



Financial Industry Regulatory Authority

FINRA TRANSPARENCY SERVICES
ATS DATA VENDOR AGREEMENT v. 1.0

The FINRA Transparency Services ATS Data Vendor Agreement (*ATS Data Vendor Agreement*) appears below. If you are at least 18 years old, execute it as a **Data Vendor** by signing your name on the “Signature” line in the appropriate signature part(s) below and at the end of this Agreement, and return a signed copy, to FINRA – ATS Transparency c/o FINRA Market Operations, either by facsimile, mail or email at the address or phone number identified for Notice in Section 23(b) below. When you purchase your vendor license online, you will be asked to affirm that you have signed this Agreement. If you did not intend to sign the Agreement, or signed in error, click on “Cancel.” Otherwise, select the affirmation checkbox on the online registration form to confirm that you have read and signed this Agreement.

*By clicking on the checkbox, you are agreeing
to be legally bound by the ATS Data Vendor Agreement.*

A. MANDATORY FOR ALL VENDORS:

Vendor: _____

Address: _____

Email: _____

Date of Execution: _____

THIS ATS TRANSPARENCY DATA VENDOR AGREEMENT, together with all Attachments and Addenda attached hereto (*Agreement*), is made by and between the Financial Industry Regulatory Authority, Inc. (**FINRA**), 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*) (FINRA and its subsidiaries and affiliated entities are collectively referred to herein as FINRA) whose principal place of business is located at 1735 K Street, N.W., Washington, D.C. and the Vendor.

WHEREAS, Vendor wants to receive and FINRA is willing to make available to Vendor the ATS Information and Data via pipe delimited file or other format as otherwise expressly provided for by the parties in writing, 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 FINRA hereby agree as follows:

DEFINITIONS

Affiliates and Subsidiaries: Affiliates and Subsidiaries of Vendor are those entities that are controlled by or under common control with Vendor or are otherwise agreed to in writing by FINRA. For the purposes of this definition, “control,” along with any derivative thereof, means legal, beneficial, or equitable ownership, directly or indirectly, of 50 percent (50%) or more of the capital stock (or other ownership interest, if not a corporation) of any entity ordinarily having voting rights.

ATS Information and Data: Certain data and other information, published by FINRA pursuant to FINRA Rule 4552, including derivative works thereof that have been collected, consolidated, validated, processed, or recorded by FINRA and which may be generated or gathered from other sources by FINRA, relating to securities or other financial instruments, products, vehicles or devices eligible for or reported to FINRA and persons regulated by FINRA.

ATS Market Data Policy: means the policies on the use and display of data contained on the website www.finra.org or its successor.

Audit Period: means the Term of this Agreement plus five (5) years after the termination or expiration of this Agreement.

Authorized Use: Shall have the meaning set forth in Section 1 of this Agreement.

Business Days: Those days in which the System is scheduled to be operating and accepting transactions.

Claims or Losses: Any and all liabilities, obligations, losses, damages, penalties, claims, 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 and (ii) administrative costs, litigation costs, and auditors’ and in-house and outside attorneys’ fees and expenses, and related disbursements.

Client: A Client is an individual or entity, including Internal Users, to whom a Vendor provides (or provides access to) Derived Data, without the ability to re-distribute the Derived Data. Clients are not entitled to receive or access ATS Information and Data.

Confidential Information: Data, information or techniques from a disclosing party which the receiving party knows, should know, or which is marked as such, is confidential information.

Data: ATS Information and Data and Derived Data are cumulatively referred to herein as Data.

Device: Any equipment which uses processes or receives ATS Information and Data.

Derived Data: ATS Information and Data which has been manipulated in any way whatsoever, so that it is not in the exact same format as it is transmitted from FINRA and further,

that it cannot be reversed engineered to arrive at the underlying ATS Information and Data or used as a surrogate for ATS transaction information. Additional information regarding Derived Data can be found in FINRA Rule 4553 and the ATS Market Data Policy on-line via the Website.

Effective Date: The date this Agreement is fully executed by FINRA or its authorized agent, or the date upon which FINRA first transmits or otherwise makes available ATS Information and Data to Vendor, whichever is sooner.

External Distribution: Distribution of the ATS Information and Data outside of Vendor or its Affiliates and Subsidiaries.

Fee Liable Data: All ATS Information and Data that is within the definition contained in FINRA Rule 4552 and 4553.

FINRA's Audit Costs: All reasonable and necessary in-house and outside audits, legal or administrative costs and expenses incurred in good faith by FINRA to detect and rectify erroneous reporting.

FINRA Group: FINRA, its representatives and auditors.

“FINRA Rules” means all applicable:

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

of or relating to the Service, the Product(s), the Participant and any information entered into the Product(s) or received from the Product(s); along with all successors of the components of FINRA Rules, as they may exist at the time.

FINRA’s ATS Transparency Data Subscriber Agreement: An agreement between FINRA and FINRA’s Subscribers which sets forth the terms and conditions upon which a

Subscriber may receive the ATS Information and Data from FINRA (***FINRA ATS Data Subscriber Agreement***).

Internal Use: Use of the ATS Information and Data by an Internal User within Vendor or its Affiliates and Subsidiaries' organization.

Internal Users: Employees or those actually operating in an employee capacity for and receiving a W-2 from Vendor or its Affiliates and Subsidiaries.

Modify: "Modify" and any derivative thereof shall mean changes, additions, or deletions to the delivery specifications and requirements of the ATS Information and Data.

Non-Professional Subscriber: A "Non-Professional Subscriber", as more specifically defined in Rule 4553 is a natural person who uses ATS Information and Data solely for his or her own personal, non-commercial use. A Non-Professional Subscriber shall only access the ATS Information and Data via the Website.

Notice: All notices, invoices, and other communications (except for notices of changes related to payments, fees or charges from FINRA) under this Agreement.

Professional Subscriber: (a) A "Professional Subscriber" as more specifically defined in Rule 4553 is a natural person or entity who is:

(1) registered or qualified in any capacity with the SEC, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association or is engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act (whether or not registered or qualified under that Act), or is an employee of any the foregoing, and uses the ATS Information and Data for other than personal, non-commercial use;

(2) employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt, or any other employee of a bank, insurance company or such other organization referenced above and uses ATS Information and Data for other than personal, non-commercial use; or is

(3) engaged in, or has the intention to engage in, any redistribution of all or any portion of the ATS Information and Data.

(b) A Professional Subscriber may create derivative works from the ATS Information and Data but ***may only use the ATS Information and Data and any derivative works thereof, internally (i.e. may not disseminate Data outside its organization).***

Subscriber: "Subscriber" refers to both Professional and Non-Professional Subscribers.

Subscriber Report: a report filed with FINRA by Vendor on a monthly basis which lists the name, address and any other pertinent information which may be requested by FINRA of each Subscriber receiving ATS Information and Data from Vendor. Subscriber Reports may be

submitted using Attachment C of this agreement or by other form and format provided by or otherwise pre-approved by FINRA.

System: System shall mean the manner in which FINRA may collect ATS Information and Data.

Term: Shall have the meaning set forth in Section 13 of this Agreement.

The Act: The Securities and Exchange Act of 1934.

Vendor: The person or entity executing this Agreement. A Vendor may redistribute Data externally to Clients and Subscribers in accordance with this Agreement and any applicable FINRA rules.

Vendor's Service: A service developed by or licensed by Vendor that may include communications facilities for, or otherwise allows for, accessing, receiving, storing, processing, using, transmitting and disseminating the Data.

Vendor's Subscriber: Any individual or entity, excluding Internal Users, to whom a Vendor provides (or provides access to) ATS Information and Data in accordance with the terms and conditions of this Agreement. A Vendor's Subscriber shall not access the Website for ATS Information and Data.

Vendor's ATS Data Subscriber Agreement: An agreement between Vendor and Vendor's Subscriber which terms contain, at a minimum, the same terms found in FINRA's ATS Data Subscriber Agreement which sets forth the terms and conditions upon which Vendor's Subscriber may receive the ATS Information and Data from Vendor ("Vendor ATS Data Subscriber Agreement"). A Subscriber shall only access the ATS Information and Data directly from the Vendor by virtue of its having executed the Vendor's Subscriber Agreement, and not via the Website and Subscriber may only disseminate the ATS Information and Data and the Derived Data internally.

Website: The Internet site found at <http://www.finra.org/ats> or such other URL to which FINRA may automatically forward the user from time to time.

TERMS

Section 1. License Grant. (a) As of the Effective Date and except as otherwise provided in this Agreement, Vendor is granted a world-wide, non-transferable, non-exclusive, non-assignable, limited right and license to use and sublicense the Data in accordance with this Agreement and Attachment B hereto, for the Term of this Agreement (**Authorized Use**). Any use of the Data, by a Vendor, unless expressly described in this Agreement or a FINRA approved *Attachment B*, is prohibited. Authorized Use shall be limited to accessing, receiving, using, processing, manipulating, creating derivative works, storing, transmitting and disseminating the Data through Vendor's Service to Clients and Subscribers pursuant to a valid ATS Transparency Data Subscriber Agreement or as otherwise provided for herein. Subsidiaries and Affiliates of

Vendor listed on *Attachment A* are authorized to use the Data solely for internal business purposes but are not permitted to further redistribute the Data outside of Subsidiaries or Affiliates of Vendor without entering into the appropriate subscription and licensing agreements with FINRA and recipient of the ATS Information and Data and only in accordance with the terms and conditions hereunder. Vendor hereby warrants that those entities listed in *Attachment A* fall within the definition of Affiliates and Subsidiaries set out herein. Vendor remains liable to FINRA for any breach of this Agreement resulting from (i) the actions/inaction of any person or entity to whom it provides the Data; (ii) Affiliates and Subsidiaries; and (iii) Internal Users.

(b) Vendor that provides Data to Subscribers or Clients shall use commercially reasonable measures to ensure that the terms and conditions of this Agreement which apply to Subscribers and Clients are agreed to and followed. Vendor is not required to have a Client sign FINRA's Subscriber Agreement for the Client to receive Derived Data, however, Vendor shall ensure that Client agrees in writing to release FINRA from any and all liability resulting from or relating to the Derived Data, including that the underlying ATS Information and Data was inaccurate. Notwithstanding the foregoing, Vendor shall indemnify, defend and hold FINRA harmless from any third claims against FINRA resulting from Vendor's Client or Subscriber receiving the information from Vendor. Notwithstanding anything in this Agreement to the contrary, Vendor remains liable to and agrees to indemnify FINRA against any unauthorized use of the Data by or through Vendor or as a result of Vendor's action/inaction.

(c) If Vendor learns of any unauthorized use of the Data, it shall immediately provide FINRA with written notice of the unauthorized use and shall assist FINRA, in investigating, halting and prosecuting, if necessary, any such unauthorized use. If FINRA 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 Data or which otherwise arises out of or is related to this Agreement, to FINRA. 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.

(d) FINRA reserves the right to monitor and review the activities of Vendors to ensure that no unauthorized use of the Data occurs. Vendor agrees to cooperate, and use reasonable efforts to obtain the cooperation of those Subscribers or Clients for which it serves as a Vendor, with FINRA at Vendor's cost in any such review. In the event that FINRA identifies any unauthorized use by Vendor or Vendor's Subscribers or Vendor's Clients, Vendor shall, upon five (5) business days' Notice from FINRA, immediately cease all such use or cause Vendor's Client or Subscriber to cease such use and confirm to FINRA in ten (10) business days that such use has been terminated. At such time when the unauthorized use in the sole and reasonable judgment of FINRA has been cured, Vendor may resume providing the Data to Subscribers and Clients. This remedy is in addition to and not in place of any other remedy FINRA may have as a matter of law or equity.

(e) Vendor agrees, and further agrees that it will require its Subscribers and Clients to agree, not to alter or present the ATS Information and Data or the Data in any manner that adversely affects its accuracy or integrity or that renders it misleading or discriminatory.

Section 2. Proprietary Rights in ATS Information and Data. Vendor acknowledges and agrees that FINRA has ownership of the ATS Information and Data that originates on, derives from or relates to all markets, individuals or entities, and activities that are regulated, operated or administered by FINRA and compilation or other proprietary rights in ATS Information and Data gathered from other sources. All ATS 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 FINRA. Vendor shall not, by act or omission, diminish or impair the acquisition, maintenance, and full enjoyment by FINRA, its licensees, transferees and assignees, of the property rights of FINRA in the ATS Information and Data and the System. FINRA reserves any right to the System and the ATS Information and Data not explicitly granted herein.

Section 3. Modifications. Vendor acknowledges and agrees that nothing in this Agreement shall be deemed to constitute an undertaking by FINRA to continue to disseminate the ATS Information and Data in the present form or configuration or to continue to use existing delivery methods. FINRA, in its sole discretion, and without Vendor's consent, may from time to time, modify the delivery method and/or ATS Information and Data. FINRA may make such Modifications irrespective of whether such Modifications would require changes to be made by Vendor to Vendor's Service or any Device. 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 ninety (90) calendar days of any Modification.

Section 4. CUSIP Numbers. Unless specifically set forth otherwise in an agreement between Vendor and CGS, Vendor agrees and acknowledges that the CUSIP Database and the information contained therein is and shall remain valuable intellectual property owned by, or licensed to, CUSIP Global Services ("CGS") and the American Bankers Association ("ABA"), and that no proprietary rights are being transferred to Vendor in such materials or in any of the information contained therein. Any use by Vendor, outside of the clearing and settlement of transactions, requires a license from CGS along with an associated fee based on usage. Vendor agrees that misappropriation or misuse of such materials will cause serious damage to CGS and ABA, and that in such event money damages may not constitute sufficient compensation to CGS and ABA; consequently, Vendor agrees that in the event of any misappropriation or misuse, CGS and ABA shall have the right to obtain injunctive relief in addition to any other legal or financial remedies to which CGS and ABA may be entitled.

Vendor agrees that Vendor shall not publish or distribute in any medium the CUSIP Database or any information contained therein or summaries or subsets thereof to any person or entity except in connection with the normal clearing and settlement of security transactions. 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 master file or database of CUSIP descriptions or numbers for itself or any third party recipient of such service and is not intended to create and does not serve in any way as a substitute for the CUSIP MASTER TAPE, PRINT, DB, INTERNET, ELECTRONIC, CD-ROM Services and/or any other future services developed by the CGS. NEITHER FINRA, CGS, ABA NOR ANY OF THEIR AFFILIATES MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY OF THE INFORMATION CONTAINED IN THE ATS INFORMATION AND DATA. ALL SUCH MATERIALS ARE PROVIDED TO VENDOR ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES AS TO MERCHANTABILITY OR

FITNESS FOR A PARTICULAR PURPOSE OR USE NOR WITH RESPECT TO THE RESULTS WHICH MAY BE OBTAINED FROM THE USE OF SUCH MATERIALS. NEITHER FINRA, CGS, ABA NOR THEIR AFFILIATES SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY ERRORS OR OMISSIONS NOR SHALL THEY BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE LIABILITY OF FINRA, CGS, ABA OR ANY OF THEIR AFFILIATES PURSUANT TO ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE FEE PAID BY VENDOR FOR ACCESS TO SUCH MATERIALS IN THE MONTH IN WHICH SUCH CAUSE OF ACTION IS ALLEGED TO HAVE ARISEN. FURTHERMORE, FINRA, CGS AND ABA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DELAYS OR FAILURES DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.

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

Section 5. Transmission to Subscribers. (a) Vendor shall only provide the ATS Information and Data to Subscribers that are a party to an effective Vendor ATS Data Subscriber Agreement and Vendor shall purchase a Professional Subscriber license from and pay a Fee to FINRA for every Subscriber to which it provides the ATS Information and Data. Vendor shall not, under any circumstances, provide the ATS Information and Data or access to the ATS Information and Data to any Non-Professional Subscribers without charge. Vendor shall not provide the ATS Information and Data to any individual or entity for retransmission or redistribution by such individual or entity. Vendor is not required to have a Client or Subscriber, who is only being provided access to Derived Data, sign FINRA's Subscriber Agreement, however, Vendor shall ensure that the Client or Subscriber, who is only receiving Derived Data, agrees in writing to release FINRA from any and all liability resulting from or relating to the Derived Data, including but not limited to, that the underlying ATS Information and Data was inaccurate. In the event Vendor fails to do so, Vendor shall indemnify, defend and hold FINRA harmless from any third party claim resulting therefrom.

(b) Vendor, on a monthly basis, shall file with FINRA a Subscriber Usage Report ("Subscriber Report") which details the identity and number of Subscribers and whether they are Professional or Non-Professional from the date Vendor begins providing, and at all times thereafter, in which Vendor provides such ATS Information and Data to Subscriber. Any Subscriber Report submitted by Vendor to FINRA shall become final and not subject to revision by Vendor thirty (30) days after such Subscriber Report is filed with FINRA. Vendor agrees to permit the FINRA Group to periodically inspect its premises to verify the veracity and accuracy of its systems and reporting. FINRA retains the right to bill Vendor's Subscribers directly for the ATS Information and Data. Vendor must also provide to FINRA, as requested, Subscriber's contact and identifying information that corresponds with the associated client license number.

(c) In addition to any other method that Vendor chooses to make the ATS Information and Data available to Subscriber, Vendor shall clearly offer to all of its Subscribers, in writing, the Data as downloadable data files in essentially the same or similar form and format by which

the ATS Information and Data is downloadable by Professional Subscribers from the Website at no additional charge.

Section 6. Termination of Subscribers. If any Subscriber (a) terminates their access to the Data, has their access to the Data terminated, cancelled or it expires on its own, or (b) if any Subscriber or Client fails to comply with any of the conditions, terms or provisions of its Subscriber Agreement or any agreement it has with Vendor which contains terms intended to benefit FINRA, or (c) has made any representation in any such agreement which was or has become false, Vendor shall, immediately, but not more than three (3) Business Days after it knows, should have known or receives Notice from FINRA, cease providing the Data to Client or Subscriber and shall, within five (5) Business Days following the receipt of such Notice or knowledge, confirm such cessation by Notice to FINRA. If Vendor's Subscriber terminates its agreement to receive the Data, or has its receipt of the Data terminated, other than by FINRA, the Vendor shall notify FINRA on the next Subscriber Report.

Section 7. Fees; Interest; Taxes. In consideration of the rights granted herein:

(a) Vendor agrees to pay to FINRA or FINRA's designee the then effective fees, charges and interest, late fees or penalties in accordance with FINRA Rules, including but not limited to Rule 4553, or other Notice to Vendor, notwithstanding amounts actually invoiced by FINRA, or within thirty (30) days of an invoice or other notice of amounts due from FINRA, whichever is sooner. Vendor's obligation to pay amounts due is not subject to set-off, offset or recoupment. Vendor shall assume full and complete responsibility for the payment of all taxes, charges or assessments imposed on Vendor, Vendor's Subscribers, Clients and FINRA (except for U.S. federal, state, or local income taxes, if any, imposed on FINRA).

(b) The current rates charged for ATS Information and Data are based on the application of *Attachment B* hereto to FINRA Rule 4553. All payments under this *Section* shall be due in advance for a consecutive twelve (12) month period beginning on the day and month in which the subscription was originally purchased and shall automatically renew for consecutive one year periods unless terminated by either Party in accordance with this Agreement. Published FINRA fees that are charged at an annual rate are due and payable in full at the time they are initially incurred. Proration of Subscriber fees charged is strictly prohibited, and Vendor shall purchase a license for every Subscriber that receives ATS Information and Data from Vendor *prior to granting access to such Subscriber* and such licenses shall not be transferred or shared between Subscribers. No refunds of any Fees shall be due to Vendor or Vendor's Subscribers for partial use. Vendor remains liable to FINRA for the full Fee (on a yearly basis) for any Subscriber to which Vendor provides the ATS Information and Data.

(c) Vendor and Vendor's Subscribers shall be eligible for access to the ATS Information and Data at the time of payment. However, such access is subject to revocation if Vendor or Vendor's Subscriber's Fee is subsequently denied by the underlying creditor, or for any other reason whatsoever. Vendor remains, at all times, liable to FINRA in full for the Fees incurred or owed by it and its Subscribers. FINRA reserves the right to change any charges or rates in accordance with FINRA Rules or other notice to Vendor. Vendor shall, in any notice or

invoice in which FINRA fees and charges are included, accurately identify said FINRA's fees and charges separately from Vendor's fees for such Data.

Section 8. Audit by FINRA. During the Audit Period, Vendor shall maintain copies of all Reports and records of payments to FINRA, and all authorizations and agreements with Vendor's Subscribers and Clients. During the Audit Period the FINRA Group or its subcontractors or Vendor's independent auditor (at FINRA's request) may, upon reasonable advance notice, review Vendor's (a) records, including but not limited to authorizations and agreements with Vendor's Subscribers and Clients, (b) Reports and records of payments to FINRA and Vendor, as well as, (c) Vendor's data processing equipment and communications facilities, and provide a report thereon detailing amounts owed and payments made. Underreported amounts shall be remitted to FINRA, together with interest at one percent (1%) per month from the date such underreported amounts were due as well as a revised Report from Vendor, within fifteen (15) Calendar Days after notice from FINRA or when Vendor knows of such underreported amounts, whichever is sooner. If such erroneous reporting is equal to or greater than five percent (5%) of the amount actually reported for the period in question or if Vendor knew and did not submit revised Reports to FINRA containing such underreported amounts within fifteen (15) Calendar days, Vendor shall also reimburse FINRA's Audit Costs, if any. Unless underreported amounts are equal to or greater than five percent (5%) of the total amounts of fees and charges due for the period in question or Vendor knew of the need for and did not submit revised Reports to FINRA when they were due, FINRA shall not re-audit records that were previously the subject of a FINRA audit. All records, books and systems inspected during the course of such an Audit shall be considered Confidential Information and shall be subject to Section 14 of this Agreement.

