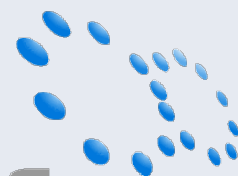


Enfinium

# Terms & Conditions



enfinium

# ENFINIUM INTERNATIONAL CUSTOMER AGREEMENT

## **1. Customer Agreement:**

This Agreement ("Agreement") governs the relationship between Customer and Enfinium International. If this Agreement varies from the Enfinium International website, this Agreement controls. This Agreement cannot be amended or waived except in writing by an Enfinium International officer. Customer Service employees cannot amend or waive any part of this Agreement. Customer acknowledges that Enfinium International may modify this Agreement by sending notice of the revised Agreement by e-mail or upon Customer log-in. Customer's use of Enfinium International after such notice constitutes acceptance of the revised Agreement.

## **2. No Investment, Tax or Trading Advice:**

Enfinium International representatives are not authorised to provide investment, tax or trading advice or to solicit orders. Nothing on Enfinium International's website is a recommendation or solicitation to buy or sell securities, futures or other investments.

## **3. Responsibility for Customer Orders/Trades:**

Customer acknowledges that Enfinium International does not know whether someone entering orders with Customer's user name/password is Customer. Unless Enfinium International is notified and agrees, Customer will not allow anyone to access Customer's account. Customer is responsible for the confidentiality and use of Customer's user name/password and agrees to report any theft/loss of such user name/password, or any unauthorised access to Customer's account, immediately by telephone or electronically through the Enfinium International website. Customer remains responsible for all transactions entered using Customer's user name/password.

## **4. Order Routing:**

Unless otherwise directed, Enfinium International will select the market/dealer to which to route Customer's orders. For products traded at multiple markets, Enfinium International may provide "Smart Routing", which seeks the best market for each order through a computerised algorithm. Customer should choose Smart Routing if available. If Customer directs orders to a particular market, Customer assumes responsibility for knowing and trading in accordance with the rules and policies of that market (e.g., trading hours, order types, etc.). Enfinium International cannot guarantee execution of every order at the best posted price: Enfinium International may not have access to every market/dealer; other orders may trade ahead; market centres may not honour posted prices or may re-route orders for manual handling; or market rules, decisions or system failures may prevent/delay execution of Customer's orders or cause orders not to receive the best price.

## **5. Order Cancellation/Modification:**

Customer acknowledges that it may not be possible to cancel/modify an order and that Customer is responsible for executions notwithstanding a cancel/modify request.

## **6. Order Execution:**

Enfinium International shall execute Customer orders as agent, unless otherwise confirmed. Enfinium International can execute Customer orders as principal. Enfinium International may use another broker, or an affiliate, to execute orders, and they have benefit of all Enfinium International's rights hereunder. Enfinium International may decline any Customer order, or terminate Customer's use of Enfinium International's services at any time in Enfinium International's discretion. All transactions are subject to rules and policies of relevant markets and clearinghouses, and applicable laws and regulations. Enfinium International IS NOT LIABLE FOR ANY ACTION OR DECISION OF ANY EXCHANGE, MARKET, DEALER, CLEARINGHOUSE OR REGULATOR.

## **7. Confirmations:**

A. Customer agrees to monitor each order until Enfinium International confirms execution or cancellation. Customer acknowledges that confirmations of executions or cancellations may be delayed or may be erroneous (e.g. due to computer system issues) or may be cancelled/adjusted by an exchange. Customer is bound by the actual order execution, if consistent with Customer's order. If Enfinium International confirms execution or cancellation in error and Customer delays reporting such error, Enfinium International reserves the right to remove the trade from the account or require Customer to accept the trade, in Enfinium International's discretion.

