

# ***NASDAQ DISTRIBUTOR AGREEMENT***

for external distribution of NASDAQ proprietary market data

## **Introduction**

This package describes the steps necessary to receive a data feed containing quotation and/or trade information from NASDAQ and the responsibilities associated with receipt and distribution of such data. NASDAQ data can be received either directly from NASDAQ through an approved NASDAQ extranet or through an authorized data feed vendor. An applicant who intends to receive data directly from NASDAQ must also procure the necessary communications lines via an approved NASDAQ extranet.

An abbreviated version of this document, the Data Feed Subscriber Agreement, is available to organizations only wishing to distribute data **internally**.

Organizations ("vendors") wishing to distribute NASDAQ data to third parties ("subscribers") must follow the procedures outlined in the *NASDAQ Requirements* accessible via [www.NASDAQTrader.com](http://www.NASDAQTrader.com). **Note:** This introduction and the *NASDAQ Requirements* are intended solely for informational purposes. This should not be considered as an agreement or an amendment to any agreement between NASDAQ or any of its affiliated corporations or parties and any other party.

Please note that NASDAQ maintains a registration with the Securities and Exchange Commission (SEC) as a registered securities information processor pursuant to Section 11A of the Securities Exchange Act of 1934. NASDAQ is obligated to offer terms that are not unreasonably discriminatory between vendors, subject to such orders, rules or regulations as the SEC may adopt.

## **Application Instructions**

In order to receive NASDAQ market data feeds, the applicant must fulfill two basic requirements: (1) execution of the NASDAQ Distributor Agreement and (2) submission of an acceptable System Description that will receive, process, control and distribute NASDAQ data.

- 1). NASDAQ DISTRIBUTOR AGREEMENT:** Applicants interested in receiving NASDAQ market data services must execute **two copies** of a NASDAQ Distributor Agreement. Execute the NASDAQ Distributor Agreement by having an authorized officer sign in the name of the vendor organization.
- 2). SYSTEM DESCRIPTION:** Applicants are also required to complete the NASDAQ System Description, which will serve as the technical system description. Complete the applicable System Description, accessible on [www.NASDAQTrader.com](http://www.NASDAQTrader.com).

After completion, submit **two (2) copies** of the NASDAQ Distributor Agreement and the System Description to NASDAQ at:

**NASDAQ Market Data Distribution**  
9600 Blackwell Road, 5<sup>th</sup> Floor  
Rockville, MD 20850  
Phone: (301) 978-5307  
Fax: (301) 978-5295

NASDAQ will review the documentation and will either approve the application or request further information from the applicant prior to approval. Please allow a minimum of **two weeks** for NASDAQ to review your application. Once the Agreement and System Description have been approved, NASDAQ will authorize initiation of the data feed(s) to the applicant (either through an authorized data feed vendor or an approved NASDAQ Extranet).

**Questions** may be directed to NASDAQ Market Data Distribution at (301) 978-5307.

# ***NASDAQ DISTRIBUTOR AGREEMENT***

THIS AGREEMENT dated as of the date executed by The NASDAQ Stock Market LLC ("NASDAQ"), is made by and between NASDAQ, a Delaware limited liability company that is subject to regulation by the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (Act) and whose principal place of business is located at One Liberty Plaza, 165 Broadway, New York, New York 10006, and the Distributor, as identified below.

WHEREAS, NASDAQ has developed a System which enables eligible individuals or entities to receive certain Information, as hereinafter defined, relating a) to eligible securities or other financial instruments, markets, products, vehicles, indicators, or devices; b) to persons regulated by, or to activities of, the NASDAQ Companies; c) to information, data, and services offered by the NASDAQ Companies from other sources; or d) to other information and data from the NASDAQ Companies.

WHEREAS, Distributor, representing that it is eligible to do so, is desirous of receiving the Information;

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. Definitions.

- (a) "Act" shall mean the Securities Exchange Act of 1934.
- (b) "Affiliate" means is any entity that controls, is controlled by, or under common control with another entity.
- (c) "Agreement" shall mean this Distributor Agreement and the Attachments, as added to, deleted from, or amended from time to time.
- (d) "Attachments" shall mean any attachments, addenda, cover sheets, amendments, and materials referenced herein, 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.
- (e) "Claims or Losses" shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, judgments, settlements, and expenses of whatever nature, including, without limitation, (i) direct, indirect, punitive, special, consequential and incidental damages, and (ii) administrative costs, litigation costs, and attorneys' and auditors' fees and disbursements.
- (f) "NASDAQ Companies" shall mean NASDAQ and its affiliates.
- (g) "NASDAQ Companies' Confidential Information" shall mean the NASDAQ Companies' confidential information, data, information or techniques that, in the course of performance of the Agreement, Distributor may obtain.
- (h) "Distributor" shall mean the Person receiving the Information pursuant to this Distributor Agreement; if more than one Person is receiving the Information pursuant to the same Distributor Agreement, the Persons shall collectively be known as "Distributor".
- (i) "Distributor Agreement" shall mean this NASDAQ Distributor Agreement, as added to, deleted from, or amended from time to time, pursuant to which Distributor receives, uses and/or distributes the Information.
- (j) "Distributor Invoiced Recipients" shall mean Recipients that per Nasdaq's decision are charged or assessed by Distributor for the Information.
- (k) "Distributor's Service" shall mean the goods or services provided by Distributor, whether internally or externally, which is based on or uses the Information or of which the Information is a part.
- (l) "Distributor's System" shall mean one or more of Distributor's systems which meet the specifications (including, but not limited to, interface and operational requirements) set forth by NASDAQ through which Distributor accesses the Information and distributes Distributor's Service.

