

Member Access Agreement

AGREEMENT between _____ ("Member")
and Topaz Exchange, LLC ("Topaz").

RECITAL

Member wishes to use Topaz Facilities (as defined below) and Topaz is willing to permit Member access to such Topaz Facilities, all in accordance with and subject to the terms and conditions of this Agreement.

TERMS AND CONDITIONS

Member and Topaz agree as follows:

SECTION 1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

- 1.1 "Communications Equipment" means the equipment provisioned by Topaz for Member that is used by Member to connect to Topaz.
- 1.2 "Conformance Test" means the test conducted by Topaz to assure messages received from Member conform to Topaz protocols.
- 1.3 "Topaz Application Software" means software Topaz provides that, when installed on a Member System, enables Member to communicate messages to and receive messages from the Production System utilizing the Topaz Open Interface Service.
- 1.4 "Topaz Facilities" means all of the computer systems and related software, hardware and other equipment operated by Topaz, including, but not limited to, the Topaz Network, Topaz Test System and Production System.
- 1.5 "Topaz Fee Schedule" means the schedule of fees determined by Topaz from time to time and effective pursuant to the provisions of the Securities Exchange Act of 1934.
- 1.6 "Topaz Market Information" means quotation and last sale information from transactions in the Production System, as well as other messages generated by activity in the Production System, that are communicated directly from Topaz to Member.
- 1.7 "Topaz Member" means a registered broker-dealer that has been approved as a member by Topaz according to Topaz Rules.
- 1.8 "Topaz Member Type" means a Primary Market Maker, Competitive Market Maker or Electronic Access Member, as those terms are defined in the Topaz Rules.
- 1.9 "Topaz Network" means the telecommunications lines and routers that communicate messages between a Member System and the Production System.
- 1.10 "Topaz Open Interface Service" means the software and related system components made available by Topaz that give Member the ability to communicate with the Production System through the Topaz's open interface.

- 1.11 “Topaz Order Routing Service” means the connection made available by Topaz that gives Member the ability to communicate with the Production System using a FIX or other protocol.
- 1.12 “Topaz Personnel” means employees, consultants and other agents of Topaz.
- 1.13 “Topaz Rules” means the Topaz Certificate of Incorporation, Constitution and Rules, as may be amended from time to time, and all regulatory interpretations, policies, practices and procedures adopted thereunder.
- 1.14 “Topaz Test System” means the computer system designated by Topaz from time to time for testing Member Applications.
- 1.15 “Topaz Trading Device” means a device on which Topaz Application Software or a Member Application that has been approved by Topaz according to the provisions of this Agreement has been installed.
- 1.16 “Location” means each address at which Communications Equipment is installed.
- 1.17 “Market Information” means Topaz Market Information and Third-Party Market Information.
- 1.18 “Market Maker Member” means an Topaz Member that has been approved as a Primary Market Maker or Competitive Market Maker according to Topaz Rules.
- 1.19 “Member Application” means a software application other than Topaz Application Software that, when installed on a Member System, enables Member to communicate messages to and receive messages from the Production System utilizing the Topaz Open Interface Service.
- 1.20 “Member Order Routing System” means a Member System that enables Member to communicate messages to and receive messages from the Production System utilizing the Topaz Order Routing Service.
- 1.21 “Member System” means Member’s internal computer systems (including all hardware, associated software and technology) and internal communications networks (including its links with the Communications Equipment) installed at or used by Member to connect to Topaz Facilities.
- 1.22 “Person” means any individual, proprietorship, corporation, partnership, limited liability company, trust, estate or other organization.
- 1.23 “Production System” means the computer system, software and network on and through which Topaz conducts a market for the trading of securities.
- 1.24 “Regulatory Requirements” means (a) Topaz Rules, (b) the rules, regulations, interpretations and other requirements of the U.S. Securities and Exchange Commission, and (c) all applicable laws, rules and other requirements (including in the area of intellectual property law) of the United States (including the Securities Exchange Act of 1934, as amended) or of any other applicable jurisdiction, as each may be from time to time in effect.
- 1.25 “Simultaneous Sessions” means the simultaneous use of more than one Topaz supplied username and password at any time in a Member System.
- 1.26 “Sponsored Customer” means a non-Topaz Member for which Member acts as executing broker for orders placed by, and communicated directly from, the non-Topaz Member (without any intervention by Member) to the Production System.

