

# NASDAQ OMX<sup>®</sup>

## FUTURES EXCHANGE

### “ABC” MEMBERSHIP LEASE & SALE AND SUBORDINATION AGREEMENT

This NASDAQ OMX Futures Exchange (“NFX” or the “Exchange”) ABC Membership Lease (the “Agreement”) is made by and between \_\_\_\_\_ (“Lessor Firm” or “member organization”), and \_\_\_\_\_ (“Lessee” or “Member”), who is currently a general partner or officer of a member organization, or an individual who is affiliated with the member organization in another capacity which is acceptable to the Exchange and the member organization with which such person is affiliated. Lessor Firm and Lessee must complete and file the accompanying Sale and Subordination Agreement.

Lessee desires to lease legal title to a PBOT membership share held by Lessor Firm and the Lessor Firm desires to allow Lessee to use its membership share purchased partially or fully with its funds, as more fully described below, upon the following terms and conditions. Therefore, in consideration of the promises, undertakings, and covenants set forth in this Agreement, Lessor Firm and Lessee agree as follows:

1. NFX By-Laws

This Agreement is subject to, and limited by, the applicable provisions of the By-Laws and Rules of the NASDAQ OMX Futures Exchange and incorporated by reference herein.

2. Transfer of Legal Title Only

The Lessor Firm hereby transfers to Lessee ownership of legal title only to a NFX membership share, together with all privileges and responsibilities incidental thereto, for the purpose of Lessee transacting business on the Exchange. Equitable title to the membership share shall remain with the Lessor Firm.

3. Commencement and Renewal on Monthly Basis

This Lease shall commence on \_\_\_\_\_, 200\_, and thereafter may be renewed by the parties on a monthly basis subject to the Cancellation and Termination terms in Paragraph 5.

4. Payments

Lessor Firm shall be responsible for paying to the Exchange all applicable dues, fees, user fees or charges and any other assessments arising from ownership and use of an NFX membership share.

5. Cancellation and Termination

(A) Lessee or his legal representative upon: (1) notice of the Lessor Firm's termination as an NFX member organization, (2) Lessee's termination of his affiliation with Lessor Firm, or (3) Lessee's death or incompetency, shall have (with the Lessor Firm's written consent) the right to:

- (i) retain the membership share and pay an amount necessary to the Lessor Firm for the purchase of another membership share,
- (ii) sell the membership share and pay the proceeds thereof to the Lessor Firm,
- (iii) transfer legal title to a person affiliated with the member organization in accordance with the By-Laws and Rules of the Exchange, or
- (iv) transfer legal title to the membership share to a lessee in accordance with the By-Laws and Rules of the Exchange.

Upon notice of any of the specified events listed in 5(A)(1), (2) or (3) above, Lessee or his/her legal representative shall not use the membership share for any purpose without the written consent of the Lessor Firm. If another NFX membership share is not available for purchase, Lessee shall not have the option under 5(A)(i) and shall, with the Lessor Firm's written consent, proceed to the options listed in 5(B) below.

Lessee's options listed in 5(A)(i), (ii), and (iii) shall expire after thirty (30) days notice of an event listed in 5(A)(1)-(3). Upon Lessee's death or incompetency, such period to select among the options listed in 5(A)(i), (ii) or (iii) shall be ten (10) days after the appointment of Lessee's legal representative.

(B) In the event Lessee or his legal representative notifies Lessor Firm in writing that Lessee will not retain the membership share upon the occurrence of an event listed in 5(A)(1)-(3), or if Lessee fails to select from the above options in 5(A)(ii)-(iii), Lessee shall, with Lessor Firm's written consent:

- (i) sell the membership share and pay proceeds to the Lessor Firm, or
- (ii) transfer the membership share for nominal consideration to a person designated by the Lessor Firm and satisfactory to NFX.

(Any transfer of an NFX membership will require the payment of applicable transfer fees to the Exchange).

6. Lessee's Representations

Lessee represents that he/she is a general partner or officer of the member organization, is at least twenty-one (21) years old, has applied for membership to the Exchange in accordance with the Rules of the Exchange, and was approved of for membership by NFX. Lessee will contribute the use of said membership share to the business of the Exchange and Lessor Firm and agrees not to use the said membership share for any other purpose without the written consent of the Lessor Firm.

7. Lessee's Rights and Obligations

(a) While this Agreement is in force and effect, the Lessee shall be deemed to be a member of the Exchange for all purposes of the Certificate, By-Laws and Rules of the Exchange, except (i) as set forth in Exchange Rule 118 (c)(4), and (ii) Lessee shall not share in the assets of the Exchange upon any liquidation, dissolution, or winding up of the Exchange.

(b) Except as stated in section 5 Cancellation and Termination, Lessee shall not transfer, pledge, or otherwise encumber legal title to the membership share during the term of this Agreement.

(c) Except as the By-Laws may provide to the contrary, in the event of a membership share split, dividend on account of membership share, or additional rights or privileges granted by the Exchange with respect to membership shares, the equitable interest and property right to such additional benefits shall vest with the Lessor only and be subject to the terms of this Agreement. Any action required to be taken by the legal titleholder of a membership share to acquire such additional benefits shall be taken by Lessee as directed by Lessor.

8. Approval by NFX

NFX, in accordance with the Rules of the Exchange, must approve of this Agreement prior to the effectiveness of this Agreement or any amendment thereto. Moreover, Lessor Firm and Lessee must also complete and file a Sale and Subordination Agreement with Membership Services and the Executive Committee.

9. Indemnification

Lessee and Lessor Firm agree to indemnify and hold the Exchange, its Board of Directors, and its employees harmless against any and all causes of action, claims, liabilities, injuries, damages, costs or expenses of any kind (including reasonable attorney's fees) arising out of or related to any claims asserted against the Exchange in connection with Lessee and/or Lessor Firm's use of the leased membership share or this Agreement.

10. Assignment

Lessee shall not sell, assign or transfer legal title to said membership share without written consent or instruction of the Lessor Firm.

11. Arbitration of Disputes

Any controversy arising between the Lessee and Lessor Firm relating to the lessee's membership share or this Agreement must be submitted for arbitration in accordance with the Arbitration Rules of the Exchange, and Lessee and Lessor Firm hereby consent to the exclusive jurisdiction of the Exchange's arbitration forum and waive any objection to venue at the Exchange.

12. Terms:

As used in this Lease Agreement, the following terms shall have the following meanings:

(a) "lessor firm" means the member organization that is registered pursuant to the Rules of the NASDAQ OMX Futures Exchange, the holder of equitable title to membership shares in the Exchange who has leased its membership share to lessee;

(b) "lessee" means a natural person who is a general partner or officer of lessor firm who has leased legal title to his membership share from lessor firm, pursuant to the By-Laws and Rules of the Exchange.

13. Miscellaneous

This Agreement constitutes the entire understanding and agreement of the parties and supercedes all prior written or oral agreements with respect to the subject matter of this Agreement. This Agreement may not be modified or amended without the express written agreement of the parties. Waiver of any provision of this Agreement by a party shall not constitute a waiver of any other provision or waiver of the same provision at any other time. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.

Intending to be bound, the parties execute this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_ (month) of 20\_\_.

\_\_\_\_\_  
LESSOR FIRM/MEMBER ORGANIZATION

\_\_\_\_\_  
LESSEE/MEMBER

\_\_\_\_\_  
Approved of by NFX President or  
Designated Officer



### **Sale and Subordination Agreement**

This Sale and Subordination agreement must be executed by the equitable title owner of a NFX membership share (hereinafter referred to as “Lessor Firm”) and by its Member as a “Lessee.” This agreement and the lease agreement must be filed with the NFX Executive Committee and Membership Services.

1. The undersigned Lessor Firm and Lessee authorize the Executive Committee of the NASDAQ OMX Futures Exchange to sell its NFX membership share: (i) in the event it becomes necessary to satisfy the claims of creditors of the lessee or of any member organization with which the lessee is affiliated arising out of business transacted by the lessee during the term of a lease agreement; or (ii) pursuant to the provisions of the Exchange’s By-Laws and Rules for non-payment by the lessee or lessor of the dues, fees, charges, or other debts.

2. The undersigned Lessee hereby agree that, insofar as it is necessary for the protection of said creditors of the lessee and of any member organization with which lessee member is affiliated, subject to the By-Laws and Rules of the Exchange, the proceeds of the sale of the said membership share shall be an asset of the member organization, and that any claims of his estate shall be fully subordinated in right of payment to the claims of any creditors of the member organization.

3. The undersigned parties also agree that their NFX membership interests shall be subordinate to the claims of creditors of the lessee or of any member organization with which the lessee is affiliated arising out of the business transacted by the lessee during the term of the lease agreement.

4. The term “creditor” as used herein, is limited to those creditors who are specified in Rule 107 of the Exchange’s By-Laws as being entitled to priority in the payment of their claims from the proceeds of a membership share sale.

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

\_\_\_\_\_  
Lessor Firm/Member Organization

\_\_\_\_\_  
Lessee/Member