

**THE VENDOR (INCLUDING ITS REPRESENTATIVES AND AGENTS) MAY NOT MODIFY OR WAIVE ANY TERM OF THIS BTDS SUBSCRIBER AGREEMENT. ANY ATTEMPT TO MODIFY THIS BTDS SUBSCRIBER AGREEMENT, EXCEPT BY NASD, IS VOID.**

***1. Definitions and Usages.***

- a. "NASD" means The National Association of Securities Dealers, Inc. and its subsidiaries, affiliated entities.
- b. "Information" means certain data and other information relating to eligible corporate debt securities or other financial instruments, products, vehicles or devices; or relating to Persons regulated by NASD or to activities of NASD; or gathered by NASD from other sources.
- c. "Or" includes the word "and".
- d. "Business Day" means any day when NASD is disseminating the Information in real-time.
- e. "Claims or Losses" means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, judgments, settlements, and expenses of whatever nature, whether incurred by or issued against an indemnified party or a third party, including (1) indirect, special, punitive, consequential or incidental loss or damage, (including trading losses, loss of opportunities, loss of anticipated revenues, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, or other indirect loss or damage) and (2) administrative costs, investigatory costs, litigation costs, and auditors' and attorneys' and fees and disbursements (including, in each case, in-house personnel).
- f. "Including", "includes" or "include" shall mean "including, without limitation".
- g. "Person" means any natural person, proprietorship, corporation, partnership, or other entity whatsoever.
- h. "Non-Professional" -- As used in Rule 7010(k)(3) a "Non-Professional" is a natural person who uses TRACE transaction data solely for his or her personal, non-commercial use. A Non-Professional subscriber must agree to certain terms of use of the TRACE data, including that he or she receive and use the TRACE transaction data solely for his or her personal, non-commercial use. Persons who are excluded from the definition of "Non-Professional" include a person that (a) is not a natural person; (b) is registered or qualified in any capacity with the SEC, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association or an employee of the above and, with respect to any person identified in this subparagraph b., uses TRACE transaction data for other than personal, non-commercial use; (c) is engaged as an "investment advisor" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act) or an employee of the above and, with respect to any person identified in this subparagraph c., uses TRACE transaction data for other than personal, non-commercial use; (d) is employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt, or any other employee of a bank, insurance company or such other organization referenced above and, with respect to any person identified in this subparagraph d., uses TRACE transaction data for other than personal, non-commercial use; or (e) is engaged in, or has the intention to engage in, any redistribution of all or any portion of the TRACE transaction data."
- i. "Professional Subscriber" means all other persons who do not meet the definition of Non-Professional Subscriber. When it appears alone, the word "Subscriber" encompasses all Non-Professional and Professional Subscribers.
- j. "Tax-Exempt Organization" as used in Rule 7010(k)(3) means an organization that is described in Section 501(c) of the Internal Revenue Code (26 U.S.C. §501(c)); has received recognition of

the exemption from federal income taxes from the Internal Revenue Service; and obtains and uses Real-Time TRACE transaction data solely for redistribution to Non-Professionals, as defined for purposes of Rule 7010(k)(3), at no charge.

- k. "Vendor's Service" means the service from a vendor, including the data processing equipment, software, and communications facilities related thereto, for accessing, receiving, processing, transmitting, using and disseminating the Information to or by Subscriber.

2. Subscriber is granted the right to receive from NASD the Information under the terms stated herein and in the NASD Rules. "NASD Rules" shall mean all applicable laws (including intellectual property, communications, and securities laws), statutes, and regulations, the rules and regulations of the SEC, the rules and regulations of NASD including those requirements established by NASD's rule filings (with such SEC approval as may be required), NASD's decisions and interpretations or successors of the components of the NASD Rules, as they may exist at the time. For Professional Subscriber, if any payment is due directly to NASD under this BTDS Subscriber Agreement, payment in full is due NASD in immediately available U.S. funds by check or electronic funds transfer drawn against a United States bank or other financial institution acceptable to NASD or by any other means mutually acceptable to the parties, within thirty (30) days of the date of an invoice, whether or not use is made of, or access is made to, the Information. Interest at the rate of one percent (1%) per month on any outstanding balance shall be due from the date thirty (30) days after the date of the invoice to the time that the amount(s) that are due have been received by NASD. Subscriber shall assume full and complete responsibility for the payment of all taxes, charges or assessments imposed on Subscriber or NASD (except for U.S. federal, state, or local income taxes, if any, imposed on NASD) by any foreign or domestic national, state, provincial or local governmental bodies, or subdivisions thereof, and any penalties or interest, relating to the provision of the Information to Subscriber.

