



June 16, 2017

Via CFTC Portal Submissions

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
3 Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington D.C. 20581

**RE: Rule Certification: Nadex Amends Rules to Add Clarification, Prohibit Disregard for Orderly Execution, and Specify Terms of Market Maker Agreement – Submission Pursuant to Commission Regulation §40.6(a)**

Dear Mr. Kirkpatrick,

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the “Act”), and §40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission (the “Commission”) under the Act, North American Derivatives Exchange, Inc. (“Nadex”) hereby submits to the Commission its intent to amend its Rulebook to clarify the Market Maker Obligations, and Trade Cancellations. In particular, Rule 4.4 will remove duplicative terms reflected in the Rules and Market Maker Agreement, and generally refer to the Market Maker Agreement for specific terms of market making. Rule 5.14 will more clearly describe Nadex’s authority to adjust trade prices or cancel trades. Additionally, Nadex is amending its Rule regarding Prohibited Transactions and Activities to prohibit the intentional or reckless disregard for the orderly execution of transactions during the closing period. Finally, Nadex is amending its Market Maker Agreement to incorporate terms from the Appendix to that Agreement. Nadex plans to implement these changes for the open of business on trade date July 3, 2017.

**DCM Core Principles**

Nadex has identified the following Designated Contact Market (“DCM”) Core Principles as potentially being impacted by the amendments discussed herein: Core Principle 2 Compliance with Regulations, implemented by Commission Regulations 38.152 (Abusive Trading Practices Prohibited), 38.157 (Real-Time Market Monitoring); Core Principle 7, implemented by Commission Regulation 38.401 (Availability of General Information).

North American Derivatives Exchange, Inc., 311 South Wacker Drive, Suite 2675, Chicago, IL 60606

US Toll-Free +1 (877) 77 NADEX info@nadex.com www.nadex.com

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Commission Regulation 38.152 requires the DCM to prohibit abusive trading practices, including those disruptive practices prohibited by the Commodity Exchange Act. The Act prohibits the intentional or reckless disregard for orderly execution during the closing period. Nadex is amending its Rules to specifically prohibit such activity, and accordingly, the amendment will positively impact Nadex's compliance with this Principle.

Commission Regulation 38.157 requires the DCM to make the terms of cancellation of trades transparent to the market and subject to standards that are clear, fair, and publicly available. Nadex sets forth the procedures for cancelling Spread trades in its Rule 5.14 Trade Cancellations. Nadex is amending this Rule to more fully describe its authority to adjust trade prices or cancel trades under certain circumstances, thereby making the terms of cancellation clearer to the public. Accordingly, the amendments discussed herein will positively impact Nadex's compliance with this Principle.

Commission Regulation 38.401 requires the DCM to make its Rules available on its website, and specifically identifies the DCM's market maker program as a Rule. Accordingly, material terms of a market maker program are to be made publicly available on its website. Nadex makes its Market Maker Agreement available on its website. Nadex is updating the Agreement to incorporate specific periods during which Market Makers are permitted to refrain from quoting, and specific instances where Market Makers are permitted to reduce bid/offer size, including reducing the size to zero. As the amendments discussed herein are being made to provide additional information and clarity to the public, the changes will positively impact Nadex's compliance with this Principle.

### **DCO Core Principles**

Nadex has not identified any Derivatives Clearing Organization ("DCO") Core Principles that would be impacted by the amendments discussed herein.

Pursuant to the 10-day filing period under Regulation 40.6(a) (3), this submission would become effective July 3, 2017, and Nadex plans to make the changes discussed herein on that date.

Rule amendments and additions have been outlined in Exhibit A. The amendments to the Rulebook are set forth in Exhibit B. Amendments to the Market Maker Agreement are attached in Exhibit C. Any deletions to the Rulebook have been stricken out while the amendments and/or additions have been underlined.

No substantive opposing views were expressed to Nadex with respect to these amendments.

