

(last updated May 5, 2026)

## **DKeX WEBSITE TERMS OF USE**

PLEASE CAREFULLY READ THESE DKeX WEBSITE TERMS OF USE BEFORE USING THE WEBSITE OR THE CONTENT PROVIDED ON THE WEBSITE. THESE TERMS OF USE AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS. THESE AGREEMENTS (AS DEFINED IN THE INTRODUCTION SECTION) ARE SUBJECT TO A WAIVER OF TRIAL BY JURY.

### **INTRODUCTION**

Railbird Exchange, LLC (d/b/a DKeX) (“**DKeX**” or “**we**” or “**our**”) offers the website <http://www.railbirdexchange.com> (the “**Website**”) through which you (“**you**” or “**your**” or “**yours**”) may access certain features, services, reports, information, documents, policies, and other content related to the DKeX exchange, including, without limitation, notices, trading platform specifications, market data, settlement reports, rulebooks, member agreements, member applications, developer resources, and fees (the “**Content**”).

DKeX operates as a designated contract market registered with the Commodity Futures Trading Commission (“**CFTC**”). For clarity, the Website does not allow you to place orders for commodity interests or derivatives and these DKeX Website Terms of Use (the “**Terms of Use**” or “**Terms**”) do not apply to such orders, including, without limitation, the holding of funds; the execution, cancelation, settlement, or clearing of commodity interests or derivatives; or any actions of an introducing broker, futures commission merchant, designated contract market, or derivatives clearing organization as it relates to orders for commodity interests or derivatives. These Terms solely govern your access to and use of the Website and the Content. In addition to these Terms of Use, members of the DKeX exchange are bound by additional Terms and Conditions, including, but not limited to, a membership agreement and the DKeX Rulebook.

### **AGREEMENT TO BE BOUND**

By accessing or using the Website and/or the Content, you agree to be, and are, bound by these Terms and all other rules, terms and conditions, policies, and notices applicable to your access to and use of the Website and/or the Content that are otherwise communicated to you by DKeX (the “**Other Terms**” and together with the Terms, the “**Agreements**”), and you accept DKeX's Privacy Policy (available by clicking [HERE](#)) (the “**Privacy Policy**”) and consent to the collection and processing of personal information described in it. The Privacy Policy and Other Terms, as may be amended at any time and from time to time by DKeX in DKeX's sole and absolute discretion, for any

reason or no reason, are hereby incorporated by reference in their entirety into these Terms.

These Terms do not apply to or govern your use of any other products and/or services provided by DraftKings Inc. or its affiliates, including, without limitation, daily fantasy contests, Pick6, sportsbook, iGaming, horse racing, lottery courier services, or social platforms.

**IN THE EVENT YOU DO NOT AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THE AGREEMENTS WITHOUT MODIFICATION, DO NOT ACCESS OR USE THE WEBSITE OR THE CONTENT IN ANY MANNER OR VIA ANY MEANS OF ACCESS. THE AGREEMENTS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND DKeX.**

By accessing or using the Website and/or the Content, you are representing and warranting that you are authorized to enter into the Agreements, and you represent and warrant that your access and/or use of the Website and/or the Content does not and will not violate any pursuant to any applicable laws, regulations, rules, orders, judgements, or other authorized acts ("**Applicable Law**") or any judgment, decree, order, or agreement, to which you are subject.

DKeX may, in its sole and absolute discretion, refuse to allow you to access or use the Website and/or the Content for any reason or no reason. You agree to release and hold harmless DKeX; its parents, subsidiaries, affiliates, successors, and assigns; and the officers, directors, employees, and shareholders of each of the foregoing (collectively, the "**DKeX Released Parties**") from any and all liability related to, and agree to waive all disputes, causes of action, controversies, and claims against the DKeX Released Parties arising out of DKeX delaying or refusing your access to, or use of, the Website, the Content, and/or any portion of the Website and/or the Content.

#### **JURY TRIAL WAIVER**

You and DKeX expressly and knowingly WAIVE THE RIGHT TO TRIAL BY JURY to the maximum extent permitted by Applicable Law, except to the extent such waiver is prohibited by Applicable Law.

#### **GRANT OF LICENSE**

You may access and use the Website, the Content, and the Intellectual Property (as defined below) solely in connection with your transactions on the DKeX exchange. Access to, and use of, the Website, the Content, and the Intellectual Property may not be used, copied, reproduced, distributed, transmitted, broadcast, publicly displayed, posted, uploaded, displayed, sold, licensed, or otherwise exploited for any other

purposes whatsoever without the prior written consent of DKeX, which may be withheld or revoked in DKeX' sole and absolute discretion, for any reason or no reason.

