



## **ErisX Terms of Use**

These terms and the Schedules hereto (the “Terms of Use”) are entered into between you and Eris Clearing, LLC (“Eris Clearing”) and Eris Exchange, LLC (“Eris Exchange”)(Eris Clearing and Eris Exchange along with all affiliates collectively referred to herein as “ErisX”) and govern your access and use of the Web site located at <http://www.erisx.com> or such other addresses or uniform resource locators as may be specified by ErisX including any content, functionality offered through or on the web site (“Site”), functionality offered through any application programming interface (including access to historical and real-time data, and access to the electronic trade matching system), and any and all systems now or in the future that ErisX provides for access to the ErisX electronic trade matching system for the trading of spot-market digital assets or derivatives on digital assets and any and all instruments that may be offered in the future and the ErisX clearing system for the settlement of the same as well as any other systems or offerings that may be provided by ErisX in the future (“Services”). By accessing, viewing or using any or the Services, you indicate your acknowledgement and acceptance of these Terms of Use.

### **1. Amendments**

ErisX may amend the Terms of Use at any time by posting such amendments on the Site and providing such amendments in writing to any ErisX Member, including via email. Such amendments will be binding on you effective as of such posting and on any ErisX member upon sending of written notice. Your continued use of the Services after the effective date of any such amendment shall constitute your ratification of, and agreement to, any such amendment.

### **2. Updates**

ErisX may in its sole discretion, release, update, enhance or otherwise make changes to the Services, including adding or removing features and functionality, discontinuing portions or functionality, in whole or in part at any time and without any prior notice.

### **3. Rules and Membership**

In addition to these Terms of Use, your use of the Services is governed by the Eris Clearing Rulebook and the Eris Exchange Rulebooks (collectively the “ErisX Rulebook”), the ErisX Privacy Policy and any ErisX Membership Agreement that you may have entered into, all as may be amended from time to time. The Exchange Rulebooks and any ErisX Membership Agreement to which you may be a party shall supersede any conflicting terms contained in this Terms of Use.

### **4. Access**

You are solely responsible for controlling, monitoring and securing the access and use of any username or password used to access the Services and you must not disclose, or permit any other person to disclose, the Passwords to any third party. Likewise you are responsible for the security of any hardware and software you use to access the Services, including your computer, internet provider and web browser. You must install all security patches and updates as well as any virus, anti malware or other security related software.

## **5. Representations, Warranties and Covenants.**

You represent, warrant and covenant as follows:

- (a) You will not in whole or in part copy, modify, reverse engineer, reverse assemble or reverse compile Services or any of the content or information displayed thereon or issued by the Services, and you will not communicate, distribute, rent, sell, retransmit, redistribute, release or re-license the Services or any of the content or information displayed thereon to any third party (other than as may be agreed to in writing with ErisX);
- (b) You will not use or permit the use of the content, information and data displayed on or issued by the Services for any illegal purpose nor shall you post on or transmit through the Services any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually explicit, profane, hateful, racially, ethnically, or otherwise objectionable material of any kind, including but not limited to, any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or international law or any other material, activity or purpose that ErisX in its sole discretion deems unacceptable.
- (c) You shall not use or permit the use of the Services other than in accordance with these Terms of Use;

## **6. Summary Suspension**

Your access to and use of the Services may be monitored by the Exchange for its own purposes and not for your benefit. ErisX may, in its sole discretion, with or without cause, suspend, terminate or restrict at any time your access to and use of the Services.

## **7. No Guarantee**

ErisX does not guarantee continuous, uninterrupted or secure access to the Services. The transmission of data on any electronic system may be subject to: interruption; interference; blackout; failure; systems or service unavailability or failure; hardware or software malfunction or failure; interception by third



parties; unauthorized access; theft; modification or inaccuracy. You acknowledge that the reliability, availability, performance and other aspects of the Internet are beyond the ErisX's reasonable control.

## **8. Intellectual Property**

The Services are the exclusive proprietary property of the ErisX. You have no rights with respect to the Services other than those expressly set forth in these Terms of Use or any ErisX Membership Agreement to which you are a direct party. The Services are protected by intellectual property laws including, but not limited to, laws relating to copyrights, patents, trade secrets, trademarks and service marks, which are and shall remain the sole property of ErisX. Nothing in these Terms of Use or displayed on or contained in the Services or elsewhere, should be construed as granting, expressly, by implication, estoppel or otherwise, any license or right to use any copyrighted materials, patents, trade secrets, trademarks, service marks or other proprietary rights of ErisX. You must use best efforts to ensure that any partners, officers, directors, employees and agents maintain sole control and possession of, and sole access to, ErisX information and data obtained by you or such persons.

