

**Off-Exchange Reporting Broker Agreement**

THIS AGREEMENT (“**Agreement**”) is made by and between NASDAQ Futures, Inc. (the “**Exchange**”), a Delaware corporation whose principal offices are located at One Liberty Plaza, 165 Broadway, New York, NY 10006, and \_\_\_\_\_ (“**Authorized Customer**”), a \_\_\_\_\_ whose principal offices are located at \_\_\_\_\_.

The Exchange and each of its affiliates and subsidiaries that provide any portion of the Services (as defined below) to Authorized Customer hereunder, along with their officers, employees, and agents, are collectively referred to herein as “**NASDAQ**.” The Exchange and Authorized Customer are each individually a “**Party**” and collectively the “**Parties**.”

The Exchange has developed a trading system (the “**Trading System**”) for providing a trading market for the receipt, entry, cancellation, storage, display, matching, and reporting of Orders in Futures and Options on Futures on the Exchange and related services of pre-trade and at-trade risk tools. This Agreement sets forth the terms pursuant to which the Exchange will grant the undersigned Authorized Customer access to the Trading System directly for the purpose of submitting either Block Trades or Futures or Options on Futures leg of an Exchange for Related Positions and any such other transactions as the Exchange may permit from time to time to be executed privately and submitted utilizing the Trading System (hereinafter collectively referred to as “**Off-Exchange Transactions**”). Authorized Customer, representing that it is eligible to do so, desires to gain access to such services.

NOW THEREFORE, in consideration of the promises and the mutual covenants and conditions herein contained, the Parties, intending to be legally bound, agree as follows:

**1. Exchange Services.**

- a. During the term of this Agreement, the Exchange grants Authorized Customer a non-exclusive, non-assignable, non-transferable, worldwide, revocable license to receive and use the services made available by the Trading System (the “**Services**”) in accordance with the terms of this Agreement. The Authorized Customer understands and agrees that the Services solely permits the entry of Off-Exchange Transactions and the Authorized Customer shall not be entitled to receive any other services, express or implied, pursuant to this Agreement.
- b. This Agreement, together with the Exchange Requirements and Applicable Law (as defined herein), shall govern Authorized Customer’s right to receive the Services. “**Exchange Requirements**” shall mean (i) the corporate formation documents, bylaws, board resolutions, rules, regulations, disciplinary decisions, and rule interpretations of the Exchange, and (ii) the Exchange’s operating procedures, specifications, requirements, and pricing terms. “**Applicable Law**” shall mean all applicable laws, statutes, rules, regulations, orders, decisions, interpretations, opinions, and other requirements of any governmental agency, authority or body, including without limitation the U.S. Commodity Futures Trading Commission (“**CFTC**”).

**2. Access to the Services.**

- a. The Exchange may issue to the Authorized Customer’s security contact person, or persons (each such person is referred to herein as an “**Authorized Security Administrator**”), one or more user IDs and passwords for access to the Services.

