



# Nasdaq Extranet Connection Agreement

This Extranet Connection Agreement (“**Agreement**”), dated as of the Effective Date, is made by and between The Nasdaq, Inc. (“**Nasdaq**”), a Delaware Corporation (Nasdaq and its affiliates are collectively referred to as the “**Corporations**”) whose principal offices are located at One Liberty Plaza, 165 Broadway, New York, NY 10006 and Extranet (each a “**Party**” and collectively the “**Parties**” to this Agreement.) The Parties hereby agree to the following terms and conditions:

<b>Extranet:</b>	
<b>Extranet Address:</b>	
<b>Extranet Phone:</b>	
<b>Extranet Email:</b>	
<b>Extranet Contact:</b>	

<b>Extranet Billing Address:</b>	
<b>Extranet Billing Phone:</b>	
<b>Extranet Billing Email:</b>	
<b>Extranet Billing Contact:</b>	

<b>Extranet Technical Address:</b>	
<b>Extranet Technical Phone:</b>	
<b>Extranet Technical Email:</b>	
<b>Extranet Technical Contact:</b>	

<b>Effective Date:</b>	
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**Terms and Conditions.** The terms and conditions set forth in **Exhibit A**, attached hereto, are made an integral part of this Agreement.

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

**Extranet:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Nasdaq, Inc.**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A Terms and Conditions

### 1. Definitions.

*"Affiliate"* shall mean any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association or other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such party.

*"Claims or Losses"* means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, and reasonable costs and expenses of whatever nature, whether incurred by or issued against an indemnified party, including, without limitation: (i) 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 (ii) reasonable administrative costs, litigation costs, and auditors' and attorneys' fees, both in-house and outside counsel, and related disbursements.

*"Customers"* shall mean end users to that subscribe or otherwise utilize Extranet's connectivity services.

*"Data Center"* means the Nasdaq data center from which the Connection is being provided.

*"Equipment Configuration"* shall mean any line, circuit, router package, or other technical configuration used to provide a connection to the Exchange market data feeds.

*"Extranet Appendix"* shall mean the appendix to the Extranet Agreement available at <http://www.nasdaqtrader.com/content/AdministrationSupport/Policy/Extranet/ExtranetAppendix.pdf>.

*"Extranet Equipment"* shall mean the hardware and software provided by or on behalf of Extranet and permitted to be installed at the Data Center by Nasdaq in order to enable the Connection.

*"Extranet Personnel"* Extranet's employees, officers, directors, independent consultants, contractors, and other agents.

*"Information"* shall mean the information and data provided by Nasdaq.

*"Nasdaq Market(s)"* shall mean the markets as detailed in the Extranet Appendix.

*"Nasdaq Requirements"* shall mean: (a) the rules, regulations, interpretations, decisions, opinions, orders and other requirements of the Securities Exchange Commission ("**SEC**") or a Financial Services Authority ("**FSA**"), as may be applicable based on the Nasdaq Market from which the Information is received; (b) the applicable rules and regulations of Nasdaq, its affiliates and its registered securities and options markets and other subsidiaries of Nasdaq, including each Nasdaq Market; (c) the Nasdaq Markets' applicable decisions, policies, interpretations, operating procedures, specifications, requirements, and other documentation (including, but not limited to, user guides); (d) all other applicable laws, statutes, rules, regulations, orders, decisions, interpretations, opinions, and other requirements, whether promulgated by the United States or any other applicable jurisdiction (including in the area of intellectual property); (e) the successors, as they may exist at the time, of the components of the Nasdaq Requirements; and (f) the statutory obligations and restrictions detailed in the Extranet Appendix.

2. **Extranet Equipment.** In the event Extranet desires to place Extranet Equipment within the Data Center, Extranet's request for placement, placement and continued co-location of the Extranet Equipment shall be in accordance with and subject to the Nasdaq Co-location and Connectivity Service Terms.

### 3. Provision of Services.

- 3.1 Subject to approval of the applicable government or regulatory agency, Nasdaq shall provide Extranet with a connection into Nasdaq's network (the "**Connection**") by means of the Extranet Equipment or other means agreed to by the Parties and in accordance with the terms and conditions of this Agreement including the Nasdaq Requirements.
- 3.2 Extranet acknowledges and agrees that nothing in this Agreement constitutes an undertaking by Nasdaq to continue the Connection, or any aspect of it, in the present form or configuration or under the current specifications or requirements.