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Nadex hereby certifies that the amendments contained herein comply with the Act, as amended, and the Commission Regulations adopted thereunder.

Nadex certifies that a copy of these amendments was posted on its website at the time of this filing.

Should you have any questions regarding the above, please do not hesitate to contact me at (312) 884-0927 or by email at [jaime.walsh@nadex.com](mailto:jaime.walsh@nadex.com).

Sincerely,



Jaime Walsh  
Legal Counsel

North American Derivatives Exchange, Inc., 311 South Wacker Drive, Suite 2675, Chicago, IL 60606

US Toll-Free +1 (877) 77 NADEX [info@nadex.com](mailto:info@nadex.com) [www.nadex.com](http://www.nadex.com)

**EXHIBIT A**

<b>Rule</b>	<b>Asset</b>	<b>Duration/Close Time</b>	<b>Action</b>	<b>Effective Date</b>
4.4	Obligations of Market Makers	N/A	Clarify Market Maker obligations	7/3/2017
5.14	Trade Cancellations	N/A	Clarify authority to cancel trades	7/3/2017
5.19	Prohibited Transactions and Activities	N/A	Prohibit disregard for orderly execution at closing	7/3/2017

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# **EXHIBIT B**

Amendment of Rules 4.4, 5.14, and 5.19

*(The following Rule amendments are underlined and deletions are stricken out)*

RULES 1.1 – 4.3 [UNCHANGED]

RULE 4.4 OBLIGATIONS OF MARKET MAKERS

(a) General – Transactions of Market Makers should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers shall not make bids or offers or enter into transactions that are inconsistent with such a course of dealings. Ordinarily, Market Makers shall be obligated to do the following:

- (i) trade for the proprietary account of the Market Maker only;
- (ii) maintain at least the minimum capital on deposit with Nadex in accordance with the terms of the applicable Market Maker Agreement;
- (iii) comply with all other terms of the applicable Market Maker Agreement; and
- (iv) maintain two-sided displayed quotes, insofar as required by the Market Maker Agreement, of a minimum designated quantity (“Size”) within a predefined spread (“Bid/Ask Spread”) for a Series of Contracts for a certain period of time throughout the trading day, and comply with all other ~~in accordance with the terms of the applicable Market Maker Agreement.~~

(1) In ordinary market conditions, quotes must be made within a maximum Bid/Ask Spread.

(2) The Market Maker Agreement sets forth specific conditions under which a Market Maker is ~~In fast market conditions, Market Makers will be permitted to refrain from quoting binding bid and offer prices, in accordance with the Market Maker Agreement.~~

(3) ~~Market Makers will be permitted to reduce their size:~~

~~(A) in any Binary Contract within a Designated Class that is so deep in the money as to be valued at \$100 offer or so deep out of the money as to be valued at zero bid and~~

~~(B) in any Variable Payout Contract within a Designated Class when the underlying for that Variable Payout Contract is outside the range of the Variable Payout Contract.~~

(b) A Market Maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for the account of the Market Maker when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity or a temporary disparity between the supply of and demand for quotations in a Series of a Designated Class to which the Market Maker is appointed. Without limiting the foregoing, a Market Maker is expected to perform the following activities in the course of maintaining a fair and orderly market;

(i) To post bid and ask quotations in all Designated Classes to which the Market Maker is appointed that, absent changed market conditions, will be honored by the Market Maker.

(ii) To update quotations in response to changed market conditions in all Designated Classes to which the Market Maker is appointed.

(iii) All Market Maker quotations in the Designated Classes to which the Market Maker is appointed shall be submitted as "Post-Only Quotes". A Market Maker may submit Non-Post-Only Orders in markets to which the Market Maker has not been appointed and, provided the Market Maker continues to meet its obligations to continuously quote a two-sided market under the Market Maker Agreement and these Rules, in the Designated Classes to which the Market Maker is appointed.

