



# TIAA Brokerage Real-Time Quote Agreements (RTQA)

## What is the TIAA Real-Time Quote Agreement (RTQA)?

As a feature of our Brokerage service, we provide you with real-time quotes. Before you're able to view real-time balances, place trades, and conduct research, we ask that you complete the Real-Time Quote Agreement.

The TIAA-CREF Real-Time Quote and Vendor agreements provide you with the terms and conditions by which investment data is provided. In addition, the agreements provide the terms and conditions by which this information can be used for your personal use.

### CUSTOMER AGREEMENT REGARDING S&P DOW JONES INDEX DATA

You ("Customer") represent and acknowledge that you have read this Agreement, understand it, and agree to be bound by the following terms and conditions with respect to your use of the S&P Dow Jones Index Data ("Index Data") provided by S&P Dow Jones Indices. ("SPDJ Indices"):

1. Customer will use the Index Data solely for internal purposes and will not redistribute the Index Data in any form or manner to any third party;
2. As a condition of Customer's continued receipt of the Index Data originating from SPDJ Indices or any of its affiliates or agents, Customer shall not create, issue, sponsor or manage any financial instruments or investment products (including, without limitation, derivatives, structured products, passively managed accounts, investment funds, investment portfolios or exchange-traded funds) where the price, return and/or performance of such instrument or product is based on, related to, or intended to track, any index published by SPDJ Indices or a proxy for such index, without a separate written agreement with SPDJ Indices for such purpose;
3. Customer will not copy, download, store, reproduce or further transmit or distribute the Index Data for commercial purposes in any type of format or by any means, including but not limited to the Internet, Intranet or other type of network;
4. Customer acknowledges and agrees that the marks associated with the SPDJ Indices are famous, well-known and internationally recognized trade names, trademarks and service marks. The S&P Dow Jones

Indices are proprietary to and are calculated, distributed and marketed by Dow Jones Opco, a subsidiary of S&P Dow Jones Indices LLC, and have been licensed for use; Standard & Poor's 500 Index, Standard & Poor's and S&P are registered trademarks of Standard & Poor's Financial Services LLC; the S&P 500 Index is an unmanaged index of 500 stocks; S&P 500 is a trademark of The McGraw-Hill Financial; and Dow Jones is a registered trademark of Dow Jones Trademark Holdings LLC (together, the "Marks").

Customer has no rights to these Marks. Customer recognizes the great value of the reputation and goodwill associated with the Marks and agrees that all goodwill associated with the Marks from the products and services offered by TIAA-CREF Individual & Institutional Services, LLC ("TC Services") belong exclusively to SPDJ Indices and/or its licensors, as the case may be. Customer further acknowledges and agrees that (i) the indexes, Index Data and the divisors, formulas and methods used to compute the SPDJ Indices, are the exclusive property of SPDJ Indices and/or its co-licensors, as the case may be, not within the public domain and are protected by intellectual property laws and (ii) but for this Agreement, Customer would not have any rights with respect to, or rights to receive, any of the Index Data;

5. SPDJ Indices retains the right to direct TC Services to terminate distribution of the Index Data (or any portion thereof) to Customer for any reason;

**6. LIMITATION OF LIABILITY:**

SPDJ INDICES, DOW JONES TRADEMARK HOLDING COMPANY LLC, MCGRAW-HILL FINANCIAL AND EACH OF ITS SOURCES, CO-LICENSORS, DISTRIBUTION AGENTS, AFFILIATES, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AGENTS, REPRESENTATIVES (COLLECTIVELY, THE “SPDJ INDICES PARTIES”) SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OR DAMAGE, DIRECT, INDIRECT OR CONSEQUENTIAL, ARISING FROM ANY INACCURACY OR INCOMPLETENESS IN, OR DELAYS, INTERRUPTIONS, ERRORS OR OMISSIONS IN THE DELIVERY OF THE INDEX DATA, OR ANY DECISION MADE OR ACTION TAKEN BY CUSTOMER IN RELIANCE UPON THE INDEX DATA.

NEITHER THE SPDJ INDICES PARTIES NOR TC SERVICES SHALL BE LIABLE TO CUSTOMER FOR ANY LOSS OF BUSINESS REVENUES, LOST PROFITS OR ANY PUNITIVE, INDIRECT, CONSEQUENTIAL, SPECIAL OR SIMILAR DAMAGES WHATSOEVER, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF THE SPDJ INDICES PARTIES ARISING OUT OF ANY LEGAL CLAIM IN ANY WAY CONNECTED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE INDEX DATA) EXCEED FEES PAID BY TC SERVICES HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE INCIDENT GIVING RISE TO SUCH CLAIM.

**7. DISCLAIMER OF WARRANTIES:**

CUSTOMER EXPRESSLY ACKNOWLEDGES THAT THE SPDJ INDICES PARTIES DO NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, TO CUSTOMER WITH RESPECT TO THE INDEX DATA, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES WITH RESPECT TO THE TIMELINESS, SEQUENCE, ACCURACY, COMPLETENESS, CURRENTNESS, MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE INDEX DATA OR ANY WARRANTIES AS TO THE RESULTS TO BE OBTAINED BY CUSTOMER IN CONNECTION WITH THE USE OF THE INDEX DATA.

**CUSTOMER AGREEMENT REGARDING AAM DATA**

You (“Customer”) represent and acknowledge that you have read this Agreement, understand it, and agree to be bound by the following terms and conditions with respect to your use of the data (“Data”) provided by Advisors Asset Management, Inc. (“AAM”):

1. Customer will use the Data solely for internal purposes and will not redistribute the Data in any form or manner to any third party;
2. Customer will not use or permit anyone else to use the Data in connection with the creating, managing, advising, writing, trading, marketing or promotion of any securities or financial instruments or products, including, but not limited to, funds, synthetic or derivative securities (e.g., options, warrants, swaps, and futures), whether listed on an exchange or traded over the counter or on a private-placement basis or otherwise or to create any indices (custom or otherwise);
3. Customer will treat the Data as proprietary to AAM. Further, Customer acknowledges that AAM is the sole and exclusive owner of the Data and any trade secrets, copyrights, trademarks and other intellectual property rights in or to the Data;
4. Customer will not (i) copy any component of the Data, (ii) alter, modify or adapt any component of the Data, including, but not limited to, translating, decompiling, disassembling, reverse engineering or creating derivative works, or (iii) make any component of the Data available to any other person or organization (including, without limitation, the Customer’s present and future parents, subsidiaries or affiliates) directly or indirectly, for any of the foregoing or for any other use, including, without limitation, by loan, rental, service bureau, external time sharing or similar arrangement;
5. Customer is obligated to reproduce on all permitted copies of the Data all copyright, proprietary rights and restrictive legends appearing on the Data;
6. Customer assumes the entire risk of using the Data and agrees to hold AAM harmless from any claims that may arise in connection with any use of the Data by the Customer or its permitted affiliates;
7. AAM may, in its sole and absolute discretion and at any time, terminate the Customer’s right to receive and/or use the Data;
8. AAM is a third party beneficiary of the Customer Agreement and is entitled to enforce all provisions of this Agreement relating to the Data.
9. **DISCLAIMER OF WARRANTIES AND LIABILITY:**

THE DATA IS PROVIDED TO CUSTOMER ON AN “AS IS” BASIS. TIAA-CREF INDIVIDUAL & INSTITUTIONAL SERVICES, LCC (“TC SERVICES”), ITS INFORMATION PROVIDERS, AND ANY OTHER THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE

DATA, MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE DATA (OR THE RESULTS TO BE OBTAINED BY THE USE THEREOF). TC SERVICES, ITS INFORMATION PROVIDERS AND ANY OTHER THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA EXPRESSLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES OF ORIGINALITY, ACCURACY, COMPLETENESS, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.

CUSTOMER ASSUMES THE ENTIRE RISK OF ANY USE CUSTOMER MAY MAKE OF THE DATA. IN NO EVENT SHALL TC SERVICES, ITS INFORMATION PROVIDERS OR ANY THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA, BE LIABLE TO THE CUSTOMER, OR ANY OTHER THIRD PARTY, FOR ANY DIRECT OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE INABILITY OF THE CUSTOMER TO USE THE DATA, REGARDLESS OF THE FORM OF ACTION, EVEN IF TC SERVICES, ANY OF ITS INFORMATION PROVIDERS, OR ANY OTHER THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA HAS BEEN ADVISED OF OR OTHERWISE MIGHT HAVE ANTICIPATED THE POSSIBILITY OF SUCH DAMAGES; and

### 10. Indemnification:

The Customer agrees to indemnify and hold harmless TC Services, its information providers, and any other third party involved in or related to the making or compiling of the Data, their affiliates and subsidiaries and their respective directors, officers, employees and agents from and against any claims, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and costs, as incurred, arising in any manner out of the Customer's or any third party's use of, or inability to use, the Data or any breach by the Customer of any provision contained in this Agreement.

### CUSTOMER AGREEMENT REGARDING MSCI DATA

You ("Customer") represent and acknowledge that you have read this Agreement, understand it, and agree to be bound by the following terms and conditions with respect to your use of the MSCI data ("Data"):

1. Customer will use the Data solely for internal purposes and will not redistribute the Data in any form or manner to any third party;
2. Customer will not use or permit anyone else to use the Data in connection with the creating, managing, advising, writing, trading, marketing or promotion of any securities or financial instruments or products, including, but not limited to, funds, synthetic or derivative securities (e.g., options, warrants, swaps, and futures), whether listed on an exchange or traded over the counter or on a private-placement basis or otherwise or to create any indices (custom or otherwise);
3. Customer will treat the Data as proprietary to MSCI. Further, Customer acknowledges that MSCI is the sole and exclusive owner of the Data and any trade secrets, copyrights, trademarks and other intellectual property rights in or to the Data;
4. Customer will not (i) copy any component of the Data, (ii) alter, modify or adapt any component of the Data, including, but not limited to, translating, decompiling, disassembling, reverse engineering or creating derivative works, or (iii) make any component of the Data available to any other person or organization (including, without limitation, the Customer's present and future parents, subsidiaries or affiliates) directly or indirectly, for any of the foregoing or for any other use, including, without limitation, by loan, rental, service bureau, external time sharing or similar arrangement;
5. Customer is obligated to reproduce on all permitted copies of the Data all copyright, proprietary rights and restrictive legends appearing on the Data;
6. Customer assumes the entire risk of using the Data and agrees to hold MSCI harmless from any claims that may arise in connection with any use of the Data by the Customer or its permitted affiliates;
7. MSCI may, in its sole and absolute discretion and at any time, terminate the Customer's right to receive and/or use the Data;
8. MSCI is a third party beneficiary of the Customer Agreement and is entitled to enforce all provisions of this Agreement relating to the Data.
9. **DISCLAIMER OF WARRANTIES AND LIABILITY:**  
THE DATA IS PROVIDED TO CUSTOMER ON AN "AS IS" BASIS. TIAA-CREF INDIVIDUAL & INSTITUTIONAL SERVICES, LCC ("TC SERVICES"), ITS INFORMATION PROVIDERS, AND ANY OTHER THIRD PARTY INVOLVED

IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA, MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE DATA (OR THE RESULTS TO BE OBTAINED BY THE USE THEREOF). TC SERVICES, ITS INFORMATION PROVIDERS AND ANY OTHER THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA EXPRESSLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES OF ORIGINALITY, ACCURACY, COMPLETENESS, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.

CUSTOMER ASSUMES THE ENTIRE RISK OF ANY USE CUSTOMER MAY MAKE OF THE DATA. IN NO EVENT SHALL TC SERVICES, ITS INFORMATION PROVIDERS OR ANY THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA, BE LIABLE TO THE CUSTOMER, OR ANY OTHER THIRD PARTY, FOR ANY DIRECT OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE INABILITY OF THE CUSTOMER TO USE THE DATA, REGARDLESS OF THE FORM OF ACTION, EVEN IF TC SERVICES, ANY OF ITS INFORMATION PROVIDERS, OR ANY OTHER THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA HAS BEEN ADVISED OF OR OTHERWISE MIGHT HAVE ANTICIPATED THE POSSIBILITY OF SUCH DAMAGES; and

### 10. Indemnification:

The Customer agrees to indemnify and hold harmless TC Services, its information providers, and any other third party involved in or related to the making or compiling of the Data, their affiliates and subsidiaries and their respective directors, officers, employees and agents from and against any claims, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and costs, as incurred, arising in any manner out of the Customer's or any third party's use of, or inability to use, the Data or any breach by the Customer of any provision contained in this Agreement.

### CUSTOMER AGREEMENT REGARDING STANDARD & POOR'S FINANCIAL SERVICES, LLC DATA

You ("Customer") represent and acknowledge that you have read this Agreement, understand it, and agree to be bound by the following terms and conditions with respect to your use of data ("Data") provided by Standard & Poor's Financial Services, LLC ("S&PFS"):

1. Customer will use the Data solely for internal purposes, will not redistribute the Data in any form or manner to any third party, and will not use or permit anyone to use the information or software provided through TC Services for any unlawful or unauthorized purpose;
2. Customer will not use or permit anyone else to use the Data in connection with the creating, managing, advising, writing, trading, marketing or promotion of any securities or financial instruments or products, including, but not limited to, funds, synthetic or derivative securities (e.g., options, warrants, swaps, and futures), whether listed on an exchange or traded over the counter or on a private-placement basis or otherwise or to create any indices (custom or otherwise);
3. Customer will treat the Data as proprietary to S&PFS. Further, Customer acknowledges that S&PFS and its affiliates are the sole and exclusive owners of the Data and any trade secrets, copyrights, trademarks and other intellectual property rights in or to the Data;
4. Customer will not (i) copy any component of the Data, (ii) alter, modify or adapt any component of the Data, including, but not limited to, translating, decompiling, disassembling, reverse engineering or creating derivative works, or (iii) make any component of the Data available to any other person or organization (including, without limitation, the Customer's present and future parents, subsidiaries or affiliates) directly or indirectly, for any of the foregoing or for any other use, including, without limitation, by loan, rental, service bureau, external time sharing or similar arrangement;
5. Customer is obligated to reproduce on all permitted copies of the Data all copyright, proprietary rights and restrictive legends appearing on the Data;
6. Customer assumes the entire risk of using the Data and agrees to hold S&PFS harmless from any claims that may arise in connection with any use of the Data by the Customer or its permitted affiliates;
7. S&PFS may, in its sole and absolute discretion and at any time, terminate the Customer's right to receive and/or use the Data;
8. S&PFS is a third party beneficiary of the Customer Agreement and is entitled to enforce all provisions of this Agreement relating to the Data.
9. **DISCLAIMER OF WARRANTIES AND LIABILITY:**  
THE DATA IS PROVIDED TO CUSTOMER ON AN "AS IS" BASIS. TIAA-CREF INDIVIDUAL & INSTITUTIONAL SERVICES, LCC ("TC SERVICES"), S&PFS, THEIR

AFFILIATES, INFORMATION PROVIDERS, AND ANY OTHER THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA, MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE DATA (OR THE RESULTS TO BE OBTAINED BY THE USE THEREOF). NEITHER TC SERVICES, S&PFS, THEIR AFFILIATES, ANY OF THEIR INFORMATION PROVIDERS AND ANY OTHER THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA EXPRESSLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES OF ORIGINALITY, ACCURACY, COMPLETENESS, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, OR FOR ANY DELAYS, INTERRUPTIONS, OMISSIONS.

IN NO EVENT SHALL TC SERVICES, S&PFS, THEIR AFFILIATES, INFORMATION PROVIDERS OR ANY THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA, BE LIABLE TO THE CUSTOMER, OR ANY OTHER THIRD PARTY, FOR ANY DIRECT OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE INABILITY OF THE CUSTOMER TO USE THE DATA, REGARDLESS OF THE FORM OF ACTION, EVEN IF TC SERVICES, ANY OF ITS INFORMATION PROVIDERS, OR ANY OTHER THIRD PARTY INVOLVED IN OR RELATED TO THE MAKING OR COMPILING OF THE DATA HAS BEEN ADVISED OF OR OTHERWISE MIGHT HAVE ANTICIPATED THE POSSIBILITY OF SUCH DAMAGES; and

### 10. Indemnification:

The Customer agrees to indemnify and hold harmless TC Services, S&PFS, information providers, and any other third party involved in or related to the making or compiling of the Data, their affiliates and subsidiaries and their respective directors, officers, employees and agents from and against any claims, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and costs, as incurred, arising in any manner out of the Customer's or any third party's use of, or inability to use, the Data or any breach by the Customer of any provision contained in this Agreement.

### REAL-TIME QUOTE AGREEMENTS

As a TIAA-CREF Individual & Institutional Services, LLC customer, you are eligible for real-time quotes. To take advantage of this valuable benefit, you must read and complete the Real-Time Quote Agreements, below.

The exchanges require us to make sure you review and understand the information in the Agreements, which contain terms and conditions relating to the use of real-time quotes data, professional and non-professional classifications, liability for trading losses, and disclosures regarding the accuracy and completeness of data. Please read each of the four (4) Agreements, below.

By clicking on the ACCEPT button, you acknowledge that (1) you are a non-professional subscriber, as defined within each Agreement, and (2) you have read, understand, accept and agree to all of the terms and conditions set forth in the Agreements.

### NYSE EXCHANGE AGREEMENT

#### SECTION 1: TERMS AND CONDITIONS OF GENERAL APPLICABILITY

- 1. MARKET DATA DEFINITION** – For all purposes of this Agreement, “Market Data” means (a) last sale information and quotation information relating to securities that are listed on a national securities exchange, (b) such bond and other equity last sale and quotation information, and such index and other market information, as United States-registered national securities exchanges and national securities associations (each, an “Authorizing SRO”) may make available and as the New York Stock Exchange (“NYSE”) or the American Stock Exchange (“AMEX”) may from time to time designate as “Market Data”; and (c) all information that derives from any such information.
- 2. PROPRIETARY NATURE OF DATA** – Subscriber understands and acknowledges that each Authorizing SRO and Other Data Disseminator has a proprietary interest in the Market Data that originates on or derives from it or its market(s).
- 3. ENFORCEMENT** – Subscriber understands and acknowledges that (a) the Authorizing SROs are third-party beneficiaries under this Agreement and (b) the Authorizing SROs or their authorized representative(s) may enforce this Agreement, by legal proceedings or otherwise, against Subscriber or any person that obtains Market Data that is made available pursuant to this Agreement other than as this Agreement contemplates. Subscriber shall pay the reasonable attorney's fees that any Authorizing SRO incurs in enforcing this Agreement against Subscriber.
- 4. DATA NOT GUARANTEED** – Subscriber understands that no Authorizing SRO, no other entity whose information is made available over the Authorizing SROs' facilities

(an “Other Data Disseminator”) and no information processor that assists any Authorizing SRO or Other Data Disseminator in making Market Data available (collectively, the “Disseminating Parties”) guarantees the timeliness, sequence, accuracy or completeness of Market Data or of other market information or messages disseminated by any Disseminating Party. Neither Subscriber nor any other person shall hold any Disseminating Party liable in any way for (a) any inaccuracy, error or delay in, or omission of, (i) any such data, information or message or (ii) the transmission or delivery of any such data, information or message, or (b) any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay or omission, (ii) non-performance or (iii) interruption in any such data, information or message, due either to any negligent act or omission by any Disseminating Party, to any “force majeure” (e.g., flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, equipment or software malfunction) or to any other cause beyond the reasonable control of any Disseminating Party.

5. **PERMITTED USE** – Subscriber shall not furnish Market Data to any other person or entity and, subject to Paragraph 10, shall use Market Data only for its individual use in its business.
6. **DISSEMINATION DISCONTINUANCE OR MODIFICATION** – Subscriber understands and acknowledges that, at any time, the Authorizing SROs may discontinue disseminating any category of Market Data, may change or eliminate any transmission method and may change transmission speeds or other signal characteristics. The Authorizing SROs shall not be liable for any resulting liability, loss or damages that may arise there from.
7. **DURATION; SURVIVAL** – This Agreement remains in effect for so long as Subscriber has the ability to receive Market Data as contemplated by this Agreement. In addition, Vendor may terminate this Agreement at any time, whether at the direction of the Authorizing SROs or otherwise. Paragraphs 2, 3 and 4, and the first two sentences of Paragraph 8, survive any termination of this Agreement.
8. **MISCELLANEOUS** – The laws of the State of New York shall govern this Agreement and it shall be interpreted in accordance with those laws. This Agreement is subject to the Securities Exchange Act of 1934, the rules promulgated under that act, and the joint-industry plans entered into pursuant to that act. This writing

contains the entire agreement between the parties in respect of its subject matter. Subscriber may not assign all or any part of this Agreement to any other person. The person manifesting assent to this agreement below represents and warrants that it has legal capacity to contract and, if that person is manifesting assent on behalf of a proprietorship or a business, partnership or other organization, represents and warrants that he or she has actual authority to bind the organization.

### SECTION 2: NONPROFESSIONAL SUBSCRIBER

9. **NONPROFESSIONAL SUBSCRIBER DEFINITION** – “Nonprofessional Subscriber” means any natural person whom Vendor has determined to qualify as a “Nonprofessional Subscriber” and who is not:
  - (a) registered or qualified with the Securities and Exchange Commission (the “SEC”), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association.
  - (b) engaged as an “investment advisor” as that term is defined in Section 201(11) of the Investment Advisor’s Act of 1940 (whether or not registered or qualified under that Act), nor
  - (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him or her to be so registered or qualified if he or she were to perform such functions for an organization not so exempt.
10. **PERMITTED USE** – If Subscriber is a Nonprofessional Subscriber, he or she shall receive Market Data solely for his or her personal, non-business use. Subscriber shall notify Vendor promptly in writing of any change in his or her circumstances that may cause him or her to cease to qualify as a Nonprofessional Subscriber.

### OPTIONS PRICE REPORTING AUTHORITY AGREEMENT

The undersigned (“Applicant”) hereby applies to TIAA-CREF Individual & Institutional Services, LLC (the “Vendor”) for approval as a Nonprofessional Subscriber to receive for personal nonbusiness use current options last sale information and current options quotation information (the “Information”) published by the Options Price Reporting Authority (“OPRA”) pursuant to a Plan declared effective by the Securities and Exchange Commission. In reviewing and approving this Application and Agreement, Vendor is authorized to act on behalf of the OPRA participants, which are those national securities exchanges and associations

who, from time to time, are parties to said Plan. Applicant acknowledges that all representations and agreements made herein and all payments made hereunder are for the benefit of OPRA, OPRA's processor and the OPRA participants.

For the purpose of this Application and Agreement, Applicant hereby represents and agrees as follows:

1. As a condition of being approved as a Nonprofessional Subscriber, Applicant represents and agrees that the following statements are and will continue to be true for so long as Applicant receives Information as a Nonprofessional Subscriber:
  - (a) Applicant is making this Application and Agreement in his or her own individual capacity and not on behalf of a firm, corporation, partnership, trust or association.
  - (b) Applicant shall use the Information solely in connection with his or her individual personal investment activities and not in connection with any trade or business activities.
  - (c) Applicant shall not furnish the Information to any other person.
  - (d) Applicant is not a securities broker-dealer, investment advisor, futures commission merchant, commodities introducing broker or commodity trading advisor, member of a securities exchange or association or futures contract market, or an owner, partner, or associated person of any of the foregoing.
  - (e) Applicant is not employed by a bank or an insurance company or an affiliate of either to perform functions related to securities or commodity futures investment or trading activity.
2. For the privilege of receiving the Information, Applicant agrees to pay to Vendor for the benefit of the OPRA participants the OPRA Nonprofessional Subscriber Fee in such amount and at such times as shall be established by OPRA from time to time, plus any applicable federal, state or local taxes. This Fee shall be in addition to any charges imposed by Vendor. OPRA shall provide notice to Vendor of any change in this Fee not less than 30 days prior to the effectiveness of such change. Vendor shall be responsible for notifying its Nonprofessional Subscribers of all Fee changes.
3. Applicant acknowledges that the Information is and shall remain the property of the respective exchange or other market on which a reported transaction took place or a reported quotation was entered, and Applicant shall make no use of the Information except in compliance with the terms of this Application and Agreement.
4. NEITHER VENDOR, OPRA, OPRA'S PROCESSOR NOR ANY OPRA PARTICIPANT GUARANTEES THE TIMELINESS, SEQUENCE, ACCURACY OR COMPLETENESS OF ANY OPTIONS INFORMATION, AND NEITHER VENDOR, OPRA, OPRA'S PROCESSOR NOR ANY OPRA PARTICIPANT SHALL BE LIABLE IN ANY WAY TO APPLICANT OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGES, COST OR EXPENSE WHICH MAY ARISE FROM ANY FAILURE OF PERFORMANCE BY VENDOR, OPRA, OPRA'S PROCESSOR OR ANY OPRA PARTICIPANT, OR FROM ANY DELAYS, INACCURACIES, ERRORS IN OR OMISSIONS FROM ANY OPTIONS INFORMATION OR THE TRANSMISSION OR DELIVERY THEREOF, WHETHER OR NOT DUE TO ANY NEGLIGENT ACT OR OMISSION ON THE PART OF OPRA, OPRA'S PROCESSOR, ANY OPRA PARTICIPANT OR ANY THIRD-PARTY. IN NO EVENT SHALL VENDOR, OPRA, OPRA'S PROCESSOR OR ANY OPRA PARTICIPANT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, TRADING LOSSES, OR DAMAGES RESULTING FROM INCONVENIENCE OR LOSS OF USE OF THE SERVICE.
5. Applicant's privilege of receiving the Information hereunder may be terminated by Applicant or by Vendor upon 30 days written notice from the terminating party to the other party, and shall be terminated immediately at any time that Vendor or OPRA determines that Applicant is not in compliance with this Application and Agreement or that any of Applicant's representations herein are not true. Upon a determination by Vendor or OPRA that Applicant received access to Information as a Nonprofessional Subscriber during any period when Applicant did not meet the qualifications for such access, within 30 days of receipt of written notice of such determination Applicant shall pay to OPRA the full amount of OPRA's Professional Subscriber fee for the period during which Applicant had access to the Information, less Applicant's Nonprofessional Subscriber fees for such period actually received by OPRA.
6. Nothing herein shall be deemed to prevent or restrict any OPRA Participant from discontinuing to furnish options last sale information or quotation information for dissemination nor to restrict OPRA from making such changes in the speed of transmission, the characteristics of the electrical signals representing the Information or the manner of disseminating the same, as OPRA shall from time to time determine to be appropriate; but in the event of any such discontinuance or change, OPRA shall give such notice thereof to Vendor as is reasonable under the circumstances.

