

## ERIS EXCHANGE CONNECTION AGREEMENT

Eris Exchange, LLC (“Eris Exchange”) operates a market for the trading of interest rate swap futures contracts and other products. Eris Exchange is willing to provide Participant Firm or Independent Software Vendor (“ISV”) (each individually, a “Participant”) access to the market subject to the terms and conditions of this Connection Agreement.

The Eris Exchange User License Agreement is incorporated herein by reference and applies with the same force and effect as if it were reproduced in its entirety in this Agreement. In addition, to the extent applicable all Forms executed by the Participant Firm and Clearing Firm, including, but not limited to all User ID and Credit Limit Form(s), Trade Entry Authority Form(s), and/or Approved Pre-Negotiated Trade Reporting List Form(s) are incorporated herein by reference and apply with the same force and effect as if they were reproduced in their entirety in this Agreement.

### 1. Definitions

**“Authorized Broker”** means a person who is either employed or is an agent of a Broker Firm and who is authorized to utilize Eris Exchange pursuant to a User ID and Credit Limit Form.

**“Authorized Trader”** means a person who is either employed or is an agent of a Clearing Firm or a Participant and who is authorized to utilize Eris Exchange pursuant to a User ID and Credit Limit Form.

**“Broker Firm”** means a person who is acting as a broker or performing an equivalent agency function on behalf of another person. The Clearing Firm is responsible for approving Broker Firms for such person pursuant to the applicable User ID and Credit Limit Form.

**“Clearing Firm”** means an entity meeting the requirements of, and approved for, clearing membership at the Clearing House that is authorized pursuant to the Clearing House Rules to clear trades in any or all of the Contracts and that meets the qualification of the Exchange pursuant to Rule 902. A Clearing Firm is authorized to access Eris Exchange to effect transactions. A Clearing Firm may trade for its own proprietary account or an account on behalf of its Customer (e.g., as a broker). A Clearing Firm may trade on behalf of a Customer with an account at a different Clearing Firm acting as a broker or performing an equivalent agency function. The different Clearing Firm is responsible for approving the Clearing Firm for such Customers pursuant to the applicable form to the Eris Exchange Clearing Firm Agreement. The term “Clearing Firm” collectively refers to all Authorized Traders of a Clearing Firm authorized to utilize Eris Exchange. A Clearing Firm is typically a FCM.

**“Clearing House”** means with respect to any Contract, the entity designated by Eris Exchange as being authorized to clear such Contract.

**“Clearing House Rules”** means the rules, interpretations, orders, resolutions, advisories, notices, statements of

policy, decisions, manuals and directives of the relevant Clearing House, and all amendments thereto.

**“Contract”** means any contract, agreement or transaction approved for trading on Eris Exchange, including, but not limited to Interest Rate Swap Futures Contracts (“IRSF Contracts”).

**“Customer”** means a person who is, but is not limited to, a customer of a Clearing Firm, Participant Firm, or Broker Firm.

**“Eris Exchange Rules”** means the Clearing Firm Agreement, the Connection Agreement, the Broker Firm Access Agreement, the EULA, the rules, interpretations, orders, resolutions, advisories, notices, statements of policy, decisions, manuals and directives of Eris Exchange, and all amendments thereto.

**“Eris System” or “Eris Trading System”** means the hardware, software, systems and/or communications links as may be furnished by Eris Exchange from time to time in accordance with the EULA.

**“EULA”** means the Eris Exchange User License Agreement, attached hereto in the Appendix.

**“Futures Commission Merchant” or “FCM”** has the meaning set forth in Section 1a(28) of the CEA.

**“Independent Software Vendor” or “ISV”** means any Person that offers services that provide access to the Eris Trading System. In order to provide access to the Eris Trading System the ISV must enter into a Connection Agreement with the Exchange and be approved by the Exchange.

**“Participant”** means a Clearing Firm, Broker Firm, or Participant Firm, any person who is either employed or is an agent of a Clearing Firm, Broker Firm, or Participant Firm, ISV, or any person who is authorized to access or utilize Eris Exchange pursuant to the applicable User ID.

**“Participant Firm”** means a person that is authorized under an Eris Exchange Connection Agreement (the “Connection Agreement”) to have access to Eris Exchange (e.g., a customer of a Clearing Firm enters orders directly into the Exchange’s trade matching system for execution through the use of a user identification in the Participant Firm’s name). A Participant Firm may trade for its own proprietary account. In certain cases, a Participant Firm may trade for an account on behalf of its Customer. A Participant Firm may also trade on behalf of a Customer with an account at a Clearing Firm other than the Participant Firm’s Clearing Firm acting as a broker or performing an equivalent agency function. The Clearing Firm is responsible for approving Participant Firms for such Customers pursuant to the applicable form to the Eris Exchange Clearing Firm Agreement. The term “Participant Firm” collectively refers to all Participants and Authorized Traders of a Participant Firm authorized to utilize Eris Exchange.

