

ADDENDUM TO NASDAQ SERVICES AGREEMENT
FOR ORDER DELIVERY SUBSCRIBERS

This Addendum ("Addendum") is an addendum to the NASDAQ Services Agreement ("**Agreement**") and is made by and between NASDAQ and *Subscriber*, as identified in the Agreement. The NASDAQ Stock Market, Inc and its subsidiaries and affiliates are collectively referred to herein as "**NASDAQ**". NASDAQ and Subscriber are each individually a "**Party**" and collectively the "**Parties**".

WHEREAS, NASDAQ is offering access to certain broker-dealers that are registered as market makers, electronic communications networks, and/or alternative trading systems ("ATs") (collectively, "Order Delivery Subscribers") for the purposes set forth in the NASDAQ Requirements, specifically for the purpose of quoting and trading securities in the NASDAQ Market Center on an order delivery basis; and

WHEREAS, Subscriber, representing that it is eligible to do so, is desirous of gaining access to the Service for the purposes set forth in the NASDAQ Requirements, specifically for the purpose of quoting and trading securities in the NASDAQ Market Center;

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

Section 1. *Order Delivery Subscriber Access.* Upon Subscriber's request and pursuant to the NASDAQ Requirements, Subscriber shall have access to certain information, data, access, capabilities, execution services, functions, features, software or equipment, which for purposes of the Agreement shall be included within the definition of "Service" and which permit Subscriber to access and participate in the Service as an "Order Delivery Participant" provided that NASDAQ may discontinue providing such Service or any portion thereof at its discretion.

Section 2. *NASDAQ Market Center.* Upon Subscriber's request and pursuant to the NASDAQ Requirements, Subscriber shall have access to the NASDAQ Market Center, which for purposes of the Addendum shall be included within the definition of "Service" and which permits Subscriber to access and participate in the NASDAQ Market Center.

Section 3. *Intermarket Trading System.* Upon Subscriber's request and pursuant to the NASDAQ Requirements, Subscriber shall have access to the Intermarket Trading System ("ITS") (for Order Delivery purposes), which for purposes of the Agreement shall be included within the definition of "Service" and which permits Subscriber to access and participate in ITS as an ITS market maker, as those terms are defined in the NASDAQ Requirements. Subscriber hereby authorizes NASDAQ to submit information and data inputted into and through ITS to a clearing entity. Subscriber acknowledges that it can comply with all system and regulatory requirements with respect to responding to order delivery messages sent through ITS.

Section 4. *Consolidated Quotations Service.* Upon Subscriber's request and pursuant to the NASDAQ Requirements, Subscriber shall have access to the Consolidated Quotations Service ("CQS"), which for purposes of the Agreement shall be included within the definition of "Service" and which permits Subscriber to access and participate in CQS. Subscriber acknowledges and agrees that it shall be invoiced separately by other participating entities for information and data supplied by those entities.

Section 5. *Subscriber Obligations.* This Addendum shall apply to Subscriber's use of certain market maker aspects of the Service as set forth in this Addendum. Except to the extent specifically overridden herein, the terms and the conditions of the Agreement remain applicable and this Addendum shall not otherwise limit or reduce Subscriber's duties, obligations, or responsibilities under the Agreement.

Section 6. *ECN/ATS Representations.* If Subscriber is a member that operates as an ECN or ATS under SEC Rules and chooses to operate such ECN or ATS as an Order Delivery Subscriber, Subscriber must represent that it will have all necessary licenses and/or approvals from the United States Securities and Exchange Commission ("SEC") or its staff to operate a compliant ECN/ATS within the meaning of the SEC Rules. Subscriber is not permitted to operate under this agreement until NASDAQ has reviewed such determination issued by the SEC.

Section 7. *ECN/ATS Broker/Dealer Requirement.* If Subscriber is a member that operates an ECN or as an ATS that does not exceed more than 5% of the average daily volume of any particular listed security and wishes to operate said ECN or ATS as an Order Delivery Subscriber, subscriber must operate such trading system as a broker-dealer registered separately from any affiliated entity engaged in broker-dealer activity unrelated to its ECN/ATS operations.

Section 8. *Service Access.* Subscriber shall use an Authorized Device as defined in the Agreement to interface with the System. Such access shall be governed by the Agreement (as it exists at the time).

