

## NASDAQ OMX U.S. Services Agreement

THIS AGREEMENT (“**Agreement**”), is made by and between The NASDAQ OMX Group, Inc., a Delaware Corporation whose principal offices are located at One Liberty Plaza, 165 Broadway, New York, NY 10006, \_\_\_\_\_ (“**Subscriber**”), a \_\_\_\_\_ corporation whose principal offices are located at \_\_\_\_\_, and each of the subsidiaries of The NASDAQ OMX Group, Inc. that provides any portion of the Service (as defined below) to Subscriber hereunder. Such subsidiaries may include, but are not limited to, The NASDAQ Stock Market LLC; The NASDAQ Options Market LLC; NASDAQ OMX BX, Inc. (formerly Boston Stock Exchange, Inc.); BSX Group LLC; NASDAQ OMX PHLX LLC (formerly Philadelphia Stock Exchange, Inc.); NASDAQ OMX Futures Exchange, Inc.; The FINRA/NASDAQ Trade Reporting Facility LLC; and Nasdaq Technology Services, LLC and each of their respective successors and assigns.

The Agreement is binding when executed by Subscriber provided that Subscriber executes the Agreement in accordance with Section 23.A (“**Effective Date**”). The NASDAQ OMX Group, Inc. and each of the subsidiaries of The NASDAQ OMX Group, Inc. that provide any portion of the Service (as defined below) to Subscriber hereunder are collectively referred to herein as “**NASDAQ OMX**”. NASDAQ OMX and Subscriber are each individually a “**Party**” and collectively the “**Parties**”.

WHEREAS, NASDAQ OMX has developed the NASDAQ OMX System (“**System**”) which enables eligible individuals or entities to receive the Service, as further defined in Section 1.A herein, relating to: (i) eligible securities or other financial instruments, U.S. exchanges, markets, products, vehicles, indicators, or devices; (ii) persons regulated by, or to activities of, NASDAQ OMX; (iii) information, data, and services offered by NASDAQ OMX from other sources; or (iv) other information and data from NASDAQ OMX; and

WHEREAS, Subscriber, representing that it is eligible to do so, is desirous of gaining access to the Service.

NOW THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained, the Parties, intending to be legally bound, agree as follows:

### **Section 1. Agreement to Provide Products and Services; Compliance with NASDAQ OMX Requirements; Subscriber Warranty.**

- A. NASDAQ OMX agrees to provide to Subscriber, on the terms and conditions set forth herein, such information, data, access, capabilities, execution services, functions, features, software, or equipment that are related to the System (collectively, the “**Service**”); Service may also include as applicable, the performance of the Service and any deliverables or items delivered under this

Agreement) as described in this Agreement or in the NASDAQ OMX Requirements, as hereinafter defined, which Subscriber requests and for which Subscriber is eligible under the NASDAQ OMX Requirements. The terms and conditions of this Agreement shall govern NASDAQ OMX's provision of the Service, and each portion thereof, received by Subscriber. "**NASDAQ OMX Requirements**" shall mean: (i) the rules, regulations, interpretations, decisions, opinions, orders and other requirements of the Securities and Exchange Commission ("**SEC**"); (ii) the applicable rules, regulations, disciplinary decisions, and rule interpretations of self-regulatory organizations; (iii) NASDAQ OMX's operating procedures, specifications, requirements, and other documentation that is regulatory or technical in nature (including, but not limited to, user guides) published on the NASDAQ Trader website located at [www.nasdaqtrader.com](http://www.nasdaqtrader.com) ("**NASDAQ Trader**") or another NASDAQ OMX website accessible by and made known to Subscriber; (iv) all other applicable laws, statutes, rules, regulations, orders, decisions, interpretations, opinions, and other requirements, whether promulgated by the United States or any other applicable jurisdiction (including in the area of intellectual property); and (v) the successors, as they may exist at the time, of the components of the NASDAQ OMX Requirements. Subscriber warrants that it is, will continue to be during the term of this Agreement, and will only use the Service in compliance with this Agreement and the NASDAQ OMX Requirements. NASDAQ OMX warrants that it is, will continue to be during the term of this Agreement, and will only use Subscriber's Data in compliance with this Agreement and the NASDAQ OMX Requirements.

- B. NASDAQ OMX offers the Service through various pricing packages. Subscriber acknowledges that the cost for the Service is subject to change. NASDAQ OMX will provide Subscriber with pricing information and prior notice of any pricing change on NASDAQ Trader or any other successor or designated website. Any changes in pricing of any part of the Service shall be filed with the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "**Act**"). Subscriber agrees to monitor and comply with the current pricing information contained on NASDAQ Trader or other applicable NASDAQ OMX web site. NASDAQ OMX reserves the right to perform a discretionary audit of Subscriber's transactions on an annual basis for the purposes of establishing and verifying pricing eligibility. Notwithstanding the foregoing, NASDAQ OMX may perform an audit for reasonable cause at any time. If, as a result of its audit, NASDAQ OMX determines that Subscriber is not eligible for its then current pricing package, NASDAQ OMX shall have the right to retroactively bill Subscriber for the appropriate pricing package at the monthly rate that was in effect at the time the service was accessed and/or provided. NASDAQ OMX must receive at least thirty (30) business days' prior written notice of all requests that constitute a change in subscription packages where Subscriber is a firm or corporation, and at least seven (7) business days' prior written notice where Subscriber is an individual user.

