

## MEMX Market Data Agreement

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This MEMX Market Data Agreement (this “Agreement”), with an effective date as of the date executed on the signature page hereof, is made by and among each of MEMX LLC and MX2 LLC (each, an “Exchange”) and Data Recipient. This Agreement is supplemented by the Market Data Policies, applicable Regulatory Requirements, Fee Schedules, MEMX Specifications and other documents incorporated by reference, available on MEMX’s website ([www.memxtrading.com](http://www.memxtrading.com)) or successor website (the “Website”), and any Additional Agreements executed by the parties, as may be amended, modified, or supplemented from time to time, that together form the entire agreement between the parties hereto. Capitalized terms used but not defined in this Agreement are defined in the Market Data Policies, Regulatory Requirements, or Fee Schedules.

**1. Definitions.** The following terms, when used in this Agreement, shall have the meanings set forth below:

**“Additional Agreements”** means any additional terms and conditions or agreements entered into in writing by Data Recipient with MEMX or any of its predecessors or affiliates relating to the subject matter hereof.

**“Authorized User”** means an individual user (an individual natural Person) uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MEMX) and authorized (by Data Recipient or an External Subscriber or Internal Subscriber) to access Exchange Data supplied to Data Recipient.

**“Claims and Losses”** means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, proceedings, costs, judgments, settlements and expenses of any nature, whether incurred by or issued against an indemnified party or a third party, including, without limitation, (a) indirect, special, punitive, consequential or incidental loss or damage, and (b) reasonable administrative costs, investigatory costs, litigation costs and auditors’ and attorneys’ fees and expenses (including in-house personnel).

**“Connectivity Fees”** means fees charged specifically for connecting to MEMX, directly or indirectly, in order to receive Exchange Data.

**“Controls”** means any of Data Recipient’s systems, rules, procedures, authorizations and policies that, when taken together and to the satisfaction of MEMX: (a) record and identify all authorized access to Exchange Data, and (b) prevent any unauthorized access to Exchange Data, or identify and record unauthorized access and facilitate proper action.

**“Data Fees”** means fees other than Connectivity Fees charged pursuant to this Agreement in connection with the use or redistribution of Exchange Data.

**“Data Recipient”** means the party that has executed this Agreement with MEMX referenced below, and its affiliates as identified in writing to MEMX, that (a) receive and use Exchange Data for internal purposes, and/or (b) receive and distribute Exchange Data, in each case pursuant to and in accordance with the terms and conditions of this Agreement and Regulatory Requirements.

**“Data Recipient Indemnified Parties”** means, collectively, Data Recipient and its affiliates, and its and their respective owners, officers, directors, employees, contractors and agents.

**“Data Recipient Invoiced Subscribers”** means any Data Users for which Data Recipient is required to pay Data Fees to MEMX pursuant to this Agreement.

**“Data User”** means any Person that receives Exchange Data from Data Recipient, including, without limitation, an Authorized User.

**“Device”** means any computer, workstation, server, or other item of equipment, fixed or portable, that receives, accesses, processes, and/or displays Exchange Data in visual, audible or other form. A Device is deemed to receive Exchange Data if the Device is entitled by Controls operated by Data Recipient or an Internal Subscriber or External Subscriber.

**“Exchange Data”** means certain data and other information: (a) disseminated by a System relating to securities or other financial instruments, products, vehicles, or other means; or (b) related to Persons regulated by MEMX or to activities of MEMX; or (c) gathered by MEMX from other sources.

**“External Subscriber”** means any Data User not affiliated with Data Recipient that receives Exchange Data where Data Recipient can substantially control Exchange Data for the purpose of reporting usage or qualification.

**“Fee Schedule”** means an applicable MEMX Fee Schedule, as in effect from time to time.

**“Internal Subscriber”** means any Data User affiliated with Data Recipient that receives Exchange Data where Data Recipient can substantially control Exchange Data for the purpose of reporting usage or qualification.

**“Market Data Policies”** means such policies with respect to use and/or distribution of Exchange Data as MEMX or its affiliates may adopt and make publicly available from time to time.

**“Member”** means, collectively, any Member, participant, or user of MEMX, as applicable.

**“MEMX”** means the applicable entity(ies) entering into this Agreement, including but not limited to MEMX LLC and/or MX2 LLC, each a Delaware limited liability company with principal offices at 525 Washington Blvd, Suite 300, Jersey City, NJ 07310.

**“MEMX Indemnified Parties”** means, collectively, MEMX, its affiliates and third-party information providers, and its and their respective owners, officers, directors, employees, contractors and agents.

**“MEMX Specifications”** means the written specifications, as may be amended, modified, or supplemented from time to time, with which Data Recipient’s system must comply.

