



Trading Appendix 5

ETS User Terms

Commodity Derivatives

Issued by ~~NASDAQ-OMX~~Nasdaq Oslo ASA

Effective Date: ~~5-20 November~~March 2017~~2~~

ETS USER TERMS

1. INTRODUCTION

- 1.1 The ETS is the principal trading facility for all Exchange Members.
- 1.2 These Terms of Use apply to all use of the ETS, regardless of which Client Application is used to connect with the ETS, and supplement other parts of the Trading Rules.

2. DEFINITIONS

- 2.1 Capitalized words in the Terms of Use shall have the same meaning as defined in the Definitions. Additionally, the following words shall have the meanings set out below:

Algorithmic Trading Trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions.

API means an application programming interface that enables interaction between two software systems without the involvement of a user through a set of standardized and callable functions.

Client Application means a software-based application and/or service other than the ETS itself (whether or not operated by human intervention, and whether installed as a local application, on the servers of Licensee, the Exchange or a third party, or available through web etc) used by a Licensee to access and interface with the ETS for the purposes of Trading and related activities.

ETS means the Exchange's system for electronic Exchange Trading, including any computers, servers, storage media, software, APIs, communication lines or other infrastructure elements provided by the Exchange in connection with Exchange Trading, and excludes (i) any Client Applications and (ii) any hardware, software, telecommunication lines (including public telecommunication lines), network components and Client Applications held or operated by or on behalf of any party other than the Exchange.

Licensee means an Exchange Member wishing to access ETS for Trading, or any other entity being granted a right to access the ETS through written agreement with the Exchange. For the avoidance of doubt, this does not cover clients submitting Orders via Direct Market Access or placing Orders through Sponsored Access.

~~Standard Application~~ ~~means any of the Client Applications offered by and through the Exchange to Licensees as a Standard Application at any time.~~

Technical Equipment means any of the Client Applications or other hardware and software, including computer application programs, used for trading in the ETS and for connecting hereto.

Terms of Use means these ETS User Terms.

Third-Party Application means any Client Application that is not offered by and through the Exchange as a ~~Standard Application~~ Technical Equipment at any time.

Trader ID means an value created by the Exchange that identifies and

	<u>represents an Exchange Trader or a technical trading flow.</u>
Trading ID	means a trading identity assigned by the Exchange to a Licensee to identify the Licensee in the ETS.
User	means a natural person accessing the ETS through a User ID.
User ID	means a log-on identity to the ETS provided by the Exchange to a Licensee, including any personal security cards, PIN codes, passwords, tokens or other access credentials or devices pertaining to such log-on identity.

3. ACCESS TO AND USE OF THE ETS

- 3.1 Licensees are granted a non-exclusive and non-transferable right to access and use the ETS and any Technical EquipmentStandard Applications through its User ID(s) for the purpose of Trading and related activities, provided that these Terms of Use are observed and complied with at all times.
- 3.2 All access to and use of the ETS and the Technical EquipmentStandard Applications shall be consistent with the instruction manuals or other similar written announcements provided by the Exchange as applicable from time to time. Licensees shall ensure that all their Users are properly acquainted with the applicable Client Application(s), the ETS, the Terms of Use and the Trading Rules prior to accessing the ETS.

3.3 Except as otherwise provided for herein or by separate written agreement between the Exchange and Licensee, each Licensee is solely responsible for the functionality, availability and use of all facilities necessary to use and access the ETS, and must at its own cost and risk set up and provide, maintain, replace and/or update such facilities as necessary and/or appropriate to comply with these Terms of Use. This includes any Client Application, telecommunication lines, hardware equipment, operating platforms and other software.

~~3.3.4~~ Licensees shall be electronically connected to the ETS and meet the requirements regarding Technical Equipment as set forth in these ETS User Terms and elsewhere in the Trading Rules. Licensees may be granted an exemption from the electronic connection requirement during a transitional period.

3.5 In the event a Licensee initiates such a large number of electronic messages (placing, changing, or withdrawal of Orders) in the ETS that such action negatively affects the properly functioning of exchange operations or in any other manner creates technical problems, the Exchange shall be entitled to establish limitations on the Licensee's right to place, change, or revoke Orders in the ETS; to cancel the Licensee's stored Orders; or to completely suspend the Licensee from the ETS for a certain period.