Nasdaq, in its sole discretion, may from time to time make additions to, deletions from or modifications to: (i) the Connection; and/or (ii) any specifications and requirements. Nasdaq shall endeavor to provide Extranet ninety (90) days advance notice of any change to the Connection (other than a minor change), unless a malfunction in Nasdaq's systems or network necessitates modifications on an accelerated basis or an emergency situation precludes such advance notice or a shorter time period is required pursuant to an order of a court, arbitrator or a regulatory agency. Use of the Connection after any change shall constitute acceptance of the Connection, as changed. Under no circumstances shall Nasdaq delay the implementation any such changes due to delays by Extranet in implementing related changes in Extranet's systems or networks or in the systems or networks of Customers.

3.3 If this Extranet Agreement will be applicable to an Affiliate, Extranet must submit a list of any such Affiliate(s) to Nasdaq. By submitting the names of its Affiliate(s), Extranet agrees that the contact information set forth herein shall be deemed to be the contact information for each Affiliate and that EXTRANET SHALL ASSUME ALL RESPONSIBILITY FOR AND WILL HOLD HARMLESS AND INDEMNIFY NASDAQ AGAINST ANY ACTION OR INACTION BY AN AFFILIATE AS IF SUCH ACTION OR INACTION WERE THAT OF EXTRANET, AND EXTRANET AND ITS AFFILIATE(S) SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL ACTIONS AND/OR INACTIONS OF THE OTHER(S)

#### 4. **Customers.**

4.1 Extranet shall only provide, or cause or permit to be provided, a Connection to Nasdaq to a Customer who, at the time of the provision of such Connection, is of a type qualified (as set forth in the Extranet Appendix) to receive Information. Extranet agrees that Nasdaq may have different qualification requirements for different types of Customers. Extranet shall submit a Customer for approval to Nasdaq and Nasdaq shall undertake reasonable efforts to notify Extranet in writing (email to suffice) within three (3) business days whether a potential or actual Customer is eligible to receive Information from Nasdaq and the types of Information for which the Customer is eligible. Such inquiries from Extranet shall only be generated if an actual or potential Customer inquires of Extranet as to the type of Information for which it is eligible. In no event shall Extranet provide Customers with access to the Information without receiving Nasdaq's prior written consent. BY EXECUTING THIS AGREEMENT, NASDAQ DOES NOT GUARANTEE THE PROVISION OF ANY INFORMATION TO EXTRANET OR TO ANY CUSTOMERS. THE PROVISION OF SOME INFORMATION DOES NOT SIGNIFY THAT OTHER INFORMATION WILL BE PROVIDED.

4.2 If any Customer fails to comply with any of the conditions, terms or provisions of this Agreement applicable to Customers, of any agreement between a Customer and Nasdaq and/or Extranet for the access to Nasdaq and/or the Information, or any other agreement between a Customer and Nasdaq, and Customer has failed to cure such non-compliance within the cure period, if any, set forth in the applicable agreement, or if a Customer has made any representation in any such agreements which was or has become untrue, then the Extranet shall, within five (5) business days after receipt of notice from Nasdaq of such failure or untruth, cease providing access to Nasdaq and to the Information to such Customer and shall, within seven (7) business days following the receipt of such notice, confirm such cessation by notice to Nasdaq.

4.3 If Extranet provides access without Nasdaq's prior written consent, Extranet shall be liable to Nasdaq, as set forth in Section 6, for Fees, taxes, charges and assessments, and related penalties and interest, which would otherwise be due Nasdaq from such unauthorized Customers for receipt of goods and services, including, but not limited to, Information from Nasdaq as well as any other remedy that may be available to Nasdaq. If Extranet becomes aware of a potential unauthorized use or access by a Customer, Extranet shall notify Nasdaq immediately of such use.

#### 5. **Obligations; Restrictions.**

5.1 Extranet shall take reasonable security precautions to prevent unauthorized individuals or entities from gaining access to the Connection and Information. Extranet shall comply with all reasonable security specifications or requirements of Nasdaq in order to prevent the Connection and the Information from being improperly used or accessed or from being improperly taken.

5.2 Extranet agrees to not: (a) format, display, access (except to the degree reasonably necessary to maintain the security of the Extranet's network and not otherwise in violation of this Agreement) or alter the Information received through and from the Connection; (b) affect the integrity of the Information; and (c) not to render the Information inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. Extranet represents that it will not interfere with or adversely affect any of the component parts or processes of the Information, the Connection or Nasdaq's systems, or any use thereof by any other authorized individuals or entities, or the distribution or operation of the Information, the Connection or Nasdaq's systems.