3. The Information is licensed only for the personal use of the Non-Professional Subscriber and the internal business use and/or personal use of the Professional Subscriber. By representing to Vendor that Subscriber is a non-professional, or by continuing to receive the Information at a non-professional subscriber rate, Subscriber is affirming to Vendor and NASD that Subscriber meets the definition of Non-Professional Subscriber as set forth in paragraph 1 above. Subscriber will promptly give written notice to Vendor of any change in the name or place of residence or place of business at which the Information is received. Subscriber may not sell, lease, furnish or otherwise permit or provide access to the Information to any other Person or to any other office, or place. Subscriber will not engage in the operation of any illegal business; use or permit anyone else to use the Information, or any part thereof, for any illegal purpose; or violate any NASD Rule. Professional Subscribers may, on a non-continuous basis, furnish limited amounts of the Information to customers; in written advertisements, correspondence, or other literature; or during voice telephonic conversations not entailing computerized voice, automated information inquiry systems, or similar technologies. Subscriber may not present the Information rendered in any false, unfair, misleading, or discriminatory format. Subscriber shall take all reasonable security precautions to prevent unauthorized Persons from gaining access to the Information.

4. Subscriber acknowledges that NASD, in its sole discretion, may from time to time make modifications to its system or the Information. Such modifications may require corresponding changes to be made in Vendor's Service. Changes or the failure to make timely changes by Vendor or Subscriber may sever or affect Subscriber's access to or use of the Information. NASD shall not be responsible for such effects.

5. NASD grants to Subscriber a nonexclusive, non-transferable, non-assignable license during the term of this BTDS Subscriber Agreement to receive and use the Information transmitted to it by Vendor for any purpose not inconsistent with the terms of this BTDS Subscriber Agreement or with the NASD Rules. Subscriber acknowledges and agrees that NASD owns all right, title and interest, including intellectual property and other proprietary rights in and to the Information and any further derivatives or compilations thereof. Subscriber further acknowledges and agrees that NASD's third

party providers own all right, title and interest, including intellectual property and other proprietary rights in and to their respective Information. In the event of any misappropriation or misuse, NASD and its third party providers shall have the right to obtain injunctive relief for their respective materials, and Subscriber agrees that NASD and each of its third party providers shall be a third party beneficiary of this BTDS Subscriber Agreement for such purpose. Subscriber will attribute the source of the Information as appropriate under all the circumstances, and will not remove or modify any proprietary notices contained within the Information. Subscriber agrees not to use any trade or service mark that belongs to NASD or any of NASD's subsidiaries or affiliates, registered or unregistered, without the prior written permission of NASD, and even after receiving written permission, in any way that would infringe upon such marks under applicable law. If NASD so elects, Subscriber shall assign and shall ensure that all of its agents assign, all right, title and interest in and to any suit, including its subject matter, of or concerning the System, the Information or which otherwise arises out of or is related to this Agreement, to NASD.

6. Subscriber acknowledges that: (a) NASD is registered with the SEC as a registered national securities association pursuant to Section 15A of the Securities Exchange Act of 1934 (the Act); (b) NASD has a statutory obligation to protect investors and the public interest and to ensure the integrity of Information (including the Information supplied to investors and the public); (c) Section 19(g)(1) of the Act mandates that NASD, as a self-regulatory organization, comply with the provisions of the Act, the rules and regulations there under, and the NASD Rules; and (d) NASD has jurisdiction to enforce compliance with the Act, the rules and regulations promulgated there under, and the NASD Rules over its members, Vendor and Subscriber. Subscriber acknowledges that NASD, when required to do so by NASD in fulfillment of its statutory obligations, may by notice to Vendor or Subscriber unilaterally limit or terminate the right of any or all Persons to receive or use the Information, and that Vendor and Subscriber will immediately comply with any such notice and will terminate or limit the furnishing of the Information and confirm such compliance by notice to NASD. Any affected Person will have available to it such procedural protections as are provided by the Act and applicable rules thereunder. NASD shall not have any liability when complying with such statutory obligations.

