

NASDAQ Futures, Inc. Services 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 _____ (“**Subscriber**”), a _____ whose principal offices are located at _____. The Exchange and each of its affiliates and subsidiaries that provides any portion of the Services (as defined below) to Subscriber hereunder, along with their officers, employees, and agents, are collectively referred to herein as “**NASDAQ**.” The Exchange and Subscriber 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 make available and provide such services to Subscriber. Subscriber, representing that it is eligible to do so, desires to gain access to such services.

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

Section 1. Exchange Services.

- A. During the term of this Agreement, the Exchange grants Subscriber a non-exclusive, non-assignable, non-transferable, worldwide, revocable license to receive and use the services made available by the Trading System (the “**Services**”) solely through Authorized Devices (as defined herein) and in accordance with the terms of this Agreement.
- B. This Agreement, together with the Exchange Requirements and Applicable Law (as defined herein), shall govern Participant’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, pricing terms, and other documents and terms that are regulatory or technical in nature (including, but not limited to, user guides), which are published on the NASDAQ Trader website located at *www.nasdaqtrader.com* or other NASDAQ website accessible by and disclosed to Subscriber, in each case as may be amended from time to time (“**NASDAQ Trader**”). “**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**”).

- C. Subscriber will not: (i) except as permitted pursuant to this Agreement or the Exchange Requirements, permit any third party to access or use the Services; (ii) copy, modify, reverse engineer, decode, decompile, attempt to tamper with, evade, or discover the method of operations of the Services; (iii) except as permitted pursuant to this Agreement or the Exchange Requirements, distribute, rent, sell, retransmit, redistribute, disseminate, divert, release, license, or sublicense the Services or any part thereof to any third party; (iv) use the Services in violation of this Agreement, the Exchange Requirements, or Applicable Law; or (v) introduce any harmful data, computer code, or viruses to the Services or otherwise damage, disrupt, disable, or harm the Services.

Section 2. Authorized Devices; Users.

- A. Subscriber may access the Trading System only through one or more systems, automated systems, or devices that meet the Financial Information Exchange interface specifications and requirements (the “**FIX Interface Specifications**”) established from time to time by the Exchange (each an “**Authorized Device**”). FIX Interface Specifications are available from the Exchange upon request and may be modified from time to time by the Exchange in its sole discretion on at least thirty (30) days’ notice unless: (i) a malfunction in the Trading System or Services necessitates modifications on an accelerated basis; (ii) an emergency situation precludes such advance notice; or (iii) a shorter time period is required pursuant to an order of a court, an arbitrator(s), or a regulatory agency or in order to comply with Applicable Law. Subscriber shall report to the Exchange, as and when requested by the Exchange, the information required to be supplied by Subscriber in the FIX Interface Specifications.
- B. Except as provided in the Exchange Requirements, Subscriber agrees that the Authorized Devices will be located in areas where such Authorized Devices are accessible only by Subscriber and its Users (as defined herein), and Subscriber agrees to take all reasonable security precautions to prevent unauthorized parties from accessing the Services through Subscriber’s Authorized Devices.
- C. To the extent and when necessary to receive the Services in accordance with this Agreement, the Exchange will grant to Subscriber a non-exclusive, non-assignable, non-transferable, worldwide, revocable license to use certain NASDAQ software (“**Software**”) solely with the Authorized Devices during the term of this Agreement.
- D. Subscriber shall designate to the Exchange in writing Subscriber’s security contact persons for purposes of communicating with the Exchange regarding use of the Services (each such person is referred to herein as an “**Authorized Security Administrator**”). Each Authorized Security Administrator shall be an employee or authorized agent of Subscriber and be authorized to, and be responsible for, sending requests to the Exchange to procure or remove Services on behalf of Subscriber. In addition, the Authorized Security Administrators’ responsibilities shall include, without limitation: (i) providing

