

**Tai·Pan Realtime USA**

**Originalfassungen der  
US-Börsenverträge**

**für Privatanleger**  
(Non-Professional Subscriber)

## NEW YORK STOCK EXCHANGE AND AMERICAN STOCK EXCHANGE AGREEMENT

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### APPLICATION AND AGREEMENT FOR THE PRIVILEGE OF RECEIVING LAST SALE INFORMATION AND BOND LAST SALE INFORMATION AS A NONPROFESSIONAL SUBSCRIBER

Nonprofessional Subscriber\* (Part 1).

AGREEMENT between Subscriber and the undersigned vendor ("Vendor") governing Subscriber's receipt and display, as a Nonprofessional Subscriber, of last sale information\* ("Information") (Part IIA) and bond last sale information\* ("Bond Information") (Part IIB).

APPLICATION made by the undersigned person ("Subscriber") for classification as a **PART I - APPLICATION**

Subscriber hereby applies, in his/her individual and personal capacity, and neither as a principal, officer, partner, employee or agent of any business nor on behalf of any other individual, to be classified as a Nonprofessional Subscriber for the purpose of receiving Information and Bond Information subject to this Application and Agreement.

1. SUBSCRIBER'S NONPROFESSIONAL STATUS - - Subscriber certifies that he/she is a natural person who is neither

- a. registered or qualified with the Securities and Exchange Commission, ("SEC"), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association,
- b. engaged as an "investment advisor" as that term is defined in Section 202(a)(II) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act), nor
- c. employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt.

2. SUBSCRIBER'S EMPLOYMENT - Subscriber certifies the truth and accuracy of the personal and employment information included in Part III of the Application and Agreement.

#### **PART IIA - AGREEMENT: LAST SALE INFORMATION**

WHEREAS, New York Stock Exchange, Inc. ("NYSE"), acting on behalf of the Participants\* pursuant to the CTA Plan\*, has entered into one or more agreements with Vendor (the "Vendor Agreement(s)") permitting Vendor to disseminate, through interrogation devices. Information to Nonprofessional Subscribers subject to a rate structure and to terms and conditions different from those applicable to other classes of subscribers\*,

WHEREAS, the Vendor Agreement(s) prohibit Vendor from dissemination Information to a person as a Nonprofessional Subscriber unless such person meets the criteria set forth in Part I and in Paragraph 5.

WHEREAS, Subscriber wishes to receive Information from Vendor as a Nonprofessional Subscriber, and

WHEREAS, Vendor or NYSE, acting for the benefit of the Participants, has reviewed this Application and Agreement and determined that, based upon the representations made and information provided by Subscriber, Subscriber qualifies to received Information as a Nonprofessional Subscriber.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained, Subscriber and Vendor hereby represent, warrant and agree, for their own benefit and for the benefit of the Participants, as follows:

### 3. DEFINITIONS

- a. The term "CTA Network A last sale information" ("A Information") includes at any given time, (i) all last sale prices (A) that reflect completed transactions in equity securities listed on NYSE that have taken place on, or been reported by, and Participant or "other reporting party" (as defined in the CTA Plan) and (B) that have been reported pursuant to the CTA Plan and (ii) all information based thereon or derived therefrom.
- b. The term "CTA Network B last sale information" ("B Information") includes, at any given time, (i) all last sale prices (A) that reflect completed transactions in equity securities (and certain other securities as provided for in the CTA Plan) registered or admitted to unlisted trading privileges on an exchange other than NYSE that are registered or so admitted on, or meet the listing requirements of, the American Stock Exchange, Inc. ("AMEX"), which transactions have taken place on, or have been reported by, any Participant or other reporting party and (B) that have been reported pursuant to the CTA Plan and (ii) all information based thereon or derived therefrom.
- c. The term "CTA Plan" means the plan signed by the Participants and declared effective by the SEC (SEC file No. S7-433).
- d. The term "last sale information" ("Information") includes A Information and B Information.
- e. The term "network's administrator" means NYSE with respect to A Information and AMEX with respect to B Information.
- f. The term "Nonprofessional Subscriber" means a subscriber who meets the criteria set forth in Part I and in Paragraph 5 and who received Information pursuant to the terms and conditions the form of this Application and Agreement.
- g. The term "person" includes any natural person, proprietorship or organization.
- h. The term "Participant" means each of NYSE, AMEX and the several other national securities exchanges and the national securities association that is a signatory to, and has not withdrawn from, the CTA Plan and as to which the plan is effective.
- i. The term "subscriber" means any person authorized to receive Information through an interrogation service.
- j. The term "Subscriber-procured interrogation device" means any interrogation device used by Subscriber for the purpose of receiving an interrogation service from Vendor, which device is not supplied, installed, operated or maintained by, or made available through, Vendor.