3.6 Technical Equipment shall, in accordance with the provisions contained in these ETS User Terms and elsewhere in the Trading Rules, be conformance tested by the Licensee prior to the connection of such equipment to the ETS.

3.7 A Licensee shall undertake conformance testing prior to initial deployment or a substantial update of the Licensee's trading system(s), trading algorithm(s) and trading strategy(-ies) as well as equipment used by the Licensee to access the ETS. The Licensee shall also undertake conformance testing upon request by the Exchange where there is a material change of the Exchange's trading system. The testing shall be conducted in the conformance testing environment provided by the Exchange and in accordance with the Exchange's instructions. It shall be sufficiently comprehensive and thorough to allow the Licensee and the Exchange to conclude that the basic functioning of the Licensee's trading systems, algorithms and strategies, as the case may be, complies with the requirements established by the Exchange and the requirements set out in MiFID and other applicable

legislation. Following a conformance test, the Exchange shall provide the Licensee with a conformance test report.¹

3.8 The Exchange reserves the right to reject the connection to the ETS of Technical Equipment which does not pass the conformance testing with acceptable results in the opinion of the Exchange. The Exchange also reserves the right to require the Licensee to conduct additional testing or to carry out its own tests of such equipment where the Exchange deems necessary. All conformance and other testing, including when carried out by the Exchange, shall be at the expense of the Licensee.

3.9 Without limiting the rights of the Exchange under the Trading Rules, General Terms, Licensees shall grant the Exchange access for the inspection of Technical Equipment connected to the Electronic Trading Platform. Such inspections shall take place at an agreed time and in the presence of the Licensee in question.

3-43.10 Licensee shall not, and shall not attempt, except as pursuant to the Trading Rules or as may be permitted by written agreement with the Exchange or mandatory provisions of applicable law, to:

- a. use the ETS or the Technical Equipment Standard Applications, or cause the same to be used, for any other purpose than in its ordinary course of business and directly related to Trading;
- b. delete, change, remove or in any way obscure any copyright or proprietary notices of the Exchange or any third party on any copy of information originating from the ETS or the Technical Equipment Standard Applications (or any part thereof);
- c. sub-license, supply, sell, assign, transfer, rent, lease, charge or otherwise deal in or encumber the ETS or the Technical Equipment Standard Applications or any software program comprised in the ETS or the Technical Equipment Standard Applications and/or installed on any equipment operated by or on behalf of the Exchange in connection with the operation of the ETS or the Technical Equipment Standard Applications or any accompanying documentation for itself or on behalf of a third party or make the same available to any third party;
- d. use, duplicate or display information on any Order or Transaction (or any part thereof) from the ETS or permit any third party to view such information or present to it for viewing in any manner not expressly permitted by the Trading Rules;
- e. supply, sell, assign, transfer, rent, lease, or otherwise dispose of equipment on which any part of the ETS or the Technical Equipment Standard Applications (or a copy of it or parts of it), is stored, kept or to be found without first ensuring that all such data have been previously deleted;
- f. copy or imitate the data base structure, design elements or any other elements of ETS or the Technical Equipment Standard Applications or any software program comprised in the ETS or the Technical Equipment Standard Applications and/or installed on any equipment operated by or on behalf of the Exchange in connection with the operation of the ETS or the Technical Equipment Standard Applications;
- g. copy, imitate, enhance, modify, adapt, alter, decompile, reverse assemble or reverse engineer the ETS or the Technical Equipment Standard Applications or any software program comprised in the ETS or Standard Application Technical Equipment and/or installed on any equipment operated by or on behalf of the Exchange in connection with the operation of the ETS, the Technical Equipment Standard Applications or the User IDs; or
- h. copy, imitate, publish or otherwise redistribute the User IDs and/or user manuals without the prior written consent from the Exchange.

¹ Section 3.7 effective as of 2 January 2018.

3A. ALGORITHMIC TRADING²

3A.1 The Licensee shall establish procedures for Algorithmic Trading which ensure that the risks associated with Algorithmic Trading are reasonable in relation to the limits which apply to the Licensee's activities and to its limits for delivery, settlement and clearing. Such procedures shall contain at least the following:

- a description of the Licensee's procedures for monitoring of Alorithmic Trading; and
- a description of the verification procedure of Orders in the ETS outlining the adequate pre-trade order validations.