Section 9. *Response Time.* In addition to any requirements of the NASDAQ Requirements or the Agreement, Subscriber's automated system must transmit an Appropriate Response to an order delivery message delivered to the Subscriber (unless NASDAQ's or Subscriber's system Failed). The response time for a response shall be as fast as is practicable (Subscriber's system may not be designed to: (i) delay a response; (ii) at the point of matching or execution, process orders from Subscriber's subscribers and order delivery messages other than in the order received; (iii) give lesser priority to processing of Order Delivery messages than it gives to processing of messages by Subscriber's subscribers; or (iv) otherwise discriminate against processing of Order Delivery messages), unless Excepted. Termination for a breach of the response time criteria of this Section shall require notice from NASDAQ to Subscriber and a commercially reasonable time to cure if practicable under the circumstances. Based on experience of actual response times, NASDAQ reserves the right, after consultation with the affected Order Delivery Subscriber, subject to any applicable procedural requirements in the NASDAQ Requirements, to set specific response time criteria.

- "Appropriate Response" means: (1) that the message complies with one of the order delivery message formats specified in the NASDAQ Requirements; (2) that the message is an acknowledgment of execution, is a rejection, or is another message type permitted under the NASDAQ Requirements for an Order Delivery Subscriber; and (3) that there is no human, automated, or other evaluation of whether to execute the order delivery message except a determination by the Order Delivery Subscriber whether the Participant, at that time, can Accept the order delivery message, or a rejection based on a ground permitted under SEC rule 11Ac1-1, or any other rule relevant to Order Delivery Subscriber responses (including any successors or replacements), as such rule(s) then exists.

- To “Accept” an order delivery message means a determination by the Order Delivery Subscriber that at the time of receipt of the order delivery message, there is an order in the Order Delivery Subscriber’s system that is executable against the order delivery message. Executable includes a quotation and/or order that contains the same or a higher bid (if the message requests a sale), or the same or lower ask (if the message requests a purchase) in the security that is the subject of the message, regardless of the size of the purchase or sale requested in the message, up to the size that the Order Delivery Subscriber has displayed in the NASDAQ System.
- “Failed” means, during the entire period for which an exception is claimed by Subscriber, that: (1) due to Subscriber system failure (*i.e.*, a sporadic, sudden, significant, technical failure of Subscriber’s system that causes the system to operate other than as designed), Subscriber was unable to create a response; or (2) due to a NASDAQ system or communications failure in the link between NASDAQ and Subscriber, an Appropriate Response could not be sent to, or if sent could not be received by, NASDAQ during the entire period.
- “Excepted” means, during the entire period for which exception is claimed by Subscriber, that: (1) Subscriber’s system Failed; or (2) during not normal market conditions (*i.e.*, during the period shortly following the opening of the market and such other conditions as are interpreted to be not normal market conditions by the SEC or its staff) substantial queues in the Order Delivery Subscriber’s system have resulted from extraordinary volume not reasonably anticipated. In any case, Subscriber must, if possible, immediately notify NASDAQ of any condition of which it is or should be aware that would form the basis of a claim of Excepted action.
- A Subscriber’s subscriber includes any person or entity using Subscriber’s system (whether designated as a user, customer, client, subscriber, or otherwise, and whether bound by contract with the Subscriber).

Section 10. *Deletion of Inaccessible Orders.* If one or more order delivery messages have been sent to Subscriber (or other NASDAQ subscribers have otherwise attempted to execute) against one or more quotations and/or orders of Subscriber without a timely Appropriate Response being sent back from Subscriber, NASDAQ, after a reasonable attempt to reach Subscriber to determine the reasons for such lack of response, in addition to any other remedy at law or in equity, can purge one or more of Subscriber’s quotations and/or orders.

Section 11. *Display Response.* Where an order and/or quotation is required by the NASDAQ Requirements to be sent to NASDAQ, then in addition to any requirements of the NASDAQ Requirements or the Agreement, this section must be complied with. Subscriber’s system must have sent the message to NASDAQ (that complies with the NASDAQ Requirements) which displays the same price and sized order and/or quotation at the same time as it is displayed to any of Subscriber’s subscribers. Termination for a breach of this Section shall require notice from NASDAQ to Subscriber and a commercially reasonable time to cure if practicable under the circumstances.

Section 12. *Compliance with the terms of the ITS Plan and Associated Rules.* Subscriber acknowledges that as an ITS market maker, it must comply with the requirements of the Intermarket Trading System Plan and any NASDAQ Requirements governing the operation

of the connection to the ITS system or its successor. Subscriber's systems shall provide a reasonable method to prevent a quotation and/or an order that would cause a locked or crossed market within the ITS system or with respect to any other market center linked through the ITS system and subject to the terms of the ITS Plan, or Subscriber shall undertake reasonable efforts to avoid a locked or crossed market before sending the quotation and/or order that would cause a locked or crossed market.

Section 13. *Price Display.* Subscriber agrees that the price displayed shall not include any fees, charges, or any other compensation for access to its system. Any quotation and/or trade disseminated by the Order Delivery Subscriber shall be exclusive of any additional fees, charges, or any other compensation that may be levied for access to the Order Delivery Subscriber's system.

Section 14. *Minimum Capital Requirements For ECNs/ATSs.* If subscriber is an ECN/ATS registered as an ITS Order Delivery Market Maker, Subscriber represents and warrants that the entity under whose MPID quotations and/or orders are submitted to NASDAQ shall, at all times, have at least the same net capital that is required under the NASDAQ Requirements under the Capital Requirements for Market Makers, SEC Rule 15c3-1(a)(4) (including any successors or replacements), as such rule(s) then exists. In interpreting the amount of net capital required, the phrase "market made" or similar phrase means a security for which the Subscriber has registered, or has submitted, to NASDAQ a quotation and/or order. For the purposes of this section, the ITS Order Delivery Market Maker is not considered to have any aggregate indebtedness.

Section 15. *Audit.* Subscriber shall ensure that NASDAQ shall have the same right to inspect the Subscriber's systems (including, its Order Delivery Subscriber application software, its Authorized Devices, the time sequence of processing of order delivery orders, and its operations) that NASDAQ has under the Agreement and the NASDAQ Requirements as if the entire system were owned by the Subscriber, regardless of whether all or a part of Subscriber's systems are being held by, licensed from, or operated by a third party. Failure to provide such access is grounds for immediate suspension of access under this Addendum. NASDAQ shall keep confidential all non-public aspects of Subscriber's systems that are marked as such, except that NASDAQ may disclose such information to NASDAQ or to the SEC (or other applicable regulatory bodies) for regulatory and enforcement purposes only, with such notice that Subscriber attaches that it considers such information to be confidential and/or non-public trade secrets entitled under law to protection from disclosure.

Section 16. *Sponsored Order Delivery Subscribers.* Subscriber hereby agrees that it is responsible for any or all acts or omissions of any third party who provides the Order Delivery Subscriber service or any part thereof, to the same extent as if such act or omission were performed by Subscriber itself.

Section 17. *Miscellaneous Requirements.* Subscriber hereby agrees on behalf of itself and, as applicable, each of its subscribers, to comply with the requirements stated in Rule 4623(b)(4)-(5) (if then effective) (including any successors or replacements), as such rule(s) then exists. Subscriber must complete the NASDAQ Services Agreement prior to being permitted access as an Order Delivery Subscriber. Subject to its procedural rights under the NASDAQ Requirements, if at any time, Subscriber fails to meet the NASDAQ Requirements to be a compliant Order Delivery Subscriber, NASDAQ may suspend access under this Addendum without notice. If Subscriber knows or has reason to know that it fails to meet the NASDAQ Requirements to be a compliant Order Delivery Participant, it must immediately notify NASDAQ

of the fact. If Subscriber again becomes eligible as an Order Delivery Subscriber, it must notify NASDAQ and re-file a NASDAQ Services Agreement. All other breaches of this Addendum are subject to the provisions of the Agreement.

Section 18. *Subscriber Obligations.* This Addendum shall apply to Subscriber's use of the Service as set forth in this Addendum. Except to the extent specifically overridden herein, the terms and the conditions of the Agreement remain applicable and this Addendum shall not otherwise limit or reduce Subscriber's duties, obligations, or responsibilities under the Agreement.

IN WITNESS WHEREOF, NASDAQ and Subscriber have caused this Agreement to be executed by their respective duly authorized officers.

(Subscriber) _____

Signature: _____

Name: _____

Title: _____
AUTHORIZED OFFICER

Date: _____

<p>The NASDAQ Stock Market, Inc. Use Only:</p> <p>Executed this _____ day of _____, 20____, for and on behalf of:</p> <p>The NASDAQ Stock Market, Inc.</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
