

## FOR INFORMATIONAL PURPOSES ONLY

### FINRA TRANSPARENCY SERVICES PARTICIPATION AGREEMENT

Financial Industry Regulatory Authority, Inc. ("**FINRA**") has developed the Service (defined below) which makes Product(s) (defined below) available to eligible Participants (defined below) for use in accordance with this Participation Agreement (the "**Agreement**").

By accessing and using the Service and the Product(s), Participant is representing that it is eligible to do so and agrees to the terms and conditions of this Agreement.

If Participant has previously entered into a Participation Agreement with FINRA with a version number of 1.4.1 or lower (a "**Prior Agreement**"), then by continuing to access and use the Service and the Product(s), Participant agrees that this Agreement supersedes and replaces its Prior Agreement.

#### Defined Terms

Capitalized words and phrases used and not otherwise defined in this Agreement shall have the following meanings:

**"Act"** means the Securities and Exchange Act of 1934.

**"Alternate Security Administrator"** means an individual who serves as a backup for the Primary Security Administrator when the Primary Security Administrator is not available to perform his/her duties.

**"Authorized Testing"** means use of the FINRA testing environment for testing in order to develop software and/or hardware that will enable Participant to access or use the Service in a manner permitted under the Agreement.

**"Authorized Device"** means one or more of Participant's systems that meet the specifications and requirements (including, but not limited to, interface and operational requirements), set forth by FINRA. Specifications and requirements for Authorized Devices are available from FINRA upon request and may be modified from time to time by FINRA in its sole discretion. FINRA will use best efforts to provide at least ninety (90) days' advance notice (if other than a routine or minor change) unless (a) a malfunction in the Service necessitates modifications on an accelerated basis; (b) an emergency situation precludes such advance notice; or (c) a shorter time period is required pursuant to an Order of a court, an arbitrator(s), or a regulatory agency.

**"Business Day"** means any day when the Service is collecting quotations and/or trade reports from Participants.

**"Claims and Losses"** means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, judgments, and expenses of whatever nature, whether incurred by or issued against an indemnified Party, including (i) indirect, special, punitive, consequential, or incidental losses or damage (including trading losses, loss of opportunities, loss of anticipated revenues, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, or other indirect loss or damage) and (ii) administrative costs, litigation costs, and auditors' and attorneys' fees, both in-house and outside advisor costs and expenses, and related disbursements.

**"Confidential Information"** means information (oral, written, or electronic) received from one Party by another which may help 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 a Party or any customer of a Party, 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. 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.

**"Covered Person"** means a 'covered person' as defined in 17 C.F.R. § 240.10c-1a.

**"FINRA Group"** means FINRA, its representatives and auditors.

**"FINRA Rules"** means (i) all applicable laws (including intellectual property, communications, and securities laws), statutes and regulations, orders, decisions, interpretations, opinions, and other requirements whether promulgated by

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the United States or any other applicable jurisdiction; (ii) the rules, interpretations, opinions, orders, regulations or other requirements of the SEC; (iii) the rules, disciplinary decisions, rule interpretations and regulations of FINRA or any other self-regulatory organization with jurisdiction over the Participant, including those requirements established by FINRA's rule filings (with such SEC approval as may be required); (iv) any FINRA operating procedures, specifications, requirements and other documentation that is regulatory or technical in nature (including, but not limited to, user guides or other guidelines) published on FINRA.org website or any other FINRA website accessible by and made known to Participant; (v) obligations of Participant contained in any other agreements which are required in order for Participant to access or receive the Service; and (vi) all successors of the components of FINRA Rules, as they may exist at the time.

**"Information and Data"** means all information and data which originates on, derives from or relates to the Service and all markets, individuals, entities or activities that are regulated, operated or administered by FINRA or its agents, (including quotations, trade reports and other information relating to securities, financial instruments, products, vehicles or devices and persons regulated by FINRA).

**"Licensed Materials"** means any materials along with all updates, replacement versions, translations, adaptations, variations, modifications, enhancements or improvements of or to the materials or any portion thereof.

**"Licensed Program(s)"** means any machine readable copies of computer programs designed (A) to provide a communication interface to the Service through Authorized Devices, (B) to allow Participant to test Participant's system against the Service; or (C) to support the Service that Participant accesses through the Authorized Devices along with updates, replacement versions, translations, adaptations, variations, modifications, enhancements or improvements to such computer programs or any portion thereof.

**"Participant"** means the FINRA member firm or other eligible entity accessing and using the Service or Products under this Agreement, whether directly or via a Service Bureau.

**"Parties"** means FINRA and the Participant.

**"Primary Security Administrator"** means a primary security contact person who shall be an employee or authorized agent of Participant responsible for providing or removing authorized access to the Service.

**"Products"** means the various unique facilities or functionalities within the Service that FINRA makes available.

**"Reporting Agent"** means a Participant that has assumed the reporting obligations of a Covered Person pursuant to 17 C.F.R. § 240.10c-1a and FINRA Rule 6500 series.

**"Reporting Participant"** means another Participant who reports trades on behalf of Participant pursuant to a Uniform Reporting Agreement.

**"SEC"** means the Securities and Exchange Commission.

**"Security Administrator"** means both the Primary Security Administrator and Alternate Security Administrator.

**"Service"** means access to the systems, along with any update, replacement version, translation, adaptation, variation, modification, enhancement or improvement of or to the system or any portion thereof, which capture information, which may be generated by FINRA or gathered by FINRA from other sources, relating to eligible U.S. National Market System equities, Over-the-Counter equities, debt securities, financial instruments, products, vehicles or devices, and persons regulated by FINRA, and consolidate, manipulate, aggregate, validate, process, record and distribute that information. The term Service shall also include any Authorized Testing, Information and Data, Licensed Programs or Licensed Materials that FINRA may provide incidental to or as part of the Service.

**"Service Bureau"** means an entity which is not itself a Participant that provides transaction reporting, quotation or connectivity services or other functionality supported by the Service to Participant.

**"SLATE Reporting Agent Authorization"** means that document notifying FINRA that a Participant that is a Covered Person has authorized another Participant to act as its Reporting Agent to report securities loan transactions on its behalf.

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**"Uniform Reporting Agreement"** means that document evidencing the agreement of the Participant to allow a Reporting Participant to report trades on behalf of Participant.

**"User"** means an employee, contractor or associated person of Participant or of a Service Bureau authorized by Participant to access the Service on its behalf.

**"Website"** means, collectively, the websites for each Product set forth on Exhibit A.

**1. Agreement to Provide Service; Compliance with FINRA Rules; Participant Warranty.** For the Term, FINRA agrees to provide to Participant, on the terms and conditions set forth herein, the Service, which Participant hereby requests and for which Participant is eligible under FINRA Rules or otherwise. Participant warrants that it is, will continue to be during the Term, and will only use the Service, in compliance with this Agreement and FINRA Rules. Participant shall provide FINRA with prompt notice of any change in the name of the Participant, the address of the Participant, Participant's Security Administrators or any other relevant information. Participant agrees that: (i) the Service is provided when FINRA makes the Service available to Participant, whether or not Participant actually accesses the Service at such time or at all; (ii) there are no standards of performance for the Service except any that are expressly set forth in this Agreement; and (iii) Participant will comply with all procedures and technical requirements posted on the Service or otherwise provided to Participant by FINRA.