all notices hereunder to the Exchange by faxing NASDAQ OMX Subscriber Services at the fax number set forth in Section 18 hereof, or by sending an e-mail from a verifiable Subscriber e-mail account to *subscribers@nasdaqomx.com* and obtaining a NASDAQ-generated receipt for the e-mail (all such e-mail receipts shall be retained by the Authorized Security Administrator for a period of not less than six (6) months); (ii) authorizing employees, agents, associated persons or customers, including Authorized Traders (as defined in the Exchange rules), of Subscriber to access and use the Services through a designated Authorized Device (each such person is referred to herein as a “**User**”); (iii) notifying the Exchange in writing within a reasonable period of time, but in no event longer than fifteen (15) days, of a User being granted access to the Services, of a User’s access being revoked, or of a User losing eligibility to access the Services for any reason; (iv) providing Users with User IDs and passwords for access to the Services and Subscriber’s Authorized Devices; (v) immediately notifying the Exchange of any unauthorized access to the Service; and (vi) receiving notice from the Exchange of changes made to web accounts.

- E. The Exchange may request at any time an explanation of any Authorized Security Administrator’s scope of authority or other information relating to an Authorized Security Administrator’s qualifications to serve as an Authorized Security Administrator. The Exchange may object to an Authorized Security Administrator for any reason. Subscriber will promptly remove and replace an Authorized Security Administrator upon receipt from the Exchange of an objection to such Authorized Security Administrator serving in such capacity.
- F. Subscriber shall cause each Authorized Security Administrator to comply with the Exchange Requirements and Applicable Law. Subscriber shall be responsible and liable for all actions or omissions of an Authorized Security Administrator (including those that were to have been performed by an Authorized Security Administrator, had one been named or available at the time).
- G. Subscriber shall cause each User (except for Users who are customers) to comply with this Agreement, the Exchange Requirements, and Applicable Law. In addition, Subscriber agrees that: (i) each Authorized Device shall be used by one specified User and shall not be shared, lent, sold, transferred, or used by any third party; (ii) Users must maintain the confidentiality of their User IDs and passwords, perform all other actions that are necessary to prevent unauthorized access to such User’s Authorized Device, and keep such User’s Authorized Device operating correctly; (iii) neither Subscriber nor any Users shall copy, modify, reverse engineer, decode, decompile, attempt to tamper with or evade, or discover the method of operations of any Software; and (iv) a User will not access the Services or any Authorized Device if such User ceases to be eligible to access the Services for any reason. Subscriber shall be responsible and liable for all actions or omissions of its Users or any third party, authorized or not, who gains access to the Services through Subscriber. For avoidance of doubt, nothing in this Section 2.G shall be construed to limit Subscriber’s obligations under Applicable Law with respect to supervision of Users.

Section 3. Changes to Services. Subscriber acknowledges and agrees that nothing in this Agreement constitutes an undertaking or obligation by the Exchange to continue the Services, the Trading System, or any aspect of either, in the present form or configuration or under the current FIX Interface Specifications or requirements or with the current Authorized Devices. The Exchange, in its sole discretion, may from time to time make additions to, deletions from, or modifications to the Services, the Trading System, or any aspect of either, including any specifications and requirements thereof. The Exchange shall provide reasonable advance notice to Subscriber of any material change to the Services, unless (i) a malfunction or other unanticipated system issue in the Trading System or Services necessitates modifications on an accelerated basis, (ii) an emergency situation precludes such advance notice, or (iii) a shorter time period is required by a court, arbitrator, or regulatory agency or by Applicable Law. The Exchange shall post notice of any such modification on NASDAQ Trader. Subscriber's receipt or use of the Services after any modification to the Services or Trading System shall constitute Subscriber's acceptance of the Services as modified.

Section 4. Payment. Subscriber agrees to pay the fees, charges, dues, fines, sanctions, and any other amounts payable by Subscriber for the Services or otherwise as set forth in the Exchange Requirements, which may be changed from time to time in the Exchange's sole discretion. All payments due by Subscriber to the Exchange under this Agreement and the Exchange Requirements (including but not limited to fees, charges, dues, fines, or sanctions) shall be due and payable in accordance with the Exchange Requirements and otherwise shall be due upon thirty (30) calendar days from the date of the Exchange's invoice. All delinquent accounts shall accrue interest at a rate equal to the lesser of one percent (1%) per month and the maximum rate allowed pursuant to Applicable Law. Failure to remit timely payment for any amounts due under this Agreement or the Exchange Requirements may subject Subscriber to legal action for recovery, in addition to any other means of recourse or disciplinary actions available to the Exchange.