## 6. Fees, Taxes and Payment.

- 6.1 Extranet will pay to Nasdaq or Nasdaq's designee the then effective charges as set forth in the Nasdaq Requirements (as those charges may be updated on thirty (30) days advance notice), including interest and late fees and/or penalties (collectively, "Fees"). For avoidance of doubt, the Fees detailed herein do not include any fees that may be charged pursuant to the Nasdaq Co-location and Connectivity Service Terms.
- 6.2 Extranet shall be responsible for all taxes, charges or assessments (other than taxes imposed on the net income or personal property of Nasdaq) by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof, and any penalties or interest relating to the provision of the services hereunder to Extranet. In addition, if Extranet is required by applicable law to deduct or withhold any such tax, charge or assessment from the amounts due Nasdaq, then such amounts due shall be increased so that the net amount actually received by Nasdaq after the deduction or withholding of any such tax, charge or assessment, will equal one hundred percent (100%) of the charges that are owed.
- 6.3 Unless otherwise set forth in the Nasdaq Requirements, payment of the Fees is due within 15 days after the end of the calendar month for that calendar month. Extranet shall pay Nasdaq, on demand or upon invoice, interest on any amounts due Nasdaq pursuant to this Agreement which are not paid within thirty (30) days after the applicable due date. Interest shall accrue at a rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum amount permitted by applicable law, for the period commencing with the applicable due date and ending upon receipt of payment by Nasdaq. Payment shall be made in immediately available United States funds by a check drawn against a chartered United States financial institution or any other institution acceptable to Nasdaq or by electronic funds transfer to an institution of Nasdaq's choosing.
7. **Ownership.** Extranet acknowledges that it has no rights in or to the Information, except for the right to transmit the Information to the degree permitted under this Agreement and the agreement between Nasdaq and a Customer and solely to the extent such Customer may be qualified to receive Information as set forth in Section 4. Extranet acknowledges and agrees that the Nasdaq Markets have: (a) proprietary rights in the information and data that originates on, derives from or relates to markets that are regulated, operated or administered by the Nasdaq Markets, in the information and data that relates to individuals and entities that are regulated by the Nasdaq Markets, and in the information and data that relates to activities that are regulated or operated by the Nasdaq Markets; and (b) compilation or other rights in information and data gathered from other sources. All Information, 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 Nasdaq. Extranet shall not, by act or omission, diminish or impair in any manner the acquisition, maintenance, and full enjoyment by Nasdaq, its licensees, transferees and assignees, of the proprietary rights of Nasdaq in the Information and Nasdaq's networks and system. Extranet acknowledges and agrees that individuals and entities that provide information, goods and services to Nasdaq may have exclusive proprietary rights in their respective information and data. Such information, goods and services shall be included in the definition of Information.

## 8. Monthly Reporting.

- 8.1 Each month, Extranet shall provide Nasdaq with the reporting set forth in the Extranet Appendix (the "Report(s)"). The Report shall, at a minimum, consist of a list of the names of Customers and the Equipment Configuration (*if applicable*). Unless otherwise set forth in the Extranet Appendix, such reporting shall occur within fifteen (15) days of the end of the applicable reporting period set forth in the Extranet Appendix.
- 8.2 Extranet is limited to a sixty (60) calendar-day grace period in which to revise or correct its usage reporting in order to obtain retroactive credits. The grace period begins on the due date of the original report, but is extended to the next business day if the last day of the grace period coincides with a market holiday or weekend day. Nasdaq will not provide Extranet with back credits for original or revised reporting received after the end of the grace period. Revised reporting could include, but is not limited to, reclassification of Customers and correction of errors by Extranet. This subsection does not limit Extranet's liability to Nasdaq for underreporting of Customers, of Equipment Configurations or of usage of Information.

## 9. Audit.

- 9.1 No more than once a year, Nasdaq may cause Extranet's: (a) records; (b) reports and payments to Nasdaq; and (c) the Extranet's system and service (and all instruments and apparatus used in connection therewith), to the extent such systems and services relate to the provision of Information to Customers, to be reviewed by Nasdaq's designated auditor. Nasdaq may conduct more frequent reviews if Nasdaq determines that Extranet is not in compliance with the terms of this