### 2. Obligations of Participant

Participant agrees to effect transactions or to provide services for Participants to effect transactions in Contracts

via the Eris Trading System in accordance with the terms and conditions of this Agreement, the EULA and such other terms and conditions as may be established by Eris Exchange from time to time. Participant agrees to accept full responsibility for any transactions effected on Eris Exchange and for any use of the Eris Trading System made by Participant, customer of Participant, or Participant's Authorized Traders, including Broker Firms authorized by Participant Firm's Clearing Firm. Participant will be responsible for such trades even if the orders received via the Eris Trading System (i) were entered as a result of a failure in the security controls and/or credit controls, other than due to the gross negligence of Eris Exchange, or (ii) were entered by an unknown or unauthorized user.

### **3. Representations and Warranties**

Participant hereby represents and warrants as follows:

- (a) Participant has all necessary power and authority to execute this Agreement and perform its obligations hereunder; this Agreement is legal, valid, binding and enforceable against Participant; and neither the execution of, nor performance under, this Agreement by Participant violates or will violate any law, rule, regulation or order, or any agreement, document or instrument, binding on or applicable to Participant.
- (b) Participant and Participant's Authorized Traders will maintain during the term of this Agreement all required and necessary regulatory approvals and/or licenses to operate as a Participant or Authorized Trader on Eris Exchange.
- (c) Participant acknowledges that funds will be held in Section 4d account(s) at Participant's Clearing Firm.

### **4. Use of the Eris Trading System**

Participant acknowledges that transactions effected on Eris Exchange are subject to the Eris Exchange Rules and the Clearing House Rules. Participant agrees at all times to comply with and to be subject to, and to cause each Authorized Trader to comply with and be subject to, the Eris Exchange Rules and the Clearing House Rules in connection with Participant's access to and use of the Eris Trading System and transactions entered and executed via the Eris Trading System. In the event of a conflict between the provisions of this Agreement and the provisions in the applicable Rules, the Rules shall govern.

### **5. Clearing Member**

Participant or Participant's customer has established a clearing relationship with the Clearing Firm identified on the applicable Form of the Clearing Firm Agreement and agrees that it shall immediately notify Eris Exchange if it ceases to be a clearing customer of such Clearing Firm. Participant understands that it will be denied access to Eris Exchange unless Participant (or Participant's customer or Participant's Clearing Firm) has obtained and delivered to Eris Exchange the applicable Form containing the authorized signature of an officer of a Clearing Firm. Participant also understands that Eris Exchange may restrict, suspend or terminate Participant's or Participant's

customer's access to Eris Exchange or the Eris Trading System at the direction of the Clearing Firm.

### **6. Indemnification**

Participant hereby agrees that it shall indemnify and hold harmless Eris Exchange, its affiliates, and its and their members, partners, officers, directors, employees, and agents from any losses, damages, reasonable costs and expenses (including reasonable attorneys' fees) arising out of or in connection with any breach of this Agreement by Participant or any Authorized Trader. Eris Exchange will promptly notify Participant of any claim, action, suit or demand that may trigger Participant's obligations under this Section 6. Participant shall control the defense and settlement of any claim, action, suit or demand for which Participant is required to indemnify Eris Exchange under this Section 6, but will not enter into any settlement without Eris Exchange's prior written consent, which shall not be unreasonably withheld or delayed.

### **7. Limited Warranty and Limitation of Liability**

The Eris Exchange Rules concerning liability and warranties (including without limitation Eris Exchange Rule 536 and any successor Rules thereto) and the Sections of the EULA concerning liability and warranties are incorporated herein by reference and apply with the same force and effect as if they were reproduced in their entirety in this Agreement. Those Eris Exchange Rules and the EULA set out the entire liability of Eris Exchange to Participant. All other liability of Eris Exchange under or in connection with this Agreement is excluded, except to the extent that it is not permitted to be excluded by applicable law.

### **8. Amendments to the Agreement**

Eris Exchange may modify any of the terms and conditions generally applicable to Participants that are set forth in this Agreement by providing not less than 10 days prior written notice to Participant. Eris Exchange's written notice may be in the form of an e-mail sent to the business contact listed in the appropriate Form. If Participant does not consent to the modification, Participant may terminate this Agreement by sending a written notice of termination to Eris Exchange within 20 days of receiving notification of the modification from Eris Exchange. Any such termination will be effective as of the date on which the modification would have taken effect.