**“Person”** means any individual natural person, corporation, limited liability company, trust, joint venture, association, company, limited or general partnership, unincorporated organization, or other entity.

**“Redistributor”** means an entity other than MEMX from which Data Recipient or any other Data User receives Exchange Data, which entity cannot substantially control the Exchange Data received by Data Recipient for purposes of reporting usage and qualification.

**“Regulatory Requirements”** means (a) the rules, regulations, interpretations, decisions, opinions, orders and other requirements of the Securities and Exchange Commission or other regulatory authorities, as may be applicable; (b) the rules and regulations, disciplinary decisions and rule interpretations of MEMX; (c) MEMX’s decisions, Market Data Policies, interpretations, user guides, operating procedures, specifications (including without limitation the MEMX Specifications), requirements and other documentation that is regulatory or technical in nature published on the Website; and (d) all other applicable laws, statutes, rules, regulations, orders, decisions, interpretations, opinions and other legal or regulatory requirements.

**“Subscriber Agreement”** means any agreement that MEMX or its affiliates may require Data Recipient to obtain from an External Subscriber prior to Data Recipient providing such External Subscriber with Exchange Data.

**“System”** means any system MEMX or its affiliates have developed for creation and/or dissemination of Exchange Data.

**“System Description”** means any written description of Data Recipient’s system for receiving, storing, processing, using, entitling, transmitting and disseminating Exchange Data that is provided to and approved by MEMX.

**“User Agreement”** means an agreement (either via a written contract or via Exchange rules applicable to Members) by and between Data Recipient and MEMX, pursuant to which Data Recipient has the right to access the MEMX to, among other things, enter orders on MEMX, receive status updates on orders, cancel orders, and execute trades against orders on MEMX, as such agreement may be amended, modified, or supplemented from time to time.

**2. Exchange Users.** All rights under this Agreement granted to any Data Recipient that is also party to a User Agreement are granted subject to the terms and conditions of this Agreement and are in addition to the rights granted to Data Recipient under the User Agreement.

If Data Recipient is a Member, then Data Recipient expressly acknowledges and agrees that: (a) this Agreement does not limit or reduce in any way Data Recipient’s obligations and responsibilities as a Member; (b) this Agreement does not in any way alter the procedures or standards generally applicable to disciplinary or other actions taken by MEMX to enforce compliance with, or impose sanctions for violations of, applicable Regulatory Requirements; and (c) the nonpayment of amounts due under this Agreement could result in the suspension or cancellation of Data Recipient’s membership on MEMX in accordance with applicable Regulatory Requirements.

**3. Other Recipients.** If Data Recipient has not entered into a User Agreement with MEMX, by signing this Agreement, Data Recipient has the right to access MEMX to receive data feeds from MEMX for internal purposes and for the distribution of, or otherwise enabling access (directly or indirectly) to, Exchange Data, as described in Data Recipient’s System Description and approved by MEMX and not for any purpose inconsistent with the terms of this Agreement.

**4. License.** MEMX hereby grants to Data Recipient a limited, worldwide, non-exclusive, non-transferable (except as provided in Section 20), revocable license permitting Data Recipient and its affiliates, during the term of this Agreement, to: (a) receive, store, process, commingle, and use for their own internal purposes any Exchange Data received (i) directly from MEMX; or (ii) from another authorized Exchange Data provider that has entered into a MEMX Market Data Agreement with MEMX, such as an extranet service provider or other Redistributor, and (b) distribute such Exchange Data to any Person that is (i) an External Subscriber that has entered into a Subscriber Agreement, (ii) another authorized Person that has entered into a MEMX Market Data Agreement with MEMX and an agreement with Data Recipient, or (iii) otherwise authorized in writing by MEMX, either individually or as a member of a category, to receive access to Exchange Data, in each case in accordance with the terms of this Agreement and Regulatory Requirements, as may be amended, modified, or supplemented from time to time. Data Recipient shall not use, or permit any third party to use, Exchange Data for the creation or calculation of any index or similar work or in connection with the creation of any financial instrument or investment product, except as otherwise set forth in the Market Data Policies or otherwise authorized in writing by MEMX or a MEMX affiliate or, with respect to any Exchange Data owned by a third party, the applicable provider of such Exchange Data.

Furthermore, Data Recipient represents and warrants that the detailed description of its system for receiving, storing, processing, using, entitling, transmitting and disseminating Exchange Data, as described in its System Description, including, but not limited to, the data processing equipment, software and communications facilities related thereto, is true, complete and not misleading, and that Data Recipient and its Data Users are authorized to receive and use the Exchange Data only for the purposes set forth in this Agreement and applicable Regulatory Requirements. Any use or distribution of the Exchange Data by Data Recipient and its Data Users, including, but not limited to, reprocessing or creating derived data or services, unless expressly described in Data Recipient’s System Description and approved by MEMX, is prohibited. Data Recipient acknowledges and represents that it shall not use or distribute the Exchange Data at any time in contravention of Regulatory Requirements, including, and without limitation, the restrictions on the display or other distribution of information as set forth in Section 603(c) of Regulation NMS if applicable.