**Section 2. License to Use; Prohibition on Diverting Service Data.**

- A. NASDAQ OMX grants to Subscriber a non-exclusive, non-assignable, non-transferable, worldwide license to receive and use the Service during the term of this Agreement. Further, NASDAQ OMX grants to Subscriber a non-exclusive, non-assignable, non-transferable, worldwide license to use the information and data received during the term of this Agreement through the Service (“**Service Data**”) even after termination or cancellation of this Agreement (unless this Agreement is terminated by NASDAQ OMX pursuant to Section 6 due to Subscriber’s breach of this Agreement). Subject to Section 2.E below, as between NASDAQ OMX and Subscriber, NASDAQ OMX retains all ownership and other rights associated with Service Data. Subscriber will attribute the appropriate source of the information and data received through the Service as set forth in applicable NASDAQ OMX Requirements. Subscriber acknowledges, based on NASDAQ OMX’s representation, that NASDAQ OMX’s third party information providers have proprietary rights in their respective information and data.
- B. Subscriber may not sell, lease, furnish or otherwise permit or provide access to the Service to any other entity or to any individual that is not Subscriber’s agent, employee or associated person under the Act, provided however, Subscriber may provide access to the Service to third-party customers of Subscriber subject and pursuant to the NASDAQ OMX Requirements. Subscriber shall indemnify NASDAQ OMX for all Claims and Losses resulting from a third-party customer’s receipt or use of the Service through Subscriber. Except as provided under the NASDAQ OMX Requirements, Subscriber acknowledges and represents that the Authorized Devices (defined in Section 3.A) will be located in areas where they may be accessible only by Subscriber, its agents, employees and associated persons (for whom Subscriber agrees to be responsible), and Subscriber agrees to take all reasonable security precautions to prevent unauthorized individuals or entities from gaining access to the Service through Subscriber’s Authorized Devices.
- C. Subscriber may, on a non-continuous basis, furnish limited amounts of the information and data received through the Service to individuals or entities in written advertisements, correspondence, client reports, or other literature; or during voice telephonic conversations not entailing computerized voice, automated information inquiry systems or similar technologies. Subscriber may not present the information and data received through the Service in any unfair, misleading, or discriminatory manner.
- D. NASDAQ OMX prohibits Subscriber from diverting data from the Service, or any NASDAQ OMX website associated with this Service, either internally or externally except as specifically authorized by a NASDAQ OMX Requirement. NASDAQ OMX is not liable to Subscriber for any diverted, repackaged or disseminated data from the Service. NASDAQ OMX reserves the right to audit Subscriber’s usage of data in adherence to the NASDAQ OMX Requirements and limitations specified within this Agreement on an annual basis for the purposes of establishing and verifying that Subscriber has not diverted, repackaged or

disseminated data from the Service. Notwithstanding the foregoing, NASDAQ OMX may perform an audit for reasonable cause at any time. If, as a result of its audit, NASDAQ OMX determines that Subscriber has diverted, repackaged or disseminated data from the Service, NASDAQ OMX shall have the right to disable all unauthorized logons and retroactively bill Subscriber for the appropriate amount that Subscriber should have paid.

- E. As consideration for receiving authorization to use the Service and the benefits associated therewith, Subscriber does hereby grant to NASDAQ OMX a non-exclusive, non-assignable, non-transferable, worldwide, irrevocable license to receive and use information and data that Subscriber or Subscriber's agent enters into the Service and System ("Subscriber's Data") for the following purposes: within Service Data for performing self-regulatory functions; for internal commercial purposes (i.e., purposes that do not include disclosing, publishing, or distributing outside of NASDAQ OMX); and for use within NASDAQ OMX market data products (i.e., products that include disclosure, publication, or distribution to third parties), provided that fees for any such market data product are filed with the SEC in accordance with the requirements of Section 19 of the Act.
- i. For the avoidance of doubt, Subscriber's license to NASDAQ OMX also includes use of Subscriber's Data by NASDAQ OMX for the purpose of providing confidential information to issuers relating to the market in an issuer's own securities.
  - ii. NASDAQ OMX represents and warrants that disclosure, publication, or distribution of Subscriber's Data as part of NASDAQ OMX's data products will only be: (a) if Subscriber's Data is generally made available with the same type of information of other Subscribers who are all identified as the sources of the information; (b) where Subscriber makes use of a Service which identifies Subscribers individually; or (c) in an aggregate manner that does not directly or indirectly identify Subscriber as the source of the information, provided, however, that Subscriber may withdraw Subscriber's Data from non-aggregated distribution under (a) above at any time by providing Notice to NASDAQ OMX pursuant to the terms of Section 20, with NASDAQ OMX providing Subscriber prior notice and a reasonable opportunity to withdraw Subscriber's Data from non-aggregated distribution prior to initial distribution.
  - iii. NASDAQ OMX represents and warrants that Market Data Products that include Subscriber's Data will be made available to Subscriber, Members of applicable NASDAQ OMX U.S. exchanges and others on terms that are fair and reasonable, and that allow redistribution to Subscriber's clients on terms that are not unreasonably discriminatory.
  - iv. Subject to the foregoing license, as between NASDAQ OMX and Subscriber, Subscriber retains all ownership and other rights associated with Subscriber's Data.
  - v. No provision in this agreement shall impair any right, interest, or use of Subscriber's Data granted by operation of SEC Rules or any other rule or law.

**Section 3. Authorized Devices.**

- A. Subscriber may access the System only through one or more systems, which meet the specifications and requirements (including, but not limited to, interface and operational requirements), set forth by NASDAQ OMX (each an “**Authorized Device**”). Approved specifications and requirements are available from NASDAQ OMX upon request and may be modified from time to time by NASDAQ OMX in its sole discretion on at least thirty (30) days’ notice (ninety (90) day notice if other than a routine change) unless: (i) a malfunction in the System or Service necessitates modifications on an accelerated basis; (ii) an emergency situation precludes such advance notice; or (iii) a shorter time period is required pursuant to an order of a court, an arbitrator(s), or a regulatory agency.
- B. Subscriber shall report to NASDAQ OMX, as requested by NASDAQ OMX, the information required to be supplied by Subscriber in NASDAQ OMX’s specifications and requirements. At reasonable times and upon reasonable notice from NASDAQ OMX, Subscriber will grant to NASDAQ OMX or its representatives free access to the Authorized Devices and, at any time, Subscriber will grant to NASDAQ OMX or its representatives free access to the areas where the Service is received and used. Such access shall be for the purposes of: (i) inspection, audit, or testing; (ii) maintenance, repair, or replacement of any NASDAQ OMX-provided equipment or of any NASDAQ OMX provided software; or (iii) maintenance of Authorized Devices pursuant to this Agreement. NASDAQ OMX shall comply with Subscriber’s reasonable security regulations.
- C. When necessary, NASDAQ OMX will grant to Subscriber a non-exclusive, non-assignable, non-transferable license to use certain NASDAQ OMX-specialized software (“**Software**”) with the Authorized Devices during the term of this Agreement.
- D. Subscriber shall designate to NASDAQ OMX in writing, a security contact person (“**Security Administrator**”), or multiple or alternative Security Administrator(s). Each Security Administrator shall be an employee or authorized agent of Subscriber, who shall be responsible for sending requests to procure or remove Services on behalf of Subscriber. Each Security Administrator will also receive notification from NASDAQ OMX of changes made to web accounts. NASDAQ OMX may request at any time an explanation of any Security Administrator’s scope of authority or a clarification of any information about a Security Administrator or object to a Security Administrator for any reason, including administrative burden on NASDAQ OMX, or lack of clarity of the information provided about the authority of a Security Administrator.
- E. Subscriber shall cause each Security Administrator to comply with the NASDAQ OMX Requirements. Each Security Administrator’s responsibilities shall include, without limitation: (i) providing all notices to NASDAQ OMX by faxing NASDAQ OMX Subscriber Services at the fax number set forth in Section 20 herein, or by sending an e-mail from a verifiable Subscriber e-mail account to