**2. Access to Service.** Access to the Service, which, depending on the method of access selected by Participant, may require Participant to enter into agreements outside of this Agreement with third parties, may be accomplished through the World Wide Web, a third-party Service Bureau or a computer-to-computer connection. In order to access the Service, Participant must designate its Security Administrators and provide other contract, billing and entitlement information via FINRA's Entitlement Program. In the event Participant, or any Service Bureau on behalf of Participant, accesses any Product provided through the Service, Participant agrees to the terms and conditions regarding that Product contained in this Agreement. Participant may only obtain access the Service through an Authorized Device or Authorized Devices. Participant shall report to FINRA, as requested by FINRA, the information required to be supplied by Participant in FINRA's specifications and FINRA Rules. At reasonable times and upon reasonable notice from FINRA, Participant will grant to FINRA or its representatives free access to the Authorized Devices and, at any time, Participant will grant to FINRA or its representatives free access to the areas where the Service is received and used. Said access shall be for the purposes of inspection, audit, testing or replacement of any software provided by FINRA. FINRA shall comply with Participant's reasonable security regulations in conducting such audits, inspection or testing or replacement under this section. Participant shall comply with all reasonable security specifications or requirements of FINRA in order to prevent the Authorized Devices and Service from being improperly used or accessed or the information and data from being improperly taken from any of Participant's places of business. FINRA shall give Participant prior written notice of any such specifications or requirements. For the purpose of determining compliance with this Agreement, at any time, FINRA and its representatives shall have access to the places where the Service is received and used, where the Authorized Devices are placed, and the right to observe the use made of the Service and the Authorized Devices, and to examine and inspect all instruments and apparatus, including Authorized Devices, used in connection therewith. Information related to the Authorized Devices that Participant gives to FINRA shall be treated as Confidential Information.

**3. Changes to Service.** Participant acknowledges and agrees that nothing in this Agreement constitutes an undertaking by FINRA to continue providing the Service, or any aspect of the Service, in its present form or under the current FINRA Rules. FINRA, in its sole discretion, may from time to time make additions to, deletions from, or modifications to the Service, FINRA Rules and this Agreement, including but not limited to the purpose of reflecting and conforming the Service, FINRA Rules or this Agreement to any changes to the Service. Continued access, receipt or use of the Service after notice of any change is received and/or posted on the Website shall constitute acceptance of the Service, FINRA Rules and this Agreement as modified. Nothing in this paragraph shall be interpreted to limit or restrict FINRA's ability to change the Service, FINRA Rules, and this Agreement or any other agreement pursuant to the actions of the SEC or any other regulatory body with authority over FINRA.

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### 4. Use of Service

4.1. **License to Use.** FINRA grants to Participant a non-exclusive, non-transferable, non-assignable license during the Term of this Agreement to access, receive and use the Service including but not limited to Licensed Programs and Licensed Materials, related to the Service that are provided in connection therewith to aid in understanding or applying the Service and which are made available by FINRA for any purpose not inconsistent with the terms of this Agreement or with FINRA Rules. The foregoing license is conditioned upon Participant's, Participant's Representatives', and its Users current and continued compliance with the terms and conditions set forth in this Agreement including but not limited to all relevant FINRA Rules.

#### 4.2. Restrictions on Use of the Service

(A) **Use of the Service.** The Service is licensed for use solely by Participant and its Users on Authorized Devices for internal business purposes and only up to and to the extent expressly necessary to exercise its rights and carry out its obligations under this Agreement and as permissioned by FINRA. The Service shall not be marketed, licensed or otherwise transferred or assigned in whole or in part by Participant, except as expressly provided herein. Unless otherwise specifically set forth herein, Participant shall not allow any other party or entity access to the Service without prior written approval from FINRA.

(B) **Testing.** Participant shall only use the Service for Authorized Testing. In conjunction with Authorized Testing, Participant agrees not to: (A) input, output, or otherwise interact or interface with the testing environment except through such hardware and software as FINRA shall prescribe; (B) gain or attempt to gain access beyond that permitted herein; (C) interfere or attempt to interfere with another's access; (D) store or attempt to store any data, source code, executable code, or other information beyond that necessary for Authorized Testing; (E) access any hardware, software, functions, directories, user privileges, authorizations, permissionings, devices, data, source code, executable code, and other information or components which may be accessible in the testing environment for which Participant is not authorized or which are not necessary to perform Authorized Testing; (F) read, modify, copy, delete, reverse engineer or attempt to read, modify, copy, delete, or reverse engineer any function, program, data, or other information beyond that necessary for Authorized Testing. FINRA makes no representations whatsoever regarding the suitability of the testing environment for Participant's purposes, that the testing environment is free from error, the accuracy of any results obtained through testing and further FINRA disclaims any liability related to the testing environment's failure to meet Participant's purposes or to accurately reflect FINRA's current production environment, or any damages caused to Participant's system or otherwise by the testing environment. Successful completion of testing does not automatically entitle Participant to access the Service in a production environment nor does it bind FINRA to approval of Participant's system or any component thereof and Participant shall not represent otherwise. Participant shall not incorporate the results of any testing into any Participant product until and unless authorized to do so in writing by FINRA.

(C) **Copies.** The Service may only be copied or transmitted, in whole or in part, on Authorized Devices and shall only be copied by Participant up to and to the extent required for backup and archival purposes.

(D) **Restrictions on Use of Information and Data.** The license granted under this Agreement to Participant for the use of Information and Data is not intended to be and shall not be used by Participant as a substitute for the execution of any vendor or data access or distribution agreement, and the payment of the applicable fees there under. Furthermore, Participant shall not use any manual or electronic means to extract Information and Data from the Service to simulate a data feed of the Information and Data, in an attempt to circumvent execution of any other vendor or data access or distribution agreement, or in a manner which would in fact result in Participant receiving a data feed of the Information and Data without executing the proper agreements and paying the appropriate market data fees for such product. Participant will promptly give notice to FINRA of any change in the name or place of business at which the Service is accessed, received or used. Nothing in this section shall be interpreted as limiting or restricting a Participant's right to use its own data or information, including but not limited to, distributing the data to its employees or incorporating the data into research and analysis. Participant may not sell, lease, furnish or otherwise permit or provide access to or receipt or use of the Service to third parties unless it is authorized to do so in writing by FINRA. Participant will not engage in the operation of any illegal business; access or knowingly or negligently permit anyone else to access the Service or for any illegal purpose; receive or permit anyone else to receive the Service for any illegal purpose; use or

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permit anyone else to use the Service for any illegal purpose; or violate any FINRA Rule. Except for any FINRA Confidential Information, Participant may on a non-continuous basis, furnish limited amounts of Information and Data obtained through the Service to customers; in written advertisements, correspondence, or other literature; or during voice telephonic conversations not entailing computerized voice, automated information inquiry services, or similar technologies. Participant shall not present such Information and Data in an unfair, misleading or discriminatory manner.

**5. Proprietary Rights.** Participant acknowledges and agrees that FINRA has title to, ownership of and proprietary rights, in and to the Service including but not limited to all Information and Data thereof and that Participant does not acquire any right or interest therein except as specifically provided herein. Participant acknowledges and agrees that third-party providers have exclusive proprietary rights in their respective information and data. In the event any Derivative Work is developed, indirectly or directly, by Participant, Participant hereby agrees that all rights, title and interest in and to such derivative works and any portion thereof, shall belong to FINRA, however, in the event by operation of law or otherwise, Participant is vested with ownership of any right, title or interest in or to the Derivative Work, Participant hereby assigns and transfers to FINRA, and agrees to cause any of its officers, employees or agents who may be vested with such ownership, to assign and transfer to FINRA, by written agreement satisfactory to FINRA, any and all right, title and interest in and to any Derivative Work or operation thereof that Participant or its officers, employees, or agents may have, including but not limited to the ownership of any patent or copyright rights. FINRA reserves any right to the Service and Information and Data not explicitly granted herein. In the event of any misappropriation or misuse, FINRA or its third-party providers shall have the right to obtain injunctive relief and Participant agrees that each of FINRA's third-party providers shall be a third-party beneficiary of this Agreement for such purpose. Participant will attribute the source of any Information and Data or other proprietary data as appropriate under all circumstances. Copyright and other proprietary notices contained on Licensed Programs or Licensed Materials shall be included on all copies of the Licensed Programs and Licensed Materials and shall not be erased or altered in any way.

**6. Data Rights.** As consideration for receiving authorization to use the Service and to enable FINRA to operate the Service, Participant does hereby deliver, transfer, and convey to FINRA all right, title, and interest, including, without limitation, all rights of copyright, in the Information and Data entered into or distributed by the Service. The delivery of such Information and Data into the Service shall be conclusively deemed to effect the transfer of all such right, title and interest to such Information and Data without further action by FINRA or Participant. Participant shall not, by act or omission, diminish or impair in any manner the acquisition, maintenance, and full enjoyment by FINRA, its licensees, transferees and assignees, of the property rights of FINRA in the Information and Data and Service. Notwithstanding anything in this Agreement to the contrary, nothing herein shall affect Participant's intellectual property rights in the Information and Data inputted by Participant outside the Service and Participant shall be free to use and distribute the Information and Data inputted by Participant for any purpose in its sole discretion.

## **7. Participant Obligations.**

**7.1.** Participant shall not knowingly or negligently cause or permit others to (i) reverse engineer, disassemble, decode, decompile, or otherwise attempt to derive any assembly or higher-level programming language (source code), or derive the proprietary logic, design or structure that is embodied in the Service; (ii) write or develop, or cause or permit to be written or developed, any derivative works or computer programs based upon or substantially similar to the Service; (iii) tamper with or evade, or discover the method of operations or defeat the Licensed Programs or any security device designed to protect the integrity of the Service; or (iv) translate, adapt, vary, amend, modify or combine the Service or any portion thereof with any other programs or programming. If applicable law authorizes Participant to perform certain types of reverse engineering or the like and declares unenforceable contractual restrictions that conflict with that law, then Participant may perform only such reverse engineering or the like as is expressly allowed by, and in strict compliance with, such law. Participant shall return or destroy all copies of the Service, or any portion thereof, upon replacement thereof or cancellation or termination of this Agreement. If the Service or copies thereof are destroyed, an authorized officer of Participant shall certify, upon FINRA's request and in a format acceptable to FINRA, to their destruction. Participant shall comply, at Participant's expense, with all reasonable security specifications or instructions of FINRA made available to Participant in order to prevent the Service from being improperly accessed, received or used from Participant or its place(s) of business/residence. Participant shall use the

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latest version of the Service provided by FINRA and shall install any fix or patch required by FINRA. FINRA shall provide Participant with not less than ninety (90) days' notice of a new release unless a malfunction which affects the Service necessitates a new release on an accelerated basis or an emergency situation precludes such advance notice or a shorter time period is required pursuant to an order of a court, arbitrator or a regulatory agency. FINRA shall provide Participant with the final version of a new release at least thirty (30) days before its implementation. Participant acknowledges that FINRA only supports the most recent version of the Service with all upgrades, fixes and patches and may order Participant to cease the use of any prior versions. FINRA or its agents shall have the right, without notice or liability, to suspend Participant's access to or receipt or use of the Service if the failure on the part of the Participant to comply with this Agreement has, or Participant's access, receipt or use of the Service may have, an adverse impact on the operation or performance of the Service or on FINRA. Participant will maintain such accurate and verifiable records regarding the access, receipt and use of the Service including the names and addresses of all of its Users that access, receive and use the Service, and will make these records available for a period of three (3) years in a form acceptable to FINRA or its designated agents for inspection by the FINRA Group upon reasonable notice. Participant shall make its premises and personnel available to FINRA Group for review of said records and for physical inspection of Participant's access, receipt and use of the Service, all at reasonable times, upon reasonable notice, to ensure Participant and its Users are in compliance with this Agreement. Notwithstanding the foregoing, FINRA may perform an audit for reasonable cause at any time. If, as a result of its audit, FINRA determines that Participant is not eligible for its then current pricing package, FINRA shall have the right to retroactively bill Participant for the appropriate pricing package at the monthly rate that was in effect at the time the service was accessed and/or provided. In the event such audit reveals that Participant under or inaccurately reported or characterized its use of the Service and such under or inaccurate reporting results in an underpayment to FINRA of greater than five percent (5%), Participant shall pay the reasonable costs of the audit, all amounts determined to be owed to FINRA plus interest on all amounts owed to FINRA during such times as the amounts were owed in the amount of one percent (1%) per month.

7.2. Participant shall designate, and identify to FINRA, individuals for the following roles: a Primary and Alternate Security Administrator, billing contact(s) for the Product(s) accessed by Participant pursuant to this Agreement ("**Billing Contacts**"), and such other administrative roles as FINRA may require. Participant may designate additional account administrators for individual Products ("**Account Administrators**"). Collectively, the Security Administrators, Account Administrators, the Billing Contacts and other required administrative roles are referred to as "**Participant's Representatives**." The appropriate Participant's Representative will only use the FINRA secured authorization to communicate and interact directly with FINRA regarding the Service and with no other person or entity and will assign only one unique authorization per eligible User. Participant's Representatives will receive notification from FINRA of changes made to web accounts. FINRA may request at any time an explanation of any of Participant's Representatives' scope of authority or a clarification of any information about a Participant's Representative or object to a Participant's Representative for any reason, including administrative burden on FINRA, or lack of clarity of the information provided about the authority of a Participant's Representative. Participant shall cause each of Participant's Representatives to comply with FINRA Rules. The Security Administrators' and Account Administrators' responsibilities shall include, without limitation: (i) providing all notices to FINRA by telephoning FINRA Market Operations at (866) 776-0800 or by sending an email from a verifiable Participant email account to [FINRAOperations@FINRA.org](mailto:FINRAOperations@FINRA.org) and obtaining an acknowledgement from FINRA of or otherwise verifying FINRA's receipt of the email; (ii) notifying FINRA within one (1) Business Day of when a User is authorized to access the Service, has access to the Service revoked, or is no longer eligible to receive the Service; and (iii) notify FINRA within a reasonable period of time, but not longer than one (1) Business Days, of any unauthorized access to the Service. Participant shall be responsible, under regulation, contract, tort or otherwise, for all actions or omissions of a Participant's Representative (including those that were to have been performed by a Participant's Representative, had one been named or available at the time). Participant shall cause each User to comply with the FINRA Rules and the following requirements: (x) access to the Service is personal to the User and may not be shared, lent, sold, transferred, or used by others or allow access or receipt of use by others; (y) User will change passwords, where applicable, and perform other actions that are necessary to prevent unauthorized access to and/or use of the Service and to keep the Service operating correctly (the actions, such as criteria for choosing and changing passwords, will be specified in FINRA Rules and User agrees to abide by such requirements); (z) User is liable, under regulation, contract, tort or otherwise, for all actions taken or omitted and all information submitted by User or on User's behalf from or to the Service or submitted by authorized or unauthorized persons who obtain access to the

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Service through User, including any actions performed, or information submitted or retrieved, using User's access credentials. Participant's Representatives will ensure that Users do not access any portion of the Service if not eligible to use the Service or after Participant's Representative or User is no longer eligible for access because of a change in the Participant's Representative or User's role or responsibility, the Participant's Representative or User's employer, or otherwise does not meet the then current requirements of the Service, or any portion of the Service. The Participant shall be responsible, under regulation, contract, tort or otherwise, for all actions or omissions of a User or any other person, authorized or not, who gains access to the Service via a User's credentials (including those that were to have been performed by the User, had one been named or available at the time). For avoidance of doubt, nothing in this section shall be construed to limit the Participant's obligations, both contractual and regulatory, with respect to supervision of Users.