Section 5. Term and Termination.

- A. Unless earlier terminated pursuant to the terms of this Agreement, this Agreement will continue until a Party elects to terminate this Agreement by providing the other Party with at least thirty (30) days' prior written notice of its intention to terminate. Upon termination of this Agreement, Subscriber shall immediately cease any and all use of the Services and cease any and all use of and remove any Software; provided, that, in the event that it is not technically feasible to remove all of the Software, the Subscriber may retain such portion of the Software that cannot be removed; provided, however, that, any portion of the Software that is retained by the Subscriber shall remain subject to the terms and conditions of this Agreement and shall not be otherwise accessed or used by the Subscriber for any purpose.
- B. Notwithstanding the foregoing, this Agreement may also be terminated by:
 - i. either Party in the event of a material breach of a Party's obligation under this Agreement, upon not less than fifteen (15) days' prior written notice to the

breaching Party, unless, if the material breach is capable of being cured, the material breach is cured within such fifteen (15) day period;

ii. the Exchange, immediately, in the event that Subscriber becomes insolvent, makes an assignment for the benefit of creditors, fails to pay its debts as they become due, admits in writing its inability to pay its debts when due, files or has filed against it any petition for bankruptcy or an application for a receiver, trustee, or custodian, or is made by anyone or becomes the subject of any proceedings of bankruptcy, insolvency, reorganization, dissolution, receivership, liquidation or arrangement, adjustment, or composition with creditors;

iii. the Exchange, immediately, in the event that: Subscriber is not permitted to receive, or the Exchange is prevented from providing the Services, or any part thereof; any representation, warranty, or certification made by Subscriber in this Agreement or in any other document furnished by Subscriber is, as of the time made or furnished, false or misleading; or the Exchange, in its sole discretion, determines Subscriber has materially violated or is likely to materially violate, any Exchange Requirement or Applicable Law;

iv. the Exchange, upon not less than fifteen (15) days' prior written notice, in the event that any representation, warranty, or certification made by Subscriber in this Agreement or in any other document furnished by Subscriber becomes untrue or inaccurate and is not corrected within such fifteen (15) day period; or

v. the Exchange, upon not less than thirty (30) days' prior written notice, in the event that the Exchange determines to cease providing the same class of Services to all other eligible individuals or entities that were receiving the same class of Services as Subscriber. The right of termination set forth herein is in addition to any other remedy at law or in equity that is available to one Party with respect to a breach by the other.

C. Notwithstanding any termination of this Agreement, this Agreement shall remain in effect with respect to any trades effected pursuant to the Services prior to any such termination.

Section 6. Audits.

A. During the term of this Agreement and for a period of two (2) years thereafter, the Exchange may, upon five (5) days' notice, audit Subscriber's use of the Services and Authorized Devices in order to: (i) confirm Subscriber's compliance with this Agreement, the Exchange Requirements, and Applicable Law; or (ii) establish and verify pricing eligibility. For purposes of conducting any such audit, Subscriber shall grant, during Subscriber's normal business hours, NASDAQ access to its facilities, offices, and equipment, including at any locations where the Services are accessed or any Authorized Devices are

located, and shall make available to NASDAQ its appropriate employees, agents, and representatives. NASDAQ's employees, agents and representatives shall comply with Subscriber's reasonable security requirements while located at Subscriber's premises. The Exchange shall be entitled to audit Subscriber pursuant to this Section 6.A once during any consecutive twelve (12) month period, provided, that the Exchange may conduct an additional audit during such period in the event that an audit reveals noncompliance with this Agreement, the Exchange Requirements or Applicable Law.