Section 9. Security. Vendor agrees to use commercially reasonable efforts to ensure that Vendor's use of the Data remains at all times secure from unauthorized access or interference and to prevent the Data from being accessed or taken from or in any way compromised, communicated, divulged or published except through authorized channels of transmission or reception.

Section 10. WARRANTIES; DISCLAIMERS OF WARRANTIES. NEITHER FINRA, S&P, CGS, ABA, ANY OF THEIR AFFILIATES OR SUBSIDIARIES, NOR ANY OF THEIR THIRD PARTY INFORMATION PROVIDERS, AFFILIATES OR SUBCONTRACTORS MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY, TIMELINESS, ADEQUACY OR COMPLETENESS OF ANY OF THE INFORMATION OR DATA CONTAINED IN THE CUSIP DATABASE. ALL SUCH MATERIALS ARE PROVIDED TO VENDOR ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS NEITHER FOR A PARTICULAR PURPOSE OR USE NOR WITH RESPECT TO THE RESULTS WHICH MAY BE OBTAINED FROM THE USE OF SUCH MATERIALS.

a. NEITHER FINRA, S&P, CGS, ABA NOR THEIR AFFILIATES OR SUBSIDIARIES OR THIRD PARTY INFORMATION PROVIDERS, AFFILIATES OR SUBCONTACTORS SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY ERRORS OR OMISSIONS NOR SHALL THEY BE LIABLE FOR ANY DAMAGES,

WHETHER DIRECT OR INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. HOWEVER, IN THE EVENT THAT FINRA, S&P, CGS, ABA OR ANY OF THEIR AFFILIATES OR SUBSIDIARIES OR THIRD PARTY INFORMATION PROVIDERS, AFFILIATES OR SUBCONTRACTORS ARE FOUND LIABLE, THE LIABILITY OF FINRA, CGS, 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 VENDOR FOR ACCESS TO SUCH MATERIALS IN THE MONTH IN WHICH THE CAUSE OF ACTION IS ALLEGED TO HAVE RISEN.

c. FURTHERMORE, FINRA, S&P, CGS AND ABA AND AFFILIATES AND SUBSIDIARIES AND THEIR THIRD PARTY INFORMATION PROVIDERS, AFFILIATES AND SUBCONTRACTORS SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO VENDOR OR VENDOR'S SUBSCRIBERS OR CLIENTS FOR DELAYS OR FAILURES DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.

d. FINRA, S&P, CGS AND ABA AND EACH OF THEIR RESPECTIVE AFFILIATES AND SUBSIDIARIES, AND VENDOR ON ITS BEHALF AND BEHALF OF IT'S AFFILIATES, CLIENTS, SUBSCRIBERS, SUBCONTRACTS AND SUBSIDIARIES AGREE, MAKE NO WARRANTIES WHATSOEVER WITH REGARD TO DERIVED DATA.

Section 11. *Indemnification.* Subject to the indemnified party's prompt notice to the indemnifying party, a failure of which shall not negate the indemnifying party's responsibility unless and up to the extent the indemnifying party was damaged as a result thereof:

a. Vendor shall indemnify, defend and hold FINRA harmless from, any and all Claims or Losses imposed on, incurred by or asserted against FINRA including, but not limited to, any and all judgments or settlements done with Vendor's prior notice and approval, to the extent that the Claims and Losses result from (i) acts or omissions or intentional misconduct of the Vendor or Vendor's Subscriber or Vendor's Client, (ii) breach of this Agreement by Vendor or Vendor's Subscriber or Vendor's Client, (iii) access, receipt, processing, use, transmission or dissemination of the Data by or through Vendor or Vendor's Subscriber or Vendor's Client; (iv) claims by third parties against FINRA that Vendor or Vendor's Subscriber or Vendor's Client's service or use of the Data infringes up the intellectual property rights of another; or (v) any third party claim brought against FINRA as a result of Vendor's, or Vendor's Clients or Vendor's Subscribers use of the Data, including but not limited to any claim that the ATS Information and Data upon which Derived Data was based was erroneous.

b. FINRA shall indemnify and defend Vendor against, and hold Vendor harmless from, any and all judgments or settlements done with FINRA's prior notice and approval, imposed on Vendor as a result of a third party action alleging that the ATS Information and Data infringes or misappropriates any third parties' U.S. registered intellectual property rights, provided that the ATS 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 ATS Information and Data. For avoidance of doubt, FINRA offers no indemnification for claims based, in whole or in part, on Derived Data.

c. In the event of a claim, action or allegation of infringement or if, in FINRA's opinion, such a claim, action or allegation is likely to occur or if the use of the ATS Information and Data is enjoined because of infringement, FINRA may, at its sole option and expense, procure for Vendor and Vendor's Subscribers the right to continue using the ATS Information and Data, replace or modify the ATS Information and Data so that it does not infringe, or discontinue providing the ATS Information and Data.

Section 12. Default. In the event Vendor is in default of any obligation in this Agreement or has provided false information or applies for receivership or is placed into bankruptcy or makes a general assignment for the benefit of creditors, FINRA in its sole discretion and in the event a default is subject to cure, shall notice Vendor and Vendor shall have thirty (30) days to cure such default. In the event Vendor fails to cure such default within this time period, FINRA will have the immediate right, in its sole discretion, to take one or more of the following actions: (i) to terminate this Agreement and Vendor's right to receive the ATS Information and Data hereunder and to make Derived Data therefrom; (ii) demand arbitration; or (iii) to pursue such other remedies as it may be entitled by virtue of or under this Agreement, before regulatory authorities, or at law or in equity.

Section 13. Term and Termination. The term of this Agreement will commence on the date of execution by FINRA, or the date FINRA grants or allows access to the ATS Information and Data, whichever is sooner, and will continue perpetually unless terminated in accordance with this Agreement or by written notice by a terminating party to a non-terminating party hereto and given at in accordance with the yearly timeframes set forth herein with at least ninety (90) days prior notice to the proposed date of termination (**Term**). Those sections which, by their nature are intended to survive termination or expiration of this Agreement, shall survive any termination or expiration of this Agreement.

Section 14. Confidentiality. FINRA and Vendor acknowledge that in the course of their performance of this Agreement each may obtain Confidential Information of the other. The recipient shall use such Confidential Information only in fulfillment of its obligations under this Agreement; shall hold such Confidential Information in confidence; and shall not use, disclose, copy, or publish any such Confidential Information without the prior written approval of the other party. Notwithstanding the foregoing, FINRA or 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 FINRA 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*

14 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 15. 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 non-assigning party. 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.

Section 16. 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 and (4) the arbitrators shall not be authorized to award punitive damages.

Section 17. Amendment. Except as may be otherwise set forth herein, FINRA may amend any part of this Agreement on 90 days prior notice. Vendor agrees to provide prompt notice to Vendor's Clients and Subscribers of any such amendment if applicable. Vendor's failure to reject by Notice the amendment 30 days prior to the effective date of the amendment or Vendor's use of the System or Data following the effective date of such amendment shall be deemed to be an acceptance of the amendment. Any rejection by Vendor of any amendment made by FINRA shall result in immediate termination of this Agreement by FINRA. Except as otherwise expressly 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 18. 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. Each party irrevocably agrees that any legal or equitable action, suit or proceeding 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. Further each party 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 19. 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 20. Attorney's Fees to the Prevailing Party. The prevailing party in any arbitration, litigation or proceeding hereunder shall be entitled to attorney's fees.

Section 21. Entire Agreement. This Agreement, including the attachments hereto which are an integral part hereof and materials referenced herein (collectively *Attachments*), FINRA Rules and Policies, including but not limited to ATS Market Data Policies, (available on the Website), as any of these items may be added to, deleted from, or amended from time to time, constitute the entire Agreement between the parties with respect to the subject matter hereof, and supersede all prior negotiations, communications, writings and understandings with respect to the subject matter of this Agreement. If there is a conflict between the provisions of this Agreement, the Attachments or FINRA Rules and Policies, the order of preference shall be FINRA Rules, FINRA Policies, the Attachments and this Agreement.

Section 22. Joint and Several Liability. Vendor, its Affiliates and Subsidiaries and any other entity related to Vendor which benefits from or accesses the Data through Vendor are hereby all jointly and severally liable for all Claims or Losses which FINRA incurs as a result of Vendor, its Affiliates and Subsidiaries, any other entity related to Vendor which benefits from or accesses the Data through Vendor or any other entity related to Vendor's breach, action or inaction under this Agreement and each of them hereby agrees to be held jointly and severally liable for indemnifying FINRA therefore. FINRA shall have no obligation to exhaust its remedies against any certain party under this Agreement prior to proceeding against another party who is liable under this Agreement.

Section 23. Notices. Unless set out otherwise herein all Notice 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 delivery receipt or by an email if the sender can prove it was sent, 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: _____

E-Mail: _____
Phone #: _____
Fax #: _____

(b) If to FINRA:

FINRA – ATS Transparency
c/o FINRA Market Operations
9509 Key West Avenue
2nd Floor
Rockville, MD 20850
Telephone: 866-776-0800
Fax: (301) 527-4918

Email: FINRAOperations@FINRA.org

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:

Financial Industry Regulatory Authority, Inc.
1735 K Street, N.W., 10th Floor
Washington, D.C. 20006-1500
Attn: Office of General Counsel – Sharon Guthrie, CTG
Telephone #: (202) 728-8817; Fax #: (202) 728-8894

Section 24. 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.

By: _____

("Vendor")

Printed Name/Title: _____

Date: _____, 20____

Executed this _____ day of _____, 20____, for and on behalf of:

Financial Industry Regulatory Authority, Inc.

By: _____

Printed Name/Title: _____

Attachment A

List of Vendor's Subsidiaries and Affiliated Entities:

Attachment B

Please submit the completed form to:

FINRA – ATS Transparency
c/o FINRA Market Operations
9509 Key West Avenue
2nd Floor
Rockville, MD 20850
Telephone: 866-776-0800
Fax: (301) 527-4918

Email: FINRAOperations@FINRA.org

1. FIRM INFORMATION

(a) Name of Your Firm (“Vendor”):

Is Your Firm a Qualified Tax-Exempt Organization:

Yes No

(b) Firm Address:

Street Address:	
City:	State/Province:
Postal Code:	Country:

(c) Billing Address (if different from above):

Street Address:	
City:	State/Province:
Postal Code:	Country:

(c) Primary Contact:

Phone Number:
E-Mail Address:

2. DATA USE

(a) INTERNAL USE

(i) Check all that apply

Application Display	<input type="checkbox"/>
Internal System, Non-Display Use	<input type="checkbox"/>
Derivative Products (for example indices; reports based on the ATS Information and Data)	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>

(ii) Describe how you intend to use the data:

(b) EXTERNAL USE

(i) PROFESSIONAL REDISTRIBUTION (IF APPLICABLE)

(A) Redistribution / Delivery Methods: Check all that apply

Application Display	<input type="checkbox"/>
Internal System, Non-Display Use	<input type="checkbox"/>
Derivative Products (for example indices; reports based on ATS Information and Data)	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>

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

THIS ATTACHMENT A SHALL BE DEEMED TO BE ATTACHED TO AND INCORPORATED INTO THE ATS DATA AGREEMENT EXECUTED BY THE UNDERSIGNED. ANY UNAUTHORIZED ALTERATION SHALL BE DEEMED A MATERIAL BREACH OF THE ATS DATA AGREEMENT TO WHICH IT IS ATTACHED AND SHALL SUBJECT THE UNDERSIGNED TO ANY AND ALL REMEDIES SET OUT IN THEREIN FOR BREACH

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

Signature: _____ Name: _____

Date: _____ Date: _____

Attachment C
Monthly Schedule of Subscriber Licenses

Please submit the completed form to:

FINRA – ATS Transparency
c/o FINRA Market Operations
9509 Key West Avenue
2nd Floor
Rockville, MD 20850
Telephone: 866-776-0800
Fax: (301) 527-4918

Email: FINRAOperations@FINRA.org

Client Name and Address	Client License Number	Date License Purchased	Renewal? (Y/N)

LICENSES: