

## MARKET DATA DISTRIBUTION AGREEMENT

**WHEREAS**, OTC Markets Group has developed a system for providing market information relating to certain securities and other financial instruments traded in the over-the-counter markets (as further defined below, the “Information”); and

**WHEREAS**, Distributor desires to receive the Information for the limited purposes set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, the parties, intending to be legally bound, hereby agree as follows:

### 1. Definitions.

**a. “Agreement”** shall mean the Distribution Agreement and the Attachments, as added to, deleted from, or amended from time to time.

**b. “Attachments”** shall mean any attachments, addenda, cover sheets, amendments, exhibits, schedules and other materials referenced herein.

**c. “Claims or Losses”** shall mean 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, including, without limitation, (i) direct, indirect, punitive, special, consequential and incidental damage, and (ii) administrative costs, litigation costs, and attorneys' and auditors' fees and disbursements.

**d. “Clearing Firm”** shall be defined in the End-of-Day Pricing Service Addendum to this Distribution Agreement.

**e. “Confidential Information”** shall mean information consisting of (i) computer software owned by each party hereto and all source documents relating to such computer software, (ii) proprietary business information of each party (including, without limitation, the names and addresses of customers, information providers and suppliers), and business information that such party does not generally make available to the public (including, without limitation, the terms of this Agreement); (iii) the methods, means, personnel, equipment and software by and with which any party provides its products and services; and (iv) any other information that any party reasonably designates, by notice in writing delivered to the other party, as being confidential or a trade secret or is disclosed in circumstances where such other party knows or ought reasonably to have known was confidential; *provided, however*, that the term shall not include information (1) that is lawfully within the possession of a party prior to the date of this Agreement and not subject to an obligation to keep such information confidential, (2) that is voluntarily disclosed to a party by a third-party; *provided* that such party does not have actual knowledge that the third-party has breached any obligation not to reveal such information, (3) that is developed by a party independently of the disclosure; or (4) is generally known or revealed to the public.

**f. “Connectivity Specifications”** shall be defined in the Direct Connectivity Addendum to this Distribution Agreement.

**g. “Custodian Bank”** shall be defined in the End-of-Day Pricing Service Addendum to this Distribution Agreement.

**h. “Derived Data Usage”** shall mean use of the Information in one or more applications or services that produce and distribute data derived from the Information, including applications or services that (i) produce derived pricing information, (ii) calculate Distributor's own prices, (iii) create indices or (iv) generate other information or analysis derived from the Information; *provided* that such applications or services (a) are fully automated, (b) use the Information to produce data based on an algorithm without human intervention, (c) do not display the Information to any Recipient, and (d) without

considerable expense and effort, cannot be reverse engineered or otherwise used to reproduce the Information.

i. **“Delayed OTC Markets Level 1+”** shall mean Information consisting of OTC Markets Level 1+, on a 15 minute delayed basis, continuously updated from 6:00 AM to 5:00 PM Eastern Standard Time.

j. **“Delayed OTC Markets Level 1+ for Website License”** shall mean a license to (i) display Information consisting of Delayed OTC Markets Level 1+ on Distributor’s Internet Properties and (ii) use Information consisting of Delayed OTC Markets Level 1+ on Distributor’s Internal Applications, except that such permitted use shall not include (A) Investment Accounting, (B) valuation, and (C) settlement, clearing and custody.

k. **“Display Usage”** shall mean distribution of the Information to Subscribers through one or more display devices operated by the Distributor.

l. **“Distribution Agreement”** shall mean this Market Data Distribution Agreement, as added to, deleted from, or amended from time to time, pursuant to which Distributor receives, uses or distributes the Information.

m. **“Distributor”** shall mean (i) the person receiving the Information pursuant to this Distribution Agreement (the **“Control Distributor”**) and (ii) any affiliate of the Control Distributor receiving the Information pursuant to this Distribution Agreement that is identified in the Distributor’s Information Plan (the **“Affiliate Distributor”** and collectively with the Control Distributor, the **“Distributor”** for all purposes under the Agreement).

n. **“Distributor Invoiced Recipients”** shall mean Recipients and Issuers that in the sole and absolute discretion of OTC Markets Group are charged or assessed by Distributor for the Information.

o. **“Distributor’s Internal Applications”** shall mean Distributor’s internal display devices and non-display applications; *provided* that such internal display devices and non-display applications are not available to any person that is not a User.

p. **“Distributor’s Internet Properties”** shall mean (i) Distributor branded Internet properties and (ii) non-Distributor branded Internet properties that are majority owned and controlled by Distributor.

q. **“Distributor’s Services”** shall mean the goods or services provided by the Distributor, whether internally or externally, that are based upon or use the Information, or of which the Information is a part.

r. **“Distributor’s System”** shall mean a system of applications operated by the Distributor, which complies with the Technical Specifications and is used by the Distributor to access the Information and distribute the Distributor’s Services.

s. **“Distributor’s Information Plan”** shall mean a detailed description of the Distributor’s intended use of the Information, including, without limitation, Distributor’s intent to manipulate, process, store, transmit, reproduce and display the Information, and the persons to whom such Information will be made available, as and to the extent approved by OTC Markets Group.

t. **“End-of-Day Pricing Service”** shall mean a license for use of Information consisting of Delayed OTC Markets Level 1+ and/or a snapshot of the Inside Market Quote taken at 4:00 PM Eastern Standard Time (or at such earlier closing time, if applicable) or at such other time agreed upon by both parties in writing received from OTC Markets Group or not more than one data vendor to be used for (i) Investment Accounting, (ii) valuation, (iii) settlement, clearing and custody, and (iv) information, research or analysis.

**u. “End-of-Day Pricing Service for Professional Information Services”** shall mean a license that may be used only by Professional Information Services for use of Information consisting of Delayed OTC Markets Level 1+ and/or a snapshot of the Inside Market Quote taken at 4:00 PM Eastern Standard Time (or at such earlier closing time, if applicable) or at such other time agreed upon by both parties in writing received from OTC Markets Group or not more than one data vendor to be used for information, research or analysis only.