7. Professional Subscriber shall make its premises available to NASD for physical inspection of Vendor's Service and of Professional Subscriber's access, receipt, processing, use, display and dissemination of the Information (including review of any records regarding use of, or access to, the Information and the number and locations of all devices that receive Information), all at reasonable times, upon reasonable notice, to ensure compliance with this BTDS Subscriber Agreement. Non-professional Subscriber shall comply promptly with any reasonable request from NASD for information regarding the Non-Professional Subscriber's access, receipt, processing, use, display and dissemination of the Information.

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

9. WARRANTIES; DISCLAIMERS OF WARRANTIES. EACH PARTY REPRESENTS AND WARRANTS THAT IT SHALL OBTAIN, MAINTAIN AND COMPLY WITH ALL PERMITS, CONSENTS AND APPROVALS NECESSARY FOR SUCH PARTY TO ENTER INTO AND FULFILL ITS OBLIGATIONS UNDER THIS AGREEMENT. NASD WILL ENDEAVOR TO OFFER THE INFORMATION AS PROMPTLY AND AS ACCURATELY AS IS REASONABLY PRACTICABLE. IN THE EVENT THAT THE INFORMATION IS NOT AVAILABLE AS A RESULT OF A FAILURE BY NASD OR ITS THIRD PARTY PROVIDERS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, NASD OR ITS THIRD PARTY PROVIDERS WILL ENDEAVOR, GIVING DUE REGARD FOR THE COST, TIME, AND EFFECT ON OTHER USERS, TO CORRECT ANY SUCH FAILURE. IN THE EVENT THAT THE INFORMATION IS NOT AVAILABLE, IS DELAYED, IS INTERRUPTED, IS INCOMPLETE OR IS NOT ACCURATE OR IS OTHERWISE MATERIALLY AFFECTED FOR AN ENTIRE BUSINESS DAY AND REMAINS AFFECTED AT

THE COMMENCEMENT OF THE IMMEDIATELY SUCCEEDING BUSINESS DAY DUE TO THE SOLE NEGLIGENCE OF NASD (EXCEPT FOR A REASON PERMITTED IN THE BTDS VENDOR AGREEMENT), SUBSCRIBER'S EXCLUSIVE REMEDY AGAINST NASD SHALL BE, (A) IF SUBSCRIBER CONTINUES TO RECEIVE THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASD, A PRORATED CREDIT OF ANY MONIES DUE FOR AND DIRECTLY ATTRIBUTABLE TO THE AFFECTED INFORMATION TO NASD FROM SUBSCRIBER FOR THE PERIOD AT ISSUE OR, (B) IF SUBSCRIBER NO LONGER RECEIVES EITHER THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASD, A PRORATED REFUND OF ANY MONIES DUE FOR THE AFFECTED INFORMATION TO NASD FROM SUBSCRIBER FOR THE PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL BE REQUESTED BY NOTICE TO NASD WITH ALL PERTINENT DETAILS. BEYOND THE WARRANTIES STATED IN THIS SECTION, THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY (INCLUDING TITLE, OWNERSHIP, INTELLECTUAL PROPERTY INFRINGEMENT, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, ACCURACY, AVAILABILITY, 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. NASD'S LIMITATION OF LIABILITY.

(a) EXCEPT AS MAY OTHERWISE BE SET FORTH HEREIN, NEITHER NASD NOR ITS THIRD PARTY PROVIDERS SHALL BE LIABLE TO SUBSCRIBER, ITS VENDOR OR TO ANY OTHER PERSON FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE (INCLUDING TRADING LOSSES, LOSS OF OPPORTUNITY, LOSS OF ANTICIPATED REVENUES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR INCREASED EXPENSES OF OPERATION, OR OTHER LOSS OR DAMAGE) OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF NASD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

(b) NEITHER NASD NOR ITS THIRD PARTY PROVIDERS SHALL BE LIABLE TO SUBSCRIBER, VENDOR OR ANY OTHER PERSON FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE INFORMATION UNLESS SUCH UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE INFORMATION LASTS FOR AN ENTIRE BUSINESS DAY AND CONTINUES AT THE COMMENCEMENT OF THE IMMEDIATELY SUCCEEDING BUSINESS DAY.

(c) IF NASD OR ANY OF ITS THIRD PARTY PROVIDERS IS FOR ANY REASON HELD LIABLE, WHETHER IN TORT, CONTRACT OR OTHERWISE, THE AGGREGATE LIABILITY OF NASD FOR ALL REASONS DURING THE TERM OF THIS AGREEMENT IS LIMITED TO THE LOWER OF: (1) IF SUBSCRIBER CONTINUES TO RECEIVE THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASD, A PRORATED CREDIT OF ANY MONIES DUE TO NASD FROM SUBSCRIBER FOR THE PERIOD AT ISSUE OR, IF SUBSCRIBER NO LONGER RECEIVES EITHER THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASD, A REFUND OF ANY MONIES DUE TO NASD FROM SUBSCRIBER FOR THE PERIOD AT ISSUE; OR (2) U.S. \$5000.00.

(d) THIS SECTION SHALL NOT RELIEVE NASD, ITS THIRD PARTY PROVIDERS OR SUBSCRIBER FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.

(e) SUBSCRIBER, VENDOR AND NASD UNDERSTAND AND AGREE THAT THE TERMS OF THIS SECTION REFLECT A REASONABLE ALLOCATION OF RISK AND LIMITATION OF LIABILITY.

(f) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NASD SHALL NOT BE RESPONSIBLE FOR OR LIABLE TO SUBSCRIBER, OR ANY PERSON FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF INFORMATION THAT IS NOT CAUSED SOLELY BY THE NEGLIGENCE OF NASD.

(g) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NASD SHALL NOT BE LIABLE TO SUBSCRIBER OR ANY PERSON FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION FROM NASD'S THIRD PARTY PROVIDERS, OR FOR

THE INFRINGEMENT OF ANY PERSON'S INTELLECTUAL PROPERTY OR OTHER RIGHTS BY THE INFORMATION PROVIDED TO NASD BY THIRD PARTY PROVIDERS.

11. THIRD PARTY PROVIDERS' LIMITATIONS OF LIABILITIES.

(a) NASD'S THIRD PARTY PROVIDERS SHALL HAVE NO LIABILITY FOR THE INACCURACY, UNAVAILABILITY, INCOMPLETENESS OR INTERRUPTION OF, OR FOR DELAYS OR OMISSIONS IN, ANY OF THE INFORMATION OR SERVICES PROVIDED BY THEM. NASD'S THIRD PARTY PROVIDERS SHALL HAVE NO LIABILITY FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE (INCLUDING TRADING LOSSES, LOSS OF OPPORTUNITY, LOSS OF ANTICIPATED REVENUES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR INCREASED EXPENSES OF OPERATION, OR OTHER LOSS OR DAMAGE) OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF THE THIRD PARTY PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

(b) SUBSCRIBER AND VENDOR ACKNOWLEDGE AND AGREE THAT NASD'S THIRD PARTY PROVIDERS HAVE EXCLUSIVE PROPRIETARY RIGHTS IN THEIR RESPECTIVE INFORMATION.

(c) SUBSCRIBER AND VENDOR AGREE THAT ACCESS TO THE INFORMATION OR SERVICES OF NASD'S THIRD PARTY PROVIDERS IS SUBJECT TO NASD'S RECEIPT OF THE INFORMATION OR SERVICES FROM SUCH THIRD PARTY PROVIDERS PURSUANT TO THE AGREEMENTS BETWEEN NASD AND SUCH THIRD PARTY PROVIDERS AND THAT NASD'S ACCESS TO AND RECEIPT OF SUCH INFORMATION OR SERVICES MAY BE DELAYED, TERMINATED OR OTHERWISE AFFECTED.

