



BOX Participant Give-Up Agreement and BOX Clearing Instructions

This BOX Participant Give-up Agreement and BOX Clearing Instructions (this “Agreement”) is made by and between the undersigned “Executing Broker” and “Clearing Broker” (each a “Party” and, together, the “Parties”), effective only as provided in, and in accordance with the provisions of, Section 1 below.

WHEREAS, the Boston Options Exchange Group, LLC (“BOX”), a limited liability company, headquartered at 101 Arch Street, Boston, Massachusetts 02110, operates a trading facility (“Facility”) of NASDAQ OMX-BX (“BX”); and

WHEREAS, BOX presents BOX executed transactions on its Facility to the Options Clearing Corporation (“OCC”) in the format proscribed by OCC and in compliance with applicable OCC Clearing Agreements for OCC transaction settlement purposes; and

WHEREAS, the term “BOX Participant” shall have the same meaning as set forth in the BOX Trading Rules; and

WHEREAS, the Parties are both BOX Participants and request and agree to OCC clearing re-allocation (the “Give Up”) of BOX executed transactions on the Facility as described below;

NOW, THEREFORE, the Parties agree as follows:

1. **Scope, Effectiveness.** This Agreement sets forth the terms and conditions under which (i) an Executing Broker shall provide BOX with clearing instructions (the Give Up allocation) to BOX Market Operations Center (“MOC”); and (ii) the Clearing Broker provides its acceptance of those instructions through OCC trade clearance and settlement. This Agreement shall only take effect if, and as of the date on which, BOX accepts this Agreement and activates the Give Up allocation in the BOX Trade Management System (“TMS”). Confirmation of such acceptance and activation will be deemed received by the Parties upon BOX MOC’s updating and issuing confirmation via email of the Give Up information in the TMS for OCC trade clearance according to clearing instructions provided for in this Agreement.

2. **General.** The Parties understand and agree that:

- a. The Executing Broker has provided BOX MOC with a copy of this Agreement signed and dated by the Parties and clearly identifying the clearing instructions (the Give Up allocation, including valid OCC account identifier).
- b. The Parties shall communicate as soon as possible, but no event later than the close of business on the first business day after issuance of confirmation, any Give Up allocation discrepancies to BOX MOC for the purposes of reporting and/or resolving allocation discrepancies among the Parties. Upon request of the Parties, BOX MOC may provide operational assistance to the Parties in order to resolve disputes.
- c. The Parties shall be subject to applicable laws, governmental, regulatory, self-regulatory and exchange rules and regulations as are in force from time to time.
- d. The Executing Broker shall be liable for all errors, omissions, or failures to accept allocations by the Clearing Broker.

3. **Disclaimer of Liability, No Warranty, Indemnification.**

- a. The Parties hereby agree and acknowledge that the provisions, including the limitations on liability, contained in the BOX Trading Rules, Chapter V, Section 26 apply to the actions and transactions contemplated by this Agreement. Notwithstanding the foregoing, the Parties understand and agree that neither BOX nor any of its affiliates, directors, officers, employees, contractors or agents will be liable to the Parties or to any other persons, whether or not associated with the Parties, for any claim, damage, loss, cost, expense or liability whatsoever, whether direct or indirect, regardless of the cause, arising out of or in any way related to this Agreement.
- b. The Parties hereby agree and acknowledge that any action taken by BOX related to this Agreement is as an accommodation to the Parties only and BOX makes no warranty, express or implied, as to any matter pertaining to this Agreement. In no event will BOX or any of its affiliates, directors, officers, employees, contractors or agents be liable for any incidental, indirect or consequential damages, including but not limited to, loss of use, revenues, profits, or savings, whether such damages or losses are those of BOX, any Party or any third party, even if BOX knew or should have known of the possibility of such damages or losses, and even if due to errors or omissions of BOX.
- c. The Parties, jointly and severally, will defend and indemnify BOX and its affiliates, directors, officers, employees, contractors and agents from, and hold them harmless against, any claim, damage, loss, cost, expense or liability whatsoever, whether direct or indirect, regardless of the cause, arising out of or in any way related to this Agreement.
- d. BOX and its affiliates, directors, officers, employees, contractors and agents are intended third party beneficiaries of this Agreement, each with an independent right to enforce the terms thereof.



4. **Governing Law.** This Agreement and any matters arising under, or relating to, this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its conflicts of law principles.

5. **Arbitration.** The Parties agree that compulsory, binding arbitration will be the exclusive means of dispute resolution in any dispute arising out of or related to this Agreement. The Parties further agree that any such arbitration will be administered by American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules and a judgment on the award of the arbitrator may be rendered in any court having jurisdiction thereof. The arbitrator shall assign the costs of the arbitration, including but not limited to expenses and reasonable attorneys’ fees, to the non-prevailing Party or Parties. Notwithstanding the foregoing, the Parties and intended beneficiaries of this Agreement may apply to any court having jurisdiction over the Parties to seek equitable relief.

6. **Entire Agreement, Amendment, Waiver.** This Agreement constitutes the entire Agreement between the Parties with respect to the Give Up arrangement, and supersedes all prior and contemporaneous agreements, understandings, and commitments between BOX and the Parties with respect to the subject matter hereof. Except as otherwise provided in this Agreement, no modification, waiver or amendment of any of the provisions of this Agreement, by course of dealing or otherwise, will be effective unless approved in writing by the Parties and BOX. The failure of any party at any time to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provision and will not affect the right of any party thereafter to enforce each and every provision hereof in accordance with its terms. Any waiver of any provision of this Agreement shall be effective only if given in writing by the party against whom such waiver is to be enforced.

7. **Severability.** If any provision of this Agreement is held to be unenforceable or void, such provision will be limited or narrowly construed to the extent necessary to make it enforceable or, if such limitation or construction is not possible or would be inconsistent with the Parties’ manifest intentions, such provision will be deemed to be stricken from this Agreement with the remaining provisions in full force and effect.

8. **Force Majeure.** No party will be liable for any failure or delay in its performance under this Agreement when such delay or failure arises from circumstances beyond its reasonable control (including without limitation, acts of God, earthquake, flood, war, terrorism, embargo, riot, sabotage, labor shortage or dispute, communication failure, equipment or software malfunction, governmental act, including acts by the Securities and Exchange Commission or any applicable regulator, or electrical failure), to the extent not due to the gross negligence or willful misconduct of such Party.

9. **Give Up Instructions** (to be completed by Executing Broker):

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered to their respective authorized officers as of the date set forth below:

(Name of Executing Broker)

(Name of Clearing Broker)

By: _____

By: _____ (signature)

Print Name: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____