B. Customer agrees to notify Enfinium International immediately by telephone or electronically through the Enfinium International website if: i) Customer fails to receive an accurate confirmation of an execution or cancellation; ii) Customer receives a confirmation that is different than Customer's order; iii) Customer receives a confirmation for an order that Customer did not place; or iv) Customer receives an account statement, confirmation, or other information reflecting inaccurate orders, trades, balances, positions, margin status, or transaction history. Customer acknowledges that Enfinium International may adjust Customer's account to correct any error. Customer agrees to promptly return to Enfinium International any assets erroneously distributed to Customer.



## **8. Proprietary Trading - Display of Customer Orders:**

Subject to all laws and regulations, Customer authorises Enfinium International to execute proprietary trades of itself and its affiliates, though Enfinium International may simultaneously hold unexecuted Customer orders for the same products at the same price.

## **9. Customer Qualification:**

Customer warrants that their application is true and complete; will promptly notify Enfinium International of any information changes; and authorises Enfinium International to make any inquiry to verify information.

A. Natural Persons: Customer warrants that Customer is over 18; is under no legal incapacity; and has sufficient knowledge and experience to understand the nature and risks of the products to be traded.

B. Organisations: Customer and its authorised representatives warrant that Customer: (i) is authorised under its governing document(s) and in the jurisdictions in which it is organised and/or regulated to enter this Agreement and trade (including on margin if applicable); (ii) is under no legal incapacity; and (iii) that persons identified to enter orders have proper authority and have sufficient knowledge and experience to understand the nature and risks of the products to be traded.

C. Trusts: "Customer" refers to the Trust and/or Trustees. Trustee(s) represent(s) that there are no Trustees other than listed in the application and certifies(y) that Enfinium International may follow instructions from any Trustee and deliver funds, securities, or any other assets to any Trustee or on any Trustee's instructions, including delivering assets to a Trustee personally. Enfinium International, in its discretion, may require written consent of any or all Trustee(s) prior to following instructions of any Trustee. Trustee(s) has (have) the power under the Trust documents and applicable law to enter this Agreement, open the type of account applied for, and enter transactions and issue instructions. Such powers include, without limit, authority to buy, sell (including short), exchange, convert, tender, redeem and withdraw assets (including delivery of securities to/from the account) to trade securities on margin or otherwise (including purchase/sale of options), and trade futures and/or options on futures, for the Trust. Should only one Trustee execute this Agreement, Trustee represents that Trustee has the authority to execute this Agreement, without consent by the other Trustees. Trustee(s) certifies(y) that all transactions for this account will comply with the Trust documents and applicable law. Trustee(s), jointly and severally, shall indemnify Enfinium International and hold Enfinium International harmless from any claim, loss, expense or liability for effecting any transactions, and acting upon any instructions given by the Trustee(s).

D. Regulated Persons and Entities: Unless Customer notifies Enfinium International otherwise, Customer represents that Customer is not a broker-dealer; futures commission merchant; or affiliate, associated person or employee thereof. Customer agrees to notify Enfinium International immediately by telephone or electronically through the Enfinium International website if Customer becomes employed or associated with a broker-dealer or futures commission merchant.

## **10. Joint Accounts:**

Each joint account holder agrees that each joint holder has authority, without notice to the other, to: (i) buy/sell securities, futures or other products (including on margin); (ii) receive account confirmations and correspondence; (iii) receive and dispose of money, securities or other assets; (iv) enter, terminate, or agree to modify this Agreement; (v) waive any part of this Agreement; and (vi) deal with Enfinium International as if each joint holder was the sole holder. Notice to any joint holder constitutes notice to all joint holders. Each joint account holder is jointly and severally liable to Enfinium International for all account matters. Enfinium International may follow instructions of any joint holder and make delivery to any joint account holder individually of any account property.

Upon death of any joint holder, the surviving holder shall give Enfinium International notice by telephone or electronically through the Enfinium International website and Enfinium International may, before or after notice, initiate proceedings, require documents, retain assets and/or restrict transactions as it deems advisable to protect itself against any liability or loss. The estate of any deceased joint account holder shall be liable and each survivor will be liable, jointly and severally, to Enfinium International for any debt or loss in the account or upon liquidation of the account. Unless Customers indicate otherwise, Enfinium International may presume that account holders are joint tenants with rights of survivorship. Upon death of any joint holder, the account shall be vested in the surviving holders, without in any manner releasing the deceased joint holder's estate from liability.