12. Subscriber will indemnify, defend and hold harmless NASD and its employees, officers, directors, and other agents from any and all Claims or Losses imposed on, incurred by or asserted as a result of or relating to: (a) any noncompliance by Subscriber with the terms and conditions hereof; (b) any third-party actions related to Subscriber's receipt and use of the Information, whether authorized or unauthorized under this BTDS Subscriber Agreement including any claim of infringement or other violation of an intellectual property right by Subscriber, its actions or omissions, equipment, or other property; and (c) any defense of or participation by NASD in any action, suit, arbitration, mediation, judicial or administrative proceeding, or any other proceeding involving any Claims or Losses described in this BTDS Subscriber Agreement. The indemnification provided by this Section 12 shall include NASD's investigative and administrative costs relating to the detection of any material noncompliance by Subscriber as provided above, or any access, receipt, processing, use, transmission or dissemination of the Information by any other Person, provided, however, that such costs are not excessive as compared to the injury NASD could suffer as a result of any such non-compliance.

13. Subscriber and Vendor agree that NASD may enforce the terms of this BTDS Subscriber Agreement against any Person, whether or not Vendor or Subscriber is a party to any such action, or against Vendor or Subscriber, and Vendor and Subscriber agree that NASD shall be a third party beneficiary of this BTDS Agreement for such purpose. In any action there shall be available injunctive relief or damages, with the prevailing party being awarded costs and attorneys' fees (including in-house counsel).

14. In the event of any conflict between the terms of this BTDS Subscriber Agreement and of the Vendor's agreements with Subscriber, the terms of this BTDS Subscriber Agreement shall prevail as between NASD and Subscriber.

15. Subscriber acknowledges and agrees that Vendor is not an agent of NASD and is not authorized to add to or delete from this BTDS Subscriber Agreement and is not authorized to modify any provision of this BTDS Subscriber Agreement. Vendor is obligated to provide notice of NASD changes to Subscriber, but if Vendor does not, NASD's notice to Vendor is still effective as to Subscriber, including notice of cancellation.

16. In addition to the termination provisions in the Vendor's agreement with Subscriber, this BTDS Subscriber Agreement may be terminated by Subscriber on thirty (30) days written notice to Vendor

and by NASD on thirty (30) days written notice either to Vendor or Subscriber. In the event of Subscriber breach, discovery of the falsity of any representation or warranty of Subscriber, or where directed by NASD in its regulatory authority, NASD may terminate this BTDS Subscriber Agreement on not less than three (3) days written notice to Subscriber provided either by NASD or Vendor.

17. NASD does not endorse or approve any equipment, Vendor, or Vendor's Service.

18. Natural persons executing this BTDS Subscriber Agreement warrant and represent that they are at least eighteen (18) years of age. Subscriber and the Person executing this BTDS Subscriber Agreement on behalf of Subscriber that is a proprietorship, corporation, partnership or other entity, represent that such Person is duly authorized by all necessary and appropriate corporate or other action to execute this BTDS Subscriber Agreement on behalf of Subscriber. All notices, invoices, and other communications required to be given to NASD under this BTDS Subscriber Agreement shall be in writing, and shall be directed to: Data Administrator, NASD Market Operations, 9509 Key West Avenue, Rockville, MD 20853, Toll-Free Telephone #: 866-776-0800, Fax #: 240-386-6225, or to Subscriber at the last address known to the Vendor, and shall be deemed to have been duly given upon actual receipt by the parties, or upon constructive receipt if sent by certified mail, postage pre-paid, return receipt requested, at such address or to such other address as any party hereto shall hereafter specify by written notice to the other party or parties hereto. Notices of breach or default or termination shall also be sent to National Association of Securities Dealers, Inc., 1735 K Street, N.W., 10th Floor, Washington, D.C. 20006-1500, Attn: NASD Office of General Counsel – Commercial Contracts Group.

