



Rule Self-Certification

December 12, 2014

VIA ELECTRONIC PORTAL

Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.

Re: **Regulation §40.6 Submission Certification**
Limitation of Liability
Reference File: SR-NFX-2014-03

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Section 40.6 of the regulations promulgated by the Commodity Futures Trading Commission under the Act, NASDAQ Futures, Inc. (“NFX” or “Exchange”) revises and adopts certain rules in connection with amending its liability provisions within the Rules and adopting a Services Agreement. These amendments will be implemented on December 30, 2014. The text of the amendments to the Exchange’s Rules is set forth in Exhibit A. The Services Agreement is attached as Exhibit B.

The Exchange proposes to amend certain Rules related to liability provisions. The new text in Chapter II, Section 8, Limitation of Exchange Liability and Reimbursement of Certain Expenses, specifies that the Exchange and its current, past, and future affiliates, and their current, past, and future officers, directors, employees, and agents, shall not be liable for any losses, damages, or other claims arising out of the Trading System Complex or its use or attempted use. The Exchange proposes to define Trading System Complex in Chapter I, Section 1, Definitions and Governance of the Exchange, as follows: the Exchange, the Trading System, the Automated System, the Clearing Corporation, and any other systems, services, and facilities of or afforded by the Exchange. Any losses, damages, or other claims related to a failure of the Trading System Complex to receive, cancel, store, display, match, report, deliver, display, transmit, execute, confirm, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Trading System Complex shall be absorbed by the Futures Participant, or the Futures Participant sponsoring the customer, that entered the order,

Quote/Order, message, or other data into the Trading System Complex. The foregoing shall apply regardless of whether a claim is asserted in contract, tort, negligence, strict liability or otherwise.

The proposed new provision also provides that the Exchange may compensate users of the Trading System Complex for losses directly resulting from the actual failure of the Trading System Complex to correctly process an Order, Quote, message, or other data. The revised rule imposes an aggregate limit for all claims made by all market participants related to the use of the Trading System Complex during a single calendar month, at the larger of \$200,000 or the amount of the recovery obtained by the Exchange under any applicable insurance policy. In no event shall the Exchange's total payment during a single calendar month pursuant to this rule exceed this amount. In the event all of the claims arising out of the use of the Trading System Complex cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided, then the maximum amount will be proportionally allocated among all such claims arising during a single calendar month. All claims for compensation pursuant to this Rule must be submitted in writing submitted no later than 12:00 P.M. ET on the next business day following the day on which the use of the Trading System Complex gave rise to such claims. The Exchange is not obligated to seek recovery under any applicable insurance policy. The revised rule also states that it does not waive the Exchange's limitations on, or immunities from, liability or suit as set forth in its Rules or agreements (including but not limited to the Services Agreement), or that otherwise apply as a matter of law.

Chapter I, Section 9, Indemnification of Directors, Officers, Employees, and Agents, is being deleted because substantially similar language exists in the Exchange's By-Laws at Article VII, Section 7.1. The Exchange is also proposing to delete Chapter V, Section 22, Limitation of Liability, which contains provisions inconsistent with the new provisions in Chapter II, Section 8. The new rule text would supersede this provision and going forward would specify in one comprehensive rule the manner in which the Exchange rules limit the Exchange's liability.

As previously mentioned, the Exchange is proposing to amend the definition of a self-regulatory organization in Chapter I, Section 1 to cite the appropriate CFTC rules. Also, the Exchange proposes to introduce a new defined term, "Services Agreement." The Exchange will require Futures Participants and other relevant market participants to execute a Services Agreement which contractually delineates the obligations of the Futures Participant and other market participants with respect to the Exchange's Trading System. This requirement is specified in Chapter II, Section 1.

Other Rules at Chapter II, Section 7, Exchange's Costs of Defending Legal Proceedings, Chapter II, Section 10, Failure to Pay, and Chapter VII, Section 2, Failure to Honor Award or Settlement, are proposed to be amended to account for the addition of the Services Agreement as a required document and to also reference, where relevant, the new amendments to the limitation on liability described above.

Finally, the Exchange is amending Chapter I, Section 3, Emergency Action, to add other relevant terms, and Chapter II, Section 9, Dues, Fees and Charges, to make the rule more clear and conform to the terms in Chapter II, Section 10.

With respect to the designated contract market core principles (“Core Principles”) as set forth in the Act:

- *Compliance with Rules:* Today the Exchange has in place Rules which describe the manner in which Futures Participants may access and trade on NFX. The provisions which limit liability establish a fair and transparent process by which the Exchange can accommodate certain claims for reimbursement for losses arising from failures of the Exchange’s trading systems under specified conditions and terms. The Rules will apply equally to all market participants that desire to access the Exchange. Chapter II, Section I provides for the qualifications and rules of participation applicable to Futures Participants as well as Authorized Traders. This Rule will require all market participants to execute the proposed Services Agreement, which is attached as Exhibit B. The Rule continues to provide clear and transparent access criteria and requirements for Futures Participants and Authorized Traders. Chapter V, Section 18 describes prohibited activities with respect to the Trading System. Trading will continue to be subject to the Rules at Chapter III of the Exchange’s Rulebook, which include prohibitions against fraudulent, noncompetitive, unfair and abusive practices.

The Exchange further believes that the new provisions of Chapter II, Section 8 and the related proposed amendments will promote the principles of impartial, transparent, and non-discriminatory access to the Exchange; enhance the Exchange’s capacity to prevent manipulation, price distortion, and disruptions of service; enhance the Exchange’s capacity to provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade; help the Exchange ensure the financial integrity of transactions entered into on or through the facilities of the contract market; promote fair and equitable trading on the Exchange; enhance the Exchange’s capacity to safeguard the operation, reliability, and security of its systems; and better enable the Exchange to ensure that it maintains adequate financial, operational, and managerial resources to discharge each of its responsibilities. In addition, the clarifying amendments and other amendments described above will serve the core principles of fairness, impartiality, transparency, and non-discriminatory access to the Exchange.

- *Prevention of Market Disruption:* The Exchange has in place risk controls, including the imposition of trading pauses or halts, to address risks posed by potential market disruptions pursuant to Chapter V, Section

16. The Exchange has the ability to reconstruct all Orders transacted on the Trading System. The provisions set forth in the Services Agreement are intended to protect the market from abusive practices which may result in market disruption.

- *Emergency Authority:* The Emergency Rule at Chapter I, Section 3 continues to permit the Exchange to act in emergency circumstances and exercise emergency authority. The Exchange has the authority to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices. Further, the Exchange has the authority to independently respond to emergencies in an effective and timely manner consistent with the nature of the emergency.

- *Availability of General Information.* The Exchange will post the amended rules which govern the Trading System in its Rulebook, which is located on its website.

- *Financial Integrity of Transactions.* The Exchange's Rules permit Direct Access to its market as provided in Chapter V, Section 4. Clearing Futures Participants must guarantee and assume financial responsibility for all Exchange Contracts of each Futures Participant guaranteed by it, and will be liable for all trades made by Authorized Customers submitting trades into the Trading System via Direct Access. The Exchange's Rules governing minimum financial requirements and protection of Customer funds are set forth in Chapter III. Pursuant to Chapter IV, Section 7, the Exchange requires that Authorized Risk Officers of the Clearing Futures Participant initially set and adjust pre-trade risk parameters for Futures Participants, Authorized Traders and Authorized Customers. Authorized Customers are required to execute the Services Agreement as are all Futures Participants.

- *Protection of Markets and Market Participants.* Chapter III of the Exchange's Rulebook contains prohibitions precluding intermediaries from disadvantaging their customers. These rules apply to trading in all Contracts by all Futures Participants.

- *Dispute Resolution.* Chapter VII provides Rules related to alternative dispute resolutions for market participants. Arbitration is available to market participants on a voluntary basis.

- *Antitrust Considerations:* The amended Rules will apply equally to all Futures Participants, Authorized Traders and Authorized Customers transacting business on the Exchange. The rules do not result in an unreasonable restraint of trade or impose an anticompetitive burden on the Exchange.

- *Financial Resources:* The amended rules limit the Exchange's liability. The futures markets, and the systems through which they provide for the receipt, entry, cancellation, storage, display, matching, and reporting of orders in futures are essential to the economy and the ways businesses and investors manage risk. If the futures exchanges could be called upon to bear costs associated with systems malfunctions the potential would exist for a single event to adversely impact exchanges, with attendant consequences for investor confidence, investor protection, and macroeconomic stability.

There were no opposing views among the Exchange's Board of Directors, members or market participants. The Exchange hereby certifies that the new and revised Rules relating to liability provisions and the Services Agreement comply with the Commodity Exchange Act and regulations thereunder. The Exchange also certifies that a notice of pending certification with the Commission and a copy of this submission have been concurrently posted on the Exchange's website.

If you require any additional information regarding the submission, please contact Angela S. Dunn at +1 215 496 5692 or via e-mail at angela.dunn@nasdaq.com. Please reference SR-NFX-2014-03 in any related correspondence.

Regards,



Daniel R. Carrigan
President

cc: Mr. J. Goodwin
National Futures Association

Exhibit A

New text is underlined; deleted text is stricken.

NASDAQ Futures—Rules

DEFINITIONS

Chapter I Definitions and Governance of the Exchange

Section 1 Definitions

Unless otherwise specifically provided in the By-Laws or Rules of the Exchange or the context otherwise requires, the terms defined herein shall for all purposes of the By-Laws and Rules of the Exchange, have the meanings therein specified.

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Self-Regulatory Organization The term “**Self-Regulatory Organization**” shall have the meaning ascribed to it in the Securities Exchange Act of 1934 and contemplated by the Commodity Exchange Act and rules and regulations thereunder, or otherwise used by the Commission, and in addition, shall include, but not be limited to, exchanges and registered futures associations that enforce financial and sales practice requirements for their members ~~any contract market, commodity clearing organization and registered futures association.~~

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Services Agreement The term “**Services Agreement**” shall mean the NASDAQ Futures Exchange, Inc., Services Agreement, as it may be amended from time to time.

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Trading System Complex The term “**Trading System Complex**” shall mean the Exchange, the Trading System, the Automated System, the Clearing Corporation, and any other systems, services, and facilities of or afforded by the Exchange.

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Section 3 Emergency Action

(a) Definition. The term "emergency" means any occurrence or circumstance listed in Commission Regulation 40.1(h) which the Emergency Committee or, with respect to physical emergencies, any officer of the Exchange, determines requires immediate action and threatens or may threaten such things as fair and orderly trading in, or the liquidation of or delivery pursuant to, any commodity interest, including but not limited to the following:

- (1) Any manipulative activity or attempted manipulative activity;

- (2) Any actual, attempted or threatened corner, squeeze, congestion or undue concentration of positions;
- (3) Any circumstances which may materially affect the performance of commodity interests, including failure of the payment system;
- (4) Any action taken by the United States or any foreign government or any state or local governmental body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the Exchange;
- (5) Any circumstances which may have a severe, adverse effect upon the physical functions of a contract market including, for example, fire or other casualty; bomb or other terroristic threats; substantial inclement weather; power failures; communications breakdowns; computer system breakdowns; screen-based trading system breakdowns; malfunctions of plumbing, heating, ventilation and air conditioning systems; and transportation breakdowns;
- (6) The bankruptcy or insolvency of any Futures Participant or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a Futures Participant which may affect the ability of that Futures Participant to perform on its contracts;
- (7) Any circumstance in which it appears that a Futures Participant or any other person has failed to perform its contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such person cannot be permitted to continue in business without jeopardizing the safety of Customers' funds, Futures Participants of the Exchange, the Exchange or the Clearing Corporation, or fair and orderly trading; and
- (8) Any other unusual, unforeseeable and adverse circumstance with respect to which it is not practicable to submit, in a timely fashion, a Rule of the Exchange to the Commission for prior review.

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Section 9. ~~Reserved Indemnification of Directors, Officers, Employees, and Agents~~

~~(a) The Corporation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of the Corporation, or is or was a Director, officer, or employee of the Corporation who is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another corporation, partnership,~~

joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of the Corporation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) The Corporation shall advance expenses (including attorneys' fees and disbursements) reasonably and actually incurred in defending any action, suit, or proceeding in advance of its final disposition to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) The Corporation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of the Corporation or is or was an agent of the Corporation who is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) The Corporation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by the Corporation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did

not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Corporation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to the Corporation.

~~(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.~~

~~(g) Notwithstanding the foregoing, but subject to subsection (j), the Corporation shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.~~

~~(h) The Corporation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.~~

~~(i) Any repeal or modification of the provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.~~

~~(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by the Corporation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Corporation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.~~

~~(k) The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability hereunder.~~

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Chapter II Membership Rules

Section 1 Qualification and Participation of Futures Participants

(a)

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- i. complete a Futures Participant Application in the form prescribed by the Exchange;
- ii. execute the Services Agreement; and
- iii. provide such other information as required by the Exchange.

* * * * *

Section 7 Exchange's Costs of Defending Legal Proceedings

Any Futures Participant or person associated with any of the foregoing who fails to prevail in a lawsuit or other legal proceeding instituted by such person or entity against the Exchange or any of its board members, officers, committee members, employees, or agents, and related to the business of the Exchange, shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding, but only in the event that such expenses exceed \$50,000.00. This provision shall not apply to disciplinary actions by the Exchange, to administrative appeals of Exchange actions or in any specific instance where the Board has granted a waiver of this provision. This provision does not waive any protection or limitation of liability afforded the Exchange under the Rules of the Exchange, the Services Agreement, or any applicable statutory or common law.

Section 8 Limitation of Exchange Liability and Reimbursement of Certain Expenses

(a) The Exchange shall not be liable for any damages sustained by a Futures Participant arising out of the use or enjoyment by such Futures Participant of the facilities afforded by the Exchange to Futures Participants for the conduct of their business. Except as provided for in paragraph (b) below or by the Act, the Exchange and its current, past, and future affiliates, and their current, past, and future officers, directors, employees, and agents, shall not be liable for any losses, damages, expenses, or other claims (including but not limited to loss of profits, loss of use, loss of goodwill, and direct, indirect, incidental, consequential, special, or punitive damages even if they were known or foreseeable) arising out of the Trading System Complex or its use or attempted use (including but not limited to losses, damages, expenses, or other claims arising out of (i) the accuracy, timeliness, completeness, reliability, performance, or continued availability of the Trading System Complex and information provided through it, (ii) errors, defects, delays, omissions, or interruptions in the Trading System Complex and information provided through it, (iii) the creditworthiness of any Futures Participant, (iv) the acts or omissions of any users authorized by a Futures Participant to use or access the Trading System Complex on behalf of a Futures Participant, or (v) any unauthorized access to, unauthorized use of, or misuse of the Trading System Complex by any person). Any losses, damages, expenses, or other claims related to a failure of the Trading System Complex to receive, cancel, store, display, match, report, deliver, display, transmit,

execute, confirm, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Trading System Complex shall be absorbed by the Futures Participant, or the Futures Participant sponsoring the customer, that entered the order, Quote/Order, message, or other data into the Trading System Complex. The foregoing shall apply regardless of whether a claim is asserted in contract, tort, negligence, strict liability or otherwise.

(b) The Exchange, subject to the express limits set forth below, may compensate users of the Trading System Complex for losses directly resulting from the actual failure of the Trading System Complex to correctly process an order, Quote/Order, message, or other data, provided the Trading System Complex has acknowledged receipt of the order, Quote/Order, message, or data.

(1) For the aggregate of all claims made by all market participants related to the use of the Trading System Complex during a single calendar month, the Exchange's payment shall not exceed the larger of \$200,000 or the amount of the recovery obtained by the Exchange under any applicable insurance policy.

(2) In no event shall the Exchange's total payment during a single calendar month pursuant to this rule exceed the amount determined pursuant to this rule.

(3) In the event all of the claims arising out of the use of the Trading System Complex cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising during a single calendar month.

(4) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than 12:00 P.M. ET on the next business day following the day on which the use of the Trading System Complex gave rise to such claims. Nothing in this rule shall obligate the Exchange to seek recovery under any applicable insurance policy. Nothing in this rule shall waive the Exchange's limitations on, or immunities from, liability or suit as set forth in its Rules or agreements (including but not limited to the Services Agreement), or that otherwise apply as a matter of law.

(c) Neither the Exchange's Futures Participants nor Clearing Futures Participants, nor any of its or their respective current, past, or future affiliates, officers, directors, employees, or agents shall be liable to any Person (including, but not limited to, a Customer) for any losses, damages, expenses, or other claims (including but not limited to loss of profits, loss of use, loss of goodwill, and direct, indirect, incidental, consequential, special, or punitive damages even if they were known or foreseeable) arising out of the Trading System Complex or its use or attempted use (including but not limited to losses, damages, expenses, or other claims arising out of (i) the accuracy, timeliness, completeness, reliability, performance, or continued availability of the Trading System Complex and

information provided through it, (ii) errors, defects, delays, omissions, or interruptions in the Trading System Complex and information provided through it, (iii) the creditworthiness of any Futures Participant, or (iv) any unauthorized access to, unauthorized use of, or misuse of the Trading System Complex by any person). The foregoing shall apply regardless of whether a claim is asserted in contract, tort, negligence, strict liability or otherwise. The foregoing shall not limit the liability of any Futures Participant, Clearing Futures Participant, or any of their respective current, past, or future affiliates, officers, directors or employees for any act, incident, or occurrence within their control.

(d) The Exchange provides no express or implied warranties or representations regarding the Trading System Complex, including, but not limited to, warranties of merchantability and warranties of fitness for a particular purpose or use. The Exchange provides the Trading System Complex on an "as is" basis at the Futures Participants' sole risk. Neither the Exchange nor its affiliates, officers, directors, employees, or agents make any warranty with respect to (i) the accuracy, timeliness, completeness, reliability, performance, or continued availability of the Trading System Complex and information provided through it, (ii) errors, defects, delays, omissions, or interruptions in the Trading System Complex and information provided through it, (iii) the creditworthiness of any Futures Participant, (iv) the acts or omissions of any users authorized by a Futures Participant to use or access the Trading System Complex on behalf of a Futures Participant, or (v) any unauthorized access to, unauthorized use of, or misuse of the Trading System Complex by any person). The Exchange has no duty or obligation to verify the accuracy or correctness of any information made available through the Trading System Complex. The Exchange does not and shall not serve as the primary basis for any decisions made by any Futures Participant, and the Exchange is not a fiduciary of any Futures Participant.

(eb) The cost to the Exchange of producing, pursuant to court order or other legal process, (whether or not the exchange is a party to the relevant proceeding, hearing or event), records relating to the business or affairs of a Futures Participant may, in the discretion of the Exchange, be required to be paid to the Exchange by such Futures Participant, whether such production is required at the instance of such Futures Participant or at the instance of any other party.