### **9. Term and Termination**

This Agreement will commence as of the date that Participant is accepted by Eris Exchange, and will continue unless and until terminated by: (i) Eris Exchange or Participant upon thirty (30) calendar days prior written notice to the other; or (ii) immediately upon written notice by Eris Exchange to Participant upon a breach of this Agreement; provided that this Agreement shall remain in effect with respect to any transactions effected prior to such termination. Notwithstanding the foregoing, the provisions of Section 6 and Section 7 shall survive the termination of this Agreement.



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**PARTICIPANT INFORMATION**

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Name of Participant Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Zip/Postal Code: \_\_\_\_\_

Participant Firm Contact Name: \_\_\_\_\_

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

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

\*Participant Firm or ISV contact will be the person whom Eris Exchange will contact for trade delivery set up and any trading related issues.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth below.

**Eris Exchange, LLC****Company**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

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

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

## APPENDIX

### Eris Exchange User License Agreement

This Agreement and the Schedules hereto (the "Agreement") set out the terms on which Eris Exchange, LLC, a Delaware limited liability company (the "Exchange"), will provide the user identified herein ("User") with access to the Web site located at <http://www.erisfutures.com> or such other addresses, uniform resource locators, graphical user interfaces, application programming interfaces as may be specified by the Exchange (collectively, the "Site") and the services provided therein by the Exchange. The services provided on the Site include, but are not limited to:

- (i) Exchange trading and services for Exchange contracts ("Trading Services") as detailed in Schedule A; and
- (ii) Such other services that the Exchange may offer from time to time.

All of the above referenced services shall be collectively referred to herein as "Services."

In consideration of the mutual covenants and agreements hereinafter set forth, the Exchange and User agree as follows:

#### **1. General Terms.**

(a) Agreement to be Bound. By using or accessing the Site and/or the Services, User agrees to be legally bound and abide by the terms of this Agreement, all applicable Schedules, the Exchange Privacy Policy, the Exchange Rules, the applicable Clearing Firm Agreement, Connection Agreement, or Broker Access Agreement, any other applicable rules and regulations, and any and all other documents referenced herein, all as may be amended from time to time (collectively, the "Terms"). The Terms will govern User's and/or its User Agent's (as defined below) access to and use of the Site, the System (as defined below) and the Services. User agrees that, with respect to transactions in Exchange contracts, the Exchange Rules and all applicable Schedules shall supersede any conflicting terms contained in this Agreement. Nothing herein affects the obligation of any User or its User Agent to comply with all applicable Exchange Rules.

(b) Amendments. The Exchange may amend the Terms at any time by posting amendments on the Site and any such amendments will be binding on User and/or its User Agent effective as of such posting. The Exchange will endeavor to provide thirty (30) calendar days prior notice of any amendments that are likely to materially and adversely affect User or its rights or obligations hereunder. User's and/or its User Agent's continued use of the Site, Service or System after notice and the effective date of any such

amendment shall constitute the User's ratification of, and agreement to, any such amendment.

(c) Payment of Fees. User agrees to pay the Exchange all fees associated with the applicable Services. Such fees shall be calculated according to the Fee Schedule set forth in the applicable Schedule or as may be posted on the Site or otherwise made available by the Exchange to User. The Exchange may change such fees by posting such changes on the Site. User hereby agrees to be bound by the Fee Schedule in effect at the time the applicable Services are rendered. Any volume or incentive discounts applied to the fees established by the applicable Fee Schedule must be made in writing and signed by a duly authorized representative of the Exchange. If amounts owed are not paid when due pursuant to the terms detailed herein, such overdue amounts shall bear interest at the monthly interest rate of the lesser of: (i) one and a half percent (1.5%); or (ii) the maximum rate of interest permitted by law.

#### **2. Access to the System.**

(a) The Exchange hereby grants User and its User Agents a non-exclusive, non-transferable, revocable license to access the Site, to utilize any Services and all information and content (including, without limitation, bids and offers, price and other trade-related data, whether generated by the Exchange, User or User Agents) therein or in any way related to the Services (collectively, "Exchange Data"), and to utilize any hardware, software, systems and/or communications links as may be furnished by the Exchange from time to time in accordance with the Terms. Such hardware, software, systems and communications links are collectively referred to herein as the "System."

