

NASDAQ FUND NETWORK TERMS AND CONDITIONS

1. Definitions. The following terms, in addition to those set forth above, when used in this Agreement, shall have the meanings set out below:

“Affiliate” shall mean any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association, special purpose 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 and Losses” means any and all liabilities, obligations, losses, damages, penalties, claims, 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, (a) 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 (b) reasonable out-of-pocket administrative costs, investigatory costs, litigation costs, and auditors’ and attorneys’ fees and disbursements.

“Nasdaq Requirements” shall mean: (a) the rules, regulations, interpretations, decisions, opinions, orders and other requirements of the SEC or an FSA, as may be applicable based upon the Nasdaq Affiliate from which the Data is received ; (b) the rules and regulations, disciplinary decision and rule interpretations applicable to any Funds; (c) Nasdaq policies, interpretations, operating procedures, specifications, requirements and other documentation that is regulatory or technical in nature (including, but not limited to, user guides) published on the Nasdaq Trader website located at www.NasdaqTrader.com or another website accessible by and made known to the Company ; (d) all other applicable laws, statutes, rules, regulations, orders, decisions, interpretations, opinions and other requirements, whether promulgated by the United States, England, Sweden or any other applicable jurisdiction (including in the area of intellectual property); and (e) the successors, as they may exist at the time, of the components of the Nasdaq Requirements.

“NFN Fund List and Data Formats” shall mean the specifications and data formats for listing Funds on the Service available at www.nasdaqtrader.com/content/AdministrationSupport/AgreementsData/mfgslistingstandards.pdf.

“Service” shall mean the Nasdaq Fund Network (NFN) and shall include the information, data, access, capabilities, dissemination services, functions, features, software, and equipment that relate to NFN; the Service shall also include as applicable, the performance of services by Nasdaq and any deliverables or items delivered under this Agreement as described in this Agreement or in the Nasdaq Requirements which the Company requests and for which the Company is eligible under the Nasdaq Requirements.

2. Nasdaq Fund Network.

2.1 Nasdaq hosts operates and maintains the Service that collects and disseminates market and pricing data relating to mutual funds, closed end mutual funds, money market funds, unit investment trusts, collective investment trusts, separate accounts, hedge funds, managed accounts, structured products, annuities, alternative investment products, demand deposit accounts and other related products (collectively, **“Funds”**) through the Nasdaq Trader website (nasdaqtrader.com) or its successor thereto (the **“Website”**).

2.2 Company is an investment company, fund family, trust, insurance company or a pricing agent or service bureau that owns or has the right to license certain market and pricing data and other information relating to one or more Company Funds (the **“Company Data”**) for distribution through the Service.

2.3 Company desires to distribute the Company Data for the Company Funds detailed in an applicable NFN Listing Application Form (**“Listing Form(s)”**) through the Service. Company shall submit a Listing Form for each new Company Fund or in the event of a change or removal of a Company as outlined in the NFN Fund List and Data

Format. Each Listing Form shall be on behalf of all named Funds individually and not as a joint venture. Nasdaq may reject a Listing Form that is incomplete. Additionally, Nasdaq may, in its sole discretion, reject any new Company Fund identified in a Listing Form. Nasdaq shall endeavor to provide notice of any such rejection within five (5) business days of receipt of the Listing Form.

3. Licenses; Ownership.

- 3.1 **Service.** Nasdaq grants Company and each Affiliate identified in the List of Affiliates Form a non-exclusive, non-transferable, non-assignable license to receive and use the Service for: (a) submitting the Company Data for dissemination through the Service in accordance with Section 3; and (b) utilizing the data transmitted from the Service solely for internal purposes in accordance with this Agreement and the Nasdaq Requirements. Company may not sell, lease, furnish or otherwise permit or provide access to the Service or any data contained therein (except for Company Data) to any third parties. Company will not engage in the operation of any illegal business; use or permit anyone else to use the Service, or any part thereof, for any illegal purpose; or otherwise violate the Nasdaq Requirements. Company shall not affect the integrity of the Service or data received through the Service and Company shall not render the data received through the Service inaccurate, unfair, misleading or discriminatory.
- 3.2 **Company Data.** Company grants to Nasdaq a non-exclusive, non-transferable, worldwide, royalty free, irrevocable right and license to receive, and use the Company Data for the following purposes: (a) for dissemination through the Service; (b) for self-regulatory functions; and (c) for use within Nasdaq commercial market data products. In the event Company removes any Company Fund, Nasdaq shall retain rights to use and distribute any Company Data collected prior to such removal.
- 3.3 **Fund Prospectus.** Company grants to Nasdaq a non-exclusive, non-transferable worldwide right and license to receive and redistribute publicly available Fund prospectuses and other Securities Exchange Commission (SEC) or Financial Supervisory Authority (FSA) required documentation for the Funds detailed in the Listing Form(s) for the purpose of dissemination through the Service in accordance with applicable law. In the event Company removes any Company Fund, Nasdaq shall retain rights to use and distribute any Fund prospectus provided prior to such removal.
- 3.4 **Company Website.** In the event Company identifies a website on either a Listing Form and/or an Order Form and notwithstanding any terms of service or other agreement governing such website, Company grants Nasdaq the right to collect Fund related data and information from such site including through data mining, automation, or similar data gathering and automated extraction tools. All such collected data shall be deemed Company Data pursuant to this Agreement.
- 3.5 **Ownership.** Company acknowledges and agrees that Nasdaq and Nasdaq's third party licensors including other participants in the Service retain all right, title and interest in the Service and the data contained therein. Notwithstanding the above, Company retains all right, title and interest in the Company Data and Company Fund Prospectus provided by Company under this Agreement and nothing within this Agreement shall diminish Company's right to use the Company Data or Company Fund Prospectus outside this Agreement.

4. Company Responsibilities.

- 4.1 Company shall calculate and report the Company Data to Nasdaq in accordance with this Agreement and Nasdaq Requirements. Company shall only submit Company Data for the Funds detailed in an applicable Listing Form.
- 4.2 Within thirty (30) days of receipt of written request from Nasdaq (email to suffice), Company shall submit to Nasdaq a statement issued by an officer that confirms that each Fund meets the continued NFN listing standards for the applicable calendar year.

- 4.3 Company shall maintain records of the Company Data submitted to Nasdaq in accordance with the Nasdaq Requirements and make such records available to any authorized representative of Nasdaq upon reasonable advance written notice (email to suffice) during normal business hours.
- 4.4 Company shall promptly submit an updated Listing Form in the event of any changes to a Company Fund including, but not limited to, change in the name or address of a Company Fund or any other material listing or corporate action information. Additionally, Company shall promptly notify Nasdaq in the event of any material inaccuracies in any Company Data including, but not limited to any material information Company would be required to disclose as an issuer under applicable law or any regulatory events (e.g. claims, investigations) involving an applicable Company Fund.
- 4.5 Company shall comply with any Nasdaq technical specifications or requirements in accessing the Service. In the event Nasdaq provides a back-up option to access the Service, Company shall only use such back-up option in cases where the primary means of accessing the Service is unavailable.

5. Nasdaq Rights and Obligations

- 5.1 Nasdaq shall use commercially reasonable efforts to offer access to the Service during reasonable business hours and to disseminate Company Data directly or through vendors so long as it appears in Nasdaq's discretion to be in the public interest to do so, but Nasdaq is under no obligation to continue such service and may terminate it at any time, with notice to Company. In the event that the Service is not available as a result of a failure by Nasdaq to perform its obligations under this Agreement, Nasdaq shall use commercially reasonable efforts, giving due regard for the cost, time, and effect on other user of the Service, to correct any such failure.
- 5.2 Nasdaq reserves the right to withhold Company Data from dissemination if, in Nasdaq's sole discretion, including if there is a reasonable basis for believing that the Company Data is not calculated in accordance with the methods specified in the Nasdaq Requirements or is otherwise in error, if sales and/or redemptions of the Company Funds or securities have been suspended, or if for any other reason it appears that continued dissemination of the Company Data would not be appropriate in the public interest and the protection of investors. Prior to Nasdaq withholding Company Data from dissemination, Nasdaq shall notify Company (email to suffice) within five (5) business days of such Company Data being withheld; provided, where practicable, Nasdaq shall endeavor to provide advance written notice to Company (email to suffice).
- 5.3 Nasdaq may, upon notice to Company (email to suffice), suspend or discontinue the collection or dissemination of Company Data with regard to particular Fund(s) in Nasdaq's sole discretion including if: (a) the Company or a particular Company Fund ceases to be eligible for participation in Service under the Nasdaq Requirements; (b) the Company or a particular Company Fund fails to comply with the terms of this Agreement; or (c) it is determined by Nasdaq that the Company has misrepresented its qualifications for inclusion in the Service. In the event Nasdaq removes a Fund, Nasdaq shall refund prorated amounts paid in advance by Company for services not rendered for the applicable Fund. Such refund shall be Company's sole and exclusive remedy.
- 5.4 Company acknowledges and agrees that nothing in this Agreement constitutes an undertaking by Nasdaq to continue providing the Service, or any aspect of the Service, in its present form or under the current Nasdaq Requirements including the method or format for dissemination of data. Nasdaq, in its sole discretion, may from time to time make additions to, deletions from, or modifications to the Service and/or the Nasdaq Requirements. Nasdaq shall undertake reasonable efforts to notify Company in writing of any material change to the Service or the Nasdaq Requirements, which means may include, but not be limited to emailing notice of such changes to Company and/or posting such changes on the Website. Receipt or use of the Service after any change shall constitute acceptance of the Service and/or the Nasdaq Requirements as changed.

6. Fees; Payment.

- 6.1 Unless otherwise detailed in an applicable Order Form, Company agrees to pay to Nasdaq the then effective charges as set forth on www.NasdaqTrader.com including all applicable deposits, interest, late fees and/ or penalties (including, but not limited to, charges incurred after termination, cancellation, or rescission of this Agreement), which payments shall be made without recoupment or set-off by Company. Unless otherwise detailed in an applicable Order Form, Nasdaq may amend the fees in its sole discretion upon at least thirty days' advance written notice. Payment for the Service is due within thirty (30) days of the receipt of an invoice. 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. The means of notifying Company of any new effective charges may include, but not be limited to, emailing Company or posting such new charges on the Nasdaq Trader website or a successor site.
- 6.2 Company shall pay any service or similar taxes, charges or assessments (other than taxes imposed on the net income of Nasdaq) by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof, and any penalties of interest on such taxes, charges or assessments relating to the provision of the Service to Company. Company shall not be responsible for the penalty or interest that is imposed on Nasdaq as a result of Nasdaq's failure to pay and assess any taxes, charges, or assessments in a timely manner, unless Nasdaq's failure was a result of a good faith disagreement with the taxing authority as to any tax, charge, or assessment. In addition, if the Company 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 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.

7. Term, Termination and Survivability.

- 7.1 Term. Unless otherwise rejected by Nasdaq in accordance with Section 2.3, the term of each Listing Form shall commence on the date of submission to Nasdaq and, unless the Services are otherwise terminated in accordance with this Agreement, Nasdaq shall continue to provide the Services until such time as Company removes all Company Funds or the Services are otherwise terminated pursuant to Section 7.2.
- 7.2 This Agreement may be terminated:
- 7.2.1 By either Party for any reason or no reason whatsoever upon thirty (30) days prior written notice.
 - 7.2.2 By either Party, upon breach and 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.
 - 7.2.3 Nasdaq, immediately, in the event Company becomes insolvent; or Company makes an assignment for the benefit of creditors; or Company does not pay its debts as they become due or admits, in a record, its inability to pay its debts to Nasdaq when due; or the Company 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 Company becomes the subject of any proceeding or bankruptcy, insolvency, reorganization, dissolution, receivership, liquidation or arrangement, adjustment, or composition with creditors.
 - 7.2.4 Nasdaq immediately, in the event that Company is not permitted to receive or Nasdaq is prevented from disseminating the Service, or any part thereof; or any consent, representation, warranty or certification made by Company in the Agreement or in any other document furnished by Company is, as of the time made or furnished, false or misleading; or that Nasdaq, in its sole discretion, determines that any failure on the part of the Company to comply with the Agreement has or is likely to have an adverse impact on the operation or performance of the Service or any of Nasdaq.

7.2.5 Nasdaq, upon not less than fifteen (15) days prior written Notice, in the event that any material consent, representation, warranty or certification made by Company in the agreement or in any other document furnished by Company becomes untrue or inaccurate and is not made true or accurate within the Notice Period.

7.3 Upon termination of this Agreement for any reason, Company shall cease any and all use of the Service and shall, upon request, provide certification to Nasdaq that it has done so. Company acknowledges and agrees that the exercise by Nasdaq of the remedies set forth herein for failure of Company to pay any or all charges, taxes, or assessments related to its receipt of the Service shall not be deemed or considered to be, and, to the extent permitted by applicable law, Company 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 service or facility operated by Nasdaq. The right of termination set forth therein is in addition to any other remedy at law or in equity that is available to one Party with respect to a breach by the other Party.

8. Confidentiality

8.1 In the event either Party (the “**Receiving Party**”) obtains during the course of the Agreement, direct or indirect access to the confidential or proprietary information of the other Party (the “**Disclosing Party**”) (which may include but not be limited to, certain confidential and/or proprietary financial, sales and distribution, marketing, research and development, organizational, employee, technical and business information, policies or practices, portfolio holdings and securities related information and certain non-public personal or financial information received from or relating to third parties such as a Party’s own clients and customers), the Receiving Party shall adhere to industry best practices for securing the Confidential Information of the Disclosing Party so as to reasonably ensure that such Confidential Information is not lost, stolen or otherwise used, modified or accessed by any unauthorized person.

8.2 The Receiving Party shall have the limited right to use the Confidential Information only for the purpose of fulfilling its commitments and obligations to the Disclosing Party under this Agreement and for no other purpose.

8.3 The Receiving Party shall promptly notify the Disclosing Party of any breach or suspected breach of the provisions of this Section 7.

8.4 "Confidential Information" shall not include any information which the Receiving Party can demonstrate: (a) is in the public domain through no fault or breach of confidentiality by such Receiving Party; (b) was rightfully known by the Receiving Party prior to its disclosure by the Disclosing Party and was not obtained in such circumstances subject to a requirement of confidentiality; or (c) was developed independently of, and without the use of or access to, any Confidential Information exchanged pursuant to this Agreement.

8.5 Despite the obligations of this Section, the Receiving Party may disclose Confidential Information of the Disclosing Party to the limited extent such Confidential Information is required to be disclosed by the Receiving Party by Law or pursuant to an order of any court, administrative body or self-regulatory organization; provided that, where practicable, the Receiving Party shall provide the Disclosing Party with notice of such request or order, including copies of subpoenas or orders requesting such Confidential Information, and shall not make disclosure pursuant thereto until legally required.

8.6 The provisions of this Section 8 shall survive termination of this Agreement.

9. Disclaimers.

NASDAQ DOES NOT CONTROL THE USES OF THE DATA BY PERSONS RECEIVING SUCH DATA. NASDAQ DOES NOT WARRANT THAT IT WILL NOTIFY THE COMPANY OR OTHERWISE INVESTIGATE REPORTS THAT THE DATA IS IN ERROR. COMPANY UNDERSTANDS AND AGREES THAT THE DISCLAIMERS OF WARRANTIES AND THE

LIMITATIONS OF LIABILITIES SET FORTH IN THIS AGREEMENT ARE APPLICABLE TO ALL ASPECTS OF NFN AND THE SERVICE, INCLUDING, BUT NOT LIMITED TO, CLAIMS AND LOSSES OF COMPANY RELATING TO OR ARISING FROM THE DISSEMINATION OF THE DATA TO THE PRESS, MARKET DATA VENDORS OR OTHER PARTIES.

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, NON-INFRINGEMENT, 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. Limitation of Liability

10.1 IN THE EVENT THAT THE SERVICE IS NOT REASONABLY AVAILABLE, IS DELAYED, IS INTERRUPTED, IS INCOMPLETE, OR IS OTHERWISE MATERIALLY AFFECTED FOR A CONTINUOUS PERIOD OF FOUR (4) HOURS OR MORE DURING THE TIME NASDAQ REGULARLY TRANSMITS THE SERVICE DUE TO THE FAULT OF NASDAQ (EXCEPT FOR A REASON PERMITTED IN THIS AGREEMENT), OR FOR MORE THAN A TOTAL DURATION OF TWELVE (12) HOURS IN A SINGLE CALENDAR MONTH DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION DURING A REGULAR CALENDAR MONTH, THE COMPANY'S EXCLUSIVE REMEDY AGAINST NASDAQ SHALL BE (A) IF COMPANY CONTINUES TO RECEIVE THE SERVICE, A PRORATED MONTH'S CREDIT FOR THE AFFECTED TIME PERIOD, OR, (B) IF COMPANY NO LONGER RECEIVES THE SERVICE, A PRORATED MONTH'S REFUND FOR THE AFFECTED TIME PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL BE REQUESTED BY WRITTEN NOTICE TO NASDAQ WITH ALL PERTINENT DETAILS.

10.2 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, NASDAQ SHALL NOT BE LIABLE TO COMPANY, 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.

10.3 NASDAQ SHALL NOT BE LIABLE TO COMPANY OR ANY OTHER PERSON FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE SERVICE THAT LASTS LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE SERVICE OR IF THE SERVICE IS MATERIALLY AFFECTED FOR LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE SERVICE UNLESS THE TOTAL DURATION OF SERVICE DISRUPTION EXCEEDS TWELVE (12) HOURS IN A SINGLE CALENDAR MONTH DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION DURING A REGULAR CALENDAR MONTH.

10.4 EXCEPT WITH RESPECT TO A BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 7 OR AS A RESULT OF THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 15, IF NASDAQ IS HELD LIABLE TO THE COMPANY OR TO ANY OTHER PERSON FOR SERVICES UNDER THIS AGREEMENT, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF NASDAQ IN ANY GIVEN YEAR OF SERVICES (FROM THE EFFECTIVE DATE OF THE AGREEMENT, OR ANNIVERSARY THEREOF) OF THE AGREEMENT, AND ANY OTHER PERSON CLAIMING THROUGH, ON BEHALF OF, OR AS HARMED BY THE COMPANY, IS LIMITED TO: (I) IF THE COMPANY OR ANY OTHER PERSON CONTINUES TO RECEIVE THE SERVICE, A PRORATED MONTH'S CREDIT OF ANY MONIES DUE TO NASDAQ FROM THE COMPANY, OR, (II) IF THE COMPANY OR ANY OTHER PERSON NO LONGER RECEIVES THE SERVICE, A REFUND OF ANY MONIES PAID TO NASDAQ BY THE COMPANY, OR, IF APPLICABLE, BY ANY OTHER PERSON, FOR THE PERIOD AT ISSUE.

10.5 THIS AGREEMENT SHALL NOT RELIEVE NASDAQ, THE COMPANY OR ANY OTHER PERSON FROM OR LIMIT LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS, BREACH OF CONFIDENTIALITY, VIOLATION OF APPLICABLE LAW, OR A PARTY'S INDEMNIFICATION OBLIGATIONS.

10.6 THE COMPANY AND NASDAQ UNDERSTAND AND AGREE THAT THE TERMS OF THIS SECTION REFLECT A REASONABLE ALLOCATION OF RISK AND LIMITATION OF LIABILITY. BOTH PARTIES ALSO AGREE THAT THE EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES, AND THE LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11. Indemnification.

11.1 Notwithstanding any limitation on Nasdaq's liability provided for by this agreement, Company shall be liable to, indemnify against, and hold Nasdaq, its information providers, their employees, directors, and other agents harmless from, any and all Claims or Losses imposed on, incurred by or asserted against any of Nasdaq, their employees, directors, and other agents to the extent that the Claims and Losses result from: (a) acts or omissions of the Company, its employees, directors, and other agents or from the use of the Service provided hereunder in a manner not explicitly licensed hereunder or in a manner not consistent with use restrictions and requirements provided hereunder; (b) by Company, its employees, directors, and other agents or by any other Person who directly or indirectly, with or without proper authorization, obtains access to or information from the Service via Company; or (c) the Company Data and Company Funds provided under this Agreement. Company's obligation to defend and indemnify under this subsection shall be conditioned on the following: (i) Nasdaq shall promptly notify the Company in writing of the claim, action or allegation (but, in any event, in a time frame that does not prejudice the rights of the Company or Nasdaq); (ii) Nasdaq shall cooperate fully with the Company in the defense thereof and the Company shall be liable to Nasdaq for Nasdaq's reasonable expenses (excluding reimbursement for the time value of Nasdaq's employees, directors, and other agents in providing such cooperation); and (iii) the Company shall have sole control of the defense and all related settlement negotiations, but upon Nasdaq's request, shall apprise Nasdaq of the status of any proceedings or negotiations. The Company shall not agree to any settlement that requires an indemnified party to pay damages, admit liability, or otherwise suffer any adverse consequence without an indemnified party's prior written consent. For the avoidance of doubt, the Company shall not be liable for any Claims or Losses arising out of the gross negligence or willful misconduct of Nasdaq.

11.2 Nasdaq shall defend, indemnify and hold harmless the Company, its employees, directors, other agents, affiliates and Fund sponsors from any and all Claims and Losses imposed on, incurred by or asserted against the Company, its employees, directors, other agents, affiliates and/or Fund sponsors as a result of any allegation that the Service infringes or misappropriates any third parties' U.S. or European Community intellectual property rights; provided such obligation shall not extend to the Company Funds or Company Data. Nasdaq's obligation to defend and indemnify under this subsection shall be conditioned on the following: (i) the Company 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 the Company or Nasdaq); (ii) the Company shall cooperate fully with Nasdaq in the defense thereof and Nasdaq shall be liable to the Company for the Company reasonable expenses (excluding reimbursement for the time value of the Company employees, directors, other agents, affiliates and Fund sponsors in providing such cooperation); and (iii) Nasdaq shall have sole control of the defense and all related settlement negotiations, but upon the Company request, shall apprise the Company of the status of any proceedings or negotiations. Nasdaq shall not agree to any settlement that requires an indemnified party to pay damages, admit liability, or otherwise suffer any adverse consequence without an indemnified party's prior written consent.

11.3 For any and all Claims and Losses imposed on, incurred by or asserted against the Company, its employees, directors, other agents, and affiliates as a result of any alleged infringement or misappropriation by the Service of any third parties' intellectual property rights other than U.S. or European Community intellectual property rights, the Company shall notify Nasdaq in writing of the claim, action or allegation at least five (5) days before a responsive action is needed, so as not to prejudice the rights of the Company or Nasdaq, but, in any event, said notification to Nasdaq shall not be given later than 15 days after the Company receives notification of any alleged non-U.S. or non-European Community infringement or misappropriation. Notwithstanding the foregoing, in the case of late notification, Nasdaq shall be relieved from its indemnification obligations set forth

in this Section 11 only to the extent materially prejudiced by such delay. No failure to so notify Nasdaq shall relieve Nasdaq of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure.

11.4 Nasdaq shall not have the obligation to defend, indemnify and hold the Company, its employees, directors, other agents and affiliates harmless for any and all Claims and Losses imposed on, incurred by or asserted against the Company, its employees, directors, other agents and affiliates as a result of any allegation of infringement or misappropriation if the Service has not been used in accordance with this Agreement or to the extent it is based on use of a superseded version of the Service if such infringement or misappropriation would have been avoided by use of the current version of the Service.

11.5 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 Service is enjoined because of infringement or misappropriation, Nasdaq may, at its sole option and expense, procure for the Company the right to continue using the Service, replace or modify the Service to be non-infringing, or terminate the Service.

11.6 This subsection sets forth the entire liability and the exclusive remedy of Nasdaq and the Company, its employees, directors, other agents, and affiliates for the infringement or misappropriation of intellectual property.

13. **Notice.** All notices and other communications required to be given in writing under this Agreement shall be directed to the persons identified in this Agreement and shall be deemed to have been duly given upon actual receipt by applicable Parties, or upon constructive receipt if sent by certified mail, return receipt requested (as of the date of signature or of first refusal of the return receipt), or by any other delivery method which obtains a signed delivery receipt, addressed to the person or entity identified or to such other address as any Party hereto shall hereafter specify by written notice to the other Party or Parties hereto. In the case of Nasdaq, notice shall be provided to the following:

To:	Nasdaq, Inc. Attention:
Address:	805 King Farm Boulevard Rockville, MD 20850
With Copy To:	Nasdaq, Inc. Office of the General Counsel 805 King Farm Boulevard Rockville, MD 20850 Attn: Contracts & IP (GIS)

12. **Force Majeure.** Notwithstanding any other term or condition of the Agreement, none of Nasdaq, its third party information providers or the Company shall be obligated to perform or observe its obligations undertaken in the 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 its control.

13. **Virus Notification/Assumption of the Risk.** The Company acknowledges that it is possible to contract a virus or similar "disease" by using the Internet or material downloaded from it. In addition, Web sites are inherently not as secure or reliable an environment as computers connected by dedicated lines and have been in the past vulnerable to attack by hackers and other third parties. The Company should obtain, use and update virus-checking software routinely when the Company is using information or data obtained from the Internet. Nasdaq will use commercially reasonable efforts to assure but cannot guarantee the Company that the Service and the information or data downloaded from it will be virus or problem free. Except as set forth herein, by using the

Service, the Company agrees to assume the risk of any unavailability, interruption, delay, incompleteness, or inaccuracy of the Service.

14. Subsequent Parties; Limited Relationship. The Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective permitted successors or assigns. Neither Party shall assign this Agreement (including by operation of law) without the prior written consent of the other Party, such consent not to be unreasonably withheld. Nasdaq may, however, assign this Agreement to any subsidiary or affiliate without the consent of the Company. Nothing in this Agreement, express or implied, is intended to or shall (a) confer on any individual or entity other than the Parties hereto, or their respective permitted successors or assigns, any rights to remedies under or by reason of this Agreement; (b) constitute the Parties hereto partners or participants in a joint venture; or (c) appoint one Party the agent of the other. There are no third party beneficiaries of this Agreement except for Nasdaq, Nasdaq's third party information providers that are indemnified hereunder, Fund families and trust sponsors using pricing agents and the persons indemnified under Section 15.

15. Corporate Names; Proprietary Rights. The Company acknowledges and agrees that Nasdaq has proprietary rights in certain names, including, but not limited to, "The Nasdaq Stock Market", "Nasdaq" and "NASDAQ OMX", and that the Company shall not use these names without the express written approval of Nasdaq or in any way that would infringe upon such names. The Company acknowledges and agrees that Nasdaq or their information providers have proprietary rights in certain trademarks, service marks, copyrights or patents, registered or unregistered, and the Company shall not use these trademarks, service marks, copyrights or patents, registered or unregistered, in any way without the express written approval of Nasdaq or that would infringe upon such marks, copyrights or patents. Nasdaq also agrees not to use the Company's name, trademarks, service marks, logos, trade names and/or branding for marketing or publicity purposes, without the Company's written consent.

16. Entire Agreement. The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, communications, writings, and understandings. In the event of any conflict between the provisions of this Agreement or the Nasdaq Requirements, the order of preference shall be the Nasdaq Requirements (but only to the extent of a legal or regulatory conflict) and this Agreement. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, if and where applicable. The use of the singular in this Agreement shall include the plural, and vice versa. Section headings are included for convenience only and are not to be used to construe or interpret this agreement.

17. Amendment; Waiver.

17.1 Nasdaq may alter any term or condition of this Agreement on ninety (90) days notice to the Company, and any use of the Service after such date shall be deemed to be acceptance of the new term or condition. The means of notifying the Company of such new term or condition shall be posting such alteration on Nasdaq Trader.

17.2 No failure on the part of Nasdaq or the Company to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege 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 this Agreement.

18. Governing Law. The Agreement shall be deemed to have been made in the United States, State of New York, 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 New York, without reference to principles of conflicts of laws thereof. Company hereby consents to submit to the jurisdiction of the courts in and of the State of New York in connection with any action or proceeding instituted relating to the Agreement.

19. Severability. If any of the provisions of the Agreement, or application thereof to any individual, entity or circumstance, shall to any extent be held invalid, or unenforceable, the remainder of the Agreement, or the application of such terms or provisions to individuals, entities, 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 the Agreement shall be valid and enforceable to the fullest extent permitted by law.