All text, information, layout, software, scripts, data, technology, graphics, photos, sounds, music, videos, other copyrightable material, interactive features, interfaces, designs, instructions, the look and feel of Website and Content, and the compilation and arrangement of information on the Website and Content, and the trademarks, trade dress, product names, service marks, logos, trade names, trade identities, and other intellectual property rights contained therein (the "**Intellectual Property**"), are owned by or licensed to DKeX or its affiliates, and are protected by copyright, trademark, patent, and other intellectual property rights under United States and foreign laws and international conventions. DKeX grants to you a limited, non-transferable, fully revocable, non-sublicensable, non-exclusive right to access and use the Website, the Content, and the Intellectual Property, in each case, solely for your internal use related to transacting on the DKeX exchange. You may not use, or permit the use of, the Website, the Content, or the Intellectual Property for the benefit of any third party.

You will not decompile, reverse engineer, modify, create derivatives of, disassemble, or attempt to access the source code of the Website, the Content, or the Intellectual Property. For clarity, use of any Intellectual Property, including, without limitation, DKeX's trademarks, as metatags on any other website(s) is prohibited, and you may not link to the Website or any Content on any other websites.

You may not remove or alter any trademark, trade names, product names, logos, copyrights, or other proprietary notices, legends, symbols, or labels on the Website or Content. DKeX reserves all rights not expressly granted in and to the Website, the Content, and the Intellectual Property. You agree to not engage in the use, copying, or distribution of the Website, the Content, or the Intellectual Property, other than as expressly permitted herein. In the event you download or print a copy of any depiction, implementation, or embodiment of the Website, the Content, or the Intellectual Property, you must retain all copyright and other proprietary notices contained therein. DKeX may, in its sole and absolute discretion, for any reason or no reason, immediately terminate or suspend your right to use the Website, the Content, and/or the Intellectual Property. You agree not to circumvent, disable, or otherwise interfere with any features or controls that prevent or restrict use or copying of the Website, the Content, and the Intellectual Property.

## **NO ADVICE**

You understand and acknowledge that the DKeX Released Parties (as defined in the Agreement to be Bound Section above) and the agents, contractors, and

representatives of the DKeX Released Parties, whether orally, in writing, through the Website, Content, or otherwise, provide no tax, legal, trading, or investment advice of any kind whatsoever, nor do the DKeX Released Parties give advice or offer any opinion with respect to the nature, appropriateness, potential value, or suitability of any particular transaction or investment strategy, including, without limitation, those regarding any commodity interests or derivatives. You represent and warrant that (i) you will neither solicit nor rely on any advice from any DKeX Released Party and (ii) you will not use the Website or the Content as a recommendation to buy, sell or hold a particular financial instrument or pursue any particular investment strategy. The Website and the Content is not an offer, or a solicitation of an offer, to buy or sell any particular financial instrument from DKeX or its affiliates, and you understand and acknowledge that the Website and the Content is not an offer, or a solicitation of an offer, to buy or sell any particular financial instrument from DKeX or its affiliates.

You acknowledge and agree that: (i) any investment or trading decisions you make will be based solely on your own evaluation of your financial circumstances and investment objectives and the suitability and appropriateness for you of any transaction(s) or any trading strategy, without reliance on any information or other statements that may be made on the Website, in Content, or by the DKeX Released Parties or the agents, contractors, or representatives of the DKeX Released Parties; (ii) the DKeX Released Parties make no representations or warranties as to the value, merits, or suitability of any commodity interests or derivatives; (iii) the DKeX Released Parties owe no fiduciary obligations to you, and DKeX's duties and obligations are limited to those expressly set forth in the Agreements; and (iv) the DKeX Released Parties have no financial or other obligations to you under the terms of the Agreements in connection with any transactions for commodity interests or derivatives.

## **CONDITIONS OF ACCESS**

You may not access or use the Website and/or Content in the event:

- You are prohibited from accessing or using the Website and/or Content pursuant to any Applicable Law;
- You are less than eighteen (18) years of age;
- DKeX determines, in its sole and absolute discretion, for any reason or no reason, that your access to or use of the Website and/or the Content is detrimental to DKeX or other users of the Website and/or Content; or
- Your access to or use of the Website and/or the Content violates the Agreements.

You must access and use the Website and the Content in compliance with Applicable Law, including, without limitation, the Commodity Exchange Act, as amended, and all rules and interpretations of the CFTC and the National Futures Association. The DKeX Released Parties (as defined in the Agreement to be Bound Section above) shall not be liable as a result of, and you agree to release and hold harmless the DKeX Released Parties from, all disputes, claims, causes of action, or controversies, related to, arising out of, or based upon, any action taken by such DKeX Released Parties or any agents, contractors, or representatives of the DKeX Released Parties to comply with Applicable Law. Any failure by the DKeX Released Parties or any agents, contractors, or representatives of the DKeX Released Parties to comply with any Applicable Law will not relieve you of any obligations under the Agreements, nor will it be construed to create rights thereunder or hereunder in favor of you and against the DKeX Released Parties.

DKeX makes no representations or warranties regarding the legality of accessing and using the Website and/or the Content outside of the United States. Although the Website and the Content is accessible worldwide, not all features, products or services discussed or referenced on the Website or in the Content are available to all persons or in all geographic locations, or appropriate or available for use outside the United States. DKeX may, in its sole and absolute discretion, for any reason or no reason, limit the provision of the Website and/or Content, or any portion of the Website and/or Content, to any person or geographic area. In the event you access or use the Website or the Content from outside the United States, you do so at your own risk and you are solely responsible for complying with all applicable local country and United States export laws.

You may not access or use the Website and/or the Content in any way that: (a) is fraudulent; (b) infringes or misappropriates any third party's intellectual property rights (including, without limitation, copyrights, patents, trademarks, and trade secrets) or other proprietary rights or rights of publicity or privacy; (c) may introduce any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other harmful computer programming or routines that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate the Website and/or the Content; or (d) creates any liability for or damages the reputation or good will of DKeX or its affiliates.

DKeX may suspend or terminate your license to use, and temporarily or permanently prohibit you from using, the Website and/or the Content, or any portion of the Website and/or the Content in the event DKeX learns or has reason to believe that you accessed or used the Website and/or the Content in violation of the Agreements, as determined

by DKeX in its sole and absolute discretion, for any reason or no reason. A violation of the Agreements includes, without limitation:

- Using the Website or Content to engage in any type of fraud, including, without limitation, financial fraud;
- Engaging in any conduct that is improper, adverse to the operation of the Website or provision of the Content, or in any way detrimental to any other's use of or access to the Website or the Content;
- Accessing or using the Website and/or the Content in any way that (i) is detrimental to DKeX or its affiliate(s) or the brand(s) of DKeX or its affiliate(s), (ii) is disparaging or otherwise portrays DKeX or its affiliate(s) in a negative light, or (iii) has a negative impact on the integrity of DKeX or its affiliate(s)' products, services, or business operations;
- Using, providing, disclosing, or otherwise making available, or permitting any third-party to use, provide, disclose, or otherwise make available, any Content to any machine learning or other artificial intelligence model, tool, system, or technology for the purpose of, or in a manner that could result in, the training or fine-tuning of such model, tool, system or technology.
- Using, or allowing any other person or entity to use, any automated means, automated computerized software, or equivalent mechanisms, including, without limitation, bots, scripts, artificial intelligence, programs, parsers, spiders, screen scrapers, or tools, to interact with the Website or the Content, including, without limitation, to collect any Content;
- Tampering with, interfering with, circumventing, or bypassing any systems, controls, policies, or security measures associated with the Website and/or the Content; or
- Collecting any person's information for any purpose.

You agree that you have no inherent or vested right to access or use the Website and/or the Content and that you shall not acquire any such right based on accessing or using the Website and/or the Content.

Not all Content, features, products or services discussed, referenced, provided, or offered through or on the Website are available to all persons or in all geographic locations, or appropriate or available for use in any particular jurisdiction. DKeX reserves the right to limit or terminate, in its sole and absolute discretion, for any reason or no reason, the provision of the Website and/or the Content to any entity or jurisdiction.