Should Data Recipient intend to make any material change to its service and/or systems for use and/or distribution of the Exchange Data (including, but not limited to, redistribution and reproduction) not then described in Data Recipient’s System

Description, Data Recipient may only do so with MEMX's prior written approval of Data Recipient's revised System Description and subject to payment of applicable fees. MEMX shall promptly and in good faith approve or disapprove proposed modifications to Data Recipient's System Description. Data Recipient acknowledges and agrees that it acts at its own risk in developing any modification to its service and/or systems prior to receiving approval from MEMX in accordance with this Section 4. Data Recipient is not required to notify MEMX of non-material changes to its System Description.

**5. Record Retention by Data Recipient.** Data Recipient shall maintain complete and accurate records relating to the use and distribution of Exchange Data in accordance with Regulatory Requirements and other such information as MEMX from time to time may reasonably request in writing.

**6. Reporting.** Data Recipient shall comply with Regulatory Requirements relating to usage reporting, such as reporting Data Users, Devices and other units of count as specified in the Market Data Policies.

**7. Proprietary Nature of Exchange Data.** MEMX represents that Exchange Data and the System constitute valuable property of MEMX. Data Recipient expressly acknowledges and agrees that, as between MEMX and Data Recipient, MEMX has the exclusive proprietary rights in and to the System and Exchange Data that (a) originates on or relates to trading on MEMX; (b) relates to activities that are regulated or operated by MEMX; (c) MEMX derives from Exchange Data that originates on or relates to MEMX; and (d) is a compilation of information and data that MEMX gathers from other sources pursuant to separate agreements with those sources. The System and all Exchange Data, including without limitation any and all intellectual property rights inherent therein or appurtenant thereto, shall, as between MEMX and Data Recipient, be and remain the sole and exclusive property of MEMX. Data Recipient shall not, by act or omission, diminish or impair in any manner the acquisition, maintenance and full enjoyment by MEMX, its licensors, licensees, transferees and assignees, of their proprietary or other rights in Exchange Data and the System. Data Recipient acknowledges and agrees that third party information providers that provide information, goods and services to MEMX in connection with the creation of Exchange Data may impose certain requirements on the use and distribution of their respective information and data or information derived from their information and data, and accordingly Data Recipient rights under this Agreement with respect to Exchange Data including or based on such third party information and data is subject to requirements imposed by the subject provider from time to time, notwithstanding terms and conditions of this Agreement to the contrary. MEMX makes no proprietary claim to information or data permitted to be derived from Exchange Data by Data Recipient pursuant to this Agreement that do not display, represent or recreate any Exchange Data, or readily allow Exchange Data to be recalculated.

**8. Protection of Exchange Data.** Data Recipient agrees to use commercially reasonable efforts to prevent any Person from obtaining Exchange Data through its equipment or facilities, except as authorized hereunder or in an Additional Agreement. In the event Data Recipient has reason to believe any Exchange Data is being obtained by an unauthorized Person from Data Recipient, or its affiliates or Data Users, Data Recipient agrees to use commercially reasonable efforts to ascertain the source from which, and the manner in which, the same is being obtained and to promptly inform and cooperate with MEMX fully with respect thereto. During the term of this Agreement, Data Recipient shall maintain effective Controls for any part of Data Recipient's service for which Data Recipient controls access to Exchange Data.

**9. Right to Deny Use or Distribution.** MEMX retains the right to direct Data Recipient to terminate any use or distribution of Exchange Data for any reason or no reason, in which event MEMX shall notify Data Recipient and Data Recipient shall cease using and/or distributing Exchange Data as directed by MEMX as soon as commercially practicable.

**10. Use of Name.** MEMX shall not: (a) advertise or publicly announce that it is providing services to Data Recipient or its affiliates or (b) use the name of Data Recipient or any affiliate thereof in any advertising or promotional materials, including but not limited to, any published list of data recipients or other clients in its Website displays, without the prior written consent of Data Recipient.

**11. Right to Audit.** During the term of this Agreement and for a period of 12 months thereafter, Data Recipient shall allow MEMX or its appointed agent to inspect Data Recipient's records and systems to verify that internal use and/or distribution of Exchange Data (including review of any records regarding the use of, or redistribution of, the Exchange Data

and locations where the Exchange Data is being received) has been in accordance with this Agreement, the Market Data Policies and Regulatory Requirements.

