

# NASDAQ NTS Access Order Form

This NASDAQ NTS Access Order Form, and the provision of all Services ordered pursuant to this NASDAQ NTS Access Order Form, shall be governed by the terms and conditions of the NASDAQ Services Agreement ("Agreement") executed by and between NASDAQ and the Firm set forth below. The terms and conditions of the Agreement are incorporated herein by reference.

*Please fax this completed document to NASDAQ Subscriber Services 203.385.5879*

- Please refer to the Pricing schedule at:  
[www.nasdaqtrader.com/trader/tradingservices/productservices/pricesheet/pricing.stm](http://www.nasdaqtrader.com/trader/tradingservices/productservices/pricesheet/pricing.stm) for fees.
- If you have any questions concerning the order form please contact Subscriber Services at 1.800.777.5606

**Firm Name:** \_\_\_\_\_ **BD #:** \_\_\_\_\_

If you are a new firm, please choose a 4-letter symbol, otherwise enter your existing MPID

**MPID:** \_\_\_\_\_

**Type of Firm:**

(Please check one)

- ATS       Market Maker       Order Entry       Participant  
 Exchange       Service Bureau

**Contact Name:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_  
**Contact E-mail:** \_\_\_\_\_ **Fax #:** \_\_\_\_\_

**Business Contact:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_  
**E-mail:** \_\_\_\_\_

**Trader Contact:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_  
**E-mail:** \_\_\_\_\_

**Technical Contact** \_\_\_\_\_ **Phone #:** \_\_\_\_\_  
**E-mail:** \_\_\_\_\_

**Security Administrator** \_\_\_\_\_ **Phone #:** \_\_\_\_\_  
**E-mail:** \_\_\_\_\_

**Note:** FIX and QIX requests require a minimum of one technical and one business contact.

**Billing Address:**

Street: \_\_\_\_\_ Suite / Room #: \_\_\_\_\_

City / State / Zip: \_\_\_\_\_

**Soft Dollar Arrangements (if applicable):**

This section may not be used for CICI requests.

- Please check here if you have entered into a Soft Dollar arrangement. Soft Dollar arrangements are permitted per site physical location.

Company you have entered into the arrangement with: \_\_\_\_\_

**Address where bills should be sent:**

Street: \_\_\_\_\_ Suite / Room #: \_\_\_\_\_

City / State / Zip: \_\_\_\_\_

**Production**

- 1. **Type of Order:** *(Please check one)*       Add       Remove
- 2. **Access Method:** *(Please check one)*       QIX       NASDAQ FIX       BRUT FIX       CTCI
- New NASDAQ Workstation     WebLink ACT ( $\leq 20$  Trades/day)     WebLink ACES
- WebLink ACT ( $> 20$  Trades/day with Risk Management)     QIX Drop Copy       FIX Drop Copy
- QIX Prop Quote       NWII (REMOVE ONLY)       API (REMOVE ONLY)

3. **Address where the connection(s) is / are or will be used** (if different than billing address above):

Street: \_\_\_\_\_

Suite / Room #: \_\_\_\_\_

City / State / Zip: \_\_\_\_\_

4. **Number of connections:** \_\_\_\_\_

5. **Connection information:**

Please complete an entry for each user. Please provide the user's name and e-mail for each additional connection requested **or** please provide the existing User ID / I112 for each connection to be removed. If additional space is required, please add to the comments section below.

| <u>User Name /User ID</u> | <u>I112</u> | <u>E-mail</u> |
|---------------------------|-------------|---------------|
| _____                     | _____       | _____         |
| _____                     | _____       | _____         |
| _____                     | _____       | _____         |

6. **Order Details**

If you chose either QIX or FIX as your connection option then fill out this section

a. If this is a sponsored relationship, please enter the name of the firm being sponsored.

\_\_\_\_\_

b. These connections will be: *(Please check one)*

- going through an Extranet: Please identify Extranet company \_\_\_\_\_
- going through a Service Bureau: Please identify Service Bureau \_\_\_\_\_
- going through an existing NASDAQ/BRUT line

7. **Session Disconnect / Log-out Order Cancellation**

If you chose FIX as your connection option then fill out this section

Upon disconnect or log-out of any of our FIX sessions, orders for each disconnected or logged-out session will be *(Please check one)*:       Cancelled       Not Cancelled

**NASDAQ Test Facility (NTF)**

1. **Type of Order:** *(Please check one)*

Add     Remove

2. **Access Method:** *(Please check one)*

QIX     NASDAQ FIX     BRUT FIX     CTCI  
 New NASDAQ Workstation  
 NWII (REMOVE ONLY)     API (REMOVE ONLY)

3. **Number of connections:** \_\_\_\_\_

4. **Connection information:**

Please complete an entry for each user. Please provide the user's name and e-mail for each additional connection requested **or** please provide the existing User ID / I1I2 for each connection to be removed. If additional space is required, please add to the comments section below.

| <u>User Name /User ID</u> | <u>I1I2</u> | <u>E-mail</u> |
|---------------------------|-------------|---------------|
| _____                     | _____       | _____         |
| _____                     | _____       | _____         |

5. **Order Details**

If you chose either QIX or FIX as your connection option then fill out this section

a. If this is a sponsored relationship, please enter the name of the firm being sponsored.

\_\_\_\_\_

b. These connections will be: *(Please check one)*

- going through an Extranet: Please identify Extranet company \_\_\_\_\_
- going through an existing NASDAQ/BRUT line
- going through a Service Bureau: Please identify Service Bureau \_\_\_\_\_
- VPN (Internet): Please check if     Windows     Linux     Solaris
- CTCI ISDN
- V90 Modem

**Comments and / or Miscellaneous Requests:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Signature**

A signature is required from an officer or a person registered with CRD unless otherwise specified by an officer or CRD-registered person from your firm. If you would like to designate a specific individual, or individuals, other than an officer or a person registered with CRD, please submit a written request signed by an officer or a CRD-registered person so that we may maintain this request on file.

**Signature:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

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

## Nasdaq Services Agreement

THIS AGREEMENT (“Agreement”), dated as of the date executed by The Nasdaq Stock Market, Inc. (the “**Effective Date**”), is made by and between The Nasdaq Stock Market, Inc., a Delaware Corporation whose principal offices are located at One Liberty Plaza, 165 Broadway, New York, NY 10006, and \_\_\_\_\_ (“**Subscriber**”), a \_\_\_\_\_ corporation whose principal offices are located at \_\_\_\_\_. The Nasdaq Stock Market, Inc and its subsidiaries and affiliates are collectively referred to herein as “**Nasdaq**”. Nasdaq and Subscriber are each individually a “**Party**” and collectively the “**Parties**”.

WHEREAS, Nasdaq has developed the Nasdaq 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, markets, products, vehicles, indicators, or devices; (ii) persons regulated by, or to activities of, Nasdaq; (iii) information, data, and services offered by Nasdaq from other sources; or (iv) other information and data from Nasdaq.

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 Requirements; Subscriber Warranty.**

- A. Nasdaq 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 Requirements, as hereinafter defined, which Subscriber requests and for which Subscriber is eligible under the Nasdaq Requirements. The terms and conditions of this Agreement shall govern Nasdaq’s provision of the Service, and each portion thereof, received by Subscriber whether pursuant to an executed Nasdaq NTS Access Order Form, or otherwise. “**Nasdaq Requirements**” shall mean: (i) the rules, regulations, interpretations, decisions, opinions, orders and other requirements of the Securities and Exchange Commission (“**SEC**”); (ii) the rules and regulations of Nasdaq; (iii) Nasdaq’s decisions, interpretations, operating procedures, specifications, requirements, and other documentation (including, but not limited to, user guides); (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 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 Requirements.
- B. Nasdaq offers the Service through various pricing packages. Subscriber acknowledges that the cost for the Service is subject to change. Nasdaq will provide Subscriber with pricing information and prior notice of any pricing change on the Nasdaq Trader website located at [www.nasdaqtrader.com](http://www.nasdaqtrader.com) (“**Nasdaq Trader**”) or any other successor or designated website. Subscriber agrees to monitor and comply with the current pricing information contained on

Nasdaq Trader. Nasdaq reserves the right to audit Subscriber's transactions on a quarterly basis for the purposes of establishing and verifying pricing eligibility. If, as a result of its audit, Nasdaq determines that Subscriber is not eligible for its then current pricing package, Nasdaq 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 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 grants to Subscriber a non-exclusive, non-assignable, non-transferable license to receive and use the Service during the term of this Agreement. Further, Nasdaq grants to Subscriber a non-exclusive, non-assignable, non-transferable license to use the information and data received during the term of this Agreement through the Service even after termination or cancellation of this Agreement (unless this Agreement is terminated by Nasdaq due to Subscriber's breach of this Agreement), provided, however, that such use and purpose is at all times consistent with the terms of this Agreement or with the then-current Nasdaq Requirements. Subscriber acknowledges and agrees that Nasdaq has proprietary rights in the information and data that originates on, derives from or relates to markets that are regulated or operated by Nasdaq, in the information and data that relates to individuals and entities that are regulated by Nasdaq, and in the information and data that relates to activities that are regulated or operated by Nasdaq. Nasdaq has compilation or other rights in the information and data gathered from other sources. Subscriber will attribute the appropriate source of the information and data received through the Service as appropriate under all the circumstances. Subscriber acknowledges and agrees that Nasdaq's third party information providers have exclusive 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 Securities Exchange Act of 1934 (the "**Act**"), provided however, Subscriber may provide access to the Service to third-party customers of Subscriber subject and pursuant to the Nasdaq Requirements. Subscriber shall indemnify Nasdaq for all Claims and Losses resulting from a third-party customer's receipt or use of the Service. Except as provided under the Nasdaq 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 prohibits Subscriber from diverting data from the Service, or any Nasdaq website

associated with this Service, either internally or externally except as specifically authorized by a Nasdaq Requirement. Nasdaq is not liable to Subscriber for any diverted, repackaged or disseminated data from the Service. Nasdaq reserves the right to audit Subscriber's usage of data in adherence to the Nasdaq Requirements and limitations specified within this Agreement on a quarterly basis for the purposes of establishing and verifying that Subscriber has not diverted, repackaged or disseminated data from the Service. If, as a result of its audit, Nasdaq determines that Subscriber has diverted, repackaged or disseminated data from the Service, Nasdaq 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 deliver, transfer, and convey to Nasdaq all right, title, and interest, including, without limitation, all rights of copyright, in the information and data entered into the Service and System, and acknowledges that Nasdaq may use such information and data for commercial purposes, including, without limitation, Nasdaq's data products and Nasdaq's Market Intelligence Desk. The delivery of such information and data into the Service and System shall be conclusively deemed to effect the transfer of all such right, title, and interest to such information and data to Nasdaq without further action either by Subscriber or Nasdaq. Subscriber shall not, by act or omission, diminish or impair in any manner the acquisition, maintenance, and full enjoyment by Nasdaq, its licensees, transferees and assignees, of the proprietary rights of Nasdaq in the information and data in the Service and System. Notwithstanding the foregoing, nothing herein shall affect Subscriber's intellectual property rights in the information and data inputted by Subscriber outside of the Service and System.

### **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 (each an "**Authorized Device**"). Approved specifications and requirements are available from Nasdaq upon request and may be modified from time to time by Nasdaq in its sole discretion on at least thirty (30) days' notice (ninety (90) days 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, as requested by Nasdaq, the information required to be supplied by Subscriber in Nasdaq's specifications and requirements. At reasonable times and upon reasonable notice from Nasdaq, Subscriber will grant to Nasdaq or its representatives free access to the Authorized Devices and, at any time, Subscriber will grant to Nasdaq 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-provided equipment or of any Nasdaq provided software; or (iii) maintenance of Authorized Devices pursuant to this Agreement and Nasdaq shall comply with Subscriber's reasonable security regulations.
- C. When necessary, Nasdaq will grant to Subscriber a non-exclusive, non-assignable, non-transferable license to use certain Nasdaq-specialized software ("**Software**") with the Authorized Devices during the term of this Agreement.

- D. Subscriber shall designate to Nasdaq in writing, a security contact person (“**Security Administrator**”), or multiple or alternative Security Administrator(s). Nasdaq may request at any time an explanation of such person’s scope of authority or a clarification of any information about the Security Administrator(s), or object to the Security Administrator(s) for any reason, including administrative burden on Nasdaq, or lack of clarity of the information provided about each Security Administrator(s) authority.
- E. Subscriber shall cause each Security Administrator to comply with the Nasdaq Requirements. Each Security Administrator’s responsibilities shall include, without limitation: (i) providing all notices to Nasdaq by faxing Nasdaq 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@nasdaq.com](mailto:subscriberservices@nasdaq.com) and obtaining a Nasdaq 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 within one (1) business day 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) providing only one unique Authorized Device per eligible User. Subscriber shall be responsible, under regulation, contract, 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 cause each User to comply with the responsibilities set forth in detail in the Nasdaq Requirements, but 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 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 a 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).
- 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 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, 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 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. 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 or Nasdaq's designee the then effective charges as set forth in the Nasdaq Requirements or as provided to Subscriber by Nasdaq, 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, then such amounts due shall be increased so that the net amount actually received by Nasdaq 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) 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 as a result of Nasdaq's failure to pay any taxes, charges or assessments in a timely manner, unless Nasdaq's failure was as a result of a good faith disagreement with the taxing authority as to the tax, charge or assessment.
- C. Payment for the Service, monthly subscription fees and other charges, are due thirty (30) calendar days from the date of Nasdaq'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 or by electronic funds transfer to an institution of Nasdaq's choosing. All delinquent accounts shall accrue interest at the rate of one percent (1%) per month, or the highest rate permitted by law, whichever is lower.

**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.

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

- A. Either Party in the event of a breach of an obligation, upon not less than fifteen (15) days' prior written notice to the breaching Party, unless, if the breach is capable of being cured, the breach is cured within the notice period;

- B. Nasdaq, 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, immediately, in the event that the Subscriber is not permitted to receive or Nasdaq 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, in its sole discretion, determines that any 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 the market;
- D. Nasdaq, 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, 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. Upon termination of this Agreement, Subscriber shall cease any and all use of the Service. Subscriber acknowledges and agrees that the exercise by Nasdaq of the remedies set forth herein for failure of Subscriber to pay all charges, taxes, or assessments related to its receipt of the Service shall not be deemed or considered to be, and, to the extent permitted by applicable law, Subscriber waives any right to represent or assert that any such exercise constitutes, an act or omission or any improper denial or limitation of access to any service or facility operated by Nasdaq as contemplated in Section 11A of the Act or any other provision of such Act, or any rule or regulation adopted thereunder. 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.
- F. Nasdaq, immediately, in the event that the Subscriber has violated or is about to violate any applicable law, rule or regulation in connection with its use of the System.

**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 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-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 Organization; Securities Processor; Actions To Be Taken In Fulfillment of Statutory Obligations.**

- A. Subscriber acknowledges: (i) that the National Association of Securities Dealers, Inc. (“**NASD**”) is registered with the SEC as a national securities association pursuant to Section 15A of the Act; (ii) that the NASD and Nasdaq 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 Nasdaq may in the future be registered with the SEC as a national securities exchange pursuant to Section 6 of the Act (“**Exchange Registration**”); (iv) that Section 19(g)(1) of the Act mandates that NASD and Nasdaq comply with the Nasdaq Requirements and that in the event of Exchange Registration, Nasdaq will have jurisdiction over members of the exchange operated by Nasdaq to enforce compliance with the Nasdaq Requirements; (v) that NASD has jurisdiction over its members to enforce compliance with the Nasdaq Requirements; and (vi) that Nasdaq 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 Requirements.
- B. Subscriber agrees that Nasdaq, when required to do so in fulfillment of its 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 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 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 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 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 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. Nasdaq 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 audit of Subscriber’s transactions that may be conducted on a regular basis for the purposes of establishing and verifying Subscriber’s eligibility.
- C. Nasdaq 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 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.

- D. Notwithstanding the foregoing, Nasdaq or Subscriber may disclose Confidential Information: (i) to the extent requested by a court, the NASD or a government agency with regulatory jurisdiction over Nasdaq 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, in the course of fulfilling its 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 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 needs to disclose the findings in order to enforce its rights under this Agreement. The obligation of non-disclosure shall survive for a period of three years from the date of disclosure to the receiving Party.
- E. 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 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.
- F. 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 Warranties; Disclaimers of Warranties.**

- (A) NASDAQ 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 TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, NASDAQ 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 REGULARLY TRANSMITS THE SERVICE DUE TO THE FAULT OF NASDAQ (EXCEPT FOR A REASON PERMITTED IN THIS AGREEMENT), SUBSCRIBER'S OR ANY OTHER INDIVIDUAL'S OR ENTITY'S EXCLUSIVE REMEDY AGAINST NASDAQ SHALL BE, AT NASDAQ'S OPTION IN NASDAQ'S SOLE DISCRETION, EITHER A PRORATED MONTH'S CREDIT OR A PRORATED MONTH'S REFUND OF ANY MONIES DUE TO NASDAQ FROM SUBSCRIBER FOR THE SERVICE FOR THE PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL BE REQUESTED BY WRITTEN NOTICE TO NASDAQ WITH ALL PERTINENT DETAILS INCLUDED. 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 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 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 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.

**Section 11. Limitation of Liability.**

- (A) EXCEPT AS MAY OTHERWISE BE SET FORTH HEREIN AND EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS, NASDAQ 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 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

- (B) NASDAQ SHALL NOT BE LIABLE TO SUBSCRIBER OR TO ANY OTHER INDIVIDUAL OR ENTITY FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE SERVICE THAT LASTS LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE SERVICE OR IF THE SERVICE IS MATERIALLY AFFECTED FOR LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE SERVICE. EXCEPT WHERE NASDAQ IS INDEMNIFYING THE SUBSCRIBER AS SET FORTH HEREIN, IF NASDAQ IS FOR ANY REASON HELD LIABLE TO SUBSCRIBER, OR TO ANY OTHER INDIVIDUAL OR ENTITY, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF NASDAQ WITHIN A SINGLE YEAR OF THE AGREEMENT (FROM THE EFFECTIVE DATE OF THE AGREEMENT) IS LIMITED TO THE GREATER OF: (1) AT NASDAQ'S OPTION, IN NASDAQ'S SOLE DISCRETION, EITHER A PRORATED MONTH'S CREDIT OR A PRORATED MONTH'S REFUND OF ANY MONIES DUE TO NASDAQ FROM SUBSCRIBER FOR THE SERVICE FOR THE PERIOD AT ISSUE; OR (2) \$500.00. THIS SUBSECTION SHALL NOT RELIEVE NASDAQ FROM LIABILITY FOR DAMAGES THAT RESULT FROM ITS OWN WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.**
- (C) SUBSCRIBER AND NASDAQ 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 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'S THIRD PARTY INFORMATION AND SOFTWARE PROVIDERS.**

**Section 12. Indemnification.**

- A. Subscriber shall be liable to, indemnify against, and hold Nasdaq, its employees, directors, and other agents harmless from, any and all Claims or Losses (as those terms are defined in subsection (G) herein) imposed on, incurred by or asserted Nasdaq, 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, 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 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); (ii) Nasdaq shall cooperate fully with Subscriber in the defense thereof and Subscriber shall be liable to Nasdaq for Nasdaq's reasonable expenses (excluding**

- reimbursement for the time value of Nasdaq'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's request, shall apprise Nasdaq of the status of any proceedings or negotiations. Nasdaq's duty of cooperation in litigation shall not be deemed to be a waiver of Nasdaq's attorney-client, attorney work product, or other legal privilege.
- B. Subject to Section 12.D., below, Nasdaq shall defend Subscriber, its employees, directors, agents, and associated persons from any and all Claims and Losses imposed on, incurred by or asserted against Subscriber, its employees, directors, agents and associated persons as a result of any alleged infringement or misappropriation by the System or the Service of any third parties' U.S. intellectual property rights. Nasdaq shall indemnify and hold Subscriber, its employees, directors, agents, and associated persons harmless from any and all such Claims and Losses imposed on, incurred by or asserted against Subscriber, its employees, directors, agents and associated persons up to the amount paid by Subscriber for the Service. Nasdaq's obligation to defend and indemnify under this subsection shall be conditioned on the following: (i) Subscriber shall promptly notify Nasdaq 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); (ii) Subscriber shall cooperate fully with Nasdaq in the defense thereof and Nasdaq shall be liable to Subscriber for Subscriber's reasonable expenses (excluding reimbursement for the time value of Subscriber's employees, directors, agents and associated persons in providing such cooperation); and (iii) Nasdaq 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. 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.
- C. For any and all Claims and Losses imposed on, incurred by or asserted against Subscriber, its employees, directors, agents, and associated persons as a result of any alleged infringement or misappropriation by the System or the Service of any third parties' intellectual property rights other than U.S. intellectual property rights, Subscriber shall notify Nasdaq in writing of the claim, action or allegation at least fifteen (15) business days before a responsive action is needed, so as not to prejudice the rights of Subscriber or Nasdaq, but, in any event, said notification to Nasdaq shall not be given later than fifteen (15) business days after Subscriber receives notification of any alleged non-U.S. infringement or misappropriation
- D. Notwithstanding anything to the contrary in this Agreement, Nasdaq 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 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'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 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 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.

**Section 14. Corporate Names; Proprietary Rights.** Subscriber and Nasdaq each acknowledge and agree that the Nasdaq and Subscriber each have proprietary rights in their respective trade names, trademarks, servicemarks, logos, copyrights and patents, registered or unregistered, and Subscriber and Nasdaq 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 (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 may, assign this Agreement, or any part of it, to any affiliated corporation, limited liability company or other 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) constitute 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 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 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 Requirements, the order of preference shall be the Nasdaq 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 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 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 shall be either: (i) posted on Nasdaq Trader; or (ii) given in writing under this Agreement and shall be sent to the Subscriber's headquarters and addressed to the Subscriber's Chief Executive Officer or President, and if to Nasdaq, shall be sent to Nasdaq Subscriber Services, 80 Merritt Boulevard, Trumbull, CT 06611 and addressed to the attention of the Agreements Administrator. 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.

With, in the event of notices of dispute or default, a required copy to:

The Nasdaq Stock Market, Inc.  
Office of the General Counsel  
Attn: Contracts Group  
9600 Blackwell Road  
Rockville, MD 20850

**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 unless executed by an officer of Nasdaq. Subscriber, Nasdaq, 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 or Subscriber.

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

- A. Nasdaq may alter any term or condition of this Agreement on sixty (60) days' notice to Subscriber, and any use by Subscriber of the Service after the expiration of the sixty (60) day

notice period shall be deemed acceptance by Subscriber of the new term or condition.

- B. No failure on the part of Nasdaq 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.
- C. 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.** The terms of this Agreement also apply to those obligations that do not implicitly survive any cancellation, termination, or rescission – namely obligations of the Security; Confidentiality; Corporate Names; and Property Rights sections.

**IN WITNESS WHEREOF, Nasdaq and Subscriber have caused this Agreement to be executed by their respective duly authorized officers. If the requested service includes any of Nasdaq’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 Nasdaq signs this Agreement.**

\_\_\_\_\_ (“Subscriber”)                      **The Nasdaq Stock Market, Inc. (“Nasdaq”)**

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

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

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

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

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

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

Authorized Officer

Authorized Officer

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

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

CRD number (if applicable): \_\_\_\_\_

Subscriber’s Primary Security Administrator:

Subscriber’s Alternate Security Administrator:

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

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

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

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

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

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

\_\_\_\_\_

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

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

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

\_\_\_\_\_

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

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

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