- 1.27 “Third-Party Market Information” means all quotation and last sale information, except for Topaz Market Information, received by Topaz from third parties and redistributed to Member.

SECTION 2. CONNECTIVITY

Where Member requests Topaz to provision telecommunication lines and/or Communications Equipment for Member to enable Member to connect directly to Topaz, the following shall apply:

- 2.1 Telecommunication Lines. Topaz will arrange for the telecommunication lines requested by Member to be installed at the Location.
- 2.2 Communications Equipment.
- 2.2.1 Topaz will arrange for the Communications Equipment requested by Member to be delivered to and installed at the Location. Risk of loss or damage to the Communications Equipment passes to Member upon delivery of the Communications Equipment to the Location; provided, however, that Topaz shall indemnify Member against any damages caused by Topaz Personnel. Prior to the delivery and installation of any Communications Equipment, Member will, at its own cost, prepare the Location for the Communications Equipment and provide proper environmental and operational conditions for the efficient working and maintenance of the Communications Equipment.
- 2.2.2 Member will have no ownership rights in the Communications Equipment. Member will not adjust, alter, modify, repair or attempt to tamper or interfere with the Communications Equipment in any way, and may not permit any Person other than Topaz Personnel to do so, without the express written consent of Topaz.
- 2.2.3 At its own cost, Topaz shall use reasonable efforts to maintain the Communications Equipment in good working order, subject to Member promptly reporting to Topaz each malfunction in any such item and cooperating with Topaz Personnel in the diagnosis and repair of the problem. Member will pay Topaz its then current rates (including charges for material, labor and travelling time) only where the maintenance services (including repair of any damage) arise from: (a) any failure of Member to comply with its obligations under this Agreement; (b) any act, error, or misuse of the Communications Equipment by any Person other than Topaz Personnel which results in damage to, or the malfunctioning of, the Communications Equipment; (c) the re-installation or removal of the Communications Equipment; (d) the Communications Equipment's attachment to or use in connection with any part of the Member System; (e) any changes, alterations, additions or modifications made to the Member System; (f) the failure of electrical power or air conditioners, or any water entry or other environmental factor; or (g) the operation of the Communications Equipment other than in accordance with the directions, recommendations or guidelines issued by Topaz Personnel or the manufacturer of the Communications Equipment.

SECTION 3. Topaz OPEN INTERFACE SERVICES

- 3.1 Topaz Trading Devices Generally. Topaz Trading Devices may be connected to the Topaz Open Interface Service. Member shall arrange, safeguard and protect Topaz Trading Devices so that, so far as reasonably possible, no Person has unauthorized access to Topaz Trading Devices. Member shall promptly respond to any Topaz request for information regarding those arrangements, safeguards and protections, and shall promptly make any modifications or revisions to the same if so requested by Topaz Personnel.