**v. “Extranet Provider”** shall mean an entity who has entered into a Market Data Extranet Provider Agreement with OTC Markets Group to transmit the Information, via its facilities, to authorized Distributors and/or Subscribers.

**w. “Historical Information”** shall mean the Information after 12:00 a.m. Eastern Standard Time subsequent to the date on which such Information was first provided to Distributor by OTC Markets Group.

**x. “Historical Information Recipient”** shall mean any natural person or entity that receives Historical Information.

**y. “Information”** shall mean the information and data, including information, goods and services provided by Third Party Information Providers, (i) contained in OTC Markets Group’s proprietary electronic quotation service data feed (“**OTC Feed**”) provided to Distributor by OTC Markets Group, (ii) contained in OTC Markets Group’s proprietary RSS feed or (iii) made available to Distributor by OTC Markets Group on a secured FTP interface or secured website interface, each as specified in the Attachments, *provided*, that Information shall not include information and data derived from a Non-Display Usage.

**z. “Inside Market Quote”** shall mean the best bid price and size and the best ask price and size for a security quoted in the Information.

**aa. “Investment Accounting”** shall mean use of the Information for portfolio valuation, preparation of client investment statements, preparation of financial statements pursuant to U.S. GAAP, IASB/IFRS or National Accounting Standards, or preparation of regulatory and other reports for Net Capital and FINRA FOCUS reports, Fund Valuation (Net Asset Value) reports, and other similar reports.

**bb. “Invoiced Recipients”** shall mean Recipients and Issuers that OTC Markets Group in its sole and absolute discretion elects to invoice, as distinguished from Distributor Invoiced Recipients.

**cc. “Issuer”** shall mean an entity that issues over-the-counter securities quoted on OTC Link.

**dd. “Non-Display Usage”** shall mean use of the Information in one or more applications or services for (i) operational, processing and order routing systems, (ii) monitoring, surveillance and best execution systems, (iii) price validation, (iv) analytical programs intended to identify purchase/sale or other trading decisions, (v) automated quote or order generation, (vi) black box market making, and (vii) other related activities; *provided* that such applications or services (a) are fully automated, (b) use the Information to deliver results based on an algorithm without human intervention and (c) do not display the Information to any Recipient.

**ee. “Non-Professional Subscriber”** shall mean any Subscriber that is a natural person using the Information that is not (i) 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, (ii) an “investment adviser” as defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified thereunder), without taking account of the exclusions to such definition contained in such section, (iii) 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

or by an organization except for such exemption or (iv) using, or planning to use, to reproduce, duplicate, copy, sell, trade, resell or exploit or make any other use of, any part of, or the use of, or access to, the Information for any commercial purpose.

**ff. “OTC Link”** shall mean the interdealer quotation system and electronic messaging service for broker-dealers provided by OTC Markets Group.

**gg. “OTC Market Tier”** shall mean a specific tier designation assigned by OTC Markets Group to an Issuer with OTC Equity Securities (within the meaning of Rule 6610 of the Financial Industry Regulatory Authority, Inc. (“FINRA”)) based on (i) the method in which such issuer publicly discloses information (either pursuant to the “alternative reporting standard,” “SEC reporting standard,” or “international information standard”), (ii) the amount of disclosure such issuer makes publicly available, and (iii) in certain cases, such issuer’s compliance with qualitative standards. The OTC Market Tier of a particular Issuer is available at [www.otcmarkets.com](http://www.otcmarkets.com).

**hh. “OTC Markets Group”** shall mean OTC Markets Group Inc., a Delaware corporation, and its affiliates.

**ii. “OTC Markets Group Company Data File”** shall be defined in the Web Access Licenses Addendum to this Distribution Agreement.

**jj. “OTC Markets Group OTC Quote History Data File”** shall be defined in the Web Access Licenses Addendum to this Distribution Agreement.

**kk. “OTC Markets Group Security Data File”** shall be defined in the Web Access Licenses Addendum to this Distribution Agreement.

**ll. “OTC Markets Group Unsolicited Quote Security File”** shall be defined in the Web Access Licenses Addendum to this Distribution Agreement.

**mm. “OTC Markets Integration and Display Requirements”** shall mean the document that sets forth the OTC Markets Group Data Integration and Display Requirements and Guidelines, dated as of January 2011, as amended from time to time.

**nn. “OTC Markets Level 1+”** shall mean a license to provide Information consisting of all bid and offer price information and aggregate size information (aggregated by size at each respective bid or offer price), security information and OTC Markets Trade Prices, for a security quoted in the Information, *provided, however*, that such Information may not be used for (A) Investment Accounting, (B) valuation, and (C) settlement, clearing and custody.

**oo. “OTC Markets Level 1+ Broker-Dealer Enterprise License”** shall mean a license for OTC Markets Real-Time Reference Prices License and Display Usage, Non-Display Usage and Derived Data Usage available only to broker-dealers to distribute to Recipients Information consisting of OTC Markets Level 1+ for a single monthly charge specified in the Attachments; *provided, however*, that (i) Information may not be distributed under such license to any Subscriber that does not maintain a securities brokerage account with the Distributor and (ii) none of such Subscribers may view such Information except as an integral part of the password protected display devices, password protected trading applications or password protected Internet sites of the Distributor.

**pp. “OTC Markets Level 1+ Internal Systems/Applications Enterprise License”** shall mean a license for Non-Display Usage of Information consisting of OTC Markets Level 1+; *provided* that the applications and services that use the Information are not available to any person that is not a User.

**qq. “OTC Markets Level 1+ for OTC Issuer Website License”** shall mean a license to publish Information consisting of OTC Markets Level 1+ relating to over-the-counter securities of a particular

Issuer that are quoted on OTC Link on a website owned by such Issuer and operated by such Issuer or on Distributor's Internet Properties, and to provide such Information to such Issuer for its use in the ordinary course of the Issuer's business, and for no other purpose; *provided, however*, that this license shall not be used to publish Information relating to the securities of any Issuer whose OTC Market Tier is "Caveat Emptor".