(fe) Without waiver of and notwithstanding the limitation of liability set forth in paragraph (a) of this section or of any other protection, limitation, or immunity from suit or from liability afforded the Exchange under the Rules of the Exchange, the Services Agreement, or any applicable statutory or common law, in the event any action or proceeding is brought to impose liability on the Exchange for an alleged failure on its part to prevent or to require action by a Futures Participant, said Futures Participant may, in the discretion of the Exchange, be required to reimburse the Exchange for:

- (1) all expenses and counsel fees incurred by the Exchange in connection with said action or proceeding, (2) the recovery, if any, adjudged against the Exchange upon a final determination that the Exchange was liable for the damage sustained, and (3)

any payment made by the Exchange with the approval of the Futures Participant in connection with any settlement of any such action or proceeding; provided, however, that no Futures Participant shall be required to reimburse the Exchange for any fine or any other civil penalty imposed on the Exchange by the Commission or any other governmental entity for a violation by the Exchange of any provision of the Act or of any Commission Regulation, or where indemnification would otherwise be prohibited by law.

(g) This provision in no way creates a cause of action and does not authorize any action that would otherwise be prohibited by the Rules of the Exchange, the Services Agreement, or any applicable statutory or common law protection, limitation, or immunity from suit or from liability.

Section 9 Dues, Fees and Charges

(a) The Board of Directors may fix and impose participation fees, transactions fees, and other assessments, fees, dues and charges to be paid by Futures Participants for applications, approvals, use of Exchange facilities or other services or privileges granted, and such assessments, fees, dues and charges may be imposed in different amounts or proportions for different classes of Futures Participants. All such assessments, fees, dues and charges shall be payable under such terms and conditions as the Board may prescribe.

(b) Each Futures Participant, and all applicants for a permit as such shall be required to provide a clearing account number for an account at the Clearing Corporation for purposes of permitting the Exchange to debit any undisputed or final assessments, fees, dues, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange pursuant to the Rules of the Exchange. In the event that a Futures Participant successfully disputes an assessment, fee, fine, due, or charge or other monetary sanction that has been debited, the Exchange would either reflect a credit in a future invoice or refund the amount in the form of a check.

(c) The Board of Directors may fix and impose a charge upon each Futures Participant measured by the number of transactions or contracts effected by such Futures Participant through the facilities of the Exchange. In fixing the amount of such charge, the Board may establish different rates for transactions or contracts involving different commodity interests or for transactions or contracts effected for non-Futures Participants, or for various classes of Futures Participant, or may omit such charge for any class or classes of Futures Participant. Such charges shall be payable under such terms and conditions as the Board may prescribe.

Section 10 Failure to Pay

A Futures Participant that does not pay any fees, assessments, charges, fines or other amounts due to the Exchange, including but not limited to amounts owed the Exchange pursuant to Chapter II, Section 8 and Chapter VI, Section 10 or their successors, within thirty (30) days after they have become due and payable shall be reported to the Board or its delegate which may, after giving reasonable notice to the Futures Participant of such

arrearages, suspend the Futures Participant until payment is made or terminate the Futures Participant's participation on the Exchange. A person associated with a Futures Participant who fails to pay any fine or other amounts due to the Exchange within thirty (30) days after such amount has become due and payable and after reasonable notice of such arrearages, may be suspended until payment is made. In addition, the Exchange may pursue legal action against any Futures Participant or person associated with a Futures Participant for recovery of such unpaid fees, assessments, charges, fines, or other amounts due.

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Chapter V Trading Procedures and Standards

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Section 22 Limitation of Liability Reserved

~~(a) Except for any party found to have engaged in willful or wanton misconduct, neither the Exchange (which for purposes of this Section includes its parents, subsidiaries and affiliates), its Futures Participants or Clearing Futures Participants, nor any of its or their respective officers, directors, employees, or agents shall be liable to any Person (including, but not limited to, a Customer) for any losses, damages, costs or expenses (including, but not limited to, loss of profits, loss of use, direct, indirect, incidental or consequential damages) arising from (1) any failure or malfunction of the Trading System or the Clearing Corporation or any Exchange services or facilities used to support the Trading System including but not limited to any user interface or any inability to enter or cancel Orders (the "the Trading System Complex"), or (2) any fault in delivery, delay, omission, suspension, inaccuracy or termination, or any other cause, in connection with the furnishing, performance, maintenance, use of or inability to use all or any part of the Trading System Complex. The foregoing shall apply regardless of whether a claim arises in contract, tort, negligence, strict liability or otherwise. The foregoing shall not limit the liability of any Futures Participant, Clearing Futures Participant, or any of their respective officers, directors or employees for any act, incident, or occurrence within their control. For purposes of this Section, the "the Trading System Complex" shall include any Exchange facilities or services used to support Block Trades, cross trades and exchange of futures for related positions pursuant to Chapter IV, Sections 11 and 12.~~