subscriberservices@nasdaqomx.com and obtaining a NASDAQ OMX generated receipt for the e-mail (all e-mail receipts to be retained for a period of not less than six months); (ii) notifying NASDAQ OMX within a reasonable period of time but not longer than fifteen (15) days, when an authorized employee, agent or associated person of Subscriber (a “**User**”) is assigned an Authorized Device that allows User to access the Service, has the Authorized Device revoked, or is no longer eligible to receive the Service; and (iii) notify NASDAQ OMX within a reasonable period of time, but not longer than five (5) business days, of any unauthorized access to the Service. Subscriber shall be responsible, under regulation, contract, and tort or otherwise, for all actions or omissions of a Security Administrator (including those that were to have been performed by a Security Administrator, had one been named or available at the time).

- F. Subscriber shall use commercially reasonable efforts to cause each User to comply with the responsibilities set forth in detail in the NASDAQ OMX Requirements, which include, without limitation, the following requirements: (i) Authorized Devices are personal to the User and may not be shared, lent, sold, transferred, or used by others; (ii) User will change passwords, where applicable, and perform other actions that are necessary to prevent compromise of the Authorized Device and to keep the Authorized Device operating correctly (the actions, such as criteria for choosing and changing passwords, will be specified in the NASDAQ OMX Requirements and User agrees to abide by such requirements); (iii) User is liable, under regulation, contract, tort or otherwise, for all actions taken or omitted and all information submitted by User or on User’s behalf from or to the Service or submitted by authorized or unauthorized persons who obtain access to the Service through User, including any actions performed, or information submitted or retrieved, using the designated Authorized Device; and (iv) User will not access any portion of the Service or any portion of the Service that utilizes Authorized Devices after User is no longer eligible for access because of a change in the User’s role or responsibility, the User’s employer, or otherwise does not meet the then current requirements of the Service, or any portion of the Service. The Subscriber shall be responsible, under regulation, contract, tort or otherwise, for all actions or omissions of a User or any other person, authorized or not, who gains access to the Service or a portion of the Service that uses an Authorized Device assigned to a User of Subscriber (including those that were to have been performed by the User, had one been named or available at the time). For avoidance of doubt, nothing in this Section 3.F shall be construed to limit the Subscriber’s regulatory obligations with respect to supervision of Users.
- G. Subscriber shall not reverse engineer, decode, decompile, attempt to tamper with or evade, or discover the method of operations or defeat any Authorized Device. If applicable law authorizes Subscriber to perform certain types of reverse engineering or the like and declares unenforceable contractual restrictions that conflict with that law, then Subscriber may perform only such reverse engineering or the like as is expressly allowed by, and in strict compliance with, such law.

**Section 4. Changes to Service.** Subscriber acknowledges and agrees that nothing in this Agreement constitutes an undertaking by NASDAQ OMX to continue: (a) the Service, the System, or any aspect of either, in the present form or configuration or under the current specifications or requirements or with the current Authorized Devices; or (b) use of the existing communications facilities. NASDAQ OMX, in its sole discretion, may from time to time make additions to, deletions from or modifications to the: (a) Service, the System, or any aspect of either; (b) specifications and requirements; and (c) communications facilities. NASDAQ OMX shall provide sufficient notice to Subscriber of any change to the Service (other than for a non-material change), unless a malfunction in the System or Service necessitates modifications on an accelerated basis or an emergency situation precludes such advance notice or a shorter time period is required pursuant to an order of a court, arbitrator or a regulatory agency, in the following manner: such modification was posted on NASDAQ Trader (or other applicable NASDAQ OMX website) and Subscriber's receipt or use of the Service after any change shall constitute Subscriber's acceptance of the Service, as changed.

**Section 5. Payment; Taxes.**

- A. Subscriber agrees to pay to NASDAQ OMX or NASDAQ OMX's designee the then effective charges as set forth in the NASDAQ OMX Requirements or as provided to Subscriber by NASDAQ OMX, including all applicable deposits, and charges for installation, de-installation, equipment, communications, facilities, interest and late fees and/or penalties (including, but not limited to, charges incurred after termination, cancellation, or rescission). In addition, if Subscriber is required by applicable law to deduct or withhold any such tax, charge or assessment from the amounts due NASDAQ OMX, then such amounts due shall be increased so that the net amount actually received by NASDAQ OMX after the deduction or withholding of any such tax, charge or assessment, will equal one hundred percent (100%) of the charges that are owed. Further, Subscriber shall pay any taxes, charges or assessments (other than taxes imposed on the net income of NASDAQ OMX) by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof, and any penalties or interest relating to the provision of the Service to Subscriber.
- B. Notwithstanding the foregoing, Subscriber shall not be responsible for the penalty or interest that is imposed on NASDAQ OMX as a result of NASDAQ OMX's failure to pay any taxes, charges or assessments in a timely manner.
- C. Payments for the Service, monthly subscription fees and other charges, are due thirty (30) calendar days from the date of NASDAQ OMX's invoice. Payment shall be made in immediately available United States funds by a check drawn against a chartered United States financial institution or any other institution acceptable to NASDAQ OMX or by electronic funds transfer to an institution of NASDAQ OMX's choosing. All delinquent accounts shall accrue interest at the rate of one percent (1%) per month, Updated February 20, 2013

**Section 6. Term and Termination.** The original term of this Agreement shall commence on the Effective Date and, unless this Agreement is otherwise terminated, the term shall continue until a Party elects to terminate this Agreement by providing the other Party with at least thirty (30) days' prior written notice of its intention to terminate. Upon termination of this Agreement, Subscriber shall cease any and all use of the Service.