7. Applicant agrees to inform Vendor promptly in writing at its address set forth above of any changes in the information provided herein and to furnish Vendor any additional information requested by it in connection with Applicant's receipt of the information.

### **MARKET DATA SUBSCRIPTION AGREEMENT: CHICAGO MERCANTILE EXCHANGE**

This Market Data Subscription Agreement is entered into by and between TIAA-CREF Individual & Institutional Services, LLC ("Distributor") and you ("You", "User" or "Subscriber"). This Market Data Subscription Agreement permits you to access, receive and use certain Market Data (defined below) in accordance with the following terms and conditions of this Market Data Subscription Agreement (this "Agreement"). This Agreement governs your access to receive and use the Market Data, and constitutes a binding legal agreement by and between Distributor and the user on behalf of itself and its company (each of Distributor and the Subscriber, a "Party" and collectively, the "Parties").

#### **DEFINITIONS.**

- (a) "Device" means any unit of equipment, fixed or portable, that receives, accesses or displays Market Data in visible, audible or other comprehensible form.
- (b) "Force Majeure Event" means any flood, extraordinary weather conditions, earthquake or other act of God, fire, war, terrorism, insurrection, riot, labor dispute, accident, action of government, communications or power failures, or equipment or software malfunctions.
- (c) "Person" means any natural person, proprietorship, corporation, partnership, limited liability company or other organization.
- (d) "Market Data" means information and data pertaining to listed and over the counter derivatives contracts (including without limitations swaps and futures) and options contracts or similar derivative instruments as well as index data and analytics data. Market Data may include, without limitation, opening and closing prices, high-low prices, settlement prices, current bid and ask prices, open interest information, last sale prices, price limits, requests for quotations, fixing prices, data curves, estimated and actual volume data, contract specifications and fast or late messages. With respect to Subscriber's obligations under this Agreement, Market Data also includes information, data and materials that convey information to Subscriber substantially equivalent to Market Data.
- (e) "OTC Market Data" means Market Data relating to over the counter derivatives contracts.

#### **PROPRIETARY RIGHTS IN THE MARKET DATA.**

- (a) Subscriber acknowledges and agrees that Chicago Mercantile Exchange Inc. and its affiliates ("CME" or "Exchange") have exclusive and valuable property rights in and to the Market Data (or in the case of third party content providers who are licensing data through CME, such third party content provider has exclusive and valuable proprietary rights), that such Market Data constitute valuable confidential information, trade secrets and/or proprietary rights of the Exchange, not within the public domain, that such Market Data shall remain valuable confidential information, trade secrets and/or proprietary rights of the Exchange and that, but for this Agreement, Subscriber would have no rights or access to such Market Data.
- (b) Subscriber acknowledges and agrees that disclosure of any Market Data, or any breach or threatened breach of any other covenants or agreements contained herein, would cause irreparable injury to the Exchange for which money damages would be an inadequate remedy. Accordingly, Subscriber further acknowledges and agrees that the Exchange shall be entitled to specific performance and injunctive and other equitable relief from the breach or threatened breach of any provision, requirement or covenant of this Agreement (including, without limitation, any disclosure or threatened disclosure of Market Data) in addition to and not in limitation of any other legal or equitable remedies which may be available.

#### **RECEIPT OF MARKET DATA BY SUBSCRIBER.**

- (a) This Agreement sets forth the terms and conditions under which Subscriber may use the Market Data. Subscriber acknowledges that, notwithstanding any agreement, CME or Distributor may, in its discretion, discontinue disseminating Market Data or change or eliminate its own transmission method, speed or signal characteristics. In addition, Subscriber acknowledges and agrees that the Distributor or Exchange reserve the right to disapprove any Subscriber and to terminate any Subscriber's receipt of Market Data for any reason or no reason.
- (b) (1) Except as provided in (2) below, Subscriber will use Market Data only for its own internal business activities (internal business activities shall exclude subsidiaries and affiliates) and only at the offices and locations and on the Devices designated by Subscriber in writing to Distributor and CME from time-to-time. (The term "for its own internal business activities," as used in the immediately preceding sentence herein, means for Subscriber's (a) trading, for its own account or for the

account of its customers (b) evaluating, for its own internal business decisions or (c) for providing advice to its customers, the movements or trends in markets for derivative instruments, subject to all of the limitations set forth below in this sub-paragraph as to the telephonic disclosure to customers of a necessary and de minimis number of segments of Market Data.) Subscriber agrees that it will not communicate or otherwise furnish, or permit to be communicated or otherwise furnished, the Market Data, in any format, to any other party or any office or location other than that designated above, nor allow any other party to take, directly or indirectly, any of the Market Data from such offices or locations, and will adopt and enforce any policy that is reasonable to prevent the Market Data from being taken therefrom. Subscriber specifically agrees, without limiting or varying its obligations under paragraph 7 herein or otherwise set forth in this Agreement, that Subscriber shall not use or permit another person to use any Market Data for the purposes of (i) creating derived data products based upon or derived from the Market Data, (ii) determining or arriving at any price, including any settlement prices, for derivatives contracts, options on derivatives contracts, or like derivatives instruments traded on any exchange other than the Exchange and (iii) for any other derived works that will be disseminated, published or otherwise used externally. Subscriber will abide by any other limitations on such use that any of the Exchange may specify from time to time. Subscriber will use its best efforts to ensure that its partners, officers, directors, employees and agents maintain sole control and physical possession of, and sole access to, Market Data received through Devices in Subscriber's possession.

(2) Notwithstanding (1) above, Subscriber may, in the regular course of its business, occasionally furnish, to each of its customers and branch offices, in a quantity restricted to that necessary to enable Subscriber to conduct its business, a de minimis number of segments of Market Data, provided that such Market Data does not include any OTC Market Data. Such redissemination must be strictly limited to telephonic communications not entailing the use of computerized voice synthesization or any other technology and must be strictly related to the trading activity of Subscriber or any such recipients. Any such recipients must be advised by Subscriber that such segments are proprietary and confidential information not to be disclosed or disseminated to other persons or entities. Subscriber agrees to make all reasonable efforts to ensure that such recipients abide by the provisions of this Agreement.

(c) Subscriber will use its best efforts to ensure that no unauthorized dissemination of the Market Data is permitted.

**DISCLAIMER OF WARRANTIES.** MARKET DATA IS PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND. SUBSCRIBER AGREES THAT THE MARKET DATA IS PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND. USER AGREES THAT NEITHER THE DISTRIBUTOR OR THE EXCHANGE NOR ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, NOR ANY LICENSOR TO EXCHANGE MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE MARKET DATA OR THE TRANSMISSION, TIMELINESS, ACCURACY OR COMPLETENESS THEREOF, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR ANY WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR NON-INFRINGEMENT, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM ANY COURSE OF DEALING OR USAGE OF TRADE.

**LIMITATIONS OF LIABILITY AND DAMAGES.** SUBSCRIBER AGREES THAT THE DISTRIBUTOR, THE EXCHANGE, NOR THEIR RESPECTIVE MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, GUARANTEE THE SEQUENCE, ACCURACY OR COMPLETENESS OF THE MARKET DATA, NOR SHALL ANY OF THEM BE LIABLE TO SUBSCRIBER OR ANY OTHER PERSON FOR ANY DELAYS, INACCURACIES, ERRORS OR OMISSIONS IN MARKET DATA, OR IN THE TRANSMISSION THEREOF, OR FOR ANY OTHER DAMAGES ARISING IN CONNECTION WITH SUBSCRIBER'S RECEIPT OR USE OF MARKET DATA, WHETHER OR NOT RESULTING FROM NEGLIGENCE ON THEIR PART, A FORCE MAJEURE EVENT OR ANY OTHER CAUSE. THE DISTRIBUTOR, THE EXCHANGE, ITS AFFILIATES, THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, EMPLOYEES OR AGENTS SHALL NOT BE LIABLE TO SUBSCRIBER OR ANY OTHER PERSON OR ENTITY FOR ANY LOSS, LIABILITY OR OTHER DAMAGE, DIRECT, INDIRECT OR CONSEQUENTIAL, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE MARKET DATA THEREUNDER, INCLUDING BUT NOT LIMITED TO ANY INACCURACY OR INCOMPLETENESS IN, OR DELAYS, INTERRUPTIONS, ERRORS OR OMISSIONS IN THE DELIVERY OF, THE SITE OR THE MARKET DATA OR (ii) ANY DECISION MADE OR ACTION TAKEN OR NOT TAKEN BY SUBSCRIBER, ITS CUSTOMERS OR ANY OTHER ENTITIES OR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS. THE DISTRIBUTOR, THE EXCHANGE, AND THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS,

MEMBERS, EMPLOYEES OR AGENTS SHALL NOT BE LIABLE TO THE SUBSCRIBER OR ANY OTHER PERSON OR ENTITY FOR LOSS OF BUSINESS REVENUES, LOST PROFITS OR ANY PUNITIVE, INDIRECT, CONSEQUENTIAL, SPECIAL OR SIMILAR DAMAGES WHATSOEVER, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBSCRIBER EXPRESSLY ACKNOWLEDGES THAT DISTRIBUTOR, EXCHANGE AND ITS AFFILIATES DO NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, TO SUBSCRIBER OR ANY THIRD PARTY WITH RESPECT TO THIS AGREEMENT AND THE MARKET DATA, INCLUDING, WITHOUT LIMITATION: (i) ANY WARRANTIES WITH RESPECT TO THE TIMELINESS, SEQUENCE, ACCURACY, COMPLETENESS, CURRENTNESS, MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE MARKET DATA OR (ii) ANY WARRANTIES AS TO THE RESULTS TO BE OBTAINED BY SUBSCRIBER OR ANY THIRD PARTY IN CONNECTION WITH THE USE OF THE MARKET DATA. IF THE FOREGOING DISCLAIMER AND WAIVER OF LIABILITY SHOULD BE DEEMED INVALID OR INEFFECTIVE, THE CUMULATIVE LIABILITY OF DISTRIBUTOR, EXCHANGE, AND THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, EMPLOYEES AND AGENTS SHALL NOT EXCEED THE ACTUAL AMOUNT OF LOSS OR DAMAGE, OR THE SUM OF FIFTY DOLLARS (\$50.00), WHICHEVER IS LESS.

**TERM AND TERMINATION.** This Agreement will commence as of the Effective Date. Subject to Subscriber's strict compliance with the provisions of this Agreement, the provision of Market Data by the Distributor hereunder will continue in force for a period of one (1) month from the Effective Date (the "Initial Term"), and shall automatically renew at the end of such Initial Term for one (1) month and automatically thereafter on a month-to-month basis (such ongoing renewals, the "Renewal Terms"), provided, however, that Subscriber may terminate this agreement by providing at least ten (10) days' prior electronic or written notice that it declines such automatic renewal.

Distributor and Exchange may from time to time modify and amend this Agreement, and Subscriber agrees to be bound by such terms. Subscriber may terminate this Agreement upon ten (10) days' prior electronic or written notice upon such modification or amendment. By continuing to access or use the Market Data after Distributor or Exchange has provided you with notice of a modification, you are indicating that you agree to be bound by the modified Agreement.

Upon any termination of this Agreement, Subscriber shall discontinue any use of the data, and delete any and all data received under this Agreement, including without limitation any stored historical data.

**SURVIVAL.** The provisions of the Definitions Section, Proprietary Rights, The Market Data Section, and Sections that by their nature should reasonably survive, and any amendments to the provisions of the aforementioned, will survive any termination or expiration of this Agreement.

**INDEMNIFICATION.** Subscriber will indemnify, defend and hold the Distributor and Exchange, and its respective affiliates, directors, officers, employees and agents harmless from and against any and all claims arising out of or in connection with this Agreement, including, without limitation, any liability, loss or damages (including, without limitation, attorneys' fees and other expenses) caused by any inaccuracy in or omission from, Subscriber's failure to furnish or to keep, or Subscriber's delay in furnishing or keeping, any report or record required to be kept by Subscriber hereunder.

**MISCELLANEOUS.** Any action arising out of this Agreement shall be governed and construed in accordance with the internal laws (and not the law of conflicts) of the State of Illinois. Subscriber may not assign all or any part of this Agreement without the prior written consent of the Distributor. Subscriber may not modify or amend the terms of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and any other agreement relating to Subscriber's receipt and use of Market Data, the terms and conditions of this Agreement will prevail. If, for any reason, one or more provisions of this Agreement is held invalid, the other provisions of the Agreement shall remain in full force and effect.

The Parties submit to the exclusive jurisdiction of the state and federal courts situated in Cook County, State of Illinois.

The Distributor and Subscriber acknowledge and agree that CME is an intended third party beneficiary to this Agreement, and that CME may enforce all of the terms hereunder.

## REAL-TIME QUOTE AGREEMENT

(Usage-Based Services/Nonprofessional Subscriber Status)  
(Electronic Version)

TIAA-CREF Individual & Institutional Services, LLC (“Vendor”) agrees to make “Market Data” available to you pursuant to the terms and conditions set forth in this agreement. By executing this Agreement in the space indicated below, you (“Subscriber”) agree to comply with those terms and conditions. Section 1 sets forth terms and conditions of general applicability. Section 2 applies insofar as Subscriber receives and uses Market Data made available pursuant to this Agreement as a Nonprofessional Subscriber.

### SECTION 1: TERMS AND CONDITIONS OF GENERAL APPLICABILITY

- 1. MARKET DATA DEFINITION** – For all purposes of this Agreement, “Market Data” means (a) last sale information and quotation information relating to securities that are admitted to dealings on the New York Stock Exchange (“NYSE”), (b) such bond and other equity last sale and quotation information, and such index and other market information, as United States-registered national securities exchanges and national securities associations (each, an “Authorizing SRO”) may make available and as the NYSE may from time to time designate as “Market Data”; and (c) all information that derives from any such information.
- 2. PROPRIETARY NATURE OF DATA** – Subscriber understands and acknowledges that each Authorizing SRO and Other Data Disseminator has a proprietary interest in the Market Data that originates on or derives from it or its market(s).
- 3. ENFORCEMENT** – Subscriber understands and acknowledges that (a) the Authorizing SROs are third-party beneficiaries under this Agreement and (b) the Authorizing SROs or their authorized representative(s) may enforce this Agreement, by legal proceedings or otherwise, against Subscriber or any person that obtains Market Data that is made available pursuant to this Agreement other than as this Agreement contemplates. Subscriber shall pay the reasonable attorney’s fees that any Authorizing SRO incurs in enforcing this Agreement against Subscriber.
- 4. DATA NOT GUARANTEED** – Subscriber understands that no Authorizing SRO, no other entity whose information is made available over the Authorizing SROs’ facilities (an “Other Data Disseminator”) and no information processor that assists any Authorizing SRO or Other Data Disseminator in making Market Data available (collectively, the “Disseminating Parties”) guarantees the timeliness, sequence, accuracy or completeness of Market Data or of other market information or messages disseminated by any Disseminating Party. Neither Subscriber nor any other person shall hold any Disseminating Party liable in any way for (a) any inaccuracy, error or delay in, or omission of, (i) any such data, information or message or (ii) the transmission or delivery of any such data, information or message, or (b) any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay or omission, (ii) non-performance or (iii) interruption in any such data, information or message, due either to any negligent act or omission by any Disseminating Party, to any “force majeure” (e.g., flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, equipment or software malfunction) or to any other cause beyond the reasonable control of any Disseminating Party.
- 5. PERMITTED USE** – Subscriber shall not furnish Market Data to any other person or entity. If Subscriber receives Market Data other than as a Nonprofessional Subscriber, it shall use Market Data only for its individual use in its business.
- 6. DISSEMINATION DISCONTINUANCE OR MODIFICATION** – Subscriber understands and acknowledges that, at any time, the Authorizing SROs may discontinue disseminating any category of Market Data, may change or eliminate any transmission method and may change transmission speeds or other signal characteristics. The Authorizing SROs shall not be liable for any resulting liability, loss or damages that may arise therefrom.
- 7. DURATION; SURVIVAL** – This Agreement remains in effect for so long as Subscriber has the ability to receive Market Data as contemplated by this Agreement. In addition, Vendor may terminate this Agreement at any time, whether at the direction of the Authorizing SROs or otherwise. Paragraphs 2, 3 and 4, and the first two sentences of Paragraph 8, survive any termination of this Agreement.
- 8. MISCELLANEOUS** – The laws of the State of New York shall govern this Agreement and it shall be interpreted in accordance with those laws. This Agreement is subject to the Securities Exchange Act of 1934, the rules promulgated under that act, and the joint-industry plans entered into pursuant to that act. This writing contains the entire agreement between the parties in respect of its subject matter. Subscriber may not assign

all or any part of this Agreement to any other person. The person executing this Agreement below represents and warrants that he or she has legal capacity to contract and, if that person is executing this Agreement on behalf of a proprietorship or a business, partnership or other organization, represents and warrants that he or she has actual authority to bind the organization.

**ACCEPTED AND AGREED:** I, the “Subscriber” to which the preceding terms and conditions refer, acknowledge that I have read the preceding terms and conditions of this Section 1, that I understand them and that I hereby manifest my assent to, and my agreement to comply with, those terms and conditions.

**SECTION 2: NONPROFESSIONAL SUBSCRIBER**

**9. NONPROFESSIONAL SUBSCRIBER DEFINITION –**

“Nonprofessional Subscriber” means any natural person who receives market data solely for his/her personal, non-business use and who is not a “Securities Professional.” A “Securities Professional” includes an individual who, if working in the United States, is:

- (a) registered or qualified with the Securities and Exchange Commission (the “SEC”), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association.
- (b) engaged as an “investment advisor” as that term is defined in Section 202 (a) (11) of the Investment Advisor’s Act of 1940 (whether or not registered or qualified under that Act), or
- (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him or her to be so registered or qualified if he or she were to perform such functions for an organization not so exempt.

A person who works outside of the United States will be considered a “Securities Professional” if he or she performs the same functions as someone who would be considered a “Securities Professional” in the United States.

Subscriber may not receive Market Data as a “Nonprofessional Subscriber” unless the vendor providing that data to Subscriber first determines that the individual falls within Paragraph 9’s definition of “Nonprofessional Subscriber.”

**10. PERMITTED RECEIPT –** Subscriber may not receive Market Data from Vendor, and Vendor may not provide Market Data to Subscriber, on a “Nonprofessional Subscriber” basis unless Vendor first properly determines that Subscriber qualifies as a “Nonprofessional Subscriber” as defined in Paragraph 9 and Subscriber in fact qualifies as a “Nonprofessional Subscriber.”

**11. PERMITTED USE –** If Subscriber is a Nonprofessional Subscriber, he or she shall receive Market Data solely for his or her personal, non-business use.

**12. PERSONAL AND EMPLOYMENT DATA –** As a prerequisite to qualifying as a “Nonprofessional Subscriber”, Subscriber shall provide the following information:

- Subscriber’s name and address
- Subscriber’s occupations (list all occupations – including homemaker, student, retiree, etc.)
- Name(s) and address(es) of Subscriber’s employer(s)
- Subscriber’s title(s) and/or position(s)
- Subscriber’s employment functions (description)

In order to facilitate a decision as to whether Subscriber qualifies as a “Nonprofessional Subscriber,” Subscriber shall agree to the following statements:

- (a) Subscriber agrees to use Market Data solely for your personal, non-business use.
- (b) Subscriber agrees not to receive Market Data for your business or any other entity.
- (c) Subscriber is not currently registered or qualified with the SEC or the CFTC.
- (d) Subscriber is not currently registered or qualified with any securities agency, any securities exchange, association or regulatory body, or any commodities or futures contract market, association or regulatory body, in the United States or elsewhere.
- (e) Subscriber does not, whether you are located within or outside of the United States, perform any functions that are similar to those that require an individual to register or qualify with the SEC, the CFTC, any other securities agency or regulatory body, any securities exchange or association, or any commodities or futures contract market, association or regulatory body.
- (f) Subscriber is not engaged to provide investment advice to any individual or entity.
- (g) Subscriber is not engaged as an asset manager.
- (h) Subscriber does not use the capital of any other individual or entity in the conduct of your trading.

- (i) Subscriber does not conduct trading for the benefit of a corporation, partnership, or other entity.
- (j) Subscriber has not entered into any agreement to share the profit of your trading activities or receive compensation for your trading activities.
- (k) Subscriber is not receiving office space, and equipment or other benefits in exchange for your trading or work as a financial consultant to any person, firm or business entity.

**13. CERTIFICATION** – By executing this Agreement, Subscriber hereby certifies that he or she falls within Paragraph 9’s definition of “Nonprofessional Subscriber” and that the personal and employment information that he or she has included in Paragraph 12 is truthful and accurate.

**ACCEPTED AND AGREED:** I, the “Subscriber” to which the preceding terms and conditions refer, acknowledge that I have read the preceding terms and conditions of this Section 2, that I understand them and that I hereby manifest my assent to, and my agreement to comply with, those terms and conditions.

### **TERMS AND CONDITIONS EXCHANGE AGREEMENTS**

Real-Time quotes are provided to TIAA-CREF Individual & Institutional Services, LLC customers by various national securities exchanges and associations. These exchanges require all customers and members who receive real-time quotes to officially agree to their terms and conditions. They also charge TIAA-CREF Individual & Institutional Services, LLC a fee for each real-time quote.

### **ONLINE NASDAQ SUBSCRIBER AGREEMENT**

#### **SUBSCRIBER AGREEMENT SAMPLE, ONLINE NASDAQ SUBSCRIBER AGREEMENT**

#### **DISCLOSURE – PLEASE READ**

Subscribers must sign a contract entitled The NASDAQ Stock Market, Inc. (“NASDAQ”) Subscriber Agreement (“Agreement”) in order to receive Information [see definition in Paragraph [1] of the Agreement] from NASDAQ. While all terms are important, please particularly note the following. For more information regarding each term, the paragraph number at the end of each term refers to the paragraph in the Agreement where more information can be located.

**RESTRICTIONS ON USES & TRANSFER:** Subscribers may not provide access to Information or transfer the Agreement to others. The Information is only for personal non-professional

use or, if you are a Professional Subscriber (see definition in Paragraph [1] of the Agreement) for internal business use and/or personal use. [Paragraph 3]

**MOST TYPES OF DAMAGES ARE EXCLUDED AND REMAINING DAMAGES ARE LIMITED:** NASDAQ is not liable for trading losses, lost profits or incidental, consequential or other indirect damages, even if the Information is untimely or incorrect. Other damages (if any), are strictly limited (in contract, tort, or otherwise) to a capped amount. [Paragraphs 9 and 10]

**NO IMPLIED OR STATUTORY WARRANTIES OR DUTIES:** All warranties and duties (if any) are eliminated. There are no express warranties except for a Limited Warranty regarding efforts only. STOCK QUOTES MIGHT NOT BE CURRENT OR ACCURATE. [Paragraph 9]

**SUBSCRIBERS PROVIDE AN INDEMNITY:** Subscriber indemnifies and holds harmless NASDAQ for any Claims or Losses (see definition in Paragraph [1] of the Agreement) resulting from Subscriber’s breach of the Agreement, for Subscriber’s infringement of a third party’s intellectual property rights, or from any third party suit related to Subscriber’s use or receipt of the Information. [Paragraph 13 and 14]

**MARYLAND LAWS AND COURTS APPLY:** Everything relating to the Agreement is governed by the laws of the United States and the State of Maryland and any disputes can only be heard in Maryland. [Paragraph 23]

**NO ORAL AMENDMENTS & ONLY NASDAQ MAY AMEND:** The Agreement may not be altered orally and may be altered by NASDAQ pursuant to an Agreement procedure which includes notice either to Subscriber or to Vendor. Failure to terminate the Agreement before, or use of Information after, an amendment will be Subscriber’s consent (or confirmation of an earlier consent) to the amendment. [Paragraph 17 and 21]

**VENDORS CAN IMPACT SUBSCRIBER’S RIGHTS BUT NOT NASDAQ’S RIGHTS:** Vendor does not have authority to change the Agreement. Vendors are obligated to provide notice of NASDAQ changes to Subscriber, but if they do not, NASDAQ’s notice to Vendor is still effective, as to Subscriber including notice of cancellation. [Above Paragraph 1 and Paragraph 17]

Subscriber qualifies as a non-professional as defined in paragraph [1] of the Agreement.

### NASDAQ SUBSCRIBER AGREEMENT

THE VENDOR AND ITS AGENTS MAY NOT MODIFY OR WAIVE ANY TERM OF THIS AGREEMENT.

ANY ATTEMPT TO MODIFY THIS AGREEMENT, EXCEPT BY NASDAQ, IS VOID.

### THE NASDAQ STOCK MARKET, INC. ("NASDAQ") SUBSCRIBER AGREEMENT

1. The word "NASDAQ" means The NASDAQ Stock Market, Inc. and its affiliates. The word "Information" means certain data and other information: relating to securities or other financial instruments, products, vehicles or devices; or relating to Persons regulated by NASDAQ or to activities of NASDAQ; or gathered by NASDAQ from other sources. The word "or" includes the word "and". The phrase "Claims or Losses" means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, judgments, settlements, and expenses of whatever nature, whether incurred by or issued against an indemnified party or a third party, including, without limitation, (1) 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 (2) administrative costs, investigatory costs, litigation costs, and auditors' and attorneys' and fees and disbursements (including in-house personnel). The word "Person" means any natural person, proprietorship, corporation, partnership, or other entity whatsoever. The phrase "Non-Professional Subscriber" means any natural person who is neither: (a) registered or qualified in any capacity with the SEC, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor" as that term is defined in Section 201 (11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor, (c) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. The phrase "Professional Subscriber" means all other persons who do not meet the definition of Non-Professional Subscriber. When it appears alone, the word "Subscriber" encompasses all Non-Professional and Professional Subscribers. The phrase "Vendor's

Service" means the service from a vendor, including the data processing equipment, software, and communications facilities related thereto, for receiving, processing, transmitting, using and disseminating the Information to or by Subscriber.

2. Subscriber is granted the right to receive from NASDAQ the Information under the terms stated herein or in the NASD Rules. "NASD Rules" shall mean all applicable laws (including intellectual property, communications, and securities laws), statutes, and regulations, the rules and regulations of the SEC, the rules and regulations of NASDAQ including, but not limited to, those requirements established by NASDAQ's rule filings (with such SEC approval as may be required), NASDAQ's decisions and interpretations and any User Guides, or successors of the components of the NASD Rules, as they may exist at the time. For Professional Subscriber, if any payment is due directly to NASDAQ under this Agreement, payment in full is due NASDAQ in immediately available U.S. funds, within 30 days of the date of an invoice, whether or not use is made of, or access is made to, the Information. Interest shall be due from the date of the invoice to the time that the amount(s) that are due have been paid. Subscriber shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on Subscriber or NASDAQ (except for U.S. federal, state, or local income taxes, if any, imposed on NASDAQ) by any foreign or domestic national, state, provincial or local governmental bodies, or subdivisions thereof, and any penalties or interest, relating to the provision of the Information to Subscriber.
3. The Information is licensed only for the personal use of the Non-Professional Subscriber and the internal business use and/or personal use of the Professional Subscriber. By representing to Vendor that Subscriber is a non-professional, or by continuing to receive the Information at a non-professional subscriber rate, Subscriber is affirming to Vendor and NASDAQ that Subscriber meets the definition of Non-Professional Subscriber as set forth in paragraph 1 above. Subscriber will promptly give written notice to Vendor of any change in the name or place of residence or place of business at which the Information is received. Subscriber may not sell, lease, furnish or otherwise permit or provide access to the Information to any other Person or to any other office, or place. Subscriber will not engage in the operation of any illegal business; use or permit anyone else to use the Information, or any part thereof, for any illegal purpose; or violate any NASD Rule. Professional Subscribers may, on a

- non-continuous basis, furnish limited amounts of the Information to customers: in written advertisements, correspondence, 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 rendered in any unfair, misleading, or discriminatory format. Subscriber shall take reasonable security precautions to prevent unauthorized Persons from gaining access to the Information.
4. Subscriber acknowledges that NASDAQ, in its sole discretion, may from time to time make modifications to its system or the Information. Such modifications may require corresponding changes to be made in Vendor's Service. Changes or the failure to make timely changes by Vendor or Subscriber may sever or affect Subscriber's access to or use of the Information. NASDAQ shall not be responsible for such effects.
  5. NASDAQ grants to Subscriber a nonexclusive, non-transferable license during the term of the Agreement to receive and use the Information transmitted to it by Vendor and thereafter to use such Information for any purpose not inconsistent with the terms of the Agreement or with the NASD Rules. Subscriber acknowledges and agrees that NASDAQ has proprietary rights in the Information that originates on or derives from markets regulated or operated by NASDAQ and compilation or other rights in Information gathered from other sources. Subscriber further acknowledges and agrees that NASDAQ's third party Information providers have exclusive proprietary rights in their respective Information. In the event of any misappropriation or misuse, NASDAQ or its third party information providers shall have the right to obtain injunctive relief for its respective materials. Subscriber will attribute source as appropriate under all the circumstances.
  6. Subscriber acknowledges that NASDAQ, as a subsidiary of NASD, when required to do so by NASD in fulfillment of NASD's statutory obligations, may by notice to Vendor unilaterally limit or terminate the right of any or all Persons to receive or use the Information, and that Vendor will immediately comply with any such notice and will terminate or limit the furnishing of the Information and confirm such compliance by notice to NASDAQ. Any affected Person will have available to it such procedural protections as are provided by the Exchange Act and applicable rules thereunder. Neither NASDAQ nor NASD shall have any liability when complying with such NASD notice.
  7. Professional Subscriber shall make its premises available to NASDAQ for physical inspection of Vendor's Service and of Professional Subscriber's use of the Information (including review of any records regarding use of, or access to, the Information and the number and locations of all devices that receive Information), all at reasonable times, upon reasonable notice, to ensure compliance with this Agreement. Non-professional Subscriber shall comply promptly with any reasonable request from NASDAQ for information regarding the Non-Professional Subscriber's receipt, processing, display and redistribution of the Information.
  8. To the extent permitted by applicable law, Subscriber acknowledges and agrees that the termination of the Vendor's Service for failure to make payments shall not be deemed or considered to be, and Subscriber waives any right to represent or assert that any such exercise constitutes, an act or omission or an improper denial or limitation of access by NASDAQ to any service or facility operated by NASDAQ as contemplated in Section 11A of the Exchange Act, or any other provision of the Exchange Act, or any rule, regulation, or interpretation adopted thereunder.
  9. **NASDAQ'S WARRANTIES/DISCLAIMER OF WARRANTIES.** NASDAQ SHALL ENDEAVOR TO OFFER THE INFORMATION AS PROMPTLY AND ACCURATELY AS IS REASONABLY PRACTICABLE. IN THE EVENT THAT THE INFORMATION 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 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 THIS AGREEMENT OR IN NASDAQ'S AGREEMENT WITH THE VENDOR), SUBSCRIBER'S OR ANY OTHER PERSON'S EXCLUSIVE REMEDY AGAINST NASDAQ SHALL BE (A) IF SUBSCRIBER OR ANY OTHER PERSON CONTINUES TO RECEIVE THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A PRORATED MONTH'S CREDIT OF ANY MONIES DUE, IF ANY, FOR THE AFFECTED INFORMATION DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM SAID OTHER PERSON, FOR THE PERIOD AT ISSUE OR, (B) IF SUBSCRIBER OR ANY OTHER PERSON NO LONGER

RECEIVES EITHER THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A PRORATED MONTH'S REFUND OF ANY MONIES DUE FOR THE AFFECTED INFORMATION DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM SAID OTHER PERSON, FOR THE PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL, IF APPLICABLE, BE REQUESTED BY WRITTEN NOTICE TO NASDAQ WITH ALL PERTINENT DETAILS. **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.**

**10. NASDAQ'S LIMITATION OF LIABILITY.**

- (a) EXCEPT AS MAY OTHERWISE BE SET FORTH HEREIN, NASDAQ SHALL NOT BE LIABLE TO SUBSCRIBER, ITS VENDOR OR ANY OTHER PERSON FOR 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, COST OF COVER, OR OTHER INDIRECT 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 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) IF NASDAQ IS FOR ANY REASON HELD LIABLE TO SUBSCRIBER OR TO ANY OTHER PERSON, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF NASDAQ WITHIN A SINGLE YEAR (FROM THE EFFECTIVE DATE OF THE AGREEMENT) OF THE AGREEMENT [COMBINED WITH THE TOTAL OF ALL CLAIMS OR LOSSES OF SUBSCRIBER'S VENDOR,

AND ANY OTHER PERSON CLAIMING THROUGH, ON BEHALF OF, OR AS HARMED BY SUBSCRIBER] IS LIMITED TO AN AMOUNT OF SUBSCRIBER'S DAMAGES THAT ARE ACTUALLY INCURRED BY SUBSCRIBER IN REASONABLE RELIANCE, AND WHICH AMOUNT DOES NOT EXCEED THE LESSER OF: (I) IF SUBSCRIBER OR ANY OTHER PERSON CONTINUES TO RECEIVE THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A PRORATED MONTH'S CREDIT OF ANY MONIES DUE DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM ANY OTHER PERSON, FOR THE INFORMATION AT ISSUE DURING THE PERIOD AT ISSUE OR, IF SUBSCRIBER OR ANY OTHER PERSON NO LONGER RECEIVES EITHER THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A REFUND OF ANY MONIES DUE DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM ANY OTHER PERSON, FOR THE INFORMATION AT ISSUE DURING THE PERIOD AT ISSUE; OR (II) \$500.00.

- (d) THIS SECTION SHALL NOT RELIEVE NASDAQ, SUBSCRIBER OR ANY OTHER PERSON FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.
- (e) SUBSCRIBER AND NASDAQ UNDERSTAND AND AGREE THAT THE TERMS OF THIS SECTION REFLECT A REASONABLE ALLOCATION OF RISK AND LIMITATION OF LIABILITY.

**11. THIRD PARTY INFORMATION PROVIDERS' DISCLAIMERS OF WARRANTIES/LIMITATIONS OF LIABILITIES.**

**NASDAQ'S THIRD PARTY INFORMATION PROVIDERS MAKE NO 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 AND THEY SHALL HAVE NO LIABILITY FOR THE ACCURACY OF, OR FOR DELAYS OR OMISSIONS IN, ANY OF THE INFORMATION PROVIDED BY THEM.** NASDAQ'S THIRD PARTY INFORMATION PROVIDERS SHALL ALSO HAVE NO LIABILITY FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, WHETHER LOST PROFITS, INDIRECT, SPECIAL OR CONSEQUENTIAL

DAMAGES OF THE SUBSCRIBER OR ANY OTHER PERSON SEEKING RELIEF THROUGH SUBSCRIBER, EVEN IF THE THIRD PARTY INFORMATION PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE LIABILITY OF THE THIRD PARTY INFORMATION PROVIDERS OR THEIR AFFILIATES TO SUBSCRIBER OR ANY OTHER PERSON SEEKING RELIEF THROUGH SUBSCRIBER PURSUANT TO ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE FEE PAID BY SUBSCRIBER OR ANY OTHER PERSON SEEKING RELIEF THROUGH SUBSCRIBER, AS APPLICABLE.

12. Notwithstanding any other term or condition of this Agreement, NASDAQ, its third party information providers or Subscriber shall not be obligated to perform or observe their respective 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 their control.
13. Subscriber will indemnify and hold harmless NASDAQ and its employees, officers, directors, and other agents from any and all Claims or Losses imposed on, incurred by or asserted as a result of or relating to: (a) any noncompliance by Subscriber with the terms and conditions hereof; (b) any third-party actions related to Subscriber's receipt and use of the Information, whether authorized or unauthorized under the Agreement.
14. Each party warrants and represents and will indemnify and hold harmless (and in every case, NASDAQ shall be permitted to solely defend and settle) another party (including NASDAQ) and their officers, directors, employees, and other agents, against any Claims or Losses arising from, involving, or relating to a claim of infringement or other violation of an intellectual property right by the indemnifying party, its actions or omissions, equipment, or other property. This right is conditioned on the indemnified party giving prompt written notice to the indemnifying party (as does not prejudice the defense) of the Claims or Losses and providing cooperation in the defense of the Claims or Losses (without waiver of attorney-client, work-product or other legal privilege, or disclosure of information legally required to be kept confidential).
15. Subscriber agrees that NASDAQ may enforce the terms of this Agreement against any Person, whether or not Vendor or Subscriber is a party to any such action or against Subscriber itself. In any action there shall be available injunctive relief or damages, with the prevailing party being awarded costs and attorneys' fees (including in-house counsel).
16. In the event of any conflict between the terms of this Agreement and of the Vendor's agreement, the terms of this Agreement shall prevail as between NASDAQ and Subscriber.
17. In addition to terminations permitted under the Vendor's agreement, this Agreement may be terminated by Subscriber on 30 days written notice to Vendor and by NASDAQ on 30 days written notice either to Vendor or Subscriber. NASDAQ may also alter any term of this Agreement on 60 days written notice either to Vendor or Subscriber, and any use after such date is deemed acceptance of the new terms. In the event of Subscriber breach, discovery of the untruth of any representation of Subscriber, or where directed by NASD in its regulatory authority, NASDAQ may terminate this Agreement on not less than three (3) days written notice to Subscriber provided either by NASDAQ or Vendor.
18. NASDAQ does not endorse or approve any equipment, Vendor, or Vendor's Service.
19. Natural persons executing this Agreement warrant and represent that they are at least eighteen (18) years of age. Subscriber and the Person executing this Agreement on behalf of Subscriber which is a proprietorship, corporation, partnership or other entity, represent that such Person is duly authorized by all necessary and appropriate corporate or other action to execute the Agreement on behalf of Subscriber.
20. All notices, invoices, and other communications required to be given in writing under this Agreement shall be directed to: The NASDAQ Stock Market, Inc., 1735 K Street, NW, Washington, DC 20006, Attn.: Manager: Market Data Distribution, or to Subscriber at the last address known to the Vendor, and shall be deemed to have been duly given upon actual receipt by the parties, or upon constructive receipt if sent by certified mail, postage pre-paid, return receipt requested, at such address or to such other address as any party hereto shall hereafter specify by written notice to the other party or parties hereto.
21. Except as otherwise provided herein, no provision of this Agreement may be amended, modified, or waived, unless by an instrument in writing executed by a duly authorized signatory of the party against whom enforcement of such amendment, modification, or waiver is sought. 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. If any of the provisions of this Agreement, or application thereof to any Person 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 Persons 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.

22. The terms of this Agreement apply to those obligations that survive any cancellation, termination, or rescission, namely, obligations relating to intellectual property, indemnification, limitation of liability, warranties, disclaimer of warranties, and Exchange Act related provisions.

23. This Agreement shall be deemed to have been made in the United States in the State of Maryland 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 Maryland, without reference to principles of conflicts of laws thereof. Subscriber hereby consents to submit to the jurisdiction of the courts of or for the State of Maryland in connection with any action or proceeding instituted relating to this Agreement.

### END OF THE NASDAQ SUBSCRIBER AGREEMENT.

Version: 1; 2002-11-21

**YOU AGREE TO THE TERMS AND CONDITIONS SET FORTH ABOVE.** You agree that: i) you have read and you understand all of the terms and conditions set forth above; and ii) you intend to form a legally binding and valid contract under which you will be bound by all of the terms and conditions set forth above.



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