Agreement and/or the Nasdaq Requirements. The review shall be scheduled upon reasonable notice to Extranet, depending upon the circumstances and conducted in locations where Extranet's records are kept or where Extranet's system is located. In addition to or in lieu thereof, Extranet shall provide Nasdaq promptly with information or materials in response to any request for information. Extranet shall make available for examination all records, reports, payments, and supporting documentation, and Extranet's system and service necessary in the judgment of the Nasdaq audit personnel to reach a conclusion as to the accuracy and completeness of: (i) Extranet's reports to Nasdaq; (ii) the payments connected therewith; and (iii) compliance with the Agreement and the Nasdaq Requirements. If the review conducted by Nasdaq determines there is underreporting, underpayment or other financial non-compliance, then, at Nasdaq's sole discretion, either Extranet shall cause Extranet's auditors (at Extranet's sole expense) to conduct a review and to determine the magnitude of any adjustments of amounts previously remitted to Nasdaq within ninety (90) days after notice from Nasdaq, or Nasdaq or its auditors shall determine the magnitude of any such adjustments. If such audit or review discloses additional underreported or underpaid amounts or other financial non-compliance, such amounts shall be remitted to Nasdaq, together with applicable interest, the later of fifteen (15) days after the date of Nasdaq's invoice or the applicable due date as set forth in the Nasdaq Requirements; if such audit or review discloses an overpayment, then Nasdaq will apply the overpayment for the sixty (60) days prior to the end of the period being reviewed as a credit against amounts due from Extranet. Nasdaq will not provide credits to Extranet for disclosures of overpayments. If the review or response to Nasdaq's request for information shows other non-compliance, then Extranet shall comply with Nasdaq's demand for compliance. Nasdaq's determination in all cases shall be deemed conclusive. Nasdaq agrees that liability pursuant to this subsection for underreporting, or underpaying for shall be limited to unpaid fees, together with interest, for the two (2) years preceding the earlier of the date that Extranet, Extranet's auditors or Nasdaq first knew that such underreporting or underpayment has occurred, if such underreporting or underpayment is solely the result of a good faith error by Extranet.

- 9.2 Further, if such underreporting, underpayment or other financial non-compliance is equal to or greater than ten percent (10%) of the monthly invoiced amount for any audited or unaudited period referred to herein, Extranet shall, in addition to remitting the fees and applicable interest due relative to such underreporting, underpayment or other financial non-compliance, reimburse Nasdaq, within the later of fifteen (15) days of the date of the invoice from Nasdaq or the applicable due date as set forth in the Nasdaq Requirements, for any audit, legal or administrative costs and expenses incurred to detect and rectify such underreporting, underpayment or other financial non-compliance, provided, however, that such costs and expenses are incurred in good faith and are not unreasonable given the amount of work necessary to detect and determine the extent of, and the actual amount of, such underreporting, underpayment or other financial non-compliance.

## 10. **Term; Termination; Effect of Termination.**

- 10.1 The term of this Agreement shall commence upon the Effective Date and, unless the Agreement is otherwise terminated, the term shall continue until this Agreement is terminated by at least thirty (30) days prior written notice by a party hereto given to the other. Notwithstanding the foregoing, this Agreement may be terminated by:

- 10.1.1 either party for a breach of this Agreement (except as set forth in Section 10.1.2, upon not less than fifteen (15) days prior written notice to the breaching party, unless, if the breach is capable of being cured, the breach is cured within the notice period;
- 10.1.2 either party, if an invoice has not been paid in full within ninety (90) days from the date of such invoice;
- 10.1.3 Nasdaq, immediately, in the event that Extranet becomes insolvent; or Extranet makes an assignment for the benefit of creditors; or Extranet does not pay its debts as they become due or admits its inability to pay its debts when due; or Extranet files or has filed against it any petition under any provision of the Bankruptcy Act or an application for a receiver, trustee, or custodian is made by anyone or Extranet becomes the subject of any proceedings of bankruptcy, insolvency, reorganization, dissolution, receivership, liquidation or arrangement, adjustment, or composition with creditors;
- 10.1.4 Nasdaq, immediately (with notice where practicable), in the event that Extranet is not permitted or not able to receive or Nasdaq is prevented from disseminating the Information, or any part thereof; or any representation, warranty or certification made by Extranet in the Agreement or in any other document furnished by Extranet is, as of the time made or furnished, false or misleading; Extranet proceeds with a proposed action which would result in a default of its obligations or covenants under this Agreement or in a breach of any representation, warranty or certification, which is material to Nasdaq for regulatory, commercial or other reasons, made by Extranet in connection herewith, after Nasdaq has notified Extranet that such proposed action would constitute a default hereunder; Nasdaq terminates for cause Extranet's receipt of any other service or product provided by or on behalf

of Nasdaq; or Nasdaq, in its sole discretion, determines that the Extranet Equipment (*if applicable*) or the Connection has or is likely to have an adverse impact on the operation or performance of the Nasdaq's network and system, the Information or market or likely to cause disproportionate harm to Nasdaq's interests should termination be delayed; or

10.1.5 Nasdaq, upon not less than fifteen (15) days prior written notice, in the event that any representation, warranty or certification made by Extranet in the Agreement or in any other document furnished by Extranet becomes untrue or inaccurate and is not made true or accurate within the notice period.

