NINJATRADER TERMS OF SERVICE AGREEMENT

THIS **TERMS OF SERVICE AGREEMENT** ("Agreement") is made between NinjaTrader, LLC ("Company") and any person ("User") who installs the Software and/or completes the registration process to open and maintain an account with the Company's NinjaTrader Software ("Software/Service").

BY CLICKING THE ACCEPTANCE BUTTON OR ACCESSING, USING OR INSTALLING ANY PART OF THE SOFTWARE/SERVICE, USER EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. IF USER DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THE BUTTON INDICATING NON-ACCEPTANCE MUST BE SELECTED AND COMPANY SHALL PROMPTLY CANCEL THIS TRANSACTION AND USER MAY NOT ACCESS, USE OR INSTALL ANY PART OF THE SOFTWARE/SERVICE. THIS AGREEMENT IS APPLICABLE FOR ALL RELEASED VERSIONS OF THE SOFTWARE/SERVICE INCLUDING, BUT NOT LIMITED TO BETA VERSIONS. THIS AGREEMENT MAY BE AMENDED FROM TIME- TO-TIME AT THE SOLE DISCRETION OF COMPANY. COMPANY SHALL PROVIDE NOTICE TO USER OF AMENDMENTS BY POSTING THE UPDATED TERMS OF SERVICE ON COMPANY'S WEBSITE. USER SHALL HAVE THE OPPORTUNITY TO REFUSE SAID AMENDMENTS SOLELY BY REQUESTING TERMINATION OF ACCESS TO THE SOFTWARE/SERVICE.

1. Software/Service Terms

a. ***Description*****.** The Software/Service is proprietary to Company and is protected by intellectual property laws and international intellectual property treaties. User's access to the Software/Service is licensed and not sold. Software/Service is an order entry and trading application for transactions involving, but not limited to, stocks, futures, exchange traded funds, mutual funds, single stock futures, options, and currency orders (collectively "Orders") that interfaces through an Application Protocol Interface ("API") or Software Development Kit ("SDK"). These systems may be based on software platforms developed by various other third party brokers and/or software developers (collectively "Broker Platforms"). Orders may be executed by brokers via Broker Platforms.

b. ***Use of Third Party Vendors/Brokers.*** User is aware that the Software/Service implements various third party software, platforms, and equipment (collectively "Vendors") and Broker Platforms. Company warrants that use of third party software and/or services is fully licensed for use by Vendors/Brokers to Company and in-turn to licensed Users of Software/Service. User shall abide by all Vendors'/Brokers' individual terms of service agreements, if applicable. **COMPANY MAKES ABSOLUTELY NO WARRANTIES WITH REFERENCE TO THIRD PARTY VENDOR/BROKER SOFTWARE AND/OR SERVICES**.

c. ***Use of Third Party Plugins.*** User is aware that third parties may develop utilities, indicators or strategies ("Plugins") that interact and/or work within the Software/Service. Installation and use of Plugins is at User's sole risk. User hereby agrees that Company makes absolutely no guarantees regarding compatibility and is not responsible for the function of Plugins individually or with respect to the Software/Service. **COMPANY MAKES ABSOLUTELY NO WARRANTIES WITH REFERENCE TO PLUGINS**

d. ***Accessibility and Function*****.** User agrees that from time to time, the Software/ Service may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment (hardware) malfunctions, (ii) software malfunctions, (iii) periodic maintenance procedures or repairs which Company may undertake from time to time, or (iv) causes beyond the reasonable control of Company or which causes are not reasonably foreseeable by Company. **Company is not responsible, directly or indirectly, for the performance and/or reliability of Broker Platforms, system, equipment or otherwise, or User's Internet Service Provider ("ISP").**

e. ***Equipment.*** User shall be solely responsible for providing, maintaining and ensuring compatibility with the Software/Service, all hardware, software, electrical and other physical requirements for User's use of the Software/Service including, without limitation, telecommunications and Internet connection(s), ISP, web browsers and/or other equipment, programs and services required to access and use the Software/Service.

f. ***Grant of License*****.** Company grants User, pursuant to the terms and conditions of this Agreement, a nonexclusive and nontransferable license to use the Software/Service.