(iv) In the event a Market Maker has built a position size equal to or greater than 90% of any applicable position limit in a particular Class or Contract, Market Maker is temporarily relieved of its quoting obligation for such Class or Contract until Market Maker's position in such Class or Contract has been reduced to 75% of the applicable position limit, at which time quoting obligations as set forth in the Market Maker Agreement will resume.

(c) Like other Members of Nadex, a Market Maker may not place an order to buy or sell a Contract in a Class unless it has the excess funds in its Nadex account necessary to fulfill its obligations under that order.

(d) Alternative Position Limits for Certain Binary Contracts

(i) Approved market makers who are engaged in bona fide market-making activity shall be exempt from the position limits for those Binary Contracts defined in

(1) Rules 12.55 (Japan 225), 12.57 (China 50), 12.65 (Wall Street 30), 12.63 (US Tech 100), 12.59 (US 500) and 12.61 (US SmallCap 2000) of these Rules. Instead, such market makers shall be subject to Alternative Position Limits of twice the limit identified for such Binary Contract in Chapter 12. In addition, such Alternative Position Limits shall apply not to the entire class of Binary Contracts, but to each Binary Contract in that Class (i.e., per strike).

(2) Rules 12.3 (Copper), 12.5 (Gold), 12.7 (Silver), 12.9 (Crude Oil), 12.11 (Natural Gas), 12.49 (FTSE 100) and 12.51 (Germany 30) of these Rules. Instead, such market makers shall be subject to Alternative Position Limits of the limit identified for such Binary Contract in Chapter 12, which limit shall apply not to the entire class of Binary Contracts, but to each Binary Contract in that Class (i.e., per strike).

(ii) A market maker taking advantage of this exemption and an Alternative Position Limit must, within 1 business day following a request by Nadex's Compliance Department, provide the Nadex Compliance Department with a trade register detailing all futures trading activity in any account owned or controlled by the market maker in the futures contract underlying a Binary Contract during the 15 minutes immediately before and after any expiration time identified by Nadex's Compliance Department in the request.

(e) Duly appointed Market Makers may be charged a Wide Spread Surcharge as set forth in the fee schedule.

#### RULES 5.1 – 5.13 [UNCHANGED]

#### RULE 5.14 TRADE CANCELLATIONS

(a) As a designated contract market, Nadex has the authority to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by malfunctions in its electronic trading platform(s) or errors in orders submitted by members and market participants. However, due to the fully collateralized and short-term nature of trading on Nadex, the circumstances in which this authority will be exercised are limited. Nadex, in its discretion and in accordance with these Rules, may cancel a trade in a Spread Contract that has been executed on the market at a price that is inconsistent with prevailing market conditions due to improper or erroneous orders or quotes being matched on the Market ("Erroneous Trade"). With respect to Binary Contracts, Nadex will generally not cancel or adjust an Erroneous Trade except in extraordinary circumstances as determined by the Exchange.

(b) Nadex may review a Spread Contract trade based on its own analysis of the Market or pursuant to a request for review by a Member or other third party. A request for a review by a Member or other third party must be received by Nadex no later than fifteen (15) minutes after the trade has been executed on the Market and before the expiration of the contract. Nadex will promptly determine whether the trade will be subject to review and then promptly post notice indicating that the trade is under review.

(c) During the review, Nadex will calculate a Fair Value for the underlying at the time of the questioned trade by utilizing the last value or price of the Underlying at the time of the trade and/or any other relevant market information obtained or presented to Nadex.

(d) Once a Fair Value has been calculated, 5 percent of the maximum contract value will be added above such Fair Value and below such Fair Value to determine the "No Bust Range". In the event that the Fair Value is less than 5 percent above the Floor or below the Cap, the No



Bust Range shall be a 10 percent range above the Floor or below the Cap. During fast market conditions, upon the release of significant news, or in other circumstances in which Nadex determines it is appropriate, Nadex may, without prior notice, temporarily double the No Bust Range.

(e) If Nadex determines that a trade has been executed within the No Bust Range, the executed trade will stand. If Nadex determines that a trade has NOT been executed within the No Bust Range, Nadex will promptly cancel the trade by busting the Erroneous Trade off the market. Once the Erroneous Trade has been cancelled, Nadex shall:

(i) notify the Members that were parties to the Erroneous Trade(s) that Nadex has cancelled the Erroneous Trade(s). Nadex will notify such Members within thirty (30) minutes from receiving notice of the Erroneous Trade unless impractical to do so within the notice period.

(ii) publish all necessary price corrections in a notification on the Nadex website.

(f) The decisions of Nadex regarding Fair Value of the underlying, the No Bust Range, the doubling of the No Bust Range, the cancellation of an Erroneous Trade, or any other determination hereunder shall be final and not subject to appeal.

**RULE 5.15 – 5.18 [UNCHANGED]**

**RULE 5.19 PROHIBITED TRANSACTIONS AND ACTIVITIES**

(a) Members are prohibited from entering orders on the Market if there are insufficient funds or Contracts in the Member’s settlement account to satisfy such orders if they are executed. Subject to the conditions set forth in Rule 9.2(f) and Rule 9.6, if you violate this Rule, the following penalties may apply:

<b>Number of Per Incident Violations Within a Calendar Year</b>	<b>Penalty</b>
1.	\$10 fee deducted from the Member’s settlement account.
2.	\$10 fee deducted from the Member’s settlement account, and the Member will be required to re-certify that it has read and agree to be bound by this Rule 5.13(a).
3.	\$15 fee deducted from the Member’s settlement account, and the Member will be required to give a satisfactory explanation as to why the Rule violation occurred, or (in the case of

	Trading Members) trading privileges may be suspended for 30 days.
4.	\$20 fee deducted from the Member's settlement account and (in the case of Trading Members) suspension of trading privileges for 30 days (regardless of explanation).
5.	\$25 fee deducted from the Member's settlement account and (in the case of Trading Members) suspension of trading privileges for 6 months (regardless of explanation).
6.	\$30 fee and revocation of trading privileges (regardless of explanation).

Nadex may, in its discretion, take such other action against a Member or market participant if the circumstances warrant, subject to Rule 9.2(f) and Rule 9.6.

(b) No Person shall enter into or attempt to enter into any non-competitive trade on the Market, including any accommodation trade or any trade that has been directly or indirectly prearranged. For example, a Member may not agree in advance with another Member that one of the Members will enter an order and the other Member will attempt to trade against that order by timing the submission of orders or otherwise.

(c) No Person shall enter into or attempt to enter into any trade on the Market that does not result in a change in beneficial ownership, that is designed to unnaturally inflate trading volume, that in any way attempts to circumvent the Market's order processing, trade ordering, and trade execution systems, or otherwise to circumvent exposure of the order to open and competitive bidding on the Market, or that has some other illegitimate purpose.

(d) No Person shall enter into any trade designed or used to cause any price for a Contract other than a true and bona fide price to be reported, registered, or recorded by the Market.

(e) No Person shall trade in, transfer, assign, or otherwise dispose of Contracts other than as provided for in these Rules.

(f) No Person shall enter into or agree to transfer or transfer the benefit of any position in any Contract to another person other than through a transaction executed through the Market.

(g) No individual Trading Member shall trade for a person or entity other than itself and no Authorized Trader of an entity Trading Member shall trade for a person or entity other than the entity Trading Member for whom that Person is an Authorized Trader. No individual or entity Trading Member may deposit funds, or allow funds to be deposited into their Nadex account from any bank account or debit card not held in the same name as their Nadex account.

(h) No Person shall engage in any activity that presents a risk of harm to Nadex, its Members, or the public.

(i) No Person shall engage in any activity that adversely affects the integrity of the Market or its underlying systems.

(j) No Person subject to arbitration under these rules shall fail to abide by an arbitration decision or award handed down under Chapter 10 of these Rules.

(k) No Person shall intentionally provide misleading, erroneous, or fraudulent information to Nadex on a membership application or otherwise.

(l) No Person shall create a false appearance of a partnership, agency, employment or affiliate relationship with Nadex and no Person shall unlawfully solicit customer funds for deposit at Nadex.

(m) No Member may operate or solicit in any capacity that may require registration with the Commodity Futures Trading Commission (CFTC) without being properly registered.

(n) No Person shall engage in any activity that is intended to, or has the effect of, manipulating the market in violation of Sections 6(c) and 9(a)(2) of the CEA and no Person shall engage in any other activity that would violate the CEA or the Commission's Regulations.

(o) No Member shall deposit funds into its Nadex account from an account which does not hold sufficient funds at the time of deposit, and at the time the deposit is presented by Nadex for payment.

(p) No Member shall make a false representation to a third party regarding any deposit made into that Member's Nadex account which would result in a chargeback or stop payment of funds to the Member's account.

(q) No Member shall allow its settlement account balance to become negative by any means. In the event that a Member's settlement account balance becomes negative, the Member must immediately deposit additional funds to correct the deficiency. Any Member whose settlement account carries a negative balance for 30 days or more is subject to summary termination of Membership. Nadex may, in its discretion, take such other action against a Member or market participant if the circumstances warrant, subject to Rule 9.2(f) and Rule 9.6.

(r) No FCM Member shall enter any bids, offers or transactions on the Market if it knows or should know that it is subject to early warning reporting requirements under Commission Regulation 1.12, is subject to a proceeding in bankruptcy or is otherwise unable to pay its obligations as they become due, without the prior written approval of Nadex.

(s) No FCM Member shall knowingly carry an account, enter an order or effect any transactions for any employee of Nadex without the prior written consent of the employer.

(t) No Member shall engage in conduct or practices inconsistent with just and equitable principles of trade or conduct or practices detrimental to the best interests of the Exchange, its Members and/or FCM Customers.

(u) No FCM Member that receives an order to buy or sell a Contract for execution on Nadex shall directly or indirectly guarantee the execution of the order or any of its terms, including quantity or price. A FCM Member may only report to a FCM Customer a trade that has been executed or reported on the Nadex Market.

(v) If a Member is an Insider of any public company that has access to material non-public information that is the subject of an Underlying of any Contract, that Member is prohibited from attempting to enter into any trade or entering into any trade, either directly or indirectly, on the market in such Contracts. An "Insider" means any person who has access to or is in a position to have access to material non-public information before such information is made publicly available. Without limiting the generality of the foregoing restriction, an Insider includes any officer or director of a public company, any employee who works in the company's financial or accounting department, and any employee of the company's accounting firm who performs services for the public company.

(w) No Person shall engage in any activity that constitutes fraudulent or abusive trading, including but not limited to violating bids or offers; demonstrating intentional or reckless disregard for the orderly execution of transactions during the closing period; or spoofing.

(x) No Person shall engage in any trading activity intended to accomplish a "money pass".

RULE 5.20 - 12.78 [UNCHANGED]

# **EXHIBIT C**



# Market Maker Agreement

This Market Maker Agreement ("Agreement") is entered into between North American Derivatives Exchange, Inc., a designated contract market and derivatives clearing organization incorporated in Delaware, with its principle place of business at 311 South Wacker Drive, Suite 2675, Chicago, Illinois 60606 ("Nadex"), and

\_\_\_\_\_,  
a [corporation/limited liability company] incorporated under the laws of the State of \_\_\_\_\_, with its principle place of business at \_\_\_\_\_, ("Market Maker"), as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"). Capitalized terms not expressly defined in this Agreement shall have the meaning ascribed to them in the Nadex Rules.

## 1 CONTROLLING PROVISIONS; CONDITION PRECEDENT

(a) All of the terms and conditions contained in the Membership application process as well as the Nadex Rules shall regulate all exchange trading activities of a Market Maker unless otherwise provided for in this Agreement, in which case this Agreement shall be controlling.

(b) For avoidance of doubt, Market Maker may not function as a Market Maker under this Agreement unless Market Maker is a Member of Nadex, and notwithstanding any other provision of this Agreement, Market Maker being a Member shall be a condition precedent to the effectiveness of this Agreement.

## 2 MARKET MAKER OBLIGATIONS

(a) Beginning on the Effective Date, the Market Maker shall continuously quote binding bid and offer prices at or inside of the maximum spread ("Defined Spread") at not less than the defined minimum size ("Defined Size") in the listed Contracts of all Classes to which the Market Maker is assigned as set forth on Appendix A Table 1 ("Designated Classes"), as it may be amended from time to time by mutual agreement of the parties, at all times during which the Designated Classes are open for trading, except as otherwise provided in Section 3 of this Agreement.

(b) The Market Maker acknowledges and agrees not to engage in any activity that would violate the Commodity Exchange Act, as amended (the "Act"), and the Commission's regulations adopted thereunder. The Market Maker also understands and agrees that this Agreement may be unilaterally modified or cancelled by Nadex for any reason if directed to do so by the Commodity Futures Trading Commission (the "Commission") in order to comply with the Act and the Commission's regulations adopted thereunder.

(c) Market Maker shall not knowingly employ any Authorized Traders who are subject to statutory disqualification under Section 8a(3) of the Act.

## 3 SUSPENSION AND MODIFICATION OF MARKET MAKER OBLIGATIONS

(a) Market Maker shall not be required to act in accordance with Section 2(a) during the occurrence of any of the following events ("Suspension Events"):

(i) The calculation of the Underlying which is the subject of any Designated Class that has been suspended;

(ii) If there is no direct Underlying market for a Designated Class or no related market or event upon which to base the prices for a Designated Class, then there is a suspension of the trading of such Designated Class;

(iii) There exists in the reasonable opinion of Nadex and/or Market Maker such a change, whether or not foreseeable, in national or international financial, political, or economic conditions as would in Nadex and/or Market Maker's view make it impossible to accurately price Contracts in the Designated Class;

(iv) Where an act of God, war, terrorism, fire, flood, civil disturbance, or act of any governmental authority beyond the control of the Market Maker occurs which prevents the Market Maker from entering bids and offers or prevents Nadex from maintaining an orderly market; or

(v) Where any interruption, defect, withdrawal or failure of power supply, trading systems, network, internet connections, computer systems,

communications (whether owned or operated by Market Maker, Nadex or any third party) or other similar force majeure event prevents Market Maker from entering bids and offers or prevents Nadex and/or Market Maker from maintaining an orderly market;

(vi) The Market Maker has a position in any Designated Class or Contract that equals or exceeds 90% of the applicable position limit for such Designated Class or Contract.

(b) The parties will each inform the other by telephone and subsequently by email as soon as practicable after either of them becomes aware that they believe any of the foregoing Suspension Events has occurred, is ongoing, or ceases to exist.

(c) Market Maker shall not be required to act in accordance with Section 2(a) during a Fast Market and shall be permitted, at the discretion of the Market Maker, to refrain from quoting binding bid and offer prices during this period. A Market Maker that chooses to submit binding bid and offer prices during a Fast Market will be required to comply with the Defined Spread and Size as set forth in Appendix A. A Fast Market is defined as:

(i) for any particular Contract, the period just prior to expiry of that Contract, specifically, as set forth in Appendix A of this Agreement;

(A) the 5 minute period just prior to expiry of any Event Contract;

(B) the 2 minute period just prior to expiry of any Intraday, Daily, or Weekly Contract, with the exception of the Intraday 5-Minute and 20-Minute Contracts;

(C) the 1 minute period just prior to the expiry of any Intraday 5-Minute or Intraday 20-Minute Contract;

(ii) the five (5) minutes prior to the scheduled announcement and the five (5) minutes after the announcement of any major economic indicator;

(iii) any unusual market condition or price volatility which is determined by Nadex, acting reasonably and in consultation with Market Maker, to prevent the maintenance of an orderly market.



**(d)** Nadex may amend the definition of a Fast Market and its applicable Rules unilaterally by providing 15 days' written notice to the Market Maker. To the extent reasonably possible and practicable, Nadex will consult with the Market Maker and other relevant Market Makers prior to amending its Fast Market Rules

**(e)** Market Maker will not be required to price a two-sided market, and also will be permitted to reduce its size below the Defined Size (including to 0) ;

**(i)** in any Binary Contract within a Designated Class that is so deep in-the-money as to be valued at \$100 offer or so deep out-of-the-money as to be valued at zero bid, and

**(ii)** in any Variable Payout Contract within a Designated Class when the underlying for that Variable Payout Contract is outside the range of the Variable Payout Contract.

**(iii)** during the first 30 seconds and last 30 seconds of any Intraday 5-Minute Binary Contract.

#### 4 CONFIDENTIALITY

**(a) Confidential Information** means all information, whether written or oral, and in any form (including, without limitation, engineering documents, research and development, manuals, reports, designs, drawings, plans, flowcharts, software (in source or object code), program listings, data file printouts, processes, component part listings and prices, product information, new product plans, sales and marketing plans and/or programs, pricing information, customer lists and other customer information, financial information and employee files or other employee information) relating to the disclosing party's business or technology to receiving party.

**(i)** The term "Confidential Information" also shall be deemed to include: **(a)** all notes, analyses, compilations, studies, interpretations, or other documents prepared by recipient or its representatives that contain, reflect or are based upon in whole or in part, the information furnished by or on behalf of disclosing party to recipient pursuant hereto, and **(b)** Confidential Information disclosed prior to, as of or after the date of this Agreement.

**(ii)** Confidential Information does not include information; **(a)** lawfully received from third parties without confidentiality obligation to the disclosing party; **(b)** in the public domain other than through breach of the obligation of confidentiality imposed by this Agreement; **(c)** independently developed without use of the other party's Confidential Information; or

**(d)** is lawfully known to the recipient without an obligation of confidentiality the time recipient receives the same from the disclosing party, as evidenced by written records.

**(b) Return of Confidential Information.** Promptly upon the written request of the discloser, the recipient shall, and shall cause its representatives to, return to the discloser, or destroy all Confidential Information. If the recipient destroys the Confidential Information, it shall certify that it has done so in writing and promptly deliver that certificate to discloser. Despite the provisions of this Section 4b), the recipient may retain one permanent file copy of the Confidential Information of the discloser and any derivative materials if required to do so under any state or federal law or regulation.

#### **(c) Obligations of Confidentiality.**

**(i)** Each party will: **(a)** use the other's Confidential Information solely to perform its obligations under this Agreement, and disclose the other's Confidential Information only to its agents, contractors, and employees legally bound, in writing, to keep Confidential Information confidential and only to the extent necessary for them to perform this Agreement; **(b)** in no event use less than ordinary care to protect the other's Confidential Information against unauthorized disclosure to any third party; and **(c)** notify the other of unauthorized use, disclosure, theft or other loss of Confidential Information of which it learns;

**(ii)** Confidential Information may be disclosed as required by law, provided that prior to any such disclosure, the recipient will; **(a)** assert the confidential nature of the Confidential Information to the court or agency; **(b)** provide sufficient notice to the disclosing party to permit it to contest the disclosure requirement; and **(c)** cooperate with the disclosing party, at the disclosing party's expense, in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

**(d) Survival.** Despite any other provision of this Agreement, this entire Section 4 Confidentiality survives any termination of this Agreement.