7.3. As a condition to the use of the Alternative Display Facility (ADF) Product and Service, Participant agrees that any trade submitted by Participant to the ADF for trade match, in accordance with Rule 7140(a)(1), or trade acceptance, in accordance with Rule 7140(a)(2), shall identify only a contra party that is another ADF participant with access to the ADF and the ability to take action (*i.e.*, accept or decline) with respect to Participant's submission. Participant further agrees that, in the event Participant, inadvertently or otherwise, submits a trade to the ADF for trade match or trade acceptance against a contra party that is not an ADF participant with access to the ADF, Participant accepts any and all potential liability resulting from the failure of such non-ADF participant to honor the trade.

7.4. If Participant is a Covered Person relying on another Participant to act as its Reporting Agent, or if Participant is acting as a Reporting Agent on behalf of a Covered Person, Participant shall comply with all applicable requirements of 17 C.F.R. § 240.10c-1a ("**SEA Rule 10c-1a**") and FINRA Rule 6500 series, including without limitation the following:

- (A) Before a Reporting Agent may act on behalf of a Covered Person, such Covered Person and such Reporting Agent must (1) enter into a written agreement as required by paragraph (a)(2) of SEA Rule 10c-1a, and (2) submit a SLATE Reporting Agent Authorization to FINRA.
- (B) For each Covered Person on whose behalf Reporting Agent has agreed to report transactions, Reporting Agent shall provide the information required to be reported by SEA Rule 10c-1a and FINRA Rule 6500 series (the "**Rule 10c-1a Information**") in the format required by FINRA Rule 6500 series, and within the applicable time frames specified in SEA Rule 10c-1a and FINRA Rule 6500 series.
- (C) Covered Person and Reporting Agent shall establish, maintain and enforce written policies and procedures that are reasonably designed to provide such Rule 10c-1a Information as required by SEA Rule 10c-1a and FINRA Rule 6500 series.
- (D) As required by FINRA Rule 6520(b), Reporting Agent shall provide FINRA with a list naming each Covered Person on whose behalf Reporting Agent is providing Rule 10c-1a Information to FINRA and shall provide FINRA with any changes to the list of such persons by the end of the day on which any such changes occur, in the form and manner specified by FINRA.
- (E) Upon written request from FINRA, Covered Person and Reporting Agent shall promptly provide evidence sufficient to establish that Reporting Agent has met the foregoing requirements.

7.5. If FINRA disseminates CUSIP information ("CUSIP Database") to Participant, the following language shall apply:

- (A) Participant acknowledges and agrees that it must execute the appropriate license or agreement with CUSIP Global Services ("**CGS**") before it will be authorized to access the CUSIP Database through the Services.
- (B) Participant acknowledges and agrees that the CUSIP Database and the information contained therein is and shall remain valuable intellectual property owned by, or licensed to CGS and the American Bankers Association ("**ABA**"), and that no proprietary rights are being transferred to Participant in such materials or in any of the information contained therein. Any use by Participant outside of the clearing and settlement of transactions requires a license from CGS, along with an associated fee based on usage. Participant agrees that misappropriation or misuse of

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such materials will cause immediate, irreparable and serious damage to CGS and ABA and that in such event monetary damages may not constitute sufficient compensation to CGS and ABA; consequently, Participant agrees that in the event of any misappropriation or misuse, CGS and ABA shall have the right to obtain injunctive relief in addition to any other legal or financial remedies to which CGS and ABA may be entitled.

(C) Participant agrees that it shall not publish or distribute in any medium the CUSIP Database or any information contained therein or summaries or subsets thereof to any person or entity except in connection with the normal clearing and settlement of security transactions. Participant further agrees that the use of CUSIP numbers and descriptions is not intended to create or maintain, and does not serve the purpose of the creation or maintenance of, a master file or database of CUSIP descriptions or numbers for itself or any other third-party recipient of such service and is not intended to create and does not serve in any way and shall not be used in any way as a substitute for the CUSIP MASTER TAPE, PRINT, DB, INTERNET, ELECTRONIC and/or CD-ROM Services and/or any other future services developed by CGS.

(D) NEITHER CGS, ABA NOR ANY OF THEIR AFFILIATES MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY OF THE INFORMATION CONTAINED IN THE CUSIP DATABASE. ALL SUCH MATERIALS ARE PROVIDED TO PARTICIPANT ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE NOR WITH RESPECT TO THE RESULTS WHICH MAY BE OBTAINED FROM THE USE OF SUCH MATERIALS. NEITHER CGS, ABA NOR THEIR AFFILIATES SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY ERRORS OR OMISSIONS NOR SHALL THEY BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE LIABILITY OF CGS, ABA OR ANY OF THEIR AFFILIATES, PURSUANT TO ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE FEE PAID BY PARTICIPANT FOR ACCESS TO SUCH MATERIALS IN THE MONTH IN WHICH THE CAUSE OF ACTION IS ALLEGED TO HAVE ARISEN. FURTHERMORE, CGS AND ABA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DELAYS OR FAILURES DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.

(E) Participant agrees that the foregoing terms and conditions shall survive any termination of its rights of access to the materials identified above.

**8. Requirements of Self-Regulatory Organization.** Participant acknowledges that: (a) FINRA is registered with the SEC as a registered national securities association pursuant to Section 15A of the Act; (b) FINRA has a statutory obligation to protect investors and the public interest and to ensure the integrity of the Service and Information and Data (including the Information and Data supplied to investors and the public); (c) Section 19(g)(1) of the Act mandates that FINRA, as a self-regulatory organization, comply with the provisions of the Act, the rules and regulations there under, and FINRA Rules; and (d) FINRA has jurisdiction to enforce compliance with the Act, the rules and regulations promulgated there under, and FINRA Rules over its members, Participant and those who access, receive or use the Service or the Information and Data by virtue of this Agreement. Accordingly, Participant agrees that (i) FINRA may, by notice to Participant unilaterally, limit or terminate the right of any and all persons to receive or use the Service or the Information and Data in accordance with the obligations set forth in this section; and (ii) FINRA may control the manner in which the Service and Information and Data are accessed, received or used. In any such case, Participant will immediately comply with any such notice and will terminate or limit its access, receipt and use of the Service and Information and Data, and confirm such compliance by notice to FINRA. Any affected person will have available to it such procedural protections as are provided by the Act and applicable rules there under.

**9. Charges; Payment; Taxes.** Participant agrees to pay to FINRA the then effective charges as set forth either in FINRA Rules or in a notice to Participant, including all applicable deposits, and installation, de-installation, equipment, communications, facilities, training, fees, interest and late fees and/or charges without set-off, offset or recoupment. Participant shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on Participant or FINRA by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof, and any penalties or interest, (except for U.S. federal, state or local income taxes, if any, imposed on FINRA) relating to the provision of the Service to Participant. In addition, if Participant is required by applicable law to deduct or withhold any such tax, charge or assessment from the amounts due FINRA, then such amounts due shall be increased so that the net amount actually received by FINRA after the deduction or withholding of any such tax, charge or



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assessment, will equal one hundred percent (100%) of the charges that are owed. Payment is due within 30 days of the receipt of the invoice. Interest at a rate of one percent (1%) per month on any outstanding balance shall be due from thirty (30) days from the date of the invoice to the time that the amount(s) that are due have been paid. Payment shall be made in immediately available United States funds by check or electronic funds transfer drawn against a United States bank or other institution acceptable to FINRA or by any other means mutually acceptable to the Parties.

### 10. Default

10.1. Participant has specifically induced FINRA to enter into this Agreement based on the representations and undertakings of Participant contained herein. Strict compliance with the provisions of this Agreement is and shall be a condition precedent to Participant's right hereunder to continue to access, receive or use the Service. Participant expressly acknowledges and agrees that FINRA shall have the rights set forth in this Section 10 if FINRA shall determine, in its sole discretion, that one or more of the following events or conditions occurs or is continuing:

(A) Participant fails to pay any amounts due FINRA under this Agreement within thirty (30) days after the applicable due date for such amounts specified in this Agreement;

(B) Any representation, warranty or certification, which is material to FINRA for regulatory, commercial or other reasons, made by Participant in this Agreement or in any other document furnished by Participant in connection herewith was false or misleading, as of the time made or furnished;

(C) Participant defaults in the performance of any of its obligations or covenants under this Agreement, or any representation, warranty or certification described in clause (ii) above becomes false or misleading, and such default, falsity or misstatement (if curable) continues without remedy for a period of fifteen (15) days after FINRA provides notice to Participant thereof, provided, however, that if such default, falsity or misstatement cannot be remedied by Participant in good faith and with due diligence within fifteen (15) days and the failure to so remedy within fifteen (15) days does not cause FINRA to be in violation of applicable law or regulations or to otherwise materially injure FINRA, then an event or condition of default under this clause will not be considered to exist or have occurred for so long as Participant commences such actions as are necessary to remedy such default, falsity or misstatement within such fifteen (15) day period and thereafter diligently pursues such actions to remedy such default, falsity or misstatement;

(D) Participant proceeds with a proposed action in default of its obligations or covenants under this Agreement, or in breach of any representation, warranty or certification, that is material to FINRA for regulatory, commercial or other reasons, made by Participant in connection herewith, after FINRA has provided notice to Participant that such proposed action would constitute a default hereunder;

(E) Participant: (A) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (B) makes a general assignment for the benefit of its creditors, institutes proceedings under the United States Bankruptcy Code, (C) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts, (D) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (E) the board of directors of Participant takes any action for the purpose of effecting any of the foregoing;

(F) A proceeding or case of the type described in clause (v) above is commenced, without the application or consent of Participant, in any court of competent jurisdiction, and such proceeding or case is entered and continues unstayed and in effect for a period of sixty (60) days, or an order for relief against Participant is entered in an involuntary case under the Bankruptcy Code; or due.

(G) Participant admits in writing its inability to pay its debts as they become due.

10.2. Upon the occurrence of any of the events or conditions described in Section 10.1 herein, FINRA will have the immediate right, in its sole discretion, to take one or more of the following actions: (i) to terminate this Agreement and Participant's right to access, receive or use the Service hereunder; (ii) to demand arbitration under Section 24; or (iii) to pursue such other remedies as it may be entitled by virtue of or under this Agreement, before regulatory authorities, or at law or in equity.

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10.3. If FINRA has breached or is in default under this Agreement, and such breach or default continues without remedy for fifteen (15) days after notice to FINRA by Participant, then Participant shall have the immediate right to take one or more of the following actions; provided, however, that if such breach cannot be remedied by FINRA in good faith and with due diligence within fifteen (15) days and the failure to so remedy within fifteen (15) days does not cause Participant (or its Users) to be in violation of applicable laws or regulations or to otherwise materially injure Participant or its Users, then FINRA shall not be considered to be in default for so long as FINRA commences such actions as are necessary to remedy such breach within such fifteen (15) day period and thereafter diligently pursues such actions to remedy such breach or default: (i) to terminate this Agreement; (ii) to demand arbitration under Section 24; or (iii) to pursue such other remedies as it may be entitled by virtue of or under this Agreement, before regulatory authorities, or at law or in equity.

10.4. To the extent permitted by applicable law, Participant acknowledges and agrees that the exercise by FINRA of the remedies to which it is entitled under Section 10.2 as a result of the occurrence of a default by Participant as described in Section 10.2 shall not be deemed or considered to be, and Participant waives any right to represent or assert that any such exercise constitutes, an act or omission or an improper denial or limitation of access to any service or facility operated by FINRA as contemplated in Section 11A of the Act, or any other provision of the Act, or any rule or regulation adopted hereunder.

## 11. Term and Termination

11.1. **Term.** The term of this Agreement (the “**Term**”) shall commence on the date that Participant is first granted access to the Service by FINRA and shall continue until terminated as expressly provided herein.

11.2. **Termination by FINRA.** This Agreement may be terminated by FINRA:

(A) upon not less than thirty (30) days’ prior notice to the Participant, that FINRA will cease providing the same class of Service or any portion thereof to all other eligible individuals or entities that were receiving the same class of Service or any portion thereof as Participant; or

(B) at any time without notice in the event: (1) Participant violates any provision of the license; (2) any court, agency, or instrumentality enjoins the provision of Service or any part thereof; (3) FINRA, in its sole discretion, determines that a threat of harm or abuse exists from further use of Service by Participant to the Service or other users; or (4) FINRA in good faith believes that Participant through the use of the Service or any part thereof, has or is about to infringe, or has or is about to aid or contribute to any infringement on FINRA or any other party's intellectual property rights, whether registered or unregistered, including but not limited to patents, trademarks, copyrights, and trade secrets.

11.3. **Termination by Participant.** This Agreement may be terminated by Participant for convenience upon five (5) days’ prior written notice to FINRA.

11.4. **Termination or Expiration Charges.** Upon termination or expiration of this Agreement, Participant shall cease any and all access, receipt and use of the Service and all Information and Data. Participant shall immediately pay the following charges upon the termination or expiration of this Agreement, other than any amounts due hereunder which are the subject of a bona fide dispute between FINRA and Participant: (i) all amounts incurred by FINRA for installation of the Service that Participant has not previously paid to FINRA; (ii) all amounts incurred by FINRA for disconnection of the Service; and (iii) all other fees and charges due to FINRA under this Agreement. Participant acknowledges and agrees that the exercise by FINRA of the remedies set forth herein for failure of Participant to pay all fees, charges and taxes related to its access, receipt and use of the Service shall not be deemed or considered to be, and, to the extent permitted by applicable law, Participant waives any right to represent or assert that any such exercise constitutes, an act or omission or any improper denial or limitation of access to any service or facility operated by FINRA as contemplated in Section 11A of the Act or any other provision of such Act, or any rule or regulation adopted there under. The right of termination set forth herein is in addition to any other remedy at law or in equity that is available to one Party with respect to a breach by the other.

11.5. **Survival.** Sections 11.4, 12, 13, 15.1, 16-19, 21-29, 31-34 along with any other Section which by its nature is meant to survive termination shall survive any termination or expiration of this Agreement.

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**12. Litigation Related to Unauthorized Access, Receipt or Use.** Participant shall not oppose any suit or proceeding that is instituted by FINRA to enjoin any individual or entity that is not authorized to access, receive or use the Service in accordance with the terms of this Agreement, from accessing, receiving or using the Service, or to enjoin any individual or entity that is accessing or assisting in accessing, receiving or assisting in receiving, using or assisting in using, the Service outside the authorized channels of communication set forth in this Agreement. Participant agrees to reasonably cooperate with and assist FINRA in any such suit or proceeding. If such a FINRA request for cooperation and assistance imposes substantial burdens upon Participant, then FINRA agrees to reimburse Participant for Participant's reasonable direct expenses incurred in connection with such request. If Participant furnishes, or permits to be furnished, the Service to any individual or entity other than in accordance with this Agreement and without the prior written approval of FINRA, then FINRA, in addition to exercising any other rights it may have under this Agreement, may take any action against such individual or entity in order to prevent the access, receipt or use of the Service by such other individual or entity, either with or without making Participant a party to such action.

**13. Notice of Breach or Default.** Participant shall promptly, but in no event later than two (2) Business Days after Participant knows that a breach of or default under this Agreement by Participant or any User has occurred, deliver to FINRA notice describing the same in reasonable detail.

**14. Integrity of Service.** Participant agrees not to format, display, or alter the Service or any part thereof in violation of FINRA Rules or FINRA specifications and requirements made available to Participant, as they may be modified from time to time; not to affect materially the integrity of the Service; or render the Service inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. Participant represents and warrants that it will not knowingly or negligently misuse, interfere with or adversely affect the Service, including but not limited to any FINRA provided software, or the operation of the Service or any part thereof, or any of the component parts or processes of the Service, or any use thereof by any other authorized individuals or entities.

**15. Security. Prevention of Unauthorized Use.** Participant agrees that it will comply, and agrees to require any applicable third party to comply, with all reasonable security specifications or requirements of FINRA including, if applicable, the installation of digital certificates for each of Participant's Users, in order to prevent the Service from being improperly accessed, received, used or improperly taken from any of Participant's, or any applicable third parties, place(s) of business or residence. FINRA shall give Participant prior notice of any such specifications or requirements. For the purpose of determining compliance with this section, at any and all times, any and all individuals designated by FINRA shall have (i) access to the place(s) of business or residence where the Service is accessed, received or used and (ii) the right to observe the access, receipt and use of the Service. Participant acknowledges and agrees that FINRA may use electronic means to verify and ensure Participant's compliance with the terms of this Agreement including code embedded within the Service. Each Party shall install and maintain at all times during the term of this Agreement a corporate "firewall" protecting its computer network in accordance with commercially reasonable specifications and standards. FINRA shall not include in the Service any computer code designed to harm the operation of Participant's computer system, or any other associated software, firmware, hardware, computer system or network or provide or allow unauthorized access to the Participant's system.

**16. Confidentiality.** FINRA and Participant acknowledge that in the course of their performance of this Agreement each may obtain Confidential Information. The recipient shall use such Confidential Information only in fulfillment of its obligations under this Agreement; shall hold such Confidential Information in confidence; and shall not use, disclose, copy, or publish any such Confidential Information without the prior written approval of the other Party. Notwithstanding the foregoing, FINRA or Participant may disclose Confidential Information to the extent demanded by a court, or required to be revealed to a government agency with regulatory jurisdiction over FINRA or Participant or in its regulatory responsibilities under the Act. The duties in this section do not apply to data, information or techniques that can be shown to be: (1) lawfully within recipient's possession prior to the date of this Agreement and not subject to a duty of confidentiality; (2) voluntarily disclosed by a third-party so long as that third-party does not breach any obligation of confidentiality with respect to such data, information or techniques; (3) is generally known or revealed to the public through no act or omission of the recipient; or (4) independently developed by the recipient without use of or reference to the Confidential Information of the other Party. The obligations under this section shall continue until such time as the Confidential Information is publicly known and made generally available through no action or inaction of the

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

### **17. Warranties; Disclaimers of Warranties**

**17.1. Each Party represents and warrants that it shall obtain, maintain and comply with all permits, consents and approvals necessary for such Party to enter into and fulfill its obligations under this Agreement.**

**17.2. In the event that the Service is not available, or is materially interrupted, delayed, incomplete, inaccurate, or affected as a result of a failure by FINRA to perform its obligations under this Agreement, FINRA's entire liability and Participant's exclusive remedy under this Agreement for Service or Product defects shall be, in FINRA's sole discretion, either (a) the good faith correction or attempted correction by FINRA, giving due regard for the cost, time, and effect on other users, of reproducible defects or (b) the provision of a bypass for a material programming defect. In the event that the Service or Product is not available, is materially delayed, interrupted, incomplete, inaccurate or negatively affected for an entire Business Day and remains so affected at the commencement of the immediately succeeding Business Day due to the fault of FINRA (except for a reason permitted in this Agreement), Participant's exclusive remedy against FINRA shall be, (a) if Participant continues to receive the Service or any other data and/or information offered by FINRA, a prorated month's credit of any monies due for and directly attributable to the affected Service to FINRA from Participant for the period at issue or, (b) if Participant no longer receives either the Service or any other data and/or information offered by FINRA, a prorated month's refund of any monies due for the affected Service to FINRA from Participant for the period at issue. Such credit or refund shall be requested by notice to FINRA with all pertinent details. Notwithstanding the foregoing, FINRA makes no warranties whatsoever with regard to Testing Services. All such Testing Services are provided "as is." Beyond the warranties stated in this section, there are no other warranties of any kind, express, implied or statutory (including title, ownership, intellectual property infringement, timeliness, truthfulness, sequence, completeness, accuracy, availability, 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).**

**17.3. With respect to Participant, FINRA's system administrator disclaims all warranties of any kind, express, implied or statutory (including title, ownership, intellectual property infringement, timeliness, truthfulness, sequence, completeness, accuracy, availability, 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).**

**17.4. Participant acknowledges that FINRA may provide Participant access to certain third-party software to assist Participant in receiving the Service or any data. Such third-party software is provided "as is" without warranty of any kind. Participant agrees that FINRA shall not be liable for any errors or defects in any third-party software (including infringement by the software of any third party's intellectual property rights). Participant's sole remedy against FINRA for any errors or defects in any third-party software (including any infringement of a third party's intellectual property rights) shall be to cease using such software and/or return the software to FINRA.**

**17.5. Participant understands and agrees that FINRA is not directly or indirectly a party to or a participant in any trade or transaction entered into or otherwise conducted through or reported to the Service. Responsibility for clearance and settlement of all trades effected through the Service rests with Participant even in the event that Participant has entered into a Uniform Reporting Agreement with a Reporting Participant. Participant hereby agrees to indemnify, defend and hold harmless, FINRA its, employees, directors,**

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and other agents against, any and all claims or losses imposed on, incurred by or asserted against FINRA its, employees, directors, and other agents arising out of or in connection with subject matter of this Section 17.5.

### 18. Limitation of Liability

18.1. Except as may otherwise be set forth herein, FINRA shall not be liable to Participant or to any other individual or entity claiming through Participant, or to any other individual or entity for indirect, special, punitive, consequential, or incidental loss or damage (including trading losses, loss of opportunity, loss of anticipated revenues, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, or other loss or damage) of any nature arising from any cause whatsoever, even if FINRA has been advised of the possibility of such losses or damages. Participant shall indemnify, defend and hold harmless FINRA from any such claims made against FINRA by any individual or entity accessing, receiving, or using the Service from or through Participant.

18.2. FINRA shall not be liable to Participant, or any other individual or entity for any unavailability, interruption, delay, incompleteness, or inaccuracy of the Service or the Information and Data unless such unavailability, interruption, delay, incompleteness, or inaccuracy of the Service or Information and Data lasts for an entire Business Day and continues at the commencement of the immediately succeeding Business Day.

18.3. If FINRA is for any reason held liable, whether in tort, contract or otherwise arising out of or in connection with this Agreement, the Service or Information and Data provided pursuant hereto, the aggregate liability of FINRA for all reasons within a single year is limited to the lower of: (1) if Participant continues to receive the Service or any other data and/or information offered by FINRA, a prorated month's credit of any monies due to FINRA from Participant for the period at issue or, if Participant no longer receives either the Service or any other data and/or information offered by FINRA, a refund of any monies due to FINRA from Participant for the period at issue; or (2) U.S. \$5,000.00. Notwithstanding the foregoing, FINRA's liability for intellectual property indemnification shall not exceed the amounts actually paid by Participant during the Term.

18.4. This Section 18 shall not relieve or limit FINRA or Participant from liability for damages that result from their own gross negligence or willful misconduct, or from personal injury or wrongful death claims.

18.5. Participant and FINRA understand and agree that the terms of this Section 18 reflect a reasonable allocation of risk and limitation of liability.

18.6. Notwithstanding anything contained herein to the contrary, FINRA shall not be responsible for or liable to Participant, anyone claiming through Participant, or any other individual or entity for any unavailability, interruption, delay, incompleteness, or inaccuracy of the Service or the Information and Data that is not caused by FINRA.

18.7. Notwithstanding anything contained herein to the contrary, FINRA shall not be liable to Participant, anyone claiming through Participant, or any other individual or entity for the unavailability, interruption, delay, incompleteness or inaccuracy of Information and Data from FINRA's third-party information and data providers, or for the infringement of any individual or entity's intellectual property or other rights by the Information and Data provided to FINRA by third-party information and data providers.

### 19. System Administrator and Third-Party Information and Data Providers' Limitations of Liabilities

19.1. FINRA's system administrator and third-party information and data providers shall have no liability for the inaccuracy, unavailability, incompleteness or interruption of, or for delays or omissions in, any of the Information and Data provided by them. FINRA's system administrator nor its third-party information and data providers shall have no liability for any indirect, special, punitive, consequential, or incidental loss or damage (including trading losses, loss of opportunity, loss of anticipated revenues, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, or other loss or damage) of any nature arising from any cause whatsoever, even if the third-party information and data providers have been advised of the possibility of such losses or damages. This section shall not relieve or limit FINRA's system

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administrator nor is third-party information and data providers from liability for damages that result from their own gross negligence or willful misconduct.

19.2. **Participant acknowledges and agrees that FINRA's third-party information and data providers have exclusive proprietary rights in their respective Information and Data.**

19.3. **Participant acknowledges and agrees that access to the Information and Data of FINRA's third-party information and data providers is subject to FINRA's receipt of the Information and Data from such third-party information and data providers pursuant to the agreements between FINRA and such third-party information and data providers and that FINRA's access to and receipt of such Information and Data may be delayed, terminated or otherwise affected.**

19.4. **Participant agrees that access to the systems and services of FINRA's system administrator is subject to FINRA's access to the systems and services from the respective system administrator pursuant to the agreements between FINRA and its system administrator and that FINRA's access to such systems and services may be delayed, terminated or otherwise affected.**

## 20. Indemnification

20.1. **Indemnification by Participant.** Participant shall be liable to, indemnify, defend and hold harmless FINRA its, employees, directors, and other agents against, any and all Claims or Losses imposed on, incurred by or asserted against FINRA, its employees, directors, and other agents arising out of or in connection with this Agreement and access, receipt or use of the Service, including all Testing Services, provided pursuant hereto to the extent that the Claims and Losses result from (i) acts or omissions of the Participant or its Users, (ii) breach of this Agreement by Participant or its Users, (iii) Participant's or its Users' access, receipt or use of the Service (including representations about the Service), (iv) as a result of a claim by a third party to intellectual property rights related to Participant's hardware, software, or services used with the Services or use of the Services in combination with the Participant's hardware, software, or services, including any claim alleging contributory infringement, or (v) any defense of or participation by FINRA its, employees, directors, and other agents in any action, suit, arbitration, mediation, judicial or administrative proceeding, or any other proceeding involving any Claims or Losses described in this Agreement caused by or related to any act or omission by Participant or any party obtaining access to the Service or Testing Services intentionally, knowingly or negligently from or through Participant.

20.2. **Indemnification by FINRA.** Subject to Section 18.7, FINRA shall indemnify, defend, and hold Participant harmless from any and all Claims and Losses imposed on, incurred by or asserted against Participant that the Service infringes or misappropriates any third parties' U.S. registered intellectual property rights, provided that the Service has been used only in accordance with this Agreement, and excluding any infringement or misappropriation relating to or resulting from any modification or alteration to the Service up to and including the amounts specified in Section 18.3.

20.3. **Infringement.** In the event of a claim of infringement or if, in FINRA's opinion, such a claim is likely to occur or if the use of the Service is enjoined because of infringement, FINRA may, at its sole option and expense, procure for Participant the right to continue using the Service, replace or modify the Service to be non-infringing, or require the Participant to cease its use of the Service.

20.4. **No Indirect Damages.** The provisions of this Section 20, however, should not be construed as authorizing or as providing any basis for the recovery by third parties of indirect, punitive, special, consequential or incidental loss or damages, including trading losses, loss of opportunities, loss of anticipated revenues and loss of anticipated profits, from the Party being indemnified.

20.5. **Indemnified Party's Obligations.** The Party claiming indemnification under this Section 20 agrees that its indemnification by the other Party is subject to compliance with this Section 20.5. The Party claiming indemnification agrees to promptly provide notice to the other Party in a time frame that does not prejudice the rights of such other Party (and, in the case of any action, suit, arbitration, mediation, judicial or administrative proceeding, or any other proceeding, shall so notify no later than fifteen (15) days after the Party claiming indemnification has received notice thereof or has been served with a complaint or other process) when it has knowledge of circumstances or the

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occurrence of any events which are likely to result in an indemnification obligation under this Agreement or when any action, suit, arbitration, mediation, judicial or administrative proceeding, or any other proceeding is pending or threatened that is covered by this Section 20; and further agrees that, upon request and to the extent permitted by applicable law, the other Party shall have the sole right to control, defend, settle, and negotiate any such suit or proceeding, at such other Party's expense, provided that: (i) such other Party demonstrates to the satisfaction of the Party claiming indemnification that it is financially able to defend such action and to pay any settlement or judgment; and (ii) counsel retained by such other Party are reasonably satisfactory to the Party claiming indemnification. The Party claiming indemnification agrees to cooperate with the other Party in the defense of any such suit or proceeding, and the other Party agrees to reimburse the Party claiming indemnification for its expenses with respect thereto. Failure by the Party claiming indemnification to promptly notify the other Party as required by this Section 20.5 shall not invalidate the claim for indemnification, unless such failure has a material adverse effect on the settlement, defense, or compromise of the matter that is the subject of the claim for indemnification. In addition, the Party claiming indemnification shall be responsible for any Claims or Losses that could have been avoided or mitigated by prompt notice as required by this Section 20.5.

**21. Virus Notification/Assumption of the Risk.** Participant acknowledges that it is possible to contract a virus or similar "disease" by accessing or using the Internet or accessing, receiving or using material downloaded from the Internet directly or through a third party. In addition, websites are inherently not as secure or reliable of an environment as computers connected by dedicated lines and have been in the past vulnerable to attack by hackers and other third parties. Participant should obtain, use and update, and cause all applicable third parties to obtain, use and update, virus-checking software routinely when Participant is accessing, receiving or using information or data obtained from the Internet. FINRA cannot assure Participant that the Service will be virus or problem free. By using the Service, Participant agrees to assume the risk of any unavailability, interruption, delay, incompleteness, or inaccuracy of the Service.

**22. No Endorsement; Proprietary Rights; Corporate Names; Trademarks; Service Marks.** Neither Party to this Agreement, including third-party beneficiaries, nor any of its users, affiliates, employees, contractors, representatives or agents shall represent, or shall cause or permit any other individual or entity to represent, either directly or indirectly, that either Party is sponsored or endorsed by the other. The Parties agree not to use any trade or service mark that belongs to the other or any of their subsidiaries or affiliates, registered or unregistered, without the prior written permission of the Party who owns such marks, and even after receiving written permission, in any way that would infringe upon such marks under applicable law. Participant shall not remove or modify any proprietary notices contained within the Service. Participant acknowledges and agrees that FINRA has proprietary rights in certain names, trademarks, service marks, copyrights or patents, registered or unregistered, and Participant shall not use these names, trademarks, service marks, copyrights or patents, registered or unregistered, in any way that would infringe upon such names, trademarks, service marks, copyrights or patents, registered or unregistered.

**23. Assignment; Third-Party Rights.** This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns. Participant shall not assign this Agreement (including by operation of law) without the prior written consent of FINRA, which consent may not be unreasonably withheld, provided, that in no event shall consent be granted where such assignment would adversely affect FINRA and would cause FINRA or any of its affiliated entities to be in violation of applicable laws or regulations, including FINRA Rules. In the event that consent to assign is granted, Participant unconditionally guarantees the payment and performance by such assignee entity of all obligations under this Agreement. FINRA or its assigns may assign this Agreement upon notice to Participant. Except as otherwise provided in this Agreement, nothing in this Agreement shall entitle any individual or entity to any rights as a third-party beneficiary under this Agreement. Nothing in this Agreement shall constitute the Parties as partners or participants in a joint venture, and neither Party is appointed the agent of the other.

**24. Arbitration.** Any claim, dispute, controversy or other matter in question with regard to the 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 (1) 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, (2) the foregoing shall not preclude either Party from pursuing all

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available administrative, judicial or other remedies for infringement of a registered patent, trademark, service mark or copyright, (3) the Parties shall not submit claims for punitive damages, and do hereby waive any right to the same, and (4) the arbitrators shall not be authorized to award punitive damages. The arbitrator(s) shall award attorneys' fees to the prevailing party. A prevailing party shall be one that brings or defends an action and receives substantially the relief sought. The demand for arbitration, which shall be effective upon receipt, shall not be made after the date when institution of legal or equitable proceedings based upon such claim, dispute, controversy or other matter in question would be barred by the applicable statute of limitations or laches. In no event shall such claim, dispute, controversy or other matter in question be made later than one year after the claim, dispute, controversy or other matter in question has arisen (unless the claim, dispute, controversy or other matter in question is related to the collection of past due payments).

**25. Amendment.** Except as may be otherwise set forth herein, FINRA may modify any part of this Agreement on 90 days prior notice. Participant's failure to reject by notice the modification within 30 days of the effective date of the modification shall be deemed to be an acceptance of the modification. Any rejection by Participant of any amendment made by FINRA in accordance with this section may, at FINRA's sole discretion, result in termination of this Agreement by FINRA. Except as otherwise provided herein, no provision of this Agreement may be amended, modified or waived unless by an instrument in writing executed on behalf of each of the Parties by their respective duly-authorized officers.

**26. Governing Law.** This Agreement shall be deemed to have been made in the State of New York and shall be construed and enforced in accordance with the laws of the State of New York, without reference to principles of conflicts of laws thereof. Unless otherwise set forth in this Agreement, each Party irrevocably agrees that any legal or equitable action, suit or proceeding (other than entry or enforcement of an arbitration award or decision) in any way arising out of this Agreement which, under the terms of this Agreement, may be brought by it in a court of law, must be brought solely and exclusively in the United States District Court for the Southern District of New York or in the state courts of the State of New York in New York County and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party; provided, however, that this section shall not prevent a Party against whom any legal action, suit or proceeding is brought by the other Party in the state courts of the State of New York in New York County from seeking to remove such legal action, suit or proceeding, pursuant to applicable Federal Law, to the district court of the United States for the district and division embracing New York County, and in the event an action is so removed each Party irrevocably accepts and submits to the jurisdiction of the aforesaid district court. Each Party hereto further irrevocably consents to the service of process from any of the aforesaid courts by mailing copies thereof by registered or certified mail, postage prepaid, to such Party at its address designated pursuant to this Agreement, with such service of process to become effective thirty (30) days after such mailing. Each Party hereby irrevocably waives their right to a jury trial.

**27. Waiver.** No failure on the part of FINRA or Participant to exercise, no delay in exercising, and no course of dealing with respect to any right, power or privilege under this Agreement or at law or equity 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 or at law or equity.

**28. Severability.** If any of the provisions of this Agreement, or the application thereof to any individual, entity or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to individuals or entities or circumstances other than those as to which they are invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**29. Captions; Interpretation.** The section headings used in this Agreement are intended solely for convenience of reference and shall not in any way or manner amplify, limit, modify or otherwise be used in the interpretation of this Agreement. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, if and where applicable. The use of the singular in this Agreement shall include the plural, and vice versa. The words "including", "includes" or "include" shall mean "including, without limitation".

**30. Force Majeure.** Neither Party will be liable for delay or failure in performance of any of the acts required by this Agreement when such delay or failure arises from circumstances beyond its reasonable control (including acts of



## FOR INFORMATIONAL PURPOSES ONLY

God, fire, flood, war, explosion, sabotage, terrorism, embargo, civil commotion, acts or omissions of any government entity, supplier delays, communications or power failure, equipment or software malfunction, or labor disputes), and without the gross negligence or willful misconduct, of the Party. If the period of non-performance exceeds ten (10) calendar days, then the Party to whom the performance is due will have the right to terminate this Agreement by giving notice five (5) calendar days before such date of termination.

**31. Entire Agreement.** This Agreement, including the FINRA Rules, as any of these items may be added to, deleted from, or amended from time to time, constitutes the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, communications, writings and understandings with respect to the subject matter of this Agreement. In the event of any conflict between the provisions of this Agreement and the FINRA Rules, the order of preference shall be FINRA Rules, then this Agreement.

**32. Notices.** All notices, requests, claims and other communications described in or regarding this Agreement will be effective if it is in writing and received by the Party to which it is addressed. Except as stated below, it is deemed received as follows: (1) if a paper copy is delivered by a delivery organization that allows users to track deliveries (e.g., FedEx, UPS), then upon receipt as stated in the tracking system; (2) if a paper copy is delivered by another means, then when the recipient Party or a representative of the recipient Party signs for it (including, e.g., an acknowledgment of hand delivery, or signing a USPS return receipt; or (3) if sent by email, then upon sending unless the sender receives a machine-generated message indicating that delivery has failed. If a notice addressed to a Party is received after 5:00 p.m. on a Business Day at the location specified in the mailing address for that Party, or on a day that is not a Business Day at the location specified in the mailing address for that Party, then the notice will be deemed to have been received at 9:00 a.m. on the next business day. Participant's initial designated recipient is Participant's compliance/regulatory contact specified in the Participant Data Management (PDM) system.<sup>1</sup> FINRA's initial designated recipients are indicated below. A Party may change its designated recipient or address for notices and communications by providing the other Party with notice of the change using one of the above methods. In addition, FINRA may provide notice to Participant through a posting to the Service or to the Website, in which case notice shall be deemed to have been duly given upon the date of posting.

Financial Industry Regulatory Authority, Inc.  
Attn: Market Operations  
9509 Key West Avenue  
Rockville, MD 20850  
Email: FINRAOperations@finra.org  
Telephone #: (866) 776-0800

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

Financial Industry Regulatory Authority, Inc.  
Attn: Office of General Counsel - Commercial Transactions Group  
1700 K Street NW  
Washington, DC 20006  
Email: ContractNotices@finra.org

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

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<sup>1</sup> Available at <https://participants.finra.org>.