- (m) "Distributor's System Description" shall mean the description of Distributor's system given to and approved by NASDAQ as described in Section 4 (b).
- (n) "Information" shall mean certain market data and other data disseminated that has been collected, validated, processed, and recorded by the NASDAQ System or other sources made available for transmission to and receipt from either a Retransmission Vendor or NASDAQ relating to: a) eligible securities or other financial instruments, markets, products, vehicles, indicators, or devices; b) activities of the NASDAQ Companies; c) other information and data from the NASDAQ Companies.
- (o) "Internal User" shall mean an individual within Distributor that uses the Information.
- (p) "NASDAQ" shall mean The NASDAQ Stock Market LLC, a Delaware limited liability company
- (q) "NASDAQ Invoiced Recipients" shall mean Recipients that NASDAQ chooses to invoice, as distinguished from Distributor Invoiced Recipients.
- (r) "NASDAQ Requirements" shall mean (i) the rules, regulations, interpretations, decisions, opinions, orders and other requirements of the SEC; (ii) the rules and regulations of the NASDAQ Companies (iii) the NASDAQ Companies' decisions, policies, interpretations, operating procedures, specifications, requirements, and other documentation that is regulatory or technical in nature (including, but not limited to, user guides) published on the NASDAQTrader website located at NASDAQTrader.com or another website accessible by and made known to Distributor; and (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.
- (s) "NASDAQ Specifications" shall mean the specifications, as the same may be amended from time to time with which Distributor's System must comply, which specifications are available from NASDAQ upon request.
- (t) "Other Information" shall have the meaning given to it in Section 4(b) of this Agreement.
- (u) "Person" shall mean any natural person, proprietorship, corporation, partnership, or other entity whatever.
- (v) "Recipient" shall mean any Person outside of Distributor that receives Information from the Distributor.
- (w) "Redistributor" shall mean another distributor (i) from which Distributor receives the Information and (ii) which cannot substantially control the capability of Distributor to access Information for the purposes of reporting usage and qualification.
- (x) "Reportable Units" shall mean those measurements of Information usage that per this Agreement must be reported to NASDAQ.
- (y) "Subscriber Agreement" shall mean any agreement that NASDAQ requires Distributor to obtain from Recipients prior to Distributor providing Recipients with Information.
- (z) "System" shall mean the system that NASDAQ has developed for the creation of Information.
- (aa) "Third Party Information Providers" shall mean those individuals and entities that provide information, goods and services to NASDAQ in connection with the creation of the Information. Such information, goods and services shall be included in the definition of Information.

Section 2. *Agreement to Provide Information; Compliance with NASDAQ Requirements; Distributor Warranty.* Until this Agreement is terminated, cancelled or rescinded pursuant to its terms, NASDAQ agrees to provide to Distributor, either directly or from a Redistributor, on the terms and conditions set forth herein, the Information, as described in this Agreement or in the NASDAQ Requirements, that Distributor requests and to which Distributor is eligible to receive under the NASDAQ Requirements. Distributor warrants that it is, will continue to be during the term of this Agreement, and will only use the Information, in compliance with this Agreement and the NASDAQ Requirements. Except to the extent a shorter period is otherwise permitted herein, NASDAQ will provide Distributor with at least 30 days' notice of any non-material changes and 90 days' notice of material changes to the NASDAQ Companies' decisions, policies, operating procedures, requirements, and other documentation (including, but not limited to, user guides. Notwithstanding the foregoing, any changes in the charges for, or associated with, the Information may be made on 30 days' notice to Distributor.

Section 3. *Distributor's System.* Distributor acknowledges and agrees that nothing in this Agreement

constitutes an undertaking by NASDAQ: (i) to continue the Information, the System, or any aspect of either, in the present form or configuration or under the current NASDAQ Specifications or with the current Distributor's System; or (ii) to continue to use existing communications facilities. NASDAQ, in its sole discretion, may make other than routine modifications, additions or deletions, from time to time, and undertake reasonable efforts to notify Distributor within ninety (90) days of any such modification, addition or deletion, (i) to the Information, the System, or any aspect of either; (ii) to the NASDAQ Specifications; or (iii) to its communications facilities, unless a) a malfunction in the System or Information necessitates modifications, additions or deletions on an accelerated basis; b) an emergency situation precludes such advance notice; or c) a shorter time period is required pursuant to an order of a court, an arbitrator(s), or a regulatory agency. **Receipt or use of the Information after any modification, addition or deletion shall constitute acceptance of the Information, the System or the NASDAQ Specifications, as so changed.**

Section 4. *License to Use.* a) NASDAQ grants to Distributor a non-exclusive, non-assignable, non-transferable license to receive and use the Information during the term of this Agreement only for the purpose of providing the Information as described in Distributor's System Description and approved by NASDAQ and not for any purpose inconsistent with the terms of this Agreement. Distributor may not sell, lease, furnish or otherwise permit or provide access to the Information in any manner not previously approved by NASDAQ in writing.

(b) If the interface with the System described in Distributor's System Description enables Distributor to receive information for which Distributor has not been authorized ("Other Information") or if NASDAQ otherwise inadvertently transmits Other Information to Distributor, Distributor shall notify NASDAQ and Distributor shall not knowingly furnish or permit to be furnished such Other Information to any third party or other place. If NASDAQ becomes aware of the fact that Distributor is receiving such Other Information, NASDAQ shall so notify Distributor. If Distributor so furnishes the Other Information to any third party or to any other place, or permits the Other Information to be so furnished, or otherwise knowingly makes use of the Other Information, Distributor shall be liable to NASDAQ pursuant to this Agreement for the Other Information, including, but not limited to, for charges for the Other Information. Distributor is considered to have knowingly furnished or used the Other Information if Distributor undertakes any efforts to modify Distributor's Service or Distributor's System in order to accommodate the Other Information or undertakes any efforts to market Distributor's Service or Distributor's System that is based on, uses or distributes the Other Information or of which the Other Information is a part. Other Information shall be considered as Information for all other purposes under this Agreement.

(c) Distributor represents and warrants that the detailed description of Distributor's System for receiving, transmitting and disseminating Information, as described in Distributor's System Description, including, but not limited to, the data processing equipment, software, and communications facilities related thereto, is true, complete and not misleading. Recipients and Internal Users are authorized to receive and use the Information only for the purposes set forth in the applicable NASDAQ Requirements. Any use of the Information by Distributor or Internal Users, including, but not limited to, retransmission or reprocessing, unless expressly described in Distributor's System Description and approved by NASDAQ, is prohibited.

(d) Should Distributor desire to make any use of the Information (including, but not limited to, developing or communicating derivative information based upon the Information, retransmission, redistribution, reproduction or calculation of indices) in any manner not then described in Distributor's System Description, Distributor may do so by submitting a revised Distributor's System Description and only with prior written approval by NASDAQ of such use and upon payment of the fees applicable to the use approved. NASDAQ shall promptly and in good faith approve or disapprove modifications to Distributor's System Description proposed by Distributor. Distributor acknowledges and agrees that it acts at its own risk in developing any modification to its Service prior to receiving approval from NASDAQ, since NASDAQ is not obligated by this Agreement to grant such approval.