3A.2 The Licensee's Technical Equipment for Algorithmic Trading shall be subject to the requirements set out in these ETS User Terms.

3A.3 Licenees must furthermore certify that the algorithms they deploy have been tested to avoid contributing to or creating disorderly trading conditions prior to the deployment or substantial update of a trading algorithm or trading strategy and explain the means used for that testing.

3A.4 Algorithmic Trading must be registered in the ETS by using one (1) or more specific Trader IDs that are used solely for Algorithmic Trading.

3A.5 The Licensee shall appoint a head of trading or a person with similar responsibility as contact person responsible for any matters which may arise in connection with Algorithmic Trading, to ensure that Algorithmic Trading is conducted in accordance with this section 3A, and for supervision of the Orders which result from Algorithmic Trading. The Licensee shall also appoint a substitute contact person.

3A.6 The Licensee shall ensure that the Exchange is at all times correctly informed as to the name of the contact person and the substitute, and shall ensure that there is a contact person available at any time during the Exchange Opening Hours.

4. AUTOMATED ORDER ROUTING³ ~~FEES~~

4.1 A Licensee may, through the use of internet connections or other computer connections between the Licensee and its client, electronically and automatically transmit Orders registered by the client directly to ETS, excluding any such processes that fall within the definition of Direct Electronic Access ("Automated Order Routing").

4.2 The Licensee shall enter into a separate written agreement regarding the terms and conditions for Automated Order Routing with each client which desires to utilise Automated Order Routing.

4.3 The Licensee's Technical Equipment for Automated Order Routing must fulfill at least the following requirements:

- The systems for Direct Market Access must automatically reject the placement in the order book of client's Orders that would, if executed, result in one or more of the client's risk limits being exceeded. The Automated Order Routing system at the Licensee shall simultaneously provide the Licensee with information regarding such Orders;
- The Licensee must, at all times, be able to verify the aggregate risk exposures resulting from a client's Orders placed via Automated Order Routing; and

² Section 3 effective as of 2 January 2018.

³ Section 4 effective as of 2 January 2018.

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- Sufficient data security measures in place towards the client's technical equipment or, according to an agreement with the client, be entitled to monitor the client's technical equipment and technical connections.
- 4.4 Technical Equipment used for Automated Order Routing must be tested and approved by the Licensee before it is put into operation. The Exchange may require further testing of such Technical Equipment. The Exchange shall approve the connection of the Technical Equipment to ETS prior to implementation thereof.
- 4.5 The Licensee has the same liability for Orders which are routed via Automated Order Routing for Orders which the Licensee places in any other manner.
- 4.6 The Licensee shall establish appropriate technical and administrative arrangements in order to ensure that Orders routed via Automated Order Routing do not violate these Trading Rules.
- 4.7 The Licensee shall appoint a Head of Trading or a person with similar responsibility as contact person responsible for any matters which may arise in connection with Automated Order Routing, in order to ensure that Automated Order Routing is conducted in accordance with this section 4, and for supervision of the Orders and Transactions which result from Automated Order Routing. Furthermore, the Licensee shall appoint a substitute contact person.
- 4.8 The Licensee shall ensure that the Exchange is at all times correctly informed as to the name of the contact persons and the substitutes and shall ensure that contact persons or the substitutes can be contacted at any time during the Exchange Opening Hours.
- 4.9 The Licensee shall inform the Exchange of any material changes or amendments with respect to the Automated Order Routing.
- 4.10 The Exchange may at any time require updated information regarding the Licensee's Automated Order Routing.
- 4.11 Orders routed via Automated Order Routing shall be identified with one specific €Trader ID that are used solely for Automated Order Routing.
- ~~4.14.12~~ Automated Order Routing may only be used for Instruments which are subject to matching in ETS.

4A. FEES

- 4A.1 The Licensee shall pay fees for its use or connection to the ETS and any Technical Equipment as set out in the Fee List.