4. PARTICIPANTS AS THIRD-PARTY BENEFICIARIES - (a) All actions to be taken by "NYSE" or by "Vendor" pursuant to this Application and Agreement shall be taken by, and (b) all payments, information and notifications to be made or given to "NYSE" or to "Vendor" pursuant to this Application and Agreement shall be accepted or received by NYSE and Vendor, respectively, for the benefit of the Participants.

5. PERMITTED USE OF INFORMATION - Subscriber shall received Information solely for his/her personal, non-business use. Subscriber shall not furnish Information to nay other person.

6. DATA RECEIPT COSTS - Subscriber shall not hold the Participants responsible for any costs associated with Subscriber's receipt of Information from Vendor.

#### 7. FAILURE TO QUALIFY

a. DETERMINATIONS - Subscriber understands that Vendor or NYSE may determine at any time that, for any of the following reasons, Subscriber does not qualify as a Nonprofessional Subscriber:

(i) Vendor made an erroneous initial determination regarding Subscriber's qualification.

(ii) Vendor or NYSE discovered a misrepresentation herein,

(iii) Subscriber failed to furnish all material information, or

(iv) Subscriber failed to update information contained herein.

Subscriber understands that following such a determination he/she may continue to received Information only after entering into one or more appropriate agreements directly with the appropriate network's administrator(s). The Participants may deny Subscriber the opportunity to enter into such agreement(s) if his/her failure to qualify results from willful misrepresentations or omissions or from willful breach of this Application and Agreement.

b. RETROACTIVE PAYMENT - In an event that such a determination is based upon any of clauses (ii) of Paragraph 7(a), or upon a violation of Paragraph 5, either network's administrator may notify Subscriber in writing (i) of such determination, (ii) of the period, as determined by NYSE, during which Subscriber received such network's Information but did not qualify as a Nonprofessional Subscriber and (iii) of the amount' calculated at Professional Subscriber rates, applicable to such period. Within 30 days of receipt of such notice, Subscriber shall pay such amount to such network's administrator at the address specified in Paragraph 17. subscriber has been informed by vendor of the rates (both professional and nonprofessional) in effect at the time of Subscriber's execution of this Application and Agreement. Subscriber understands that if, pursuant to an agreement between Vendor and the Participants or otherwise. Vendor pays to NYSE, any amount payable by Subscriber pursuant to the Paragraph 7(b), Vendor shall become subrogated to any and all rights of the Participants or recover such amount from Subscriber.

8. SUBSCRIBER-PROCURED EQUIPMENT - If Subscriber receives Information by means of one or more Subscriber procured interrogation devices, Subscriber, unless otherwise directed in writing by Vendor, (a) shall report to Vender, both at the commencement of such receipt and upon Vendor's request, the number and type(s) of such devices, and (b) shall promptly report to Vendor any change in the number or type(s) of such devices. Subscriber hereby indemnifies the Participants for any costs arising out of any claim that any Subscriber-procured interrogation device or the manner in which such device uses Information provided pursuant hereto infringes any patent or copyright

or violates any other property right.

9. **SUBSCRIBER REQUIRED TO UPDATE** - Subscriber shall notify vendor promptly in writing of any change in his/her circumstances that causes any of his/her statements or representations contained in either Part I or Part II to be in any way inaccurate or incomplete or that otherwise prevent him/her from continuing to comply with this Application and Agreement.

10. **STRICT COMPLIANCE REQUIRED** - Subscriber understands that he/she must comply strictly with the provisions of this Application and Agreement in order to continue to receive Information as a nonprofessional subscriber. Subscriber also understands that if, in NYSE's judgment, any breach of this Application and Agreement by Subscriber has occurred or any representation by Subscriber set forth in this Application and Agreement has been or is untrue, Vendor shall, if and as directed by NYSE, terminate this Application and Agreement and discontinue providing Information or Subscriber.

11. **DATA NOT GUARANTEED** - Subscriber understands that neither the Participants nor the "Processor" or "CTA" (as defined in the CTA Plan) guarantees the timelessness, sequence, accuracy or completeness of Information. Neither Subscriber nor any other person shall hold any of them liable in any way for:

- a. any inaccuracies or errors in, or omissions of, any such information or message,
- b. any delays or errors in the transmission or delivery of any part of any such information or message, or
- c. any loss or damage arising from or occasioned by any such inaccuracies, errors, omissions or delayed or by reason of non-performance, or of interruption in any such information or message, either due to any negligent act or omission by any of them or due to any cause beyond the reasonable control of them, including, but not limited to, flood, extraordinary weather conditions or other act of God, fire, war, insurrection, riot, strike, accident, action of government, communications or power failure, or equipment or software malfunction.