(e) Distributor shall be entitled to change the display format described in Distributor's System Description *provided that*: (i) Distributor shall notify NASDAQ, describing such change in reasonable detail, within fifteen (15) days after implementation of any such change; and (ii) such change complies with the NASDAQ Requirements. Distributor shall not be required to notify NASDAQ of non-material changes. Distributor will attribute source as set forth in the NASDAQ Requirements. Distributor shall not remove or alter any intellectual property ownership and/or identification notices found within the Information except with NASDAQ's prior written approval.

(f) Distributor agrees (i) not to format, display, or alter the information or data received through and from the Information in violation of NASDAQ Requirements, including, but not limited to, NASDAQ's Specifications; (ii) not to affect materially the integrity of the Information; (iii) not to alter the Information in any manner that adversely affects its accuracy or integrity; and (iv) not to render the Information inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. Distributor represents that it will not interfere with or adversely affect any of the component parts or processes of the Information or the System, or any use thereof by any other authorized individuals or entities, or the distribution or operation of the Information or the System. If Distributor becomes aware of a potential unauthorized use by a Recipient, Distributor shall notify NASDAQ immediately of such use.

(g) Distributor may use, on its premises, the Information in connection with Distributor's System, without charge (except for 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 Information to Distributor), for advertisement, demonstration, product development, technical operations, monitoring of data quality and customer service. Distributor may also make limited use, off its premises, of the Information, as part of the Distributor's Service, for sales and marketing purposes (including, but not limited to, use at trade shows) and for demonstration purposes to potential customers. Upon request, Distributor shall provide NASDAQ or its designate with information about, and demonstrate, such non-fee liable uses. All other provisions of this Agreement shall remain applicable, including, without limitation, audit by NASDAQ. Use of the Information by Distributor for securities transactions or to support the trading of securities by Distributor's customers shall be considered a fee-liable use.

(h) Distributor agrees that during the term of this Agreement it will provide at no cost to NASDAQ two (2) subscriptions to Distributor's Service together with the equipment used to receive and to display or communicate the Distributor's Service and the related telecommunications facilities. NASDAQ represents and agrees that such subscriptions will be used solely for purposes of monitoring the Information and demonstrating Distributor's Service. Upon request, Distributor will make available marketing materials and user guides for all components of the Distributor Service that include the Information.

(i) Distributor shall take reasonable security precautions to prevent unauthorized individuals or entities from gaining access to the Information. Distributor shall comply with all reasonable security specifications or requirements of NASDAQ in order to prevent the Information from being improperly used or accessed or from being improperly taken. Distributor shall notify NASDAQ immediately upon any breach in security procedures of which it becomes aware.

(j) Distributor acknowledges and agrees that the NASDAQ Companies have i) proprietary rights in the information and data that originates on, derives from or relates to markets that are regulated, operated or administered by one or more of the NASDAQ Companies, in the information and data that relates to individuals and entities that are regulated by one or more of the NASDAQ Companies, and in the information and data that relates to activities that are regulated or operated by one or more of the NASDAQ Companies, and ii) compilation or other rights in information and data gathered from other sources. All Information, including without limitation any and all intellectual property rights inherent therein or appurtenant thereto, shall, as between the parties, be and remain the sole and exclusive property of NASDAQ. Distributor 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 System. Distributor acknowledges and agrees that Third Party Information Providers have exclusive proprietary rights in their respective information and data.

Section 5. *Payment; Taxes.* (a) Distributor agrees to pay to NASDAQ or NASDAQ's designee the then effective charges as set forth in the NASDAQ Requirements or by notice, including, but not limited to, all applicable deposits and communications, facilities, electronic fund transfer fees, interest and late fees and/or penalties (including, but not limited to, charges incurred after termination, cancellation, or rescission). Distributor agrees to pay the amount actually invoiced by NASDAQ, including monthly adjustments for updated reporting. Unless otherwise set forth in the NASDAQ Requirements, Distributor shall remit the charges no later than fifteen (15) days after the end of the calendar month for which charges are incurred. Nothing in this Agreement shall prevent Distributor from separately charging its Recipients for the Distributor's Service. Distributor shall pay NASDAQ, on demand or upon invoice, interest on any amounts due NASDAQ pursuant to this Agreement which are not paid within thirty (30) days after the applicable due date. Interest shall accrue at a rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum amount permitted by applicable law, for the period commencing with the applicable due date and ending upon receipt of payment by NASDAQ.

(b) Unless another form of billing is otherwise set forth in the NASDAQ Requirements, all Recipients shall be either Distributor Invoiced Recipients or NASDAQ Invoiced Recipients. Alternatively, Distributor shall be responsible for the charges associated with the Recipients. Distributor shall bear all risk of non-payment by Distributor Invoiced Recipients or by Recipients for whom Distributor is responsible for the charges associated with Recipients. NASDAQ will bear the risk of non-payment by NASDAQ Invoiced Recipients. Distributor shall reasonably cooperate, at Distributor's expense, with NASDAQ in any lawful efforts by NASDAQ to collect unpaid charges due NASDAQ from current or former NASDAQ Invoiced Recipients. With NASDAQ's prior approval and in NASDAQ's sole discretion, Distributor may choose to pay NASDAQ any charges due on behalf of any Recipient. Upon Distributor's payment to NASDAQ on behalf of any Recipient of any charges due hereunder, Distributor shall be subrogated to any and all rights of NASDAQ to recover such charges.

(c) In addition, Distributor 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 relating to the provision of the Information by NASDAQ pursuant to this Agreement, and any related penalties or interest. In addition, if Distributor or any Distributor Invoiced Recipient 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.

(d) All payments 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, by electronic funds transfer to an institution of NASDAQ's choosing or by any other form of payment as specified by NASDAQ in the NASDAQ Requirements.

Section 6. *Distributor Reporting.* (a) Distributor shall comply with the requirements of NASDAQ as to reporting of Reportable Units as set forth in this Agreement and the NASDAQ Requirements. Unless otherwise set forth in the NASDAQ Requirements, such reporting shall occur within 15 days of the end of the applicable reporting period set forth by NASDAQ in the NASDAQ Requirements.

(b) Distributor is limited to a sixty (60) calendar-day grace period in which to revise or correct its usage reporting in order to obtain retroactive credits. The grace period begins on the due date of the original report, but is extended to the next business day if the last day of the grace period coincides with a market holiday or weekend day. NASDAQ will not provide Distributor with back credits for original or revised reporting received after the end of the grace period. Revised reporting could include, but is not limited to, reclassification of Recipients, reporting of usage under alternative pricing structures and correction of errors by Distributor. This Section 6 does not limit Distributor's liability to NASDAQ for underreporting of usage.