5. CLIENT APPLICATIONS

- 5.1 The Exchange shall have no responsibility for the actual installation, operation or maintenance of any Client Application, including Technical Equipment Standard Applications.
- 5.2 The Exchange shall have no responsibility for the compatibility, functionality, availability, reliability or fitness for purpose of any Third-Party Application at any time. The Exchange may exclude or impose special terms and conditions relating to the use of specific Third-Party Applications if it has reasonable grounds for doing so. All responsibility and liability for Third-Party Applications are expressly excluded by the Exchange.
- 5.3 The Licensee shall upon request from the Exchange inform of what Client Application(s) it uses to connect to the ETS. The Exchange may request information about any Third-Party Applications used, including all ancillary services etc, in order for the Exchange to assess the Third-Party Application to its satisfaction. Failure by a Licensee to disclose all such information upon request and without undue delay will be deemed a breach of the Terms of Use. Until such information is disclosed and the relevant Third-Party Application is

approved by the Exchange, the Licensee may be excluded from connecting to the ETS through such Third Party Application.

6. TRADER ID, TRADING IDS AND USER IDS

- 6.1 Access to and use of the ETS requires one or more Trading IDs, ~~and~~ User IDs and Trader IDs.
- 6.2 Exchange Members may have one or more Trading IDs for accessing the ETS. Each Trading ID may be associated with one or more User IDs and Trader IDs. Trading IDs are established by request to the Exchange.
- 6.3 User IDs and Trader IDs are issued by the Exchange pursuant to the procedures and arrangements in effect with the Exchange from time to time. Each Trader ID or User ID shall be associated to one Trading ID and one Exchange Trader. Licensees who are not Exchange Members must upon request from the Exchange for each User ID nominate one associated natural person with rights corresponding to that of an Exchange Trader in relation to their applicable ETS activity, as may be further determined by the Exchange in each case.

6.4 Upon an application by a Licensee, an employee who fulfils the requirements and who is deemed suitable by the Exchange shall be registered as an Exchange Trader. The Exchange shall assign each registered Exchange Trader with a personal User ID and Trader ID.

6.5 The application for registration shall be submitted to the Exchange as instructed by the Exchange. Unless otherwise stated in the Trading Rules, an Exchange Trader may not permit any other person to use the Exchange Trader's User ID and Trader ID.

~~6.6.6~~ The access privileges of each User ID and Trader ID shall be specified by the Licensee within the parameters allowed by the Exchange using such form or application as may be made available by the Exchange from time to time. The privileges of individual User IDs and Trader IDs may be unilaterally amended by the Exchange, provided that the Exchange shall notify affected Licensees in writing prior to such amendment becoming effective.

~~6.5.7~~ Licensee shall ensure that each User ID and Trader ID is-are used only in accordance with these Terms of Use, and not for any other purpose, and that each User ID is treated confidentially and that adequate security measures are in place to effectively prevent unauthorized access or use of each User ID. Licensees are strictly liable for all use of the ETS through any User IDs issued to it, including any Orders and Transactions registered through each of its User IDs.

~~6.6.8~~ A User ID and a Trader ID as applicable will be disabled only when the Exchange has confirmed in writing its reception of notification from the Licensee that the relevant User ID or Trader ID shall be disabled, or when the Exchange otherwise deems that it has just grounds for disabling the User ID or the Trader ID. If a Licensee, ~~-or-~~ User or Exchange Trader at any time becomes suspicious or aware of unauthorized use of a User ID or a Trader ID, it shall immediately notify the Exchange in writing thereof.

~~6.7.9~~ If the Exchange at any time becomes suspicious or aware of unauthorized use or attempted use of a User ID or Trader ID, the Exchange will as soon as reasonably practicable notify the Licensee. The Exchange shall not be obliged to block such User ID or Trader ID other than following instructions from the Licensee.

7. USER QUALIFICATIONS

- 7.1 Each Licensee shall ensure that each of its Users is qualified as such under the Trading Rules, and that each of its Users is properly acquainted with the general operations of the Exchange and the ETS in relation to Exchange Trading.
- 7.2 Each Licensee shall ensure that each of its Users is properly acquainted with, and complies with, the Trading Rules at all times. Each Licensee shall make the necessary arrangements

to ensure that the Exchange has the possibility to enforce the Trading Rules towards all of its Users at all times to the extent mandated by the Trading Rules.

- 7.3 Licensee shall keep records of the individual Users accessing the ETS through each User ID, and shall keep the Exchange currently and continuously updated on the aggregate number of Users accessing the ETS through each of the Licensee's User IDs.
- 7.4 Users may not be located outside the European Economic Area without the prior written consent of the Exchange.
- 7.5 In order to verify the correctness of the number of Users reported by the Licensee, the Exchange shall, upon prior appointment between the parties and during normal business hours of the Licensee, have the right to examine and audit the Licensee's record of Users. The Licensee may request that such audit takes place without disclosing the identity of the individual Users (e.g. by using external auditors) provided that such anonymous review is possible and that the Licensee pays all costs associated therewith. The Licensee shall provide all assistance requested by the Exchange in connection with such audits, including any necessary information regarding the technical systems and other circumstances related to the audit. In case the audit reveals that the Licensee has reported an incorrect number of Users the Exchange may, in addition to any other remedies available to it, require the Licensee to reimburse all costs connected to the audit and for any unreported Users charge two (2) times the fee that would normally apply.
- 7.6 The Licensee shall upon the request of the Exchange inform the Exchange of the identity of the individual Users accessing the ETS through the Licensee's User IDs or Trader IDs, if the Exchange in its own discretion considers this information relevant for the investigation of any suspected breach of the Marked Conduct Rules or to comply with applicable law.

8. FUNCTIONALITY

- 8.1 The functionality of the ETS and the ~~Technical Equipment Standard Applications~~ is limited to such functionality and other operational parameters as the Exchange decides to make available to the applicable Users and/or ~~Technical Equipment Standard Applications~~ at any given time, provided that the Exchange shall ensure that such functionality that is required, expressly or by implications by the provisions of the Trading Rules, will be provided in the ETS. The Exchange decides how all such functionality is implemented.
- 8.2 To the extent that the ETS or a ~~Standard Application-Technical Equipment~~ includes functionality such as the possibility to set individual trading limits or other risk mitigating features ("User Defined Restrictions"), such functionality is provided solely for the convenience of the Licensee and all use of User Defined Restrictions is at the discretion and risk of the Licensee. The Exchange makes no warranty, expressed or implied, as to the actual functionality of any User Defined Restrictions and expressly excludes any liability for such features. The Licensee shall have no right, and the Exchange shall have no obligation, to correct any Transactions registered in breach of User Defined Restrictions except as may otherwise follow from the Trading Rules in relation to Trading Errors in general. The Exchange's sole obligation in connection with any error in the ETS or any ~~Standard Application-Technical Equipment~~ relating to User Defined Restrictions shall, unless as otherwise set out in the Trading Rules, be limited to the Exchange exercising reasonable efforts to remedy such error at its earliest convenience.
- 8.3 The ETS or the ~~Technical Equipment Standard Applications~~ may from time to time be developed and updated with additional functionalities, or may be replaced by other software products with similar functionality, and the Licensee shall upon reasonable notice implement and make itself and its Users acquainted with any such changes, updates or replacements as to at all time operate the ETS properly. The Exchange will inform affected Licensees of such changes, updates and replacements, including information on the need for changes to equipment or software commonly used to connect with the ETS when necessary.

9. CONNECTION

- 9.1 The ETS may only be accessed through such communication methods as are supported by the Exchange from time to time.
- 9.2 The Exchange may assist in providing or setting up external connection facilities to the ETS, including telecommunication facilities, subject to separate fees as set out in the Fee List or as otherwise agreed with the Exchange.

9.3 The Exchange shall have no responsibility whatsoever for the functionality or availability of any communication facilities or systems beyond those which are part of the ETS. Any errors or problems related to external communication facilities shall be the sole responsibility of the Licensee or its telecommunications service supplier.

9.4 The Exchange reserves the right, to the extent it is deemed necessary for the maintenance of properly functioning exchange operations, to limit the number of connections per Licensee or generally limit the order and/or transaction volume per connection.

~~9.39.5~~ The Exchange reserves the right to (i) immediately limit the order submission rate in one or more connection (s) to the ETS; (ii) disconnect a connection to the ETS or (iii) establish restrictions on a Licensee, terminate a Licensee's membership or effect cancellation in accordance with section 3.5 above, in the event the connection is used in a manner which constitutes an unusual strain on the ETS through, inter alia, unusual relations between own Orders and own Exchange Transactions or otherwise, provided the Exchange deems such measure necessary for the maintenance of properly functioning exchange operations.