10.2 Upon termination of this Agreement, Extranet shall cease any and all use of the Connection and the Information. Extranet acknowledges and agrees that the exercise by Nasdaq of the remedies set forth herein for failure of Extranet to pay all charges, taxes, or assessments related to the Connection shall not be deemed or considered to be (and, to the extent permitted by applicable law, Extranet waives any right to represent or assert that any such exercise constitutes) an act or omission or any improper denial or limitation of access to any Information or facility operated by Nasdaq. The right of termination set forth herein is in addition to any other remedy at law or in equity, consistent with the Agreement, that is available to Nasdaq with respect to a breach by Extranet and is in addition to anything otherwise set forth herein. In the event of a party's default under this Agreement, the non-defaulting party shall have all rights available at law or equity, including the right of set-off. In no event shall termination by either party relieve the other party of obligations already incurred. Upon termination of this Agreement for any reason, the Extranet Equipment will be returned to Extranet, at Extranet's sole cost and expense, after Extranet has satisfied any outstanding invoices.

10.3 Survival. Sections 6, 7, 8, 9, 10.2, 10.3, 11, 12, 13, 14, 15, 19, and 21 through 26 shall survive termination or expiration of this Agreement.

## 11. Confidentiality.

11.1 Extranet acknowledges that the Information, the Nasdaq systems and networks, Nasdaq's equipment and any parts thereof, and other information, both oral and written, that helps meet a regulatory purpose or business need that the Extranet Personnel are provided by or through Nasdaq pursuant to this Agreement or that the Extranet Personnel may be provided access to or otherwise observe while on Nasdaq's premises, are trade secrets, proprietary and unique to Nasdaq ("**Nasdaq Confidential Information**"), and that copyright and patent rights of Nasdaq may also exist. Extranet, on behalf of itself and the Extranet Personnel agrees to keep confidential such Nasdaq Confidential Information. Extranet further agrees to take or cause to be taken all reasonably necessary precautions to maintain the secrecy and confidentiality of such Nasdaq Confidential Information, and shall not disclose the same to any other third party. Extranet shall destroy or return to Nasdaq the Nasdaq Confidential Information in any tangible form whatsoever and all copies thereof upon any termination of this Agreement.

11.2 Except to the extent otherwise set forth in this Agreement, Nasdaq shall keep confidential Extranet's audited records, reports and payments and the audit findings ("**Extranet Confidential Information**"). Nasdaq agrees to take or cause to be taken all reasonably necessary precautions to maintain the secrecy and confidentiality of such Extranet Confidential Information.

11.3 Each party shall exercise the same degree of care in the protection of the confidential information as the receiving party exercises with respect to its own proprietary property and trade secrets, but in no event shall it be less than a reasonable degree of care given the nature of the confidential information. The Nasdaq Markets or the Extranet may disclose confidential information: (a) to the extent demanded by a court; (b) to the extent revealed to a government agency with regulatory jurisdiction over one or more of the Nasdaq Markets or over the Extranet; (c) in the course of fulfilling any of the Nasdaq Markets' regulatory responsibilities, including responsibilities over members and associated persons under the Act; or (d) to their and the Nasdaq Markets' respective employees, directors, independent contractors, (sub)contracts, and other agents solely for uses consistent with the purposes of this Agreement. Notwithstanding anything otherwise set forth in this Agreement, nothing herein shall prevent Nasdaq: (i) from using the audit findings without restriction to the extent the findings are used in the aggregate with other information and such aggregation does not specifically identify the Extranet; or (ii) from disclosing without restriction the Extranet Confidential Information to Nasdaq's telecommunications network provider/operator on a need to know basis. The duties in this section do not apply to data, information or techniques: (1) that is lawfully within a party's possession (and, in the case of Nasdaq, within the Nasdaq Markets' possession) prior to the date of the Agreement and not under a duty of non-disclosure; (2) that is voluntarily disclosed to a party (and, in the case of Nasdaq, to the Nasdaq Markets) by a third-party so long as a party (and, in the case of Nasdaq, to the Nasdaq Markets) does not know that the third-party has breached any obligation not to reveal such data, information or techniques; (3)

information that is developed by a party (and, in the case of Nasdaq, by the Nasdaq Markets) independently of the disclosure; or (4) is generally known or revealed to the public.

## 12. Representation and Warranties; Disclaimer.

12.1 Extranet represents and warrants that it is, will continue to be during the term of this Agreement, and will only use the Connection in compliance with the Agreement and the Nasdaq Requirements.