(b) User agrees that transactions submitted to the Site or the System shall be deemed to be "in writing" and to have been "signed" for all purposes and that any record of any such Transaction will be deemed to be "in writing." User will not contest the legally binding nature, validity or enforceability of any Transaction submitted to the Site or the System based on the fact that it was entered and executed electronically and expressly waives any and all rights it may have to assert any such claim.

(c) User agrees that it will not contest the legally binding nature, validity or enforceability of any Transaction submitted to the Site or System based upon any claim that the Transaction was unlawful under applicable law and expressly waives any and all rights it may have to assert any such claim.

### **3. Means of Access to the System.**

User or its User Agents may obtain access to the System via the Internet or by any other means deemed acceptable by the Exchange. User assumes all risk and bears sole responsibility for establishing such access including, but not limited to, selecting its service provider, paying all applicable costs for establishing such access, and bearing all risk associated with any malfunction thereof.

### **4. Registration.**

(a) Services are available only to persons that have registered with the Exchange and such persons thereby agree to abide by the terms of this Agreement and any applicable Schedules hereto.

(b) User may register one or more agents, customers, or connections to access the Site and/or the System on behalf of User (each a "User Agent") by submitting to the Exchange a list specifying any User Agents using such form as may be provided by the Exchange. User's registration of various User Agents will be subject to the additional terms, if any, contained in the applicable Schedule. User must register a User Agent prior to permitting such User Agent to access the Site and the System and agrees to notify the Exchange prior to any change in its User Agents. By registering a User Agent, User agrees to be bound by any and all actions taken by such User Agent in connection with the Site, the System and the Services.

### **5. User IDs and Passwords.**

Following registration for Services by a User, the Exchange will issue one or more user IDs and passwords (collectively, the "Passwords") for use exclusively by User and/or its User Agents on behalf of the User for transactions in Exchange contracts as authorized by the Exchange. Communications to Users and/or its User Agents that take place via e-mail are not secure. As such, Users and/or its User Agents must immediately change any initial Passwords provided by the Exchange. User will be solely responsible for controlling and monitoring the use of the Passwords and will not disclose, or permit any other person to disclose, the Passwords to any third party. User will immediately notify the Exchange of: (i) any unauthorized disclosure or use of a Password; (ii) any unauthorized access to the Site and/or the System; and (iii) any loss of a Password. Except as otherwise provided in this Agreement, User and its User Agents acknowledge and agree that they shall be bound by any actions taken through the use of their Passwords, whether or not such actions were authorized by User and/or its User Agent, unless any such unauthorized use is due to the gross negligence of the Exchange.

### **6. Representations, Warranties and Covenants.**

User represents, warrants and covenants as follows:

(a) It will not in whole or in part copy, modify, reverse engineer, reverse assemble or reverse compile the Site, the System or any of the content or information displayed thereon or issued by the Site or System, and it will not communicate, distribute, rent, sell, retransmit, redistribute, release or re-license the Site or the System or any of the content or information displayed thereon to any third party (other than to User Agents subject to and in accordance with this Agreement).

(b) It will not use or permit the use of the content, information and data displayed on or issued by the Site or the System including, but not limited to, Exchange Data, for any illegal purpose or for any purpose deemed unacceptable by the Exchange in its sole discretion.

(c) It will only use and permit use of the Site and the System for soliciting and entering orders for itself and for persons for whom User is authorized to act, such as customers of User, for trades in the System.

(d) Neither User nor any of its User Agents are subject to any trading prohibition by any governmental authority or self-regulatory organization, whether under the Commodity Exchange Act as amended, or otherwise, which would apply to any transaction on the System.

(e) User and its User Agents shall comply with all Exchange Rules and any and all laws, rules, regulations and orders applicable to User's access to and use of the Site, the System and the Services, and shall not use the System in any jurisdiction in which to do so would be illegal or otherwise prohibited.

(f) Unless authorized by the Exchange, neither it, nor any of its User Agents or affiliates is or will become, directly or indirectly, vendors of the content, information or data displayed on or issued by the Site or System including, but not limited to, Exchange Data.

(g) It will not, without the Exchange's prior written consent, directly or indirectly, redistribute, or facilitate redistribution of, all or any portion of the data on the Site or the System including, but not limited to Exchange Data, provided, however, that such consent shall not be required for (i) copying, reproduction or re-transmission of information that is generally available to the public free of charge, (ii) any part of the data on the System including, but not limited to Exchange Data, for the administration, regulatory and reporting purposes of the User or its User Agents, (iii) the solicitation and entry of orders for trades in the System, including, if applicable, orders transmitted via User's internal automated order routing system, or (iv) the provision of indicative valuations to User's and/or its User



Agent's counterparties. Notwithstanding the foregoing, User represents and warrants that it and all its User Agents shall only use such data including, but not limited to, Exchange Data, for its and their own internal business purposes and processes, and not for any commercial purposes whatsoever.

