

## MARKET DATA FEED LICENSE AGREEMENT

**THIS MARKET DATA FEED LICENSE AGREEMENT** (the “Agreement”) is entered into, effective as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between National Stock Exchange, Inc., whose mailing address is 101 Hudson, Suite 1200, Jersey City, NJ (“NSX”) and \_\_\_\_\_, whose mailing address is \_\_\_\_\_ (“Recipient”).

**WHEREAS**, NSX has developed and operates a certain automated securities information system (the “NSX System”) which collects, validates, processes, records and disseminates certain data relating to securities or other financial instruments traded on NSX’s securities exchange (the “Information”);

**WHEREAS**, NSX has developed and operates a certain Depth of Book feed (the “DOB Feed”) and Top of Book feed (the “TOB Feed”) and, together with the DOB Feed and any other feeds made available by NSX from time to time pursuant to this Agreement, the “Market Data Feeds”), which feeds make the Information available for transmission to, and reception by, authorized recipients for such recipients’ internal use and/or further distribution;

**WHEREAS**, Recipient (i) operates an internal system for receiving, transmitting and disseminating data to its employees and authorized agents using its proprietary technology offerings (the “Internal Distribution System”), and/or (ii) has developed and operates a service for receiving, transmitting and disseminating data using its proprietary technology offerings (the “Vendor Service”) which it provides to its customers who subscribe to it (the “Subscribers”); and

**WHEREAS**, the parties desire that NSX, through one or more Market Data Feeds, make the Information available for Recipient’s reception, internal use and/or further transmission to Recipient’s Subscribers, as applicable, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the covenants and mutual promises set forth above and for other good and valuable consideration, the parties agree as follows:

### 1. LICENSE.

(a) Subject to the terms and conditions of this Agreement, NSX hereby grants Recipient a limited, non-exclusive, non-transferable, non-sublicenseable license to:

(i) receive and process the Information pursuant to the Market Data Feed(s) and connection method(s) described in subsection (b) below, either through a TCP/IP or a multicast data stream provided by extranet or similar service providers approved by NSX, or through direct connect to NSX or such other method as NSX may permit in its discretion; and

(ii) transmit the Information solely to, as applicable, (x) Recipient’s own employees and authorized agents through the Internal Distribution System and for Recipient’s own internal business purposes, and such employees and authorized agents are hereby authorized to receive and use the Information only for Recipient’s internal business purposes, and/or (y) Recipient’s Subscribers through the Vendor Service, and such Subscribers are hereby authorized to receive and use the Information only for their own internal business purposes. Without NSX’s prior written consent, any other use of the Information, including, but not limited to, retransmission or reprocessing, whether by Recipient, its employees, authorized agents or Subscribers, or any other person or entity is strictly prohibited.

(b) As of the Effective Date, Recipient's license is limited to the Market Data Feed(s) and connection method(s) selected on Exhibit A hereto, to the extent made available by NSX. If, at any time during the Term, Recipient desires to modify any such selections, it shall submit its request to NSX in writing, and any such modification shall become effect upon the execution by both parties of a revised Exhibit A.

## 2. RESTRICTIONS.

(a) Recipient shall promptly and accurately transmit the Information to its employees and authorized agents through the Internal Distribution System and/or, as applicable, to its Subscribers through the Vendor Service. Although the look and feel of Recipient's display of the Information shall be determined by Recipient, Recipient shall not alter the Information in any manner that adversely affects its accuracy or integrity or that renders it misleading, and Recipient agrees to reasonably monitor and review the activities of its employees, authorized agents and/or Subscribers to ensure, to the extent practicable, that no unauthorized use of the Information occurs.

(b) Recipient shall only furnish, or cause or permit to be furnished, all or any part of the Information to its own employees, authorized agents and/or Subscribers who, at the time of receipt thereof, are of a type qualified to receive the Information from Recipient under (i) the rules, regulations, and other requirements of the Securities and Exchange Commission; (ii) NSX's operating procedures, specifications, and other technical or regulatory documentation; (iii) all other applicable laws, statutes and regulations; and (iv) this Agreement.

(c) For purposes of clarification, the license rights granted herein shall not extend to any subsidiaries or other affiliates or related entities of Recipient unless they otherwise qualify to receive such data pursuant to Section 1(a)(ii) and Section 2(b) above or as agreed in writing by NSX.

(d) Recipient shall at all times publicly and prominently attribute NSX as the source, originator or provider of the Information conveyed pursuant to the Market Data Feeds, and shall provide NSX with evidence of same from time to time upon NSX's reasonable request.

(e) Without the prior written consent of NSX, Recipient shall not impose any fees, dues or charges for the Information conveyed pursuant to the Market Data Feeds other than a flat fee payable to Recipient for access to market data generally (including market data collected by Recipient from other sources) such that the fee is not payable, in whole or in part, specifically for the Information or access to the Market Data Feeds.

## 3. RECIPIENT RESPONSIBILITIES.

(a) Recipient shall be responsible for, and shall bear all costs associated with, the receipt of Information from NSX, whether directly through a TCP/IP or multicast, or indirectly through an approved extranet or similar service provider's TCIP/IP, multicast or other method approved by NSX, as well as the further transmission, storage and distribution of the Information to its employees, authorized agents and/or Subscribers after such receipt, including, without limitation, (i) obtaining the requisite quantity and quality of common carrier communication lines, (ii) ensuring the reliability and continued availability of such communications lines, and (iii) interfacing with the NSX System. Without limiting the generality of the foregoing, if Recipient accesses a Market Data Feed through an extranet or similar service provider's multicast, Recipient will be solely responsible for contacting the applicable extranet provider(s), entering into any necessary agreements with them and paying all applicable fees charged by them to connect to their network.

(b) Recipient shall maintain complete and accurate records identifying all employees, authorized agents and/or Subscribers receiving Information through the Internal Distribution System and/or Vendor Service and containing such other information relating to the Internal Distribution System and/or Vendor Service as NSX may reasonably request. Recipient will provide such information to NSX from time to time upon NSX's reasonable request. NSX may, by notice to Recipient, unilaterally: (i) limit or terminate the right of any employee, authorized agent, Subscriber or other person to receive or use the Information; and (ii) control the manner in which the Information is formatted by Recipient to ensure the completeness, fairness and integrity of the Information. Recipient shall promptly comply with any such notice.

(c) Recipient acknowledges that NSX may provide the information set forth in subsection (b) above to law enforcement, regulatory, or other authorized agencies, including, without limitation, the Securities Exchange Commission (the "Authorities") in connection with any investigation or prosecution of crimes or violations alleged to have been committed using the Market Data Feed(s), the Information, the Internal Distribution System or the Vendor Service, and Recipient agrees to reasonably cooperate with NSX and such Authorities in connection therewith.

(d) Recipient will use its best efforts to configure and operate its communications network so that it remains at all times secure from unauthorized entry or interference and to prevent the Information from being taken from said communications network, or in any way communicated, divulged or published except through the channels of transmission authorized hereunder. Recipient will adopt and enforce, as respects persons entering such place or places of business, reasonable requirements in order to prevent the Information from being improperly taken from any of Recipient's offices or places of business.

#### **4. CONSIDERATION.**

(a) There shall initially be no charge for Recipient's use of any Market Data Feed and the Information during the Term of this Agreement. In the event that NSX, in its discretion, initiates fees for the use of one or more of Market Data Feeds (or later modifies such fees from time to time), NSX shall send Recipient a written notice containing a schedule of fees and the payment terms and conditions. Such fees, terms and conditions (and any subsequent modifications thereto) shall become effective thirty (30) days after the date of the applicable written notice. If Recipient does not accept such terms, it may terminate this Agreement for convenience pursuant to Section 10(b)(i).

(b) Recipient shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on Recipient, its employees, authorized agents and/or Subscribers or NSX (except for U.S. federal, state, or local income taxes, if any, imposed on NSX) by any foreign or domestic national, state, provincial or local governmental bodies, or subdivisions thereof, and any penalties or interest, relating to the provision to, or use by, Recipient and its employees, authorized agents and/or Subscribers of the Market Data Feed(s) and the Information hereunder.

#### **5. OWNERSHIP; MODIFICATIONS.**

(a) NSX shall retain sole and exclusive ownership of all right, title and interest (including, without limitation, all patent, copyright, trademark, and trade secret rights), now existing or hereafter coming into existence, in and to the Information, Market Data Feeds and NSX System (but not including (i) the Internal Distribution System or the Vendor Service, as applicable, which shall remain the sole property of Recipient, and (ii) the multicast technology provided by the applicable extranet or similar service provider). All rights not expressly granted hereunder are reserved by NSX, and Recipient agrees

that it does not acquire any rights, express or implied, therein, other than the licenses expressly set forth in this Agreement.

(b) Neither party will use any of the other party's trademarks, logos, trade names or service marks (collectively, the "Marks") without the other party's prior written consent. Any permitted use by one party of the other's Marks shall be subject to the owner's quality control standards, and all associated goodwill shall inure to the benefit of the respective owner.

(c) Nothing in this Agreement shall be deemed to constitute an undertaking by NSX to continue to disseminate the Information in the present form or configuration or to continue to use existing communications facilities, Market Data Feeds or extranet or similar service providers. NSX, in its sole discretion and without Recipient's consent, may from time to time make modifications to the Information and the NSX System and Market Data Feeds irrespective of whether such modifications would require changes to be made by Recipient to its Internal Distribution System or its Vendor Service, as applicable, or to any equipment, or would render any of the foregoing inoperative with respect to the Information.

**6. RECIPIENT REPRESENTATIONS, WARRANTIES AND COVENANTS.** Recipient represents, warrants and covenants that it will not use or knowingly permit anyone to use the Information for any purpose or in any manner not authorized by this Agreement or for any unlawful purpose. To the extent Recipient transmits Information to Subscribers through its Vendor Services, Recipient further represents and warrants that it has, or will have in place before distributing the Information to Subscribers, a legally valid and enforceable contract that (i) governs the accounts held by Subscriber with the Recipient through which the Subscriber is entitled to access the Information, including prohibitions against a Subscriber's right to redistribute the Information without the prior written consent of NSX, and (ii) protects NSX to the same extent as if Recipient had presented and the Subscriber had signed an agreement directly with NSX.

**7. NSX WARRANTY DISCLAIMER.** NSX does not warrant or guarantee the timeliness, sequence, accuracy or completeness of the Information or the Market Data Feeds. THE INFORMATION AND MARKET DATA FEEDS ARE PROVIDED AS-IS. NSX MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE MARKET DATA FEEDS OR THE INFORMATION, OR ANY MULTICAST SERVICES FROM EXTRANET OR SIMILAR SERVICE PROVIDERS, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF NON-INFRINGEMENT, WARRANTIES FROM A COURSE OF DEALING OR USE OF TRADE, OR ANY WARRANTIES THAT THE MARKET DATA FEEDS OR THE INFORMATION WILL MEET RECIPIENT'S OR ITS SUBSCRIBERS' REQUIREMENTS; THAT THE MARKET DATA FEEDS WILL OPERATE IN COMBINATIONS WITH ANY PARTICULAR HARDWARE, SOFTWARE, SYSTEMS, OR DATA WHICH RECIPIENT OR THE SUBSCRIBERS MAY SELECT FOR USE; THAT THE OPERATION OF THE MARKET DATA FEEDS WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT ERRORS WILL BE CORRECTED.

**8. INDEMNIFICATION.**

(a) Recipient shall indemnify, defend and hold harmless NSX and its affiliates and each of their officers, directors, employees and agents (collectively, the "Indemnified Parties") from and against any and all any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, judgments, settlements, and expenses of whatever nature, including, without limitation, and attorneys' fees (collectively, "Claims or Losses") imposed on, incurred by or asserted against the Indemnified Parties as a result of or relating to this Agreement or the use of the Market Data Feeds, the Internal Distribution System, the Vendor Service, any extranet or similar service provider's multicast services or

the Information by Recipient, its employees or agents or any Subscriber. NSX will promptly notify Recipient upon its becoming aware of any such Claims or Losses and will reasonably cooperate with Recipient in the defense of the same at Recipient's expense.

(b) Except as set forth in Section 8(c), NSX shall have no liability for, and no obligation to defend or indemnify Recipient, its employees or agents or any Subscribers or other third parties from or against, any Claims or Losses whatsoever arising out of or relating to this Agreement, the Market Data Feeds, any extranet or similar service providers' multicast services, or the Information, including, without limitation, for any errors, inaccuracies, omissions, or other defects in, or untimeliness or unauthenticity of, the Information, or for any delay or interruption in the transmission thereof to Recipient, its employees or agents or any Subscriber or for any software viruses or infringement claims, or for any claims or losses arising therefrom or occasioned thereby.

(c) NSX agrees to indemnify, defend and hold harmless Recipient and its affiliates and each of their officers, directors, employees, and agents from and against all expenses and costs and damages (including reasonable legal fees and expenses), direct, consequential, and/or incidental in nature, claims, demands, proceedings, suits, and actions, and all liabilities resulting from, in connection with, or arising out of any third party claim that the Market Data Feeds, or Recipient's use thereof, infringes or violates any copyright, patent, trademark, trade secret or other intellectual property right of such third party; provided that: (i) Recipient promptly notifies NSX in writing of the claim; (ii) NSX shall have sole control of the settlement and defense of any action to which this indemnity relates; and (iii) Recipient reasonably cooperates to facilitate such defense.

**9. LIMITATION OF LIABILITY; LIMITATION OF DAMAGES.** IN NO EVENT SHALL NSX BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST DATA, LOST GOOD WILL, LOST BUSINESS, OR DOWN TIME, INCURRED BY RECIPIENT OR ITS EMPLOYEES, AGENTS OR SUBSCRIBERS AS A RESULT OF ANY BREACH OF THIS AGREEMENT OR ANY NEGLIGENCE IN CARRYING OUT THIS AGREEMENT, OR ANY OTHER CAUSE, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NSX'S AGGREGATE AND CUMULATIVE LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE TOTAL AMOUNTS PAID (IF ANY) BY RECIPIENT TO NSX UNDER SECTION 4. *THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THIS AGREEMENT AND THAT NSX WOULD NOT BE ABLE TO PROVIDE THE INFORMATION TO RECIPIENT AT THE PRICES SET FORTH HEREIN WITHOUT SUCH LIMITATIONS.*

**10. TERM AND TERMINATION.**

(a) This Agreement shall be effective as of the Effective Date and shall continue in effect for one (1) year thereafter unless otherwise terminated as provided herein (the "Term"). Upon expiration, this Agreement will automatically renew for additional one-year terms for a total of up to five (5) Terms, including the Initial Term.

(b) This Agreement may be terminated: (i) by either party, upon not less than fifteen (15) days' prior written notice to the other party for convenience; (ii) in the event of a breach of this Agreement, by the party not in breach upon written notice provided that it has first given the breaching party not less than five (5) days' prior written notice describing the breach in reasonable detail, and the breaching party has failed to cure such breach within the fifteen day period; (iii) by NSX, immediately, in the event that NSX, in its sole discretion, determines that any failure on the part of the Recipient to comply with this Agreement has or is likely to have an adverse impact on the operation or performance of

the NSX System, Information or market or likely to cause disproportionate harm to NSX's interests should termination be delayed.

(c) Sections 7 – 17 shall survive the expiration or earlier termination of this Agreement.

11. **EFFECT OF TERMINATION.** Termination of this Agreement shall not limit either party from pursuing other remedies available to it, including injunctive relief. Upon termination, Recipient shall immediately cease any and all use of the Information and terminate all access by its employees, agents and/or Subscribers, as applicable, to the Information, except to the extent that NSX requests that Recipient continue to provide access to certain Subscribers during a reasonable transition period of up to thirty (30) days or as otherwise agreed by the parties.

12. **INDEPENDENT CONTRACTORS.** The parties to this Agreement are independent contractors, and neither party is an employee, agent, partner or joint venturer of the other. Nothing in this Agreement shall be construed to create a relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Except to the extent provided in Section 2(d), Recipient shall not represent directly or indirectly that Recipient, the Internal Distribution System or the Vendor Service is sponsored or endorsed by NSX or its affiliates.

13. **GOVERNING LAW AND VENUE.** This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of Illinois, excluding its conflict of law provisions, and the patent and copyright provisions of federal law. The courts located in Cook County, Illinois shall have exclusive jurisdiction and venue over any dispute arising out of or relating to this Agreement and the parties hereby consent to such jurisdiction.

14. **NOTICES.** All notices required hereunder shall be in writing and shall be sufficiently given if delivered personally or mailed by First Class mail, postage prepaid or by Federal Express or other reliable common carrier to the addresses first set forth above and the authorized signatories set forth below.

15. **SEVERABILITY; AMENDMENTS.** In the event any one or more of the provisions of the Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of the Agreement shall be unimpaired, and the invalid, illegal, or unenforceable provision shall be replaced by a mutually acceptable provision which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision. Except as otherwise provided in Sections 4(a) or 5(c), this Agreement may be modified or amended only by a writing signed by authorized representatives of both parties.

16. **ASSIGNMENT.** Recipient shall have no right to assign or otherwise transfer this Agreement or any of its rights or delegate any of its duties under this Agreement without the prior written consent of NSX, and any attempted transfer without such written consent shall be void and of no effect.

17. **ENTIRE AGREEMENT.** This Agreement, along with any Exhibits, which are hereby incorporated by reference, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior representations, proposals, discussions and communications, whether oral or written.

*[remainder of page intentionally blank;*

*Signature page follows]*

18. **COUNTERPARTS; EXCHANGES BY FAX.** This Agreement, and any Exhibits, may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The exchange of a fully executed agreement (in counterparts or otherwise) by fax, pdf or other electronic signature format shall be sufficient to bind the parties to the terms and conditions of this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed and delivered by their authorized representatives as of the Effective Date.

NATIONAL STOCK EXCHANGE, INC.

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

\_\_\_\_\_

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

**EXHIBIT A**

Selection of Market Data Feeds and Method of Receipt\*

*\*Please note that not all of the services and connections referenced below may be immediately available; please contact your NSX representative from time to time for anticipated availability dates.*

This document is Exhibit A to a certain Market Data Feed License Agreement between NSX and Recipient dated \_\_\_\_\_, 20\_\_ (the "Agreement").

Recipient's license under the Agreement is limited to the Market Data Feed(s) checked below:

- 1. \_\_\_\_\_ DOB Feed
  
- 2. \_\_\_\_\_ TOB Feed

Recipient has elected to connect to Market Data Feed(s) above by the method(s) checked below.

- 1. \_\_\_\_\_ Direct Connect to NSX via TCP/IP
  
- 2. \_\_\_\_\_ Direct Connect to NSX via Multicast
  
- 3. \_\_\_\_\_ TCP/IP via Extranet or Similar Provider
  
- 4. \_\_\_\_\_ Multicast from Extranet or Similar Provider

*Check below as applicable:*

\_\_\_\_\_ This Exhibit A represents the original Exhibit A as of the Effective Date of the Agreement.

\_\_\_\_\_ This Exhibit A represents an amendment to an earlier Exhibit, which shall be effective as of \_\_\_\_\_, 20\_\_.

NATIONAL STOCK EXCHANGE, INC. \_\_\_\_\_

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

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