\* Term is defined in Paragraph 3 or Part IIB.

12. **DATA MODIFICATION OR DISCONTINUANCE** - Subscriber understands that the participants do not guarantee that they will continue to disseminate, or that they will not change or eliminate any of the methods by which they disseminate, Information. If the Participants discontinue disseminating Information or change or eliminate any such method, Subscriber shall not hold the Participants liable in any way from any loss or damage arising therefrom.

13. **PARTICIPANTS' ENFORCEMENT RIGHT** - The Participants may enforce this Application and the Agreement against Subscriber by legal proceedings or other appropriate means.

14. **PARTICIPANTS' SUBSTITUTED ADMINISTRATION** - Subscriber understands that NYSE may, by written notice, direct Subscriber to send any payments, information or notifications provided for herein to NYSE and, if Subscriber received B Information, to AMEX, as appropriate. Such direction shall specify whether such obligation is in lieu of, or in addition to, Subscriber's obligation to send such item to Vendor. Subscriber shall comply with any such directions.

15. **TERMINATION** - Upon becoming effective, this Application and Agreement shall supersede all agreements, (if any) between Subscriber and either network's administrator relating to Subscriber's receipt of Information through an interrogation service. Subject to Paragraphs 7, 10 and 12, either Subscriber or Vendor may terminate this application and Agreement on not less than 30 days' written notice to the other. Paragraphs 7(b), 8(second sentence only), 11 and

13 shall survive any termination of this Agreement.

16. GOVERNING LAW - This Application and Agreement shall be governed by, and interpreted in accordance with, the law of the State of New York.

17. NOTICES - Any communications to the Participants, NYSE, AMEX, Vendor or Subscriber provided for in, or otherwise relating to, this Application and Agreement shall be sent to such person's below - indicated address:

CTA Plan Participants C/O New York Stock Exchange, Inc. 11 Wall Street New York, New York 10005 Attention: Director of Market Data Services New York Stock Exchange, Inc. (as above)

American Stock Exchange, Inc. 86 Trinity Place New York, New York 10006 Attention: Director of Market Communications Vendor (as below) Subscriber (as below)

**PART IIB - AGREEMENT: NYSE BOND LAST SALE INFORMATION**

To the extent Subscriber received Bond Information by means of any interrogation device, Subscriber agrees that all provisions of Part IIA, except those of paragraphs 3(a) through 3(e) and 3(b), all shall govern such receipt, for that purpose, (a) all references in any such provision to "Information" or B Information" shall be changed to "Bond Information" and (b) all such references to the "Participants", the "network's administrator(s)" or "AMEX" shall be changed to "NYSE". The term "bond last sale information" ("Bond Information") as used in Part I and in this Part IIB shall mean, at any given time, (i) all fast sale prices that reflect completed transactions on NYSE relating to bonds and certain other securities as NYSE may designate from time to time, (ii) any other market information disseminated by NYSE as NYSE may designate from time to item and (iii) all information based on or derived from such last sale prices or market information.

**PART III - PERSONAL AND EMPLOYMENT DATA**

(Please type or print)

(a) Subscriber's name and address:

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(b) Subscriber's occupation(s) (list all occupations - including homemaker, student, retiree, etc.):

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(c) Subscriber's employer(s)\*\* (name and address of employer(s)\*\*, if any, and, if self-employed, businesses address (es), if different from residence):

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(d) Subscriber's title(s) and/or position(s):

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(e) Subscriber's employment functions (description):

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*\*\* Please attach an additional sheet if necessary to include information as to other employers.*

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(Subscriber's Signature)

Dated: \_\_\_\_\_

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(Vendor) Lenz+Partner AG

By: \_\_\_\_\_

Dated: \_\_\_\_\_

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**EXHIBIT B**

**AGREEMENT FOR**  
**MARKET DATA DISPLAY SERVICES**  
**(Usage-Based Services/Nonprofessional Subscriber Status)**

**(Printed Version)**

**Lenz+Partner AG** [NAME OF VENDOR/BROKER DEALER] ("Vendor") agrees to make "Market Data" available to you pursuant to the terms and conditions set forth in this agreement. By executing this Agreement in the space indicated below, you ("Subscriber") agree to comply with those terms and conditions. Section 1 sets forth terms and conditions of general applicability. Section 2 applies insofar as Subscriber receives and uses Market Data made available pursuant to this Agreement as a Nonprofessional Subscriber.

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

1. **MARKET DATA DEFINITION** – For all purposes of this Agreement, "Market Data" means (a) last sale information and quotation information relating to securities that are listed on a national securities exchange, (b) such bond and other equity last sale and quotation information, and such index and other market information, as United States-registered national securities exchanges and national securities associations (each, an "Authorizing SRO") may make available and as the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX") may from time to time designate as "Market Data"; and (c) all information that derives from any such information.

2. **PROPRIETARY NATURE OF DATA** – Subscriber understands and acknowledges that each Authorizing SRO and Other Data Disseminator has a proprietary interest in the Market Data that originates on or derives from it or its market(s).

3. **ENFORCEMENT** – Subscriber understands and acknowledges that (a) the Authorizing SROs are third-party beneficiaries under this Agreement and (b) the Authorizing SROs or their authorized representative(s) may enforce this Agreement, by legal proceedings or otherwise, against Subscriber or any person that obtains Market Data that is made available pursuant to this Agreement other than as this Agreement contemplates. Subscriber shall pay the reasonable attorney's fees that any Authorizing SRO incurs in enforcing this Agreement against Subscriber.



4. **DATA NOT GUARANTEED** – Subscriber understands that no Authorizing SRO, no other entity whose information is made available over the Authorizing SROs' facilities (an "Other Data Disseminator") and no information processor that assists any Authorizing SRO or Other Data Disseminator in making Market Data available (collectively, the "Disseminating Parties") guarantees the timeliness, sequence, accuracy or completeness of Market Data or of other market information or messages disseminated by any Disseminating Party. Neither Subscriber nor any other person shall hold any Disseminating Party liable in any way for (a) any inaccuracy, error or delay in, or omission of, (i) any such data, information or message or (ii) the transmission or delivery of any such data, information or message, or (b) any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay or omission, (ii) non-performance or (iii) interruption in any such data, information or message, due either to any negligent act or omission by any Disseminating Party, to any "force majeure" (e.g., flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, equipment or software malfunction) or to any other cause beyond the reasonable control of any Disseminating Party.

5. **PERMITTED USE** – Subscriber shall not furnish Market Data to any other person or entity and, subject to Paragraph 10, shall use Market Data only for its individual use in its business.

6. **DISSEMINATION DISCONTINUANCE OR MODIFICATION** – Subscriber understands and acknowledges that, at any time, the Authorizing SROs may discontinue disseminating any category of Market Data, may change or eliminate any transmission method and may change transmission speeds or other signal characteristics. The Authorizing SROs shall not be liable for any resulting liability, loss or damages that may arise therefrom.

7. **DURATION; SURVIVAL** – This Agreement remains in effect for so long as Subscriber has the ability to receive Market Data as contemplated by this Agreement. In addition, Vendor may terminate this Agreement at any time, whether at the direction of the Authorizing SROs or otherwise. Paragraphs 2, 3 and 4, and the first two sentences of Paragraph 8, survive any termination of this Agreement.

8. **MISCELLANEOUS** – The laws of the State of New York shall govern this Agreement and it shall be interpreted in accordance with those laws. This Agreement is subject to the Securities Exchange Act of 1934, the rules promulgated under that act, and the joint-industry plans entered into pursuant to that act. This writing contains the entire agreement between the parties in respect of its subject matter. Subscriber may not assign all or any part of this Agreement to any other person. The person executing this Agreement below represents and warrants that he or she has legal capacity to contract and, if that person is executing this Agreement on behalf of a proprietorship or a business, partnership or other organization, represents and warrants that he or she has actual authority to bind the organization.

## **SECTION 2: NONPROFESSIONAL SUBSCRIBER**

### **9. NONPROFESSIONAL SUBSCRIBER DEFINITION -**

"Nonprofessional Subscriber" means any natural person whom Vendor has determined to qualify as a "Nonprofessional Subscriber" and who is not:

- (a) registered or qualified with the Securities and Exchange Commission (the "SEC"), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association.
- (b) engaged as an "investment advisor" as that term is defined in Section 201(11) of the Investment Advisor's Act of 1940 (whether or not registered or qualified under that Act), nor
- (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him or her to be so registered or qualified if he or she were to perform such functions for an organization not so exempt.

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

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

Subscriber's name and address:

Subscriber's occupations (list all occupations – including homemaker, student, retiree, etc.):

Name(s) and address(es) of Subscriber's employer(s):

Subscriber's title(s) and/or position(s):

Subscriber's employment functions (description):

Subscriber shall notify Vendor promptly in writing of any change in his or her circumstances that may cause him or her to cease to qualify as a Nonprofessional Subscriber.]

12. **CERTIFICATION** – By executing this Agreement, Subscriber hereby certifies that he or she falls within Paragraph 9's definition of "Nonprofessional Subscriber" and that the personal and employment information that he or she has included in Paragraph 11 is truthful and accurate.

