

Provided below is a sample Membership Lease Agreement. Please be advised that the parties may negotiate any additional or different provisions within their specific Membership Lease Agreement.

FORM OF MEMBERSHIP LEASE AGREEMENT

MEMBERSHIP LEASE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20 ____, (this “Agreement”) by and between

_____, (hereinafter referred to as “Lessor”), and

_____, (hereinafter referred to as “Lessee”).

RECITALS:

WHEREAS, Lessor is the record and beneficial owner of, and desires to lease to Lessee certain rights and privileges associated with, a membership in Board of Trade of the City of Chicago, Inc. (the “CBOT”);

WHEREAS, Lessee desires to lease from Lessor certain rights and privileges associated with a membership in the CBOT;

WHEREAS, _____ is a clearing member of the CBOT and will qualify and clear Lessee’s trades on the CBOT (the “Qualifying Clearing Member”) **(strike out and initial if inapplicable _____)**; and

WHEREAS, as a condition to Lessor’s willingness to enter into this Agreement, Qualifying Clearing Member has, on behalf of Lessee, entered into an indemnification agreement for the benefit of Lessor in the form attached to this Agreement as Exhibit A **(strike out and initial if inapplicable _____)**.

AGREEMENTS:

NOW AND THEREFORE, in consideration of the mutual covenants hereinafter set forth, Lessor and Lessee hereby agree as follows:

1. **Lease of Membership.**

a. *Identification of Leased Interests.* Subject to the terms and conditions set forth herein, Lessor leases to Lessee during the Lease Term (as defined below) the trading rights and privileges (in the case of a membership in the CBOT) and rights and privileges associated with the following interests (each, a "Leased Interest"):

- SERIES B-1 (FULL) MEMBERSHIP (Membership # _____ / _____).
- SERIES B-2 (ASSOCIATE) MEMBERSHIP (Membership # _____).
- SERIES B-3 (GIM) MEMBERSHIP (Membership # _____).
- SERIES B-4 (IDEM) MEMBERSHIP (Membership # _____).
- SERIES B-5 (COM) MEMBERSHIP (Membership # _____).

b. *Lease Term.* The "Lease Term" shall be the _____ **month / year (circle one)** period commencing at the open of business on _____, 20__ (the "Effective Date") and ending at the close of business on _____, 20__, including all trading sessions occurring during this period, as may be extended from time to time by written agreement between Lessor and Lessee.

c. *Lessor/Lessee Optional Termination.* Notwithstanding Section 1(b) above, the Lease Term may be earlier terminated by either party hereto at any time after _____, 20__, with or without cause, upon _____ calendar days prior written notice by the terminating party to the other party.

d. *Lessor Optional Termination.* Notwithstanding Section 1(b) above, the Lease Term may be earlier terminated by Lessor:

(1) immediately without prior notice to Lessee if all or a portion of one or more Lease Payments (as defined below) is delinquent for more than ten (10) calendar days; and

(2) upon ten (10) calendar days prior written notice to Lessee if Lessee materially breaches this Agreement.

e. *Automatic Termination.* Notwithstanding Section 1(b) above, the Lease Term will terminate automatically without prior notice upon:

(1) the effective date of any action by the CBOT that results in, or will result in, the expulsion of Lessee from membership in the CBOT;

(2) the effective date of any action by the CBOT that results in, or will result in, the expulsion of Lessor from membership in the CBOT, or the suspension of Lessor's trading rights and privileges in the CBOT; and

(3) the sale by Lessor of the Leased Interest.

f. *Notice of Termination.* Lessor and Lessee shall provide the Membership Services Department with written notice of any termination pursuant to Section 1(e) above as soon as reasonably practicable following actual knowledge of such termination of the Lease Term.

g. *Qualifying Clearing Member.*

(1) If the Leased Interest(s) include a membership in the CBOT and Lessee has designated a Qualifying Clearing Member hereunder, Lessee agrees not to change the Qualifying Clearing Member without the prior written consent of Lessor.

(2) If the Leased Interest(s) include a membership in the CBOT and Lessee has not designated a Qualifying Clearing Member hereunder, Lessee agrees to provide to Lessor not less than one business day's prior written notice of Lessee's intent to utilize the trading rights and privileges associated with such membership to transact at the CBOT.

(3) Lessee will be liable to Lessor for any costs incurred by Lessor in connection with the preparation of a new lease agreement, indemnity agreement and/or other related documents to the extent such documents are required as a result of Lessee changing the Qualifying Clearing Member or Lessee subsequently identifying a Qualifying Clearing Member.

2. Registration of Leased Interest(s) on behalf of Member Firms. Subject to the terms and conditions set forth herein, Lessor hereby agrees to permit Lessee to register the following Leased Interest(s) ("Registered Interests") during the Lease Term on behalf of a member firm as contemplated by the CBOT's Rules:

Memberships

- SERIES B-1 (FULL) MEMBERSHIP (Membership # _____/_____).
- SERIES B-2 (ASSOCIATE) MEMBERSHIP (Membership # _____).