- 3.2 Topaz Application Software. If Member utilizes Topaz Application Software, Topaz will license Topaz Application Software to Member under a software license agreement. Upon execution of a software license agreement, Topaz will provide Member with one copy of the Topaz Application Software if it has not previously provided Member with such software. Upon Member's request, Topaz will install Topaz Application Software for Member at the Topaz hourly rate then in effect. Topaz will supply the Member with updates and enhancements to Topaz Application Software, as they become available to Topaz.
- 3.3 Member Application. If Member utilizes a Member Application, such application must, to the reasonable satisfaction of Topaz, restrict a Person's ability to perform functions or receive data not authorized for the applicable Topaz Member Type. Topaz is under no obligation to provide Member with access to the Production System unless and until the Member Application successfully passes a Conformance Test to Topaz's reasonable satisfaction.
- 3.4 Topaz Trading Devices Used To Perform Market Maker Activities. A Market Maker Member shall not place into operational use a Member System and shall not materially modify or upgrade, or add or delete a material component to or from, a Member System or Topaz Trading Device used to perform market making activities on Topaz prior to successful testing of the impact of the system or change on Topaz Facilities. Member shall design such tests to assure to Topaz's satisfaction that each component and linkage, and Member System as a whole, are fully operational and conform to any applicable Topaz specifications. Member shall promptly make all test results available to Topaz upon its request.
- 3.5 Simultaneous Sessions. Topaz will arrange for Member to be configured for Simultaneous Sessions if so requested by Member, provided that the number of Simultaneous Sessions and the manner in which they are utilized by Member are in conformance with the Topaz Configuration Policy, as published by Topaz from time to time.

SECTION 4. Topaz ORDER ROUTING SERVICES

- 4.1 Member Order Routing Systems. Member may utilize a Member Order Routing System to communicate directly with the Production System; provided, however, that Topaz is under no obligation to provide Member with access to the Production System unless and until the Member Order Routing System successfully passes a Conformance Test to Topaz's reasonable satisfaction.
- 4.2 Simultaneous Sessions. Topaz will arrange for Member to be configured for Simultaneous Sessions if so requested by Member, provided that the number of Simultaneous Sessions and the manner in which they are utilized by Member are in conformance with the Topaz Configuration Policy, as published by Topaz from time to time.

SECTION 5. SPONSORED CUSTOMERS

Member may, at any time during the term of this Agreement, request that one or more of its Sponsored Customers connect directly to the Production System. For each Sponsored Customer, Member and Sponsored Customer shall complete, sign and submit to Topaz a Sponsored Customer Addendum to this Agreement describing the manner of the Sponsored Customer's connection. Upon Topaz's acceptance of a Sponsored Customer Addendum, the terms and conditions of this Agreement shall apply to the Sponsored Customer, and Member shall be responsible for the acts and omissions of Sponsored Customer under this Agreement. Member shall pay all fees and charges associated with its Sponsored Customer's connection. Member and Sponsored Customer shall update the Sponsored Customer Addendum each time a non-trivial change is made to the information contained therein. If, for any reason, Member is temporarily or permanently suspended from trading on Topaz, any and all

Sponsored Customers of Member shall simultaneously be temporarily or permanently suspended from trading on Topaz.

SECTION 6. MARKET INFORMATION

6.1 Topaz Market Information.

6.1.1 Topaz will distribute Topaz Market Information to Member upon Member's request.

6.1.2 Where Topaz distributes Topaz Market Information to Member, Topaz hereby grants to Member a non-exclusive, non-transferable license to receive and use Topaz Market Information solely for its internal business purposes and in compliance with this Agreement and with Regulatory Requirements. If Topaz so requests, Member shall promptly provide a written description of Member's manner of receipt and use of Topaz Market Information. Member shall not sublicense, give, redistribute, sell, furnish or otherwise transfer Topaz Market Information to any other Person except as follows:

6.1.2(a) Member may, solely in the regular course of its securities business, occasionally furnish limited amounts of Topaz Market Information to its customers and clients who are not on Member's premises solely (a) in written advertisements, educational material, sales literature or similar written communications or (b) during telephone conversations not entailing the use of computerized voice synthesization, other electronic communication or similar technology.

6.1.3 Topaz Market Information may be displayed on Topaz Trading Devices subject to the following conditions:

6.1.3(a) Topaz Trading Devices displaying Topaz Market Information must be devices from which an individual can enter orders or quotations into the Production System.

6.1.3(b) Topaz Market Information may only be displayed to individuals associated with Member that are permitted to effect transactions on Topaz without the services of another Person acting as broker, and, with respect to options information, only if each such individual has comparable access to options information disseminated through the Options Price Reporting Authority system. An individual will be deemed to have comparable access to such information if the information is available on an Topaz Trading Device or on a device at the same workstation.