\* \* \*

ACCEPTED AND AGREED: I, the "Subscriber" to which the preceding terms and conditions refer, acknowledge that I have read the preceding terms and conditions, that I understand them and that I hereby agree to comply with those terms and conditions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

SUBSCRIBER

VENDOR

\_\_\_\_\_  
(Name of Subscriber)

Lenz+Partner AG  
\_\_\_\_\_  
(Name of Vendor)

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**Stand Alone Nasdaq Subscriber Agreement**

**DISCLOSURE – PLEASE READ**

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

**RESTRICTIONS ON USES & TRANSFER:** Subscribers may not provide access to Information or transfer the Agreement to others. The Information is only for personal non-professional use or, if you are a *Professional Subscriber* (see definition in Paragraph [1] of the Agreement) for internal business use and/or personal use. [Paragraph 3]

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

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

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

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

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

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

The Agreement appears below. If you are at least 18 years old, sign it as either a Professional or a Non-Professional Subscriber by signing your name or other symbol of your signature on the “Signature” line in the appropriate signature part(s) below.

**SIGNATURE SECTION - This section incorporates all terms of The Nasdaq Subscriber Agreement by this reference.**

Do you qualify as a **non-professional** as defined in paragraph [1] of the Agreement?  Yes  No

**A. MANDATORY FOR ALL SUBSCRIBERS**

Subscriber: (print name)

Signature:

Date:

**B. AGENT USE ONLY (complete only if you signed on behalf of the Subscriber)**

Print Name: (printed name of person signing for Subscriber)

Title:  Chief Executive Officer  Chief Operating Officer  Other:  
 President  Senior Vice-President  
 Vice-President  Managing Director

(use “Other” only if you have the same contracting authority as the listed titles but your title is different)

**C. FOR VENDOR USE ONLY**

Vendor Name:

Signature:

Print Name: (printed name of person signing for Vendor)

Title:  Chief Executive Officer  Chief Operating Officer  Other:  
 President  Senior Vice-President  
 Vice-President  Managing Director

(use “Other” only if you have the same contracting authority as the listed titles but your title is different)

Date:

**THE VENDOR AND ITS AGENTS MAY NOT MODIFY OR WAIVE ANY TERM OF THIS AGREEMENT.  
ANY ATTEMPT TO MODIFY THIS AGREEMENT, EXCEPT BY NASDAQ, IS VOID.**

1. The word "Nasdaq" means The Nasdaq Stock Market, Inc. and its affiliates. The word "Information" means certain data and other information: relating to securities or other financial instruments, products, vehicles or devices; or relating to Persons regulated by Nasdaq or to activities of Nasdaq; or gathered by Nasdaq from other sources. The word "or" includes the word "and". The phrase "Claims or Losses" means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, judgments, settlements, and expenses of whatever nature, whether incurred by or issued against an indemnified party or a third party, including, without limitation, (1) indirect, special, punitive, consequential or incidental loss or damage, (including, but not limited to, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, or other indirect loss or damage) and (2) administrative costs, investigatory costs, litigation costs, and auditors' and attorneys' and fees and disbursements (including in-house personnel). The word "Person" means any natural person, proprietorship, corporation, partnership, or other entity whatsoever. The phrase "Non-Professional Subscriber" means any natural person who is neither: (a) registered or qualified in any capacity with the SEC, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor" as that term is defined in Section 201 (11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor, (c) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. The phrase "Professional Subscriber" means all other persons who do not meet the definition of Non-Professional Subscriber. When it appears alone, the word "Subscriber" encompasses all Non-Professional and Professional Subscribers. The phrase "Vendor's Service" means the service from a vendor, including the data processing equipment, software, and communications facilities related thereto, for receiving, processing, transmitting, using and disseminating the Information to or by Subscriber.
  2. Subscriber is granted the right to receive from Nasdaq the Information under the terms stated herein or in the NASD Rules. "NASD Rules" shall mean all applicable laws (including intellectual property, communications, and securities laws), statutes, and regulations, the rules and regulations of the SEC, the rules and regulations of Nasdaq including, but not limited to, those requirements established by Nasdaq's rule filings (with such SEC approval as may be required), Nasdaq's decisions and interpretations and any User Guides, or successors of the components of the NASD Rules, as they may exist at the time. For Professional Subscriber, if any payment is due directly to Nasdaq under this Agreement, payment in full is due Nasdaq in immediately available U.S. funds, within 30 days of the date of an invoice, whether or not use is made of, or access is made to, the Information. Interest shall be due from the date of the invoice to the time that the amount(s) that are due have been paid. Subscriber shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on Subscriber or Nasdaq (except for U.S. federal, state, or local income taxes, if any, imposed on Nasdaq) by any foreign or domestic national, state, provincial or local governmental bodies, or subdivisions thereof, and any penalties or interest, relating to the provision of the Information to Subscriber.
  3. The Information is licensed only for the personal use of the Non-Professional Subscriber and the internal business use and/or personal use of the Professional Subscriber. By representing to Vendor that Subscriber is a non-professional, or by continuing to receive the Information at a non-professional subscriber rate, Subscriber is affirming to Vendor and Nasdaq that Subscriber meets the definition of Non-Professional Subscriber as set forth in paragraph 1 above. Subscriber will promptly give written notice to Vendor of any change in the name or place of residence or place of business at which the Information is received. Subscriber may not sell, lease, furnish or otherwise permit or provide access to the Information to any other Person or to any other office, or place. Subscriber will not engage in the operation of any illegal business; use or permit anyone else to use the Information, or any part thereof, for any illegal purpose; or violate any NASD Rule. Professional Subscribers may, on a non-continuous basis, furnish limited amounts of the Information to customers: in written advertisements, correspondence, or other literature; or during voice telephonic conversations not entailing computerized voice, automated information inquiry systems, or similar technologies. Subscriber may not present the Information rendered in any unfair, misleading, or discriminatory format. Subscriber shall take reasonable security precautions to prevent unauthorized Persons from gaining access to the Information.
  4. Subscriber acknowledges that Nasdaq, in its sole discretion, may from time to time make modifications to its system or the Information. Such modifications may require corresponding changes to be made in Vendor's Service. Changes or the failure to make timely changes by Vendor or Subscriber may sever or affect Subscriber's access to or use of the Information. Nasdaq shall not be responsible for such effects.
  5. Nasdaq grants to Subscriber a nonexclusive, non-transferable license during the term of the Agreement to receive and use the Information transmitted to it by Vendor and thereafter to use such Information for any purpose not inconsistent with the terms of the Agreement or with the NASD Rules. Subscriber acknowledges and agrees that Nasdaq has proprietary rights in the Information that originates on or derives from markets regulated or operated by Nasdaq and compilation or other rights in Information gathered from other sources. Subscriber further acknowledges and agrees that Nasdaq's third party Information providers have exclusive proprietary rights in their respective Information. In the event of any misappropriation or misuse, Nasdaq or its third party information providers shall have the right to obtain injunctive relief for its respective materials. Subscriber will attribute source as appropriate under all the circumstances.
  6. Subscriber acknowledges that Nasdaq, as a subsidiary of NASD, when required to do so by NASD in fulfillment of NASD's statutory obligations, may by notice to Vendor unilaterally limit or terminate the right of any or all Persons to receive or use the Information, and that Vendor will immediately comply with any such notice and will terminate or limit the furnishing of the Information and confirm such compliance by notice to Nasdaq. Any affected Person will have available to it such procedural protections as are provided by the Exchange Act and applicable rules thereunder. Neither Nasdaq nor NASD shall have any liability when complying with such NASD notice.
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7. Professional Subscriber shall make its premises available to Nasdaq for physical inspection of Vendor's Service and of Professional Subscriber's use of the Information (including review of any records regarding use of, or access to, the Information and the number and locations of all devices that receive Information), all at reasonable times, upon reasonable notice, to ensure compliance with this Agreement. Non-professional Subscriber shall comply promptly with any reasonable request from Nasdaq for information regarding the Non-Professional Subscriber's receipt, processing, display and redistribution of the Information.

8. To the extent permitted by applicable law, Subscriber acknowledges and agrees that the termination of the Vendor's Service for failure to make payments shall not be deemed or considered to be, and Subscriber waives any right to represent or assert that any such exercise constitutes, an act or omission or an improper denial or limitation of access by Nasdaq to any service or facility operated by Nasdaq as contemplated in Section 11A of the Exchange Act, or any other provision of the Exchange Act, or any rule, regulation, or interpretation adopted thereunder.

9. NASDAQ'S WARRANTIES/DISCLAIMER OF WARRANTIES. NASDAQ SHALL ENDEAVOR TO OFFER THE INFORMATION AS PROMPTLY AND ACCURATELY AS IS REASONABLY PRACTICABLE. IN THE EVENT THAT THE INFORMATION IS NOT AVAILABLE AS A RESULT OF A FAILURE BY NASDAQ TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, NASDAQ WILL ENDEAVOR, GIVING DUE REGARD FOR THE COST, TIME, AND EFFECT ON OTHER USERS, TO CORRECT ANY SUCH FAILURE. IN THE EVENT THAT THE INFORMATION IS NOT AVAILABLE, IS DELAYED, IS INTERRUPTED, IS INCOMPLETE, OR IS NOT ACCURATE OR IS OTHERWISE MATERIALLY AFFECTED FOR A CONTINUOUS PERIOD OF FOUR (4) HOURS OR MORE DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION DUE TO THE FAULT OF NASDAQ (EXCEPT FOR A REASON PERMITTED IN THIS AGREEMENT OR IN NASDAQ'S AGREEMENT WITH THE VENDOR), SUBSCRIBER'S OR ANY OTHER PERSON'S EXCLUSIVE REMEDY AGAINST NASDAQ SHALL BE (A) IF SUBSCRIBER OR ANY OTHER PERSON CONTINUES TO RECEIVE THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A PRORATED MONTH'S CREDIT OF ANY MONIES DUE, IF ANY, FOR THE AFFECTED INFORMATION DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM SAID OTHER PERSON, FOR THE PERIOD AT ISSUE OR, (B) IF SUBSCRIBER OR ANY OTHER PERSON NO LONGER RECEIVES EITHER THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A PRORATED MONTH'S REFUND OF ANY MONIES DUE FOR THE AFFECTED INFORMATION DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM SAID OTHER PERSON, FOR THE PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL, IF APPLICABLE, BE REQUESTED BY WRITTEN NOTICE TO NASDAQ WITH ALL PERTINENT DETAILS. BEYOND THE WARRANTIES STATED IN THIS SECTION, THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, ACCURACY, FREEDOM FROM INTERRUPTION), ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

10. NASDAQ'S LIMITATION OF LIABILITY. (A) EXCEPT AS MAY OTHERWISE BE SET FORTH HEREIN, NASDAQ SHALL NOT BE LIABLE TO SUBSCRIBER, ITS VENDOR OR ANY OTHER PERSON FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE (INCLUDING, BUT NOT LIMITED TO, TRADING LOSSES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR INCREASED EXPENSES OF OPERATION, COST OF COVER, OR OTHER INDIRECT LOSS OR DAMAGE) OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF NASDAQ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(B) NASDAQ SHALL NOT BE LIABLE TO SUBSCRIBER OR ANY OTHER PERSON FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE INFORMATION THAT LASTS LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION OR IF THE INFORMATION IS MATERIALLY AFFECTED FOR LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION.

(C) IF NASDAQ IS FOR ANY REASON HELD LIABLE TO SUBSCRIBER OR TO ANY OTHER PERSON, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF NASDAQ WITHIN A SINGLE YEAR (FROM THE EFFECTIVE DATE OF THE AGREEMENT) OF THE AGREEMENT [COMBINED WITH THE TOTAL OF ALL CLAIMS OR LOSSES OF SUBSCRIBER'S VENDOR, AND ANY OTHER PERSON CLAIMING THROUGH, ON BEHALF OF, OR AS HARMED BY SUBSCRIBER] IS LIMITED TO AN AMOUNT OF SUBSCRIBER'S DAMAGES THAT ARE ACTUALLY INCURRED BY SUBSCRIBER IN REASONABLE RELIANCE, AND WHICH AMOUNT DOES NOT EXCEED THE LESSER OF: (I) IF SUBSCRIBER OR ANY OTHER PERSON CONTINUES TO RECEIVE THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A PRORATED MONTH'S CREDIT OF ANY MONIES DUE DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM ANY OTHER PERSON, FOR THE INFORMATION AT ISSUE DURING THE PERIOD AT ISSUE OR, IF SUBSCRIBER OR ANY OTHER PERSON NO LONGER RECEIVES EITHER THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A REFUND OF ANY MONIES DUE DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM ANY OTHER PERSON, FOR THE INFORMATION AT ISSUE DURING THE PERIOD AT ISSUE; OR (II) \$500.00.

(D) THIS SECTION SHALL NOT RELIEVE NASDAQ, SUBSCRIBER OR ANY OTHER PERSON FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.

(E) SUBSCRIBER AND NASDAQ UNDERSTAND AND AGREE THAT THE TERMS OF THIS SECTION REFLECT A REASONABLE ALLOCATION OF RISK AND LIMITATION OF LIABILITY.

11. THIRD PARTY INFORMATION PROVIDERS' DISCLAIMERS OF WARRANTIES/LIMITATIONS OF LIABILITIES. NASDAQ'S THIRD PARTY INFORMATION PROVIDERS MAKE NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, ACCURACY, FREEDOM FROM INTERRUPTION), ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, OR THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE AND THEY SHALL HAVE NO LIABILITY FOR THE ACCURACY OF, OR FOR DELAYS OR OMISSIONS IN, ANY OF THE INFORMATION PROVIDED BY THEM. NASDAQ'S THIRD PARTY INFORMATION PROVIDERS SHALL ALSO HAVE NO LIABILITY FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, WHETHER LOST PROFITS, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF THE SUBSCRIBER OR ANY OTHER PERSON SEEKING RELIEF THROUGH SUBSCRIBER, EVEN IF THE THIRD PARTY INFORMATION PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE LIABILITY OF THE THIRD PARTY INFORMATION PROVIDERS OR THEIR AFFILIATES TO SUBSCRIBER OR ANY OTHER PERSON SEEKING RELIEF THROUGH SUBSCRIBER PURSUANT TO ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE FEE PAID BY SUBSCRIBER OR ANY OTHER PERSON SEEKING RELIEF THROUGH SUBSCRIBER, AS APPLICABLE.