10. SECURITY

- 10.1 Licensee shall ensure that any parts of its software and equipment used to connect to the ETS, including any Client Application, complies with the minimum requirements as notified by the Exchange from time to time with reasonable notice to the Licensee. The Exchange may exclude access to the ETS in the event the Licensee, following a written warning from the Exchange, fails to maintain and/or update their Client Application in accordance with the Exchange's instructions (including related software and hardware installations).
- 10.2 If the Exchange at any time has reason to believe that a Licensee's or User's access to the ETS is causing a security threat to the ETS or may be affecting other Licensees or Users in an adverse and unusual manner, the Exchange may immediately disconnect the applicable Licensee and/or User(s) from the ETS. The Exchange shall immediately inform the Licensee thereof, reasonably detailing its reasons for denying access.
- 10.3 Without prejudice to any other obligations pursuant to the Trading Rules, the Licensee, the Users and the Exchange shall use reasonable endeavours to ensure that their software and hardware is free from any computer viruses and that no computer viruses or similar are introduced on to the other party's software or hardware through the ETS or otherwise.

11. SUPPORT AND SERVICE LEVELS

- 11.1 The Exchange will take all reasonable and practicable steps to maintain the continuity of access to, and technical capacity, for Licensee and its representatives to access the ETS during Trading Hours, and to provide Licensees with reasonable notice of system outages and other matters affecting use or access to the ETS, but will not be liable for
- any suspension, interruption, temporary unavailability or fault occurring in the provision of the ETS;
 - any loss or damage whatsoever and howsoever caused arising in connection with the use of information or services acquired or accessed by Licensee through use of the ETS howsoever; or
 - any loss or damage incurred as a result of systems, equipment or services delivered by third party suppliers or other circumstances for which the Exchange is not responsible.

- 11.2 The Exchange offers telephone support related to the ETS' and ~~Technical Equipment Standard Applications~~ functionality to Licensees during Trading Hours on any Trading Day, free of charge. Support is provided on an "as available" and "reasonable effort" basis, and does not include on-site support.
- 11.3 Where the Licensee requests the assistance and/or advice of the Exchange in overcoming any connection problems or any other failure of software or equipment not provided by the Exchange/for which the Exchange is not responsible:
- a. any such support shall be undertaken only if and when the Exchange has the ability, capacity and availability for rendering such support;
 - b. the Exchange shall not be responsible for actually resolving the problem, nor will any guarantee be given that the solution represents a final and/or full remedy of the problem;
 - c. the Exchange shall not be liable for any damage to software, equipment or loss of data for whatever reason; and
 - d. the Licensee shall reimburse all reasonable costs and expenses incurred by the Exchange (including any internal costs) in supporting the Licensee in overcoming or attempting to overcome such problems.
- 11.4 The Licensee shall offer and maintain first line support to Users that are not Exchange Traders in order to address any questions or problems relating to any User's use of, or inability to use, the ETS and/or ~~Technical Equipment Standard Application(s)~~. The Exchange will only offer support to Users to the extent such support is offered under this Section 11. The Licensee undertakes to cooperate with the Exchange in resolving problems related to its Users.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The ETS and the ~~Technical Equipment Standard Applications~~ are the sole property of the Exchange and/or its licensors. Except for the right to use and access the ETS and the ~~Technical Equipment Standard Applications~~ in accordance with the Trading Rules and these Terms of Use, neither the Licensee nor any User acquires any intellectual property rights, property rights or other rights to the ETS or the ~~Technical Equipment Standard Applications~~, and nothing herein shall be deemed or construed as a transfer of or license to any such rights.
- 12.2 The Licensee is granted access to the object code only and shall not have access to the source code of the ETS or the ~~Technical Equipment Standard Applications~~.
- 12.3 All User IDs and other measures or devices which are distributed to the Licensee in relation to the Licensee's use of the ETS are and shall remain the property of the Exchange or its licensors.
- 12.4 The Exchange represents and warrants that the Licensee's use of the ETS or the ~~Technical Equipment Standard Applications~~ will not infringe any statutory or common law copyright, trademark or patent or otherwise infringe any personal or proprietary right of any person or entity. This Section 12.4 does not apply where:
- a. the Licensee uses a version of the ETS or the ~~Technical Equipment Standard Applications~~ other than the most recent version issued by the Exchange from time to time; or
 - b. a claim arises out of the combination of the ETS with any Third-Party Application, where the ETS would not alone have given rise to such infringement; or
 - c. a claim arises out of the combination of the ETS or a ~~Standard Application-Technical Equipment~~ or any part thereof with hardware and software not meeting the specifications or requirements notified in writing by the Exchange, where the ETS or the ~~Standard Application-Technical Equipment~~ would not alone have given rise to such infringement.