**12. Qualification Requirements; Data Recipient Indemnification.** Except as otherwise set forth in this Agreement, Data Recipient shall only furnish, or cause or permit to be furnished, all or any part of Exchange Data to Data Users that, at the time of receipt thereof, are of a type qualified (as set forth in applicable Regulatory Requirements) to receive Exchange Data from Data Recipient. Data Recipient agrees that MEMX may have different qualification requirements for different Data Users. Data Recipient shall defend, indemnify and hold harmless the MEMX Indemnified Parties and any third parties that provide information, goods, and services to MEMX in connection with the creation of Exchange Data from Claims and Losses based on or related to Exchange Data received by Data Recipient (including without limitation, any Exchange Data received, used and/or distributed by Data Recipient) arising from Data Recipient's election to distribute Exchange Data to such Data User or Person without an executed Subscriber Agreement with such Data User or Person.

If any Data User fails to comply with any of the terms or conditions of this Agreement applicable to Data Users, its agreement with Data Recipient for Exchange Data, or any other agreement between Data User and MEMX (including the Additional Agreements), or has made any representation in any such agreement which was or has become untrue, then Data Recipient shall, within 5 business days after receipt of notice from MEMX of such failure or untruth, cease providing Exchange Data to such Data User and shall, within 10 business days following the receipt of such notice, confirm such cessation by notice to MEMX. Data Recipient shall be solely responsible for the acts and omissions of Internal Subscribers. If a Data User is to be terminated under this provision, then MEMX will request all Data Recipients to cease providing Exchange Data to such Data User.

**13. Warranty; Disclaimers; Modifications.** MEMX represents and warrants that it has the right to grant the rights herein granted to Data Recipient. MEMX represents and warrants that the Exchange Data that it makes available to Data Recipient hereunder will be equivalent to the Exchange Data it makes available to other Persons entering into a MEMX Market Data Agreement that are subscribing to the same Exchange Data through the same Exchange Data service. Notwithstanding the foregoing, Data Recipient acknowledges and agrees that nothing in this Agreement constitutes an undertaking by MEMX to continue: (a) to make Exchange Data, the System, or any aspect of either, available in the present form or configuration or under the current MEMX Specifications; or (b) to use existing communications facilities. In addition, MEMX, in its sole discretion, may make modifications, additions, and/or deletions to Exchange Data, the System, or any aspect of either, including its communications facilities. MEMX will use commercially reasonable efforts to provide Data Recipient with at least 60 days' notice of any material modification, addition, or deletion to such items, except to the extent a shorter period is: (x) required due to any situation that necessitates modifications, additions, or deletions on an accelerated basis or otherwise precludes such advance notice, or (y) required pursuant to an order of a court or an arbitrator or by a regulatory agency.

**14. Fees.** Data Recipient agrees to make timely payment of Connectivity Fees and Data Fees, as well as any applicable late fees for the failure to make payment within the required time period, in accordance with the applicable Fee Schedules. Connectivity Fees and Data Fees are payable within 30 days of the invoice date. Data Recipient will be solely responsible for any and all telecommunications costs and all other expenses incurred in connecting to and maintaining its connection to, MEMX. Failure to make payments within 30 days from the invoice date may result in suspension or termination of distribution of Exchange Data by MEMX to Data Recipient. Subject to Regulatory Requirements, MEMX reserves the right to change fees stated in a Fee Schedule, including Connectivity Fees and Data Fees, applicable to Data Recipient. MEMX will use commercially reasonable efforts to provide advance notice to Data Recipient (delivered via email and posted to the Website) of any changes to Connectivity Fees. MEMX will use commercially reasonable efforts to provide at least 60 days advance notice to Data Recipient (delivered via email and posted to the Website) of any changes to Data Fees, provided, however, that such notice shall be not less than 30 days prior to the effectiveness of the change. **Receipt or use of Exchange Data after the applicable notice period for any change of Connectivity Fees or Data Fees shall constitute acceptance of such changes by Data Recipient.**



Data Recipient is not required to actually invoice Data Recipient Invoiced Subscribers, but, in any event, Data Recipient shall be responsible for the charges associated with the Data Recipient Invoiced Subscribers. Data Recipient shall bear all risk of non-payment by Data Recipient Invoiced Subscribers or by Data Users for which Data Recipient is responsible for the charges. Data Recipient may choose to pay MEMX any charges due on behalf of any Data User. Upon Data Recipient's payment to MEMX on behalf of any Data User of any charges due hereunder, Data Recipient shall be subrogated to any and all rights of MEMX to recover such charges. Data Recipient shall pay any taxes, charges or assessments (other than taxes imposed on the net income of MEMX) by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof relating to the provision, use or distribution of Exchange Data pursuant to this Agreement, and any related penalties or interest. In addition, if Data Recipient or any Data Recipient Invoiced Subscriber is required by applicable law to deduct or withhold any such tax, charge or assessment from the fees due MEMX, then such fees due from Data Recipient to MEMX shall be increased so that the net amount actually received by MEMX after the deduction or withholding of any such tax, charge or assessment, will equal one hundred percent (100%) of the fees that are owed.

**15. Term and Termination.** This Agreement, subject to earlier termination in accordance with its terms, shall continue until it is terminated either by Data Recipient on not less than 30 days' written notice to MEMX or by MEMX on not less than 60 days' written notice to Data Recipient. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice by MEMX in the event that (a) Data Recipient is not permitted or not able to receive or MEMX is prevented from disseminating Exchange Data, or any part thereof; (b) any representation, warranty or certification made by Data Recipient in this Agreement or in any other document furnished by Data Recipient is, as of the time made or furnished, materially false or misleading; (c) Data Recipient's actions or omissions result in a default of its obligations or covenants under this Agreement or in a breach of any representation, warranty, certification or other provision of this Agreement, which is material to MEMX for regulatory, commercial or other reasons, after MEMX has notified Data Recipient in writing that such action constitutes a default or breach hereunder and has not been cured within 30 days of receipt of such notification by MEMX; or (d) MEMX, in its sole reasonable discretion, determines that any failure on the part of Data Recipient to comply with this Agreement has or is likely to have a materially adverse impact on the operation or performance of the System, Exchange Data or MEMX, or likely to cause disproportionate harm to MEMX's interests should termination be delayed. The following Sections will survive the termination or expiration of this Agreement for any reason: 1, 5-8, 10-19, 21, 22, 24-27, and 29. Any terms and conditions of the Additional Agreements incorporated herein by reference which by their terms are stated to survive the termination or expiration of such Additional Agreements shall survive the termination or expiration of this Agreement.

**16. Confidentiality.** Under this Agreement, MEMX (and any MEMX designee conducting an audit pursuant to this Agreement) shall keep confidential Data Recipient's System Description and Data Recipient's records, reports and payments that MEMX or its designee has reviewed or audited, and any other Data Recipient information or material reasonably considered to be of a confidential nature (whether or not designated as such), as well as any and all information received in connection with this Agreement, including but not limited to, business, financial, operational, product, service and other information. Data Recipient acknowledges that it may also obtain confidential information, data, or techniques of MEMX or its affiliates (whether or not designated as such). All such confidential information, whether written or oral, shall be deemed confidential upon disclosure to the recipient. Except as otherwise set forth herein, the recipient shall use such confidential information solely for use consistent with the purposes of this Agreement; shall hold such confidential information in confidence; and shall not use, disclose, copy, or publish any such confidential information without the prior written approval of the disclosing party. The recipient shall take reasonable security precautions, including at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the confidential information of the disclosing party. The recipient shall notify the disclosing party immediately upon discovery of any unauthorized use or disclosure of confidential information, and will cooperate with the disclosing party in every reasonable way to help the disclosing party regain possession of the confidential information and prevent its further unauthorized use or disclosure. The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of confidential information, and that disclosing party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

Notwithstanding anything herein to the contrary, MEMX (or a MEMX affiliate) or Data Recipient may disclose confidential information to the extent: (a) demanded by a court, arbitrator or government agency with regulatory jurisdiction over MEMX or over Data Recipient or any judicial or government order; (b) necessary to fulfill any MEMX (or MEMX affiliate) or Data Recipient regulatory responsibility, including any responsibility over Members and associated Persons under the Act; or (c) necessary for MEMX (or a MEMX affiliate) or Data Recipient and their respective employees, directors, and other agents to use such confidential information consistent with the purposes of this Agreement. If a party is required to disclose information pursuant to clauses (a) and (b) immediately above, such party shall notify the disclosing party in writing, to the extent permitted by law or regulation, of such requirement prior to disclosing such information and provide the original disclosing party, at its expense, with an adequate opportunity to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the confidential information. The duties in this Section 16 do not apply to data, information or techniques that: (i) were lawfully in a party's possession prior to the date of this Agreement, provided the source of that information was not known by recipient to be bound by a confidentiality agreement with or other continual, legal or fiduciary obligation of confidentiality to disclosing party; (ii) is now, or hereafter becomes, through no act or failure to act on the part of recipient, generally known to the public; (iii) is rightfully obtained by recipient from a third party so long as the party does not know that the third party has breached any obligation not to reveal such data, information, or techniques; or (iv) can be demonstrated was independently developed by recipient without use or reference to the confidential information. All confidential information is and shall remain the property of the disclosing party. By disclosing confidential information to recipient, disclosing party does not grant any express or implied right to recipient to or under any patents, copyrights, trademarks, or trade secret information.

MEMX shall not disclose its audit findings to any third parties (other than to its affiliates and to MEMX's and its affiliates' directors and independent consultants or subcontractors that are subject to confidentiality obligations or as otherwise set forth herein) and all information learned in connection with an audit shall constitute Data Recipient's confidential information. Notwithstanding the foregoing, nothing herein shall prevent MEMX from using the audit findings to the extent the findings are used in the aggregate with other information and such aggregation does not (a) specifically identify Data Recipient or (b) create a context where Data Recipient's identity may be reasonably inferred.

**17. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES.** Except to the extent of fraud or willful misconduct by MEMX, or a claim arising out of MEMX's indemnification or confidentiality obligations set forth herein, MEMX Indemnified Parties shall not be liable to Data Recipient or its affiliates, or to any other Person, for Claims and Losses related to the Exchange Data, including for any inaccurate or incomplete Exchange Data received from MEMX or from a Redistributor, any delays, interruptions, errors, or omissions in the furnishing thereof, or any direct, indirect or consequential damages arising from or occasioned by said inaccuracies, delays, interruptions, errors or omissions. DATA RECIPIENT EXPRESSLY ACKNOWLEDGES THAT EXCHANGE DATA AND ANY AND ALL MATERIAL RELATED TO EXCHANGE DATA, INCLUDING BUT NOT LIMITED TO THE SYSTEM AND MEMX SPECIFICATIONS, ARE BEING PROVIDED "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN SECTION 13, DATA RECIPIENT ACKNOWLEDGES THAT MEMX INDEMNIFIED PARTIES DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO EXCHANGE DATA, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR ANY WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT TO THE EXTENT OF FRAUD OR WILLFUL MISCONDUCT BY MEMX, MEMX INDEMNIFIED PARTIES SHALL NOT BE LIABLE TO DATA RECIPIENT, OR TO ANY OTHER PERSON, FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO DATA, LOSS OF BUSINESS OR LOST PROFITS, ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF MEMX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ABSENT FRAUD OR WILLFUL MISCONDUCT BY DATA RECIPIENT, OR A CLAIM ARISING OUT OF DATA RECIPIENT'S INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS SET FORTH HEREIN, DATA RECIPIENT INDEMNIFIED PARTIES SHALL NOT BE LIABLE FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF DATA RECIPIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**18. Indemnification by Data Recipient.** Data Recipient and its affiliates agree to indemnify, defend, and hold harmless MEMX Indemnified Parties from and against any and all Claims and Losses imposed on or asserted against MEMX

Indemnified Parties by a third party resulting from, in connection with, or arising out of (a) any failure of a Data User to comply with the terms and conditions of any MEMX required agreement for Exchange Data if Data Recipient has failed to notify MEMX in writing of such non-compliance within 10 days after Data Recipient knows of such non-compliance (unless such Data User is a party to a MEMX Market Data Agreement); (b) any assertion of Claims and Losses relating to this Agreement against any MEMX Indemnified Party made by any Data User (or any third party relying upon Exchange Data received by such Data User, unless such Data User is party to a MEMX Market Data Agreement); (c) the receipt, use, or redistribution of Exchange Data in breach hereof by Data Recipient or its affiliates; (d) any failure by Data Recipient or its affiliates to comply with its obligations under this Agreement; and (e) any claim by any third party that the use of Data Recipient's service (except the Exchange Data) infringes any U.S. copyright, patent, trademark, trade secret or other intellectual property right; provided that: (i) MEMX promptly notifies Data Recipient in writing of any claim, action, or allegation; however, failure to promptly notify Data Recipient of a claim shall not relieve Data Recipient of its indemnification obligations hereunder except to the extent that such failure prejudices the rights of Data Recipient; (ii) Data Recipient shall have sole control of the settlement and defense of any action to which this indemnity relates, but, upon MEMX's request, shall inform MEMX of the status of any proceedings or negotiations; and (iii) MEMX reasonably cooperates to facilitate such defense. Data Recipient, in defending any such claim, action or allegation, except with the written consent of MEMX Indemnified Parties, shall not consent to entry of any judgment or enter into any settlement which (A) does not include, as an unconditional term, the grant by the claimant to the MEMX Indemnified Parties of a release of all liabilities in respect to such claim, action, or allegation and (B) subjects MEMX Indemnified Parties to any obligation in addition to those set forth herein. MEMX shall use all reasonable efforts to mitigate its loss, damage, costs, and expense. Any costs recovered in a settlement will be for the account of Data Recipient.

**19. Indemnification by MEMX.** MEMX agrees to indemnify, defend and hold harmless Data Recipient Indemnified Parties from and against all Claims and Losses imposed on or asserted against a Data Recipient Indemnified Party by a third party resulting from, in connection with, or arising out of a claim that Exchange Data, or Data Recipient's use thereof, or the System infringes any U.S. copyright, patent, trademark, trade secret or other intellectual property right; provided that: (a) Data Recipient promptly notifies MEMX in writing of any claim, action, or allegation; however, failure to promptly notify MEMX of a claim shall not relieve MEMX of its indemnification obligations hereunder except to the extent that such failure prejudices the rights of MEMX; (b) MEMX shall have sole control of the settlement and defense of any action to which this indemnity relates, but, upon Data Recipient's request, shall inform Data Recipient of the status of any proceedings or negotiations; and (c) Data Recipient reasonably cooperates to facilitate such defense. MEMX, in defending any such claim, action or allegation, except with the written consent of Data Recipient Indemnified Parties, shall not consent to entry of any judgment or enter into any settlement which (A) does not include, as an unconditional term, the grant by the claimant to the Data Recipient Indemnified Parties of a release of all liabilities in respect to such claim, action, or allegation and (B) subjects Data Recipient Indemnified Parties to any obligation in addition to those set forth herein. Data Recipient shall use all reasonable efforts to mitigate its loss, damage, costs, and expense. Any costs recovered in a settlement will be for the account of MEMX.

MEMX shall not have the obligation to indemnify, defend and hold harmless Data Recipient Indemnified Parties for any and all Claims and Losses imposed on, incurred by or asserted against a Data Recipient Indemnified Party as a result of any allegation of infringement or misappropriation if the System, Exchange Data, or any MEMX Specifications have not been used in accordance with this Agreement which resulted in such infringement or misappropriation, or if Data Recipient uses the System, Exchange Data, or any MEMX Specifications after MEMX notifies Data Recipient of a potential or actual infringement claim or to the extent it is based on use of a superseded version of the System, Exchange Data, or any MEMX Specifications if such infringement or misappropriation would have been avoided by use of the current version of the System, Exchange Data, or MEMX Specifications or if the infringement or misappropriation claim, action, or allegation is the result of the combination, operation, or use of the System furnished timely to Data Recipient by MEMX, Exchange Data, or any MEMX Specifications with hardware, software, or materials if such infringement or misappropriation would have been avoided by the use of the System, Exchange Data, or any MEMX Specifications without such hardware, software, or materials.



In the event of a claim, action or allegation of infringement or misappropriation or if, in MEMX's reasonable opinion, such a claim, action or allegation is likely to occur or if the use of the System, Exchange Data, or any MEMX Specifications is enjoined because of infringement or misappropriation, MEMX may, at its sole option and expense, (i) procure for Data Recipient the right to continue using the System, Exchange Data, or any MEMX Specifications; (ii) replace or modify the System, Exchange Data, or any MEMX Specifications to be non-infringing, and require the return of the potentially infringing or misappropriating items, if applicable, without liability to Data Recipient or any other third party; or (iii) terminate this Agreement immediately without liability to Data Recipient (other than indemnification by MEMX in accordance with this Section) or any third party.

This Section sets forth the entire liability of MEMX and the exclusive remedy of Data Recipient for the infringement or misappropriation of intellectual property by MEMX.

**20. Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective permitted successors and assigns. Data Recipient may not assign this Agreement in whole or in part without the prior written consent of MEMX; provided, however, that MEMX shall not unreasonably withhold such consent. Notwithstanding the foregoing, Data Recipient may assign this Agreement in its entirety to (a) an affiliate or subsidiary; (b) a successor of Data Recipient, by consolidation, merger, or operation of law; or (c) a purchaser of all or substantially all of Data Recipient's assets, in each case without the prior written consent of MEMX, provided that Data Recipient (i) is not currently in breach of this Agreement or delinquent in any fees owed to MEMX hereunder and (ii) provides prior written notice to MEMX. MEMX may require the assignee to sign a new agreement with MEMX. MEMX may assign or transfer this Agreement or any of its rights or obligations hereunder to a related or an unrelated party pursuant to written notice to Data Recipient.

**21. Force Majeure.** Neither party to this Agreement will be liable for delay or failure to perform its obligations hereunder (other than a failure to pay fees when due) caused by an event that is beyond the party's control; provided, however, that such party shall use commercially reasonable efforts to remedy the situation and resume performance as specified in this Agreement.

**22. Severability.** Each provision of this Agreement will be deemed to be effective and valid under applicable law, but if any provision of this Agreement is determined to be invalid, void, or unenforceable under any law, rule, administrative order or judicial decision, that determination will not affect the validity of the remaining provisions of this Agreement, and such provision shall be construed to be effective and valid to the fullest extent under applicable law.

**23. Relationship of the Parties.** Nothing herein shall be construed to create a joint venture or partnership between the parties hereto. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

**24. Entire Agreement; Priority Rules; Amendment; Waiver.** Notwithstanding anything in this Agreement to the contrary, the terms and conditions of any applicable Additional Agreements shall be incorporated herein by reference, and, together with this Agreement, shall constitute the complete and entire statement of all conditions and representations of the agreement between MEMX and Data Recipient with respect to its subject matter and supersedes all prior writings or understandings. If there is any conflict or inconsistency among this Agreement and the documents incorporated herein by reference with respect to the use or distribution of Exchange Data as contemplated herein, the following order of precedence shall apply, to the extent applicable to Data Recipient: (a) Regulatory Requirements; (b) applicable Fee Schedules; (c) this Agreement; (d) the applicable System Description; (e) the User Agreement; and (f) Additional Agreements, if any.

Except as may otherwise be set forth in this Agreement, MEMX or its affiliates may amend this Agreement, the Subscriber Agreement and the Market Data Policies on 60 days' prior written notice to Data Recipient, and any receipt or use of Exchange Data after such date is deemed acceptance. The means of notifying Data Recipient of such amendment may

include, but not be limited to, emailing such term or condition to Data Recipient or posting such alteration on the Website upon written notice to Data Recipient.

No failure on the part of MEMX or Data Recipient to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under the 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.

**25. Notices.** Any notice given pursuant to this Agreement shall be in writing (including by email) to MEMX at [legal@memx.com](mailto:legal@memx.com) or 382 NE 191<sup>st</sup> Street, Suite 92178, Miami, FL 33179, or the office address set forth on the Website or in the Market Data Policies from time to time, or to Data Recipient at the email or office address of Data Recipient on file with MEMX.

**26. Governing Law; Venue.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provision or rule. Both parties agree that disputes relating to this Agreement shall be resolved solely in the state or federal courts located in the County of New York in the State of New York, and each party hereby submits to the jurisdiction of such courts.

**27. Affiliates.** Notwithstanding anything to the contrary in this Agreement, the Data Recipient may identify to MEMX any affiliate that is entitled to exercise the rights of Data Recipient set forth herein on behalf of itself, the Data Recipient, or any other affiliate of the Data Recipient, including, but not limited to, rights to use and distribute Exchange Data to other parties, subject to the terms of this Agreement. If this Agreement will be applicable to an affiliate, Data Recipient must submit a list of any such affiliate(s) to MEMX. By submitting the names of its affiliate(s), Data Recipient agrees that the contact information set forth herein shall be deemed to be the contact information for each affiliate and that DATA RECIPIENT SHALL ASSUME ALL RESPONSIBILITY FOR AND WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS MEMX INDEMNIFIED PARTIES AGAINST ANY ACTION OR INACTION BY AN AFFILIATE AS IF SUCH ACTION OR INACTION WERE THAT OF DATA RECIPIENT, AND DATA RECIPIENT AND ITS AFFILIATE(S) SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL ACTIONS AND/OR INACTIONS OF THE OTHER(S). All of the rights and licenses granted to, and all obligations of, Data Recipient under this Agreement will apply to such affiliate(s) to the same extent as applicable to Data Recipient. For the avoidance of doubt, any affiliate of Data Recipient that is not identified by Data Recipient to MEMX under this provision shall not be entitled to exercise the rights of Data Recipient set forth herein, and Data Recipient shall ensure that no such affiliate receives any Exchange Data from Data Recipient under the terms hereof.

For purposes of this Agreement, an “affiliate” of Data Recipient shall include any entity that, from time to time, directly or indirectly controls, is controlled by, or is under common control with Data Recipient, where control means the power to direct or cause the direction of the management or policies of another entity, whether through the ownership of voting securities, by contract, or otherwise. The Data Recipient may delegate any of its responsibilities, obligations or duties under or in connection with this Agreement to any affiliate of the Data Recipient or an authorized third-party agent, which may discharge those responsibilities, obligations or duties on behalf of the Data Recipient in accordance with this Agreement.

**28. Headings.** 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.

**29. Cumulative Remedies.** Except as otherwise limited herein, all rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, equity, by statute, in any other agreement between the parties (including without limitation the Additional Agreements) or otherwise.

**30. Counterparts.** This Agreement may be executed in one or more counterparts, which shall each be considered an original but all of which shall constitute one and the same Agreement.

**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed by their duly authorized officers.

This Agreement is submitted with respect to the following exchange(s): ☐ MEMX LLC ☐ MX2 LLC

User: \_\_\_\_\_

MEMX LLC; MX2 LLC (as applicable)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

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