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- b. The Authorized Customer will be solely responsible for controlling and monitoring the use of the user IDs and passwords, and will provide the passwords only to its authorized employees, and will not provide the passwords to any third party. The Authorized Customer will immediately notify the Exchange of any unauthorized disclosure or use of the passwords or access to the Services or of the need to deactivate any passwords. The Authorized Customer acknowledges and agrees that it will be bound by any actions taken through the use of its passwords (except where such use can be shown to be through the fault or negligence of the Exchange) and the use of the Service, whether or not such actions were authorized. The Authorized Customer will only use the passwords to access and use the Service from the jurisdictions specified by the Authorized Customer and accepted by the Exchange. The Authorized Security Administrator shall be responsible for all communications between the Exchange and the Authorized Customer, and any notices or other communications sent to the Authorized Security Administrator by the Exchange shall be binding on the Authorized Customer.
3. **Fees.** The Exchange reserves the right to charge fees for the Services, which may be changed from time to time at the Exchange's sole discretion.
4. **Term and Termination.** This Agreement will commence as of the date hereof and will continue until terminated by: (i) the Authorized Customer upon forty-eight (48) hours' written notice; or (ii) the Exchange immediately with written notice, provided that this Agreement shall remain in effect with respect to the Off-Exchange Transactions entered prior to such termination. Sections 6 through 9, and 12 through 16 shall survive termination of this Agreement.
5. **Authorized Customer Representations, Warranties, and Agreements.**
  - a. Authorized Customer has all necessary power and authority to execute and perform this Agreement, and this Agreement constitutes the legal, valid, and binding obligation of Authorized Customer, enforceable against Authorized Customer in accordance with its terms. Neither the execution of nor performance under this Agreement by Authorized Customer violates any Applicable Law or any agreement, document, or instrument, binding on or applicable to Authorized Customer.
  - b. Authorized Customer agrees that the Services will be utilized solely for the purpose of submitting Off-Exchange Transactions on behalf of its own proprietary accounts and/or the accounts of its customers, who are parties to such transaction and whose clearing member(s) has (or have) authorized the Authorized Customer to enter such transactions into the Services on their behalf. The Exchange shall have the right to reject any Off-Exchange Transaction if the Exchange determines that the clearing member(s) has (or have) not authorized the Authorized Customer to enter such transaction into the Service on behalf of the customers who are the parties to such transactions. The Authorized Customer represents and warrants that it has the authority to enter all Off-Exchange Transactions on behalf of the customers for which it acts and all necessary registrations or licenses as may be required under Applicable Law.
  - c. Authorized Customer consents to the jurisdiction of NASDAQ and agrees to abide by its Exchange Requirements, including, but not limited to, Chapter V, Section 4 (Direct Access) of the Nasdaq Futures Rules.

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- d. Authorized Customer represents that it is not presently enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any commodity, security, option or similar instrument by Applicable Law.
- e. In the event an Authorized Customer is not registered as an Associated Person with the National Futures Association (“NFA”), Authorized Customer represents that only orders for its customers located outside the United States will be submitted through the Service. An Authorized Customer not registered as an Associated Person with NFA represents and warrants that it will not submit orders for its customers located in the United States. The Exchange reserves the right to reject any Off-Exchange Transaction if the Exchange determines that an Authorized Customer not registered as an Associated Person has submitted an order on behalf of one of its customers located in the United States.
- f. Authorized Customer acknowledges that the Exchange may, immediately and without notice, suspend or terminate the Authorized Customer’s access to and utilization of the Services. The Authorized Customer further acknowledges that the Exchange may, in its sole discretion, temporarily or permanently cease to provide the Services. The Authorized Customer also acknowledges that its access to and utilization of the Services shall be monitored by the Exchange for its own purposes (including, without limitation, for purposes of monitoring levels of activity and for purposes of maintaining the functional and operational integrity of the Trading System and for purposes of complying with Applicable Law).
- g. Authorized Customer represents and warrants that, as of the date hereof, it is in compliance with the Exchange Requirements and Applicable Law. Authorized Customer agrees to comply with the Exchange Requirements and Applicable Law, including as the foregoing apply to the execution of Off-Exchange Transactions whether or not such Authorized Customer is a Member. Authorized Customer further agrees that it will only use the Services in compliance with this Agreement, the Exchange Requirements, and Applicable Law, including any required registrations with respect to any jurisdiction in which the Authorized Customer is accessing and using the Services.
- h. Authorized Customer agrees that, as between the Exchange and Authorized Customer, the Exchange retains all ownership and other rights associated with the Services. Authorized Customer acknowledges that it has been granted a limited right to receive the Services solely for the purposes set forth herein, and Authorized Customer will have no other rights with respect to the Services. Authorized Customer agrees to attribute the appropriate source of any information and data received through the Services as set forth in applicable Exchange Requirements. Authorized Customer acknowledges that NASDAQ’s third party information providers have proprietary rights in their respective information and data.
- i. Authorized Customer understands and agrees that the Exchange may use any information and data that Authorized Customer and its users enter into the Trading System (the “**Authorized Customer’s Data**”) for the following purposes: (i) for performing regulatory functions delegated to the Exchange by the Commodity Exchange Act (the “**Act**”) or the CFTC; (ii) for internal purposes that do not include disclosing, publishing, or distributing outside of NASDAQ; and (iii) for use within NASDAQ market data products that include disclosure, publication, or distribution to third parties.