#### 5 FEES

**(a)** The Market Maker will pay a fee of \$\_\_\_\_\_ in order to establish a dedicated line.

**(b)** The Market Maker shall pay transaction-based Exchange Fees to Nadex during the Term of the Agreement. These fees will be set by the fee committee and approved by the Nadex board. "Exchange Fees" are all fees relating to the execution and settlement of transactions on the exchange, including, but not limited to, trading and settlement fees.

#### 6 MINIMUM DEPOSIT AND MAINTENANCE AMOUNT

**(a)** Market Maker is required to have an initial Minimum Deposit of \$500,000 and a Maintenance Amount of \$250,000:

**(b)** In this Section, "Minimum Deposit" means the amount the Market Maker must initially deposit in order to establish an account at Nadex and "Maintenance Amount" means the minimum amount that must be in the Market Maker's account at all times. In the event the Market Maker's available cash balance falls to the Maintenance Amount, the Market Maker must immediately deposit sufficient funds to bring the available cash balance to \$500,000.

**(c)** Market Maker cannot withdraw funds from its Nadex account if, after such withdrawal, its Nadex available cash balance would be less than \$500,000 except on termination of Agreement.



**7 ASSIGNMENT**

Neither this Agreement, nor any of the rights or obligations under this Agreement, may be assigned or transferred by either party without the express prior written consent of the other party.

**8 TERM OF AGREEMENT**

The term of this Agreement shall be for a term of one year ("Initial Term"), as of the Effective Date. This agreement shall be automatically renewed annually after the Initial Term (collectively "Term") unless terminated pursuant to paragraph 9 of this Agreement.

**9 TERMINATION**

(a) This Agreement may be terminated immediately by Nadex in the event that the product in which the Market Maker has contracted to make markets is delisted, the Market Maker makes a material statement which is untrue or made in bad faith, Nadex is so ordered by the Commission, the Market Maker does not satisfy the terms of the Agreement, or the Market Maker breaches a material provision of this Agreement or commits a major offense. Notwithstanding anything to the contrary herein, the sole and exclusive remedy of Nadex for any breach of Market Maker's obligations hereunder shall be to terminate this Agreement.

(b) This Agreement may be terminated by either party for any reason provided the terminating party provides 30 days written notice to the non-terminating party.

(c) This Agreement will terminate if and when the Market Maker's Nadex Membership terminates.

**10 AMENDMENTS**

Unless otherwise stated in this Agreement, no provision of this Agreement may be amended or modified except by written agreement of both parties.

**11 WAIVER OF COMPLIANCE**

Any failure of a party to comply with any obligation herein may be expressly waived in writing by the other party to this agreement, but such waiver or failure to insist upon strict compliance with such obligation shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

**12 MANDATORY ARBITRATION**

Any controversy or claim arising out of or in connection with this Agreement or the performance or breach hereof, or relating to designation as a market maker, including any claim against Nadex, the Nadex settlement bank, or any other Nadex Member or Market Maker, shall be settled by arbitration as set forth in the Nadex Rules.

**13 CHOICE OF LAW**

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND ALL DISPUTES HEREUNDER SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF ILLINOIS AS APPLIED TO CONTRACTS MADE AND TO BE PERFORMED IN ILLINOIS, WITHOUT APPLYING CONFLICT OF LAW RULES.

BY SIGNING THIS AGREEMENT, MARKET MAKER ACCEPTS FULL RESPONSIBILITY FOR HAVING KNOWLEDGE OF AND ADHERING TO ALL RULES AND REGULATIONS GOVERNING NADEX.

**MARKET MAKER**

*Signed for and on behalf of Market Maker:*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NORTH AMERICAN DERIVATIVES EXCHANGE, INC.**

*Signed for and on behalf of Nadex:*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_