(h) Neither it nor its User Agents shall use or permit use of the Site, the System or the Services except in accordance with the Terms and the provisions of the Exchange Rules.

(i) It is duly organized, validly existing, and in good standing under the laws of the state of its organization (if User is an entity); it has all necessary power and authority to execute and perform this Agreement; this Agreement is legal, valid, binding and enforceable against User; neither the execution of, nor performance under, this Agreement by User violates or will violate any law, rule, regulation or order, or any agreement, document or instrument, binding on or applicable to User; and its access to and use of the Site, the System and/or the Services will be in accordance with all applicable federal, state, and local laws, rules and regulations. User further represents and warrants that all its User Agents identified in the registration process shall read and agree to be bound by the Terms.

## **7. Acknowledgements.**

(a) User acknowledges that the Exchange may, in its sole discretion, with or without cause, and with or without notice to User (i) temporarily or permanently cease to operate the Site or System, (ii) temporarily or permanently cease to make certain products available, or (iii) suspend, terminate or restrict at any time User's or its User Agent's access to and utilization of the Site, the System or the Services. User acknowledges that its access to and utilization of the Site, the System and the Services may be monitored by the Exchange for its own purposes and not for the benefit of User.

(b) User acknowledges that the Exchange does not guarantee continuous, uninterrupted or secure access to the Site, the System and the Services and acknowledges that transmission of data on any electronic system may be subject to: interruption; interference; blackout; failure; systems or service unavailability or failure; hardware or software malfunction or failure; interception by third parties; unauthorized access; theft; modification or inaccuracy. User further acknowledges that the reliability, availability, performance and other aspects of the Internet are beyond the Exchange's reasonable control.

(c) User understands and agrees that User and its User Agents are prohibited from posting on or transmitting through the Site and/or the System any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually explicit, profane, hateful, racially, ethnically, or otherwise objectionable material of any

kind, including but not limited to any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or international law.

(d) User acknowledges that the Exchange has granted the Platform Technology Services Provider and its affiliates (the "PTSP") a perpetual, non-exclusive, royalty-free license (the "PTSP License") that permits the PTSP: (i) to use any and all Exchange Data generated to provide certain Services to the Exchange and (ii) to compile, store and use any or all Exchange Data generated for research, data mining, and other similar products that may be sold, licensed or otherwise made available by the PTSP or its affiliate to third parties. The PTSP License applies only to Exchange Data compiled on an aggregate basis. The PTSP License does not permit the PTSP to use, distribute, or disseminate in any way Exchange Data that is identifiable to an individual User or affiliated group of Users, which is highly confidential and is the sole and exclusive property of the Exchange. The term "Platform Technology Services Provider" refers to the specific technology services provider providing services to the Exchange as a designated contract market.

## **8. Intellectual Property.**

(a) The Site, the System, the Services and Exchange Data are the exclusive proprietary property of the Exchange. User and its User Agents will have no rights with respect to the Site, the System, the Services or Exchange Data other than those expressly set forth in this Agreement.

(b) The Site, the System and Exchange Data are protected by intellectual property laws including, but not limited to, laws relating to copyrights, patents, trade secrets, trademarks and service marks, which are and shall remain the sole property of the Exchange. Nothing in this Agreement or displayed on or contained in the Site, the System or elsewhere, should be construed as granting, expressly, by implication, estoppel or otherwise, any license or right to use any copyrighted materials, patents, trade secrets, trademarks, service marks or other proprietary rights of the Exchange.

(c) User will use commercially reasonable efforts to ensure that its User Agents, partners, officers, directors, employees and agents maintain sole control and possession of, and sole access to, Exchange Data obtained by User and/or its User Agents.

(d) Unless and except as otherwise specified, the Exchange reserves complete title and rights for materials downloaded from the Site and/or the System. User may download one copy of any and all materials on the Site for internal, non-commercial use provided that it does not modify or alter the materials in any way, or delete or change any copyright, trademark or other proprietary rights or other notice.

