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## SYSTEM MONITORING SERVICE AGREEMENT<sup>1</sup>

To: optionsXpress, Inc.  
311 W. Monroe, Suite 1000  
Chicago, IL 60606

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Account: \_\_\_\_\_

Dear optionsXpress:

I currently subscribe to the following mechanical trading system(s) (Please specify which version if known):

\_\_\_\_\_  
\_\_\_\_\_ (each a "System").

**1. MECHANICAL TRADING SYSTEM DOCUMENTS.** I have been given Performance, Statistics, Returns, Markets, and Assumptions for each System ("System Documentation"), and agree that the System Documentation is made continuously available to me by optionsXpress (hereafter, "OX").

By my initials which appear next to the title of each document, I affirm and agree that I have read the aforementioned documents, have had an opportunity to discuss any or all of these documents with a member of the OX trading system staff or their designee (or a member of the trading system's staff) and having done so declare that I understand the contents, purpose and operation of the trading system sufficient to my satisfaction, and I understand the contents and meaning of the documents that I have received, and have read such documents, including the Agreement, and agree to be bound by the terms of these documents and agreements.

**2. RISKS OF MECHANICAL TRADING SYSTEMS.** It has been disclosed to me AND I SPECIFICALLY UNDERSTAND that mechanical trade systems are not foolproof, i.e., that they have certain limitations and risks. These include, but are not limited to, the following:

- a. Past performance or hypothetical performance by the mechanical trading system that I have chosen is not a guarantee or assurance of continued or future performance by the System.
- b. Trading in futures, even utilizing a trading system, including the System, involves a significant risk, and is not appropriate for all investors. Risk should be the first and foremost consideration in any decision to trade commodity futures and in choosing which trading system to employ. The level of risk I am willing to assume should be considered first and foremost in my decision to trade futures, and in choosing the trading system I employ. I understand that I am fully responsible for my trading decisions and actions, including my choice to utilize a trading system such as the System.
- c. Because trading in futures involves risk and is considered very speculative, I understand that even utilizing the System I have chosen, there is a real and substantial likelihood that I could lose all of my capital or more than all of my deposits, and I acknowledge that I should only use capital that I can afford to lose. I understand that as a result, I may have to contribute additional funds to avoid the forced sale or closeout of positions.

<sup>1</sup> Hereafter, this document shall be referred to as "the Agreement."

d. Futures trading on margin may result in losses beyond my initial deposit and any subsequent deposit. As a result, I may have to contribute additional funds to avoid the forced sale or closeout of my positions or to satisfy any residual unsecured debit balance. Should I not have sufficient margin to place a trade for the full number of contracts directed, OX may enter some or none of the contracts.

e. Every mechanical trading system experiences losing trades, and all mechanical trading systems experience periods of trading losses, known as drawdowns. Drawdowns are a backward looking statistics, and cannot tell us with accuracy what will happen in the future. You will need to determine what your risk tolerance is in the face of adversity.

f. Hypothetical system performance results have many inherent limitations. Therefore, no representation is or can be made that any account will or is likely to achieve profits or losses similar to those depicted in the systems trading literature.

g. Hypothetical system performance results are often prepared with the benefit of hindsight, and do not involve financial risk. No hypothetical trading record can completely account for the impact of financial risk in actual trading.

h. Information on trading systems contained in the written materials is based upon information from specific system marketing documents, system developers and/or system vendors themselves. OX cannot and does not guarantee the completeness or accuracy of the system marketing documents, system developers' and/or system vendors' representations.

i. Market conditions (e.g., illiquidity) and/or the operation of the rules of certain markets (e.g., the suspension of trading in any contract or contract month because of price limits or "circuit breakers"), limit moves, gap openings and other general adverse market conditions, can result in the inability to limit losses to a specified amount, and may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions.