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- j. Authorized Customer agrees that it will not interfere with or adversely affect the operation of the Services or Trading System or the use of the Services or Trading System by any Authorized Customer or Authorized Trader (as defined in the Exchange rules).
- k. Authorized Customer agrees that it will be solely responsible for any and all costs or expenses associated with or incurred by Authorized Customer in connection with its receipt of the Services.

### 6. Confidentiality.

- a. The Exchange and Authorized Customer each acknowledge that, in the course of performance of this Agreement, each may obtain the other Party's confidential data, information, techniques, research, documentation, processes, or other materials ("**Confidential Information**"). All such Confidential Information, in any form, shall be deemed confidential upon disclosure to the other Party. Each Party shall use the Confidential Information of the other Party solely for use consistent with the purposes of this Agreement or, in the case of the Exchange, for purposes of fulfilling its regulatory responsibilities; shall hold such Confidential Information in strict confidence; and shall not use, disclose, copy, or publish any Confidential Information without the prior written approval of the other Party.
- b. Notwithstanding the foregoing, the Exchange and Authorized Customer may disclose Confidential Information: (i) to the extent ordered or requested by a court or by a government agency with regulatory jurisdiction over the Exchange or Authorized Customer; (ii) to the extent requested by a valid subpoena; (iii) to their respective employees, directors, and other agents solely for use consistent with the purposes of this Agreement and who are bound by obligations of confidentiality at least as restrictive as those set forth in this Agreement; or (iv) in the case of the Exchange, in the course of fulfilling regulatory responsibilities, including responsibilities over members and associated persons under the Act and responsibilities to provide audit trail, large trader or other regulatory information to the CFTC or other regulators. The duties to maintain the confidentiality of information set forth in this Section 6 do not apply to data, information, or techniques that are: (a) lawfully within a Party's possession prior to the date of this Agreement and not under a duty of non-disclosure; (b) voluntarily disclosed to a Party by a third-party so long as the receiving Party does not know that the third-party has breached any obligation not to reveal such data, information, or techniques; (c) developed by a Party independently of the disclosure; or (d) generally known or revealed to the public.
- c. Neither Party shall make copies of Confidential Information except for those copies required for use by authorized employees, agents, partners, or associated persons. Each party shall implement and maintain an appropriate security program including appropriate physical, electronic, and procedural safeguards, designed to: (i) provide for the security and confidentiality of Confidential Information; (ii) protect against threats or hazards to the security or integrity of Confidential Information; and (iii) prevent unauthorized access to or use of Confidential Information. Except where prohibited by any relevant law, regulation or court order, each party shall promptly notify the other party of: (a) any disclosure, access to, or use of its Confidential Information in breach of this Agreement; and (b) any unauthorized intrusion into systems containing the other party's Confidential Information. Each Party agrees that all Confidential

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Information, including copies thereof, shall be returned to the other Party or destroyed within ten (10) days of the date of termination of this Agreement, except to the extent that Exchange Requirements or Applicable Law do not permit it to return or destroy such information or in the event Confidential Information is stored as a result of electronic backup or archiving procedures, provided, however, in either case, that any Confidential Information that is not returned or destroyed shall remain subject to the terms and conditions of this Agreement and shall not be accessed or otherwise used by such Party except for purposes of complying with such Exchange Requirements or Applicable Law. Notes and other documents referencing or relating to Confidential Information may be made and kept by a receiving Party, but shall be governed by this Agreement until such notes and other documents are destroyed. All intellectual property rights associated with the Confidential Information shall remain the disclosing Party's intellectual property rights.