6.1.4 Topaz retains all proprietary rights and interest in Topaz Market Information.

6.1.5 Topaz does not guarantee the timeliness, sequence, accuracy or completeness of Topaz Market Information.

6.2 Third-Party Market Information.

6.2.1 Topaz will distribute Third-Party Market Information to Member, subject to Member executing any agreements required by the providers of Third-Party Market Information and Topaz receiving any required approvals from the providers of Third-Party Market Information.

6.2.2 Member shall bear sole responsibility for all aspects of Member's entry into, and compliance with, its agreements with providers of Third-Party Market Information. Topaz shall bear sole responsibility for all aspects of acquiring any necessary Topaz approvals from the providers of Third-Party Market Information. In the event of any conflict between this Agreement and an agreement between Member and a provider of Third-

Party Market Information, the agreement with the provider of Third-Party Market Information shall control.

6.2.3 Topaz may refrain from making Third-Party Market Information available to Member if Member has not complied with the requirements of any agreement required by the providers of Third-Party Market Information. In addition, any provider of Third-Party Market Information, with or without advance notice, may require Topaz to terminate Member's receipt of that Third-Party Market Information.

6.2.4 Topaz does not guarantee the timeliness, sequence, accuracy or completeness of Third-Party Market Information, nor timeliness, accuracy or completeness of its redistribution thereof.

SECTION 7. MODIFICATIONS TO SERVICES

7.1 Modifications Due To Regulatory Necessity. Topaz may change any component or aspect of Topaz Facilities or services provided to Member under this Agreement immediately and without notice to Member, and without liability to Member, if any applicable regulatory authority so directs or if Topaz, in its sole discretion, deems such change to be necessary for the protection of investors or for the maintenance of fair and orderly markets.

7.2 Modifications To Services By Topaz. Upon as much notice as is reasonably practicable under the circumstances, Topaz may, for any reason and without liability to Member or any other Person, make changes to Topaz Facilities, including, but not limited to, changes related to (a) Topaz's method of operation, including any software, hardware or other component of the technology that comprises Topaz Facilities; (b) Topaz Network circuits, or the specifications or requirements, for Communications Equipment, for interconnectivity to Topaz Facilities or for Topaz's distribution of Market Information; or (c) the speed, format or any other characteristic of the electrical signals representing any or all Market Information.

7.3 Modification To Services By Member. Except where specifically provided otherwise in this Agreement, Member may modify the manner in which it connects to Topaz and the services it receives only by submitting to Topaz a signed change request form (and such other documentation reasonably requested by Topaz, as necessary) and Topaz's acceptance of such request.

7.4 Immediate Withdrawal of Services. Topaz may cease providing all services under this Agreement immediately and without liability to Member: (a) upon any material breach of this Agreement by Member; (b) upon any unauthorized access to the Production System by Member or through Member's connection to the Production System; (c) if Topaz believes, in good faith, that a Member System or Member Application is causing harm, or threatens to cause harm, to Topaz Facilities; or (d) if Regulatory Requirements otherwise require or permit Topaz to do so. In the event that Topaz ceases to provide services, this Agreement shall remain in effect unless terminated pursuant to Section 16.

SECTION 8. ASSISTANCE TO Topaz PERSONNEL

In respect of Topaz's performance of its installation, maintenance, testing and similar functions under this Agreement, Member will, at its expense: (a) provide to Topaz Personnel such access to its premises as may be reasonably necessary for that work; (b) provide adequate and safe working space, including heat, light, ventilation, electricity and telephone and power outlets for the use of Topaz Personnel; and (c) provide such qualified personnel as Topaz may reasonably request to assist Topaz Personnel.