Notwithstanding the foregoing, this Agreement may also be terminated by:

- A. Either Party in the event of a material breach of an obligation, upon not less than fifteen (15) days' prior written notice to the breaching Party, unless, if the material breach is capable of being cured, the material breach is cured within the notice period;
- B. NASDAQ OMX, immediately, in the event that the Subscriber becomes insolvent; or the Subscriber makes an assignment for the benefit of creditors; or the Subscriber does not pay its debts as they become due or admits, in writing, its inability to pay its debts when due; or the Subscriber files or has filed against it any petition under any provision of the Bankruptcy Act or an application for a receiver, trustee, or custodian is made by anyone or Subscriber becomes the subject of any proceedings of bankruptcy, insolvency, reorganization, dissolution, receivership, liquidation or arrangement, adjustment, or composition with creditors;
- C. NASDAQ OMX, immediately, in the event that the Subscriber is not permitted to receive or NASDAQ OMX is prevented from disseminating the Service, or any part thereof; or any representation, warranty or certification made by Subscriber in this Agreement or in any other document furnished by Subscriber is, as of the time made or furnished, false or misleading; or that NASDAQ OMX, in its sole discretion, determines that any material failure on the part of the Subscriber to comply with this Agreement has or is likely to have an adverse impact on the operation or performance of the System or Service or on a market;
- D. NASDAQ OMX, upon not less than fifteen (15) days' prior written notice, in the event that any representation, warranty or certification made by Subscriber in this Agreement or in any other document furnished by Subscriber becomes untrue or inaccurate and is not made true or accurate within the notice period; or
- E. NASDAQ OMX, upon not less than thirty (30) days' prior written notice, should it determine that it will cease providing the same class of Service to all other eligible individuals or entities that were receiving the same class of Service as Subscriber.
- F. NASDAQ OMX, immediately, in the event that Subscriber has materially violated or is about to materially violate any applicable law, rule or regulation in connection with its use of the System.

The right of termination set forth herein is in addition to any other remedy at law or in equity that is available to one Party with respect to a breach by the other.



**Section 7. Integrity of Service.** Subscriber agrees not to format, display, or alter the information or data received through and from the Service in violation of the NASDAQ OMX Requirements; to affect materially the integrity of the information or data received through and from the Service; or to render the information or data received through the Service inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. Subscriber warrants that it will not interfere with or adversely affect any NASDAQ OMX-provided equipment or software, or any of the component parts or processes of the Service or the System, or any use thereof by any other authorized individuals or entities or the operation of the Service or the System.

**Section 8. Requirements of Self-Regulatory Organizations; Securities Processor; Actions To Be Taken In Fulfillment of Statutory Obligations.**

- A. Subscriber acknowledges: (i) that the Financial Industry Regulatory Authority, Inc. (“**FINRA**”) is registered with the SEC as a national securities association pursuant to Section 15A of the Act; (ii) that certain subsidiaries of The NASDAQ OMX Group, Inc. (the “NASDAQ OMX U.S. Exchanges”) are registered with the SEC as national securities exchanges pursuant to Section 6 of the Act, (iii) that FINRA and the NASDAQ OMX U.S. Exchanges have a statutory obligation to protect investors and the public interest, and to ensure that quotation information supplied to investors and the public is fair and informative, and not discriminatory, fictitious or misleading; (iii) that Section 19(g)(1) of the Act mandates that FINRA and the NASDAQ OMX U.S. Exchanges comply with the NASDAQ OMX Requirements and that the NASDAQ OMX U.S. Exchanges have jurisdiction over their respective members to enforce compliance with the NASDAQ OMX Requirements; (iv) that FINRA has jurisdiction over its members to enforce compliance with certain of the NASDAQ OMX Requirements; and (v) that NASDAQ OMX is registered with the SEC as a registered securities information processor pursuant to Section 11A of the Act and is obligated to offer terms that are not unreasonably discriminatory between Subscribers, subject to applicable NASDAQ OMX Requirements.
- B. Subscriber agrees that NASDAQ OMX (including the NASDAQ OMX U.S. Exchanges), when required to do so in fulfillment of statutory obligations, may temporarily or permanently unilaterally condition, modify or terminate the right of any or all individuals or entities to receive or use the Service. NASDAQ OMX shall undertake reasonable efforts to notify Subscriber of any such condition, modification or termination, and Subscriber shall promptly comply with any such notice within such period of time as may be determined in good faith by NASDAQ OMX to be necessary, consistent with its statutory obligations. Any individual or entity that receives such a notice shall have available to it such procedural protections as are provided to it by the Act and the applicable rules thereunder.

**Section 9. Security; Confidentiality.**

- A. Subscriber shall comply with all reasonable security specifications or requirements of NASDAQ OMX in order to prevent the Authorized Devices and Service from being improperly used or accessed or the information and data from being improperly taken from any of Subscriber's place(s) of business. NASDAQ OMX shall give Subscriber prior notice of any such specifications or requirements. For the purpose of determining compliance with this Agreement, at reasonable times and upon reasonable notice, NASDAQ OMX and its representatives shall have access to the places where the Service is received and used, where the Authorized Devices are placed, and the right to observe the use made of the Service and the Authorized Devices, and to examine and inspect all instruments and apparatus, including Authorized Devices, used in connection therewith, subject to Subscriber's reasonable security regulations.
- B. Each party shall install and maintain at all times during the term of this Agreement a corporate "firewall" protecting its computer network in accordance with commercially reasonable specifications and standards. NASDAQ OMX shall not include in the System or Service any computer code designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of Subscriber's computer system, or any other associated software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms"), or that would disable such system or impair in any way its operation based on the elapsing of a period of time, advancement to a particular date or other numeral (sometimes referred to as "time bombs", "time locks", or "drop dead" devices) or, or any other similar harmful, malicious or hidden programs, procedures, routines or mechanisms which would cause such programs to cease functioning, or provide or allow unauthorized access to the Subscriber's system, or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations. In addition, NASDAQ OMX shall implement a commercially reasonable method to intercept and block or delete any such viruses, worms, time bombs, time locks, drop dead devices or other malicious or harmful programs, procedures, routines or mechanisms, and carry out on a regular basis, no less frequently than monthly, and more frequently as reasonably required, a commercially reasonable method to scan its computer system and eliminate from it any such malicious or harmful programs, procedures, routines or mechanisms.
- C. NASDAQ OMX shall keep confidential the information related to the Service provided by Subscriber pursuant to this Agreement, as well as any findings arising from any NASDAQ OMX audit of Subscriber's transactions that may be conducted on a regular basis for the purposes of establishing and verifying Subscriber's eligibility.
- D. NASDAQ OMX and Subscriber each acknowledge that, in the course of performance of this Agreement, each may obtain the other Party's confidential data, information or techniques. (Such confidential data, information or techniques along with information related to the Authorized Devices and the Subscriber information identified in Section 9.A above shall collectively be referred to herein as

(“**Confidential Information**”). All such Confidential Information shall be deemed confidential upon disclosure to the other Party and any related oral information received from NASDAQ OMX shall be deemed confidential upon disclosure to the Subscriber. Each Party shall use the Confidential Information of the other Party solely for use consistent with the purposes of this Agreement; shall hold such Confidential Information in confidence; and shall not use, disclose, copy, or publish any such Confidential Information without the prior written approval of the other Party.