12.2 THE CONNECTION, THE OTHER MATERIALS OR SERVICES FURNISHED BY OR ON BEHALF OF NASDAQ ARE PROVIDED "AS IS", WITHOUT WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE CONNECTION, AND THE SPACE AND OTHER MATERIALS OR SERVICES FURNISHED BY OR ON BEHALF OF NASDAQ IS WITH EXTRANET. NASDAQ MAKES NO REPRESENTATION OR WARRANTY THAT THE CONNECTION OR THE SPACE AND OTHER MATERIALS OR SERVICES FURNISHED BY OR ON BEHALF OF NASDAQ WILL MEET THE EXTRANET'S REQUIREMENTS, BE ERROR FREE, OR OPERATE WITHOUT INTERRUPTION OR FAILURE, AND NASDAQ EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY (INCLUDING WHITEOUT LIMITATION, USE, TIMELINESS, SEQUENCE, COMPLETENESS, ACCURACY, FREEDOM FROM INTERRUPTION, AND ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE).

## 13. Limitation of Liability.

13.1 Except as may be otherwise specifically set forth herein, Extranet and Nasdaq agree that the Nasdaq Parties (as defined below) shall not be liable to Extranet or to any third party for any loss of profits (anticipated or otherwise), loss of use, trading loss, loss by reason of shutdown in operation or for increased expenses of operation, or any other damages suffered, or cost and expenses incurred by Extranet or any third party, of any nature, or from any cause whatsoever, whether direct, indirect, special, punitive, incidental, or consequential, arising out of the furnishing, performance, maintenance, or use of; or inability to use, the Information, Connection or Facilities and any other services and materials furnished by or on behalf of Nasdaq or Nasdaq's service providers, notwithstanding that Nasdaq has been advised of the possibility that damages may or will arise.

13.2 In the event that the Connection is not available, is interrupted, or is otherwise materially affected, due to the fault of Nasdaq (except for a reason permitted in the agreement) for a continuous period of twenty-four (24) hours or more during the time that Nasdaq would otherwise regularly transmit Information through the Connection, Extranet's or any other individual's or entity's exclusive remedy (to the extent not otherwise governed by an agreement between Nasdaq and such other individual or entity) against Nasdaq shall be, at Nasdaq's option, either a prorated month's credit or a prorated month's refund of any monies due to Nasdaq from Extranet for the Connection for the period at issue. Such credit or refund shall be requested by written notice to Nasdaq with all pertinent details included.

13.3 Except as may be otherwise specifically set forth herein, if any or all of the Nasdaq Markets are for any reason held liable to Extranet, or to any other individual or entity, for claims arising from or related to this Agreement, whether in tort or in contract, the liability of the Nasdaq Markets within a single year of the Agreement (from the Effective Date of the Agreement) is limited to an amount of Extranet's direct damages that is actually incurred by Extranet in reasonable reliance, and which amount does not exceed, at Nasdaq's option, either a month's credit or a month's refund of the average monthly amount paid to Nasdaq as calculated over the 12 months preceding the claim.

13.4 Extranet and Nasdaq, on behalf of itself and the Nasdaq Markets, understand and agree that the pricing for the Connection reasonably reflects the allocation of risk and limitation of liability set forth in this Agreement.

13.5 In no event shall any claim, dispute, controversy or other matter in question be made against the Nasdaq Markets by Extranet or any individual or entity claiming by or through Extranet later than one year after the claim, dispute, controversy, and other matter in question has arisen. Extranet and its affiliates and their employees, officers, directors, and other agents expressly waive any claims, disputes, controversies, and other matters not brought within the period set forth above.

## 14. Indemnification.

14.1 Extranet shall defend, be liable to, indemnify against, and hold harmless Nasdaq and the Nasdaq Markets, their employees, directors, officers, agents, and service providers and any related persons or entities, (collectively, "Nasdaq Parties"), from any and all Claims and Losses (as defined below) imposed on, incurred by or asserted against any of the Nasdaq Parties to

the extent that the Claims and Losses result from or arise out of: (a) any misrepresentation, breach of representation or warranty or non-fulfillment of any covenant or agreement on the part of Extranet under the terms of this Agreement; (b) the infringement (or alleged infringement) in whole or in part by Extranet of any intellectual property right or other property or proprietary rights of any third party; or (c) any acts or omissions of Extranet or the Extranet Personnel. Extranet's obligation to defend and indemnify under this subsection shall be conditioned on the following (but any limits on Extranet's obligations are only to the extent that Nasdaq's failure to comply with the following has caused a material harm to Extranet's ability to defend and indemnify): (i) Nasdaq shall promptly notify Extranet in writing of the claim, action or allegation (but, in any event, in a time frame that does not prejudice the rights of Extranet or Nasdaq); (ii) Nasdaq shall cooperate fully with Extranet in the defense thereof and Extranet shall be liable to Nasdaq for Nasdaq or the Nasdaq Markets' reasonable expenses (excluding reimbursement for the time value of the Nasdaq or the Nasdaq Markets' employees, directors, and other agents in providing such cooperation); and (iii) Extranet shall have sole control of the defense and all related settlement negotiations, but, upon Nasdaq request, shall apprise Nasdaq of the status of any proceedings or negotiations. Extranet shall have a right to defend provided that Extranet demonstrates to Nasdaq's satisfaction that it is financially able to defend such action and pay any judgment or settlement and counsel retained by Extranet is reasonably satisfactory to Nasdaq. Extranet shall not settle any action against Nasdaq or the Nasdaq Markets that in any way restricts or impairs Nasdaq's intellectual property rights.

14.2 Nasdaq shall defend the Extranet, its employees, directors, officers, and agents ("**Extranet Parties**") from any and all Claims and Losses imposed on or asserted against the Extranet Parties by a third party, as evidenced by any fully adjudicated and non-appealable judgment or Nasdaq -negotiated settlement arising as a result of any alleged infringement or misappropriation by the Nasdaq proprietary Information of such third party's U.S. or European Community intellectual property rights. Nasdaq shall indemnify and hold the Extranet Parties harmless from any and all such Claims and Losses imposed on, incurred by or asserted against the Extranet Parties, by such judgment or settlement up to the amount paid by Extranet for the Connection. Nasdaq's obligation to defend and indemnify under this subsection shall be conditioned on the following: (a) Extranet shall promptly notify Nasdaq in writing of the claim, action or allegation (but, in any event, in a time frame that does not prejudice the rights of Extranet or Nasdaq); (b) Extranet shall cooperate fully with Nasdaq in the defense thereof and Nasdaq shall be liable to Extranet for Extranet's reasonable expenses (excluding reimbursement for the time value of Extranet's employees, directors, other agents and affiliates in providing such cooperation); and (c) Nasdaq shall have sole control of the defense and all related settlement negotiations, but upon Extranet's request, shall apprise Extranet of the status of any proceedings or negotiations.

14.3 For any and all Claims and Losses imposed on, incurred by or asserted against the Extranet Parties as a result of any alleged infringement or misappropriation by the Nasdaq proprietary Information of any third parties' intellectual property rights other than U.S. or European Community intellectual property rights, Extranet shall notify Nasdaq in writing of the claim, action or allegation at least 5 days before a responsive action is needed, so as not to prejudice the rights of Extranet or Nasdaq, but, in any event, said notification to Nasdaq shall not be given later than fifteen (15) days after Extranet receives notification of any alleged non-U.S. or non-European Community infringement or misappropriation and Nasdaq shall have the right, but not the obligation, to defend, indemnify and hold Extranet Parties harmless on the same terms otherwise set forth in this Agreement. An initial response by Nasdaq shall not waive its rights to choose not to defend, indemnify and hold harmless.

14.4 Nasdaq shall not have the obligation to defend, indemnify and hold the Extranet Parties for any and all Claims and Losses imposed on, incurred by or asserted against the Extranet Parties, by any fully adjudicated and non-appealable judgment or Nasdaq -negotiated settlement as a result of any allegation of infringement or misappropriation if the Nasdaq has not been used in accordance with this Agreement or if Extranet transmits the Information after Nasdaq notifies Extranet of a potential or actual infringement claim or if the infringement or misappropriation claim, action, or allegation is the result of the combination, operation, or use of the Information with the Extranet Equipment, or with hardware, software, materials, systems or networks of Extranet if such infringement or misappropriation would have been avoided by the use of the Information without such hardware, software, materials, systems or networks.

14.5 In the event of a claim, action or allegation of infringement or misappropriation or if, in Nasdaq's opinion, such a claim, action or allegation is likely to occur or if the use of the Information is enjoined because of infringement or misappropriation, Nasdaq may, at its sole option and expense, (i) procure for Extranet the right to continue using the Information; (ii) replace or modify the Information to be non-infringing, if applicable, without liability of Nasdaq to Extranet or to any other individual or entity; or (iii) terminate this Agreement immediately without liability of Nasdaq to Extranet or to any other individual or entity.

14.6 This section and Section 14 set forth the entire liability and the exclusive remedy of the Nasdaq Markets for the infringement or misappropriation of intellectual property.