SECTION 9. RECORDS AND REPORTING

- 9.1 Records. Member shall maintain such records, reports, information and other documents as Topaz reasonably may require from time to time to permit Topaz to invoice for applicable charges and to monitor compliance with this Agreement and with Regulatory Requirements. Without limiting the scope of the foregoing, those records must include a monthly record of the number of Topaz Trading Devices and the type of Topaz Application Software installed.
- 9.2 Reporting. Topaz may, from time to time, require Member to furnish or report all or some of the items that paragraph 9.1 requires Member to maintain. Upon Topaz's request, Member shall: (a) furnish or report some or all of those items; and (b) provide detailed summaries.

SECTION 10. CHARGES

- 10.1 In General. Member shall pay Topaz in United States dollars the applicable charges included in the Topaz Fee Schedule, as well as Topaz time and material charges for maintenance, as may be in effect from time to time. Member shall pay any amounts due in accordance with such procedures, and within such time parameters, as Topaz may specify from time to time and shall pay any applicable tax (excluding any income tax imposed on Topaz). Topaz shall provide Member with the schedule of Topaz's charges for corrective maintenance at Member's request.
- 10.2 Third-Party Charges. Member shall be responsible for the payment of all installation, use, rental and other charges that common carriers, providers of Third-Party Market Information or other third parties may impose (regardless of whether the invoice for any such charge is sent directly to Member or Topaz).
- 10.3 Member Responsible For Costs. Member shall be solely responsible for all expenses associated with its operations at its premises.

SECTION 11. INDEMNIFICATIONS

- 11.1 By Member. Member shall indemnify, defend and hold Topaz harmless from and against any suit or other proceeding, at law or in equity, claim, liability, loss, cost, damage or expense (including reasonable attorneys' fees) incurred by or threatened against Topaz that arises out of or relates to: (a) Member's failure to comply with this Agreement; (b) any third-party actions with respect to the use of a Member System, Member Application or Member's receipt and use of Market Information; or (c) any claim that either any component of a Member System or the manner of the use made of the component or of Market Information provided pursuant to this Agreement, infringes any United States or foreign patent or copyright or violates any other property right.
- 11.2 By Topaz. Topaz shall indemnify, defend and hold Member harmless from and against any suit or other proceeding, at law or in equity, claim, liability, loss, cost, damage or expense (including reasonable attorneys' fees) incurred by or threatened against Member that arises out of or relates to any claim that Topaz Application Software or any component of Topaz Facilities infringes any United States or foreign patent or copyright or violates any other property right.
- 11.3 Procedures. The indemnified party's provision to the indemnifying party of prompt written notice of the suit or proceeding is a condition to the indemnifying party's obligations under this Section 11 (but any failure or delay to give notice shall not excuse any indemnity obligation unless such failure or delay materially prejudices the ability of the indemnifying party to defend against or dispute the same). The indemnifying party shall have sole control of the defense of the suit or proceeding and all negotiations for its settlement or compromise.

SECTION 12. NO WARRANTIES; LIMITATIONS OF LIABILITY

- 12.1 No Warranties. Except as expressly provided in this Agreement, Topaz makes no warranty of any kind in respect of Topaz Facilities or any other aspect of this Agreement, either express or implied, including, without limitation, the implied warranties of merchantability and fitness for a particular use or purpose.
- 12.2 Limitations of Liability. Topaz shall not be liable in any way to Member or to any other Person for:
- (a) any malfunction or interruption in performance of Topaz Facilities, Topaz Application Software, Communications Equipment, telecommunications lines or any connection or interactive function that this Agreement contemplates, whether in part or in whole (each, a "System Malfunction");
 - (b) any inaccuracy, error or delay in, or omission or interruption of (1) Market Information or (2) the transmission or delivery of any such data, information or message (each, an "Information Error");
 - (c) any loss or damage arising from or occasioned by any System Malfunction, Information Error, or non-performance; or
 - (d) any loss or damage to property, or injury or death to any Member employee, agent or customer, arising in connection with Topaz services under this Agreement, due either to any negligent act or omission by Topaz Personnel or to any "Force Majeure" (i.e., any flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, terrorist act, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction) or any other cause beyond the reasonable control of Topaz. Member's sole remedy in the event of any such occurrence shall be its right to terminate this Agreement in accordance with Section 16. These liability limitations are in addition to such other liability limitations as Topaz Rules may provide.
- 12.3 Consequential Damages. Topaz shall not be liable to Member or to any other Person for indirect, special, consequential, punitive or incidental loss or damage of any nature (including trading losses, loss of data and lost profits), regardless of the cause and whether Topaz has been advised, or knew or should have known, of the possibility of such damages.