Unless and except as otherwise specified, ErisX reserves complete title and rights for materials downloaded from the Services.

## **9. Submission of Ideas**

To the extent that you might submit to ErisX submit ideas, concepts, designs or inventions for instruments or any other relevant topic (collectively, "Ideas") you should not reveal to ErisX any Ideas for which you want to receive any compensation or credit. By submitting Ideas to ErisX, you expressly agree to give up any and all rights you may have to such Ideas and you agree to transfer to ErisX all of your rights pertaining to such Ideas. By submitting any Ideas to ErisX, you expressly authorize ErisX to use and benefit from the Ideas as ErisX may decide. ErisX will not provide you with any compensation or credit for any Ideas you submit. By submitting an Idea to ErisX, you give up all control you might otherwise have concerning such Ideas unless you and ErisX have executed a valid and relevant non-disclosure agreement that covers the submission of your Ideas to ErisX.

## **10. Disclaimer of Warranties**

EXCEPT AS SPECIFICALLY PROVIDED ELSEWHERE IN THIS AGREEMENT, THE SITE AND THE SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND AND THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY ERISX. FURTHERMORE, ERISX CANNOT AND DOES NOT GUARANTEE OR MAKE ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE VALIDITY, SEQUENCE, TIMELINESS, COMPLETENESS,



ACCURACY OR CONTINUED AVAILABILITY OF ANY INFORMATION OR DATA MADE AVAILABLE ON OR THROUGH THE SERVICES.

#### **11. Limitation of Liability and Remedies.**

EXCEPT AS PROVIDED BELOW AND EXCEPT WHEN THERE HAS BEEN A FINDING OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL ERISX, ITS AFFILIATES OR ITS OR THEIR OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, PARTNERS AGENTS AND REPRESENTATIVES BE LIABLE TO ANY PERSON FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, DIRECT, SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING FROM: (A) ANY FAILURE OR MALFUNCTION OF THE SERVICES, OR ANY FACILITIES USED TO SUPPORT THE SAME (B) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE SERVICES OR OTHER INFORMATION MADE AVAILABLE ON THE SITE, THE SERVICES, OR ANY FACILITIES USED TO SUPPORT THE SERVICES.

THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY), STRICT LIABILITY OR OTHERWISE.

THE SOLE LIABILITY OF ERISX, ITS AFFILIATES AND/OR ANY OF THEIR RESPECTIVE SUCCESSORS OR ASSIGNS, AND ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, PARTNERS, AGENTS AND REPRESENTATIVES FOR DIRECT LOSS OR DAMAGE WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY), STRICT LIABILITY OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR THE TERMS OF USE SHALL BE LIMITED TO (A) \$1,000 FOR ANY SINGLE CLAIM AND (B) \$10,000 FOR ALL CLAIMS.

#### **12. Indemnification**

You shall indemnify, defend and hold harmless ErisX its affiliates and its and their respective officers, directors, members, employees, partners, agents and representatives from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs and expenses (including reasonable attorney's fees) resulting from or arising out of any act or omission by any person obtaining access to the Services through the use of your username and password or other access materials whether or not you authorized such access.

### **13. Notices**

Notice to you may be made via email, registered or certified mail, return receipt requested, to your most current address on record with ErisX. Notices of changes to these Terms of Use or other matters may also be made by posting to the Site or providing a click through screen through the Services. You may give notice to ErisX by email at [Legal@erisx.com](mailto:Legal@erisx.com) or registered or certified mail, return receipt requested, to ErisX, 227 W. Monroe, Suite 2070, Chicago IL 60606, to the attention of the General Counsel.

### **14. Venue and Governing Law**

These Terms of Use and your use of the Services shall be governed by the laws of the State of Illinois and the federal laws of the United States, without regard to conflicts of laws principles. Any controversy or claim arising out of or relating to these Terms of Use, or the breach of the same, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Chicago, Illinois. The arbitration shall be in English and shall be governed by the laws of the State of Illinois. You and ErisX acknowledge that a material breach relating to certain provisions of these Terms of use may, by its gravity or nature, cause immediate or irreparable injury to the other that cannot be adequately compensated for in damages. Accordingly, notwithstanding anything to the contrary in these Terms of Use, in the event of any such material breach and in addition to all other remedies available herein, the non-breaching party may seek solely injunctive relief (including a temporary restraining order, preliminary injunction or permanent injunction) from any court of competent jurisdiction, without posting a bond or other security. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or these Terms of Use must be filed within one (1) year after such claim or cause of action arose or be forever barred. With respect to an unauthorized user there are no time limitations with respect to any action brought by ErisX other than the applicable statute of limitations.