15. **Notices.** All notices and other communications (except for invoices) required hereunder to be in writing shall be deemed to have been duly given: (a) upon actual receipt (or date of first refusal), if and when delivered by hand; (b) upon constructive receipt, as of the date of receipt (or date of first refusal), when sent by overnight carrier, returned receipt requested, to the address of Extranet or Nasdaq as applicable, as set forth below, or, for Extranet, to such other person or address as Extranet shall furnish; or (c) upon posting the notice or communication on [www.NASDAQTrader.com](http://www.NASDAQTrader.com) or a successor site. All communications required to be given in writing under this Agreement shall be directed to:

<b>Nasdaq</b>	
<b>Name</b>	
<b>Title</b>	
<b>Address</b>	805 King Farm Boulevard Rockville, MD 20850
<b>Telephone</b>	
<b>With Copy To:</b>	Nasdaq, Inc. Office of the General Counsel 805 King Farm Boulevard Rockville, MD 20850 Attn: Contracts & IP (GIS)

If an email address is provided, Nasdaq may, in lieu of the above, give notice to or communicate with Extranet by email addressed to the persons identified above or to such other email address or persons as Extranet shall hereafter specify. By providing an email address, the Extranet agrees that any receipt received by Nasdaq from Extranet's service provider or internet computer server indicating that the email was received shall be deemed proof that Extranet received the message. If the Extranet's recipient cannot see or printout all or any portion of the messages or notices, Extranet must contact the applicable Data Center.

16. **Force Majeure.** Other than with respect to failure to make payments due, neither party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequences thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, government actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control.

17. **Amendment.** Except for the Nasdaq Requirements which may be amended at any time or except as may otherwise be set forth in the Agreement, Nasdaq may alter any term or condition of this Agreement on ninety (90) days notice to Extranet, and any use after such effective date is deemed acceptance of the new term or condition. The means of notifying Extranet of such new term or condition may include, but not be limited to, emailing such term or condition to Extranet or posting such alteration on [www.NASDAQTrader.com](http://www.NASDAQTrader.com) or a successor site. By providing an email address, Extranet agrees that any receipt received by Nasdaq from Extranet's service provider or internet computer server indicating that the email was received shall be deemed proof that Extranet received the message. If Extranet cannot see or printout all or any portion of the message, Extranet agrees that it is Extranet's responsibility to contact Nasdaq. Except to the extent a shorter period is otherwise permitted herein, Nasdaq will provide Extranet with at least thirty (30) days notice of any non-material changes to the Nasdaq Markets' decisions, policies, operating procedures, requirements, and other documentation (including, but not limited to, user guides) and at least ninety (90) days notice of any material changes. Notice shall be provided in accordance with Section 15.

18. **Insurance.** Upon execution of the Agreement, Extranet will furnish Nasdaq with a certificate of insurance, and Nasdaq may require Extranet to obtain additional coverage. During the term of this Agreement, each party agrees that it will maintain insurance at levels no less than those required by applicable law.

19. **Specific Performance.** Extranet acknowledges that a breach of any provision of this Agreement will cause Nasdaq irreparable injury and damage. Therefore, Extranet acknowledges and agrees that any such breach may be remedied through injunctive proceedings in addition to any other rights and remedies which may be available to Nasdaq at law or in equity.

20. **No Promotion.** Each party agrees that without the prior written consent of the other party, it will not: (a) use the name of the other party or of any affiliate thereof, or any trade name, trademark, trade device, service mark or symbol of the other party or its affiliates in advertising, publicity or otherwise; or (b) represent (directly or indirectly) that any product or any service provided by the party has been approved or endorsed by the other.
21. **Entire Agreement.** This Agreement, all its Attachments and any other materials referenced herein shall constitute the entire agreement between Nasdaq and Extranet, and shall supersede all prior agreements, arrangements, representations or promises whether oral or written, in regards to the Connection contemplated herein between Extranet and Nasdaq. For Information disseminated from Nasdaq Markets based in the United States and subject to SEC oversight, Nasdaq will not make any changes to the Agreement per Section 6(b) of the Exchange Act and undertaking #5 in [www.sec.gov/litigation/admin/3437538.txt](http://www.sec.gov/litigation/admin/3437538.txt). For Information disseminated from a non-U.S. Nasdaq Market, Nasdaq will similarly adhere to all regulations and other applicable statutory obligations of a relevant Financial Services Authority (“FSA”) and/or other regulatory body.
22. **No Partnership.** Nothing in this Agreement shall constitute a partnership or joint venture between the parties or constitute either party as the employee or agent of the other.
23. **Assignment.** This Agreement may not be assigned (including by operation of law) or transferred by either party to any other person or entity without the prior written consent of the other party, such consent not to be unreasonably withheld, except that Nasdaq may assign this Agreement to any of Nasdaq affiliate without the prior consent of Extranet. The Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective permitted successors or assigns.
24. **Governing Law.** For Information received, this Agreement shall be deemed to have been made in the jurisdiction of the applicable Nasdaq Market as detailed in Extranet Appendix.
25. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall remain in full force and effect.
26. **Waiver.** No failure on the part of Nasdaq or Extranet to exercise, no delay in exercising, and no course of dealing with respect to their respective rights, powers, or privileges under the 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 the Agreement.