SECTION 13. REGULATORY REQUIREMENTS

This Agreement is subject at all times to Regulatory Requirements which govern the offer, sale and execution of transactions in securities through Topaz Facilities, as well as the rights and obligations of Topaz and its members.

13.1 Compliance. Except as otherwise provided herein, with respect to all orders submitted to the Exchange, it is the sole responsibility of the Member to ensure compliance, by itself, its customers and its representatives, with all applicable United States federal and state laws, rules, and regulations as well as those of FINRA or any other self-regulatory organization of which the Member is a member. Member represents and warrants that: (i) it will use the Exchange only if and when it is duly authorized to use the Exchange pursuant to the Exchange Rules; (ii) it agrees to be bound by, and will only use the Exchange in compliance with Exchange Rules; and, (iii) it is and will remain responsible for its use of the Exchange and the use of the Exchange by any of its employees, customers or agents or, if Member is a Member of the Exchange, by any person which has entered into a sponsorship arrangement with Member to use the Exchange (a "Sponsored Customer"); (iv) it will maintain and keep current a list of all authorized traders who may obtain access to the Exchange on behalf of Member

and/or any Sponsored Customer(s); and (v) it will familiarize all authorized traders with all of Member's obligations under this Agreement and will assure that they receive appropriate training prior to any use of or access to Exchange.

13.2 Monitoring. Member acknowledges and agrees that the Exchange will monitor the use of the Exchange by Member for compliance with all applicable laws and regulations, including, without limitation, Exchange Rules. Member acknowledges its responsibility to monitor its employees, agents and customers for compliance with Exchange Rules, the rules and regulations of any self-regulatory organization of which Member is a member and all applicable federal and state laws.

13.3 Settlement of Transactions. Member agrees that it is Member's absolute, unconditional, and unassignable obligation, in connection with each securities transaction effected on the Exchange to ensure the timely delivery of the subject securities and/or funds, as well as, any required remittance of interest, dividend payments and/or other distributions. Member will promptly notify the Exchange in writing upon becoming aware of any material change in or to Member's clearing arrangements. Exchange retains the right to break any trade without liability to Member or any of Member's customers in accordance with the Exchange's Obvious Errors Rule (Exchange Rule 720, as amended).

13.4 Obvious Errors Trade Policy. Member has read and agrees to the terms stipulated in Exchange Rule 720 (Obvious Errors), as the Exchange may amend from time to time.

SECTION 14. ARBITRATION

The parties shall settle any controversy or claim arising out of or relating to this Agreement, or to its breach or alleged breach, by arbitration in New York, New York, under the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator(s) may issue injunctive and other equitable relief, but may not modify this Agreement. Either party may enter in any court having jurisdiction judgment upon any award that the arbitrator(s) render. For the purposes of so entering any such judgment, each party submits to the jurisdiction of the courts of the State of New York, County of New York. Nothing in this Section 14 derogates any right Member, Topaz, or any other Person may have to appeal to the Securities and Exchange Commission any action taken or any failure to act under the Securities Exchange Act of 1934, as amended, or any of its rules, or to pursue any claim relating to the unauthorized publication or use of communications under the Communications Act of 1934, as amended, at any time, whether before or after the commencement of any arbitration proceeding.

SECTION 15. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants to the other party that: (a) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing; (b) it has the power to execute this Agreement, to deliver this Agreement and to perform its obligations under this Agreement, and has taken all necessary action to authorize such execution, delivery and performance; and (c) the individuals executing and delivering this Agreement are duly empowered and authorized to do so, and they have duly executed and delivered this Agreement.

SECTION 16. EFFECTIVE DATE AND TERMINATION

16.1 Effective Date. This Agreement becomes effective upon execution of both parties. Upon becoming effective, this Agreement supersedes each previous agreement between the parties concerning the subject matter hereof (including any letter of intent to enter into an access agreement). This Agreement continues in effect until terminated as paragraph 16.2 provides.

- 16.2 Termination. Either Member or Topaz may terminate this Agreement on thirty (30) days' written notice to the other for any reason.
- 16.2.1 Sections 8, 9, 10, 11, 12, 13, 14 and 17 survive any termination of this Agreement.
- 16.2.2 Upon termination of this Agreement, Topaz Personnel shall arrange for the removal, at Member's cost, of the telecommunications lines and Communication Equipment provided by Topaz under this Agreement.

SECTION 17. MISCELLANEOUS

- 17.1 Entire Agreement. This writing contains the entire agreement between the parties in respect of its subject matter. No oral or written collateral representation, agreement or understanding exists except as this Agreement may otherwise provide.
- 17.2 Modifications To Agreement. Topaz may, by written notice to Member, modify this Agreement in accordance with Section 7 of this Agreement. Member's interaction with Topaz Facilities or receipt and use of Topaz Market Information after the effective date of the modification shall constitute Member's acceptance of the modification. All other changes to this Agreement require a writing signed by each party.
- 17.3 Assignments. Member may not assign this Agreement, in whole or in part, without the written consent of Topaz.
- 17.4 Indirect Acts Prohibited. In prohibiting Member from doing any act, this Agreement also prohibits Member from doing the act indirectly (e.g., by causing or permitting another Person to do the act).
- 17.5 Reasonableness Standard. This Agreement requires or authorizes either or both parties to provide notices, to make determinations, to specify requirements, and otherwise to act in respect of a variety of matters. Each party shall perform each of its acts in a reasonable manner.
- 17.6 Reliance On Messages. Topaz shall have no obligation to investigate the authenticity of, or authorization for, any order, message or other communication that Topaz Facilities may receive from Member pursuant to this Agreement. Topaz may consider Member to have properly authorized each such order, message or other communication.
- 17.7 Third-Party Beneficiary Status. Member understands and acknowledges that OMX (U.S.), its parent company and its affiliated companies (collectively the "OMX Group"), provide certain exchange trading software, and that other Topaz service providers provide other equipment, software and services for the purposes of this Agreement. The OMX Group and such other Topaz service providers are, with respect to the product or service provided by them, third-party beneficiaries to this Agreement, and any action that may be taken by Topaz to enforce any provision of this Agreement (but which is not so taken by Topaz, for whatever reason), may, if the action relates to a product or service provided by such third-party beneficiary, be taken by such third-party beneficiary.
- 17.8 Waivers. Except as expressly stated herein, the failure of either party at any time or times to require performance of any provision contained in this Agreement shall in no manner affect its rights at a later time to enforce that provision. Any waiver by either party of the breach of any provision contained in this Agreement in one or more instances shall not be deemed to be a waiver of any other breach of the same provision or any other provision contained in this Agreement.

- 17.9 Notices. Member shall furnish any notice, description, report or other communication relating to this Agreement in writing or by such other means (e.g., by electronic mail) as Topaz may specify.
- 17.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to the principles of conflicts of laws.
- 17.11 Remedies Cumulative. All remedies provided for in this Agreement shall be deemed cumulative and additional to, and not in lieu of or exclusive of, each other or of any other remedy available to any party at law, in equity or otherwise.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized officers, have executed this Agreement on the dates set forth below.

Member: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Topaz Exchange, LLC.

By: _____

Print Name: _____

Title: _____

Date: _____