



TRANSACTION REPORTING FACILITY
TESTING AGREEMENT

This Testing agreement ("Agreement") is made between _____, ("Exchange") and the Financial Industry Regulatory Authority, Inc. ("FINRA").

RECITALS

The purpose of this Agreement is to allow Exchange to gain technical documentation about the technology and interfaces proposed to be used by FINRA to carry out its regulatory obligations for Exchange's internalized trading ("Service"). Exchange shall evaluate the utility, reliability, maintainability, functional performance, user acceptance, and any other factors that might enhance the design of the Service and the Service's value as a quotation-dissemination, trade-reporting and information resource.

TERMS

IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES, FINRA AND EXCHANGE DO HEREBY AGREE AS FOLLOWS:

1. FINRA grants to Exchange, and Exchange accepts, a royalty-free, non-exclusive, nontransferable, non-assignable, worldwide license for the specified term to use the Service software and documentation in Exchange's internal facilities solely for the purpose of evaluating the Service's performance and operation and reporting to FINRA the results of such use.
2. FINRA shall provide Exchange with access to the Service for a test period ("Test Period"). Such Test Period is expected to last from the date of Exchange's receipt of connection information from FINRA until the date FINRA notifies Exchange that the Service has been converted to production status. At such time Exchange shall discontinue use of the Service unless Exchange has entered into the appropriate agreements with FINRA to use the production version of the Service. The Test Period is subject to termination by FINRA at any time without prior notice.
3. FINRA shall provide standardized documentation to the Exchange on operation of the Service and the desired test data to be gained.
4. FINRA shall assign Exchange passwords, user identification numbers, certificates, or other form(s) of authentication or security used to access the Service ("Security Devices").
5. Exchange shall provide FINRA with the names and positions of Exchange's Users ("Users"; each, a "User") for authorization purposes. Such Users are set forth in Attachment A.
6. Exchange shall designate to FINRA in writing, a security contact person ("Security Administrator"). Such Security Administrator is authorized by Exchange to: (i) assign one unique secure connection per authorized User; (ii) receive and secure all personal identification numbers needed for each certificate download; and (iii) provide notice to FINRA at FINRAOperations@FINRA.org for general information and for specific information regarding the test or if any User is no longer eligible to receive the Service.
7. Exchange may copy Service and Service documentation solely for Exchange's internal use in connection with performance of Exchange's testing and evaluation of Service and Service documentation pursuant to the terms, and subject to the conditions, of this Agreement. Exchange shall maintain a log of any and all copies of Service and Service documentation made pursuant to this Agreement, and Exchange shall track any and all such copies of the Service and/or Service documentation and destroy them in accordance with this Agreement upon termination of the Test Period.
8. Exchange shall use the Service solely for unit and performance testing in the Exchange's environment and only during FINRA authorized Test Periods, and not for use in any production environment, recognizing that as a test

version, its accuracy, completeness and reliability are not guaranteed. Exchanges are responsible for validating test results and coordinating production rollouts with FINRA.

9. Exchange shall not rely upon the Service in making any financial, investment, or other business decisions or planning.

10. Exchange shall gather and report test data to FINRA in the manner set forth in the Test invitation letter and registration form or any other FINRA documentation. During the term of this Agreement, Exchange shall use and evaluate Service and promptly report to FINRA any errors or bugs.

11. Exchange acknowledges that Service is pre-release software that FINRA is providing to Exchange solely for evaluation and testing purposes hereunder. Exchange acknowledges that Service has not been fully tested or debugged and that neither FINRA, nor its subcontractors or suppliers make any representations or warranties regarding Service or its use. EXCHANGE ACKNOWLEDGES THAT THE SERVICE IS PROVIDED "AS IS" WITH ALL FAULTS. FINRA MAKES NO WARRANTIES WITH RESPECT TO THE SERVICE AND THE DATA PROVIDED THROUGH IT, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCHANGE EXPRESSLY DISCLAIMS ANY REMEDIAL BENEFIT AS A RESULT OF THIS AGREEMENT. EXCHANGE IS SOLELY RESPONSIBLE FOR ADEQUATE PROTECTION AND BACKUP OF COMPANY DATA USED IN CONNECTION WITH SERVICE. UNDER NO CIRCUMSTANCES SHALL FINRA HAVE ANY LIABILITY IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF SERVICE, OR SERVICE'S FAILURE TO PERFORM.