j. Trading on an electronic trading platform may differ not only from trading in an open-outcry market but also from trading on other electronic trading platforms. If OX undertakes transactions on an electronic trading system, I may be exposed to risks associated with the system including the failure of hardware, internet, connectivity, data and/or software, which risks I accept and for which I will indemnify and hold OX harmless. The result of any platform failure may be that my order entered pursuant to the System is either not executed according to my instructions or is not executed at all.

k. Some trading systems generate trading recommendations or signals that are based on technical analysis generated by the System. The profitability of technical analysis depends upon the accurate forecasting of price moves or trends in such move. The best technical trading approach will not be profitable if there are no price moves or trends of the kind the System seeks to follow. In the past, there have, or may have been periods without discernible trends and such periods may recur.

**3. REPRESENTATIONS BY PURCHASER.** In consideration for OX handling my account and utilizing the System, I hereby direct OX to enter trades for my commodity trading account in strict accordance with the daily trading instructions generated by the System. In following this System, OX should also employ the following instructions:

- a. I understand that, due to the unpredictability of markets, it cannot be guaranteed that liquidation points can limit losses to a specified amount. Events including, but not limited to, illiquidity, limit moves, and gap openings have been explained to me to my satisfaction and understanding, and are examples of situations that may preclude OX, from exiting positions at a specified dollar value.
- b. Each time an order is generated by the newsletter or system, OX shall buy/sell contract(s) pursuant to the letter of Direction.
- c. I agree that the commission rate that OX shall charge me shall vary from time to time pursuant to agreement between OX and me.

**4. ADDITIONAL RESTRICTIONS OR INSTRUCTIONS.** I acknowledge that OX is acting solely in a ministerial and clerical capacity as my agent in executing orders for my account pursuant to my direction and these instructions set forth herein. I acknowledge that the System is not owned or controlled by or affiliated with OX, and that OX bears no responsibility for orders not communicated or incorrectly communicated to OX by me or by the System. I understand that computerized trading models or methods, including the System, can potentially generate conflicting trades due to various market or external conditions. As a result, I understand that the orders placed by OX on my behalf can, on occasion, vary substantially from what my computer is reporting.

**5. POTENTIAL CAUSES OR VARIANCES IN PERFORMANCE OF THE SYSTEM.** I understand and accept that there are many causes and potential causes that result in the variance in performance that I may experience while using or trading pursuant to the System. The potential causes or variance in performance may include but not be limited to:

- a. Data transmission / reception (physical computer set-ups, i.e., Satellite, Cable, or FM reception), erroneous market data including data mis-reported by data sources, data-vendors and/ or the Exchanges. Further, there are cases where "one tick" differences between data sources can have a substantial effect on unrealized trading profits or actual realized losses.
- b. Differences in software platforms, software versions of the same platform /set up, internal processor speed, memory configurations, hardware differences, and interface problems between supplier, distributor and/or agent may result in breakdown, delay, failure, and/or error or the dissemination of misinformation. Further, I am aware that the performance of the System or method of trade can fluctuate between my physical computer and those of OX.
- c. Trading systems potentially can generate conflicting trades due to various market or external conditions. As a result, orders placed in my account can vary substantially from hypothetical performance figures.

**6. EMERGENCY PROCEDURES DUE TO INTERRUPTIONS IN SERVICES.** I understand that OX will use best efforts in connection with services under this agreement. There are no guarantees that these services will not be interrupted for reasons beyond the direct control of OX. In the event of any disruption in data reception or a power outage, I will be notified as soon as reasonably practicable. If OX does not, or is unable to contact me, due to practical circumstances or otherwise, I specifically authorize OX to execute the following instructions with respect to positions generated by the mechanical trading system(s) I have chosen (market conditions permitting):

- a. After an outage of more than 15 minutes, any day trade systems positions may be liquidated at market, and any stop loss or other related orders may be cancelled in OX's sole discretion.

- b. After an outage of more than 60 minutes, if OX has not been able to communicate directly with me (at either my designated telephone number or e-mail address), then all systems positions may be liquidated at market, and any stop loss or other related orders may be cancelled in OX's sole discretion. These procedures do not apply to existing market positions executed on my direct orders, nor do these procedures apply to any other account or sub account that I may hold at OX. Rather, this emergency policy applies specifically to trading positions entered pursuant to this Agreement.

These procedures do not apply to existing market positions executed on my direct orders, nor do these procedures apply to any other account or sub account that I may hold at OX. Rather, this emergency policy applies specifically to trading positions entered pursuant to this Agreement.

**7. LIMITATIONS OF LIABILITY AND DAMAGES.** I hereby understand and agree that (i) my use of the System includes or involves equipment, communication devices, Market Data and/or leased lines that are not owned or operated solely by OX; (ii) neither OX, nor its parent or affiliated companies or their respective members, directors, officers, employees or agents, guarantees the sequence, accuracy or completeness of the Market Data, nor shall any of them be liable to me or any other Person for any delays, inaccuracies, errors or omissions in Market Data, or in the transmission thereof, or for any other damages arising in connection with my receipt or use of the System or the Market Data used therein, or in the transmission thereof, whether or not resulting from negligence on their part, a Force Majeure Event or any other cause beyond their reasonable control; and (iii) if the foregoing disclaimer and limitation of liability should be deemed invalid or ineffective by a court of competent jurisdiction, neither OX, nor its parent or affiliated companies or its or their respective members directors, officers, employees or agents shall be liable for any of the foregoing beyond the actual amount of loss or damages, or the sum of fifty dollars (\$50.00), whichever is less.

For purposes of the Agreement, "Market Data" shall mean information and data pertaining to futures contracts, options contracts and commodities contracts traded on the Exchanges, that include without limitation, opening and closing range prices, high-low prices, settlement prices, current bid and ask prices, last sale prices, price limits, requests for quotations, estimates and actual contract volume data, test messages pertaining to market activity, contract specifications, fast or late messages and, as determined by each of the Exchanges, may include information regarding exchange-for-physical (EFP) or against actuals (AA) transactions. Market Data shall also include information, data and materials which are derived from the foregoing and that convey information to the System, OX or me that is substantially equivalent to Market Data.

For purposes of the Agreement, the term "Force Majeure Event" means any flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, act of terrorism, accident, action of government, communications or power failure, software, hardware, malfunctions or errors.

**8. HOLD HARMLESS.** I further agree to hold OX, its parent, affiliated companies and its and their officers, directors, employees and agents, harmless from all losses arising from:

- a. Power failure
- b. Interruption of data transmission;  
Satellite, internet, software or hardware failure;
- c. Computer failure;
- d. Inaccurate quotes to OX, Errors in the computer "system code" or "method" which is provided to OX by the developer;
- e. Any act of sabotage, terrorism, war, riot, or strike;

- f. Any failure or malfunction, including any ability to enter or cancel orders, of the System;
- g. Any failure or malfunction of the System, or of any data service or of any Exchange at which any order is placed;
- h. Any fault in delivery, delay, omission, suspension inaccuracy or termination, or any other cause in connection with the furnishing, performance, maintenance, execution, use of or inability to use all or any part of the System, or of any services or facilities used to support the System;
- i. Any other occurrences beyond the direct control of OX and their employees and agents; and
- j. Key punch or scrivener's errors

I am fully aware that there are market and physical conditions (as partially listed, but not limited to the above-stated examples) that can cause potential unrealized profits and/or actual realized losses. I hereby confirm and agree that OX, its parent, affiliated companies, and its and their officers, employees and agents shall be held harmless for any and all losses and/or liabilities resulting from the orders generated by the System, which I have chosen. Additionally, I agree to hold OX, its parent, affiliated companies, and its and their officers, employees and agents, harmless against any and all losses arising out of, or relating to, the System and the Agreement.

**9. DISCLAIMER OF WARRANTIES.** THE SYSTEM, DOCUMENTATION RELATING TO THE SYSTEM, AND THE MARKET DATA USED IN CONJUNCTION WITH THE SYSTEM, IS OFFERED "AS IS" AND WITHOUT ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM, DOCUMENTATION RELATING TO THE SYSTEM, THE MARKET DATA RECEIVED OR USED IN CONJUNCTION THEREWITH, OR THE TRANSMISSION, TIMELINESS, ACCURACY OR COMPLETENESS THEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AS TO THEIR QUALITY, FUNCTIONALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. OX, EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM TRADE USAGE, OR COURSE OF PERFORMANCE. OX MAKES NO REPRESENTATION, WARRANTY OR COVENANT CONCERNING THE ACCURACY, COMPLETENESS, SEQUENCE, TIMELINESS OR AVAILABILITY OF THE SYSTEM, THE DATA USED IN CONJUNCTION THEREWITH OR ANY OTHER INFORMATION OR THE LIKEHOOD OF PROFITABLE TRADING USING THE SYSTEM.

**10. RISKS ASSOCIATED WITH COMMODITIES.** I acknowledge that investments in commodities, even if done pursuant to a mechanical trading system like the System, are speculative, involve a high degree of risk, and are suitable only for persons who can afford to lose all funds invested. I understand and accept that because of the utilization of margin, price changes in commodity contracts may result in significant losses, which may substantially exceed my margin deposits. I further recognize and accept that guarantees of profit or limitation of loss are impossible in commodities trading, even if done pursuant to a mechanical trading system, including the System. I acknowledge and agree that I have received no such guarantees from OX, and I am not entering into the Agreement in reliance on any such guarantees. I agree not to hold OX, its parent or affiliated companies or its or their officers, employees, independent contractors, or agents responsible for losses incurred arising out of or relating to any recommendations, suggestions or signals generated by the System. I further understand that there are certain limitations and risks associated with trading systems, including the System, which risks are identified in Section 2 above. In addition, I understand that there are additional risks and limitations with regard to OX's execution of my orders relating to the System, including, but not limited to, the following:

- a. OX executes orders for many customers who use many different services. In this process, OX may aggregate (i.e., batch) orders entered by multiple customers who may use the same or different third party services and send a single order to the marketplace. If this bunched order is not filled in full, OX may allocate the partial fill among its customers in accordance with allocation

methods which incorporate various factors such as time of order entry and order size and which allocation methods may vary from time to time.

- b. Because of the nature of the communication and processing systems and other factors involved in such transactions, there is a risk that an individual customer's order may be processed and executed more slowly than it might be if a customer enters an order without using a system. In addition, orders entered through the third party system are subject to the risk of mishandling and other errors involving electronic systems, communications systems and market processes. The system service is being provided by OX on a commercially reasonable efforts basis with all orders handled as "not held" orders, and customers using this system are expressly agreeing to OX's handling of orders as described in this notice.
- c. OX, in its sole discretion and at any time, may cease to permit a third party from participating in this system service and will notify me if a third party is no longer participating, in which case, I understand that I will be required to directly enter orders rather than using the order entry service, including for existing positions previously initiated by the me based on the third party's information.

**11. INDEMNIFICATION OF OX.** I agree to indemnify and hold OX, its parent and affiliated companies and its and their officers, employees and agents, and the Exchanges harmless from and against any and all claims arising out of or in connection with the Agreement, including without limitation, any liability, loss or damages caused by me with respect to my following, adherence to, or failure to follow or adhere to the signals or instructions generated by the System, from and against any act or omission on my part, and from and against any System Documentation, performance reporting or hypothetical system performance results.