2. Security of User's System

User shall be solely responsible for the security, confidentiality and integrity of all messages and the content that User receives, transmits through or stores via the Software/Service or on any computer or related equipment that is used to access the Software/Service. User shall be solely responsible for any authorized or unauthorized access to User's account by any person, entity, partnership, organization, association or otherwise.

3. Fees/Licenses

a. ***Collection and Taxes*****.** All Fees, taxes and other charges shall be billed to User's credit/charge card or paid by check. In the event that User is provided with use of Software/Service through a 3rd party reseller ("Reseller), User shall pay the Reseller who in turn shall submit the appropriate subscription fee to Company. User shall be solely responsible for and shall pay Company or Reseller , if applicable, all sales, use, value-added, personal property or other tax, duty or levy of any kind, including interest and penalties thereon (collectively, "Taxes"), whether imposed now or hereinafter by any governmental authority. User shall promptly pay Company in the event of any refusal by User's credit card issuer to pay any amount to Company for any reason. User agrees to pay interest at the rate of two percent (2.0%) per month on any outstanding balance, together with costs of collection, including attorney's fees and costs, and any applicable bank fees. In the event User fails to pay any amount due as set forth herein, Company may, at its sole discretion, immediately suspend or terminate this Agreement and User's access to the Software/Service. Company reserves the right to report delinquent accounts to appropriate credit agencies.

b. ***Term/Automatic renewal*****.** The term of this agreement shall begin upon User's commencement of the Software/Service and shall automatically renew on either a monthly or quarterly basis as chosen by the Client at the time of contract initiation. Fixed lease options as chosen at the time of contract initiation do not auto-renew. Termination by User or Company prior to automatic renewal of term must be supplied in written form at least 30 days prior to the expiration of the current term and must comply with the termination procedures set forth in Section 6 of this Agreement. Should the subscription be terminated prior the current subscription period expiration date and pursuant to Section 6 of this Agreement, NO refund shall be issued to User by Company.

c. ***Lifetime Licenses.*** If User purchases a lifetime license to use the Software/Service, User agrees that without limitation certain features of the software may not be available or supported in perpetuity. User also agrees that Company shall have the right to change features associated with the Software/Service in Company's sole discretion, and that Company may choose to discontinue support of Software/Service at any time. User shall not be entitled to a refund of the lifetime license fee under any circumstances. Lifetime licenses are for non-concurrent use, they are non-transferable, and can only be used by the individual that purchased the license. Lifetime licenses cannot be sold or bartered in the future and if such actions are taken the license can be terminated at Company's sole discretion. The lifetime license fee does not include the cost of any TT transaction fees if applicable when a static SuperDOM is requested.

d. **Upgrades.** During the term of the license User shall be entitled to Software/Service upgrades as provided in the sole discretion of Company. User's entitlement to upgrades shall be limited to the specific edition of the Software/Service for which the User is licensed. For instance, if User subscribes

to Edition A of the Software/Service, User shall be entitled only to Edition A upgrades and so forth. Software/Service editions relate to the service level of Software/Service and shall not be confused with release version number(s).

4. User Representations

User represents and warrants to Company that: (a) User is over the age of eighteen (18) and has the power and authority to enter into and perform User's obligations under this Agreement, (b) all information provided by User to Company is truthful, accurate and complete, (c) User is the authorized signatory of the credit or charge card provided to Company to pay the Fees, (d) User shall comply with all terms and conditions of this Agreement including, without limitation, the provisions set forth in section 5, (e) User, and not the Company, is solely responsible for the security and use of User's password, (f) User has provided and shall provide accurate and complete registration information including, without limitation, User's legal name, address and telephone number, (g) User acknowledges that all right, title, and interest to the Software/Service belongs to Company. Company reserves all rights not expressly granted to User in this Agreement and that the User may not sublicense, transfer, or assign the Software/Service, directly or indirectly, to any person, entity, partnership, organization, association or otherwise, for any reason.

5. Prohibited Uses

a. ***Errors, Acts, Omissions and Unacceptable Use.*** User is solely responsible for any and all errors, acts and omissions that occur under User's account or password, and User, directly or indirectly, agrees not to engage in, facilitate, or encourage any unacceptable use of the Software/Service which unacceptable use includes, without limitation, use of the Software/Service to: (i) disseminate, store or transmit unsolicited messages, chain letters or unsolicited commercial e-mail, (ii) disseminate or transmit material that, to a reasonable person may be considered abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious, (iii) disseminate, store or transmit files, graphics, software or other material that actually, impliedly, or potentially infringes the copyright, trademark, patent, trade secret, trade name or other intellectual property right of any person, entity, partnership, organization, association or otherwise, (iv) create a false identity or to otherwise attempt to mislead any person, entity, partnership, organization, association or otherwise, as to the identity or origin of any communication, (v) distribute, re-distribute or permit transfer of content in violation of any export or import law and/or regulation or restriction of the United States of America and its agencies or authorities, or without all required approvals, licenses or exemptions, (vi) interfere, disrupt or attempt to gain unauthorized access to other accounts on the Software/Service or any other computer network, (vii) disseminate, store or transmit viruses or any other malicious code or program,; or (viii) engage in any other activity deemed by the Company, in its sole discretion, to be in conflict with the spirit or intent of this Agreement.

b. ***Dissemination.*** User may not disseminate software, username(s) and/or password(s) to any other person, entity, partnership, organization, association or otherwise. Internet Protocol ("IP") addresses may be recorded by the Software/Service to prevent account misuse.

6. Termination

This Agreement is effective upon User's acceptance as set forth herein and shall continue in full force until terminated. User may terminate this Agreement for any reason upon thirty (30) days prior written notice to Company. Company reserves the right, in its sole discretion and without prior notice to User, at any time and for any reason, to: (a) remove or disable access to all or any portion of the Software/Service, (b) suspend User's access to or use of all or any portion of the Software/Service, and (c) terminate this Agreement.

7. Disclaimer of Warranties

THE SOFTWARE/SERVICE IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. USE OF THE SOFTWARE/SERVICE IS AT USER'S SOLE RISK. COMPANY DOES NOT WARRANT THAT THE SOFTWARE/SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES COMPANY MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SOFTWARE/SERVICE. USER REALIZES THAT THERE IS RISK IN TRADING STOCKS AND THAT ASSETS MAY BE LOST AND ARE NOT INSURED. COMPANY IS ABSOLUTELY NOT RESPONSIBLE, DIRECTLY OR INDIRECTLY, FOR USERS' STOCK ORDER, PURCHASE AND SALE ACTIONS. COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN RELATION TO THE SOFTWARE/SERVICE. COMPANY MAKES ABSOLUTELY NO WARRANTIES WITH REFERENCE TO THIRD PARTY VENDOR/BROKER SOFTWARE AND/OR SERVICES.

8. <u>Limitation of Liability</u>

UNDER NO CIRCUMSTANCES SHALL COMPANY, DIRECTLY OR INDIRECTLY, BE LIABLE TO USER OR ANY OTHER PERSON, ENTITY, PARTNERSHIP, ORGANIZATION, ASSOCIATION OR OTHERWISE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT, THE SOFTWARE/SERVICE OR THE INTERNET IN GENERAL, INCLUDING, WITHOUT LIMITATION, USER'S USE OR INABILITY TO USE THE SOFTWARE/SERVICE, ANY CHANGES TO OR INACCESSIBILITY OF THE SOFTWARE/SERVICE, DELAY, FAILURE, UNAUTHORIZED ACCESS TO OR ALTERATION OF ANY TRANSMISSION OR DATA, ANY MATERIAL OR DATA SENT OR RECEIVED OR NOT SENT OR RECEIVED, ANY TRANSACTION OR AGREEMENT ENTERED INTO THROUGH THE SOFTWARE/SERVICE, OR ANY DATA OR MATERIAL FROM A THIRD PARTY ACCESSED ON OR THROUGH THE SOFTWARE/SERVICE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL COMPANY'S TOTAL LIABILITY FOR ANY DAMAGES EXCEED THE TOTAL FEES PAID BY USER TO COMPANY HEREUNDER. SOME STATES PROHIBIT THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THUS THIS LIMITATION OF LIABILITY MAY NOT APPLY TO USER. IF USER IS DISSATISFIED WITH THE SOFTWARE/SERVICE, USER'S SOLE AND EXCLUSIVE REMEDY SHALL BE FOR USER TO DISCONTINUE USE OF THE SOFTWARE/SERVICE AND TERMINATE THIS AGREEMENT IN ACCORDANCE WITH SECTION 6. COMPANY IS NOT LIABLE FOR ANY ITEMS VIEWED OR TRANSMITTED VIA THE SOFTWARE/SERVICE. COMPANY IS NOT LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY ACTS TAKING PLACE WHICH ARE NOT VIEWED OR TRANSMITTED VIA THE SOFTWARE/SERVICE. COMPANY IS NOT OBLIGATED, DIRECTLY OR INDIRECTLY, TO TAKE ANY STEPS TO PREVENT OR CORRECT ANY ILLEGAL, ABUSIVE OR OTHERWISE INAPPROPRIATE ACTIVITY PERFORMED BY USER, NOR IS COMPANY OBLIGATED, DIRECTLY OR INDIRECTLY, TO ARCHIVE OR OTHERWISE MAINTAIN OTHER REPRODUCTION OF THE CONTENT THAT APPEARS OR IS TRANSMITTED ON THE SOFTWARE/SERVICE FOR FUTURE REFERENCE. COMPANY IS NOT LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY ACTION OR INACTION WITH RESPECT TO ANY CONTENT ON THE SOFTWARE/SERVICE. COMPANY IS NOT RESPONSIBLE, DIRECTLY OR INDIRECTLY, FOR COMPLIANCE OR LACK THEREOF BY ANY BROKER(S) WITH RESPECT TO ANY APPLICABLE LAWS AND REGULATIONS INCLUDING, BUT NOT LIMITED TO, THOSE LAWS REGARDING OR PERTAINING TO THE TRADING OF SECURITIES. COMPANY MAKES SIGNIFICANT EFFORTS MEETING OR EXCEEDING INDUSTRY STANDARDS TO INSURE THE SECURITY AND/OR FUNCTIONALITY OF SOFTWARE/SERVICE RELATED INTERNET TRANSMISSIONS BUT, DUE TO THE INHERENT NATURE OF THE INTERNET,

CANNOT GUARANTEE OR WARRANT FUNCTIONALITY AND/OR SECURITY OF INTERNET TRANSMISSIONS.

9. Indemnification

User agrees to indemnify, hold harmless and defend Company, its shareholders, directors, officers, employees and agents from and against any action, cause, claim, damage, debt, demand or liability, including reasonable costs and attorney's fees, asserted by any person, entity, partnership, organization, association or otherwise, arising out of or relating to: (a) this Agreement, (b) User's use of the Software/Service, including any data or work transmitted or received by User, and (c) any unacceptable use of the Software/Service, including, without limitation, any statement, data or content made, transmitted or republished by User which is prohibited as unacceptable in section 5.

10. Privacy

a. ***General.*** When reasonably practicable, Company shall attempt to respect and maintain User's privacy. Company shall not monitor, edit, or disclose any personal information about User or User's account, including its contents or User's use of the Software/Service, without User's prior written consent unless Company has a good faith belief that such action is necessary to: (i) comply with any legal process or other legal requirements of any governmental authority, (ii) protect and defend the rights, interests, or property of Company, (iii) enforce this Agreement, (iv) protect the interests of users of the Software/Service other than User or any other person, entity, partnership, organization, association or otherwise, or (v) operate or conduct maintenance and repair of Company's services or equipment, including the Software/Service as authorized by law. User has no expectation of privacy with respect to the Internet in general. User's IP address is transmitted and recorded with each User session.

b. ***Cookies*****.** The Software/Service may use cookies. A cookie is a small data file that a website stores on the User's computer when the Software/Service is accessed via the Internet. A cookie allows Company to monitor activity on its website and remember user preferences. Company uses information contained in cookies to improve the User's experience, as well as track usage and tailor service options and content to usage patterns. Company does not use cookies to retrieve information from the User's computer not related to the Software/Service.

c. ***Billing/Credit or Charge Card Information*****.** Company shall not share billing/credit or charge card information provided by the User with third parties unless written or electronic permission is expressly received from User.

d. ***Use of Aggregate Information*****.** Company may, at its sole discretion, share aggregate information (e.g. number of website visits, demographic breakdown, etc.) to third parties by combining aspects of personal information into an anonymous pool.

e. Security of Personal Information**.** Information security is of the utmost importance to Company, however, no transmission of data over the Internet is guaranteed to be completely secure. Company shall not guarantee or warrant the security of any personal information transmitted to or from it. Any such transmission is made solely at User's risk.

f. Links. Company's Software/Service website may contain links to other Internet websites. These websites are not under the control of Company and Company does not control linked websites' privacy and/or user agreements. Company does not grant any warranties (express or implied) nor does Company have any liability for information transferred and conferred to or from linked websites.

g. ***Audits.*** Company may gain access to customers account/trading records for auditing purposes. Such records may be disclosed to an independent audit source. Reasonable and industry appropriate non-disclosure agreement(s) shall pertain to third party auditing sources. Some configurations of

Software/Service may transmit trade execution data over the Internet to a secure database for the purpose of audit tracking.

11. Miscellaneous

a. *Amendment.* Company shall have the right, at any time and without prior written notice to or consent from User, to add to or modify the terms of this Agreement, simply by delivering such amended terms to User by e-mail at the address provided to Company by User or by requiring the User to accept an updated Agreement upon accessing the Software/Service. User's access to or use of the Software/Service after the date such amended terms are delivered to User shall be deemed to constitute acceptance of such amended terms.

b. *Waiver*. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other term, provision or condition hereof, whether or not similar, nor shall such waiver constitute a continuing waiver of any such term, provision or condition hereof. No waiver shall be binding unless executed in writing by the party making the waiver.

c. *Severability*. If any provision of this Agreement is determined to be illegal or unenforceable, then such provision shall be enforced to the maximum extent possible and the other provisions shall remain fully effective and enforceable.

d. *Notice.* All notices shall be in writing and shall be deemed to be delivered when sent by first-class mail or when sent by facsimile or e-mail to either parties' last known post office, facsimile or e-mail address, respectively. User hereby consents to notice by e-mail. All notices shall be directed to the parties at the respective addresses given above or to such other address as either party may, from time to time, provide to the other party.

e. *Governing Law*. This Agreement is made in and shall be governed by the laws of the State of Colorado without reference to any conflicts of laws.

f. *Dispute Resolution*. Any and all disputes relating to or arising out of this Agreement including, but not limited to, the arbitrability and the validity of this Agreement shall be resolved by binding arbitration in Denver, Colorado.

g. *Force Majeure*. If the performance of any part of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by causes beyond the reasonable control of either party, that party shall be excused from such performance to the extent that it is prevented, hindered or delayed by such causes.

h. *Survival*. The terms and provisions of sections 2, 3, 4, 5, 7, 8, 9, 10 and 11 shall survive any termination or expiration of this Agreement.

i. *Entire Agreement.* This Agreement constitutes the complete and exclusive statement of the agreement between the parties with respect to the Software/Service and supersedes any and all prior or contemporaneous communications, representations, statements and understandings, whether oral or written, between the parties concerning the Software/Service.

USER HAS READ, UNDERSTANDS AND AGREES TO THE TERMS & CONDITIONS OF THIS AGREEMENT AND APPENDIX A AS INCORPORATED HEREIN.

☐ **I ACCEPT** ☐ **I DO NOT ACCEPT**