## 9. Disclaimer of Warranties.

EXCEPT AS SPECIFICALLY PROVIDED ELSEWHERE IN THIS AGREEMENT, THE SITE, THE SYSTEM AND THE SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND AND THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY THE EXCHANGE (INCLUDING ITS SUBSIDIARIES AND AFFILIATES, AND ANY TECHNOLOGY SERVICES PROVIDER AND CONTRACTORS PROVIDING SERVICES TO THE EXCHANGE), NOR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS, AND LICENSORS (THE "DISCLAIMING PARTY" OR "DISCLAIMING PARTIES"). FURTHERMORE, THE DISCLAIMING PARTIES CANNOT AND DOES NOT GUARANTEE OR MAKE ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE VALIDITY, SEQUENCE, TIMELINESS, COMPLETENESS, ACCURACY OR CONTINUED AVAILABILITY OF ANY INFORMATION OR DATA MADE AVAILABLE ON OR THROUGH THE SITE, THE SYSTEM OR THE SERVICES INCLUDING, BUT NOT LIMITED TO EXCHANGE DATA.

## 10. Limitation of Liability.

(a) EXCEPT AS PROVIDED IN SUBSECTION (b) BELOW AND EXCEPT WHEN THERE HAS BEEN A FINDING OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL THE EXCHANGE (INCLUDING ITS SUBSIDIARIES AND AFFILIATES, OR ANY TECHNOLOGY SERVICES PROVIDER AND CONTRACTORS PROVIDING SERVICES TO THE EXCHANGE), NOR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS, AND LICENSORS BE LIABLE TO ANY PERSON FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, DIRECT, SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING FROM:

(i) ANY FAILURE OR MALFUNCTION OF THE SITE, THE SYSTEM, THE SERVICES, OR ANY FACILITIES USED TO SUPPORT THE SAME, INCLUDING ANY INABILITY TO ENTER OR CANCEL TRANSACTIONS IN WHOLE OR IN PART ON THE SITE, OR

(ii) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE SITE, THE SYSTEM, THE SERVICES, EXCHANGE DATA OR OTHER INFORMATION MADE AVAILABLE ON THE SITE OR THE SYSTEM, OR ANY FACILITIES USED TO SUPPORT THE SITE OR THE SYSTEM.

THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY), STRICT LIABILITY OR OTHERWISE.

(b) THE SOLE LIABILITY OF THE EXCHANGE (INCLUDING ITS SUBSIDIARIES AND AFFILIATES, AND ANY CONTRACTORS PROVIDING SERVICES TO THE EXCHANGE), NOR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS, AND LICENSORS FOR DIRECT LOSSOR DAMAGE WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY), STRICT LIABILITY OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH SITE, THE SYSTEM, THE SERVICES OR THE TERMS SHALL BE LIMITED TO:

(i) \$1,000 FOR ANY SINGLE CLAIM; AND

(ii) \$10,000 FOR ALL CLAIMS.

(c) NOTWITHSTANDING SUBSECTION (a) and (b) ABOVE, IN NO EVENT SHALL THE PLATFORM TECHNOLOGY SERVICES PROVIDER BE LIABLE TO ANY PERSON NOR SHALL ANY PERSON BRING ANY LEGAL ACTION (WHETHER IN TORT, NEGLIGENCE, OR BREACH OF CONTRACT) FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, DIRECT, SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING FROM THE USE OF THE PLATFORM. THE TERM "PLATFORM TECHNOLOGY SERVICES PROVIDER" REFERS TO THE SPECIFIC TECHNOLOGY SERVICES PROVIDER PROVIDING SERVICES TO THE EXCHANGE AS A DESIGNATED CONTRACT MARKET. THE PLATFORM TECHNOLOGY SERVICES PROVIDER IS A THIRD PARTY BENEFICIARY TO THIS AGREEMENT AND THE TERMS AND SUCH AGREEMENT SHALL BE MADE AVAILABLE TO THE PLATFORM TECHNOLOGY SERVICES PROVIDER UPON REQUEST AND WITHOUT NOTICE TO USER.

11. Indemnification. The User and its User Agent shall indemnify, defend and hold harmless the Exchange, its affiliates and its and their respective officers, directors, members, employees, partners, agents and representatives from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs and expenses (including reasonable attorney's fees) resulting from or arising out of any act or omission by any person obtaining access to the Site, the System, the Service or Exchange Data through the Passwords (other than through the gross negligence of the Exchange) whether or not User has authorized such access.

## 12. Confidentiality.

(a) Any and all non-public information in any form obtained by User from the Exchange arising out of or related to the provision or use of the Site, the System or the Service including, but not limited to, trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto and Exchange Data, shall be deemed to be confidential and proprietary information. User agrees to hold such information in strict confidence and not to disclose such information to third parties (other than to its employees, its affiliates their employees or its agents) or to use such information for any purpose whatsoever other than as contemplated by this Agreement and to advise each of its employees, affiliates and agents who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential.