## **11. Margin:**

**A. Risk of Margin Trading:** Margin trading is highly risky and may result in a loss of funds greater than Customer has deposited in the account. Customer has read the "Disclosure of Risks of Margin Trading" provided separately by Enfinium International.

**B. Requirement to Maintain Sufficient Margin Continuously:** Margin transactions are subject to initial and maintenance margin requirements of exchanges, clearinghouses and regulators and also to any additional margin requirement of Enfinium International, which may be greater ("Margin Requirements"). ENFINIUM INTERNATIONAL MAY MODIFY MARGIN REQUIREMENTS FOR ANY OR ALL CUSTOMERS FOR ANY OPEN OR NEW POSITIONS AT ANY TIME, IN ENFINIUM INTERNATIONAL'S SOLE DISCRETION. Customer shall monitor their account so that at all times the account contains sufficient equity to meet Margin Requirements. Enfinium International may reject any order if the account has insufficient equity to meet Margin Requirements, and may delay processing any order while determining margin status. Customer shall maintain, without notice or demand, sufficient equity at all times to continuously meet Margin Requirements. Formulas for calculating Margin Requirements on the Enfinium International website are indicative only and may not reflect actual Margin Requirements. Customers must at all times satisfy whatever Margin Requirement is calculated by Enfinium International.

**C. Enfinium International Will Not Issue Margin Calls:** Enfinium International does not have to notify Customer of any failure to meet Margin Requirements prior to Enfinium International exercising its rights under this Agreement. Customer acknowledges that Enfinium International generally will not issue margin calls; generally will not credit Customer's account to meet intraday or overnight margin deficiencies; and is authorised to liquidate account positions in order to satisfy Margin Requirements without prior notice.

### **D. Liquidation of Positions and Offsetting Transactions:**

- i. if at any time customer's account has insufficient equity to meet margin requirements or is in deficit, enfinium international has the right, in its sole discretion, but not the obligation, to liquidate all or any part of customer's positions in any of customer's enfinium international accounts, individual or joint, at any time and in any manner and through any market or dealer, without prior notice or margin call to customer. customer shall be liable and will promptly pay enfinium international for any deficiencies in customer's account that arise from such liquidation or remain after such liquidation. enfinium international has no liability for any loss sustained by customer in connection with such liquidations (or if the enfinium international system delays effecting, or does not effect, such liquidations) even if customer re-establishes its position at a worse price.
- ii. Enfinium International may allow Customer to pre-request the order of liquidation in event of a margin deficiency, but such requests are not binding on Enfinium International and Enfinium International retains sole discretion to determine the assets to be liquidated and the order/manner of liquidation. Enfinium International may liquidate through any market or dealer, and Enfinium International or its affiliates may take the other side of the transactions consistent with laws and regulations. If Enfinium International liquidates any/all positions in Customer's account, such liquidation shall establish Customer's gain/loss and remaining indebtedness to Enfinium International, if any. Customer shall reimburse and hold Enfinium International harmless for all actions, omissions, costs, fees (including, but not limited to, attorney's fees), or liabilities associated with any such transaction undertaken by Enfinium International. If Enfinium International executes an order for which Customer did not have sufficient equity, Enfinium International has the right, without notice, to liquidate the trade and Customer shall be responsible for any resulting loss and shall not be entitled to any resulting profit.
- iii. If Enfinium International does not, for any reason, liquidate under-margined positions, and issues a margin call, Customer must satisfy such call immediately by depositing funds. Customer acknowledges that even if a call is issued, Enfinium International still may liquidate positions at any time.
- iv. Customer acknowledges that Enfinium International also has the right to liquidate all or part of Customer's positions without prior notice: (i) if any dispute arises concerning any Customer trade, (ii) upon any "Default" as described in 17 below, or (iii) whenever Enfinium International deems liquidation necessary or advisable for Enfinium International's protection.

## **12. Universal Accounts:**

An Enfinium International Universal Account is two underlying accounts, an SEC-regulated securities account and a CFTC-regulated commodity account. Customer authorises transfers between the securities and commodity accounts to cover Margin Requirements and other obligations, and acknowledges Enfinium International may liquidate positions to cover obligations in the other account. Customer authorises Enfinium International to provide combined confirmations/statements for both accounts. Customer acknowledges that only assets in the securities account are covered by SIPC protection and excess coverage and not assets in the commodity account.



### **13. Short Sales:**

Customer acknowledges that short sales must be done in a margin account, subject to Margin Requirements; that prior to selling short, Enfinium International must believe it can borrow stock for delivery; and that if Enfinium International cannot borrow stock (or re-borrow after a recall notice) Enfinium International may buy-in stock on Customer's behalf, without notice to Customer, to cover short positions and Customer is liable for any losses/costs.

### **14. Enfinium International's Right to Loan/Pledge Customer Assets:**

As allowed by law, Enfinium International is authorised by Customer to lend to itself or others Customer securities or assets. Enfinium International may, without notice, pledge, re-pledge, hypothecate or re-hypothecate Customer securities and assets, separately or together with those of other customers, for any amount due in any Enfinium International account in which Customer has an interest, without retaining in Enfinium International's possession or control a like amount of assets. For loans of securities, Enfinium International may receive financial and other benefits to which Customer is not entitled. Such loans could limit Customer's ability to exercise securities' voting rights.

### **15. Security Interest:**

All Customer assets of any kind held by or on behalf of Enfinium International for Customer's account are hereby pledged to Enfinium International and are subject to a perfected first priority lien and security interest in Enfinium International's favour to secure performance of obligations and liabilities to Enfinium International arising under this or any other Agreement.

### **16. Event of Default: A "Default" occurs automatically, without notice upon:**

(i) Customer breach/repudiation of any agreement with Enfinium International; (ii) Customer failure to provide assurance satisfactory to Enfinium International of performance of an obligation, after request from Enfinium International in Enfinium International's sole discretion; (iii) proceedings by/against Customer under any bankruptcy, insolvency, or similar law; (iv) assignment for the benefit of Customer's creditors; (v) appointment of a receiver, trustee, liquidator or similar officer for Customer or Customer property; (vi) Customer representations being untrue or misleading when made or later becoming untrue; (vii) legal incompetence of Customer; (viii) proceeding to suspend Customer business or license by any regulator or organisation; (ix) Enfinium International having reason to believe that any of the foregoing is likely to occur imminently.

Customer unconditionally agrees that, upon a Default, Enfinium International may terminate any or all Enfinium International's obligations to Customer and Enfinium International shall have the right in its discretion, but not the obligation, without prior notice, to liquidate all or any part of Customer's positions in any Enfinium International account, individual or joint, at any time and any manner and through any market or dealer. Customer shall reimburse and hold Enfinium International harmless for all actions, omissions, costs, fees (including, but not limited to, attorney's fees), or liabilities associated with any Customer Default or any transaction undertaken by Enfinium International upon Default.

### **17. Suspicious Activity:**

If Enfinium International in its sole discretion believes that a Customer account has been involved in any fraud or crime or violation of laws or regulations, or has been accessed unlawfully, or is otherwise involved in any suspicious activity (whether victim or perpetrator or otherwise), Enfinium International may suspend or freeze the account or any privileges of the account, may freeze or liquidate funds or assets, or may utilise any of the remedies in this Agreement for a "Default".