~~(b) No express or implied warranties or representations regarding the Trading System Complex are provided by the Exchange, including, but not limited to, warranties of merchantability and warranties of fitness for a particular purpose or use.~~

~~(c) Any dispute arising from the use of the Trading System or the Clearing Corporation in which the Exchange or any of its or their respective officers, directors, employees or agents is a party shall be construed and enforced in accordance with the laws of the State of Pennsylvania, without reference to that State's choice of law principles. Any actions, suits, or proceedings against any of the above must be brought within two years from the~~

~~time that a cause of action has accrued, and any party bringing such action consents to the exclusive jurisdiction of the U.S. District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Philadelphia County, Pennsylvania, and waives any objection to venue and any right to trial by jury.~~

~~(d) This provision shall in no way create a cause of action and shall not authorize an action that would otherwise be prohibited by the Rules of the Exchange.~~

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Chapter VII Arbitration Rules

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Section 2 Failure to Honor Award or Settlement

(a) Any Futures Participant or associated person or Related Party who fails to honor an arbitral award or settlement rendered under this Chapter shall be subject to disciplinary proceedings in accordance with Chapter V or legal action for recovery as provided by Chapter II, Section 10.

(b) In addition to commencing a disciplinary proceeding against a Futures Participant, or Related Party for failure to honor an Award, the President of the Exchange may, on 30 days written notice, summarily suspend a Futures Participant, or Related Party which:

- (1) fails to comply with an award within 30 days from the date of service of the award by NFA or such other period as specified in the Award unless there is pending a request to modify the Award pursuant to NFA rules or an application to vacate, modify or correct the Award in a court of competent jurisdiction; or
- (2) fails to comply with a settlement agreement within 30 days after NFA terminates the arbitration proceeding pursuant to NFA rules or such other period as specified in the settlement agreement; or
- (3) fails to comply with a settlement agreement executed in connection with an NFA-sponsored pre-arbitration mediation proceeding within 30 days after the time stated in the settlement agreement; or
- (4) fails to pay any fee assessed within the time so ordered by the panel.

The suspension shall remain in effect until such award, settlement agreement, or order of the panel has been satisfied.

* * * * *

Appendix B

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 _____ corporation 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, or associated persons 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 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; (iv) Users shall be responsible and liable for all actions taken or omitted and all information submitted by such User or on such User’s behalf from or to the Services or submitted by authorized or unauthorized persons who obtain access to the Services through such User; and (v) 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; Taxes.

- A. 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. Such amounts shall include the costs for any installation, de-installation, equipment, communications, facilities, interest, and late fees, and/or penalties (including, but not limited to, charges incurred after termination, cancellation, or rescission of this Agreement). The Exchange will provide Subscriber with prior notice of any change in the price for the Services on NASDAQ Trader, and file any such changes with the CFTC pursuant to Section 5 of the Commodity Exchange Act (the "Act").
- B. If Subscriber is required by Applicable Law to deduct or withhold any tax, charge, or assessment from the amounts due to the Exchange, then such amounts due shall be increased so that the net amount actually received by the Exchange after the deduction or withholding of any such tax, charge, or assessment will equal one hundred percent (100%) of the amount that is owed. Further, Subscriber shall pay any taxes, charges, or assessments (other than taxes imposed on the net income of the Exchange) imposed by any foreign or domestic national, state, provincial, or local government bodies, or subdivisions thereof, and any penalties or interest relating to the receipt of the Services by Subscriber.
- C. 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) are due 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.

