

**MODEL**  
**ELECTRONIC DATA INTERCHANGE TRADING PARTNER AGREEMENT AND**  
**COMMENTARY**

**1.1. Documents: Standards.** Each party may electronically transmit to or receive from the other party any of the transaction sets listed in the Appendix, [transaction sets which the parties regularly transmit] and transaction sets which the parties by written agreement add to the Appendix (collectively "Documents"). Any transmission of data which is not a Document shall have no force or effect between the parties unless justifiably relied upon by the receiving party. All Documents shall be transmitted in accordance with the standards [and the published industry guidelines] set forth in the Appendix.

**1.2. Third Party Service Providers.**

**1.2.1.** Documents will be transmitted electronically to each party either, as specified in the Appendix, directly or through any third party service provider ("Provider") with which either party may contract. Either party may modify its election to use, not use or change a Provider upon 30 days prior written notice.

**1.2.2.** Each party shall be responsible for the costs of any Provider with which it contracts, unless otherwise set forth in the Appendix.

[**1.2.3.** Each party shall be liable for the acts or omissions of its Provider while transmitting, receiving, storing or handling Documents, or performing related activities, for such party; provided, that if both the parties use the same Provider to effect the transmission and receipt of a Document, the originating party shall be liable for the acts of omissions of such Provider as to such Document.]

**1.3. System Operations.** Each party, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Documents.

**1.4. Security Procedures.** Each party shall properly use those security procedures, including those specified in the Appendix, if any, which are reasonably sufficient to ensure that all transmissions of Documents are authorized and to protect its business records and data from improper access.

**1.5. Signatures.** Each party shall adopt as its signature an electronic identification consisting of symbol(s) or code(s) which are to be affixed to or contained in each Document transmitted by such party ("Signatures"). Each party agrees that any Signature of such party affixed to or contained in any transmitted Document shall be sufficient to verify such party originated such Document. Neither party shall disclose to any unauthorized person the Signatures of the other party.

**2.1. Proper Receipt.** Documents shall not be deemed to have been properly received, and no Document shall give rise to any obligation, until accessible to the receiving party at such party's Receipt Computer designated in the Appendix.

**2.2. Verification.** Upon proper receipt of any Document, the receiving party shall promptly and properly transmit a functional acknowledgement in return, unless otherwise specified in the Appendix. A functional acknowledgement shall constitute conclusive evidence a Document has been properly received.

**2.3. Acceptance.** If acceptance of a Document is required by the Appendix, any such Document which has been properly received shall not give rise to any obligation unless and until the party initially transmitting such Document has properly received in return an Acceptance Document (as specified in the Appendix).

**3.1. Terms and Conditions.** This Agreement is to be considered party of any other written agreement referencing it or referenced in the Appendix. In the absence of any other written agreement applicable to any Transaction made pursuant to the Agreement, such Transaction (and any related communication) also shall be subject to [CHOOSE ONE]:

[A] those terms and conditions, including any terms for payment, included in the Appendix.

[B] the terms and conditions included on each party's standard printed applicable forms attached to or identified in the Appendix [as the same may be amended from time to time by either party upon written notice to the other]. The parties acknowledge that the terms and conditions set forth on such forms may be inconsistent, or in conflict, but agree that my conflict or dispute that arises between the parties in connection with any such Transaction will be resolved as if such Transaction had been effected through the use of such forms.

[C] such additional terms and conditions as may be determined in accordance with applicable law.

The terms of this Agreement shall prevail in the event of any conflict with any other terms and conditions applicable to any Transaction.

**3.3. Validity; Enforceability.**

**3.3.1.** This Agreement has been executed by the parties to evidence their mutual intent to create binding purchase and sale obligations pursuant to the electronic transmission and receipt of Documents specifying certain of the applicable terms.

**3.3.2.** Any Document properly transmitted pursuant to this Agreement shall be considered, in connection with any Transaction any other written agreement described in Section 3.1, or this Agreement, to be a "writing" or "in writing"; and any such Document when containing, or to which there is affixed, a Signature ("Signed Documents") shall be deemed for all purposes (a) to have been "signed" and (b) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

**3.3.3.** The conduct of the parties pursuant to this Agreement, including the use of Signed Documents properly transmitted pursuant to this Agreement, shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the parties in furtherance of this Agreement, any Transaction and any other written agreement described in Section 3.1.

**3.3.4.** The parties agree not to contest the validity or enforceability of Signed Documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Signed Documents under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Signed Documents were not originated or maintained in documentary form.