## LIMITATION ON DKeX'S RESPONSIBILITIES

The DKeX Released Parties (as defined in the Agreement to be Bound Section above) are not responsible for, you agree to release and hold harmless the DKeX Released Parties from any and all liability related to, and agree to waive all disputes, causes of action, controversies, and claims against the DKeX Released Parties arising out of, your use of the Website, the Content, and/or the Intellectual Property; any incorrect, invalid, or inaccurate Content or other information; errors related to the Website and/or the Content, including, without limitation, human errors; technical malfunctions; failures, including, without limitation, public utility, telephone, or internet outages; omissions, interruptions, deletions, or defects of any telephone or internet systems or networks, computer online systems, data, computer equipment, servers, providers, or software; any injury or damage to your or any other person's computer or video equipment relating to or resulting from your access to or use of the Website and/or the Content; your inability to access or use the Website, the Content, or any portion thereof; Content that is inaccurate, out of date, incorrect, or that is incomplete; typographical, printing, or other errors; or any combination thereof.

The DKeX Released Parties shall not be liable as a result of, and you agree to release and hold harmless the DKeX Released Parties from, all disputes, claims, causes of action, or controversies, related to, arising out of, or based upon, any action taken by the DKeX Released Parties or any agents, contractors, or representatives of the DKeX Released Parties to comply with Applicable Law. You acknowledge and agree that the DKeX Released Parties are not responsible for the acts and omissions of third parties, including, without limitation, any introducing broker, futures commission merchant, designated contract market, or derivatives clearing organization, to comply with Applicable Law. Any failure by the DKeX Released Parties or any agents, contractors, or representatives of the DKeX Released Parties to comply with any Applicable Law will not relieve you of any obligations under the Agreements, nor will it be construed to create rights thereunder or hereunder in favor of you and against the DKeX Released Parties.

Under no circumstances shall the DKeX Released Parties or its third party service providers, contractors, or contract counterparties, have any responsibility or liability to you in the event that, whether because of electronic or mechanical failure, system failure or delay, acts of God or terrorism, or any other reason, you are unable to access or use the Website and/or the Content.

You must immediately notify DKeX by email at [DKeXtradingsupport@draftkings.com](mailto:DKeXtradingsupport@draftkings.com) and cease using the Website and the Content in the event you become aware of any errors related to the Website or the Content.

ANY ATTEMPT BY YOU OR ANY OTHER INDIVIDUAL TO DELIBERATELY DAMAGE THE WEBSITE OR THE CONTENT IS A VIOLATION OF THESE TERMS AND MAY BE A VIOLATION OF CRIMINAL AND/OR CIVIL LAWS. IN THE EVENT SUCH AN ATTEMPT IS MADE, DKeX RESERVES THE RIGHT TO SEEK DAMAGES AND OTHER REMEDIES FROM ANY SUCH PERSON TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

## **TERMINATION AND EFFECT OF TERMINATION**

DKeX may immediately suspend or terminate your right to access and use the Website, the Content, and/or any portion of the Website and/or Content at any time and without prior notice, in its sole and absolute discretion, for any reason or no reason. In such event, you will immediately cease all access to and use of the Website, the Content, and the Intellectual Property. Additionally, DKeX may immediately suspend or terminate the offering of the Website, the Content, and/or any portion of the Website and/or Content, at any time and without prior notice, in its sole and absolute discretion, for any reason or no reason.

The DKeX Released Parties (as defined in the Agreement to be Bound Section above) shall not be liable to you for any suspension or termination of your right to access and use the Website, the Content, and/or any portion of the Website and/or the Content or DKeX's suspension or termination of the offering of the Website, the Content, and/or any portion of the Website and/or the Content. Suspension or termination of your access to and use the Website, the Content, the Intellectual Property, and/or any portion of the Website, the Content, and/or Intellectual Property or DKeX's suspension or termination of the offering of the Website, the Content, and/or any portion of the Website, the Content, and or Intellectual Property shall not affect any rights, obligations, or liabilities arising prior thereto. All provisions of the Agreements, which, by their express terms or nature, should survive termination of your access and use of the Website, the Content, and/or the Intellectual Property or DKeX's suspension or termination of the offering of the Website, the Content, and/or the Intellectual Property shall survive such termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitation of liability.

## **DISCLAIMER OF WARRANTIES**

THE WEBSITE, THE CONTENT, AND THE INTELLECTUAL PROPERTY ARE PROVIDED "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS." YOUR ACCESS TO, AND USE OF, THE WEBSITE, CONTENT, AND INTELLECTUAL PROPERTY IS AT YOUR SOLE RISK. THE DKeX RELEASED PARTIES (AS DEFINED IN THE AGREEMENT TO BE BOUND SECTION ABOVE) DISCLAIM ANY AND ALL

EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, AND COVENANTS, INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE. WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, THE DKeX RELEASED PARTIES MAKE NO REPRESENTATIONS, WARRANTIES, OR ENDORSEMENTS OF ANY KIND WHATSOEVER (EXPRESS OR IMPLIED) ABOUT: (A) THE WEBSITE, THE CONTENT, AND THE INTELLECTUAL PROPERTY; (B) THE FUNCTIONS MADE ACCESSIBLE ON OR ACCESSED THROUGH THE WEBSITE; (C) ANY PRODUCTS OR SERVICES OFFERED VIA THE WEBSITE OR CONTENT, INCLUDING, WITHOUT LIMITATION, THIRD PARTY PRODUCTS OR SERVICES; OR (D) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION IN CONNECTION WITH THE WEBSITE. DKeX DOES NOT WARRANT THAT YOUR ACCESS TO, OR USE OF, THE WEBSITE, ANY OF THE FUNCTIONS THEREON, OR ANY CONTENT WILL BE UNINTERRUPTED, ERROR-FREE, OR AVAILABLE AT ANY PARTICULAR LOCATION OR TIME; THAT DEFECTS WILL BE CORRECTED; OR THAT THE WEBSITE OR CONTENT IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

You acknowledge and agree that you are solely responsible for your own research and that the DKeX Released Parties make no representations, warranties, or other guarantees as to the accuracy, completeness, usefulness, or timeliness of any Content, including, without limitation, market data, settlement prices, and trading volumes. All Content, including, without limitation, all market data, settlement prices, trading volumes, and all other information provided on the Website is provided on an 'AS IS' basis and may be delayed, inaccurate, or incomplete. DKeX does not guarantee the timeliness, accuracy, or completeness of any Content and shall not be liable for any trading losses or other damages arising from reliance on any Content. Content may be sourced from third-party data providers, and DKeX does not endorse, guarantee, or assume responsibility for the accuracy, timeliness, or completeness of any third-party data.

The DKeX Released Parties make no representations, warranties, or other guarantees as to the present or future value or suitability of any sale, trade, or other transaction involving any commodity transactions or any other investment. You understand that the Content is not personalized or in any way tailored to reflect your personal financial circumstances or investment objectives, and any instruments and investment strategies discussed in the Content may not be suitable for you.

BY ACCESSING OR USING THE WEBSITE OR CONTENT YOU HEREBY RELEASE, HOLD HARMLESS, COVENANT NOT TO SUE, AND FOREVER DISCHARGE THE

DKeX RELEASED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, DAMAGES, LOSSES, LIABILITIES, COSTS, EXPENSES, INJURIES, OR CAUSES OF ACTION OF ANY KIND THAT IN ANY WAY NOW OR HEREINAFTER MAY ARISE FROM OR RELATE TO YOUR USE OF, OR INABILITY TO USE, THE WEBSITE, THE CONTENT, OR THE INTELLECTUAL PROPERTY.

YOU UNDERSTAND THAT BY VISITING THE WEBSITE OR USING THE CONTENT, YOU ACT AT YOUR OWN RISK, AND YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU VISIT, ACCESS, AND/OR USE THE WEBSITE, THE CONTENT, AND/OR THE INTELLECTUAL PROPERTY. YOU AGREE TO RELEASE AND HOLD HARMLESS THE DKeX RELEASED PARTIES FROM ANY AND ALL LIABILITY RELATED TO, AND AGREE TO WAIVE ALL DISPUTES, CAUSES OF ACTION, CONTROVERSIES, AND CLAIMS AGAINST THE DKeX RELEASED PARTIES ARISING OUT OF YOUR USE OF THE WEBSITE, CONTENT, AND/OR INTELLECTUAL PROPERTY VIOLATING APPLICABLE LAW.

DKeX has no control over, assumes no responsibility for, and makes no warranties, express or implied, related to the content, privacy, performance, or practices of any third-party websites or applications, including any websites accessible via the Website or the Content. In addition, DKeX will not and cannot censor or edit the content of any third-party website or application. By visiting the Website and/or using the Content, you expressly relieve the DKeX Released Parties from any and all liability arising from your use of any third-party website or application. DKeX encourages you to be aware when you visit any third-party website or application and to read the terms and conditions and privacy policy of any third-party website and application that you visit. Your use of any third-party websites or applications is at your sole risk.

The Website and/or Content may contain advertisements for third parties or third-party products or services. DKeX makes no endorsements, representations, or warranties, express or implied, related to any third parties or third-party products or services advertised on the Website or through the Content. You agree that the DKeX Released Parties shall not be responsible or liable for any loss or damage you may incur as a result of any dealings, including, without limitation, participation in promotional offers, you have with third parties advertised on or through the Website or the Content or your use of any third-party products or services advertised on or through the Website or the Content. You agree to indemnify, release, and hold harmless the DKeX Released Parties from any and all liability, claims, actions, proceedings, damages, losses, costs, expenses (including reasonable attorneys' fees, court costs, and other legal expenses, including, without limitation, those costs incurred at the trial and appellate levels), fines,

penalties, or settlements of any kind whatsoever, including, without limitation, personal injury, death, or losses to or damage of property, which directly or indirectly arise from, are related to, or are based upon any third parties and/or third-party products or services advertised on or through the Website or Content.

## **WAIVER OF DAMAGES AND CONSEQUENTIAL DAMAGES**

YOU UNDERSTAND, ACKNOWLEDGE, AND AGREE THAT THE DKeX RELEASED PARTIES (AS DEFINED IN THE AGREEMENT TO BE BOUND SECTION ABOVE) LIMIT THEIR LIABILITY IN CONNECTION WITH, THE DKeX RELEASED PARTIES ARE NOT LIABLE TO YOU OR ANY THIRD PARTY FOR, YOU WAIVE ALL DISPUTES, CAUSES OF ACTION, CONTROVERSIES, AND CLAIMS AGAINST THE DKeX RELEASED PARTIES, AND YOU SHALL HOLD THE DKeX RELEASED PARTIES HARMLESS FROM ANY LOSSES OR DAMAGES—WHETHER DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL, IN AN ACTION OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHERWISE—RELATED DIRECTLY OR INDIRECTLY TO:

- i. YOUR USE OF, INABILITY TO USE, OR PERFORMANCE OF THE WEBSITE, THE CONTENT, AND/OR THE INTELLECTUAL PROPERTY;
- ii. ANY FAILURE, DELAY, OR DEFECTIVE PERFORMANCE OF ANY COMMUNICATIONS OR COMPUTER SYSTEMS OR EQUIPMENT, INCLUDING, BUT NOT LIMITED TO ERRORS OR DELAYS IN THE WEBSITE OR CONTENT;
- iii. ANY RELIANCE PLACED BY YOU ON ANY CONTENT OR OTHER INFORMATION SUPPLIED TO YOU, INCLUDING, WITHOUT LIMITATION, THAT IS AVAILABLE ON THE WEBSITE OR PROVIDED BY THE DKeX RELEASED PARTIES, IT BEING UNDERSTOOD THAT ANY SUCH INFORMATION MAY BE UNVERIFIED, AND DKeX MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR REASONABLENESS OF SUCH CONTENT OR INFORMATION;
- iv. ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY DKeX OR LAW ENFORCEMENT AUTHORITIES REGARDING YOUR ACCESS TO, OR USE OF THE WEBSITE, THE CONTENT, AND/OR THE INTELLECTUAL PROPERTY;
- v. ANY ACTION TAKEN IN CONNECTION WITH COPYRIGHT, PATENT, OR OTHER INTELLECTUAL PROPERTY OWNERS; OR

- vi. ANY ERRORS OR OMISSIONS IN THE TECHNICAL OPERATIONS OF THE WEBSITE OR THE CONTENT.

IN THE CASE OF i THROUGH vi ABOVE, EVEN IN THE EVENT SUCH EVENT IS FORESEEABLE OR EVEN IN THE EVENT THE DKeX RELEASED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATION OR EXCLUSIONS IN (i) THROUGH (vi) OF THIS PARAGRAPH MAY NOT APPLY TO YOU.

IN NO EVENT SHALL THE DKeX RELEASED PARTIES' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION EXCEED ONE HUNDRED DOLLARS (\$100). YOU AGREE THAT THE DKeX RELEASED PARTIES ARE NOT RESPONSIBLE OR LIABLE FOR ANY LOSS OF PROFIT OR TRADING OPPORTUNITY.

YOU AND DKeX EXPRESSLY AND KNOWINGLY WAIVE THE RIGHT TO TRIAL BY JURY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT TO THE EXTENT SUCH WAIVER IS PROHIBITED BY LAW.

IN THE EVENT YOU ARE DISSATISFIED WITH THE WEBSITE AND/OR CONTENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE ACCESSING AND USING THE WEBSITE AND CONTENT. YOU RECOGNIZE AND CONFIRM THAT IN THE EVENT YOU INCUR ANY DAMAGES, LOSSES, OR INJURIES THAT ARISE OUT OF THE DKeX RELEASED PARTIES' ACTS OR OMISSIONS, THE DAMAGES, TO THE EXTENT THEY EXIST, CAUSED TO YOU ARE NOT IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION PREVENTING ANY EXPLOITATION OF THE WEBSITE, CONTENT, OR INTELLECTUAL PROPERTY OR ANY INFORMATION, PROPERTY, PRODUCTS, OR SERVICES OWNED OR CONTROLLED BY DKeX OR ITS AFFILIATES, AND YOU WILL HAVE NO RIGHTS TO ENJOIN OR RESTRAIN THE DEVELOPMENT, PRODUCTION, DISTRIBUTION, ADVERTISING, EXHIBITION, OR EXPLOITATION OF THE WEBSITE, CONTENT, INTELLECTUAL PROPERTY, OR ANY INFORMATION, PROPERTY, PRODUCTS, OR SERVICES OWNED OR CONTROLLED BY DKeX OR ITS AFFILIATES, AND ANY AND ALL ACTIVITIES OR ACTIONS RELATED THERETO.

BY VISITING THE WEBSITE AND USING THE CONTENT, YOU UNDERSTAND THAT YOU ARE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED. ACCORDINGLY, YOU AGREE TO WAIVE THE BENEFIT OF ANY LAW, INCLUDING, TO THE EXTENT APPLICABLE, CALIFORNIA

CIVIL CODE SECTION 1542, THAT OTHERWISE MIGHT LIMIT YOUR WAIVER OF SUCH CLAIMS.

## **INDEMNIFICATION**

By visiting or using the Website or the Content in any manner, you agree to indemnify, release, and hold harmless the DKeX Released Parties (as defined in the Agreement to be Bound Section above) from any and all liability, claims, actions, proceedings, damages, losses, costs, expenses (including reasonable attorneys' fees, court costs, and other legal expenses, including, without limitation, those costs incurred at the trial and appellate levels and in any bankruptcy, reorganization, insolvency, or other similar proceedings), fines, penalties, or settlements of any kind whatsoever, including, without limitation, personal injury, death, or losses to or damage of property, which directly or indirectly arise from, are related to, or are based upon: (i) your access or use of the Website, Content, and/or Intellectual Property; (ii) your breach of the Agreements; (iii) your violation of any Applicable Laws; (iv) your use of the Website, the Content, or the Intellectual Property in a manner that violates, infringes upon, or otherwise misappropriates any patents, copyrights, trademarks, intellectual property rights, publicity rights, rights of privacy, or any other third party rights; or (v) your rights of publicity or privacy ("**Indemnification Claims**"). Without waiving any rights under this section, DKeX reserves the right, without your consent, to control the settlement and/or defense of any Indemnification Claims. You agree to provide DKeX with any cooperation, assistance, and/or information requested by DKeX in connection with DKeX's settlement or defense of any Indemnification Claims. You will not, without DKeX's prior written consent, enter into any settlement agreements in relation to any Indemnification Claims or make any statements or admissions or take any action that prejudices the settlement or defense of any Indemnification Claim.

## **COMPLAINTS**

In the event you have any questions, concerns, or complaints related to the Website or the Content please e-mail DKeX at [DKeXtradingsupport@draftkings.com](mailto:DKeXtradingsupport@draftkings.com). You will use reasonable and good faith efforts to attempt to resolve any complaints, disputes, Claims (as defined in the Consent to Jurisdiction in New York, Choice of Law, Attorneys' Fees section below), or controversies you have with DKeX prior to commencing any lawsuit.

## **CONSENT TO JURISDICTION IN NEW YORK, CHOICE OF LAW, ATTORNEYS' FEES**

The Agreements shall be governed by the internal substantive laws of the State of New York, without respect to its conflict of laws principles or any other law or regulation that would permit or require the application of the substantive laws of any jurisdiction other than the State of New York. The exclusive jurisdiction and venue for proceedings

involving any and all disputes, claims, causes of action, or controversies arising out of or relating to the Agreements, the breach thereof, or access to or use of the Website, the Content, and/or the Intellectual Property ("**Claims**") shall be the United States District Court for the Southern District of New York or any state court of competent jurisdiction sitting in the Borough of Manhattan in New York, New York (the "**Forum**"). You hereby irrevocably waive any argument that any such court does not have personal jurisdiction or that the Forum is not appropriate or convenient. In the event that you initiate a proceeding involving a Claim other than in the Forum, you agree that DKeX shall recover from you all attorneys' fees and expenses reasonably incurred in enforcing the Forum to which you and DKeX have herein agreed.

You and DKeX expressly and knowingly WAIVE THE RIGHT TO TRIAL BY JURY to the maximum extent permitted by Applicable Law, except to the extent such waiver is prohibited by Applicable Law.

### **TIME BAR**

You agree, to the maximum extent permitted by applicable law, that any and all Claims you have or may come to have must be commenced within one (1) year from the date the cause of action for such Claim accrues, or you irrevocably waive such Claim and are forever barred from asserting such Claim.

### **MISCELLANEOUS**

Nothing in the Agreements shall create or confer any rights or other benefits in favor of any third parties except as specifically provided herein.

The Agreements; your access and use of the Website, the Content, and/or the Intellectual Property; and any rights granted to you under the Agreements may not be assigned, pledged, sublicensed, or otherwise transferred by you, either voluntarily or by operation of law, to any third party without DKeX's prior written consent, which may be withheld in the sole and absolute discretion of DKeX, for any reason or no reason. DKeX reserves the right to assign, sublicense, pledge, or otherwise transfer the Agreements and any of DKeX's rights or obligations under the Agreements, in each case, in whole or in part, to any affiliate of DKeX or any third party, without your consent or notice to you, in DKeX's sole and absolute discretion, for any reason or no reason.

You may be required to provide DKeX with additional information and/or documentation from time to time, as determined by DKeX in its sole and absolute discretion, for any reason or no reason. In the event DKeX requests information from you, you must promptly provide DKeX with accurate and complete information and must promptly update the information when it changes. Until you provide, and/or in the event you fail to

promptly provide, accurate and complete information in response to a request from DKeX, without limitation to, and in addition to any other rights and/or remedies available under the Agreements, DKeX may, in its sole and absolute discretion, restrict, suspend, or revoke your ability to access or use the Website and/or the Content.

You agree to promptly provide DKeX with any assistance or cooperation in connection with DKeX's investigation of any suspicious activity. In the event you decline or otherwise fail to fully assist and cooperate with DKeX's investigation of suspicious activity, DKeX may, in its sole and absolute discretion, restrict, suspend, or revoke your ability to access or use the Website and/or the Content.

Nothing in the Agreements shall create or be deemed to create a partnership, agency, trust arrangement, fiduciary relationship, or joint venture between you and any of the DKeX Released Parties (as defined in the Agreement to be Bound Section above).

Any waiver of a term or condition in the Agreements must be in writing signed by the party waiving such term or condition. No waiver of any term or condition of the Agreements shall be deemed a further or continuing waiver of such term or any other term, and DKeX's failure to assert any right or provision under the Agreements shall not constitute a waiver of such right or provision. In the event any term of the Agreements is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be enforced to the maximum extent permissible, and all other terms of the Agreements shall remain in full force and effect.

DKeX reserves the right to amend the Agreements at any time, and without notice to you, in its sole and absolute discretion, for any reason or no reason. It is your responsibility to review the Agreements for any changes prior to accessing or using the Website or Content. Any amendments to the Agreements will be effective and binding upon the posting of the amended Agreements. Your continued access to and use of the Website and/or the Content after DKeX amends the Agreements shall be deemed to constitute your acceptance and agreement to the amended Agreements. In the event you do not agree to or accept the amended Agreements, you must stop accessing and using the Website and the Content.

By accessing or using the Website or the Content, you consent to receive communications from DKeX electronically. You agree that all notices, disclosures, and other communications that DKeX provides to you electronically satisfy any legal requirement that such communications be in writing.

DKeX shall not be liable for or deemed in default of the Agreements due to any delay or failure by DKeX to comply with any provision of the Agreements due to any cause beyond DKeX's control, including, without limitation, acts of God, acts of nature, acts of

government or other competent regulatory or executive authority, war or national emergency, riots, civil commotion, fire, explosion, flood, lightning, extremely severe weather, epidemic, pandemic, or lock-outs, strikes, other industrial disputes, or interruptions of communications or data processing services.

Accessing or using the Website and/or Content from your wireless device may cause you to incur data or other charges from your wireless carrier, and you are solely responsible for such charges.