(b) Confidential information shall not include information which is: (i) in or becomes part of the public domain other than by disclosure by User in violation of this Agreement; (ii) known to or obtained by User without an obligation of confidentiality; or (iii) independently developed by User outside of this Agreement.

(c) Notwithstanding the foregoing, User may disclose confidential information if and to the extent required to be disclosed by applicable law or regulation, or pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction, provided that User provides the Exchange with, if permissible, prompt notice of such requirement, subpoena or order (together with copies thereof), minimizes such disclosure to the confidential information specifically required to be disclosed, and the persons or entities entitled to receive same pursuant to such law, regulation, subpoena or order, and not make such disclosure until the Exchange has had a reasonable opportunity to resist such disclosure and/or to seek confidential treatment of the confidential information unless User is ordered to do otherwise.

## 13. Term, Termination and Summary Denial of Access to the System.

(a) This Agreement will commence as of the date that the User agrees to abide by the terms of this Agreement, and will continue unless and until terminated by: (i) one party upon thirty (30) calendar days prior written notice to the other party; or (ii) immediately upon written notice by one party to the other party upon a breach of this Agreement; provided that this Agreement shall remain in effect with respect to any Transactions effected prior to such termination. Notwithstanding the foregoing, the provisions of Section 1 (“General Terms”), Section 6 (“Representations, Warranties and Covenants”), Section 8

(“Intellectual Property”), Section 9 (“Disclaimer of Warranties”), Section 10 (“Limitation of Liability”), and Section 11 (“Indemnification”), and Section 12 (“Confidentiality”) of this Agreement shall survive the termination of this Agreement.

(b) Upon termination for any reason, all outstanding fees for Services rendered shall become immediately due and payable.

14. **Notices.** Except as otherwise provided in this Agreement, all notices delivered with respect to this Agreement shall be in writing and either: (i) hand delivered or forwarded by registered or certified mail; or (ii) sent via electronic mail, in either case to the relevant e-mail address provided via registration with the Exchange. Service of any such notice shall be deemed to have been made upon the earlier of actual receipt or in the case of first class mail on the third business day after mailing, in the case of email transmission when confirmation has been generated that the Notice was delivered to the recipient.

15. **No Third Party Beneficiary.** Except as specifically provided for in Section 10 (“Limitation of Liability”) and Section 11 (“Indemnification”), nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not a party to this Agreement or imposing any obligations on the Exchange to persons not a party to this Agreement.

16. **Force Majeure.** The Exchange shall not be deemed to be in default of any provision hereof or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, civil or military authority, civil disturbance, war, terrorism, strikes, fires, other catastrophes, power or telecommunications failure or any other cause beyond its reasonable control.

17. **Waiver.** No waiver by either party of any default by the other in the performance of any provisions of this Agreement shall operate as a waiver of any continuing or future default, whether of a like or different character.

18. **Assignment.** This Agreement may not be assigned by User without the Exchange’s express prior written consent. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns in accordance with its terms.

19. **Venue and Governing Law.** Except as set forth below, each party hereby consents to the jurisdiction of any federal or state court located in Chicago, Illinois with respect to any action arising from this Agreement and agree that this Agreement shall be governed and construed in all respects by the laws of the State of Illinois without giving effect to principles of conflict of law. No action arising out of any claimed breach of this Agreement or transactions under this





Agreement may be brought by either party more than two years after the cause of action has accrued.

20. **Designation of Agent for Service of Process.** If User is not a resident of the United States, User hereby designates the Exchange for the purposes of accepting delivery and service of any communication issued by or on behalf of the Commodity Futures Trading Commission ("CFTC") to User and the Exchange shall transmit same to User in a manner which is reasonable under the circumstances or in a manner specified by the CFTC. Such designation shall remain in effect unless and until User provides the Exchange with an effective written agency agreement for this purpose with a person domiciled in the United States and the agreement is provided to the CFTC by the Exchange. Nothing herein shall affect the right of the Exchange to serve legal process in any other manner permitted by law.

21. **No Partnership.** User and the Exchange agree that this Agreement is not intended to create, nor shall it be interpreted to create, a joint venture, partnership, or any similar relationship between User and the Exchange and, except as otherwise provided in this Agreement, neither party shall be deemed to be the agent of the other party.

22. **Headings.** The headings in this Agreement are intended for convenience of reference, are not substantive and shall not be used to interpret or construe any of the provisions contained in this Agreement. When used in this Agreement, the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

23. **Severability.** If any provision of this Agreement (or any portion thereof) shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.

24. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement binding on the party's hereto.