Section 7. *Distributor Audit.* (a) From time to time, NASDAQ may cause Distributor's (i) records, (ii) reports and payments to NASDAQ, and (iii) System and Service (and all instruments and apparatus used in connection therewith), to be reviewed by NASDAQ personnel and/or auditors of NASDAQ's choice. The review shall be scheduled upon reasonable notice to Distributor, depending upon the circumstances and conducted in locations where Distributor's records are kept, Distributor's System is located or where Distributor uses the Information. In addition to or in lieu thereof, Distributor shall provide promptly information or materials in response to any request for information. Distributor shall make available for examination all records, reports, payments, and supporting documentation, and Distributor's System and Service necessary in the judgment of the NASDAQ audit personnel to reach a conclusion as to the accuracy and completeness of: (i) Distributor's reports to NASDAQ, (ii) the payments connected therewith, (iii) the description set forth in Distributor's System Description and (iv) compliance with this Agreement and the NASDAQ Requirements. If the review conducted by NASDAQ determines there is underreporting, underpayment or other financial non-compliance with this Agreement, then, at NASDAQ's sole discretion, either Distributor shall cause Distributor's auditors (at the Distributor's sole expense) to conduct a review and to determine the magnitude of any adjustments of amounts previously remitted to NASDAQ within ninety (90) days after notice from NASDAQ, or NASDAQ or its auditors shall determine the magnitude of any such adjustments. If such audit or review discloses additional underreported or underpaid amounts or other financial non-compliance, such amounts shall be remitted to NASDAQ, together with applicable interest, the later of fifteen (15) days after the date of NASDAQ's invoice containing such unpaid amounts or the applicable due date as set forth in the NASDAQ Requirements; if such audit or review discloses an overpayment, then NASDAQ will apply the overpayment for the 60 days prior to the end of the period being reviewed as a credit against amounts due from Distributor. If the examination conducted by NASDAQ personnel or its or Distributor's auditors reveals that there may be errors or omissions in Distributor's System Description, Distributor shall submit a revised Distributor's System Description for NASDAQ's approval, within ninety (90) days after notice from NASDAQ or, if Distributor audits, following conclusion of the audit. If the review or response to NASDAQ's request for information shows other non-compliance, then Distributor shall comply with NASDAQ's demand for compliance and NASDAQ in its discretion at any time and from time to time during such time of noncompliance may suspend service under this Agreement. NASDAQ's determination in all events shall be deemed conclusive. With regard to Distributor's liability pursuant to this subsection 7 (a) for underreporting, or underpaying for, the number of Recipients or Reportable Units receiving the Information or other financial non-compliance, provided such underreporting, underpaying or other financial non-compliance is a result of a good faith error by Distributor, Distributor's liability shall be limited to unpaid fees, together with interest, for the three (3) years preceding the earlier of the date that Distributor, Distributor's auditors or NASDAQ first knew or determined that such underreporting, underpayment or other financial noncompliance has occurred, plus any costs and expenses as set forth in subsection 7 (b) below.

(b) If any underreporting, underpayment or other Distributor financial non-compliance is found to be equal to or greater than ten percent (10%) of the reported number of Reportable Units for any audited or unaudited period referred to herein, Distributor shall, in addition to remitting the fees and applicable interest due relative to such underreporting, underpayment or other financial non-compliance, reimburse NASDAQ, within the later of fifteen (15) days of the date of the invoice from NASDAQ or the applicable due date as set forth in the NASDAQ Requirements, for any audit, legal or administrative costs and expenses incurred to detect and rectify such underreporting, underpayment or other financial non-compliance, *provided, however,* that such costs and expenses are incurred in good faith and are not unreasonable given the amount of work necessary to detect and determine the extent of, and the actual amount of, such underreporting, underpayment or other financial non-compliance.

Section 8. *Qualification Requirements.* Except as otherwise set forth in this Agreement, Distributor shall only

furnish, or cause or permit to be furnished, all or any part of the Information to a Recipient or Internal User who, at the time of receipt thereof, is of a type qualified (as set forth in the NASDAQ Requirements) to receive the Information from Distributor. Distributor agrees that NASDAQ may have different qualification requirements for different Recipients or Internal Users, including, but not limited to different Recipients or Internal Users of different types of Distributor Services. In the text of a Subscriber Agreement, the Distributor may be referenced as "Vendor". If any Recipient fails to comply with any of the conditions, terms or provisions of this Agreement applicable to Recipients, its agreement with NASDAQ and/or Distributor for the Information, or any other agreement between Recipient and NASDAQ, or has made any representation in any such agreement which was or has become untrue, then Distributor shall, within five (5) business days after receipt of notice from NASDAQ of such failure or untruth, cease providing the Information to such Recipient and shall, within seven (7) business days following the receipt of such notice, confirm such cessation by notice to NASDAQ. Distributor shall be solely responsible for the acts and omissions of Internal Users.

**Section 9. *Term and Termination.*** (a) The original term of this Agreement shall commence on the earlier of the date of this Agreement or the date the Information is provided and, unless this Agreement is otherwise terminated, the term shall continue until this Agreement is terminated by at least thirty (30) days' prior written notice by a party hereto given to the other. Notwithstanding the foregoing, this Agreement may be terminated by:

(i) either party following breach of this Agreement by the other, 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;

(ii) NASDAQ, immediately, in the event that the Distributor becomes insolvent; or the Distributor makes an assignment for the benefit of creditors; or the Distributor does not pay its debts as they become due or admits its inability to pay its debts when due; or the Distributor 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 Distributor becomes the subject of any proceedings of bankruptcy, insolvency, reorganization, dissolution, receivership, liquidation or arrangement, adjustment, or composition with creditors;

(iii) NASDAQ, immediately, in the event that the Distributor is not permitted or not able to receive or NASDAQ is prevented from disseminating the Information, or any part thereof; or any representation, warranty or certification made by Distributor in this Agreement or in any other document furnished by Distributor is, as of the time made or furnished, false or misleading; Distributor proceeds with a proposed action which would result in a default of its obligations or covenants under this Agreement or in a breach of any representation, warranty or certification, which is material to the NASDAQ Companies for regulatory, commercial or other reasons, made by Distributor in connection herewith, after NASDAQ has notified Distributor that such proposed action would constitute a default hereunder; NASDAQ terminates for cause Distributor's receipt of any other service or product provided by or on behalf of NASDAQ; or NASDAQ, in its sole discretion, determines that any failure on the part of the Distributor to comply with this Agreement has or is likely to have an adverse impact on the operation or performance of the System, Information or The Nasdaq Stock Market or likely to cause disproportionate harm to NASDAQ's interests should termination be delayed;

(iv) NASDAQ, upon not less than fifteen (15) days' prior written notice, in the event that any representation, warranty or certification made by Distributor in the Agreement or in any other document furnished by Distributor becomes untrue or inaccurate and is not made true or accurate within the notice period.