The name of the member firm ("Member Firm") on behalf of which such Registered Interests are to be registered is:

Lessor acknowledges and agrees that he or she may not sell or transfer the Registered Interests nor may Lessor register the Registered Interests or permit the Registered Interests to be registered on behalf of a member firm other than the Member Firm during the Lease Term and until the later of (1) the end of the claims filing period applicable to Lessee and the Registered Interests pursuant to Rule 110 and (2) the resolution of any outstanding claims against Lessee and the Registered Interests, including claims associated with disciplinary actions and arbitrations, properly made pursuant to Rule 110 (the "Claims Period").

Lessor further acknowledges and agrees that, during the Claims Period, the Registered Interests are subject to claims brought under CBOT Rule 110, including claims brought following the end of the Lease Term, against the Member Firm and Lessee that relate to the obligations of the Member Firm and Lessee under the Rules of the CBOT arising during the Lease Term.

4. **Lease Payments.**

a. *Lease Payments.* During the Lease Term, Lessee shall pay to Lessor the following consideration (“Lease Payments”) in exchange for the rights granted under this Agreement (**check box and, to the extent required, fill in applicable section**):

For the first calendar month during the Lease Term, Lessee shall pay to Lessor \$_____, payable on or before the Effective Date, and for each calendar month thereafter, a fixed amount of \$_____ per month, payable in advance on the 1st business day of each such calendar month (subject to pro-ration in the event that the beginning or end of the Lease Term does not coincide with the beginning or end of a calendar month).

For the first calendar month during the Lease Term, Lessee shall pay to Lessor \$_____, payable on or before the Effective Date, and for each calendar month thereafter, a variable amount determined by mutual agreement of Lessor and Lessee on before the second to the last business day of each calendar month (the “Renegotiation Deadline”) payable in advance on the 1st business day of each the next calendar month (subject to pro-ration in the event the beginning or end of the Lease Term does not coincide with the beginning or end of a calendar month). Notwithstanding Section 1(b) above, if Lessor and Lessee cannot agree on a new Lease Payment, the Lease Payment shall remain the amount last agreed to by the parties and within thirty (30) calendar days of the Renegotiation Deadline, the Lease Term will automatically terminate without penalty to either Lessor or Lessee at the end of such thirty (30) calendar day period.

Another amount determined as follows:

b. *Late Lease Payments.* At the discretion of Lessor, and without any further notice to Lessee, beginning on the 10th calendar day following the Lease Payment due date, a late payment fee shall be charged in the amount of:

\$_____ per day accruing beginning on the Lease Payment due date.

_____% of the outstanding Lease Payment accruing daily from the Lease Payment due date.

Other

5. **Ownership and Use.** The Leased Interest(s) and any Pledged/Assigned Shares shall at all times remain the sole and exclusive property of Lessor, and Lessee shall have no right or property interest therein except as contemplated by this Agreement. Without limiting the foregoing in any manner, Lessor shall be entitled to receive all dividends and distributions in respect of the Leased Interest(s) and/or Pledged/Assigned Shares.

6. **Assignment by Lessee.** Lessee may not assign, transfer or sublease his or her rights, privileges or obligations under this Agreement. Any attempted assignment, transfer or sublease will be deemed null and void.

7. **Obligations for Dues, Fees, Taxes, and Other Charges.** Lessor / Lessee (**circle one**) shall be responsible to Lessor / Lessee (**circle one**) for satisfying all obligations including but not limited to dues, fees, taxes or assessments of any kind or other charges imposed with respect to the use or lease of the Leased Interest(s) and/or Pledged/Assigned Shares.

8. **Exercise of Voting Rights.** Lessor, acting on his or her own behalf, shall/may during the Lease Term continue to exercise any of the voting rights associated with the Leased Interest(s) .

9. Representations and Warranties.

- a. Lessor represents and warrants that he/she/it owns beneficially and of record the Leased Interest, as applicable. Lessor further represents and warrants that he/she/it has not previously entered into a lease agreement or other arrangement whereby he/she/it has granted the rights that are granted hereunder to Lessee with respect to the Leased Interest, as applicable, during the Lease Term.
- b. Lessor and Lessee each represent and warrant that this Agreement has been duly authorized, executed and delivered by he/she/it, and is a valid and binding obligation of he/she/it, enforceable against he/she/it, respectively, in accordance with its terms.

10. Lessee Indemnity.

- a. Lessee shall indemnify, protect, and hold harmless Lessor, his or her agents, servants, employees, officers, directors, successors, and assigns from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses, of whatever nature, arising out of the use by Lessee of the Leased Interest(s) and/or Pledged/Assigned Shares.
- b. Lessee shall, at the written direction of Lessor, assume the settlement of, and the defense of any suit or suits or other legal proceedings brought to enforce all such losses, damages, injuries, claims, demands, and expenses, and shall pay all judgments entered in any such suit or other legal proceeding.
- c. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination or expiration of the Lease Term.

11. Arbitration. Any dispute or difference of interpretation respecting this Agreement or matters relating to members or other Lessees of the CBOT or trades with members of the CBOT Shall be submitted to arbitration pursuant to the Rules of the CBOT and Lessee agrees to arbitrate such matters under the Rules of that Exchange.

12. Bylaws, Certificate of Incorporation and Rules of the CBOT. The parties hereto hereby agree to be bound by the provisions of the Amended and Restated Certificate of Incorporation, Amended and Restated Bylaws and Rules of the CBOT and all applicable interpretations thereof, in each case, as may be amended from time to time. In the event of any conflict between the terms of this Agreement and the terms of the Amended and Restated Certificate of Incorporation, amended and Restated Bylaws and Rules of the CBOT, the Amended and Restated Certificate of Incorporation, amended and Restated Bylaws and Rules of the CBOT shall take precedence.

13. Notices. All notice required to be given pursuant to this Agreement shall be given by personal delivery to the party entitled thereto or by registered or certified mail addressed to the parties as set forth below:

If to Lessor: _____

If to Lessee: _____

14. **Severability.** Lessor's failure to enforce any provision of this or any future contract or agreement, shall have no effect on any other provision of this or any other related or subsequent contract, document or agreement.

15. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto and may not be modified except by a written instrument signed by the parties hereto.

16. **Governing Law.** This Agreement is deemed to be entered into and shall be construed in accordance with the laws of the State of Illinois.

17. Clearing Firm Representative to Contact If Leased Privilege is Sold or Transferred:

Name: _____

Firm: _____

Telephone Number: _____

Facsimile Number: _____

E-Mail Address: _____

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date written above.

LESSOR:

[Print Lessor's Name]

[Print Authorized Signatory's Name (if Lessor is an Entity)]

[Print Authorized Signatory's Title (if Lessor is an Entity)]

[Lessor's/Authorized Signatory's Signature]

LESSEE:

[Print Lessee's Name]

[Lessee's Signature]

Provided below is a sample Membership Indemnification Agreement. Please be advised that the parties may negotiate any additional or different provisions within their specific Indemnification Agreement.

EXHIBIT A

FORM OF INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT is made this _____ day of _____, 20____, (this “Agreement”) by and between

_____, (hereinafter referred to as “Lessor”), and

_____, (hereinafter referred to as “Qualifying Clearing Member” or “QCM”).

WHEREAS Lessor and _____ (the “Lessee”) have entered into a Membership Lease Agreement, dated as of the date hereof (the “Membership Lease Agreement”) pursuant to and in accordance with the Rules of the Board of Trade of the City of Chicago, Inc. (the “CBOT”);

WHEREAS, capitalized terms used herein shall have the meaning given to such terms in the Membership Lease Agreement; and

WHEREAS, the Qualifying Clearing Member wishes to serve as Lessee’s Qualifying Clearing Member as defined in CBOT Rule 511(or any successor rule) and has filed or plans to file a Trading Qualification form with the Membership Services Department.

NOW THEREFORE, by virtue of this Agreement and in consideration of grant by Lessor to Lessee of certain rights and privileges under the Membership Lease Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Qualifying Clearing Member hereby agrees to indemnify, defend and hold harmless Lessor for all losses, costs and expenses directly or indirectly arising out of the following (please circle the applicable numbered choice. A principal of the Qualifying Clearing Member and Lessor are to initial the appropriate blank):

1. _____ trading losses of Lessee resulting from transactions by Lessee on the CBOT*;
2. _____ all financial obligations of Lessee and Member Firm (other than Lease Payments due to Lessor from Lessee), as applicable, arising under the rules of the CBOT; or
3. _____ all financial obligations of Lessee and Member Firm, as applicable, arising under the rules of the CBOT, all Lease Payments due to Lessor from Lessee and all other liabilities of Lessee identified in the space below:

_____;

* This means Lessor remains liable for all other financial obligations of Lessee pursuant to Rule 110. Such liabilities may include CBOT fines, CBOT dues, claims by other members arising from transactions on the exchange.

This indemnification is expressly limited to claims based upon the financial obligations of Lessee that arise while the Qualifying Clearing Member serves as Lessee's Qualifying Clearing Member and until such time as the Qualifying Clearing Member files a release.

The Qualifying Clearing Member acknowledges that Lessor may bring a claim under CBOT rules in order to enforce an indemnity obligation hereunder.

* * * *

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date written above.

QUALIFYING CLEARING MEMBER:

[Print Qualifying Clearing Member's Name]

[Print Name of Registered Member of QCM]

[Print Title of Registered Member of QCM]

[Signature of Registered Member of QCM]

LESSOR:

[Print Lessor's Name]

[Print Authorized Signatory's Name (if Lessor is an Entity)]

[Print Authorized Signatory's Title (if Lessor is an Entity)]

[Lessor's/Authorized Signatory's Signature]