12. IN NO EVENT SHALL FINRA OR ANY OF ITS AFFILIATES, OR ANY OF ITS RESPECTIVE SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY DIRECT OR INDIRECT DAMAGES INCLUDING BUT NOT LIMITED TO LOST REVENUES OR PROFITS, OR OTHER SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING WITH RESPECT TO THE SERVICE AND RELATED DOCUMENTATION OR ARISING OUT OF THIS AGREEMENT, EVEN IF FINRA OR ANY OF ITS RESPECTIVE SUBCONTRACTORS OR SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE ABOVE LIMITATION SHALL NOT APPLY TO ANY DAMAGES RESULTING FROM FINRA'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

13. IN NO EVENT SHALL EXCHANGE, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO FINRA, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, SUPPLIERS, OR AGENTS FOR ANY INDIRECT DAMAGES, OR FOR LOST REVENUES OR PROFITS, OR FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THE SERVICE AND RELATED DOCUMENTATION, OR THIS AGREEMENT, EVEN IF EXCHANGE, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOST PROFITS, OR LOST REVENUES. THE ABOVE LIMITATION SHALL NOT APPLY TO ANY DAMAGES RESULTING FROM A MATERIAL BREACH OF THIS AGREEMENT BY EXCHANGE OR FROM EXCHANGE'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

14. Notwithstanding any limitations of liability, FINRA shall defend and indemnify Exchange from and against any damages, liabilities, costs and expenses (including reasonable attorneys' fees) incurred by Exchange arising out of any claim against Exchange that the software used to operate the Service ("Software") infringes a valid United States patent or copyright or misappropriates a trade secret of a third party, provided, that (i) Exchange shall have promptly provided FINRA or its assign written notice thereof and reasonable cooperation, information, and assistance in connection therewith, and (ii) FINRA or its assign shall have sole control and authority with respect to the defense, settlement, or compromise thereof. If any Software becomes or, in FINRA's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, FINRA may, at its option, (1) procure for the Exchange the right to continue using such Software, (2) replace or modify such Software so that it becomes non-infringing without substantially compromising its functionality, or (3) terminate Exchange's license to the allegedly infringing Software. FINRA shall have no liability or obligation to Exchange hereunder with respect to any patent, copyright or trade secret infringement claim based upon (i) use of the Service in an application or environment or on a platform or with devices for which the Software was not designed, contemplated, or licensed; (ii) modifications, alterations, combinations or enhancements of the Service not created by FINRA, or (iii) any patent, copyright or trade secret in which Exchange or any affiliate has an interest. Exchange shall indemnify and hold FINRA harmless from all costs, damages, and expenses (including reasonable attorneys' fees) arising from any claim enumerated in clauses (i) through (iii) above. The foregoing states the entire liability of FINRA or its assign with respect to infringement of patents, copyrights and trade secrets by the Service or any part thereof or by its operation. Exchange will immediately inform FINRA as soon as it becomes aware of any threatened or actual liability claim by a third party relating to the Service.

15. The parties may not use each other's name, or any trademark, service mark, trade name, logo, or other commercial or product designations of each other without the prior written consent in each instance.

16. Exchange acknowledges that neither FINRA nor any of its respective subcontractors or suppliers shall have an obligation to correct any problems or deficiencies within the Test Period.

17. Exchange acknowledges that FINRA reserves the right to decline or terminate authorization to any Exchange, and any User, for any reason.

18. In the event Exchange has NOT entered into a non-disclosure agreement covering the subject of this Agreement, the following shall apply: In consideration of FINRA's provision of access to certain confidential information by Exchange in order to permit the Exchange to evaluate the Service and for other good and valuable consideration, the sufficiency of which is acknowledged, it is agreed as follows:

(a) Exchange may be provided with access to selected information (oral, written, or electronic) of FINRA which helps meet a regulatory purpose or business need, including, but not limited to, that information which relates or refers to: business planning; internal controls; computer, data processing, or communications architectures or systems; electronic data processing architectures, applications, programs, routines, or subroutines; business affairs and methods of operation or proposed methods of operations, techniques or systems of FINRA or any customer or contractor of a FINRA, financial or other non-public information, including but not limited to proposals, processes, forecasts, ideas, concepts, projections, analyses, software, hardware, marketing information, documentation, structure and protocols. Some of the information in each of these categories is confidential in nature or constitutes a trade secret. This information received, either orally or in writing, during the course of the test of the Service shall be deemed to be confidential information (Confidential Information) for purposes of this Agreement. Notes, documents, summaries or reports which are prepared from Confidential Information to the extent such specifically refer or relate to Confidential Information are themselves Confidential Information.