- B. If, as a result of any such audit, the Exchange determines that Subscriber has without authorization diverted, repackaged, or disseminated data from the Services, the Exchange shall have the right to (i) disable all unauthorized accounts, users, and login information, if such unauthorized accounts, users, and login information is not authorized by Subscriber for use of the Services within five (5) days of receipt of written notice thereof from the Exchange, and (ii) retroactively bill Subscriber for the appropriate amount that Subscriber should have paid.
- C. If, as a result of any such an audit, the Exchange determines that any payments made by Subscriber were made at a price that Subscriber was not eligible to receive at the time of such payment, the Exchange shall have the right to charge Subscriber retroactively for the appropriate price at the monthly rate that was in effect at the time the Services were accessed and/or provided.
- D. Subscriber shall promptly pay any additional amounts assessed by the Exchange as a result of any such audit, which amounts shall be paid in accordance with the terms of this Agreement.

Section 7. Representations, Warranties, and Agreements.

- A. The Exchange has all necessary power and authority to execute and perform this Agreement, and this Agreement constitutes the legal, valid, and binding obligation of the Exchange, enforceable against the Exchange in accordance with its terms. Neither the execution of nor the performance under this Agreement by the Exchange violates any Applicable Law or any agreement, document, or instrument, binding on or applicable to the Exchange.
- B. Subscriber has all necessary power and authority to execute and perform this Agreement, and this Agreement constitutes the legal, valid, and binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms. Neither the execution of nor performance under this Agreement by Subscriber violates any Applicable Law or any agreement, document, or instrument, binding on or applicable to Subscriber.
- C. Subscriber represents and warrants that, as of the date hereof, it is in compliance with the Exchange Requirements and Applicable Law. Subscriber agrees to comply with the Exchange Requirements and Applicable Law during the term of

this Agreement. Subscriber further agrees that it will only use the Services in compliance with this Agreement, the Exchange Requirements, and Applicable Law.

- D. Subscriber agrees that, as between the Exchange and Subscriber, the Exchange retains all ownership and other rights associated with the Services. Subscriber acknowledges that it has been granted a limited right to receive the Services solely for the purposes set forth herein, and Subscriber will have no other rights with respect to the Services. Subscriber agrees to attribute the appropriate source of any information and data received through the Services as set forth in applicable Exchange Requirements. Subscriber acknowledges that NASDAQ's third party information providers have proprietary rights in their respective information and data.
- E. Subscriber understands and agrees that the Exchange may use any information and data that Subscriber and its Users enter into the Trading System (the "**Subscriber'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.
- F. Subscriber 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).
- G. Subscriber agrees that it will be solely responsible for any and all costs or expenses associated with or incurred by Subscriber in connection with its receipt of the Services.

Section 8. Responsibilities of the Exchange as a Self-Regulatory Organization and Actions To Be Taken by the Exchange in Fulfillment of Its Statutory Obligations.

- A. Subscriber acknowledges that: (i) the National Futures Association ("**NFA**") is registered with the CFTC as a futures association pursuant to Section 17 of the Act; (ii) the Exchange is a board of trade registered with the CFTC as a designated contract market pursuant to Section 5 of the Act; (iii) the NFA and the Exchange have statutory obligations under the Act and the rules and regulations promulgated thereunder, including but not limited to the obligations to maintain fair and orderly markets, to preserve market integrity, to prevent market disruption, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest; (iv) the Act requires that the Exchange comply with Applicable Law, and

that the Exchange has authority to enforce compliance with the Exchange Requirements; (v) the NFA has jurisdiction to enforce compliance with Applicable Law; and (vi) The Options Clearing Corporation (“OCC”) has jurisdiction to enforce compliance with Applicable Law.

- B. Subscriber agrees that the Exchange, when it deems it appropriate to do so in fulfillment of its statutory and regulatory obligations, including for any reason provided in the Exchange Requirements (including by Exchange Rule Chapter V, Section 17, as such rule may be amended or renumbered from time to time), may temporarily or permanently unilaterally condition, modify, or terminate the right of any or all individuals or entities to receive or use the Services. The Exchange shall undertake reasonable efforts to notify Subscriber of any such condition, modification, or termination, and Subscriber shall promptly comply with any such notice within such period of time as may be determined in good faith by the Exchange to be necessary, consistent with its statutory obligations.

Section 9. Security; Confidentiality.

- A. Subscriber shall comply with all reasonable security specifications or requirements of the Exchange to prevent any unauthorized access or use of the Services or Authorized Devices. The Exchange shall give Subscriber prior notice of any such FIX Interface Specifications or requirements.
- B. Each party shall install and maintain at all times during the term of this Agreement a corporate “firewall” protecting its computer network in accordance with commercially reasonable standards generally accepted in the industry.
- C. The Exchange and Subscriber 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; 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.
- D. Notwithstanding the foregoing, the Exchange and Subscriber 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 Subscriber; (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. The duties to maintain the confidentiality of information set forth in this Section 9 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. Further, nothing shall prevent the Exchange from freely disclosing any findings arising or resulting from an audit conducted pursuant to this Agreement to the extent that (1) the findings are used in the aggregate with other information and such aggregation does not specifically identify Subscriber; and (2) the Exchange needs to disclose the findings in order to enforce its rights under this Agreement.

- E. 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, to: provide for the security and confidentiality of Confidential Information; (ii) protect against any threats or hazards to the security or integrity of Confidential Information; and (iii) prevent unauthorized access to or use of Confidential Information. 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 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.
- F. 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 9 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 of this Section 9, 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.

Section 10. Disclaimers of Warranties.

- A. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SUBSCRIBER 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 SUBSCRIBER'S SOLE RISK. THE EXCHANGE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER THE EXCHANGE NOR ITS DIRECTORS, MANAGERS, OFFICERS, AFFILIATES, SUBSIDIARIES, SHAREHOLDERS, EMPLOYEES, OR AGENTS MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PARTY SHALL HAVE ANY LIABILITY TO SUBSCRIBER 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 SUBSCRIBER, OR (IV) THE ACTS OR OMISSIONS OF ANY USERS AUTHORIZED BY SUBSCRIBER TO USE THE SERVICES ON BEHALF OF SUBSCRIBER. THE EXCHANGE WILL HAVE NO DUTY OR OBLIGATION TO VERIFY THE ACCURACY OR CORRECTNESS OF ANY INFORMATION MADE AVAILABLE THROUGH OR ON THE SERVICES. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE EXCHANGE DOES NOT AND SHALL NOT SERVE AS THE PRIMARY BASIS FOR ANY DECISIONS MADE BY SUBSCRIBER AND THAT THE EXCHANGE IS NOT A FIDUCIARY OF SUBSCRIBER.

Section 11. Limitation of Liability.

- A. 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, THE EXCHANGE AND ITS AFFILIATES, OR ANY OF THEIR EMPLOYEES, OFFICERS, DIRECTORS, OR AGENTS (COLLECTIVELY, THE "**EXCHANGE AFFILIATES**"), SHALL NOT BE LIABLE TO SUBSCRIBER 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 EXCHANGE AFFILIATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 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, SUBSCRIBER SHALL NOT BE LIABLE TO THE EXCHANGE 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 SUBSCRIBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- C. SUBSCRIBER AND THE EXCHANGE UNDERSTAND AND AGREE THAT THE PRICING FOR THE SERVICES REASONABLY REFLECTS THE ALLOCATION OF RISK AND LIMITATION OF LIABILITY SET FORTH IN THIS SECTION.
- D. THE EXCHANGE AFFILIATES SHALL NOT BE LIABLE TO SUBSCRIBER 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.
- E. SUBSCRIBER SHALL NOT BE LIABLE TO THE EXCHANGE OR TO ANY OTHER INDIVIDUAL OR ENTITY FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION FROM SUBSCRIBER'S THIRD PARTY INFORMATION AND SOFTWARE PROVIDERS.
- F. SUBSCRIBER SHALL USE COMMERCIALY REASONABLE EFFORTS TO INCLUDE IN ANY AGREEMENT WITH ITS CUSTOMER LIMITING ITS LIABILITY TO ITS CUSTOMER RELATED TO THE SERVICES PROVIDED BY SUBSCRIBER A PROVISION SPECIFICALLY IDENTIFYING THE EXCHANGE AS A THIRD PARTY BENEFICIARY OF THE PROVISION AND LIMITING ANY CLAIM BY SUBSCRIBER'S CUSTOMER AGAINST THE EXCHANGE AT LEAST TO THE SAME EXTENT AS CLAIMS AGAINST SUBSCRIBER. TO THE EXTENT THE SUBSCRIBER FAILS TO INCLUDE A PROVISION IN ANY AGREEMENT WITH ITS CUSTOMER IN ACCORDANCE WITH THE IMMEDIATELY PRECEDING SENTENCE, SUBSCRIBER SHALL BE LIABLE TO, INDEMNIFY, AND HOLD THE EXCHANGE AFFILIATES HARMLESS FROM, ANY AND ALL CLAIMS OR LOSSES (AS THOSE TERMS ARE DEFINED IN SECTION 12.F) RESULTING FROM SUBSCRIBER'S CUSTOMERS IN EXCESS OF ANY SUCH LIMITATION.

Section 12. Indemnification.

- A. Subscriber shall be liable to, indemnify, and hold the Exchange Affiliates harmless from, any and all Claims or Losses (as those terms are defined in Section 12.F) imposed on, incurred by or asserted against the Exchange, NASDAQ or their affiliates, or any of their employees, directors, and other agents to the extent that the Claims and Losses result from acts or omissions of Subscriber or its affiliates or their employees, directors, agents, or associated persons, including its Users, or any other person obtaining access to the Services through any of the foregoing (other than through the gross negligence of the Exchange), or from the receipt or use of the Services (including representations about the Service) by Subscriber, its affiliates, its customers, or their employees, directors, agents or associated persons. Subscriber's obligation to defend and indemnify under this subsection shall be conditioned on the following: (i) the Exchange promptly (but, in any event, in a time frame that does not prejudice the rights of Subscriber or the Exchange, 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 Subscriber in writing of the claim, action or allegation; (ii) the Exchange fully cooperating with Subscriber in the defense thereof; and (iii) Subscriber having sole control of the defense and all related settlement negotiations, provided that (a) upon the Exchange's request, Subscriber shall inform the Exchange of the status of any proceedings or negotiations, and (b) the Exchange may, at its own expense, participate in the defense by counsel chosen by it without, however, impairing Subscriber's control of the defense. Subscriber shall give prompt written notice to the Exchange of any proposed settlement of an indemnified claim and Subscriber may not, without the Exchange'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 Exchange 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 Exchange Affiliate; and (3) does not require a contribution from any Exchange Affiliate or contain any equitable order, judgment or term (other than the fact of payment or the amount of such payment from Subscriber) that in any manner affects, restrains or interferes with the business or regulatory functions of any Exchange Affiliate. The Exchange's duty of cooperation in litigation shall not be deemed to be a waiver of any Exchange Affiliate's attorney-client, attorney work product, or other legal privilege or protection from disclosure.
- B. The Exchange shall be liable to, indemnify, and hold Subscriber 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 12.F) imposed on, incurred by or asserted against Subscriber, its employees, directors, and other agents by a party unaffiliated with the Parties to the extent that the Claims and Losses result: (i) from acts or omissions of the Exchange or its affiliates, or their employees, directors, agents or associated persons, or (ii) from any alleged

infringement or misappropriation by the Trading System or the Services of any third parties' intellectual property rights. The Exchange's obligation to defend and indemnify under this subsection shall be conditioned on the following: (a) Subscriber promptly (but, in any event, in a time frame that does not prejudice the rights of Subscriber or the Exchange) notifying the Exchange in writing of the claim, action or allegation; (b) Subscriber fully cooperating with the Exchange in the defense thereof; and (c) the Exchange having sole control of the defense and all related settlement negotiations, but (1) upon Subscriber's request, the Exchange shall inform Subscriber of the status of any proceedings or negotiations, and (2) Subscriber may, at its own expense, participate in the defense by counsel chosen by it without, however, impairing the Exchange's control of the defense. The Exchange shall give prompt written notice to Subscriber of any proposed settlement of an indemnified claim and the Exchange may not, without Subscriber'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: (A) includes and unconditional release of Subscriber from all liability arising out of such claim; (B) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of Subscriber; and (C) does not require a contribution from Subscriber or contain any equitable order, judgment or term (other than the fact of payment or the amount of such payment from the Exchange) that affects, restrains or interferes with the business of Subscriber. Subscriber's duty of cooperation in litigation shall not be deemed to be a waiver of Subscriber's attorney-client, attorney work product, or other legal privilege or legal protection from disclosure.

- C. Notwithstanding anything to the contrary in this Agreement, the Exchange shall NOT have the obligation to defend, indemnify, and hold Subscriber or its affiliates, or their employees, directors, agents, or associated persons harmless for any and all Claims and Losses as to which the Exchange would otherwise have no liability under any Exchange Requirement or Applicable Law.
- D. Notwithstanding anything to the contrary in this Agreement, the Exchange shall NOT have the obligation to defend, indemnify and hold Subscriber 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 Subscriber, 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 Subscriber'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. In the event of a claim, action, or allegation of infringement or misappropriation or if, in the Exchange's opinion, such a claim, action, or allegation is likely to occur or if the use of the Trading System or Services is enjoined because of infringement or misappropriation, the Exchange may, at its sole option and expense, procure for Subscriber the right to continue using the Trading System or Services, replace or modify the Trading System or Services to be non-infringing, or to the extent technically feasible, require that Subscriber immediately cease all use of and return the portion of the Trading System or Services that is the subject of such infringement or misappropriation.
- F. "**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 12.A and 12.B to cooperate in the defense of indemnified Claims and Losses.

Section 13. Corporate Names; Proprietary Rights. Each Party acknowledges and agrees that the other has proprietary rights in its trade names, trademarks, servicemarks, logos, copyrights, and patents, registered or unregistered, and each Party agrees that it will not use the other's trade names, trademarks, servicemarks, logos, copyrights, or patents, registered or unregistered, in any way without the prior review and written approval of the other Party.

Section 14. 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 Subscriber 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.

Section 15. 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 or delayed. 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.

Section 16. Entire Agreement. This “Agreement” consists of this NASDAQ Futures, Inc., Services Agreement (“**NFSA**”) together with any attachments, addenda, cover sheets, and amendments (collectively, the “**Attachments**”), as well as materials referenced herein, including, but not limited to, the Exchange Requirements, as any of these items may be added to, deleted from, or amended from time to time. Except with respect to NASDAQ’s provision of data services, which may be the subject of a separate agreement, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, communications, writings, and understandings.

Section 17. Arbitration.

- A. Except as may be provided in the Exchange Requirements, Applicable Law, or this Section 17, 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 17, “**Claims**”), shall be settled by final binding arbitration in accordance with this Agreement and the following procedure or such other procedures as may be mutually agreed upon by the Parties.
- B. Except as otherwise provided herein, in the Exchange Requirements, or by agreement of the Parties, any arbitration proceeding shall be conducted in accordance with the 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 number of arbitrators to preside over an arbitration shall be as follows: (a) where the amount being sought is \$500,000.00 or less, one (1) arbitrator shall preside; and (b) where the amount being sought is more than \$500,000.00 or where no amount is sought, three (3) arbitrators shall preside.
- C. The arbitrators shall render a written award, if any, for each Claim. The Parties agree that the arbitration proceedings and any aspect thereof, including, but not limited to, the contents of any awards, shall be considered Confidential Information.
- D. The arbitration proceeding shall be held in the City of New 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.
- E. Any challenge to an arbitration decision or to the propriety or permissibility of an arbitration proceeding brought pursuant to this Section 17 (other than entry or enforcement of an arbitration award/judgment) shall be brought solely in a federal

court located in New York, NY, if jurisdiction may potentially exist in such court, or otherwise in a state court located in New York, NY.

- F. The Parties shall not submit Claims for punitive damages and hereby waive any right to punitive damages. The arbitrators shall not be authorized to award punitive damages.
- G. Class Action and Consolidation Waiver. With respect to any Claims that are arbitrated, no Party or person or entity covered by this arbitration provision shall have the right (i) to participate in a class action, private attorney general action, or other representative action in court or in arbitration, whether as a class representative, class member, or otherwise; or (ii) to join or consolidate Claims with claims, disputes, or controversies of any other person or entity. The arbitrators shall have no power or authority to conduct class-wide, consolidated, or private attorney general arbitration or to issue any relief that applies to any person or entity other than the Parties and the persons and entities covered by this arbitration provision individually. The validity and effect of this class action and consolidation waiver may be determined only by a court and not by an arbitrator. If a determination is made in a proceeding involving the Parties that this class action and consolidation waiver is invalid or unenforceable, only this sentence of this arbitration provision will remain in force and the remainder of this Section 17 shall be null and void, provided that the determination concerning the class action and consolidation waiver shall be subject to appeal.
- H. A Party's demand for arbitration, which shall be effective upon receipt, shall not be made after the date when institution of legal or equitable proceedings based upon such Claim would be barred by the applicable statute of limitations or laches. In no event shall such Claim be made later than two years after the Claim has arisen (unless the Claim in question is related to the collection of past due payments).
- I. 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 Subscriber, 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.
- J. This arbitration provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*, because the Agreement evidences a transaction in interstate

commerce. If there is a conflict between this arbitration provision and the Agreement or the arbitration administrator's rules, this arbitration provision governs.

Section 18. Notice. All notices, invoices, and other communications required to be given under this Agreement to Subscriber shall be: (i) posted on NASDAQ Trader, and, at Subscriber's election, transmitted through e-mail notice to the e-mail address most recently designated by Subscriber; or (ii) given in writing and sent to Subscriber at the office address most recently designated by Subscriber. All notice and other communications required to be give under this Agreement to the Exchange shall be sent to NASDAQ OMX, U.S. Exchange Subscriber Services, One Liberty Plaza, 165 Broadway, New York, NY 10006, and addressed to the attention of the Agreements Administrator, with, in the event of notices of dispute, default or objection, a required copy to:

The NASDAQ OMX Group, Inc.
Office of the General Counsel Attn: Contracts Group
805 King Farm Blvd
Rockville, MD 20850

Written notice shall be deemed to have been duly given upon actual receipt by the Parties, or upon constructive receipt if sent by certified mail, return receipt requested (as of the date of signature or of first refusal of the return receipt), or by any other delivery method which obtains a signed delivery receipt.

Section 19. 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 17 above, Subscriber and the Exchange hereby consent 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 or Chapter V, Section 22 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).

Section 20. Interpretation. In the event of any conflict between the provisions of the NFSFA, the Attachments, the Exchange Requirements, or Applicable Law, the order of preference shall be Applicable Law, the Exchange Requirements, the Attachments, and the NFSFA. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, if and where applicable. The use of the singular in this Agreement shall include the plural, and vice versa. Section headings are included for

convenience only and are not to be used to construe or interpret this Agreement. All references contained herein to sections or subsections shall refer to the sections or subsections of this Agreement, unless specific reference is made to the sections or subsections of another document.

Section 21. Amendment; Waiver; Severability.

- A. Notwithstanding any changes that may be made to the Exchange Requirements, the Exchange may amend any term or condition of this Agreement pursuant to the following process, which amendments shall be prospectively binding on Subscriber. The Exchange shall provide thirty (30) days' notice to Subscriber of any proposed amendment to the Agreement in a manner consistent with other broadly publicized Exchange notices. Any use by Subscriber of the Services after the expiration of the thirty (30) day notice period shall be deemed acceptance by Subscriber of the amendment.
- B. Subscriber may not alter any terms and conditions of this Agreement, and no modification to this Agreement proposed by Subscriber 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 Subscriber 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.

Section 22. Survival of Provisions. Sections 6, 9 through 13, and 17 through 22 of this Agreement shall survive any cancellation, termination, or rescission of this Agreement.

[signature page follows]

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

("Subscriber")

By: _____

Name: _____

Title: _____

Date: _____

NFA number (if applicable): _____

NASDAQ Futures, Inc.

By: 

Name: Daniel R. Carrigan

Title: President

Authorized Security Administrator Notification

If the requested service includes any of the Exchange's web products, then at least one Authorized Security Administrator must be identified below.

Subscriber's Primary Authorized Security Administrator:

Subscriber's Alternate Authorized Security Administrator:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Tel No.: _____

Tel No.: _____

Fax No.: _____

Fax No.: _____

Email: _____

Email: _____