12. Notwithstanding any other term or condition of this Agreement, Nasdaq, its third party information providers or Subscriber shall not be obligated to perform or observe their respective obligations undertaken in this Agreement (except for obligations to make payments hereunder and regulatory obligations) if prevented or hindered from doing so by any circumstances found to be beyond their control.
13. Subscriber will indemnify and hold harmless Nasdaq and its employees, officers, directors, and other agents from any and all Claims or Losses imposed on, incurred by or asserted as a result of or relating to: (a) any noncompliance by Subscriber with the terms and conditions hereof; (b) any third-party actions related to Subscriber's receipt and use of the Information, whether authorized or unauthorized under the Agreement.
14. Each party warrants and represents and will indemnify and hold harmless (and in every case, Nasdaq shall be permitted to solely defend and settle) another party (including Nasdaq) and their officers, directors, employees, and other agents, against any Claims or Losses arising from, involving, or relating to a claim of infringement or other violation of an intellectual property right by the indemnifying party, its actions or omissions, equipment, or other property. This right is conditioned on the indemnified party giving prompt written notice to the indemnifying party (as does not prejudice the defense) of the Claims or Losses and providing cooperation in the defense of the Claims or Losses (without waiver of attorney-client, work-product or other legal privilege, or disclosure of information legally required to be kept confidential).
15. Subscriber agrees that Nasdaq may enforce the terms of this Agreement against any Person, whether or not Vendor or Subscriber is a party to any such action or against Subscriber itself. In any action there shall be available injunctive relief or damages, with the prevailing party being awarded costs and attorneys' fees (including in-house counsel).
16. In the event of any conflict between the terms of this Agreement and of the Vendor's agreement, the terms of this Agreement shall prevail as between Nasdaq and Subscriber.
17. In addition to terminations permitted under the Vendor's agreement, this Agreement may be terminated by Subscriber on 30 days written notice to Vendor and by Nasdaq on 30 days written notice either to Vendor or Subscriber. Nasdaq may also alter any term of this Agreement on 60 days written notice either to Vendor or Subscriber, and any use after such date is deemed acceptance of the new terms. In the event of Subscriber breach, discovery of the untruth of any representation of Subscriber, or where directed by NASD in its regulatory authority, Nasdaq may terminate this Agreement on not less than three (3) days written notice to Subscriber provided either by Nasdaq or Vendor.
18. Nasdaq does not endorse or approve any equipment, Vendor, or Vendor's Service.
19. Natural persons executing this Agreement warrant and represent that they are at least eighteen (18) years of age. Subscriber and the Person executing this Agreement on behalf of Subscriber which is a proprietorship, corporation, partnership or other entity, represent that such Person is duly authorized by all necessary and appropriate corporate or other action to execute the Agreement on behalf of Subscriber.
20. All notices, invoices, and other communications required to be given in writing under this Agreement shall be directed to: The Nasdaq Stock Market, Inc., 1735 K Street, NW, Washington, DC 20006, Attn.: Manager: Market Data Distribution, or to Subscriber at the last address known to the Vendor, and shall be deemed to have been duly given upon actual receipt by the parties, or upon constructive receipt if sent by certified mail, postage pre-paid, return receipt requested, at such address or to such other address as any party hereto shall hereafter specify by written notice to the other party or parties hereto.
21. Except as otherwise provided herein, no provision of this Agreement may be amended, modified, or waived, unless by an instrument in writing executed by a duly authorized signatory of the party against whom enforcement of such amendment, modification, or waiver is sought. No failure on the part of Nasdaq or Subscriber to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege under this Agreement. If any of the provisions of this Agreement, or application thereof to any Person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to Persons or circumstances other than those as to which they are held invalid or unenforceable, shall not be affected thereby and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
22. The terms of this Agreement apply to those obligations that survive any cancellation, termination, or rescission, namely, obligations relating to intellectual property, indemnification, limitation of liability, warranties, disclaimer of warranties, and Exchange Act related provisions.
23. This Agreement shall be deemed to have been made in the United States in the State of Maryland and shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Maryland, without reference to principles of conflicts of laws thereof. Subscriber hereby consents to submit to the jurisdiction of the courts of or for the State of Maryland in connection with any action or proceeding instituted relating to this Agreement.