(b) Exchange acknowledges the sensitive and secret nature of the Confidential Information it will have access to during the term of the Test of the Service and agrees that it will treat such Confidential Information as strictly confidential and shall exercise the same degree of care in the protection of the Confidential Information as the it exercises with respect to its own proprietary property and trade secrets, but in no event shall it be less than a reasonable degree of care given the nature of the Confidential Information.

(c) Exchange shall (i) keep all Confidential Information received or emanating from FINRA confidential, (ii) undertake to use the same only in connection with the Test of the Service and not to make any other commercial use thereof or use the same for the benefit of itself or any third party, and (iii) not disclose any such Confidential Information, or part thereof, to any third party except (A) to professional advisers, employees or subcontractors only to the extent that such disclosure is necessary for the performance any obligations within the scope of the Test of the Service or the determination, preservation or exercise of its rights or remedies ("Permitted Third Person"), or (B) where Exchange is obliged to make disclosure by law, regulation (including regulations of any public authority exercising jurisdiction over the Receiving Party) or court order. Exchange acknowledges and agrees that title to and ownership and use rights of Confidential Information shall remain with FINRA.

(d) Exchange shall not make copies of the Confidential Information except for those copies required for use by a Permitted Third Person in the performance of the Test of the Service. Each copy, including its storage media, shall be marked Confidential, and also include all copyright, trademark and other proprietary notices which appear on the original. Exchange agrees that all Confidential Information of FINRA, including any copies thereof, shall be returned to FINRA upon request or destroyed within ten (10) business days of the expiration or other termination of the Test of the Service.

(e) Where Exchange intends to disclose Confidential Information to a Permitted Third Person, Exchange shall ensure that, prior to disclosure to the Permitted Third Person, such Permitted Third Person is bound by confidentiality obligations that are no less stringent than those set forth in this Agreement with respect to the protection of Confidential Information. Following disclosure to such Permitted Third Person, Exchange shall (i) use its commercially reasonable endeavors to minimize the risk of disclosure of any Confidential Information by such Permitted Third Person, and (ii) shall remain vicariously liable vis-a-vis FINRA for any acts or omissions of such Permitted Third Person which would constitute a breach of this Confidentiality Agreement if such acts or omissions had been those of the Exchange.

(f) Upon written demand by FINRA, Exchange shall: (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes or extracts thereof to FINRA within ten (10) business days of receipt of demand; and (iii) upon request of FINRA, certify in writing that it has complied with the obligations set forth in this paragraph. All intellectual property rights associated with the Confidential Information, including without limitation, patent, trademark, copyright, trade secret rights, and moral rights shall remain in FINRA.

(g) The limitations on disclosure or use of Confidential Information shall not apply to Confidential Information:

- (i) Which the receiving Party can demonstrate was known to it prior to the disclosure thereof by the disclosing Party, and the receiving Party has no obligation of confidentiality with respect to said information other than pursuant to this Confidentiality Agreement.
- (ii) If disclosure is required by law, statute or court order.
- (iii) If such Confidential Information is public knowledge or becomes public knowledge other than by breach of this Confidentiality Agreement or by agreement previously entered into by the Parties.
- (iv) If the Confidential Information is independently developed by the receiving Party, as demonstrated by the receiving Party's written records, without violating the disclosing Party's rights.
- (v) If the Confidential Information is disclosed by the owner of such information to a third party free of any obligation of confidentiality.

(h) In the event Exchange is obliged to disclose Confidential Information by law, statute or court order, Exchange shall provide prompt actual notice to the General Counsel of FINRA, of such receipt, providing FINRA with a reasonable opportunity to intervene in the proceeding before the time that Exchange is required to comply with such subpoena or other process. Notwithstanding anything otherwise set forth herein, Exchange shall (i) inform the recipient of the Confidential Information that the information released is confidential and use its best efforts to ensure that the information is kept confidential by such recipient, and (ii) promptly notify FINRA of its release of the Confidential Information specifying the information disclosed, the recipient of the information, and the circumstances giving rise to the duty to disclose it and cooperate with FINRA's reasonable, lawful efforts to resist, limit or delay disclosure at Exchange's expense.

(i) Exchange acknowledges that Confidential Information constitutes valuable property and that any breach of this Confidentiality Agreement may result in irreparable harm to FINRA, the extent of which would be difficult and or impracticable to assess, and that money damages would not be an adequate remedy for such breach. Accordingly, Exchange agrees that in such circumstances FINRA will be entitled to seek immediate equitable relief, including specific performance of this Confidentiality Agreement or an injunction as a remedy for such breach, in addition to all other remedies at law or in equity and without prejudice to any such remedy.

(j) FINRA may, upon written request, consent to the disclosure of Confidential Information. The representations and obligations of the Exchange to the Confidential Information shall survive the termination of this Confidentiality Agreement for a period up to three (3) years from the date of the completion or other termination of the test of the Service with the exception of trade secret information which shall remain subject to the confidentiality obligations in perpetuity.

(k) FINRA acknowledges that the Confidential Information disclosed by it under this Agreement may be subject to export controls under the laws of the United States. Exchange shall comply with such laws and agrees not to knowingly export, re-export or transfer Confidential Information of the other party without first obtaining all required United States authorizations or licenses.

(l) All Confidential Information is provided "as is". FINRA shall not be liable to the other for any special, incidental, consequential or punitive damages arising from or relating to any alleged breach of this Agreement or for any damages whatsoever arising from or relating to the receiving Party's use or inability to use any Confidential Information.

19. FINRA shall maintain as confidential, in the same manner it protects its own confidential information, but not less than that which a reasonable person would do under similar circumstances, any and all technical and non-technical information of Exchange, including: (i) information relating to Exchange's planned or existing computer systems and systems architecture, including computer hardware, computer software, source code, object code, documentation, methods of processing and operational methods; (ii) techniques, drawings, inventions, know-how, and any data related to the current and future products and services of Exchange; and (iii) financial information, regulatory information, business affairs and modes of operation, non-public information of the Exchange, customer lists, business forecasts, sales and marketing plans. FINRA shall hold Exchange's confidential information of Exchange in confidence in accordance with this Section for a period of one (1) year.

20. Exchange shall refrain from the retransmission of the Service and/or any data provided through Service, as the retransmission of any such data is strictly prohibited.

21. FINRA represents to Exchange that: (i) it is the owner of the Service or it is authorized to grant to Exchange the license granted to Exchange herein. FINRA and its licensors shall retain all right, title, and interest in and to the Service and the Service documentation including, but not limited to, all copyrights, patents, trade secret rights, trademarks and any other intellectual property rights specifically related to the Service. Exchange agrees that it will not reverse engineer, decode, decompile, attempt to tamper with or evade, or discover the method of operations or defeat any Security Device or any Software.

22. Unless Exchange has executed a contract with FINRA to participate in the Service, within ten (10) days of the conclusion of the Test Period, Exchange shall destroy all passwords, User identification numbers, certificates, or any other form of Security Devices, and certify to FINRA that the information has been destroyed and the use of the Service has been discontinued.

23. Exchange agrees that it will not use any trademark, service mark, copyright, or patent (registered or unregistered) of FINRA or FINRA ("Marks"), or any derivation thereof, or of any entity controlling, controlled by or in common control with FINRA or FINRA, in any way including (without limitation) in any advertising or promotional media of Exchange without the prior written consent of the owner of the Marks.

24. Any claim, dispute, controversy or other matter in question with regard to this Agreement that cannot be resolved by negotiation between the parties shall be submitted to arbitration in accordance with the rules and regulations of the American Arbitration Association; *provided, however*, that: (i) submission of any such claim, dispute, controversy or other matter in question to the American Arbitration Association shall not be required if the parties agree upon another arbitration forum; (ii) the foregoing shall not preclude either party from pursuing all available administrative, judicial or other remedies for infringement of a registered patent, trademark, service mark or copyright; (iii) the parties shall not submit claims for punitive damages, and do hereby waive any right to the same; and (iv) the arbitrators shall not be authorized to award punitive damages.

25. Unless stated otherwise, all provisions of this Agreement relating to proprietary rights, confidentiality and non-disclosure, indemnification, limitation of liability, and privacy shall survive the completion of the Test Period or any termination of this Agreement for a period of three (3) years.

26. This Agreement shall be governed by, and construed in accordance with, the substantive laws of the United States of America and by the laws of the State New York, without regard to its principles of conflicts of laws. This agreement represents the full and final agreement between the parties, and merges and supersedes all prior discussions and agreements regarding the subject matter hereof. This agreement may only be amended or waived in writing signed by both parties hereto.

27. Neither party may transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. This Section 28 will not be construed as limiting FINRA the right to use subcontractors to carry out any of its obligations under this Agreement. FINRA will remain liable for any such services provided by a subcontractor. Any assignment not in conformity with this Section 27 is void.

28. This Agreement constitutes the entire understanding between the parties regarding its subject matter and supersedes all proposals and other representations, statements, negotiations and undertakings, in each case, verbal or written, relating to such subject matter. In entering this Agreement, neither party has relied on, and will have no remedy in respect of, any statement, warranty or representation (except in the case of fraud) made by the other save as set out in this Agreement. No change in, addition to, or waiver of any provision of this Agreement will be binding upon either party unless in writing signed by an authorized representative of such party.

29. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of this Agreement will remain in effect and this Agreement will be read as though the offending provision had not been written.

30. If either party delays or fails to exercise any right or remedy under the Agreement, that party will not have waived that right or remedy or any other right or remedy on any other occasion.

31. Exchange agrees to comply with all relevant export laws and regulations of the United States and other countries (collectively, **Export Laws**) to ensure that no Software or any portion of it is exported, directly or indirectly, in violation of Export Laws. FINRA will not be liable for default or delay caused by Exchange's efforts to comply with Export Laws. If Export Laws change after the execution of this Agreement and such changes materially inhibit or prohibit FINRA from performing under this Agreement, FINRA will not be liable for its non-performance and FINRA will have the right to terminate this Agreement and the licenses granted under it.

32. Exchange Connection Obligations.

(a) FINRA will provide Exchange, and Exchange will comply, with FINRA Information Security Policy and related policies, procedures and standards, and FINRA Enterprise Security Standards (collectively *FINRA Standards*'), as tailored by FINRA to suit the Exchange's Connection (collectively, *Exchange Connection*). Exchange warrants that it will comply with FINRA Standards.

(b) Exchange will be subject to a continuing risk assessment process operated by FINRA Information Security Office (*NISO*) or its successor. FINRA will have the right to terminate the Exchange Connection without notice and at any time in the event of technical or operational risks to FINRA systems or networks, as determined by NISO in its sole discretion.

(c) Exchange will demonstrate to the NISO a reasonable information security plan. Exchange warrants that its implementation of the plan, in conjunction with a FINRA firewall that is to be established and managed by, and at the cost of, one or more of FINRA, will result in Exchange systems and networks being logically isolated from FINRA systems and networks.

(d) Exchange warrants that Exchange Connections, and the information flowing through each Exchange Connection, will be used solely for the fulfillment of Exchange's obligations under, and in accordance with all of the terms and conditions of, this Agreement. Any other use by Exchange or Exchange's Personnel may constitute, in FINRA's sole discretion, grounds for disconnection and/or termination of this Agreement.

(e) Except as otherwise specified in this *Section 32*, Exchange will be solely responsible for all costs and expenses associated with establishing, maintaining and terminating the Exchange Connection.

(f) Exchange will defend and hold FINRA harmless from any loss, damage and expense incurred by FINRA and arising from Exchange or Exchange Personnel breach of this *Section 32*.

33. No Further Assurances. Exchange hereby acknowledges and agrees that any information or feedback that it supplies to FINRA can and will be used by FINRA to enhance or modify the Service. Exchange hereby gives FINRA a perpetual, royalty-free, non-exclusive, worldwide right to use and incorporate any information or feedback provided by Exchange to FINRA under this Agreement into the Service. Further, Exchange understands and agrees that nothing in this Agreement shall be construed as a promise by FINRA to incorporate any information or feedback into the Service or to make any modifications or changes to the Service whatsoever.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

_____ ("Exchange") Financial Industry Regulatory Authority, Inc. ("FINRA")

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

AUTHORIZED OFFICER AUTHORIZED OFFICER

Date: _____ Date: _____

Attachment A

Please list the names and positions of the expected Users of the Service.

Name: _____ Position:

Name: _____ Position:

Name: _____ Position:

Name: _____ Position:

Name: _____ Position:

Name: _____ Position:

Exchange's Security Administrator:

Name: _____ Telephone:

Title: _____ Fax #:

Address: _____ Email: