

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
BOND TRADE DISSEMINATION SERVICE (BTDS)
VENDOR AGREEMENT v. 3

THIS BOND TRADE DISSEMINATION SERVICE (BTDS) VENDOR AGREEMENT (*Agreement*), is made by and between the National Association of Securities Dealers, Inc. (*NASD*), a Delaware nonprofit corporation that is a securities self-regulatory organization, registered with the United States Securities and Exchange Commission (*SEC*) and subject to the Securities Exchange Act of 1934 (*Act*) (*NASD* and its subsidiaries and affiliated entities are collectively referred to herein as the *NASD*) whose principal place of business is located at 1735 K Street, N.W., Washington, D.C. and the Vendor. The subsidiaries and affiliated entities of Vendor with which Vendor will be sharing Vendor's Service (as defined below) or providing the Information and Data (as defined below), if any, are listed on Attachment A attached hereto. Affiliates and subsidiaries of Vendor are those entities that are controlled by or under common control with Vendor or otherwise agreed to in writing by NASD. For the purposes of this definition, "control" and its derivatives shall mean the legal, beneficial, or equitable ownership, directly or indirectly, of 50 percent or more of the capital stock (or other ownership interest, if not a corporation) of any entity ordinarily having voting rights.

WHEREAS, NASD has developed a Bond Trading Dissemination System (*System*); which makes available through the System, either directly or through an authorized individual or entity as may be permitted by NASD, certain data and other information relating to: eligible corporate debt securities or other financial instruments, products, vehicles or devices; and persons regulated by the NASD (*Information and Data*). Such Information and Data, which may be generated by the NASD or gathered by the NASD from other sources, has been collected, consolidated, validated, processed, or recorded by the System that is operated by or on behalf of the NASD.

WHEREAS, NASD may, in its sole discretion, administer the System through a System Administrator that shall be identified in Section 45(c).

WHEREAS, Vendor has developed a service, which, in accordance with the terms and conditions herein, including, but not limited to termination rights, shall be modified by Vendor that includes communications facilities for accessing, receiving, storing, processing, using, transmitting and disseminating the Information and Data (*Vendor's Service*);

WHEREAS, Vendor desires to receive and use the Information and Data through a communications interface between the System and the Vendor's Service; and

WHEREAS, NASD is willing to make available and Vendor is willing to receive the Information and Data subject to the terms and conditions of this Agreement as it may be amended from time to time.

NOW, THEREFORE, in consideration of the recitals and the terms and conditions contained in this Agreement, Vendor and NASD hereby agree as follows:

Section 1. Agreement to Provide Information and Data. For the Term of this Agreement, NASD agrees to provide on a non-transferable, non-exclusive, non-assignable basis, either directly or through an authorized individual or entity, to Vendor on the terms and conditions as described in this Agreement and in the NASD Rules, such Information and Data for which Vendor is eligible. If Vendor elects to or does in fact access the NASD server which contains the daily lists of all reportable securities (Downloadable Lists), Vendor hereby consents to and agrees to abide by the additional terms and conditions for access to the Downloadable Lists contained in the Addendum attached hereto. The term “**NASD Rules**” shall mean all applicable laws (including intellectual property, communications, and securities laws), statutes and regulations, the rules and regulations of the SEC, the rules and regulations of NASD regarding the display and dissemination of data, including those requirements established by NASD’s rule filings (with such SEC approval as may be required), NASD’s decisions and interpretations, or other guidelines (including but not limited to, Market Data Policy and policies on the use and display of data), or successors of the components of the NASD Rules, as they may exist at the time. Strict compliance by Vendor with this Agreement and the NASD Rules is a condition to the Vendor’s receipt of the Information and Data. The person or entity executing this Agreement shall be referred to herein as Vendor. Vendor shall be deemed to be and referred to herein as a Retransmission Vendor by taking certain actions to retransmit the Information and Data to: certain third party individuals and entities, including, but not limited to, (a) Subscribers (receiving the Information and Data via a desktop terminal, or similar device, but not a data feed), (b) other Vendors, (c) other Retransmission Vendors (both (b) and (c) receive the Information and Data via a data feed) or (d) any other person or entity for whom NASD may give its prior written approval (collectively, **Clients**), in accordance with the terms and conditions of this Agreement. A Retransmission Vendor shall have the rights and obligations set out herein for Vendors as well as those for Retransmission Vendors. If Vendor acts in the capacity of a Retransmission Vendor as set out herein, Vendor hereby agrees to be bound by the terms and conditions pertaining to Retransmission Vendors.

Section 2. Proprietary Rights in Information and Data. Vendor acknowledges and agrees that NASD has a) proprietary rights in the System, Information and Data that originates on, derives from or relates to the System and all markets that are regulated, operated or administered by NASD, Information and Data that relates to individuals and entities that are regulated by the NASD, and in Information and Data that relates to the activities that are regulated or operated by the NASD or its agents, and b) compilation or other rights in Information and Data gathered from other sources. All Information and Data, including without limitation any and all intellectual property rights inherent therein or appurtenant thereto, shall, as between the parties, be and remain the sole and exclusive property of NASD. Vendor shall not, by act or omission, diminish or impair in any manner the acquisition, maintenance, and full enjoyment by NASD, its licensees, transferees and assignees, of the property rights of NASD in the Information and Data and the System. Vendor acknowledges and agrees that third party providers have exclusive proprietary rights in their respective information and data. NASD reserves any right to the System and the Information and Data not explicitly granted herein.

Section 3. Configuration.(a) System. Vendor acknowledges and agrees that nothing in this Agreement shall be deemed to constitute an undertaking by NASD to continue to operate the System, disseminate the Information and Data in the present form or configuration or to continue to use existing communications facilities. NASD, in its sole discretion, and without Vendor's consent, may from time to time modify, add to, or delete from the Information and Data, the System, and the specifications and requirements (including the interface and operational requirements) (**Modifications**). NASD may make such Modifications irrespective of whether such Modifications would require changes to be made by Vendor to Vendor's Service, any device or equipment, including any computer, data processing equipment, communications equipment, terminal, or monitor, which is authorized by Vendor to receive Information and Data or which does in fact receive Information and Data (collectively, the **Device**). Unless a malfunction in the System necessitates Modifications on an accelerated basis or an emergency situation precludes such advance Notice (at which point NASD shall give Vendor as much notice as is reasonably possible thereafter), Vendor shall be given at least ninety (90) days prior Notice (as defined in *Section 45*) of any Modifications, if other than routine changes, which are known by NASD to affect or render inoperable with respect to the Information and Data, Vendor's Service, any device or other equipment which (i) displays, transmits or communicates the Information and Data to any individual in visual, audible, or other form or (ii) uses or processes the Information and Data for any purpose or in any manner other than solely to process the Information and Data for transmission to or to transmit the Information and Data to devices for the purposes of delayed dissemination of Information and Data. In connection with the foregoing sentence such Notice will be given by electronic mail and through a posting to the Internet at <http://www.nasdr.com/trace.asp> or such other URL to which Vendor may be automatically forwarded which may be updated by NASD from time to time (the **Website**). Vendor may contact NASD at the phone number or address listed in *Section 45* for the System Administrator with regard to questions concerning the System or the Information and Data generally. Vendor will make, and bear the cost of making, any changes necessary to maintain the proper working order of Vendor's Service, Devices or other equipment in light of the Modifications within the ninety (90) day Notice period set forth above. Vendor shall bear all risks of failing to make corresponding modifications, additions or deletions to Vendor's Service or to any Device in light of the Modifications. Continued receipt of the Information and Data by Vendor after any Modification shall constitute acceptance of the Information and Data, System or the specifications as changed.

(b) **Communication Lines.** Vendor shall be responsible for obtaining the requisite quantity and quality of common carrier communication lines and for interfacing with the System. Updated System specifications for the receipt of Information and Data from the System can be found at the Web Site.

(c) **Communication from Retransmission Vendor.** If Vendor has contracted to obtain the Information and Data from an individual or entity (i) which is a party to an effective BTDS Vendor Agreement with NASD, and (ii) which has received prior written consent from NASD to retransmit or redistribute the Information and Data (**Retransmission Vendor**), then Vendor and such Retransmission Vendor are responsible for all communications and other arrangements necessary for Vendor to receive the Information and Data from such Retransmission Vendor.

Vendor acknowledges and agrees that NASD is not responsible for, and makes no representations or warranties regarding, the quality of the Retransmission Vendor's services or Vendor's Service. NASD shall not be responsible for, nor shall it bear any of the costs associated with (y) the transmission, storage and distribution of the Information and Data after receipt from NASD or (z) the interface with the System.

(d) *Communication to Subscriber.* If Vendor in its capacity as a Retransmission Vendor has contracted an to provide the Information and Data to an individual or entity which is a party to an effective BTDS Subscriber Agreement with Vendor (**Subscriber**), then Vendor and such Subscriber are responsible for all communications and other arrangements necessary for Vendor to provide the Information and Data to such Subscriber. Vendor and Subscriber acknowledge and agree that NASD is not responsible for, and makes no representations or warranties regarding, the quality of the Vendor's services or Vendor's Service. Vendor and Subscriber shall be responsible for and shall bear all costs associated with (i) the transmission, storage and distribution of the Information and Data after receipt from NASD and (ii) the interface with the System.