25. **Whole Agreement.** This Agreement, as amended from time to time according to its terms, shall constitute the entire agreement between User and the Exchange respecting the Services described herein, and shall supersede all prior agreements, arrangements, representations or promises, whether oral or written, as to its subject matter.

## SCHEDULE A

### Trading Services for Futures Positions Transactions

This Schedule A sets out the specific terms and conditions on which the Exchange will provide User with Trading Services for Exchange Transactions.

All capitalized terms used herein shall have the same meaning set forth in the Agreement.

1. General Terms. User agrees that this Schedule A supplements and supersedes any conflicting terms contained in the Agreement. User further agrees that this Schedule A shall be superseded by any conflicting terms contained in the Exchange Rules.

2. Trading Services.

(a) Trading Services are provided for Eris futures contract transactions. Trading services are also provided for “block trades” in Exchange contracts that are submitted for clearing (also referred to herein as “Transactions”). Currently, the trade entry web interface available via the Eris Exchange web browser is designed to accept trades from Users or brokers, who must be registered with the Exchange and authorized by a Clearing Member of the Chicago Mercantile Exchange to submit trades to clear through specific accounts set up by the Clearing Member.

(b) User understands that after the Eris User Transaction Data (as defined in Section 7 below) is submitted to the Exchange, it becomes Exchange Data. In connection with the trade being submitted, User agrees to accept and to be bound by all applicable Exchange Rules, which may be updated from time to time.

3. Registration and User Agents. User will be required to register with the Exchange’s clearing services provider, Chicago Mercantile Exchange, for clearing services.

4. User IDs and Passwords. Following registration for Trading Services, the Exchange shall issue to User and its User Agents one or more Password(s) for use exclusively by User and/or its User Agents.

5. Terms of Payment. In addition to the terms of payment contained in the Agreement, User agrees to the additional payment terms as follows:

Trading and Clearing Services. On or about the fifth (5th) day of each month, the Exchange will send an invoice for billable Services from the prior month to the User or the User’s Clearing Member.

6. Fee Schedule. Until further notice from the Exchange, there shall be no monthly subscription charge. However, the User will remain responsible for Exchange trading and clearing fees for executed transactions, which will be collected by the User’s Clearing Member on behalf of the Exchange.

7. Intellectual Property. Notwithstanding the provisions of Section 8 (“Intellectual Property”) in the Agreement, the parties hereby agree that any bids, offers or other transaction information that User and/or its User Agents generate and provide to the Exchange in connection with the submission of transactions for Trading Services (“User Transaction Data”) shall be treated as the non-exclusive property of each party and each party shall have the right to use, sell, retransmit and/or redistribute such User Transaction Data. User and its User Agents further understand and agree that from time to time, the Exchange may request the participation of User and/or its User Agents in determining daily settlement prices for products and instruments for which the Exchange provides Trading Services. Such participation may include the voluntary submission to the Exchange of various price data other than User Transaction Data, such as the submission of forward price curves for particular products (“User Price Curve Data”). Any and all User Price Curve Data shall remain the exclusive property of the User and User shall retain the right to use, sell, retransmit or redistribute such data. User hereby grants the Exchange the right to use such User Price Curve Data, provided that the Exchange shall not report or otherwise distribute specific assessment prices in connection with such data.

**SCHEDULE 1  
TO ERIS EXCHANGE CONNECTION AGREEMENT**

**Eris Exchange Network Access Charges**

<b>Type of Connection</b>	<b>Monthly Charge</b>
Public Internet	\$0
Utilize existing cross-connection	\$0
Cross-connect in CH1 with NO redundant connection	\$3,000
Cross-connect in CH1 with a redundant connection at CH1	\$3,000
Cross-connect in CH1 with a redundant connection at a POP location	\$6,000
Cross-connect at POP location with NO redundant connection	\$3,000
Cross-connect at POP location with a redundant connection at CH1	\$6,000
Cross-connect at POP location with a redundant connection at POP	\$6,000
IBCC in CH1 with NO redundant connection	\$3,000
IBCC in CH1 with a redundant connection at CH1	\$4,500
IBCC in CH1 with a redundant connection at a POP location	\$6,000
Cross-connect at POP location with a redundant IBCC in CH1	\$6,000

**\* IBCC (Inter-Building Cross Connect) is required at CH1 for firms that do not have servers on the 5<sup>th</sup> or 6<sup>th</sup> floors**

- Eris SwapBook primary data center location is CH1 (350 East Cermak)
- Eris SwapBook POP (Point of Presence) locations are NY4, LD4 and TK1
- Each new connection has a minimum commitment of 30 days
- Monthly charges listed above are based on a 1 Gbps connection
- Additional data center charges may apply