13. LIABILITY

- 13.1 The Exchange shall defend, indemnify and hold the Licensee harmless from and against any claim, demand, liability or expenses arising directly out of any claim by a third party against the Licensee arising out of the Exchange's breach of Section 12.4, provided that the Licensee shall:
- a. promptly provide the Exchange with written notice of any claim of which the Licensee is notified and believes falls within the scope of this Section 13;
 - b. not make any admittance or otherwise respond to the claim to the third party involved, except as and to the extent required by applicable law;
 - c. promptly provide the Exchange with all such information as in the Exchange's opinion is necessary for the Exchange's defence, which is in the possession of the Licensee and which the Exchange cannot reasonably acquire from a third party;
 - d. allow the Exchange to comply with Section 13.2 and do all such acts and execute any such documents as is required in connection therewith; and
 - e. if the Exchange so requests, and subject to reasonable compensation from the Exchange, assist in such defence.
- 13.2 The Exchange shall control any defence and all negotiations related to the settlement of any claim from a third party under Section 13, provided that such settlement
- a. does not without Licensee's prior written approval (i) involve the admission of any wrongdoing by Licensee, (ii) unreasonably restrict Licensee's future actions, or (iii) requires Licensee to take any action (including the payment of money); and
 - b. includes a full release of the Licensee.
- 13.3 The Licensee shall defend, indemnify and hold the Exchange harmless from and against any claim, demand, liability or expenses arising directly out of any claim from Users against the Exchange that are caused by the Users' use of (or inability to use) the ETS and/or ~~Technical Equipment Standard Application(s)~~ regardless of cause.

14. EXCLUSIVE REMEDIES

- 14.1 The Licensee accepts that these Terms of Use set out the exclusive rights and remedies available to the Licensee for any use of and access to (or inability to use or access) the ETS and the ~~Technical Equipment Standard Applications~~.
- 14.2 The Licensee accepts that the Exchange's licensors or suppliers shall not under any circumstances be liable towards the Licensee for any damage whatsoever incurred as a result of use of or access to (or inability to use or access) the ETS or the ~~Technical Equipment Standard Applications~~.

15. BREACH OF TERMS OF USE

- 15.1 Any failure to comply with these Terms of Use shall be considered a breach of the Terms of Use.
- 15.2 The Exchange may request a written explanation from the Licensee in the event the Exchange suspects a breach of any of the provisions of the Terms of Use. Failure to provide such written explanation within the deadline set by the Exchange in each case shall be considered a material breach of the Terms of Use.

16. TERMINATION

- 16.1 Without prejudice to other provisions of these Terms of Use, the Exchange may terminate or suspend the Licensee's or a specific User's right to access and use the ETS upon thirty (30) days written notice in the event of a breach of the Terms of Use, provided that such breach is not rectified within the expiry of the thirty (30) ~~days-noticedays'~~ notice period. For the avoidance of doubt, this clause is without prejudice to the Exchange's right to

suspend or terminate any Licensee or User in accordance with any other provisions of these Terms of Use or the Trading Rules.

- 16.2 The Exchange may terminate or suspend the Licensee's or a specific User's right to access and use the ETS with immediate effect in the event of material breach of these Terms of Use.
- 16.3 Following termination of the Licensees right to access the ETS all rights and obligations set out herein shall immediately cease, except for the rights and obligations pursuant to Sections 12 and 14 of these Terms of Use.
- 16.4 Upon termination the Licensee and/or each affected User shall immediately return to the Exchange all software and other material received in connection with use of the ETS, or if the Exchange so agrees destroy or delete all such software and other material including any copies thereof.

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