### **18. Multi-Currency Function in Enfinium International Accounts:**

A. Customers may be able to trade products denominated in different currencies using a base currency chosen by Customer. Upon purchase of a product denominated in a different currency from the base currency, a margin loan is created to fund the purchase, secured by the assets in Customer's accounts. If Customer maintains positions denominated in foreign currencies, Enfinium International will calculate Margin Requirements by applying exchange rates specified by Enfinium International. Enfinium International will apply "haircuts" (a percentage discount on the foreign currency equity amount) to reflect the possibility of fluctuating exchange rates between the base currency and the foreign currency. customer must closely monitor margin requirements at all times, particularly for positions denominated in foreign currencies, because fluctuation in the currency and the value of the underlying position can cause a margin deficit.

B. Customer agrees that Enfinium International's obligations to Customer shall be denominated in: (i) the United States dollar; (ii) a currency in which funds were deposited by Customer or were converted at the request of Customer, to the extent of such deposits and conversions; or (iii) a currency in which funds have accrued to the customer as a result of trading conducted on a designated contract market or registered derivatives transaction execution facility, to the extent of such accruals. Information regarding Customer's currency conversions is provided on the Enfinium International customer statements. Customer further agrees that Enfinium International may hold customer funds in: (i) the United States; (ii) a money centre country as defined by the US Commodity Exchange Act & regulations thereunder; or (iii) the country of origin of the currency. In addition, Customer acknowledges and authorises Enfinium International to hold Customer's funds outside the United States, in a jurisdiction that is neither a money centre country nor the country of origin of the currency in order to facilitate Customer's trading in investments denominated in that currency.



## **18. Multi-Currency Function in Enfinium International Accounts:**

A. Customers may be able to trade products denominated in different currencies using a base currency chosen by Customer. Upon purchase of a product denominated in a different currency from the base currency, a margin loan is created to fund the purchase, secured by the assets in Customer's accounts. If Customer maintains positions denominated in foreign currencies, Enfinium International will calculate Margin Requirements by applying exchange rates specified by Enfinium International. Enfinium International will apply "haircuts" (a percentage discount on the foreign currency equity amount) to reflect the possibility of fluctuating exchange rates between the base currency and the foreign currency. Customer must closely monitor margin requirements at all times, particularly for positions denominated in foreign currencies, because fluctuation in the currency and the value of the underlying position can cause a margin deficit.

B. Customer agrees that Enfinium International's obligations to Customer shall be denominated in: (i) the United States dollar; (ii) a currency in which funds were deposited by Customer or were converted at the request of Customer, to the extent of such deposits and conversions; or (iii) a currency in which funds have accrued to the customer as a result of trading conducted on a designated contract market or registered derivatives transaction execution facility, to the extent of such accruals. Information regarding Customer's currency conversions is provided on the Enfinium International customer statements. Customer further agrees that Enfinium International may hold customer funds in: (i) the United States; (ii) a money centre country as defined by the US Commodity Exchange Act & regulations thereunder; or (iii) the country of origin of the currency. In addition, Customer acknowledges and authorises Enfinium International to hold Customer's funds outside the United States, in a jurisdiction that is neither a money centre country nor the country of origin of the currency in order to facilitate Customer's trading in investments denominated in that currency.

## **19. Foreign Currency Exchange ("Forex") Transactions:**

A. High risks of Forex Trading: Forex trading is generally unregulated, is highly risky due to the leverage (margin) involved, and may result in loss of funds greater than customer deposited in the account.

B. For Forex transactions, Enfinium International generally will act as agent or riskless principal and charge a fee. Enfinium International may effect Forex transactions through an affiliate or third party, which may profit or lose from such transactions. Customer agrees that Enfinium International may transfer to or from Customer's regulated futures or securities account(s) from or to any of Customer's non-regulated Forex account any funds or assets that may be required to avoid margin calls, reduce debit balances or for any other lawful reason.

### C. Netting:

(i) Netting by Novation: Each Forex transaction between Customer and Enfinium International will immediately be netted with all then existing Forex transactions between Customer and Enfinium International for the same currencies to constitute one transaction.

(ii) Payment Netting: If on any delivery date more than one delivery of a currency is due, each party shall aggregate the amounts deliverable and only the difference shall be delivered.