- E. Notwithstanding the foregoing, NASDAQ OMX or Subscriber may disclose Confidential Information:(i) to the extent requested by a court, FINRA or a government agency with regulatory jurisdiction over NASDAQ OMX or Subscriber; (ii) to their respective employees, directors, and other agents solely for use consistent with the purposes of this Agreement; or (iii) in the case of NASDAQ OMX, in the course of fulfilling regulatory responsibilities, including responsibilities over members and associated persons under the Act. The duties in this section do not apply to data, information or techniques that are: (i) lawfully within a Party’s possession prior to the date of this Agreement and not under a duty of non-disclosure; (ii) voluntarily disclosed to a Party by a third-party so long as the receiving Party does not know that the third-party has breached any obligation not to reveal such data, information or techniques; (iii) developed by a Party independently of the disclosure; or (iv) generally known or revealed to the public. Further, nothing shall prevent NASDAQ OMX from freely disclosing the audit findings to the extent that (i) the findings are used in the aggregate with other information and such aggregation does not specifically identify Subscriber; and (ii) NASDAQ OMX needs to disclose the findings in order to enforce its rights under this Agreement. The obligation of non-disclosure shall survive indefinitely.
- F. Neither Party shall make copies of Confidential Information except for those copies required for use by authorized employees, agents, partners or associated persons. Each copy, including its storage media, shall be marked CONFIDENTIAL, and include all notices, which appear on the original. Each party shall implement and maintain an appropriate security program including appropriate physical, electronic and procedural safeguards, to: (i) provide for the security and confidentiality of Confidential Information; (ii) protect against any threats or hazards to the security or integrity of Confidential Information; and (iii) prevent unauthorized access to or use of Confidential Information. Each party shall promptly notify the other party of: (i) any disclosure, access to or use of its Confidential Information in breach of this Agreement; and (ii) any unauthorized intrusion into systems containing the other party’s Confidential Information. Each Party agrees that all Confidential Information, including copies thereof, shall be returned to the other Party or destroyed within ten (10) days of the date of termination of this Agreement. Notes and other documents referencing or relating to Confidential Information may be made and kept by a receiving Party, but shall be governed by this Agreement until they are destroyed. All intellectual property rights associated with the Confidential Information, including without limitation, patent, trademark, copyright and trade secrets, and moral rights shall remain the disclosing Party’s intellectual property rights.

- G. Each Party acknowledges that the other Party, because of the nature of the Confidential Information, would suffer irreparable harm in the event of a material breach of the provisions of this section of this Agreement in that monetary damages would be inadequate to compensate the Party for such a breach, and that in the event of any material breach or threatened material breach by of the provisions of this section, the disclosing Party shall be entitled, in addition to such other legal or equitable remedies which might be available, to injunctive relief in any court of competent jurisdiction against the threatened material breach or continuation of any such material breach without showing or proving any actual damages sustained. If the disclosing Party prevails in any action brought to enjoin a material breach or threatened breach of this provision, it shall be entitled to reasonable attorneys' fees and costs in connection with such legal proceeding.

**Section 10. NASDAQ OMX Warranties; Disclaimers of Warranties.**

- A. NASDAQ OMX WILL ENDEAVOR TO OFFER THE SERVICE AS PROMPTLY AND AS ACCURATELY AS IS REASONABLY PRACTICABLE. IN THE EVENT THAT THE SERVICE IS NOT AVAILABLE AS A RESULT OF A FAILURE BY NASDAQ OMX TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, NASDAQ OMX WILL ENDEAVOR, GIVING DUE REGARD FOR THE COST, TIME, AND EFFECT ON OTHER USERS, TO CORRECT ANY SUCH FAILURE. IN THE EVENT THAT THE SERVICE IS NOT AVAILABLE, IS DELAYED, IS INTERRUPTED, IS INCOMPLETE, IS NOT ACCURATE OR IS OTHERWISE MATERIALLY AFFECTED FOR A CONTINUOUS PERIOD OF FOUR (4) HOURS OR MORE DURING THE TIME THAT NASDAQ OMX REGULARLY TRANSMITS THE SERVICE DUE TO THE FAULT OF NASDAQ OMX (EXCEPT FOR A REASON PERMITTED IN THIS AGREEMENT), SUBSCRIBER'S OR ANY OTHER INDIVIDUAL'S OR ENTITY'S EXCLUSIVE REMEDY AGAINST NASDAQ OMX, IN ADDITION TO (1) ANY REMEDIES THAT MAY BE AVAILABLE PURSUANT TO THE NASDAQ RULE CURRENTLY NUMBERED 4626 (AS SUCH RULE MAY BE AMENDED OR RE-NUMBERED FROM TIME TO TIME) OR (2) ANY OTHER APPLICABLE EXCHANGE RULE OF A NASDAQ OMX U.S. EXCHANGE, SHALL BE EITHER A PRORATED MONTH'S CREDIT OR A PRORATED MONTH'S REFUND OF ANY MONIES DUE TO NASDAQ OMX FROM SUBSCRIBER FOR THE SERVICE FOR THE PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL BE REQUESTED BY WRITTEN NOTICE TO NASDAQ OMX WITH ALL PERTINENT DETAILS INCLUDED. IN THE EVENT THAT THE SERVICE IS NOT AVAILABLE, IS DELAYED, IS INTERRUPTED, IS INCOMPLETE, IS NOT ACURATE OR IS OTHERWISE MATERIALLY AFFECTED FOR A CONTINUOUS PERIOD OF LESS THAN FOUR (4) HOURS, THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 11 HEREIN SHALL APPLY. THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, ACCURACY, FREEDOM

FROM INTERRUPTION, NONINFRINGEMENT, ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PURPOSE), BEYOND THE WARRANTIES STATED IN THIS SECTION.

- B. SUBSCRIBER ACKNOWLEDGES THAT NASDAQ OMX MAY PROVIDE SUBSCRIBER ACCESS TO CERTAIN THIRD PARTY SOFTWARE TO ASSIST SUBSCRIBER IN RECEIVING THE SERVICE OR ANY DATA. SUCH THIRD PARTY SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. SUBSCRIBER AGREES THAT NASDAQ OMX SHALL NOT BE LIABLE FOR ANY ERRORS OR DEFECTS IN ANY THIRD PARTY SOFTWARE (INCLUDING INFRINGEMENT BY THE SOFTWARE OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS). SUBSCRIBER'S SOLE REMEDY AGAINST NASDAQ OMX FOR ANY ERRORS OR DEFECTS IN ANY THIRD PARTY SOFTWARE (INCLUDING ANY INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS) SHALL BE TO CEASE USING SUCH SOFTWARE AND/OR RETURN THE SOFTWARE TO NASDAQ OMX.
- C. NASDAQ OMX ACKNOWLEDGES THAT SUBSCRIBER'S DATA IS PROVIDED "AS IS" WITH NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, ACCURACY, FREEDOM FROM INTERRUPTION, NONINFRINGEMENT, ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PURPOSE), BEYOND THE WARRANTIES STATED IN THIS SECTION.
- D. NASDAQ OMX SHALL INCLUDE A DISCLAIMER OF WARRANTY FOR SUBSCRIBER'S DATA TO THE SAME EXTENT AND IN THE SAME LOCATIONS AS IT DOES FOR NASDAQ OMX DATA.

**Section 11. Limitation of Liability.**

- A. EXCEPT AS MAY: (i) OTHERWISE BE SET FORTH HEREIN; (ii) OTHERWISE BE SET FORTH IN: (a) THE NASDAQ RULE CURRENTLY NUMBERED 4626 (AS SUCH RULE MAY BE AMENDED OR RE-NUMBERED FROM TIME TO TIME) OR (b) ANY OTHER APPLICABLE EXCHANGE RULE OF A NASDAQ OMX U.S. EXCHANGE; (iii) ARISE FROM NASDAQ OMX'S INDEMNIFICATION OBLIGATIONS; OR (iv) ARISE AS A RESULT OF NASDAQ OMX'S WILLFUL TORTIOUS MISCONDUCT OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS, NASDAQ OMX SHALL NOT BE LIABLE TO SUBSCRIBER OR TO ANY OTHER INDIVIDUAL OR ENTITY FOR TRADING LOSSES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR FOR INCREASED EXPENSES OF OPERATION, OR FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL,

OR INCIDENTAL LOSS OR DAMAGE OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF NASDAQ OMX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- B. EXCEPT AS MAY (i) OTHERWISE BE SET FORTH HEREIN; (ii) ARISE FROM SUBSCRIBER'S INDEMNIFICATION OBLIGATIONS; OR (iii) ARISE AS A RESULT OF SUBSCRIBER'S WILLFUL TORTIOUS MISCONDUCT OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS, SUBSCRIBER SHALL NOT BE LIABLE TO NASDAQ OMX OR TO ANY OTHER INDIVIDUAL OR ENTITY FOR TRADING LOSSES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR FOR INCREASED EXPENSES OF OPERATION, OR FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF NASDAQ OMX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- C. SUBSCRIBER AND NASDAQ OMX UNDERSTAND AND AGREE THAT THE PRICING FOR THE SERVICE REASONABLY REFLECTS THE ALLOCATION OF RISK AND LIMITATION OF LIABILITY SET FORTH IN THIS SECTION.
- D. NASDAQ OMX SHALL NOT BE LIABLE TO SUBSCRIBER OR TO ANY OTHER INDIVIDUAL OR ENTITY FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION FROM NASDAQ OMX'S THIRD PARTY INFORMATION AND SOFTWARE PROVIDERS.
- E. SUBSCRIBER SHALL NOT BE LIABLE TO NASDAQ OMX OR TO ANY OTHER INDIVIDUAL OR ENTITY FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION FROM SUBSCRIBER'S THIRD PARTY INFORMATION AND SOFTWARE PROVIDERS.

**Section 12. Indemnification.**

- A. Subscriber shall be liable to, indemnify against, and hold NASDAQ OMX, its employees, directors, and other agents harmless from, any and all Claims or Losses (as those terms are defined in subsection (F) herein) imposed on, incurred by or asserted against NASDAQ OMX, its employees, directors, and other agents to the extent that the Claims and Losses result from acts or omissions of the Subscriber, its employees, directors, agents or associated persons, or from the receipt or use of the Service (including representations about the Service) by Subscriber, its employees, directors, agents or associated persons, unless the Claims or Losses are directly attributable to NASDAQ OMX, its employees, directors, or other agents' gross negligence or willful misconduct. Subscriber's obligation to defend and indemnify under this subsection shall be conditioned on the following: (i) NASDAQ OMX shall promptly notify Subscriber in writing of the claim, action or allegation (but, in any event, in a time frame that does not prejudice the rights of Subscriber or NASDAQ OMX); (ii) NASDAQ OMX shall cooperate fully with Subscriber in the

defense thereof and Subscriber shall be liable to NASDAQ OMX for NASDAQ OMX's reasonable expenses (excluding reimbursement for the time value of NASDAQ OMX's employees, directors, and other agents in providing such cooperation); and (iii) Subscriber shall have sole control of the defense and all related settlement negotiations, but, upon NASDAQ OMX's request, shall apprise NASDAQ OMX of the status of any proceedings or negotiations. NASDAQ OMX's duty of cooperation in litigation shall not be deemed to be a waiver of NASDAQ OMX's attorney-client, attorney work product, or other legal privilege.

- B. NASDAQ OMX shall be liable to, indemnify against, and hold Subscriber, its employees, directors, and other agents harmless from, any and all Claims or Losses (as those terms are defined in subsection (F) herein) imposed on, incurred by or asserted against Subscriber, its employees, directors, and other agents to the extent that the Claims and Losses result: (i) from acts or omissions of NASDAQ OMX, its employees, directors, agents or associated persons; or from the receipt or use of Subscriber's Data (including representations about Subscriber's Data) by NASDAQ OMX, its employees, directors, or agents, or (ii) as a result of any alleged infringement or misappropriation by the System or the Service of any third parties' intellectual property rights, unless the Claims or Losses are directly attributable to Subscriber, its employees, directors, or other agents' gross negligence or willful misconduct. NASDAQ OMX's obligation to defend and indemnify under this subsection shall be conditioned on the following: (i) Subscriber shall promptly notify NASDAQ OMX in writing of the claim, action or allegation (but, in any event, in a time frame that does not prejudice the rights of Subscriber or NASDAQ OMX); (ii) Subscriber shall cooperate fully with NASDAQ OMX in the defense thereof and NASDAQ OMX shall be liable to Subscriber for Subscriber's reasonable expenses (excluding reimbursement for the time value of Subscriber's employees, directors, and other agents in providing such cooperation); and (iii) NASDAQ OMX shall have sole control of the defense and all related settlement negotiations, but, upon Subscriber's request, shall apprise Subscriber of the status of any proceedings or negotiations.
- C. Subscriber's duty of cooperation in litigation shall not be deemed to be a waiver of Subscriber's attorney-client, attorney work product, or other legal privilege.
- D. Notwithstanding anything to the contrary in this Agreement, NASDAQ OMX shall NOT have the obligation to defend, indemnify and hold Subscriber, its employees, directors, agents or associated persons harmless for any and all Claims and Losses imposed on, incurred by or asserted against Subscriber, its employees, directors, other agents and affiliates as a result of any allegation of infringement or misappropriation if the System and/or Service has not been used in accordance with this Agreement or to the extent it is based on use of a superseded version of the System and/or Service if such infringement or misappropriation would have been avoided by use of the current version of the System and/or Service or if the infringement or misappropriation claim, action, or allegation is the result of the combination, operation, or use of the System and/or Service with hardware, software or materials not furnished by NASDAQ OMX if such infringement or misappropriation would have been avoided by the use of the System and/or Service

without such hardware, software or materials.

- E. In the event of a claim, action or allegation of infringement or misappropriation or if, in NASDAQ OMX's opinion, such a claim, action or allegation is likely to occur or if the use of the System and/or Service is enjoined because of infringement or misappropriation, NASDAQ OMX may, at its sole option and expense, procure for Subscriber the right to continue using the System and/or Service, replace or modify the System and/or Service to be non-infringing, or require the return of the Licensed Programs.
- F. This Section 12 sets forth the entire liability and the exclusive remedy of NASDAQ OMX and Subscriber, their employees, directors, agents, and associated persons for the infringement or use of the System or Service.
- G. Unless otherwise stated herein, "**Claims or Losses**" means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, and reasonable costs and expenses of whatever nature, whether incurred by or issued against an indemnified Party, including, without limitation: (i) indirect, special, punitive, consequential, or incidental loss or damage (including, but not limited to, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, or other indirect loss or damage); and (ii) reasonable administrative costs, litigation costs, and auditors' and attorneys' fees, both in-house and outside counsel, and related disbursements.

**Section 13.** **No Government Rights.** This Agreement neither grants, nor is intended to grant, directly or through Subscriber, any governmental entity or agency any rights in technical data (including, but not limited to, software) as set forth in FAR Subpart 27.4 and its successors thereof. Any such rights of a governmental entity or agency in technical data (including, but not limited to, software) shall be determined by a separate written agreement with NASDAQ OMX.

**Section 14.** **Corporate Names; Proprietary Rights.** Subscriber and NASDAQ OMX each acknowledge and agree that the NASDAQ OMX and Subscriber each have proprietary rights in their respective trade names, trademarks, servicemarks, logos, copyrights and patents, registered or unregistered, and Subscriber and NASDAQ OMX each agree they shall not use the other Party's trade names, trademarks, servicemarks, logos, copyrights or patents, registered or unregistered, in any way that would infringe upon the rights of the other Party. Further, this Agreement shall not grant either Party the right to use the other Party's trade names, trademarks, servicemarks, logos, copyrights or patents, registered or unregistered, in any marketing, promotional or other materials without the prior review and written consent of the other Party.

**Section 15.** **Force Majeure.** Notwithstanding any other term or provision of this Agreement, neither NASDAQ OMX (including, for purposes of this Section, its third party information and software providers) nor Subscriber shall be obligated to perform or observe its obligations undertaken in this Agreement (except for obligations to make payments hereunder and regulatory obligations) if prevented or hindered from doing so by any circumstances found to be beyond its control.



**Section 16. Subsequent Parties; Limited Relationship.** This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective permitted successors or assigns. Neither Party shall assign this Agreement (including by operation of law) without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, NASDAQ OMX may, assign this Agreement, or any part of it, to any affiliated entity without the consent of the other Party. Nothing in this Agreement, express or implied, is intended to or shall: (a) confer on any individual or entity other than the Parties hereto, or their respective permitted successors or assigns, any rights to remedies under or by reason of this Agreement; (b) institute the Parties hereto partners or participants in a joint venture; or (c) appoint one Party the agent of the other.

**Section 17. Entire Agreement.** This “Agreement” consists of this NASDAQ OMX U.S. Services Agreement (“NSA”) together with any attachments, addenda, cover sheets, amendments, and materials referenced herein (collectively, the “Attachments”), including, but not limited to, the NASDAQ OMX Requirements, as any of these items may be added to, deleted from, or amended from time to time. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, communications, writings, and understandings. In the event of any conflict between the provisions of the NSA, the Attachments, or the NASDAQ OMX Requirements, the order of preference shall be the NASDAQ OMX Requirements, the Attachments, and the NSA. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, if and where applicable. The use of the singular in this Agreement shall include the plural, and vice versa. Section headings are included for convenience only and are not to be used to construe or interpret this Agreement. All references contained herein to sections or subsections shall refer to the sections or subsections of this Agreement, unless specific reference is made to the sections or subsections of another document.

**Section 18. Arbitration.**

- A. Except as may be provided in the NASDAQ OMX Requirements, all claims, disputes, controversies, and other matters in question between the Parties to this Agreement and the Parties’ employees, directors, agents and associated persons arising out of, or relating to this Agreement, or to the breach hereof, shall be settled by final binding arbitration in accordance with this Agreement and the following procedure or such other procedures as may be mutually agreed upon by the Parties.
- B. Except as otherwise provided herein or by agreement of the Parties, any arbitration proceeding shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association or in accordance with such other rules and procedures as are agreed to by the Parties. The number of arbitrators to preside over an arbitration shall be as follows: (a) where the amount being sought is \$25,000.00 or less, one (1) arbitrator shall preside; (b) where the amount being sought is more than \$25,000.00, but less than \$500,000.00 or where no amount is sought, three (3) arbitrators shall preside; and (c) where the amount being sought is more than \$500,000.00, five (5) arbitrators shall preside.

- C. The arbitrators shall render a written award, if any, for each claim. The Parties agree that the arbitration proceedings and any aspect thereof, including, but not limited to, the contents of any awards, shall be considered Confidential Information.
- D. The arbitration proceeding shall be held in the City of New York, unless otherwise agreed by the Parties. The decision rendered through arbitration shall be final and binding upon the Parties hereto and judgment may be entered in accordance with applicable law in any court having jurisdiction thereof.
- E. Any challenge to an arbitration decision or proceeding (other than entry or enforcement of an arbitration award/judgment) shall be brought solely in the federal or local court(s) of and for the State of New York.
- F. The foregoing procedures shall not preclude either Party from: (i) petitioning a regulatory body regarding a matter in question over which the regulatory body has administrative jurisdiction; or (ii) pursuing injunctions before any administrative or judicial forum provided that all monetary and other relief is submitted for arbitration.
- G. The Parties shall not submit claims for punitive damages, and do hereby waive any right to the same and the arbitrators shall not be authorized to award punitive damages.
- H. A Party's demand for arbitration, which shall be effective upon receipt, shall not be made after the date when institution of legal or equitable proceedings based upon such claim, dispute, controversy or other matter in question would be barred by the applicable statute of limitations or laches. In no event shall such claim dispute, controversy or other matter in question be made later than one year after the claim, dispute, controversy or other matter in question has arisen (unless the claim, dispute, controversy or other matter in question is related to the collection of past due payments).

**Section 19. Waiver of Claims.** Except as may be set forth in the NASDAQ OMX Requirements, their Parties and the Parties' employees, directors, agents and associated persons expressly waive any claims, disputes, controversies, and other matters not brought within the period set forth herein.

**Section 20. Notice.** All notices, invoices, and other communications required to be given under this Agreement to Subscriber shall be: (i) posted on a specially designated location on NASDAQ Trader, and, at Subscriber's election, transmitted through email notice to the email address most recently designated by Subscriber; or (ii) given in writing and sent to Subscriber at the office address most recently designated by Subscriber. All notice and other communications required to be give under this Agreement to NASDAQ OMX shall be sent to NASDAQ OMX, U.S. Exchange Subscriber Services, One Liberty Plaza, 165 Broadway, New York, NY 10006, and addressed to the attention of the Agreements Administrator, with, in the event of notices of dispute, default or objection, a required copy to:

The NASDAQ OMX Group, Inc.  
Office of the General Counsel Attn: Contracts Group  
9600 Blackwell Road, Rockville, MD 20850

Written notice shall be deemed to have been duly given upon actual receipt by the Parties, or upon constructive receipt if sent by certified mail, return receipt requested (as of the date of signature or of first refusal of the return receipt), or by any other delivery method which obtains a signed delivery receipt.

**Section 21. Governing Law.** This Agreement shall be deemed to have been made in the United States, State of New York, and shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of New York, without reference to principles of conflicts of laws thereof. For all matters not subject to the arbitration provisions set forth in Section 18 above, Subscriber hereby consents to submit to the jurisdiction of the courts in and of the State of New York in connection with any action or proceeding instituted relating to this Agreement, and all proceedings shall be conducted in New York City.

**Section 22. Authorization.** This Agreement shall not be binding upon NASDAQ OMX unless executed by an officer of NASDAQ OMX. Subscriber, NASDAQ OMX, and the individuals executing this Agreement for the respective Parties represent that such individuals are duly authorized by all necessary and appropriate corporate or other action to execute this Agreement on behalf of NASDAQ OMX or Subscriber.

**Section 23. Amendment; Waiver; Severability.**

- A. With the exception of changes to the NASDAQ OMX Requirements under Section 1A, NASDAQ OMX may alter any term or condition of this Agreement only pursuant to the following process. NASDAQ OMX shall provide one hundred and twenty (120) days' notice to Subscriber of any proposed amendment to the Agreement pursuant to Section 20 above. Subscriber may object in writing to the proposed amendment by providing notice to the NASDAQ OMX Office of General Counsel pursuant to Section 20 above. Such notice will state the basis of the objection. NASDAQ OMX will respond to Subscriber's objection in writing within thirty (30) days and will use reasonable efforts thereafter to meet with the objecting Subscriber (in person or by phone) to discuss in good faith any potential resolution. Prior to the effective date of a proposed amendment to the Agreement, Subscriber may request that the SEC or staff of the Division of Trading & Markets authorized to exercise delegated authority on behalf of the SEC review the proposed amendment to determine whether it should be filed as a proposed rule change of a self-regulatory organization under Section 19(b) of the Act. If the SEC or staff of the Division of Trading & Markets Regulation exercising delegated authority on behalf of the SEC determines that the proposed amendment should be filed under Section 19(b) of the Act, the proposed amendment shall not take effect until a filing with respect to the amendment under Section 19(b) of the Act has become effective. Otherwise, any use by Subscriber of the Service after the expiration of the one hundred and twenty (120) day notice period shall be deemed acceptance by Subscriber of the amendment, with the following exception. With respect to the data license set forth in under Section 2.E above, if within the one hundred twenty (120) day notice period the SEC or staff of the Division of Trading & Markets Regulation exercising delegated authority has not reached a determination whether the proposed amendment should be filed under Section 19(b) of

the Act, then the amendment shall not take effect pending such determination.

- B. Subscriber may not alter any terms and conditions of this Agreement, and no modification to this Agreement proposed by Subscriber will be binding, unless in writing and manually signed by an authorized representative of each party.
- C. No failure on the part of NASDAQ OMX or Subscriber to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege under this Agreement.
- D. If any of the provisions of this Agreement, or application thereof to any individual, entity or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to individuals, entities, or circumstances other than those as to which they are held invalid or unenforceable, shall not be affected thereby and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**Section 24. Survival Of Provisions.**

Sections 9, 10, 11, 12, 14, 18, 19, 20, 21, 22, 23, and 24 of this Agreement shall survive any cancellation, termination, or rescission of this Agreement.

**IN WITNESS WHEREOF, NASDAQ OMX and Subscriber have caused this Agreement to be executed by their respective duly authorized officers. If the requested service includes any of NASDAQ OMX’s web products, then at least one Security Administrator (as identified in Section 3.D of this Agreement) must be noted below. Pursuant to Section 6 of this Agreement, the effective date of this Agreement shall be the date Subscriber signs this Agreement.**

\_\_\_\_\_  
 (“Subscriber”)

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

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


Title: \_\_\_\_\_  
 Authorized Officer

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

CRD number (if applicable):

\_\_\_\_\_

The NASDAQ OMX Group, Inc. (“NASDAQ  
 OMX”)

By: 

Name: Stacie Swanstrom

Title: Vice President

NASDAQ Transaction Services  
 Authorized Officer

Pursuant to Section 3.D, please provide the following:

Subscriber's Primary Security Administrator:

Subscriber's Alternate Security Administrator:

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

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

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

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

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

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

Tel No: \_\_\_\_\_

Tel No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Fax No: \_\_\_\_\_

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

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