20. Subscriber shall not assign this BDTs Subscriber Agreement (including by operation of law). Notwithstanding the foregoing, this BDTs Subscriber Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

21. Except as may be otherwise set forth herein, NASD may modify any part of this BDTs Subscriber Agreement on forty-five (45) days prior notice. NASD shall notice Subscriber of any change in this BTDS Subscriber Agreement by posting such change to the following <http://www.nasd/trace.asp> Subscriber's failure to reject by written notice to Vendor the modification within thirty (30) days of the effective date of the modification shall be deemed to be an acceptance of the modification. Any rejection by Subscriber of any amendment made by NASD in accordance with this Section 21 may, at NASD's sole discretion, result in termination of this BTDS Subscriber Agreement by Vendor or NASD. Except as otherwise provided herein, no provision of this BTDS Subscriber Agreement, or any attachments which are a part hereof, may be amended, modified or waived unless by an instrument in writing executed on behalf of each of the parties by their respective duly-authorized officers.

22. This BTDS Subscriber Agreement shall be deemed to have been made in the State of New York and shall be construed and enforced in accordance with the laws of the State of New York, without reference to principles of conflicts of laws thereof. Each party irrevocably agrees that any legal action, suit or proceeding (other than entry or enforcement of an arbitration award or decision) brought by it in any way arising out of this BTDS Subscriber Agreement must be brought solely and exclusively in the United States District Court for the Southern District of New York or in the state courts of the State of New York in New York County and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other party; provided, however, that this Section 22 shall not prevent a party against whom any legal action, suit or proceeding is brought by the other party in the state courts of the State of New York in New York County from seeking to remove such legal action, suit or proceeding, pursuant to applicable Federal Law, to the district court of the United States for the district and division embracing New York County, and in the event an action is so removed each party irrevocably accepts and submits to the jurisdiction of the aforesaid district court. Each party hereto further irrevocably consents to the service of process from any of the aforesaid courts by mailing copies thereof by registered or certified mail, postage prepaid, to such party at its address designated pursuant to this BTDS Subscriber Agreement, with such service of

process to become effective thirty (30) days after such mailing. Each party hereby irrevocably waives their right to a jury trial.

23. No failure on the part of any party to exercise, no delay in exercising, and no course of dealing with respect to any right, power or privilege under this BTDS Subscriber Agreement or at law or equity 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 BTDS Subscriber Agreement or at law or equity.

24. If any of the provisions of this BTDS Subscriber Agreement, or the application thereof to any Person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this BTDS Subscriber Agreement, or the application of such terms or provisions to Persons or circumstances other than those as to which they are invalid or unenforceable, shall not be affected thereby, and each term and provision of this BTDS Subscriber Agreement shall be valid and enforceable to the fullest extent permitted by law.

25. The section headings used in this BTDS Subscriber Agreement are intended solely for convenience of reference and shall not in any way or manner amplify, limit, modify or otherwise be used in the interpretation of this BTDS Subscriber Agreement. All personal pronouns used in this BTDS Subscriber 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 BTDS Subscriber Agreement shall include the plural, and vice versa.

26. No party will be liable for delay or failure in performance of any of the acts required by this BTDS Subscriber Agreement when such delay or failure arises from circumstances beyond its reasonable control (including acts of God, fire, flood, war, explosion, sabotage, terrorism, embargo, civil commotion, acts or omissions of any government entity, supplier delays, communications or power failure, equipment or software malfunction, or labor disputes), and without the gross negligence or willful misconduct, of the party. If the period of non-performance exceeds ten (10) calendar days, then the party to whom the performance is due will have the right to terminate this BTDS Subscriber Agreement by giving notice five (5) calendar days before such date of termination.

27. This BTDS Subscriber Agreement, including any attachments hereto which are an integral part hereof and materials referenced herein (collectively, **Attachments**) and the NASD Rules, as any of these items may be added to, deleted from, or amended from time to time, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, communications, writings and understandings with respect to the subject matter of this BTDS Subscriber Agreement. In the event of any conflict between the provisions of this BTDS Subscriber Agreement, the Attachments the BTDS Vendor Agreement or the NASD Rules, the order of preference shall be the NASD Rules, the BTDS Vendor Agreement, the Attachments and this BTDS Subscriber Agreement.

28. This BTDS Subscriber Agreement shall become effective on the date executed by Vendor. (**Effective Date**).

29. This BTDS Subscriber Agreement may be executed in one or more counterparts, which shall each be considered an original, but all of which together shall constitute one and the same BTDS Subscriber Agreement.