(iii) Close-Out Netting: If Customer: (a) incurs a margin deficit in any Enfinium International account, (b) defaults on any obligation to Enfinium International, (c) becomes subject to bankruptcy, insolvency or other similar proceedings, or (d) fails to pay debts when due, Enfinium International has the right but not the obligation to close-out Customer's Forex transactions, liquidate all or some of Customer's collateral and apply the proceeds to any debt to Enfinium International.

(iv) Upon Close-Out Netting or any "Default", all outstanding Forex transactions will be deemed terminated as of the time immediately preceding the triggering event, petition or proceeding. (v) Enfinium International's rights herein are in addition to any other rights Enfinium International has (whether by agreement, by law or otherwise).

D. Nothing herein constitutes a commitment of Enfinium International to offer Forex transactions generally or to enter into any specific Forex transaction. Enfinium International reserves the unlimited right to refuse any Forex order or to decline to quote a two-way market in any currency.

## **20. Commodity Options and Futures Not Settled in Cash: Customer acknowledges that:**

(A) commodity options cannot be exercised and must be closed out by offset; and

(B) for futures contracts that settle not in cash but by physical delivery of the commodity (including currencies not on Enfinium International's Deliverable Currency List), Customer cannot make or receive delivery. If Customer has not offset a commodity option or physical delivery futures position prior to the deadline on the Enfinium International website, Enfinium International is authorised to roll or liquidate the position or liquidate any position or commodity resulting from the option or futures contract, and Customer is liable for all losses/costs.



## **21. Commissions and Fees, Interest Charges, Funds:**

Commissions and fees are as specified on the Enfinium International website unless otherwise agreed in writing by an officer of Enfinium International. Customer acknowledges that Enfinium International deducts commissions/fees from Customer accounts, which will reduce account equity. Positions will be liquidated if commissions or other charges cause a margin deficiency. Changes to commissions/fees are effective immediately upon either of: posting on the Enfinium International website or email or other written notice to Customer. Enfinium International shall pay credit interest to and charge debit interest from Customer at interest rates and terms on the Enfinium International website. Customer funds will not be disbursed until after transactions are settled. Terms and conditions for deposit and withdrawal of funds (including holding periods) are as specified on the Enfinium International website.

## **22. Account Deficits:**

If a cash account incurs a deficit, margin interest rates will apply until the balance is repaid, and Enfinium International has the right, but not the obligation, to treat the account as a margin account. Customer agrees to pay reasonable costs of collection for any unpaid Customer deficit, including attorneys' and collection agent fees.

## **23. Risks of Foreign Markets; After Hours Trading:**

Customer acknowledges that trading securities, options, futures, currencies, or any product on a foreign market is speculative and involves high risk. There also are special risks of trading outside ordinary market hours, including risk of lower liquidity, higher volatility, changing prices, un-linked markets, news announcements affecting prices, and wider spreads. Customer represents that Customer is knowledgeable and able to assume these risks.

## **24. Knowledge of Securities, Warrants and Options; Corporate Actions:**

Customer acknowledges Customer's responsibility for knowing the terms of any securities, options, warrants or other products in Customer's account, including upcoming corporate actions (e.g., tender offers, reorganisations, stock splits, etc.). Enfinium International has no obligation to notify Customer of deadlines or required actions or dates of meetings, nor is Enfinium International obligated to take any action without specific written instructions sent by Customer to Enfinium International electronically through the Enfinium International website.

## **25. Quotes, Market Information, Research and Internet Links:**

Quotes, news, research and information accessible through Enfinium International (including through links to outside websites) ("Information") may be prepared by independent Providers. The Information is the property of Enfinium International, the Providers or their licensors and is protected by law. Customer agrees not to reproduce, distribute, sell or commercially exploit the Information in any manner without written consent of Enfinium International or the Providers. Enfinium International reserves the right to terminate access to the Information. None of the Information constitutes a recommendation by Enfinium International or a solicitation to buy or sell.

Neither Enfinium International nor the Providers guarantee accuracy, timeliness, or completeness of the Information, and Customer should consult an advisor before making investment decisions. Reliance on quotes, data or other information is at customer's own risk. In no event will Enfinium International or the providers be liable for consequential, incidental, special or indirect damages arising from use of the information. There is no warranty of any kind, express or implied, regarding the information, including warranty of merchantability, warranty of fitness for a particular use, or warranty of non-infringement.

## **26. License to Use Enfinium International Software:**

Enfinium International grants Customer a non-exclusive, non-transferable license to use Enfinium International Software solely as provided herein. Title to Enfinium International Software and updates shall remain the sole property of Enfinium International, including all patents, copyrights and trademarks. Customer shall not sell, exchange, or transfer the Enfinium International Software to others. Customer shall not copy, modify, translate, decompile, reverse engineer, disassemble or reduce to a human readable form, or adapt, the Enfinium International Software or use it to create a derivative work, unless authorised in writing by an officer of Enfinium International. Enfinium International is entitled to immediate injunctive relief for threatened breaches of these undertakings.

## **27. LIMITATION OF LIABILITY AND LIQUIDATED DAMAGES PROVISION:**

Customer accepts the Enfinium International system "as is", and without warranties, express or implied, including, but not limited to, the implied warranties of merchantability or fitness for a particular use, purpose or application; timeliness; freedom from interruption; or any implied warranties arising from trade usage, course of dealing or course of performance. Under no circumstances shall Enfinium International be liable for any punitive, indirect, incidental, special or consequential loss or damages, including loss of business, profits or goodwill. Enfinium International shall not be liable to customer by reason of delays or interruptions of service or transmissions, or failures of performance of the Enfinium International system, regardless of cause, including, but not limited to, those caused by hardware or software malfunction; governmental, exchange or other regulatory action; acts of god; war, terrorism, or Enfinium International's intentional acts. Customer recognises that there may be delays or interruptions in the use of the Enfinium International system,



including, for example, those caused intentionally by Enfinium International for purposes of servicing the Enfinium International system. In no event shall Enfinium International's liability, regardless of the form of action and damages suffered by customer, exceed the highest total monthly commissions paid by customer to Enfinium International over the 6 months prior to any incident.

**28. Customer Must Maintain Alternative Trading Arrangements:**

Computer-based systems such as those used by Enfinium International are inherently vulnerable to disruption, delay or failure. Customer must maintain alternative trading arrangements in addition to customer's Enfinium International account for execution of customer's orders in the event that the Enfinium International system is unavailable. By signing this Agreement, Customer represents that Customer maintains alternative trading arrangements.

**29. Enfinium International and Its Affiliates:**

A copy of Enfinium International's audited financial statements shall be posted on the Enfinium International website and, upon request, mailed to Customer. Customers shall rely only on the financial condition of Enfinium International, and not on its affiliates, which are not liable for Enfinium International's acts and omissions.

**30. DISCLOSURE STATEMENT:**

This statement is furnished to you because rule 190.10(c) of the commodity futures trading commission requires it for reasons of fair notice unrelated to Enfinium International's current financial condition:

(A) You should know that in the unlikely event of this company's bankruptcy, property, including property specifically traceable to you, will be returned, transferred or distributed to you, or on your behalf, only to the extent of your pro rata share of all property available for distribution to customers;

(B) Notice concerning the terms for the return of specifically identifiable property will be made by publication in a newspaper of general circulation.

(C) The commission's regulations concerning bankruptcies of commodity brokers can be found at 17 code of federal regulations part 190.

**31. Consent To Accept Electronic Records And Communications**

Enfinium International provides electronic trade confirmations, account statements, tax information and other Customer records and communications (collectively, "Records and Communications") in electronic form. Electronic Records and Communications may be sent to Customer's Trader Workstation or to Customer's e-mail address, or for security purposes may be posted on the Enfinium International website, with a notification sent to customer to login and retrieve the Communication. By entering into this Agreement, Customer consents to the receipt of electronic Records and Communications. Such consent will apply on an ongoing basis and for every tax year unless withdrawn by Customer. Customer may withdraw such consent at any time by providing electronic notice to Enfinium International through the Enfinium International website. If Customer withdraws such consent, Enfinium International will provide required tax documents in paper form upon request by telephone or via the Enfinium International website. However, Enfinium International reserves the right to require Customer to close Customer's account.

In order to trade using the Enfinium International Trader Workstation ("TWS"), and to receive Records and Communications through the TWS, there are certain system hardware and software requirements, which are described on the Enfinium International Website at [www.enfiniuminternational.com.au](http://www.enfiniuminternational.com.au). Since these requirements may change, Customer must periodically refer to the Enfinium International website for current system requirements. To receive electronic mail from Enfinium International, Customer is responsible for maintaining a valid Internet e-mail address and software allowing customer to read, send and receive e-mail. Customer must notify Enfinium International immediately of a change in Customer's e-mail address by using those procedures to change a Customer e-mail address that may be available on the Enfinium International website.



### **32. Miscellaneous:**

A. This Agreement is governed by the laws of the State of Connecticut, without giving effect to conflict of laws provisions. Courts of Connecticut have exclusive jurisdiction over disputes relating to this Agreement, except when arbitration is provided. In all judicial actions, arbitrations, or dispute resolution methods, the parties waive any right to punitive damages.

B. Customer agrees to the provision of this Agreement in English and represents that Customer understands its terms and conditions. This Agreement contains the entire agreement between the parties, who have made no other representations or warranties. If any provision of this Agreement is unenforceable, it shall not invalidate other provisions. Failure of Enfinium International to enforce any term or condition of this Agreement is not a waiver of the term/condition.

C. Customer consents to recording of all telephone conversations. Customer acknowledges the Enfinium International Privacy Statement and consents to collection/use of Customer information as described therein.

D. Customer may not assign or transfer any rights or obligations hereunder without the prior written consent of Enfinium International. Upon notice to Customer Enfinium International may assign this Agreement to another broker-dealer or futures commission merchant. This Agreement shall inure to the benefit of Enfinium International's successors and assigns. Enfinium International may terminate this Agreement or its services to Customer at any time. Customer may close its account upon notice to Enfinium International electronically through the Enfinium International website, but only after all positions are closed and all other requirements specified on the Enfinium International website regarding account closure are satisfied.

### **33. Mandatory Arbitration:**

- All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.
- Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.
- The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.
- The arbitrators do not have to explain the reason(s) for their award.
- The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
- The rules of some arbitration forums may impose time limits for bringing a claim in arbitration.
- In some cases, a claim that is ineligible for arbitration may be brought in court.
- The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

A. Customer agrees that any controversy, dispute, claim, or grievance between Enfinium International, any Enfinium International affiliate or any of their shareholders, officers, directors employees, associates, or agents, on the one hand, and Customer or, if applicable, Customer's shareholders, officers, directors employees, associates, or agents on the other hand, arising out of, or relating to, this Agreement, or any account(s) established hereunder in which securities may be traded; any transactions therein; any transactions between Enfinium International and Customer; any provision of the Customer Agreement or any other agreement between Enfinium International and Customer; or any breach of such transactions or agreements, shall be resolved by arbitration, in accordance with the rules then prevailing of any one of the following: (a) The American Arbitration Association; (b) The Financial Industry Regulatory Authority; or (c) any other exchange of which Enfinium International is a member, as the true claimant-in-interest may elect. If Customer is the claimant-in-interest and has not selected an arbitration forum within ten days of providing notice of Customer's intent to arbitrate, Enfinium International shall select the forum. The award of the arbitrators, or a majority of them, shall be final, and judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction.

B. No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until:

- The class certification is denied; or
- The class is decertified; or
- The customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Agreement except to the extent stated herein.

