ACCOUNT**

\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_  
**GUARANTOR SOCIAL SECURITY NUMBER**

\_\_\_\_\_  
**PRINT GUARANTOR NAME**

\_\_\_\_\_  
**GUARANTOR SIGNATURE**

\_\_\_\_\_  
**DATE**

I, \_\_\_\_\_, Secretary of \_\_\_\_\_

a corporation organized under the laws of the State of \_\_\_\_\_, having its principal office at

do hereby certify that a meeting of the Board of Directors of said company duly held on this date \_\_\_\_\_ the following resolutions were duly adopted, that said resolutions have not been amended, rescinded or revoked, and are in no way in conflict with any of the provisions of the Charter, By-Laws, or Operating Agreement, as applicable, of said company.

RESOLVED: That the \_\_\_\_\_ / \_\_\_\_\_ Title / Name Title / Name

be and hereby are authorized to trade in commodities for present or future delivery and options on such futures for the account and risk of this company through and with the firm of Cunningham Commodities as said firm is now constituted or may be hereafter constituted, the authority hereby granted including the power to do any and/all of the following:

- (a) To buy, sell and trade in commodity futures and options on commodity futures for present or future delivery, on margin or otherwise, the power to sell including the power to sell "short" (this includes transactions on the Foreign Interbank Market);
(b) To deposit with and withdraw from said firm, money, commodities, contracts for the purchase or sale of commodity futures and options on such futures, checks and other negotiable instruments, securities and other property;
(c) To receive and acquiesce in the correctness of notices, confirmations, requests, demands and communications of every kind;
(d) To enter into a Customer's Commodity Account Agreement (and all related account documents) with the said firm in the form attached to the Minutes of this meeting;
(e) To settle, compromise, adjust, and give releases with respect to any and all claims, demands, disputes and controversies;
(f) To make agreements and take any other action relating to any of the foregoing matters.

This enumeration of specific authority shall not in any way limit or affect any other authority which the named officials might otherwise have; and it was further

RESOLVED: That any and all past transactions of any kind herein authorized, which may have been heretofore had on behalf of this company through or with said firm be, and hereby are, ratified; and it was further

RESOLVED: That said firm is authorized to act upon the authority of these resolutions until receipt by said firm of a certificate showing revision or modification thereof signed by the Secretary or Managing Member of this company and under its seal, and that said firm is also authorized to recognize and deal with the officers/members of this company whose names are set forth in a certificate signed by the Secretary / Managing Member of this company, until receipt by said firm of a further certificate setting forth the names of another person or persons as such officers / members; and it was further

RESOLVED: That the above named officers / members shall specifically have the authority to enter into a Managed Account Agreement if desired with Cunningham; and it was further

RESOLVED: That confirmations of transactions entered into pursuant to this authorization shall be sent to the business address of the Company and also to:

\_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the company

Secretary's Signature (must be signed) Date

\_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_ List of individuals that own 10% or more interest in this company

Presidents Name (Print)

Signature

Vice President Name (Print)

Signature

Treasurer Name (Print)

Signature

A copy of the following documents should be submitted with the account agreement. *The officers listed in these corporate documents must match the officers listed on page 20.*

ARTICLES OF INCORPORATION

CORPORATE MINUTES (most recent)

FINANCIAL STATEMENT (upon request)

At CUNNINGHAM COMMODITIES, LLC. (CUNNINGHAM) we value our customers, and maintaining customer trust and confidence is our highest priority. While it is necessary that we obtain accurate and current information about our customers in order to provide the highest level of customer service, we are dedicated to protecting the privacy and confidentiality of our customers' information.

**CUNNINGHAM will never sell your personal information to anyone.** We will not use or distribute your personal information in any way (except as specifically noted below) without prior notification to you. We promise that we will uphold the privacy policies and procedures as set forth below.

**Information we collect about our Customers:**

- The personal information we collect from you comes from information you supply to us in account opening applications (whether written or electronic), or in other forms you may provide to us. This information may include your name, address, social security number or tax identification number, and financial information about you.
- Information regarding your transactions with us including your trading history at Cunningham, your history of meeting margin calls or your use of the various services and products that we provide.
- Information about your credit history and information we may receive from your introducing broker or associated person and other consumer reporting agencies.
- Cookies are small text files consisting of encrypted information assigned to a computer's browser. Cookies do not collect or transmit your personal information. For users of the non-public areas of our website or electronic trading platforms that require a User ID or password, Cunningham may use cookies to identify you so that you do not have to input your password multiple times as you navigate our site. Cunningham may also use cookies for administrative purposes, such as to maintain security on our site.

**Information we may share about our Customers:**

- **CUNNINGHAM will not sell personal information regarding our current or former customers.**
- Cunningham may share personal information about our current and former customers with our affiliated companies and service providers. In this case, your personal information will remain subject to the strictest confidentiality protections.
- To the extent that we may engage unaffiliated companies to assist in providing services on our website, such providers will be subject to stringent contractual requirements to maintain the confidentiality of any personal information they may obtain in connection with the performance of their services for us. We will make every effort to make sure that they receive the minimum amount of personal information necessary and will be allowed to retain that information only for as long as necessary in order to provide such services. Such service providers will only be allowed to use personal information in the course of providing services to Cunningham and only for the purposes that we authorize.

**Information we may disclose:**

- We may disclose information about current or former customers in order to cooperate with legal or regulatory authorities or pursuant to a court order or subpoena.
- We may also disclose personal information as necessary to perform credit checks, collect debts, enforce our legal rights or otherwise protect our interests and property.

**SECURITY:**

**CUNNINGHAM is committed to protection of your personal information and to protecting your privacy.**

- Only authorized Cunningham employees or agents will have access to your personal information. All of our employees, affiliates and service providers are held to the highest standards of privacy and security.