Section 4. Authorized Use and Restrictions. (a) Except as otherwise provided in this Agreement, Vendor is granted a world-wide, non-transferable, non-exclusive, non-assignable, limited right to use the Information and Data in accordance with this Agreement and Attachment B hereto, for the Term of this Agreement (**Authorized Use**). Such Authorized Use shall be limited to accessing, receiving, using, processing, manipulating, storing, transmitting and disseminating the Information and Data through Vendor's Service. Vendor shall only provide the Information and Data to those Clients for whom Vendor is serving as a Retransmission Vendor in accordance with the terms and conditions herein and Vendors own employees for internal purposes only (**Internal Use**) for which a BTDS Subscriber Agreement is not required. Vendor, in its capacity as Retransmission Vendor, shall provide Information and Data to a Subscriber and shall administer the terms and conditions of this Agreement which apply to a Subscriber through the Bond Trading Dissemination Service Subscriber Agreement (**BTDS Subscriber Agreement**) or through an agreement in some other form, acceptable to the NASD, and which is in accordance with the BTDS Subscriber Agreement. Any use of the Information and Data, by a Retransmission Vendor or by a Vendor, including retransmission or reprocessing by Vendor, unless expressly described in *Attachment B* and with prior written approval from NASD which shall not be unreasonably withheld, is prohibited. Should Vendor desire to make any use of the Information and Data (including, but not limited to, developing or communicating derivative information based upon the Information and Data, retransmission, redistribution, reproduction or calculation of indices) in any manner not then described in *Attachment B*, Vendor may do so only with prior approval by NASD of such use, which approval shall be reflected in an amendment to *Attachment B*, and upon payment of the fees applicable to the use approved, NASD shall promptly and in good faith approve or disapprove modifications to *Attachment B* proposed by Vendor. Vendor acknowledges and agrees that it acts at its own risk in developing any modifications to Vendor's Service prior to receiving approval from NASD, since NASD is not obligated by this Agreement to grant such approval. Vendor remains liable to and agrees to indemnify the NASD against any unauthorized use of the Information and Data by any Subscriber for whom it serves as a Retransmission Vendor. Additionally, Retransmission

Vendor remains liable to and agrees to indemnify the NASD against any other Vendor for whom Vendor serves as a Retransmission Vendor if Retransmission Vendor has failed to notify NASD of any non-compliance by Vendor with the terms and conditions of this Agreement within ten (10) business days after Retransmission Vendor has actual knowledge of any such non-compliance. If Vendor learns of any unauthorized use of the Information and Data, it shall immediately provide NASD with written Notice of the unauthorized use and shall assist NASD, in investigating, halting and prosecuting, if necessary, any such unauthorized use. NASD shall reimburse Vendor for its reasonable out-of-pocket expenses incurred in assisting the NASD in any investigation in which the unauthorized use is caused by an act or omission by an individual or entity, *other than* Vendor, its Subscriber or its agents'. If there is the potential for compromise of any of NASD's rights, obligations in the System, Information and Data or this Agreement, if NASD so elects, Vendor shall assign and shall ensure that all of its, agents assign, all right, title and interest in and to any suit, including its subject matter, of or concerning the System, the Information and Data or which otherwise arises out of or is related to this Agreement, to NASD. In the event that such an election is made Vendor shall have the right to participate in any cause of action at its sole cost and expense.

(b) NASD agrees to make available the Information and Data to Vendor on a non-exclusive basis for the Term of this Agreement. Nothing in this Agreement shall be construed to authorize, appoint or license Vendor to act on an exclusive basis. NASD reserves the right, without any Notice or liability to Vendor or to any other individual or entity, to furnish, or to contract with any other individual or entity to furnish, the Information and Data or any other market information to any individual or entity by any means whatsoever (including devices or equipment designed or manufactured by NASD or any other individual or entity). NASD reserves the right to monitor and review the activities of Vendors and those individuals and entities for whom Vendor serves as a Retransmission Vendor to ensure that no unauthorized use of the Information and Data occurs. Vendor agrees to cooperate and use reasonable efforts to obtain the cooperation of those Clients for which it serves as a Retransmission Vendor with NASD at Vendor's cost in any such review. In the event that NASD identifies any unauthorized use, Vendor shall, upon five (5) business days Notice from NASD, immediately cease all such use and confirm to NASD in ten (10) business days that such use has been terminated. In the event such unauthorized use in the sole and reasonable judgment of the NASD can be cured, Vendor shall have a reasonable amount of time to cure such use. At such time when the unauthorized use in the sole and reasonable judgment of the NASD has been cured, Vendor may resume providing the Information and Data in its capacity as a Retransmission Vendor. This remedy is in addition to and not in place of any other remedy NASD may have as a matter of law or equity.

(c) Unless otherwise permitted in this Agreement or unless Vendor has NASD's prior written approval, Vendor in its capacity as a Retransmission Vendor, shall not furnish, or cause or permit to be furnished, all or any part of the Information and Data to any individual or entity other than an individual or entity who, at the time of receipt thereof, is a party to a BTDS Subscriber Agreement or a Vendor Agreement which has been countersigned by NASD. NASD reserves the right to amend the BTDS Subscriber Agreement with sixty (60) days Notice, unless such change was made necessary by a regulatory entity with authority over the NASD, at which

time NASD shall provide as much Notice as is reasonably possible. Vendor agrees to provide prompt notice to Vendor's Subscribers of any such amendment and such Subscribers may accept or reject such amendment in accordance with the terms and conditions set forth in such Subscribers' BTDS Subscriber Agreement.

(d) If any Client fails to comply with any of the conditions, terms or provisions of its BTDS Vendor Agreement, Subscriber Agreement or any agreement it has with its Vendor, or has made any representation in any such agreement which was or has become false, then Vendor shall, within five (5) Business Days after receipt of Notice from NASD of such failure or falsity, or after Vendor knows or should have known of such failure or falsity, cease providing the Information and Data to such Client and shall, within ten (10) Business Days following the receipt of such notice, confirm such cessation by Notice to NASD.

(e) Unless otherwise provided in this Agreement, should Vendor desire to make any use of the Information and Data (including developing or communicating information derived from or based upon the Information and Data, retransmission, redistribution, reproduction or calculation of indices) in any manner not then described in *Attachment B*, Vendor may do so only (i) with the prior written approval by NASD of such use, by submitting *Attachment B* or an amendment to *Attachment B*, and (ii) upon payment of all applicable fees for such approved use. Vendor shall submit to NASD in writing any such proposed use modifications to *Attachment B*, and NASD shall timely approve or reject such proposed modifications. Vendor acknowledges and agrees that it acts at its own risk in developing any modification to Vendor's Service to accommodate any proposed use modification prior to receiving approval from NASD. Vendor hereby acknowledges that NASD is not obligated by this Agreement to grant such approval. NASD may in accordance with the terms of this Agreement and with such Notice as it deems practicable under the circumstances, sever Vendor's access to the System until Vendor repairs or modifies Vendor's Service to NASD's satisfaction.

(f) Vendor agrees not to alter the Information and Data in any manner that adversely affects its accuracy or integrity or that renders it misleading or discriminatory and Vendor agrees that it shall comply with any guidelines that may be issued by NASD to Vendors to ensure the accuracy or integrity of the Information and Data and to ensure that the Information and Data is not misleading or discriminatory. Guidelines for the display of data are available on the Web Site. These guidelines are subject to change by NASD from time-to-time upon ninety (90) days prior Notice, unless such change is required as a result of an entity with regulatory oversight over the NASD, at which time NASD shall give as much Notice as is reasonably practicable under the circumstances. Such Notice may be in electronic format including emails and posting to the Web Site.

(g) Subject to the following sentence, Vendor shall be entitled to change the display format described in *Attachment B*, without prior approval from NASD, *provided that*: (i) such change is not materially different from the original submission in regard to content and conveyance and is otherwise in conformance with this *Section 4(g)*; and (ii) such change shall not alter the identification codes for issuers, brokers, dealers, and securities specified by NASD or its agents, including but not limited to CUSIP, otherwise, Vendor must provide NASD with

fifteen (15) days prior Notice. Vendor will attribute source as set forth in the NASD Rules. Vendors shall not remove or alter any intellectual property ownership and/or identification notices found within the Information and Data except with NASD's prior written approval. NASD, or its agents or designees, reserve the right to reject any change and, upon Notice from NASD, which may be by facsimile or in electronic form, Vendor shall modify the change in its display format to a format approved by NASD within ten (10) business days.

(h) Vendor agrees that during the term of this Agreement it will provide at no cost to NASD two (2) subscriptions to Vendor's Service covered by this Agreement. NASD represents that and agrees that such subscriptions will be used solely for purposes of monitoring the Information and Data and demonstrating Vendor's Service. Upon request Vendor shall make available marketing materials and user guides for all components of the Vendor's Service that includes the Information and Data.

Section 5. Administrative Use. NASD will permit Vendor to use the Information and Data on a reasonable number of Devices which shall be located on Vendor's premises or under Vendor's control or operated by Vendor's personnel, without charge, in development environment(s) and distribute the Information and Data through Devices which shall be used by its personnel, on its premises, to support Vendor's Service offered by Vendor. Such use could include marketing, customer service, and product development (collectively, *Administrative Use*). Vendor is not required to have executed Subscriber Agreements for Information and Data accessed through Devices where the use of such Information and Data is solely an Administrative Use. It would not include any use in Vendor's capacity as a Retransmission Vendor, including but not limited to, use by a Subscriber or any use by Vendor to support the trading of securities or other financial instruments or any other investment purpose. Vendor's Administrative Use of such Information and Data and Devices in connection therewith and the number thereof shall be subject to audit by NASD and subject to all the provisions of this Agreement, except for (i) the payment of fees (but not any taxes, charges or assessments imposed by any governmental entity); (ii) reporting requirements; and (iii) the execution of the BTDS Subscriber Agreement. Upon reasonable request Vendor shall provide NASD or its designate with information about and a demonstration of such Administrative Use.

Section 6. Operation of Vendor's Service. Vendor shall assume sole responsibility for the design, development, acquisition, installation, testing, implementation, operation, maintenance and upgrades of any and all software and equipment not directly supplied by NASD. Vendor represents and warrants that the design, development, acquisition, installation, testing, implementation, operation, maintenance and upgrades of Vendor's Service will not interfere with or adversely affect the equipment, software or operation of the System, any of its component parts or processes, or the Information and Data, or any use thereof by NASD or other individuals or entities. Vendor agrees to indemnify, defend and hold NASD harmless should the operation of Vendor's Service interfere with or adversely affect the equipment, software or operation of the System or any of its component parts or processes or the Information and Data, or the use thereof by NASD or any other individual or entity. Vendor shall be responsible for and shall bear all costs associated with the transmission, storage and distribution of the Information and Data after receipt from NASD, its agents, or from its Retransmission Vendor

and the interface with the then existing System. For Real-Time usage (Vendor displays or disseminates Information and Data promptly upon receipt by Vendor from NASD, its agents or its Retransmission Vendor with no unreasonable delay giving due consideration for exceptional traffic conditions), Vendor shall promptly and accurately transmit the Information and Data to its Clients for which it serves as a Retransmission Vendor. For Delayed-Time usage (Vendor delays displaying or disseminating any Information and Data for at least 4 hours after receipt from NASD or its agents or its Retransmission Vendor) Vendor shall prominently and accurately disclose the exact nature and extent of the delay on any media in or Device on which the delayed information is shown. Vendor is not required to have individuals or entities execute agreements with NASD for Delayed-Time Usage.

Section 7. CUSIP Numbers. If NASD disseminates a CUSIP Database to Vendor, the following language shall be applicable:

(a) Vendor acknowledges and agrees that it must execute a Daily License with CUSIP Service Bureau that is operated by Standard & Poor's ("S&P") for the American Bankers Association ("ABA") before it will be authorized to access CUSIP information through the System.

(b) Vendor acknowledges and agrees that the CUSIP Database is and shall remain valuable intellectual property owned by, or licensed to CUSIP Service Bureau, S&P and the ABA, and that no proprietary rights are being transferred to Vendor in such materials or in any of the information contained therein. Subscriber agrees that misappropriation or misuse of such materials will cause immediate, irreparable and serious damage to S&P and ABA and that in such event monetary damages may not constitute sufficient compensation to S&P and ABA; consequently, Vendor agrees that in the event of any misappropriation or misuse, S&P and ABA shall have the right to obtain injunctive relief. This remedy is in addition to and not in place of any other remedy S&P and ABA may have as a matter of law.

(c) Vendor 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 internal processing of security transactions. Vendor 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 file of CUSIP descriptions or numbers for 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 ELECTRONIC and/or CD-ROM Services. Vendor agrees that it shall not make use of any CUSIP information if its receipt thereof is inadvertent or improper. Vendor agrees that in the event it receives CUSIP information inadvertently or inappropriately it will immediately notify NASD of such fact including all necessary details thereof.

(d) NEITHER S&P, 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 SUBSCRIBER 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.

(e) NEITHER S&P, 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.

(f) HOWEVER, IN THE EVENT THAT S&P, ABA OR ANY OF THEIR AFFILIATES ARE FOUND LIABLE, THE LIABILITY OF S&P, 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 SUBSCRIBER FOR ACCESS TO SUCH MATERIALS IN THE MONTH IN WHICH THE CAUSE OF ACTION IS ALLEGED TO HAVE RISEN.

(g) FURTHERMORE, S&P AND ABA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DELAYS OR FAILURES DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.

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

Section 8. Requirements of Self-Regulatory Organization; Securities Information Processor. (a) Vendor acknowledges that: NASD is registered with the SEC as a registered national securities association pursuant to Section 15A of the Act; NASD has a statutory obligation to protect investors and the public interest and to ensure the integrity of Information and Data (including the Information and Data supplied to investors and the public); Section 19(g)(1) of the Act mandates that NASD, as a self-regulatory organization, comply with the provisions of the Act, the rules and regulations there under, and the NASD Rules; and NASD has jurisdiction to enforce compliance with the Act, the rules and regulations promulgated there under, and the NASD Rules over its members, Vendor, and those who access Information and Data from the System by virtue of this Agreement and the BTDS Subscriber Agreement.

(b) Vendor agrees, and shall ensure that its Subscribers agree, that NASD may, by Notice to Vendor unilaterally: (i) limit or terminate the right of any or all individuals or entities to receive or use the Information and Data; and (ii) control the manner in which the Information and Data is formatted and displayed by Vendor in order to ensure that the Information and Data received by Subscribers is not inaccurate, incomplete, misleading or discriminatory. Vendor shall, without any unreasonable delay, comply with any Notice. With respect to clause (i) above, Vendor shall terminate or limit the furnishing of the Information and Data within five (5) Business Days after receipt of Notice and shall confirm such compliance by Notice to NASD not later than ten (10) Business Days after receipt of Notice from NASD. With respect to clause (ii) above, Vendor shall make the necessary changes to Vendor's Service to comply with any such Notice within such period of time as may be determined in good faith by NASD to be necessary and consistent with best practices.

Section 9. Transmission to Clients. The Vendor, in its capacity as Retransmission Vendor, shall transmit or provide the Information and Data only to other Clients that (i) have been specifically pre-approved in writing by NASD and are party to an effective BTDS Vendor Agreement with NASD, or (ii) are a party to an effective BTDS Subscriber Agreement. Vendor shall not transmit or provide the Information and Data to any individual or entity for retransmission or redistribution by such individual or entity, unless previously authorized by NASD in writing and only in accordance with the provisions of this Agreement and with other NASD requirements related to data retransmission. The Vendor, in its capacity as Retransmission Vendor, agrees to file with NASD on a monthly basis commencing with the date of approval by NASD of the Vendor's status as a Retransmission Vendor, a report that lists all of the Vendors receiving Information and Data (**Retransmission Usage Report**). The Vendor, in its capacity as Retransmission Vendor, agrees to file with NASD on a monthly basis commencing with the date of approval by NASD of the Vendor's status as a Retransmission Vendor, a report that lists all of the Subscribers receiving Information and Data (**Usage Report**). The Vendor, in its capacity as Retransmission Vendor, agrees to permit the NASD Group (as defined in *Section 18* below) to periodically inspect its premises to verify the veracity and accuracy of its systems and reporting.

Section 10. Termination of Clients. If Vendor's Client terminates its agreement to receive the Information and Data, or has its receipt of the Information and Data terminated, other than by NASD, the Vendor shall notify NASD on the next Retransmission Usage Report or Usage Report. If Vendor provides access to the Information and Data to other individuals or entities, and any such individuals or entities fail to comply with any of the conditions, terms or provisions of any agreement between NASD and such individuals or entities, or has made any representation in any of the foregoing Agreements which was or has become false, then Vendor shall, within five (5) Business Days after receipt of Notice from NASD of such failure or falsity, cease providing the Information and Data to such individuals or entities and shall, within ten (10) Business Days following the receipt of such Notice, confirm such cessation by Notice to NASD.

Section 11. Fees; Interest; Facilities Charges. In consideration of the rights granted herein, Vendor agrees to pay to NASD or NASD's designee the then effective fees, charges and interest, late fees or penalties, including but not limited to, charges incurred after termination, cancellation or recession, in accordance with the NASD Rules or other Notice to Vendor and as actually invoiced by NASD. The current charges for the Information and Data are set forth in *Attachment B* hereto. All payments under this *Section 11* shall be made on a monthly basis. NASD reserves the right to change any charges noted herein in accordance with the NASD Rules or other Notice to Vendor. Nothing in this Agreement will prevent Vendor from separately charging for Vendor's Service. Vendor shall, in any notice or invoice for Vendor's Service which NASD fees and charges are listed, accurately identify said fees and charges. NASD shall have the right to make changes based on this *Section 11* with thirty (30) days notice to Vendor during the first six (6) months of this Agreement. Thereafter, NASD shall provide Vendor with ninety (90) days notice of any change.

Section 12. Reporting and Invoicing. Vendor shall submit a report sufficiently detailing any and all fees due for the applicable payment period (**Retransmission Report and/or Usage**

Report) fifteen (15) days after the end of the month in which the Information and Data was received. NASD will generate an invoice based upon Retransmission and/or Usage Report. Unless Vendor is otherwise notified, Vendor shall remit payment directly to NASD in accordance with the invoice generated from such Retransmission Report and/or Usage Report for the fees and other amounts described in this Agreement. NASD shall bill any data feed recipients directly. Vendor's obligation to pay the then current fees, interest and charges is independent of any or all third parties' obligations to pay Vendor for receipt of the Information and Data and is not subject to set-off, offset or recoupment. NASD reserves the right to amend this section upon forty-five (45) days Notice to Vendor.

Section 12.1. Vendor is limited to a sixty (60)-calendar day grace period in which to revise or correct its usage reporting to obtain retroactive credits. The grace period begins on the due date of the original report, but is extended to the next business day if the last day of the grace period coincides with a market holiday or weekend day. NASD will not provide Vendor with back credits for original or reviewed reporting received after the end of the grace period. Revised reporting could include, but is not limited to, reclassification of Clients, reporting of usage under alternative pricing structures and correction of errors by Vendor. This section does not limit Vendor's liability to NASD for underreporting of usage.

Section 13. Payments; Taxes. Vendor shall have the obligation to pay directly to NASD one hundred percent (100%) of the appropriate fees and charges for the Information and Data due from Vendor and from the Vendor invoiced Subscriber specified in the then effective fee schedule, without any deductions or setoffs whatsoever. Such fees and charges shall be payable in immediately available United States funds by check or electronic funds transfer drawn against a United States bank or other financial institution acceptable to NASD or by any other means mutually acceptable to the parties. Vendor shall assume full and complete responsibility for the payment of all taxes, charges or assessments imposed on Vendor, Vendor invoiced Subscriber or NASD (except for U.S. federal, state, or local income taxes, if any, imposed on NASD) by any foreign or domestic national, state, provincial or local governmental bodies, or subdivisions thereof, and any penalties or interest, relating to the provision of the Information and Data. In addition, if Vendor or the Vendor Subscriber, respectively, are required by applicable law to deduct or withhold any such tax, charge or assessment from the amounts due NASD under this Agreement, then the amounts due under this Agreement shall be increased so that the net amount actually received by NASD after the deduction or withholding of any such tax, charge or assessment will equal one hundred percent (100%) of the appropriate fees specified on the then effective fee schedule.

Section 14. Payment a Condition to Access. Vendor acknowledges that payment by Vendor of all fees and other amounts due pursuant to this Agreement is a condition for continued access to and receipt of the Information and Data by Vendor. NASD may, in its sole discretion, and with ninety (90) days notice, elect to invoice Subscribers directly who receive Information and Data from Vendor for the NASD fee associated with the level of service received by any Subscriber. Vendor may continue to invoice Subscriber for any Vendor imposed fees for Subscriber's level of service. In such event, NASD will bear the risk of non-payment by such NASD-invoiced Subscribers, *provided, however*, that if an NASD-invoiced Subscriber fails to

pay invoiced amounts to NASD in a timely fashion, then upon Notice from NASD to Vendor, Vendor shall either (a) terminate such Subscriber within 5 business days of such Notice or (b) shall invoice such Subscriber and Vendor shall pay to NASD, on behalf of such Subscriber, all fees due NASD with respect to such Subscriber for billing periods which commence on or after the date ten (10) days after such Notice from NASD. Vendor shall cooperate, at Vendor's expense, with NASD in any lawful efforts by NASD to collect unpaid amounts due NASD described in this Agreement from current or former Subscribers.

Section 15. Collection of Unpaid Fees. Upon Vendor's payment to NASD on behalf of any Subscriber of any amounts due under this Agreement, Vendor shall be subrogated to any and all rights of NASD to recover such amounts. Such fees shall be payable in immediately available United States funds by check or electronic funds transfer drawn against a United States bank or other financial institution acceptable to NASD or by any other means mutually acceptable to the parties.

Section 16. Subscriber Agreements; Termination of Subscriber. Except as otherwise provided in this Agreement, Vendor shall not furnish, or cause or permit to be furnished, all or any part of the Information and Data to any individual or entity in contravention of this Agreement. If any Subscriber fails to comply with any of the conditions, terms or provisions of this Agreement applicable to Subscribers, the BTDS Subscriber Agreement, any other agreement between Subscriber and NASD, or has made any representation in any such BTDS Subscriber Agreement or other agreement which was or has become false, then, within five (5) Business Days after receipt of Notice from NASD of such failure or falsity, Vendor shall cease providing the Information and Data to such Subscriber. On the next Usage Report due for that service month or within ten (10) Business Days following the receipt of such Notice, whichever is sooner, Vendor shall confirm such cessation by Notice to NASD. If NASD invoices Subscriber NASD may terminate Subscriber immediately, or require Vendor to do so, in the case of a failure by said Subscriber to pay amounts due NASD.

Section 17. Compliance with Law. Vendor represents that it is not engaged in, and agrees not to engage in, any unlawful transaction or business, and agrees not to use or knowingly permit anyone to use the Information and Data for (i) any purpose or in any manner not authorized by this Agreement or (ii) for any unlawful purpose or in any manner not in compliance with the applicable laws, statutes, rules and regulations, including the NASD Rules. The Information and Data furnished to Vendor by NASD shall be solely for use in accordance with this Agreement, and Vendor will neither furnish nor permit others to furnish Information and Data other than in accordance with this Agreement. Vendor represents that it is in compliance with all applicable laws, statutes, rules and regulations, including the NASD Rules, with respect to the operation of Vendor's business.

Section 18. Audit by NASD. During the Term of this Agreement, and for a period of five (5) years after the termination or expiration of this Agreement, Vendor shall maintain copies of all reports and records of payments to NASD, and all authorizations and agreements with Vendor's Clients including, but not limited to, BTDS Subscriber Agreements, subscriber agreements, Retransmission Vendor authorizations and agreements, and related substantiating

documentation for all of the foregoing. During said period, NASD may cause Vendor's (a) records, (b) reports and records of payments to NASD, and (c) data processing equipment and communications facilities, to be reviewed by NASD, its representatives and auditors (collectively, the **NASD Group**). The review shall be scheduled upon reasonable Notice to Vendor depending on the circumstances and conducted in Vendor's offices where its records are kept or its data processing equipment and communications facilities are located. Vendor shall make available for review all records and supporting documentation necessary in the judgment of the NASD Group to reach a conclusion as to the accuracy and completeness of: (i) Vendor's reports to NASD, and (ii) the payments connected therewith. If the examination conducted by the NASD Group reveals that there may be errors in the list of Clients provided to NASD by Vendor or there may be exceptions or errors in the audit reports provided to the NASD Group pursuant to this Agreement, Vendor shall notify Vendor's record keeping personnel and direct them to perform such procedures as are necessary to determine the magnitude of any adjustments of amounts previously remitted to NASD relating to the audit period in question and to provide the NASD Group with the results thereof within ninety (90) days after Notice from NASD. If the review conducted by the NASD Group relates to a previously unaudited period, then unless Vendor causes Vendor's auditors (at the Vendor's sole cost and expense) to review the unaudited period and to determine the magnitude of any adjustments of amounts previously remitted to NASD within ninety (90) days after Notice from NASD, the NASD Group shall determine the magnitude of any such adjustments. In the latter case, the NASD Group's determination shall be deemed conclusive. Vendor's auditors shall be independent and NASD shall have the right to provide direction on the purposes of the audit and review the conclusions of such audit. If such audit or review discloses additional underreported amounts, such amounts shall be remitted to NASD, together with applicable interest, at one percent (1%) per month from the date such underreported amounts were due, and a revised list of Datafeed Recipients and Subscribers or other individuals or entities who have received or are receiving Vendor's Service or Information and Data from Vendor in its capacity as Retransmission Vendor within fifteen (15) days after Notice from NASD. Further, if such underreporting is equal to or greater than five percent (5%) for any audited or unaudited period referred to in this Agreement, Vendor shall, in addition to remitting the fees and applicable interest due relative to such underreporting, within fifteen (15) days of invoice from NASD, reimburse NASD for any audit, legal or administrative costs and expenses, including in-house and outside advisor costs and expenses, incurred to detect and rectify such underreporting, *provided, however*, that such costs and expenses are incurred in good faith and are not unreasonable given the amount of work necessary to detect and determine the extent of such underreporting and the actual amount of underreporting detected. NASD agrees that Vendor's liability pursuant to this Agreement for underreporting the number of Clients shall be limited to unpaid fees, together with interest, for the two (2) years preceding the date Vendor, Vendor's auditors or the NASD Group first discovered or should have discovered that such underreporting had occurred, if such underreporting is solely the result of a good faith error by Vendor. If such audit or review discloses an overpayment, then NASD, in its sole discretion, will apply the overpayment as a credit against amounts due from Vendor or shall refund the overpayment to Vendor. Unless underreported amounts equal to or greater than five percent (5%) are discovered, (y) NASD shall not re-audit records that were previously the subject of an NASD audit, and (z) NASD shall only conduct one audit at each of Vendor's locations per year. All records, books and systems inspected during the course of such an Audit

shall be considered Confidential Information and shall be subject to Section 30 of this Agreement.

Section 19. Information from Clients. In the event that any records are found by the NASD Group to be insufficient or incomplete in order to verify the number of Devices being used by a Client or the use made of the Information and Data, or if the NASD Group requests, in good faith, information regarding the access, receipt, use, reprocessing, retransmission or redissemination of the Information and Data by a Client, Vendor shall, within ten (10) days of being so advised by NASD, request, in writing, from such Client the information required by the NASD Group and shall advise such Client that failure to provide the requested information to Vendor within ten (10) days will result in termination of access to the Information and Data until such time as Client has complied with the request. Vendor shall terminate access to the Information and Data by such Client if the information requested is not received within the applicable period specified above. If the information provided by such Client is found by the NASD Group to be insufficient or incomplete in order to verify the number of Devices or the use made of the Information and Data, Vendor shall, upon being so advised by NASD, send a second request to such Client in accordance with the above procedures. If the information that is provided by such Client in response to the second request is found by the NASD Group to still be insufficient or incomplete in order to verify the number of Devices or the use made of the Information and Data, Vendor shall, upon being so advised by NASD, terminate such Client's access to the Information and Data until such time as the NASD Group determines and advises Vendor that Client has adequately responded to the request. Upon NASD's reasonable request, Vendor shall assist, at Vendor's cost and expense, the NASD Group in gaining access to Client locations for purposes of verifying the number of Devices and the use of the Information and Data at such locations.

Section 20. Security. Vendor agrees to use commercially reasonable efforts to configure and operate Vendor's Service (or to use commercially reasonable efforts to cause Vendor's Service to be configured and operated) so that Vendor's Service and the System remain at all times secure from unauthorized access or interference and to prevent the Information and Data from being accessed or taken from or in any way communicated, divulged or published except through authorized channels of transmission or reception. Vendor agrees to use commercially reasonable security procedures regarding the place or places of business where equipment is used to access, process, store and transmit the Information and Data. Vendor agrees to meet, and agrees to require any applicable third party to meet, any commercially reasonable requirement of NASD concerning the security arrangements at the place or places of business where equipment is used to access, process, store and transmit the Information and Data with commercially reasonable Notice of such arrangements. Vendor will adopt and enforce, and agrees to require any applicable third party to adopt and enforce, with respect to individuals entering such place or places of business, any reasonable regulation or requirement that NASD may deem advisable in order to prevent the Information and Data from being improperly accessed or taken or in any way communicated from any place or places of business where such equipment is located. NASD shall give Vendor prior Notice of any such regulation or requirement. For the purpose of determining compliance with this Agreement, and at reasonable times, NASD shall have access to the locations where the Information and Data is processed (including where equipment used to

access, process, store and transmit the Information and Data is located) and Vendor's Service is received, and shall have the right to observe the use made of the Information and Data and Vendor's Service and to examine and inspect the Devices.

Section 21. *Litigation Related to Unauthorized Use.* Vendor shall not, unless compelled to do so by a court of competent jurisdiction, oppose any suit or proceeding that is instituted by NASD to enjoin any individual or entity that is not authorized to access, receive, process, use, transmit or disseminate the Information and Data from Vendor in accordance with the terms of this Agreement, from accessing, receiving, processing, using, transmitting or disseminating the Information and Data, or to enjoin any individual or entity that is accessing or assisting in accessing, receiving or assisting in receiving, processing or assisting in processing, using or assisting in using, transmitting, or assisting in transmitting, or disseminating or assisting in disseminating any Information and Data from Vendor or NASD outside the authorized channels of communication set forth in this Agreement. Vendor agrees to cooperate with and assist NASD in any such suit or proceeding. If such an NASD request for cooperation and assistance imposes substantial burdens upon Vendor, then NASD agrees to reimburse Vendor for Vendor's reasonable direct expenses incurred in connection with such request. If Vendor furnishes, or permits to be furnished, any Information and Data to any individual or entity other than in accordance with this Agreement and without the prior written approval of NASD, then NASD, 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, processing, use, transmission or dissemination of the Information and Data by such other individual or entity, either with or without making Vendor a party to such action.

Section 22. *Notice of Breach or Default.* Vendor shall promptly, but in no event later than five (5) Business Days after Vendor knows that a breach of or default under this Agreement, including any Attachments hereto, by one of its Clients has occurred, deliver to NASD Notice describing the same in reasonable detail.

Section 23. *WARRANTIES; DISCLAIMERS OF WARRANTIES.* 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. THE SYSTEM ALONG WITH ALL INFORMATION AND DATA IS PROVIDED AS IS. NASD WILL ENDEAVOR TO OFFER THE INFORMATION AND DATA AS PROMPTLY AND AS ACCURATELY AS IS REASONABLY PRACTICABLE. IN THE EVENT THAT THE SYSTEM OR INFORMATION AND DATA IS NOT AVAILABLE AS A RESULT OF A FAILURE BY NASD TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, NASD WILL ENDEAVOR, GIVING DUE REGARD FOR THE COST, TIME, AND EFFECT ON OTHER USERS, TO CORRECT ANY SUCH FAILURE. IN THE EVENT THAT THE INFORMATION AND DATA IS NOT AVAILABLE, IS DELAYED, IS INTERRUPTED, IS INCOMPLETE OR IS NOT ACCURATE OR IS OTHERWISE MATERIALLY AFFECTED FOR AN ENTIRE BUSINESS DAY AND REMAINS AFFECTED AT THE COMMENCEMENT OF THE IMMEDIATELY SUCCEEDING BUSINESS DAY DUE TO THE FAULT OF

NASD (EXCEPT FOR A REASON PERMITTED IN THIS AGREEMENT), VENDOR'S EXCLUSIVE REMEDY AGAINST NASD SHALL BE, (A) IF VENDOR CONTINUES TO RECEIVE THE INFORMATION AND DATA OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASD, A PRORATED MONTH'S CREDIT OF ANY MONIES DUE FOR AND DIRECTLY ATTRIBUTABLE TO THE AFFECTED INFORMATION AND DATA TO NASD FROM VENDOR FOR THE PERIOD AT ISSUE OR, (B) IF VENDOR NO LONGER RECEIVES EITHER THE INFORMATION AND DATA OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASD, A PRORATED MONTH'S REFUND OF ANY MONIES DUE FOR THE AFFECTED INFORMATION AND DATA TO NASD FROM VENDOR FOR THE PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL BE REQUESTED BY NOTICE TO NASD WITH ALL PERTINENT DETAILS. VENDOR SHALL ENSURE THAT SUBSCRIBERS AGREE TO THIS PROVISION AND SHALL REFUND ANY MONEYS DUE TO SUBSCRIBERS IN ACCORDANCE HEREWITH. 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).

Section 23.1. WITH RESPECT TO VENDOR, NASD'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).

Section 24. LIMITATION OF LIABILITY. (a) EXCEPT FOR NASD'S INTELLECTION PROPERTY INDEMNIFICATION OBLIGATIONS AS SET OUT IN SECTION 26(d)(ii), AND AS MAY OTHERWISE BE SET FORTH HEREIN, NASD SHALL NOT BE LIABLE TO VENDOR OR TO ANY OTHER INDIVIDUAL OR ENTITY CLAIMING THROUGH VENDOR 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 THE NASD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. VENDOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS NASD FROM ANY

SUCH CLAIMS MADE AGAINST NASD BY ANY SUBSCRIBER, INDIVIDUAL OR ENTITY ACCESSING, RECEIVING, PROCESSING, USING, TRANSMITTING OR DISSEMINATING INFORMATION AND DATA FROM OR THROUGH VENDOR.

(b) NASD SHALL NOT BE LIABLE TO VENDOR OR ANY OTHER INDIVIDUAL OR ENTITY FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE INFORMATION AND DATA UNLESS SUCH UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE INFORMATION AND DATA IS A DIRECT RESULT OF NASD'S ACTION OR INACTION AND LASTS FOR AN ENTIRE BUSINESS DAY AND CONTINUES AT THE COMMENCEMENT OF THE IMMEDIATELY SUCCEEDING BUSINESS DAY.

(c) IF NASD IS FOR ANY REASON HELD LIABLE, WHETHER IN TORT, CONTRACT OR OTHERWISE, THE AGGREGATE LIABILITY OF NASD FOR ALL REASONS DURING THE TERM OF THIS AGREEMENT IS LIMITED TO THE LOWER OF: (1) IF VENDOR CONTINUES TO RECEIVE THE INFORMATION AND DATA OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASD, A PRORATED MONTH'S CREDIT OF ANY MONIES DUE TO NASD FROM VENDOR FOR THE PERIOD AT ISSUE OR, IF VENDOR NO LONGER RECEIVES EITHER THE INFORMATION AND DATA OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASD, A REFUND OF ANY MONIES DUE TO NASD FROM VENDOR FOR THE PERIOD AT ISSUE; OR (2) U.S. \$5000.00, WHICHEVER IS LESS.

(d) THIS SECTION SHALL NOT RELIEVE NASD OR VENDOR FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.

(e) VENDOR AND NASD UNDERSTAND AND AGREE THAT THE TERMS OF THIS SECTION REFLECT A REASONABLE ALLOCATION OF RISK AND LIMITATION OF LIABILITY.

(f) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NASD SHALL NOT BE RESPONSIBLE FOR OR LIABLE TO VENDOR, ANYONE CLAIMING THROUGH VENDOR, OR ANY OTHER INDIVIDUAL OR ENTITY FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF INFORMATION AND DATA THAT IS NOT CAUSED BY NASD.

(g) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NASD SHALL NOT BE LIABLE TO VENDOR, ANYONE CLAIMING THROUGH VENDOR, OR ANY OTHER INDIVIDUAL OR ENTITY FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION FROM NASD'S THIRD PARTY INFORMATION PROVIDERS, OR FOR THE INFRINGEMENT OF ANY INDIVIDUAL OR ENTITY'S

INTELLECTUAL PROPERTY OR OTHER RIGHTS BY THE INFORMATION PROVIDED TO NASD BY THIRD PARTY PROVIDERS.

Section 25. NASD SYSTEM ADMINISTRATOR'S AND THIRD PARTY INFORMATION PROVIDERS' LIMITATIONS OF LIABILITIES. (a) NASD'S SYSTEM ADMINISTRATOR AND THIRD PARTY INFORMATION PROVIDERS SHALL HAVE NO LIABILITY FOR THE INACCURACY, UNAVAILABILITY, INCOMPLETENESS OR INTERRUPTION OF, OR FOR DELAYS OR OMISSIONS IN, ANY OF THE INFORMATION OR SERVICES PROVIDED BY THEM. NASD'S SYSTEM ADMINISTRATOR, AND THIRD PARTY INFORMATION 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 SYSTEM ADMINISTRATOR OR THIRD PARTY INFORMATION PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

(b) VENDOR ACKNOWLEDGES AND AGREES THAT NASD'S SYSTEM ADMINISTRATOR AND THIRD PARTY INFORMATION PROVIDERS HAVE EXCLUSIVE PROPRIETARY RIGHTS IN THEIR RESPECTIVE INFORMATION, SYSTEMS AND SERVICES.

(c) VENDOR AGREES THAT ACCESS TO THE INFORMATION OF NASD'S THIRD PARTY INFORMATION PROVIDERS IS SUBJECT TO NASD'S RECEIPT OF THE INFORMATION FROM SUCH THIRD PARTY PROVIDERS PURSUANT TO THE AGREEMENTS BETWEEN NASD AND SUCH THIRD PARTY PROVIDERS AND THAT NASD'S ACCESS TO AND RECEIPT OF SUCH INFORMATION MAY BE DELAYED, TERMINATED OR OTHERWISE AFFECTED.

(d) VENDOR AGREES THAT ACCESS TO THE SYSTEMS AND SERVICES OF NASD'S SYSTEM ADMINISTRATOR IS SUBJECT TO NASD'S ACCESS TO THE SYSTEMS AND SERVICES FROM THE RESPECTIVE SYSTEM ADMINISTRATOR PURSUANT TO THE AGREEMENTS BETWEEN NASD AND ITS SYSTEM ADMINISTRATOR AND THAT NASD'S ACCESS TO SUCH SYSTEMS AND SERVICES MAY BE DELAYED, TERMINATED OR OTHERWISE AFFECTED.

Section 26. Indemnification. (a) Vendor shall indemnify and defend NASD against, and hold NASD harmless from, any and all Claims or Losses imposed on, incurred by or asserted against NASD to the extent that the Claims and Losses result from negligent (including gross and willfull) acts or omissions, intentional misconduct of the Vendor or Subscriber or breach of this Agreement by Vendor or the Subscriber, or from the access, receipt, processing, use, transmission or dissemination of the Information and Data by or through Vendor or Subscriber including the following:

(i) Any non-compliance by the Subscribers with the terms and conditions hereof or of their respective BTDS Subscriber Agreements.

(ii) Any assertion of Claims or Losses relating to the subject matter or existence of this Agreement against NASD made by an individual or entity who accesses, receives, processes, uses, transmits or disseminates the Information and Data from or through Vendor (or any individual or entity relying upon the Information and Data received by such an individual or entity) and who is not a party to a BTDS Subscriber Agreement;

(iii) Any assertion of Claims or Losses against NASD by Subscribers relating to NASD's exercise of its remedies under this Agreement or at law or equity; or

(iv) Any defense of or participation by NASD in any action, suit, arbitration, mediation, judicial or administrative proceeding, or any other proceeding involving any Claims or Losses described in this Agreement; or

(v) Any non-compliance by the Vendor with the terms and conditions hereof.

(b) The indemnification provided by this *Section 26(a)* herein shall include, without limitation, NASD's investigative and administrative costs relating to the detection of any material noncompliance by Vendor referred to above, any material noncompliance by Subscribers as provided above, or any access, receipt, processing, use, transmission or dissemination of the Information and Data by any other individual, *provided, however*, that such costs are not excessive as compared to the injury NASD could suffer as a result of any such non-compliance.

(c) Vendor shall indemnify and defend NASD against, and hold NASD harmless from, any and all Claims or Losses imposed on, incurred by or asserted against NASD as a result of: (i) any assertion by any individual or entity that Vendor's Service infringes any patent, trademark, service mark, trade secret, or copyright, or violates any other right, including any intellectual property right; or (ii) any defense of or participation by NASD in any action, suit, arbitration, mediation, judicial or administrative proceeding, or any other proceeding involving any Claims or Losses described in this *subsection (c)*.

(d) NASD shall indemnify and defend Vendor against, and hold Vendor harmless from, any and all Claims or Losses imposed on, incurred by or asserted against Vendor as a result of:

(i) Vendor refusing to furnish the Information and Data or terminating or suspending delivery of the Information and Data to Vendor's Clients, solely as a result of, and pursuant to, Notice from NASD: (A) limiting or terminating the right of any Client to receive or use the Information and Data or (B) requesting Vendor to cease providing the Information and Data to a Client; *provided, however*, that the indemnification provided by this *Section 26* shall not be available to Vendor where Vendor ceases furnishing the Information and Data to any Client for whom no enforceable BTDS Subscriber

Agreement or Vendor Agreement was completed, executed and delivered in accordance with the terms of this Agreement or for whom it did not receive NASD's approval to retransmit Information and Data, or

(ii) Subject to *Section 24(g)*, any assertion that the System or Information and Data infringes or misappropriates any third parties' U.S. registered intellectual property rights, provided that the System and Information and Data have 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 System or Information and Data; or

(iii) Any defense or participation by Vendor in any action, suit, arbitration, mediation, judicial or administrative proceeding, or any other proceeding involving any Claims or Losses described in this *Section 26(d)*.

(e) In the event of a claim, action or allegation of infringement or if, in NASD's opinion, such a claim, action or allegation is likely to occur or if the use of the Information and Data is enjoined because of infringement, NASD may, at its sole option and expense, procure for Vendor and Vendor's Clients the right to continue using the Information and Data, replace or modify the Information and Data to be noninfringing, or discontinue providing the Information and Data.

(f) Unless otherwise stated herein, "Claims or 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. The provisions of this *subsection (f)*, 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 or the Vendor.

(g) The party claiming indemnification under this *Section 26* agrees that its indemnification by the other party is subject to compliance with this *Section 26(g)*. 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 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 26*; 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 26* 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 26*.

Section 27. Default. (a) Vendor has specifically induced NASD to enter into this Agreement based on the representations and undertakings of Vendor contained herein. Strict compliance with the provisions of this Agreement is and shall be a condition precedent to Vendor's right hereunder to continue to receive the Information and Data. Vendor expressly acknowledges and agrees that NASD shall have the rights set forth in this *Section 27* if NASD shall determine, in its sole discretion, that one or more of the following events or conditions occurs or is continuing:

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

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

(iii) Vendor 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 unremedied for a period of fifteen (15) days after NASD notifies Vendor thereof, *provided, however*, that if such default, falsity or misstatement cannot be remedied by Vendor in good faith and with due diligence within fifteen (15) days and the failure to so remedy within fifteen (15) days does not cause NASD to be in violation of applicable law or regulations or to otherwise materially injure NASD, then an event or condition of default under this clause will not be considered to exist or have occurred for so long as Vendor 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, truth or inaccuracy;

(iv) Vendor 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 NASD for regulatory, commercial or other reasons, made by Vendor in

connection herewith, after NASD has notified Vendor that such proposed action would constitute a default hereunder;

(v) Vendor defaults (and such default is not cured within applicable grace periods) in the performance of any of its obligations under any agreement between Vendor and NASD relating to the distribution of Information and Data by NASD;

(vi) Vendor: (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, (C) institutes proceedings under the United States Bankruptcy Code, (D) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts, (E) 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 the board of directors of Vendor takes any action for the purpose of effecting any of the foregoing;

(vii) A proceeding or case of the type described in clause (vi) above is commenced, without the application or consent of Vendor, 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 Vendor is entered in an involuntary case under the Bankruptcy Code; or

(viii) Vendor admits in writing its inability to pay its debts as they become due.

(b) Upon the occurrence of any of the events or conditions described in *Section 27(a)* herein, NASD will have the immediate right, in its sole discretion, to take one or more of the following actions: (i) to terminate this Agreement and Vendor's right to receive the Information and Data hereunder; (ii) to suspend transmission of the Information and Data to Vendor; (iii) to demand arbitration under *Section 33*; or (iv) to pursue such other remedies, consistent with *Section 35* as it may be entitled by virtue of or under this Agreement, before regulatory authorities, or at law or in equity.

(c) If NASD has breached or is in default under this Agreement, and such breach or default continues unremedied for fifteen (15) days after Notice to NASD by Vendor, then Vendor shall have the immediate right to take one or more of the following actions; *provided, however,* that if such breach cannot be remedied by NASD in good faith and with due diligence within fifteen (15) days and the failure to so remedy within fifteen (15) days does not cause Vendor (or its Subscribers) to be in violation of applicable laws or regulations or to otherwise materially injure Vendor or its Subscribers, then NASD shall not be considered to be in default for so long as NASD 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 33*; or (iii) to pursue such other remedies, consistent with *Section 35* herein, as it may be entitled by virtue of or under this Agreement, before regulatory authorities, or at law or in equity.

(d) To the extent permitted by applicable law, Vendor acknowledges and agrees that the exercise by NASD of the remedies to which it is entitled under *Section 27(b)* and *Section 28(a)* herein as a result of the occurrence of a default by Vendor as described in *Section 27(a)* or the conditions provided in *Section 28(a)* shall not be deemed or considered to be, and Vendor 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 NASD as contemplated in Section 11A of the Exchange Act, or any other provision of the Exchange Act, or any rule or regulation adopted there under.

Section 28. Term and Termination. The term of this Agreement will commence on the date of execution by NASD and will continue perpetually unless terminated by Notice by a party hereto given at least ninety (90) days prior to the proposed date of termination (***Term***).

(a) This Agreement may be terminated as expressly provided herein and may also be terminated by:

(i) Either party, upon termination of the right of Vendor to receive Information and Data pursuant to *Section 4*; or

(ii) Either party, if performance hereof by NASD is impaired or rendered unnecessary by reason of changes after the Effective Date in the statutes, rules and regulations referenced in *Section 35*, other than NASD Rules which are not approved by the SEC;

(iii) Vendor, should it be unable to receive the Information and Data as a result of any modification to the operational requirements notified by NASD in accordance with *Section 3*; or

(iv) Vendor, by Notice to NASD within thirty (30) days after approval by the SEC of an NASD Rule that imposes obligations on Vendor that materially exceed the obligations imposed on Vendor as of the Effective Date in connection with Vendor's distribution of the Information and Data; or

(v) NASD, should it cease providing Information and Data to all individuals or entities in the same class of service as Vendor, *provided, however*, that NASD has given Vendor not less than ninety (90) days Notice of its intention to so cease providing such Information and Data.

(b) Upon termination of this Agreement for whatever reason, Vendor will immediately cease any and all access, receipt, processing, usage, transmission and dissemination of the Information and Data.

(c) *Sections 2, 11-15, 18, 19, 21, 24, 26, 28(b) and (c), 30-33, 35-40, 44 and 45* shall survive any termination or expiration of this Agreement.

Section 29. NASD Member Vendors. If Vendor is a member of NASD, then Vendor expressly acknowledges and agrees that:

(i) This Agreement does not limit or reduce in any way Vendor's obligations and responsibilities as a member of NASD;

(ii) This Agreement does not in any way alter the procedures or standards generally applicable to disciplinary or other actions taken by NASD to enforce compliance with, or impose sanctions for violations of, the NASD Rules; and

(iii) The Vendor's non-payment of the fees, payments and charges referenced in this Agreement could result in the suspension or cancellation of Vendor's NASD membership in accordance with NASD Rules.

Section 30. Confidentiality. NASD and Vendor acknowledge that in the course of their performance of this Agreement each may obtain confidential data, information or techniques from the other (**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, NASD or Vendor may disclose Confidential Information to the extent demanded by a court, or required to be revealed to a government agency with regulatory jurisdiction over NASD or Vendor or in its regulatory responsibilities under the Exchange Act of 1934. 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 30* shall continue until such time as the Confidential Information is publicly known and made generally available through no action or inaction of the recipient of the Confidential Information.

Section 31. No Endorsement; Proprietary Rights; Corporate Names; Trademarks; Service marks. Neither Vendor, nor Clients, nor any of their 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 Vendor or all or any part of Vendor's Service that Vendor offers or any equipment that is utilized by Vendor is sponsored or endorsed by NASD. NASD shall not represent that Vendor endorses or sponsors either the System or the Information and Data. Each party agrees not to use any trade or service mark that belongs to any other party (including their respective affiliates and subsidiaries) to this Agreement, registered or unregistered, without the prior written permission of the party who owns such mark, and even after receiving written permission, in any way that would infringe upon such marks under applicable law. Vendor shall not remove or modify any proprietary notices contained within the Information and Data. For purposes of monitoring compliance with this section, upon

reasonable written request, Vendor shall provide the NASD Group with any materials made available to potential users of the Information and Data.

Section 32. Assignment; Third-Party Rights. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns. Neither party shall assign this Agreement (including by operation of law) without the prior written consent of the other party, which consent may not be unreasonably withheld, *provided*, that in no event shall consent be granted where such assignment would adversely affect NASD and would cause NASD or any of its affiliated entities to be in violation of applicable laws or regulations, including the NASD Rules. In the event that consent to assign is granted, Vendor unconditionally guarantees the payment and performance by such assignee entity of all obligations under this Agreement. NASD or its assigns may assign this Agreement to an affiliated entity upon notice to Vendor. 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.

Section 33. 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 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, (4) the arbitrators shall not be authorized to award punitive damages, (5) the prevailing party in any arbitration shall be entitled to attorneys fees (a “prevailing party” for the purposes of this Agreement shall be one who brings or defends a claim, dispute, controversy or other matter in question and is substantially granted the relief sought).

Section 34. Amendment. Except as may be otherwise set forth herein, NASD may modify any part of this Agreement on 90 days prior Notice. Vendor agrees to provide prompt Notice to Vendor’s Subscribers of any such modification. Vendor’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 Vendor of any amendment made by NASD in accordance with this *Section 34* may, at NASD’s sole discretion, result in termination of this Agreement by NASD. Except as otherwise provided herein, no provision of this Agreement, or the attachments which are a part hereof, 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.

Section 35. 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. Subject to the terms of

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) brought by it in any way arising out of this Agreement 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 35* 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.

Section 36. Waiver. No failure on the part of NASD or Vendor 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.

Section 37. 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.

Section 38. Export Restrictions. NASD reserves the right to restrict the export of the Information and Data by Vendor or any of its Clients pursuant to applicable laws and this Agreement upon Notice to Vendor.

Section 39. 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. The Attachments referred to and appended to this Agreement are made an integral part 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”.

Section 40. Enforcement. Vendor agrees that NASD may enforce the terms of this Agreement against any individual or entity, whether or not Vendor is a party to any such action,

or against Vendor itself. In any action there shall be available injunctive relief or damages, with the prevailing party being awarded costs and attorneys' fees (including in-house counsel).

Section 41. 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 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.

Section 42. Authorization. This Agreement shall not be binding upon either party unless executed by an authorized officer of such party, or, in the case of NASD, such designated employee of System Administrator that is authorized by NASD to execute this Agreement on behalf of NASD. Vendor and NASD, and the persons executing this Agreement on their behalf, represent that the persons executing this Agreement have been and are duly authorized by all necessary and appropriate corporate or other action to execute this Agreement on behalf of Vendor and NASD, respectively.

Section 43. Effective Date. The execution date of this Agreement shall be July 1, 2002, and this Agreement will become effective on this date (**Effective Date**).

Section 44. Entire Agreement. This Agreement, including the attachments hereto which are an integral part hereof and materials referenced herein (collectively **Attachments**) the NASD Rules, and the NASD Market Data Policy (available on the Website), 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. If, as a result of action by an entity with regulatory authority over the NASD, there is a conflict between the provisions of this Agreement, the Attachments or the NASD Rules, the order of preference shall be the NASD Rules, the Attachments and this Agreement.

Section 45. Notices. All notices, invoices, and other communications (**Notice**) (except for Notices of changes related to payments, fees or charges under this Agreement) to be given under this Agreement shall be in writing, and shall be directed to the signatories or, in the alternative, to the individuals identified in subsections (a) and (b) below and shall be deemed to have been duly given upon actual receipt by the parties, or upon constructive receipt if sent by certified mail, return receipt requested, or any other delivery method that actually obtains a signed delivery receipt, to the following addresses or to such other address as any party hereto shall hereafter specify by prior Notice to the other party or parties hereto:

(a) If to Vendor:
Name: _____
Title: _____
Address: _____

Phone #: _____
Fax #: _____

(b) If to NASD:

See System Administrator at Section 45(c)

With, in the event of Notices of default or dispute or personal service of process, a required copy by U.S. certified mail, return receipt requested to:

National Association of Securities Dealers, Inc.
1735 K Street, N.W.
10th Floor
Washington, D.C. 20006-1500
Attn: NASD Office of General Counsel - Contracts Group
Telephone #: (202) 728-8294
Fax #: (202) 728-8894

(c) If to System Administrator:

The Nasdaq Stock Market, Inc.
Nasdaq Market Data Distribution
9600 Blackwell Rd.
5th Floor
Rockville, MD 20850
Attn: Manager, Market Data Distribution
Telephone #: 301-978-5307
Fax #: 301-978-5295

NASD reserves the right to change its System Administrator, in its sole discretion, without Vendor's prior approval and/or consent. NASD shall notify Vendor of any change in System Administrator.

Section 46. Counterparts. This Agreement may be executed in one or more counterparts, which shall each be considered an original, but all of which together shall constitute one and the same Agreement.

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

("Vendor")

By: _____

Name: _____

Title: _____

Date: _____, 200__

a _____ (*insert type of entity, i.e., corporation, limited partnership, general partnership, sole proprietorship*), incorporated, registered or formed in _____ (if applicable, insert state, jurisdiction or country in which entity is incorporated or registered), which has its principal place of business located at _____.

Executed this _____ day of _____, 200__, for and on behalf of:

The National Association of Securities Dealers, Inc.

By: _____

Name: _____

Title: _____

ADDENDUM FOR ACCESS TO LIST OF REPORTABLE SECURITIES

WHEREAS, the NASD through a File Transfer Protocol Server (*FTP Server*) makes available on a daily basis a list of bonds listed as reportable securities in the TRACE System (*Downloadable Lists*) for eligible Vendors to access and download; and

WHEREAS, Vendor, representing that it is eligible to do so, is desirous of gaining access to the FTP Server for the sole purpose of obtaining the Downloadable Lists;

NOW THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained, the parties, intending to be legally bound, agree as follows:

Section 1. Agreement to Provide Access to FTP Server; Compliance with NASD Rules; Vendor Warranty. For the Term of this Agreement, NASD agrees to provide to Vendor, on the terms and conditions set forth herein, access to the FTP Server for the sole purpose of obtaining the Downloadable Lists, which Vendor hereby requests and for which Vendor is eligible under the applicable NASD Rules (as defined below). Vendor warrants that it is, will continue to be during the term of this Agreement, and will only access the FTP Server, in compliance with this Agreement and the NASD Rules. Vendor further warrants that it shall provide NASD with prompt Notice (as defined in *Section 45*) of any change in the name of the Vendor, the address of the Vendor, Vendor's security administrator or any other relevant information. Vendor agrees that if Vendor executes this Addendum: (i) the Downloadable Lists are provided when NASD provides a server or other provider through which Vendor may access the Downloadable Lists, whether or not Vendor actually accesses the FTP Server for the Downloadable Lists; (ii) there are no standards of performance for the FTP Server except any that are expressly set forth in this Agreement; and (iii) Vendor will comply with all procedures and technical requirements and specifications for interface with the FTP Server set forth on the Web Site. For the purposes of this Addendum and in addition to any other definition set forth in this Agreement, the term "**NASD Rules**" shall include NASD's decisions and interpretations and any user guides (to be provided in the future) (**User Guides**), or other guidelines, as they may exist at the time.

Section 2. Manner of Access to the System. Vendor shall access the Downloadable Lists via a secure Internet connection between the Vendor and the NASD's FTP Server in compliance with the technical requirements and specifications. Vendor must contact the National Association of Securities Dealers, Inc. c/o The Nasdaq Stock Market, Inc., Nasdaq Market Data Distribution, 9600 Blackwell Road, 5th Floor, Rockville, MD 20850 Attn: Manager, Market Data Distribution, Phone: (301) 978-5307, Fax: (301) 978-5295 for access.

Section 3. License Grant. (a) NASD grants to Vendor a non-exclusive, non-transferable, non-assignable license during the Term of this Agreement to access the FTP Server and thereafter to receive and use Downloadable Lists for any purpose not inconsistent with the terms of this Agreement or with the NASD Rules. The foregoing license is conditioned upon Vendor's, and its appointed security administrator's, current and continued compliance with the terms and conditions set forth in this Agreement, all relevant Attachments and the NASD Rules.

(b) *Parameters of Use.* The FTP Server and all Downloadable Lists are licensed only for use by Vendor and Vendor's users for internal business purposes only. Vendor will promptly give Notice to NASD of any change in the name or place of business at which the FTP Server or the Downloadable Lists are accessed, received or used. Vendor may not sell, lease, furnish or otherwise permit or provide access to or receipt or use of the FTP Server or Downloadable Lists to any third parties unless it is authorized to do so in writing in advance by NASD. Vendor will not engage in the operation of any illegal business; access or knowingly or negligently permit anyone else to access or use FTP Server or Downloadable Lists, or any part thereof, for any illegal purpose or violate any NASD Rule.

Section 4. Injunctive relief. In the event of any misappropriation or misuse of NASD's or a thirty party provider's proprietary information, NASD or its third party providers shall have the right to obtain injunctive relief and Vendor agrees that each of NASD's third party providers shall be a third party beneficiary of this Agreement for such purpose. Vendor will attribute source of any Information or other proprietary data as appropriate under all circumstances.

Section 5. Vendor Obligations. Vendor shall not reverse engineer, decode, decompile, attempt to tamper with or evade, or discover the method of operations or defeat any security device designed to protect the integrity of the FTP Server or the Downloadable Lists. If applicable law authorizes Vendor to perform certain types of reverse engineering or the like and declares unenforceable contractual restrictions that conflict with that law, then Vendor may perform only such reverse engineering or the like as is expressly allowed by, and in strict compliance with, such law. Vendor shall comply, at Vendor's expense, with all reasonable security specifications or instructions of NASD made available to Vendor in order to prevent the FTP Server or the Downloadable Lists from being improperly accessed, received or used through Vendor or its place(s) of business/residence. NASD or its agents shall have the right, without Notice or liability, to suspend Vendor's access to or receipt or use of the FTP Server or the Downloadable Lists if the failure on the part of the Vendor to comply with this Agreement has, or Vendor's access, receipt or use of the FTP Server or the Downloadable Lists may have, an adverse impact on the operation or performance of the FTP Server, the Downloadable Lists, the System or the Service or on NASD. Vendor will maintain such accurate and verifiable records regarding the access, receipt and use of the FTP Server or the Downloadable Lists including the names and addresses of all users that access, receive and use the Service and the Information, and will make these records available for a period of five (5) years in a form acceptable to NASD or its designated agents for inspection by the NASD Group upon reasonable notice. Vendor shall make its premises and personnel available to the NASD Group for review of said records and for physical inspection of Vendor's access, receipt and use of the FTP Server or the Downloadable Lists, all at reasonable times, upon reasonable Notice, to ensure Vendor's and its users are in compliance with this Agreement.

Section 6. Charges; Payment; Taxes. Vendor agrees to pay to NASD the then effective charges as set forth either in the NASD Rules or in a Notice to Vendor, including all applicable deposits, and installation, deinstallation, equipment, communications, facilities, training, interest and late fees and/or charges (other than amounts due under this Agreement which are the subject of a bona fide dispute between Vendor and NASD) without set-off, offset or recoupment.

Vendor will also be responsible for paying NASD for any cost or expense incurred by NASD when: (i) visiting Vendor's facilities for training, support or other services if NASD determines, in good faith and in its reasonable judgment, that such visit was unnecessary; or (ii) the cost or expense of any scheduled service calls by NASD personnel to Vendor's facilities where NASD's personnel are unable to gain entrance to Vendor's facilities or unable to gain reasonable cooperation from Vendor's personnel. Vendor shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on Vendor or NASD 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 NASD) relating to the provision of the System and Information to Vendor. In addition, if Vendor is required by applicable law to deduct or withhold any such tax, charge or assessment from the amounts due NASD, then such amounts due shall be increased so that the net amount actually received by NASD after the deduction or withholding of any such tax, charge or 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 or the date stated therein if different. 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 fund transfer drawn against a United States bank or other institution acceptable to NASD or by any other means mutually acceptable to the parties.

Section 7. *Litigation Related to Unauthorized Access, Receipt or Use.* Vendor shall not oppose any suit or proceeding that is instituted by NASD to enjoin any individual or entity that is not authorized to access, receive or use the FTP Server or the Downloadable Lists in accordance with the terms of this Agreement, from accessing, receiving or using the FTP Server or the Downloadable Lists, 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 FTP Server or the Downloadable Lists outside the authorized channels of communication set forth in this Agreement. Vendor agrees to reasonably cooperate with and assist NASD in any such suit or proceeding. If such an NASD request for cooperation and assistance imposes substantial burdens upon Vendor, then NASD agrees to reimburse Vendor for Vendor's reasonable direct expenses incurred in connection with such request. If Vendor furnishes, or permits to be furnished, the FTP Server or the Downloadable Lists to any individual or entity other than in accordance with this Agreement and without the prior written approval of NASD, then NASD shall have no obligation to reimburse Vendor's costs and, 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 FTP Server or the Downloadable Lists by such other individual or entity, either with or without making Vendor a party to such action.

Section 8. *Security. Prevention of Unauthorized Use.* Vendor agrees that it will comply, and agrees to require any applicable third party to comply, with all reasonable security specifications or requirements of NASD including, if applicable, the installation of digital certificates for each of Vendor's users, in order to prevent the FTP Server or the Downloadable Lists from being improperly accessed, received, used or improperly taken from any of Vendor's,

or any applicable third party's, place(s) of business or residence. NASD shall give Vendor prior Notice of any such specifications or requirements. For the purpose of determining compliance with this subsection, at any and all times, any and all individuals designated by NASD shall have (i) access to the place(s) of business or residence where the FTP Server or the Downloadable Lists are accessed, received or used and (ii) the right to observe the access, receipt and use of the FTP Server or the Downloadable Lists.

Section 9. *Virus Notification/Assumption of the Risk.* Vendor 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, web sites are inherently not as secure or reliable an environment as computers connected by dedicated lines and have been in the past vulnerable to attack by hackers and other third parties. Vendor should obtain, use and update, and cause all applicable third parties to obtain, use and update, virus-checking software routinely when Vendor is accessing, receiving or using information or data obtained from the Internet. NASD cannot assure Vendor that the FTP Server or the Downloadable Lists will be virus or problem free. By using the FTP Server or the Downloadable Lists Vendor agrees to assume the risk of any unavailability, interruption, delay, incompleteness, or inaccuracy of the FTP Server or the Downloadable Lists.

Attachment A

List of Vendor's Subsidiaries and Affiliated Entities:

Attachment B

BTDS INSTRUCTION SHEET

(All information on this form should be typewritten)

1. FIRM INFORMATION

(a) **Name of Your Firm** (“Vendor”):

(b) **Installation Address:**

Street Address: _____

City _____ State/Province _____

Postal Code _____ Country _____

(c) **Billing Address** (if different than installation address):

Street Address: _____

City _____ State/Province _____

Postal Code _____ Country _____

(d) **Primary Contact Name:** _____

Phone Number: _____

E-Mail Address: _____

_____ Installation Address

_____ Billing Address

(e) **Billing Contact Name:** _____

Phone Number: _____

E-Mail Address: _____

_____ Installation Address

_____ Billing Address

(f) **Technical Contact Name:** _____

Phone Number: _____

E-Mail Address: _____

_____ Installation Address

_____ Billing Address

(g) **Reporting Contact Name:** _____

Phone Number: _____

E-Mail Address: _____

Installation Address: _____

Billing Address: _____

2. PURPOSE FOR APPLICATION

(a) Name of the product(s)/service() your firm will provide to your customers which incorporates, is related to or which is based upon the Information and Data:

(b) Describe your intended use of Information and Data.

3. DATAFEED INFORMATION

(a) Name of Datafeed Provider: _____

(b) Level Of Service: Check the mode of Information and Data your firm will receive:
(Check all that apply)

NASD Service	Real Time Datafeed Mode	Delayed Datafeed Mode (≥4 hours)
BTDS/TRACE (Bond Data)	Yes	Yes

4. DATA UTILIZATION

(a) Check the boxes below which indicate the services your firm will offer to customers.

DATA UTILIZATION	BTDS Real-Time	BTDS Delayed (≥ 4 hours)
Display of Quote and/or Trade data	Yes	Yes
Disaster Recover/Back-Up	Yes	Yes
Development	Yes	Yes
Retransmission Datafeed	Yes	Yes
Other (specify)		

- (b) How will your firm distribute Information and Data? (Check all that apply)

	Distribution
Dedicated Land Line	___ Yes
Satellite	___ Yes
Internet/Intranet	___ Yes
WAP Phone/Handheld devices	___ Yes
Other (specify)	

5. INTERNET DISTRIBUTION

- (a) Internet Distribution: Does your firm distribute any Information and Data via the Internet?

___ No, then skip to question 6.

___ Yes, then provide the website addresses in the chart in 5b.

- (b) Website Distribution: If you checked “Yes” to question 5b, enter the website information in the table below.

WEBSITE ADDRESS	Demo Account Logon	Password	Type of Service	Timing of Service
			___ Firm’s own website ___ Hosted/Co-Branded	___ Real Time ___ Delayed
			___ Firm’s own website ___ Hosted/Co-Branded	___ Real Time ___ Delayed
			___ Firm’s own website ___ Hosted/Co-Branded	___ Real Time ___ Delayed

6. MONTHLY USAGE

- (a) Vendors are required to submit monthly reports indicating the number and location of terminals entitled to access the Information and Data. Which of the following services will be provided? All fees are subject to change.

SUBSCRIBER TYPE	PRICE	YES/NO
Professionals	\$60.00 per device per month	___ Yes ___ No
Non-Professionals	\$1.00 per device per month	___ Yes ___ No
Delayed (≥ 4 hours)	No charge currently	___ Yes ___ No
Other (specify)		

- (b) Vendors are required to identify whether they intend to use the Information and Data internally and/or externally. Indicate the manner(s) that you will be using the Information and Data. All fees are subject to change.

SUBSCRIBER TYPE	PRICE	YES/NO
Internal Usage Authorization	\$500.00 per month per organization	<u> </u> Yes <u> </u> No
External Usage Authorization	\$1,000.00 per month per organization	<u> </u> Yes <u> </u> No
Daily List Fax	\$15.00 per month per fax number/addressee	<u> </u> Yes <u> </u> No
Delayed (\geq 4 hours)	No charge currently	<u> </u> Yes <u> </u> No
Other (specify)		

7. MONTHLY USAGE ENTITLEMENT SYSTEM: Technical Control of the Datafeed/Network

- (a) Identify the provider(s) of the entitlement system(s) used to control distribution of Information and Data to your display devices/users. (Enter “proprietary” if your firm provides system.)

- (b) Name and Address of entitlement system provider: (Enter “proprietary” if system is provided by your firm.)

- (c) Name of Entitlement System: _____ Version No. _____

- (d) Identify the location of where entitlement control will take place and where entitlement database is stored.

- (e) How will device entitlement be controlled?

- i) Terminal ID basis ___ Yes ___ No
- ii) User ID/Password basis ___ Yes ___ No
- iii) Other _____ Yes ___ No

Each user must have a separate and unique ID/password or TID that is not shared

- The system will not allow simultaneous access to Information and Data by the same user ID/password or TID.
- The system must have the ability to generate entitlement reports that show those users that are entitled, and those that are not entitled to receive a specific data provider's data.

(f) How much time is necessary to distribute new entitlements to the end user:

(g) Is your firm able to distribute entitlements to the end user during market hours?

___ Yes ___ No

(h) Does your datafeed/network system provide an audit trail, identifying each entitlement transaction (additions or deletions)?

___ Yes ___ No

(i) Do your systems/procedures prevent the unauthorized use or concurrent sharing of IDs?

___ Yes ___ No

(j) Describe the process to add and delete a user/device using your entitlement system?

(k) Does your firm have the capabilities to change entitlements in-house?

___ Yes ___ No, then indicate the name of the firm that processes changes in entitlements on this system: _____

8. Display Software

- (a) Provide the name and address of the organization that will supply the display software: (Enter “proprietary” if the display software is provided by your firm.)

Name and Address:

- (b) Name of Display Software: _____ Version No. _____

- (c) The NASD BTDS Vendor Agreement requires that monthly usage reports be maintained on file for at least five years. Does your firm have this capability?

Yes No

- (d) How will this data be maintained?

Hard Copy _____ Electronic File _____ Other _____

9. DISPLAY REQUIREMENTS

- (a) DISPLAY SAMPLES: The NASD requires that proposed display samples of how your firm will display the Information and Data to customers be submitted. The Display Requirements can be located on the Web Site, or are available by contacting (301) 978-5307. If the display samples are not received, NASD cannot process your application.

Check here to acknowledge that your firm has included the required screen samples with this application. Yes No

The following ten fields must be displayed for each BTDS bond symbol:

- Bond Identifier (Symbol or CUSIP Number)
- Quantity
- Price
- Date/Time – Execution Time for current day’s transactions, Execution Date for As/Of trades and Reversals
- Yield
- Sale Condition Modifier
- When Issued Indicator (if applicable)
- Commission Indicator (if applicable)
- Special Price Indicator (if applicable)

- Reversal Indicator (if applicable)

(b) Will your firm provide Information and Data on a delayed basis?

No

Yes, then provide the actual text of your delay message that will be displayed to your customers: _____

I certify that the information provided on this Attachment B is accurate.

Signature: _____ Name: _____

Date: _____ Date: _____