- d. Each Party acknowledges that the other Party, because of the nature of the Confidential Information, may suffer irreparable harm in the event of a breach of the provisions of this Section 6 and that monetary damages may be inadequate to compensate the Party for such breach. Accordingly, but without waiver of any of the other provisions of this Agreement or the Exchange Requirements, in the event of any breach or threatened breach of this Section 6, the disclosing Party shall be entitled, in addition to such other legal or equitable remedies which might be available, to seek injunctive relief in any court of competent jurisdiction against any continuation of any such breach or any threatened breach without showing or proving any actual damages sustained. If the disclosing Party prevails in any action brought to enjoin a material breach or threatened breach of this provision, it shall be entitled to reasonable attorneys' fees and costs in connection with such legal proceeding.

**7. Disclaimers of Warranties.** AUTHORIZED CUSTOMER ACKNOWLEDGES AND AGREES THAT THE EXCHANGE MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE SERVICES, SOFTWARE, OR OTHER INFORMATION PROVIDED IN CONNECTION THEREWITH AND THAT THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AT AUTHORIZED CUSTOMER'S SOLE RISK. THE EXCHANGE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER THE EXCHANGE, NASDAQ NOR THEIR DIRECTORS, MANAGERS, OFFICERS, AFFILIATES, SUBSIDIARIES, SHAREHOLDERS, EMPLOYEES, OR AGENTS MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PARTY SHALL HAVE ANY LIABILITY TO AUTHORIZED CUSTOMER FOR, (I) THE ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE, OR CONTINUED AVAILABILITY OF THE SERVICES, (II) ERRORS, DEFECTS, DELAYS, OMISSIONS, OR INTERRUPTIONS IN THE SERVICES, (III) THE CREDITWORTHINESS OF ANY OTHER AUTHORIZED CUSTOMER, OR (IV) THE ACTS OR OMISSIONS OF ANY USERS AUTHORIZED BY AUTHORIZED CUSTOMER TO USE THE SERVICES ON BEHALF OF AUTHORIZED CUSTOMER. THE EXCHANGE WILL HAVE NO DUTY OR OBLIGATION TO VERIFY THE ACCURACY OR CORRECTNESS OF ANY INFORMATION MADE AVAILABLE THROUGH OR ON THE SERVICES. AUTHORIZED CUSTOMER ACKNOWLEDGES AND AGREES THAT THE EXCHANGE DOES NOT AND SHALL NOT SERVE AS THE PRIMARY BASIS

FOR ANY DECISIONS MADE BY AUTHORIZED CUSTOMER AND THAT THE EXCHANGE IS NOT A FIDUCIARY OF AUTHORIZED CUSTOMER. WITHOUT LIMITATION OF THE FOREGOING, THE AUTHORIZED CUSTOMER ACKNOWLEDGES, AGREES AND ACCEPTS THAT THE EXCHANGE SHALL HAVE NO LIABILITY OR RESPONSIBILITY WHATSOEVER FOR ANY MATTERS RELATED TO THE AUTHORIZED CUSTOMER'S RELATIONSHIP OR DEALINGS WITH ITS OWN CUSTOMERS, INCLUDING BUT NOT LIMITED TO THE EXECUTION OF TRANSACTIONS OR THE ACCURACY OF ANY INFORMATION SUBMITTED THROUGH THE TRADING SYSTEM IN CONNECTION WITH THE AUTHORIZED CUSTOMER'S USE OF THE SERVICES, ALL OF WHICH SHALL BE THE SOLE RESPONSIBILITY OF THE AUTHORIZED CUSTOMER.

**8. Limitation of Liability.**

- a. NOTWITHSTANDING THE TERMS OF SECTION 7 ABOVE, IF THE EXCHANGE IS DETERMINED TO BE LIABLE TO THE AUTHORIZED CUSTOMER FOR ANY CAUSE (OTHER THAN PURSUANT TO SECTION 9B. BELOW), THEN AUTHORIZED CUSTOMER EXPRESSLY AGREES THAT IN ENTERING INTO THIS AGREEMENT, THE EXCHANGE'S AGGREGATE LIABILITY, FOR ALL CAUSES OF ACTION, SHALL NOT EXCEED THE SUM TOTAL OF ALL FEES PAID TO THE EXCHANGE BY THE AUTHORIZED CUSTOMER AND, IF APPLICABLE, BY PARTIES TO THE OFF-EXCHANGE TRANSACTIONS ARRANGED BY THE AUTHORIZED CUSTOMER DURING THE SIX MONTH PERIOD PRECEDING THE ACTION, BUT IN NO EVENT MORE THAN US\$10,000 (TEN THOUSAND DOLLARS).
- b. EXCEPT AS MAY (I) OTHERWISE BE SET FORTH HEREIN (II) OTHERWISE BE REQUIRED BY THE ACT, OR (III) OTHERWISE BE PERMITTED BY THE EXCHANGE REQUIREMENTS, NEITHER PARTY, NOR ITS AFFILIATES, OR ANY OF THEIR EMPLOYEES, OFFICERS, DIRECTORS, OR AGENTS, SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER INDIVIDUAL OR ENTITY FOR TRADING LOSSES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR FOR INCREASED EXPENSES OF OPERATION, OR FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF ANY SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. NEITHER THE EXCHANGE, NASDAQ NOR THEIR AFFILIATES SHALL BE LIABLE TO AUTHORIZED CUSTOMER OR TO ANY OTHER INDIVIDUAL OR ENTITY FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF INFORMATION FROM THE EXCHANGE'S THIRD PARTY INFORMATION AND SOFTWARE PROVIDERS.

**9. Indemnification.**

- a. Authorized Customer shall be liable to, indemnify, and hold the Exchange and its affiliates, and their employees, directors, and other agents harmless from, any and all Claims or Losses (as those terms are defined in Section 9e) imposed on, incurred by or asserted against the Exchange, NASDAQ or their affiliates, or any of their employees, directors, and other agents by an third party unaffiliated with the



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Exchange or NASDAQ, to the extent that the Claims and Losses result from acts or omissions of Authorized Customer or its affiliates or their employees, directors, agents, or associated persons, or from the receipt or use of the Services (including representations about the Service) by Authorized Customer, its affiliates, its customers, or their employees, directors, agents or associated persons.

- b. The Exchange shall be liable to, indemnify, and hold Authorized Customer and its affiliates, and their employees, directors, and other agents harmless from, any and all Claims or Losses (as those terms are defined in Section 9e) imposed on, incurred by or asserted against Authorized Customer, its employees, directors, and other agents by a party unaffiliated with the Parties to the extent that the Claims and Losses result from any alleged infringement or misappropriation by the Trading System or the Services of any third parties' intellectual property rights.
- c. For the purposes of Sections 9a and 9b above, each Party's obligation to defend and indemnify the other Party under this Section 9 shall be conditioned on the following:
  - (i) the indemnified Party promptly (but, in any event, in a time frame that does not prejudice the rights of either Party, except insofar as any delay is caused by the Exchange's attending to its regulatory functions or exigent needs of the operation of its markets) notifying the indemnifying Party in writing of the claim, action or allegation;
  - (ii) the indemnified Party fully cooperating with indemnifying Party in the defense thereof; and (iii) indemnifying Party having sole control of the defense and all related settlement negotiations, provided that (a) upon the indemnified Party's request, indemnifying Party shall inform the indemnified Party of the status of any proceedings or negotiations, and (b) the indemnified Party may, at its own expense, participate in the defense by counsel chosen by it without, however, impairing indemnifying Party's control of the defense. Indemnifying Party shall give prompt written notice to the indemnified Party of any proposed settlement of an indemnified claim and indemnifying Party may not, without the indemnified Party's prior written consent, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder unless such settlement, compromise, or consent: (1) includes an unconditional release of the indemnified Party Affiliates from all liability arising out of such claim; (2) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of any indemnified Party Affiliate; and (3) does not require a contribution from any indemnified Party Affiliate or contain any equitable order, judgment or term (other than the fact of payment or the amount of such payment from indemnifying Party) that in any manner affects, restrains or interferes with the business or regulatory functions of any indemnified Party Affiliate. The indemnified Party's duty of cooperation in litigation shall not be deemed to be a waiver of any indemnified Party Affiliate's attorney-client, attorney work product, or other legal privilege or protection from disclosure.
- d. Notwithstanding anything to the contrary in this Agreement, the Exchange shall NOT have the obligation to defend, indemnify and hold Authorized Customer or its affiliates, or their employees, directors, agents, or associated persons harmless for any and all Claims and Losses imposed on, incurred by, or asserted against Authorized Customer, its employees, directors, other agents, and affiliates as a result of any allegation of infringement or misappropriation if the Trading System or Services have not been used in accordance with this Agreement, the Exchange Requirements, or Applicable Law, or to the extent it is based on Authorized Customer's use of a

superseded version of the Trading System or Services if such infringement or misappropriation would have been avoided by use of the current version of the Trading System or Services furnished by the Exchange or if the infringement or misappropriation claim, action, or allegation is the result of the combination, operation, or use of the Trading System or Services with hardware, software, or materials not furnished by the Exchange if such infringement or misappropriation would have been avoided by the use of the Trading System or Services without such hardware, software, or materials.

- e. “**Claims or Losses**” means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, and reasonable costs and expenses of whatever nature, whether incurred by or issued against an indemnified Party, including, without limitation: (i) indirect, special, punitive, consequential, or incidental loss or damage (including, but not limited to, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, or other indirect loss or damage); and (ii) reasonable administrative costs, litigation costs, and auditors’ and attorneys’ fees, and related disbursements. “Claims or Losses” do not include the time value of the Parties’ directors, employees, or agents (other than with respect to attorneys’ fees and related disbursements, which are included as set forth above) in fulfilling the Parties’ obligations under Sections 9a and 9b to cooperate in the defense of indemnified Claims and Losses.

**10. Force Majeure.** Notwithstanding any other term or provision of this Agreement, neither the Exchange (including, for purposes of this Section, its third party information and software providers) nor Authorized Customer shall be obligated to perform or observe its obligations undertaken in this Agreement (except for obligations to make payments hereunder and regulatory obligations) if prevented or hindered from doing so by any circumstances found to be beyond its control.

**11. Subsequent Parties; Limited Relationship.** This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective permitted successors or assigns. Neither Party shall assign this Agreement (including by operation of law) without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the Exchange may assign this Agreement or any part of it to any affiliated entity without the consent of the other Party. Nothing in this Agreement, express or implied, is intended to or shall: (i) confer on any individual or entity other than the Parties hereto, or their respective permitted successors or assigns, any rights to remedies under or by reason of this Agreement; (ii) render the Parties hereto partners or participants in a joint venture; or (iii) appoint one Party the agent of the other.

**12. Arbitration.**

- a. Except as may be provided in the Exchange Requirements, Applicable Law, or this Section 12, all claims, disputes, controversies, and other matters in question between the Parties to this Agreement and the Parties’ employees, directors, agents, and associated persons arising out of, or relating to this Agreement, or to the breach hereof (collectively for purposes of this Section 12, “**Claims**”), shall be settled by final binding arbitration in accordance with Commercial Arbitration Rules of the American Arbitration Association or in accordance with such other rules and procedures as are agreed to by the Parties. The arbitration proceeding shall be held in the City of New



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York, unless otherwise agreed by the Parties. The decision rendered through arbitration shall be final and binding upon the Parties hereto and judgment may be entered in accordance with applicable law in any court having jurisdiction thereof.

- b. Notwithstanding the foregoing provisions:
  - i. when the Exchange asserts that Applicable Law or the Exchange Requirements provide the Exchange with limitation of liability, immunity, or other defense to a disputed Claim, the Exchange may, upon notice to Authorized Customer, opt to have such dispute heard and decided by a court and not in arbitration;
  - ii. in the event that any Party seeks injunctive relief against another Party, the Party seeking injunctive relief may, upon notice to the other Party, opt to have such dispute be heard and decided by a court and not in arbitration; and
  - iii. any Party may petition a regulatory body regarding a matter in question over which the regulatory body has administrative jurisdiction.

**13. Notices.** All notices and other communications required to be given under this Agreement shall be in writing and either (i) hand delivered or forwarded by registered or certified mail; or (ii) sent via electronic mail, in either case to the relevant address provided by a Party for such purpose.

**14. Governing Law.** This Agreement shall be deemed to have been made in the United States, State of New York, and shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of New York, without reference to principles of conflicts of laws thereof. The rights and obligations of the Parties in respect of the matters covered by this Agreement, however, shall at all times also be subject to any applicable provisions of the Exchange Requirements, and the interpretation of the Exchange Requirements is a matter of federal law. For all matters not subject to the arbitration provisions set forth in Section 12 above, Authorized Customer hereby consents to submit to the jurisdiction of the federal and state courts in and of the State of New York in connection with any action or proceeding instituted relating to this Agreement, and all proceedings shall be conducted in the City of New York. Without limitation and for the avoidance of doubt, this Agreement does not waive any protection or limitation of liability afforded the Exchange under the Exchange Requirements or Applicable Law (including but not limited to Chapter II, Section 8 of the NASDAQ Futures Rules or Article IX, Section 2 of the Exchange's By-Laws or any successor of any of the foregoing, and the doctrines of self-regulatory organization immunity and federal preemption).

**15. Headings.** Section headings are included for convenience only and are not to be used to construe or interpret this Agreement.

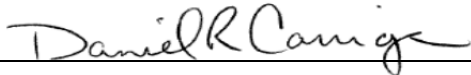
**16. Amendment; Waiver; Severability; Counterparts.**

- a. Exchange may alter any term or condition of this Agreement at any time by providing at least forty-eight (48) hours' written notice of any such amendment that is likely to materially and adversely affect the Authorized Customer or its rights or obligations hereunder. The Authorized Customer's use of the Services after such notice and/or after the effective date of any such amendment shall constitute its ratification of, and agreement to, any such amendment.

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- b. Authorized Customer may not alter any terms and conditions of this Agreement, and no modification to this Agreement proposed by Authorized Customer will be binding, unless in writing and manually signed by an authorized representative of each Party.
- c. No failure on the part of the Exchange or Authorized Customer to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege under this Agreement.
- d. Unless otherwise provided herein, if any of the provisions of this Agreement, or application thereof to any individual, entity or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to individuals, entities, or circumstances other than those as to which they are held invalid or unenforceable, shall not be affected thereby and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- e. This Agreement may be executed in counterparts (including by facsimile or other electronic transmission), each of which shall be deemed to be an original.

**IN WITNESS WHEREOF, the Exchange and Authorized Customer have caused this Agreement to be executed by their respective duly authorized officers. The effective date of this Agreement shall be the date Authorized Customer signs this Agreement.**

Authorized Customer:	NASDAQ Futures, Inc.
By:	By: 
Print name:	Print name: Daniel R. Carrigan
Title:	Title: President
Date:	
Phone:	
Email:	
NFA number:	