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.

Section 6. Audits.

- A. During the term of this Agreement and for a period of two (2) years thereafter, the Exchange may 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.
- 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 disable all unauthorized accounts, users, and login information and 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.

Section 7. Subscribers Representations, Warranties, and Agreements.

- A. 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.
- B. 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.
- C. 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.

- D. 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 Act or the CFTC; (ii) for internal commercial 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. For the avoidance of doubt, the Exchange may use Subscriber's Data for the purpose of providing confidential information to issuers relating to the market in an issuer's own securities.
- E. 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).
- F. 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 Exchange is a member of and has contracted with the NFA to provide certain regulatory services to the Exchange, and the NFA has jurisdiction to enforce compliance with Applicable Law; and (vi) the Exchange

has contracted with The Options Clearing Corporation (“**OCC**”) to provide certain regulatory services to the Exchange, and the 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 specifications and standards.
- 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 copy, including its storage media, shall be marked CONFIDENTIAL by the receiving Party, and include all notices that appear on the original. Each party shall implement and maintain an appropriate security program including appropriate physical, electronic, and procedural safeguards, to: (i) 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. 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, would suffer irreparable harm in the event of a breach of the provisions of this Section 9 and that monetary damages would be inadequate to compensate the Party for such breach. Accordingly, but without waiver of any of the other provisions of this Agreement or the Exchange Requirements, in the event of any breach or threatened breach of this Section 9, the disclosing Party shall be entitled, in addition to such other legal or equitable remedies which might be available, to 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. 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 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.

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 by an third party unaffiliated with the Exchange or NASDAQ, 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, 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 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 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 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, both in-house and outside counsel, 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. 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 New York federal court, if jurisdiction may potentially exist in such court, or otherwise in a New York state court.
- 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 one year 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 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 hereby consents to submit to the jurisdiction of the federal and state courts in and of the State of New York in connection with any action or proceeding instituted relating to this Agreement, and all proceedings shall be conducted in the City of New York. Without limitation and for the avoidance of doubt, this Agreement does not waive any protection or limitation of liability afforded the Exchange under the Exchange Requirements or Applicable Law (including but not limited to Chapter II, Section 8 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 NFSA, the Attachments, the Exchange Requirements, or Applicable Law, the order of preference shall be Applicable Law, the Exchange Requirements, the Attachments, and the NFSA. 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. With the exception of changes to the Exchange Requirements under Section 1.C of this Agreement, the Exchange may alter any term or condition of this Agreement only pursuant to the following process. The Exchange shall provide

one hundred and twenty (120) days' notice to Subscriber of any proposed amendment to the Agreement. Subscriber may object in writing to the proposed amendment by providing notice to the NASDAQ OMX Office of General Counsel at the address set forth in Section 18 hereof. Such notice will state the basis of the objection. The Exchange will respond to Subscriber's objection in writing within thirty (30) days and will use reasonable efforts thereafter to meet with the objecting Subscriber (in person or by phone) to discuss in good faith any potential resolution. Prior to the effective date of a proposed amendment to the Agreement, Subscriber may request that the CFTC review the proposed amendment to determine whether it requires certification as a proposed rule change of a self-regulatory organization under Section 5(c) of the Act. If the CFTC determines that the proposed amendment requires certification pursuant to Section 5(c) of the Act, the proposed amendment shall not take effect until a certification is filed with the CFTC with respect to the amendment under Section 5(c) of the Act. Otherwise, any use by Subscriber of the Services after the expiration of the one hundred and twenty (120) 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")

NASDAQ Futures, Inc.

By: _____
Name:
Title:

By: _____
Name:
Title:

Date: _____

Date: _____

NFA number (if applicable):

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:

Name: _____

Title: _____

Address: _____

Tel No: _____

Fax No: _____

Email: _____

Subscriber's Alternate Authorized Security Administrator:

Name: _____

Title: _____

Address: _____

Tel No: _____

Fax No: _____

Email: _____