(v) NASDAQ, upon not less than ninety (90) days' prior written notice, should it determine that it will cease providing the same type of Information to all other eligible individuals or entities that were receiving the same type of Information as Distributor.

(b) Upon termination of this Agreement, Distributor shall cease any and all use of the Information. Distributor acknowledges and agrees that the exercise by NASDAQ of the remedies set forth herein for failure of Distributor to pay all charges, taxes, or assessments related to its receipt of the Information shall not be deemed or considered to be, and, to the extent permitted by applicable law, Distributor 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 Information or facility operated by NASDAQ as contemplated in Section 11A of the Act or any other provision of the 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, consistent with this Agreement, that is available to one party (including the NASDAQ Companies) with respect to a breach by the other and is in addition to anything otherwise set forth herein.

**Section 10. *Requirements of Self-Regulatory Organization; Actions To Be Taken In Fulfillment of Statutory Obligations.*** (a) Distributor acknowledges that: (i) NASDAQ is registered with the SEC as a registered national securities exchange; (ii) NASDAQ has 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) Section 19(g)(1) of the Act mandates that NASDAQ, as a self-regulatory organization, comply with the NASDAQ Requirements; (iv) NASDAQ has jurisdiction over its members to enforce compliance with the NASDAQ Requirements; and (v) NASDAQ is obligated to offer terms that are not unreasonably discriminatory

between Distributors, subject to applicable NASDAQ Requirements. Accordingly, Distributor 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 Information. NASDAQ shall undertake reasonable efforts to notify Distributor of any such condition, modification or termination, and Distributor 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 Person 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.

(b) If Distributor is a member of NASDAQ, then Distributor expressly acknowledges and agrees that (i) this Agreement does not limit or reduce in any way Distributor's obligations and responsibilities as a member of NASDAQ; (ii) this Agreement does not in any way alter the procedures or standards generally applicable to disciplinary or other actions taken by NASDAQ to enforce compliance with, or impose sanctions for violations of, the NASDAQ Requirements; and (iii) the nonpayment of amounts due under this Agreement could result in the suspension or cancellation of Distributor's NASDAQ membership in accordance with the NASDAQ Requirements.

Section 11. *Confidentiality.* (a) Under this Agreement, NASDAQ shall keep confidential the Distributor's System Description and the Distributor's records, reports and payments that it or its designee audited. Distributor acknowledges that it may obtain the NASDAQ Companies' Confidential Information. All such confidential information shall be deemed confidential upon disclosure to the recipient and any related confidential oral information shall be deemed confidential upon disclosure to the recipient. The recipient shall use such confidential information 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 except as otherwise set forth herein.

(b) The NASDAQ Companies or the Distributor may disclose confidential information: a) to the extent demanded by a court; b) to the extent revealed to a government agency with regulatory jurisdiction over one or more of the NASDAQ Companies or over Distributor; c) in the course of fulfilling any of the NASDAQ Companies' regulatory responsibilities, including responsibilities over members and associated persons under the Act; or d) to their and the NASDAQ Companies' respective employees, directors, and other agents solely for use consistent with the purposes of this Agreement. The duties in this section 11 do not apply to data, information or techniques that are: (1) lawfully within a party's possession (and, in the case of NASDAQ, within the NASDAQ Companies' possession) prior to the date of this Agreement and not under a duty of non-disclosure; (2) voluntarily disclosed to a party (and, in the case of NASDAQ, to the NASDAQ Companies) by a third-party so long as a party (and, in the case of NASDAQ, to the NASDAQ Companies) does not know that the third-party has breached any obligation not to reveal such data, information or techniques; (3) developed by a party (and, in the case of NASDAQ, by the NASDAQ Companies) independently of the disclosure; or (4) generally known by or revealed to the public.

(c) NASDAQ shall not disclose the audit findings to third parties (other than the NASDAQ Companies, their directors, and independent consultants/subcontractors or as otherwise set forth herein). However, nothing herein shall prevent NASDAQ from using the audit findings to the extent the findings are used in the aggregate with other information and such aggregation does not specifically identify Distributor.

**SECTION 12. NASDAQ WARRANTIES; DISCLAIMERS OF WARRANTIES. NASDAQ WILL MAKE COMMERCIALY REASONABLE EFFORTS TO OFFER THE INFORMATION AS PROMPTLY AND AS ACCURATELY AS IS REASONABLY PRACTICABLE. THE INFORMATION AND ANY MATERIAL RELATED TO THE INFORMATION, INCLUDING, BUT NOT LIMITED TO, THE SPECIFICATIONS, ARE BEING PROVIDED "AS IS" WITH NO WARRANTIES OTHER THAN THOSE WARRANTIES EXPRESSLY SET FORTH IN THE DISTRIBUTOR AGREEMENT. IN THE EVENT THAT THE INFORMATION IS NOT AVAILABLE AS A RESULT OF A FAILURE BY NASDAQ TO PERFORM ITS OBLIGATIONS UNDER THE 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 INFORMATION IS NOT AVAILABLE, IS DELAYED, IS INTERRUPTED, IS INCOMPLETE OR 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 INFORMATION DUE TO THE FAULT OF NASDAQ (EXCEPT FOR A REASON PERMITTED IN THE AGREEMENT), DISTRIBUTOR'S OR ANY OTHER INDIVIDUAL'S OR ENTITY'S EXCLUSIVE REMEDY AGAINST NASDAQ SHALL BE, AT NASDAQ'S OPTION, EITHER A PRORATED MONTH'S CREDIT OR A PRORATED MONTH'S REFUND OF ANY MONIES DUE TO NASDAQ FROM DISTRIBUTOR (LESS MONIES REFUNDED OR CREDITED TO DISTRIBUTOR'S RECIPIENTS) FOR THE INFORMATION AT ISSUE FOR THE PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL BE REQUESTED BY WRITTEN NOTICE TO NASDAQ WITH ALL PERTINENT DETAILS INCLUDED. IN THOSE CASES WHERE DISTRIBUTOR RECEIVES SAID CREDIT OR REFUND ON BEHALF OF ITS RECIPIENTS, DISTRIBUTOR SHALL PROMPTLY PROVIDE THE SAME CREDIT OR REFUND ON BEHALF OF NASDAQ TO DISTRIBUTOR INVOICED SUBSCRIBERS. BEYOND THE WARRANTIES STATED IN THIS SECTION, THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION, TIMELINESS, TRUTHFULNESS,**



SEQUENCE, COMPLETENESS, ACCURACY, FREEDOM FROM INTERRUPTION, ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE).

**SECTION 13. *LIMITATION OF LIABILITY.*** (A) EXCEPT FOR NASDAQ'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN THIS AGREEMENT, THE NASDAQ COMPANIES AND THEIR THIRD PARTY INFORMATION PROVIDERS SHALL NOT BE LIABLE TO DISTRIBUTOR OR TO ANY OTHER PERSON 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 THE NASDAQ COMPANIES AND THEIR THIRD PARTY INFORMATION PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(B) THE NASDAQ COMPANIES SHALL NOT BE LIABLE TO DISTRIBUTOR OR TO ANY OTHER PERSON FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE INFORMATION THAT LASTS LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION OR IF THE INFORMATION IS MATERIALLY AFFECTED FOR LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION.

(C) EXCEPT WHERE NASDAQ IS INDEMNIFYING THE DISTRIBUTOR AS SET FORTH IN THIS AGREEMENT, IF ANY OR ALL OF THE NASDAQ COMPANIES ARE FOR ANY REASON HELD LIABLE TO DISTRIBUTOR, OR TO ANY OTHER PERSON, FOR CLAIMS ARISING FROM THE INFORMATION, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF THE NASDAQ COMPANIES WITHIN A SINGLE YEAR OF THIS AGREEMENT (FROM THE EFFECTIVE DATE OF THIS AGREEMENT) IS LIMITED TO AN AMOUNT OF DISTRIBUTOR'S DIRECT DAMAGES THAT IS ACTUALLY INCURRED BY DISTRIBUTOR IN REASONABLE RELIANCE, AND WHICH AMOUNT DOES NOT EXCEED THE GREATER OF: (1) AT NASDAQ'S OPTION, EITHER A PRORATED MONTH'S CREDIT OR A PRORATED MONTH'S REFUND OF ANY MONIES DUE TO NASDAQ FROM DISTRIBUTOR (LESS MONIES REFUNDED OR CREDITED TO DISTRIBUTOR'S RECIPIENTS) FOR THE INFORMATION AT ISSUE FOR THE PERIOD AT ISSUE; OR (2) \$50.00. THIS SUBSECTION SHALL NOT RELIEVE THE NASDAQ COMPANIES FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.

(D) EXCEPT WHERE NASDAQ IS INDEMNIFYING THE DISTRIBUTOR AS SET FORTH IN THIS AGREEMENT, IF ANY OR ALL OF THE NASDAQ COMPANIES ARE FOR ANY REASON HELD LIABLE TO DISTRIBUTOR, OR TO ANY OTHER PERSON, FOR CLAIMS NOT ARISING FROM THE INFORMATION, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF THE NASDAQ COMPANIES WITHIN A SINGLE YEAR OF THIS AGREEMENT (FROM THE EFFECTIVE DATE OF THIS AGREEMENT) IS LIMITED TO AN AMOUNT OF DISTRIBUTOR'S DIRECT DAMAGES THAT IS ACTUALLY INCURRED BY DISTRIBUTOR IN REASONABLE RELIANCE, AND WHICH AMOUNT DOES NOT EXCEED, AT NASDAQ'S OPTION, EITHER A MONTH'S CREDIT OR A MONTH'S REFUND OF THE AVERAGE MONTHLY AMOUNT PAID NASDAQ CALCULATED OVER THE 12 MONTHS PRECEDING THE CLAIM. THIS SUBSECTION SHALL NOT RELIEVE THE NASDAQ COMPANIES FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.

(E) THE DISTRIBUTOR AND NASDAQ UNDERSTAND AND AGREE THAT THE PRICING FOR THE INFORMATION REASONABLY REFLECTS THE ALLOCATION OF RISK AND LIMITATION OF LIABILITY SET FORTH IN THIS SECTION.

(F) THE NASDAQ COMPANIES SHALL NOT BE LIABLE TO DISTRIBUTOR OR TO ANY OTHER PERSON FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION FROM NASDAQ'S THIRD PARTY INFORMATION PROVIDERS.

(G) THE CORPORATIONS SHALL NOT BE LIABLE TO DISTRIBUTOR OR TO ANY OTHER PERSON FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION OR DATA RECEIVED FROM A REDISTRIBUTOR OR FOR ANY ACTS OR OMISSIONS OF A REDISTRIBUTOR.

**Section 14. *Force Majeure.*** Notwithstanding any other term or condition of this Agreement, none of NASDAQ, its third party information providers (but not other distributors) or Distributor shall be obligated to perform or observe its respective obligations under 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 15. *Indemnification.* (a) Distributor shall defend, be liable to, indemnify, and hold the NASDAQ Companies, their employees, directors, and other agents (collectively, "NASDAQ Indemnified Parties") harmless from and against, any and all Claims or Losses imposed on, incurred by or asserted against any of the NASDAQ Indemnified Parties to the extent that the Claims and Losses result from or relate to: (i) failure of Distributor, its employees, independent consultants/subcontractors, directors, and other agents to comply with the terms and conditions of this Agreement; (ii) failure of Recipients to comply with the terms and conditions of NASDAQ-required agreements for the Information if Distributor has failed to notify NASDAQ of such non-compliance within 10 days after Distributor knows of such non-compliance; (iii) any assertion of Claims or Losses relating to the subject matter or existence of this Agreement against the NASDAQ Indemnified Parties made by a Person who receives the Information from Distributor (or any Person relying upon the Information received by such Person); (iv) any assertion of Claims or Losses against the NASDAQ Indemnified Parties by Recipients relating to NASDAQ's exercise of its remedies against Recipients pursuant to this Agreement; (v) breach of any warranty by Distributor; (vi) any defense or participation by the NASDAQ Indemnified Parties in any action, suit, arbitration, or judicial or administrative proceeding involving any Claims or Losses described in this section, or (vii) the receipt or use of the Information (including representations about the Information) by Distributor, its employees, directors, and other agents. Distributor's obligation to defend and indemnify under this subsection 15 (a) shall be conditioned on the following (but any limits on Distributor's obligations are only to the extent that NASDAQ's failure to comply with the following has caused a material harm to Distributor's ability to defend and indemnify): (i) NASDAQ shall promptly notify Distributor in writing of the claim, action or allegation (but, in any event, in a time frame that does not prejudice the rights of Distributor or NASDAQ); (ii) NASDAQ shall cooperate fully with Distributor in the defense thereof and Distributor shall be liable to NASDAQ for the NASDAQ Companies' reasonable expenses (excluding reimbursement for the time value of the NASDAQ Companies' employees, directors, and other agents in providing such cooperation); (iii) Distributor 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. Distributor shall have a right to defend provided that Distributor demonstrates to NASDAQ's satisfaction that it is financially able to defend such action and pay any judgment or settlement and counsel retained by Distributor is reasonably satisfactory to NASDAQ. Distributor shall not settle any action against the NASDAQ Companies that in any way restricts or impairs NASDAQ's intellectual property rights.

(b) NASDAQ shall defend Distributor, its employees, directors, other agents, and affiliates ("Distributor's Indemnified Parties") from any and all Claims and Losses imposed on or asserted against Distributor's Indemnified Parties by a third party, as evidenced by any fully adjudicated and non-appealable judgment or NASDAQ-negotiated settlement arising as a result of any alleged infringement or misappropriation by the System, the Information or the specifications of such third party's U.S. or European Community intellectual property rights. NASDAQ shall indemnify and hold Distributor's Indemnified Parties harmless from any and all such Claims and Losses imposed on, incurred by or asserted against Distributor's Indemnified Parties, by such judgment or settlement up to the amount paid by Distributor for the Information. NASDAQ's obligation to defend and indemnify under this subsection shall be conditioned on the following: (i) Distributor 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 Distributor or NASDAQ); (ii) Distributor shall cooperate fully with NASDAQ in the defense thereof and NASDAQ shall be liable to Distributor for Distributor's reasonable expenses (excluding reimbursement for the time value of Distributor's employees, directors, other agents and affiliates in providing such cooperation); and (iii) NASDAQ shall have sole control of the defense and all related settlement negotiations, but upon Distributor's request, shall apprise Distributor of the status of any proceedings or negotiations.

(c) For any and all Claims and Losses imposed on, incurred by or asserted against Distributor's Indemnified Parties as a result of any alleged infringement or misappropriation by the System, the Information or the specifications of any third parties' intellectual property rights **other** than U.S. or European Community intellectual property rights, Distributor shall notify NASDAQ in writing of the claim, action or allegation at least 5 business days before a responsive action is needed, so as not to prejudice the rights of Distributor or NASDAQ, but, in any event, said notification to NASDAQ shall not be given later than 15 days after Distributor receives notification of any alleged non-U.S. or non-European Community infringement or misappropriation and NASDAQ shall have the right, but not the obligation, to defend, indemnify and hold Distributor's Indemnified Parties harmless on the same terms otherwise set forth in this Distributor Agreement. An initial response by NASDAQ shall not waive its rights to choose not to defend, indemnify and hold harmless.

(d) NASDAQ shall not have the obligation to defend, indemnify and hold Distributor's Indemnified Parties for any and all Claims and Losses imposed on, incurred by or asserted against Distributor, its employees, directors, other agents and affiliates by any fully adjudicated and non-appealable judgment or NASDAQ-negotiated settlement as a result of any allegation of infringement or misappropriation if the System, Information or any specifications have not been used in accordance with this Agreement or if Distributor uses the System, Information or any specifications after NASDAQ notifies Distributor of a potential or actual infringement claim or to the extent it is based on use of a superseded version of the System, Information or any specifications if such infringement or

misappropriation would have been avoided by use of the current version of the System, Information or specifications or if the infringement or misappropriation claim, action, or allegation is the result of the combination, operation, or use of the System, Information or any specifications with hardware, software or materials if such infringement or misappropriation would have been avoided by the use of the System, Information or any specifications 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, Information or any specifications is enjoined because of infringement or misappropriation, NASDAQ may, at its sole option and expense, (i) procure for Distributor the right to continue using the System, Information or any specifications; (ii) replace or modify the System, Information or any specifications to be non-infringing, and require the return of the potentially infringing or misappropriating items, if applicable, without liability to Distributor or any other Person; or (iii) terminate this Agreement immediately without liability to Distributor or any other Person.

(f) This section and Section 13 set forth the entire liability and the exclusive remedy of the NASDAQ Companies for the infringement or misappropriation of intellectual property.

Section 16. *No Government Rights.* This Agreement neither grants nor is intended to grant, directly or through Distributor, to any governmental entity or agency any rights in technical data (including, but not limited to, software) as set forth in FAR Subpart 27.4 or any other regulation. 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 17. *Corporate Names; Proprietary Rights.* Distributor acknowledges and agrees that the NASDAQ Companies have proprietary rights in certain names, including, but not limited to, "The NASDAQ Stock Market LLC", "The Nasdaq Stock Market, Inc.", and "NASDAQ", and Distributor shall not use these names in any way that would infringe upon such names and shall not use these names in any advertising or marketing materials, except with NASDAQ's prior written consent. Distributor acknowledges and agrees that the NASDAQ Companies have proprietary rights in certain trademarks, servicemarks, copyrights or patents, registered or unregistered, and Distributor shall not use these trademarks, servicemarks, copyrights or patents, registered or unregistered, in any way that would infringe upon such marks, copyrights or patents. NASDAQ acknowledges and agrees that Distributor has proprietary rights in Distributor's name and NASDAQ shall not use the corporate name in any way that would infringe upon such name and shall not use the name in any advertising or marketing materials, without Distributor's prior written consent. NASDAQ acknowledges and agrees that Distributor has proprietary rights in certain trademarks, servicemarks, copyrights or patents, registered or unregistered, and NASDAQ shall not use these trademarks, servicemarks, copyrights or patents, registered or unregistered, in any way that would infringe upon such marks, copyrights or patents.

Section 18. *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. NASDAQ may, however, assign this Agreement to any of the NASDAQ Companies without the consent of Distributor. Nothing in this Agreement, express or implied, is intended to or shall (a) confer on any Person other than the parties hereto (and any of the NASDAQ Companies), 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 19. *Entire Agreement.* 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. 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 the 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 20. *Claim Time Limit.* In no event shall any claim, dispute, controversy or other matter in question be made against the NASDAQ Companies by Distributor (or any Person claiming by or through Distributor) later than one year after the claim, dispute, controversy or other matter in question has arisen.

Section 21. *Waiver of Claims.* Distributor and its employees, directors, and other agents expressly waive any claims, disputes, controversies, and other matters not brought within the period set forth above.

Section 22. *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. Distributor 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.

Section 23. *Authorization.* This Agreement shall not be binding upon NASDAQ unless executed by an officer of NASDAQ. Distributor, 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 the Agreement on behalf of NASDAQ or Distributor.

Section 24. *Amendment; Waiver; Severability.* Except as may otherwise be set forth in this Agreement, NASDAQ may alter any term or condition of this Agreement on ninety (90) days' notice to Distributor, and any use of the Information after such date is deemed acceptance of the new term or condition. The means of notifying Distributor of such new term or condition may include, but not be limited to, emailing such term or condition to Distributor or posting such alteration on [www.nasdaqtrader.com](http://www.nasdaqtrader.com) or a successor site. No failure on the part of NASDAQ or Distributor to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under the 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. 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 25. *Survival Of Provisions.* The terms of Sections 1, 4 (j), 5, 6, 7, 11, 12, 13, 15, 16, 17, 21, and 22 shall survive the completion of performance or any termination of this Agreement.

Section 26. *Counterparts.* This Agreement may be executed in one or more counterparts, which shall each be considered an original, but all of which together shall constitute one and the same Agreement.

Section 27. *Notices.* All notices and other communications (except for invoices) required to be given in writing under this Agreement shall be directed to the signatories or, in the alternative, to the individuals identified in subsections (a) and (b) below and shall be deemed to have been duly given (i) upon actual receipt (or date of first refusal) by the parties, or (ii) upon constructive receipt (or date of first refusal) if sent by certified mail, return receipt requested, or any other delivery method that actually obtains a signed delivery receipt, to the following addresses or to such other address as any party hereto shall hereafter specify by prior written notice to the other party or parties below, or (iii) upon posting the notice or other communication on [www.nasdaqtrader.com](http://www.nasdaqtrader.com) or a successor site. If an email address is provided, NASDAQ may, in lieu of the above, give notice to or communicate with Distributor by email addressed to the persons identified in subsection (a) or to such other email address or persons as Distributor shall hereafter specify by prior written notice. By providing an email address, Distributor agrees that any receipt received by NASDAQ from Distributor's service provider or internet computer server indicating that the email was received shall be deemed proof that Distributor received the message. If Distributor cannot see or printout all or any portion of the message, Distributor agrees that it is Distributor's responsibility to contact NASDAQ at (301) 978-5307.

(a) if to **Distributor**:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Email: \_\_\_\_\_

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

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

(b) If to **NASDAQ**:

The NASDAQ Stock Market LLC

9600 Blackwell Road, Suite 500  
Rockville, MD 20850  
Attn: Market Data Manager  
Market Data Distribution  
Telephone #: (301) 978 - 5307

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

The Nasdaq Stock Market, Inc.  
Office of General Counsel  
9600 Blackwell Road  
Rockville, MD 20850

Check here: ☐ if this Agreement will be applicable to affiliates and have each affiliate sign the attached Appendix. By submitting the Appendix, Distributor agrees that the contact information set forth herein is the contact information for all affiliates. EACH SIGNATORY SHALL BE CONSIDERED A DISTRIBUTOR AND THE DISTRIBUTORS SHALL BE JOINTLY AND SEVERALLY LIABLE.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers. Signature on this cover sheet is in lieu of and has the same effect as signature on each document noted herein. DISTRIBUTOR WARRANTS THAT IT IS NOT A CONSUMER AND THAT IT WILL NOT USE THE SERVICE FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

**Distributor:** \_\_\_\_\_  
(PRINT NAME OF FIRM)

By: \_\_\_\_\_  
(SIGNATURE)

Name of  
Signatory: \_\_\_\_\_  
(PRINT NAME OF SIGNATORY)

Title: \_\_\_\_\_  
AUTHORIZED OFFICER

Date: \_\_\_\_\_, 20\_\_\_\_\_

**The NASDAQ Stock Market LLC**

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

Name of Signatory: \_\_\_\_\_

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

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

**Distributor's Principal Place of Business:**

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

**Identification of Distributor:**

a) type of entity, i.e., corporation, limited partnership, general partnership, sole proprietorship, etc.:

\_\_\_\_\_

b) state of incorporation or registration, if applicable:

\_\_\_\_\_

## **APPENDIX TO NASDAQ DISTRIBUTOR AGREEMENT**

This NASDAQ Distributor Agreement Appendix ("Appendix"), dated as of the date executed by The NASDAQ Stock Market, LLC ("NASDAQ"), is made by and between NASDAQ, a Delaware limited liability company that is subject to regulation by the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (Act), whose principal place of business is located at One Liberty Plaza, 165 Broadway, New York, New York 10006, the Distributor ("Recipient") and the Affiliated Distributor ("Affiliated Distributor"), as identified below. This is an Appendix to a NASDAQ Distributor Agreement ("Agreement") between NASDAQ and Distributor. Unless otherwise set forth herein, all defined terms shall have the meaning set forth in the NASDAQ Distributor Agreement.

Affiliated Distributor, as identified below, is an affiliate of Distributor. Both Distributor and Affiliated Distributor desire that Affiliated Distributor be permitted to receive Information, pursuant to the Agreement, as the same may be amended from time-to-time. Affiliated Distributor shall be bound by the terms of the Agreement as though it were the therein defined Distributor.

Both Distributor and Affiliated Distributor shall be jointly and severally liable under the Agreement, and Distributor shall be responsible for any breach of the Agreement by Affiliated Distributor.

In witness whereof, the parties hereto have caused this Appendix to be executed by their duly authorized officers. Signature on this Appendix by Affiliated Distributor is in lieu of and has the same effect as signature on each document noted herein. Affiliated Distributor warrants that it is not a consumer and that it will not use the service for personal, family or household purposes.

### **Distributor Firm:**

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Signature of Signatory

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Date

### **Affiliated Distributor Firm:**

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Signature of Signatory

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Date

**The NASDAQ Stock Market, LLC:**

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

Signature of Signatory: \_\_\_\_\_  
*Person signing on behalf of NASDAQ*

Name of Signatory: \_\_\_\_\_  
*Print name of person signing on behalf of NASDAQ*

Title of Signatory: \_\_\_\_\_