**12. THIRD PARTY SERVICES.** The unaffiliated third parties who have developed, programmed, own, and maintain the System and that provide trading recommendations, instructions, and signals, may or may not be registered as investment advisers under the Investment Advisers Act or as commodity trading advisors under the Commodity Exchange Act. A THIRD PARTY PARTICIPATING IN THE SYSTEM DOES NOT AND SHOULD NOT BE DEEMED TO SUGGEST, IMPLY OR MEAN THAT IT IS OR IS NOT REGISTERED OR REQUIRED TO BE REGISTERED AS AN INVESTMENT ADVISER OR COMMODITY TRADING ADVISOR, AND OX DOES NOT MAKE SUCH THIRD PARTY REGISTRATION DETERMINATIONS.

OX does not recommend, rank or rate third-party trading systems, and does not pre-screen or qualify third-party trading systems in any manner. OX does not review third parties' experience, credentials, performance (hypothetical or actual) or other factors relating to their qualifications. PARTICIPATION IN ANY TRADING SYSTEM OR FACILITATION THEREOF DOES NOT AND SHOULD NOT BE DEEMED TO SUGGEST, IMPLY OR MEAN THAT OX OR ANY AFFILIATE RECOMMENDS OR ENDORSES THE VALIDITY OF, OR ADVOCATES THE THIRD PARTIES PROVIDING THE SERVICES. Customer determines whether to use any third-party trading system and is responsible for investigating and selecting them in light of Customer's investment objectives and risk tolerance.

Customer acknowledges that OX is acting solely in a ministerial and clerical capacity and as an accommodation in executing orders for Customer's account. Customer acknowledges that the System is not owned by, affiliated with or endorsed by OX, and that OX bears no responsibility for orders not communicated or incorrectly communicated to OX, via API, by an introducing broker or otherwise.

OX does not review or assist in the preparation of the trading recommendations, instructions, or signals provided by these third parties. CUSTOMERS ARE RESPONSIBLE FOR EVALUATING ANY

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RECOMMENDATIONS, INSTRUCTIONS, AND SIGNALS AND FOR UNDERSTANDING ALL SUCH INFORMATION, INCLUDING THE UNDERLYING TRADING STRATEGIES, RISKS AND OBLIGATIONS (INCLUDING CAPITAL REQUIREMENTS) ASSOCIATED WITH THE INFORMATION. OX does not supervise third parties or their services and takes no responsibility for reviewing or monitoring performance (hypothetical or actual) or the appropriateness of third party recommended transactions for customers' accounts. CUSTOMERS ARE RESPONSIBLE FOR REVIEWING AND MONITORING ALL ACTIVITY FOR THEIR ACCOUNT, INCLUDING ALL ORDERS, TRANSACTIONS, TRADES AND DEALINGS ARISING FROM OR RELATING TO THE CUSTOMER'S USE OF AUTOMATED EXECUTION OR THE CUSTOMER'S ENTERING ORDERS VIA API OR OTHERWISE BASED ON THIRD PARTY RECOMMENDATIONS.

Any advertisements or marketing materials appearing on the OX website are solely for promotional purposes and are not endorsements of the third parties by OX. Additionally, OX may have advertising or marketing agreements with third parties for promotional purposes and are not endorsements of OX by the third party.

**13. MISCELLANEOUS.** In case of any breach by me of my obligations under the Agreement, each of the Exchanges will be considered to be a third-party beneficiary of the Agreement and may bring an action to enforce its terms directly against me. Any action arising out of the Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois. I may not assign all or any part of the Agreement without the prior written consent of OX. This Agreement may not be modified unless agreed to in writing by OX. If, for any reason, one or more provisions of the Agreement is held invalid, the other provisions of the Agreement shall remain in full force and effect.

I hereby agree to all of the terms and conditions of the Agreement. OX shall act upon the authority given it by the Agreement until the undersigned Customer revokes the authority by written notice.

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Customer Name (Please Print)

Joint Customer Name (Please Print)

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Customer Signature

Date

Joint Customer Signature

Date

optionsXpress, Inc. (Member SIPC) and Charles Schwab & Co., Inc. (Member SIPC) are separate but affiliated companies and subsidiaries of The Charles Schwab Corporation.