**rr. "OTC Markets Level 2+"** shall mean a license to provide Information consisting of all bid and offer prices and size information, market maker identifiers and contact information, security information and OTC Markets Trade Prices, for a security quoted in the Information, *provided, however*, that such Information may not be used for (A) Investment Accounting, (B) valuation, and (C) settlement, clearing and custody.

**ss. "OTC Markets Level 2+ Broker-Dealer Enterprise License"** shall mean a license for OTC Markets Real-Time Reference Prices License and Display Usage, Non-Display Usage and Derived Data Usage available only to broker-dealers to distribute to Recipients Information consisting of OTC Markets Level 2+ for a single monthly charge specified in the Attachments; *provided, however*, that (i) Information may not be distributed under such license to any Subscriber that does not maintain a securities brokerage account with the Distributor and (ii) none of such Subscribers may view such Information except as an integral part of the password protected display devices, password protected trading applications or password protected Internet sites of the Distributor.

**tt. "OTC Markets Level 2+ External Derived Data License"** shall mean a license for Derived Data Usage of Information consisting of OTC Markets Level 2+ by the Distributor and the data derived from the Information may be distributed to any person.

**uu. "OTC Markets Level 2+ Internal Derived Data License"** shall mean a license for Derived Data Usage of Information consisting of OTC Markets Level 2+ by the Distributor; *provided* that the data derived from the Information may not be distributed to any person that is not a User.

**vv. "OTC Markets Level 2+ Internal Systems/Applications Enterprise License"** shall mean a license for Non-Display Usage of Information consisting of OTC Markets Level 2+; *provided* that the applications and services that use the Information are not available to any person that is not a User.

**ww. "OTC Markets Level 2+ for OTC Issuer Website License"** shall mean a license to publish Information consisting of OTC Markets Level 2+ relating to over-the-counter securities of a particular Issuer that are quoted on OTC Link on a website owned by such Issuer and operated by such Issuer or on Distributor's Internet Properties, and to provide such Information to such Issuer for its use in the ordinary course of the Issuer's business, and for no other purpose; *provided, however*, that this license shall not be used to publish Information relating to the securities of any Issuer whose OTC Market Tier is "Caveat Emptor".

**xx. "OTC Markets Multicast Data Feeds Technical Specification"** shall mean the document that sets forth the OTC Markets Multicast Data Feeds Technical Specification dated as of October 6, 2011, as amended from time to time.

**yy. "OTC Markets Real-Time Reference Prices License"** shall mean a license to publish Information consisting of (i) the highest bid price and lowest offer price, but no quote size information other than a "1", (ii) security information and (iii) OTC Markets Trade Prices, for a security quoted in the Information, *provided, however*, that such Information may not be used for (A) Investment Accounting, (B) valuation, and (C) settlement, clearing and custody.

**zz. "OTC Markets Trade Prices"** shall mean Information consisting of real-time price and sale information, volume information and market maker identifiers, if provided, for transactions in OTC Equity Securities (within the meaning of Rule 6610 of the Financial Industry Regulatory Authority, Inc.

("FINRA")) communicated to OTC Markets Group on OTC Link or advertised through facilities operated by OTC Markets Group.

**aaa. "Other Information"** shall have the meaning given to it in Section 5(a) of this Agreement.

**bbb. "Prime Broker"** shall be defined in the End-of-Day Pricing Service Addendum to this Distribution Agreement.

**ccc. "Professional Information Service"** shall mean any entity deriving the majority of its revenues from the aggregation and distribution of financial information, including financial news and reports, research analyses, charts, graphs, or other similar publications covering security markets, securities, or issuers.

**ddd. "Professional Subscriber"** shall mean any Subscriber that is not a Non-Professional Subscriber.

**eee. "Redistributor"** shall mean another distributor (i) from which Distributor receives the Information and (ii) which cannot substantially control the capability of Distributor to access Information for the purposes of reporting usage and qualification.

**fff. "Recipient"** shall mean a User or a Subscriber.

**ggg. "Service Bureau"** shall be defined in the End-of-Day Pricing Service Addendum to this Distribution Agreement.

**hhh. "Subscriber"** shall mean any customer of Distributor that receives Information from the Distributor and has entered into a Subscriber Agreement. In the case of a broker-dealer that is a Distributor of Information through an OTC Markets Level 1+ Broker-Dealer Enterprise License or an OTC Markets Level 2+ Broker-Dealer Enterprise License, such customer shall have and maintain one or more brokerage accounts with Distributor.

**iii. "Subscriber Agreement"** shall mean an agreement that Distributor must obtain from Subscribers prior to Distributor providing Recipients with Information, (i) in the appropriate form attached hereto as Appendix A-1 (or, in the case of an Issuer whose securities are displayed pursuant to an OTC Markets Level 1+ for OTC Issuer Website License or an OTC Markets Level 2+ for OTC Issuer Website License, Appendix A-3), as such agreement may be amended by OTC Markets Group, in its sole and absolute discretion, from time to time, or in the alternative, (ii) in a form of agreement drafted by Distributor, *provided* that such agreement incorporates by reference the agreement in the form attached hereto as Appendix A-1 (or Appendix A-3, as applicable) pursuant to the instructions set forth in Appendix A-2 attached hereto, or (iii) in a form of agreement drafted by Distributor, *provided* that such agreement provides OTC Markets Group with rights, privileges and obligations that are indubitably equivalent to the rights, privileges and obligations set forth in the form of agreement attached hereto as Appendix A-1 (or Appendix A-3, as applicable) and, in the event that a dispute with any Subscriber arises relating to the Information, Distributor agrees to provide OTC Markets Group with a copy of such agreement. In the case of an OTC Markets Real-Time Reference Prices License, an OTC Markets Level 1+ for OTC Issuer Website License or OTC Markets Level 2+ for OTC Issuer Website License, or a Delayed OTC Markets Level 1+ for Website License, such Subscriber Agreement may consist of terms of service approved by OTC Markets Group that are prominently displayed on the Distributor's Internet Properties where the Information is provided that (1) identify OTC Markets Group as the owner of the Information, (2) require each Subscriber to agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purpose, any part of, the use of, or access to, the Information and (3) provides a disclaimer, substantially in the following form: "THE INFORMATION THAT OTC MARKETS DIRECTLY OR INDIRECTLY PROVIDES IS PROVIDED "AS IS," AND THERE ARE NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION,

TIMELINESS, TRUTHFULLNESS, SEQUENCE, COMPLETENESS, 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 PURPOSE).”

**jjj. “System”** shall mean the system developed by OTC Markets Group to deliver the Information.

**kkk. “Technical Specifications”** shall mean the OTC Markets Multicast Data Feeds Technical Specification, the OTC Markets Integration and Display Requirements and, if the Direct Connectivity Addendum is applicable, the Connectivity Specifications.

**III. “Third Party Information Providers”** shall mean those individuals and entities that provide information, goods and services to OTC Markets Group contained in the OTC Feed.

**mmm. “User”** shall mean an employee or consultant of Distributor that is furnished the Information for internal business use. Without limiting the generality of the foregoing, the term “User” specifically does not include any person that sells, leases, furnishes or otherwise permits or provides access to the Information to any person that is not an employee or consultant of the Distributor.

**nnn. “Web Access License for OTC Markets Group Company Data File”** shall mean a license to (i) display Information consisting of OTC Markets Group Company Data File received from a secured FTP interface or secured website interface on Distributor’s Internet Properties and (ii) use such Information on Distributor’s Internal Applications, except that such permitted use shall not include (A) Investment Accounting, (B) valuation, and (C) settlement, clearing and custody.

**ooo. “Web Access License for OTC Markets Group OTC Quote History Data File”** shall mean a license to (i) display Information consisting of OTC Markets Group OTC Quote History Data File received from a secured FTP interface or secured website interface on Distributor’s Internet Properties and (ii) use such Information on Distributor’s Internal Applications, except that such permitted use shall not include (A) Investment Accounting, (B) valuation, and (C) settlement, clearing and custody.

**ppp. “Web Access License for OTC Markets Group Security Data File”** shall mean a license to (i) display Information consisting of OTC Markets Group Security Data File received from a secured FTP interface or secured website interface on Distributor’s Internet Properties and (ii) use such Information on Distributor’s Internal Applications, except that such permitted use shall not include (A) Investment Accounting, (B) valuation, and (C) settlement, clearing and custody.

**qqq. “Web Access License for OTC Markets Group Unsolicited Quote Security File”** shall mean a license to (i) display Information consisting of OTC Markets Group Unsolicited Quote Security File received from a secured FTP interface or secured website interface on Distributor’s Internet Properties and (ii) use such Information on Distributor’s Internal Applications, except that such permitted use shall not include (A) Investment Accounting, (B) valuation, and (C) settlement, clearing and custody.

## **2. Agreement to Provide Information; Distributor Warranty.**

**a.** OTC Markets Group hereby agrees to provide to Distributor, either directly or through another distributor, subject to the terms and conditions set forth herein, the Information that is requested by Distributor, as specified in the Attachments. Distributor warrants that it will not use the Information in any way that violates, breaches or is inconsistent with the terms of this Agreement.

**b.** The Control Distributor, if any, hereby represents and warrants that (i) it has the power and authority to cause each Affiliate Distributor to comply with the terms of the Agreement, (ii) it will cause each Affiliate Distributor hereunder to comply entirely with the terms of the Agreement as if a signatory thereto, (iii) each Affiliate Distributor hereunder will have the same rights and obligations under the

Agreement as the Control Distributor and (iv) upon execution and delivery by the Control Distributor, the Agreement shall be binding and enforceable on the Control Distributor and each Affiliate Distributor in accordance with its terms. Each Distributor hereunder shall be jointly and severally liable for any breach of the Agreement by any of them.

**3. Distributor's System.** Distributor acknowledges receipt of the Technical Specifications and acknowledges and agrees that nothing in this Agreement constitutes an undertaking by OTC Markets Group (i) to continue to provide the Information, the System or any component or function of either of them, in the present form or configuration or as specified in the Technical Specifications or in a manner compatible with Distributor's System, or (ii) to use existing communications facilities or methods. OTC Markets Group, in its sole and absolute discretion, may make any modification, addition or deletion to (i) the Information or System, or any component or function of either of them, (ii) the Technical Specifications or (iii) communications facilities or methods used by the System; ***provided, however,*** that OTC Markets Group will make commercially reasonable efforts to provide Distributor with ninety (90) days' notice of any such modification, addition or deletion that is material, except in the case of (a) a System malfunction that requires modifications, additions or deletions on an accelerated basis, (b) an emergency that precludes the opportunity to provide such notice, or (c) an order of a court or regulatory agency that requires a shorter time period for such notice. **Receipt or use of the Information after any such modification, addition or deletion shall constitute acceptance of the Information, System or the Technical Specifications, inclusive of such modification, addition or deletion.**

**4. License to Use.** OTC Markets Group grants to Distributor a non-exclusive, non-assignable, non-transferable license to receive and use the Information during the term of this Agreement only for the following purposes:

**a.** Distributor will use the Information by integrating the Information into Distributor's Systems for transmission or dissemination to Users, Subscribers, Issuers and Historical Information Recipients through use of the applications comprising Distributor's Systems as set forth in the Distributor's Information Plan as and to the extent such Plan is approved by OTC Markets Group. Except for (i) Historical Information transmitted or disseminated pursuant to Section 4(c) herein or (ii) data derived from the Information pursuant to a OTC Markets Level 2+ External Derived Data License, Distributor may not transmit or disseminate Information to any person that is not a User, a Subscriber or an Issuer and may not transmit or disseminate Information using an OTC Markets Level 1+ Broker-Dealer Enterprise License or an OTC Markets Level 2+ Broker-Dealer Enterprise License to any Subscriber that does not maintain an account with the Distributor (or with the Distributor's clearing agent as an introduced account of the Distributor) for the custody, purchase and sale of securities; *provided, however,* that Distributor may transmit or disseminate Information to other distributors that have entered into this agreement with OTC Markets Group, to the extent such transmission or dissemination is specifically set forth in the Distributor's Information Plan and approved by OTC Markets Group; *further, provided, however,* that Distributor may make Delayed OTC Markets Level 1+ available for viewing by persons who are not Users or Subscribers, provided that such Delayed OTC Markets Level 1+ is not made available to such persons except through an Internet site (i) owned and operated by the Distributor, (ii) containing terms and conditions for use that comply with the requirements contained in the definition of "Subscriber Agreement" in Section 1 hereof and (iii) that is clearly identified as an Internet site that may make such Information available to such persons in the Distributor's Information Plan; and *further, provided, however,* that Distributor may make Information consisting of OTC Markets Level 1+ or OTC Markets Level 2+ relating to over-the-counter securities of a particular Issuer that are quoted on OTC Link available for viewing by persons who are not Users or Subscribers or Issuers to the extent that Distributor is authorized by OTC Markets Group pursuant to an OTC Markets Level 1+ for OTC Issuer Website License or OTC Markets Level 2+ for OTC Issuer Website License, as applicable; *provided* that such Delayed OTC Markets Level 1+ is not made available to such persons except through an Internet site (i) owned and operated by the Distributor, (ii) containing terms and conditions for use that comply with the requirements contained in the definition of "Subscriber Agreement" in Section 1 hereof and (iii) that is clearly identified as an Internet site that may make such Information available to such persons in the Distributor's Information Plan. Distributor shall not use the Information for Investment Accounting, valuation, or settlement, clearing and custody except in connection with the End-of-Day



Pricing Service or the End-of-Day Pricing Service for Professional Information Services. In the case of a broker-dealer that is a Distributor of Information through an OTC Markets Level 1+ Broker-Dealer Enterprise License or an OTC Markets Level 2+ Broker-Dealer Enterprise License, in the event that such Distributor clears securities for an introducing broker-dealer, then for the purposes of this Section 4(a), the term Subscriber shall not include any of the customers of such introducing broker-dealer, but shall include other customers (such as investment management accounts, pension funds, hedge funds) that maintain an account for the custody, purchase and sale of securities with the Distributor. Distributor represents and warrants that the detailed description of Distributor's System for receiving, transmitting and disseminating Information, as described in Distributor's Information Plan, including, but not limited to, the data processing equipment, software, and communications facilities related thereto, is true, complete and not misleading. With respect to the Delayed OTC Markets Level 1+ for Website License, the Distributor hereby agrees to provide the Information to Recipients on not less than a 15-minute delayed basis and to describe the methods used to accomplish this delay in the Distributor's Information Plan. Any use of the Information by Distributor or Distributor's Users, including, but not limited to, retransmission or reprocessing, unless expressly described in Distributor's Information Plan and approved by OTC Markets Group, is prohibited.

**b.** To the extent set forth in Distributor's Information Plan, Distributor may use, on its premises, the Information in connection with Distributor's System, without charge (except for any taxes, charges or assessments (other than taxes imposed on the net income of OTC Markets Group) by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof, and any penalties or interest relating to the provision of the Information to Distributor), for advertisement, demonstration, product development, technical operations, monitoring of data quality and customer service, *provided* that no such use would involve an activity that would require the persons engaged in such activity, if conducted as part of a business, to register under federal or state securities laws. Upon request, Distributor shall provide OTC Markets Group or its designee with information about, and demonstrate, such use.

**c.** Notwithstanding anything to the contrary in this Agreement, to the extent set forth in Distributor's Information Plan, Distributor may sell, lease, furnish or otherwise permit or provide access to Historical Information, without charge (except for any taxes, charges or assessments (other than taxes imposed on the net income of OTC Markets Group) by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof, and any penalties or interest relating to the provision of the Historical Information to Distributor) to a Historical Information Recipient; *provided*, that Distributor shall prominently display or provide, as applicable, in any medium containing Historical Information, including, but not limited to, wall boards, tickers, mobile devices, audio announcements on voice response services or Distributor's Internet Properties, a message that (i) specifies that the Information is Historical Information, (ii) identifies OTC Markets Group as the owner of the Historical Information, and (iii) requires that each Historical Information Recipient agree not to sell, lease, furnish or otherwise permit or provide access to Historical Information to any other person or entity, *unless* such Historical Information Recipient retransmits or redistributes the Historical Information in accordance with items (i) through (iii) of this subsection.

**d.** Distributor may not use the Information for any purpose inconsistent with the terms of this Agreement. All Information, including, without limitation, any and all intellectual property rights inherent therein or appurtenant thereto, shall, as between the parties, be and remain the sole and exclusive property of OTC Markets Group. Distributor shall not, by act or omission, diminish or impair in any manner the acquisition, maintenance, and full enjoyment by OTC Markets Group, its licensees, transferees and assignees, of the proprietary rights of OTC Markets Group in the Information and System.

## **5. Restrictions on Use.**

**a.** Distributor may not sell, lease, furnish or otherwise permit or provide access to the Information in any manner not set forth in Distributor's Information Plan and previously approved by OTC Markets Group in writing. If Distributor's interface with the System enables Distributor to receive data

other than the Information for which Distributor has been authorized or if OTC Markets Group otherwise inadvertently transmits data to Distributor other than the Information for which Distributor has been authorized ("Other Information"), Distributor shall notify OTC Markets Group, and Distributor shall not knowingly furnish or permit to be furnished such Other Information to any third party. Distributor shall be liable to OTC Markets Group (including, without limitation, for the charges set forth herein for use of such Other Information) in the event Distributor furnishes the Other Information to any third party or to any other place, or permits the Other Information to be so furnished, or otherwise knowingly makes use of the Other Information. Distributor is considered to have knowingly furnished or used the Other Information if Distributor undertakes any efforts to modify Distributor's Services or Distributor's System in order to accommodate the Other Information or undertakes any efforts to market Distributor's Services or Distributor's System that are based on, uses or distributes the Other Information or of which the Other Information is a part. Other Information shall be considered as Information for all other purposes under this Agreement.

**b.** In the event that Distributor desires to make any use of the Information (including, but not limited to, developing or communicating derivative information based upon the Information, or the retransmission, redistribution, reproduction or calculation of indices) in any manner not otherwise expressly permitted by the terms of Section 4 above, Distributor must obtain the prior written approval of OTC Markets Group for such use and agree to such further terms and conditions as may be required by OTC Markets Group with respect to such use. OTC Markets Group shall promptly and in good faith approve or disapprove such use proposed by Distributor. Distributor acknowledges and agrees that it acts at its own risk in developing any system for such use prior to receiving approval from OTC Markets Group because OTC Markets Group is not required to grant any such approval in its sole, absolute and unfettered discretion.

**c.** Distributor shall (i) display the Information on the Distributor's Service in a manner set forth in the OTC Markets Integration and Display Requirements and consistent with Distributor's display of NASDAQ prices, and (ii) in Distributor's Information Plan, identify the method that Distributor will use to display the required OTC Market Tier. Distributor shall not remove or alter any intellectual property ownership and/or identification notices found within the Information except with OTC Markets Group's prior written approval and shall identify OTC Markets Group as the source of the Information in a manner approved by OTC Markets Group.

**d.** Distributor hereby agrees that it will not (i) format, display, or alter the information or data received through and from the Information in violation of the OTC Markets Integration and Display Requirements, (ii) affect materially the integrity of the Information, (iii) alter the Information in any manner that adversely affects its accuracy or integrity, or (iv) render the Information inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. Distributor will not damage the goodwill or reputation of OTC Markets Group or disparage or misrepresent the products or services of OTC Markets Group, including, without limitation, the Information. Distributor will not interfere with or adversely affect any of the component parts or processes of the Information or the System, or any use thereof by any other authorized individuals or entities, or the distribution or operation of the Information or the System. If Distributor becomes aware of any potential unauthorized use by any Recipient, Issuer, or Historical Information Recipient, Distributor shall notify OTC Markets Group immediately of such unauthorized use.

**e.** Distributor agrees that (i) no later than three (3) months after the commencement of this Agreement, Distributor shall submit to OTC Markets Group a screen shot of Distributor's System showing Distributor's compliance with Section 5(c) herein and shall provide additional screen shots from time to time upon OTC Markets Group's request and (ii) during the term of this Agreement Distributor will either (A) provide at no cost to OTC Markets Group two (2) subscriptions to Distributor's Services together with the equipment used to receive and to display or communicate the Distributor's Services and the related telecommunications facilities, and OTC Markets Group agrees to execute Distributor's customary agreement with respect to such subscriptions, or (B) provide on Distributor's premises on reasonable notice during business hours as requested by OTC Markets Group the opportunity to view the use of the Information on the Distributor's System. OTC Markets Group represents and agrees that any such subscriptions will be used solely for purposes of monitoring the Information and demonstrating

Distributor's Services. Upon request, Distributor will make available marketing materials and user guides for all components of the Distributor's Services that include the Information.

f. Distributor shall take reasonable security precautions to prevent unauthorized individuals or entities from gaining access to the Information. Distributor shall comply with all reasonable security specifications or requirements prescribed by OTC Markets Group in order to prevent the Information from being improperly used or accessed or from being improperly taken. Distributor shall notify OTC Markets Group immediately when the Distributor becomes aware of any breach in security procedures concerning the Information.

g. Distributor acknowledges that OTC Markets Group may, in its sole discretion and without notice, terminate Distributor's ability to use any and all Information if OTC Markets Group finds or is alerted to alleged copyright infringement in connection with any use of the Information, all in accordance with OTC Markets Group's internal copyright infringement policies, as such policies may be amended from time to time in OTC Markets Group's sole discretion.

## **6. Distributor Reporting; Payment; Taxes.**

a. Distributor will report the number of Recipients and Issuers obtaining Information through the Distributor's System each month within fifteen (15) days following the calendar end of the applicable month through the reporting service specified by OTC Markets Group, which may be changed from time to time. Notwithstanding the foregoing sentence, (i) in the case of Historical Information distributed pursuant to Section 4(c) above, the Distributor is not required to report the number of Historical Information Recipients, provided that every medium where the Distributor provides the Historical Information is identified in the Distributor's Information Plan, and (ii) in the case of Information distributed pursuant to an OTC Markets Level 1+ Broker-Dealer Enterprise License, an OTC Markets Level 2+ Broker-Dealer Enterprise License, an OTC Markets Level 2+ External Derived Data License, an OTC Markets Level 2+ Internal Derived Data License, an OTC Markets Level 1+ Internal Systems/Applications Enterprise License, an OTC Markets Level 2+ Internal Systems/Applications Enterprise License or a Delayed OTC Markets Level 1+ for Website License, the Distributor is not required to report the number of Recipients, provided that every Internet site, including each Uniform Resource Locator (URL), where the Information may be viewed, is identified in the Distributor's Information Plan.

b. Distributor agrees to pay to OTC Markets Group or OTC Markets Group's designee the charges set forth in Appendix B, as amended from time to time on 30 days notice, except as provided in Appendix C, and in addition all applicable deposits and payments for communications, facilities, electronic fund transfer fees, interest and late fees and/or penalties (including, without limitation, charges incurred after termination, cancellation, or rescission) no later than thirty (30) days after the end of the calendar month for which such charges are incurred. Nothing in this Agreement shall prevent Distributor from separately charging its Recipients, Issuers and Historical Information Recipients for the Distributor's Services. Distributor shall pay OTC Markets Group, on demand or upon invoice, interest on any amounts due OTC Markets Group pursuant to this Agreement that are not paid within thirty (30) days after the applicable due date. Interest shall accrue at a rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum amount permitted by applicable law, for the period commencing with the applicable due date and ending upon receipt of payment by OTC Markets Group.

c. Distributor shall bear all risk of non-payment by Distributor Invoiced Recipients or by Recipients and Issuers for whom Distributor has accepted responsibility for the charges associated with such Recipients and Issuers. OTC Markets Group will bear the risk of non-payment by Invoiced Recipients. Distributor shall reasonably cooperate, at Distributor's expense, with OTC Markets Group in any lawful efforts by OTC Markets Group to collect unpaid charges due OTC Markets Group from current or former Invoiced Recipients. With OTC Markets Group's prior approval and in OTC Markets Group's sole discretion, Distributor may choose to pay OTC Markets Group any charges due on behalf of any Recipient or Issuer. Upon Distributor's payment to OTC Markets Group on behalf of any Recipient

or Issuer of any charges due hereunder, Distributor shall be subrogated to any and all rights of OTC Markets Group to recover such charges.

d. In addition, Distributor shall pay any taxes, charges or assessments (other than taxes imposed on the net income of OTC Markets Group) by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof relating to the provision of the Information by OTC Markets Group pursuant to this Agreement, and any related penalties or interest. In addition, if Distributor or any Recipient or Issuer is required by applicable law to deduct or withhold any such tax, charge or assessment from the amounts due OTC Markets Group, then such amounts due shall be increased so that the net amount actually received by OTC Markets Group after the deduction or withholding of any such tax, charge or assessment, will equal one hundred percent (100%) of the charges that are owed.

e. All payments 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 OTC Markets Group, or by electronic funds transfer to an institution of OTC Markets Group's choosing.

## 7. Distributor Audit.

a. From time to time, and no more than once in any twelve (12) month period unless necessary due to suspected non-compliance with the material provisions of this Agreement, OTC Markets Group may cause Distributor's (i) records relating to the Information, (ii) reports relating to the Information and payments to OTC Markets Group, and (iii) Distributor's System and Services (and all instruments and apparatus used in connection therewith), to be reviewed by OTC Markets Group personnel and/or auditors of OTC Markets Group's choice. The review shall be scheduled upon reasonable notice to Distributor, depending upon the circumstances and conducted in locations where Distributor's records are kept, Distributor's System is located or where Distributor uses the Information. OTC Markets Group will make reasonable efforts to provide at least four (4) weeks advance written notice of the audit, unless the audit is scheduled due to suspected material non-compliance. Distributor shall provide promptly information or materials in response to any request for information relating to the Information. Distributor shall make available for examination all records, reports, payments, and supporting documentation, and Distributor's System and Services necessary in the judgment of OTC Markets Group's audit personnel to reach a conclusion as to the accuracy and completeness of (i) Distributor's reports to OTC Markets Group, (ii) the payments connected therewith, (iii) the description set forth in the Distributor's Information Plan and (iv) compliance with applicable law and the terms of this Agreement.

b. OTC Markets Group shall endeavor to ensure that, where reasonably practicable, Distributor is provided with a preliminary audit response within ninety (90) days following the completion of any audit. OTC Markets Group shall discuss the outcome of any such preliminary audit response in good faith with Distributor or, at Distributor's election, with Distributor's designee.

c. After receipt of the preliminary audit response, Distributor may then elect, at Distributor's sole discretion and at the Distributor's sole expense, to conduct a subsequent review to determine the magnitude of the non-compliance. This subsequent review shall be completed and submitted to OTC Markets Group within ninety (90) days after the preliminary audit response is received by Distributor.

d. In the event that OTC Markets Group and Distributor are not able to reach agreement concerning the preliminary audit response nor the subsequent review within ninety (90) days of Distributor's receipt of the preliminary audit response, provided OTC Markets Group has proceeded with such examination and audit in good faith in accordance with the provisions hereof, then OTC Market's determination shall be deemed conclusive (the "**Final Audit**").

e. In the event that the Final Audit determines that there is underreporting, underpayment or other financial non-compliance with this Agreement (or discloses additional underreporting or underpaid amounts or other financial non-compliance), then such shall be remitted to OTC Markets Group, together with applicable interest within sixty (60) days of the completion of the Final Audit. In the event

that the Final Audit discloses an overpayment, OTC Markets Group will apply the overpayment for the 60 days prior to the end of the period being reviewed as a credit against amounts due from Distributor. In the event that the examination conducted by OTC Markets Group personnel or its or Distributor's auditors reveals that there may be errors or omissions in Distributor's Information Plan, Distributor shall submit a revised Information Plan for OTC Markets Group's approval within ninety (90) days after notice from OTC Markets Group or, in the event revealed by Distributor's auditors, following conclusion of the audit. In the event that the Final Audit reveals other non-compliance, Distributor shall comply with OTC Markets Group's demand for compliance, and OTC Markets Group in its discretion at any time and from time to time during such time of non-compliance may suspend service under this Agreement. OTC Markets Group's determination in all such cases shall be deemed conclusive. Distributor's liability pursuant to this subsection for underreporting, underpayment or other financial non-compliance, provided such underreporting, underpayment or other financial non-compliance is a result of a good faith error by Distributor, shall be limited to unpaid fees, together with interest, for the three (3) years preceding the earlier of the date that Distributor, Distributor's auditors or OTC Markets Group first knew or determined that such underreporting, underpayment or other financial non-compliance has occurred, plus any costs and expenses as set forth in subsection 7(f) below.

f. In the event that the amount of underreporting, underpayment or other financial non-compliance as a result of the Final Audit is found to be equal to or greater than ten percent (10%) of the total amount of Recipients and Issuers reported or the total amount of fees payable to OTC Markets Group hereunder, as the case may be, for any audited or unaudited period referred to herein, Distributor shall, in addition to remitting the fees and applicable interest due relative to such underreporting, underpayment or other financial non-compliance, reimburse OTC Markets Group, within thirty (30) days of the date of the invoice from OTC Markets Group, for any reasonable audit, legal or administrative costs and expenses incurred to detect and rectify such underreporting, underpayment or other financial non-compliance, *provided, however* that such costs and expenses are incurred in good faith and are not unreasonable given the amount of work necessary to detect and determine the extent of, and the actual amount of, such underreporting, underpayment or other financial non-compliance.

**8. Qualification Requirements.** Distributor agrees that OTC Markets Group may have different qualification requirements for different Users, Subscribers, Issuers and Historical Information Recipients. Distributor shall provide proper protections for the Information. Distributor will cause each Subscriber to execute and deliver an appropriate form of Subscriber Agreement, which agreement may refer to Distributor as "Vendor". In the event that any Subscriber fails to comply with any of the conditions, terms or provisions of the Subscriber Agreement, or has made any representation in the Subscriber Agreement that was or has become untrue, Distributor shall, within five (5) business days after receipt of notice from OTC Markets Group of such failure or untruth, cease providing the Information to such Subscriber and shall, within ten (10) business days following the receipt of such notice, confirm such cessation by notice to OTC Markets Group. Distributor shall be solely responsible for the acts and omissions of each User. Notwithstanding anything to the contrary contained herein, Distributor hereby agrees to cease providing the Information immediately to any person upon request from OTC Markets Group, and OTC Markets Group shall not be required to provide any reason whatsoever for such request.

## **9. Term and Termination.**

a. The original term of this Agreement shall commence on the earlier of the date of this Agreement or the date the Information is provided and continue unless this Agreement is otherwise terminated. This Agreement may be terminated at any time by at least thirty (30) days' prior written notice by a party hereto given to the other. Notwithstanding the foregoing, this Agreement may be terminated by:

- i. either party, following breach of this Agreement, upon not less than fifteen (15) days' prior written notice to the breaching party, unless, if the breach is capable of being cured, the breach is cured within the notice period;

- ii. OTC Markets Group, immediately, in the event that the Distributor becomes insolvent; or the Distributor makes an assignment for the benefit of creditors; or the Distributor does not pay its debts as they become due or admits its inability to pay its debts when due; or the Distributor 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 the Distributor becomes the subject of any proceedings of bankruptcy, insolvency, reorganization, dissolution, receivership, liquidation or arrangement, adjustment, or composition with creditors;
- iii. OTC Markets Group, immediately, in the event that (a) the Distributor is not permitted or not able to receive or OTC Markets Group is prevented from disseminating the Information, or any part thereof; (b) any representation, warranty or certification made by Distributor in this Agreement or in any other document furnished by Distributor is, as of the time made or furnished, false or misleading; (c) Distributor proceeds with a proposed action which would result in a default of its obligations or covenants under this Agreement or in a breach of any representation, warranty or certification, that is material to OTC Markets Group for regulatory, commercial or other reasons, made by Distributor in connection herewith, after OTC Markets Group has notified Distributor that such proposed action would constitute a default hereunder; (d) OTC Markets Group terminates for cause Distributor's receipt of any other service or product provided by or on behalf of OTC Markets Group; or (e) OTC Markets Group, in its sole and absolute discretion, determines that (x) the Distributor has failed to comply with this Agreement and (y) any delay in termination will or is likely to have an adverse impact on the operation or performance of the System or Information or is likely to cause disproportionate harm to OTC Markets Group's interests; or
- iv. OTC Markets Group, upon not less than fifteen (15) days prior written notice, in the event that any representation, warranty or certification made by Distributor in this Agreement or in any other document furnished by Distributor becomes untrue or inaccurate and is not made true or accurate within the notice period.

b. Upon termination of this Agreement, Distributor shall cease any and all use of the Information. The right of termination set forth herein is in addition to any other remedy at law or in equity, consistent with this Agreement, that is available to one party with respect to a breach by the other and is in addition to anything otherwise set forth herein.

## 10. Confidentiality.

a. OTC Markets Group acknowledges that it may obtain Distributor's Confidential Information, and Distributor acknowledges that it may obtain OTC Markets Group's Confidential Information. Each of OTC Markets Group and Distributor hereby agree that all such Confidential Information, and any related confidential oral information, shall be deemed confidential upon disclosure to the recipient. The recipient shall (i) use such Confidential Information solely for use consistent with the purposes of this Agreement, (ii) hold such Confidential Information in confidence and (iii) not use, disclose, copy, or publish any such Confidential Information without the prior written approval of the other party except as otherwise set forth herein.

b. OTC Markets Group or the Distributor each may disclose Confidential Information to each of their respective employees, directors, and other agents solely for use consistent with the purposes of this Agreement, *provided* that any such officer, employee or adviser shall be advised of the terms and provisions of this Agreement and shall be bound to keep such information confidential at the time any of them receive such Confidential Information. In the event that either party is required by legal, administrative or judicial process by an entity having jurisdiction over either of them to disclose any of their respective Confidential Information, the party from whom disclosure is sought shall provide the

party seeking confidential treatment with prompt prior written notice of such requirement, unless prohibited by law, and shall cooperate with the party seeking confidential treatment, at such party's expense, so that such party may seek a protective order or other appropriate remedy to avoid disclosure and, if requested by such party, shall cooperate in lawfully resisting such disclosure. In the event that such protective order or other remedy is not obtained, or the party seeking confidential treatment informs the party from whom disclosure is sought that it will not seek such a protective order or other remedy, the party from whom disclosure is sought may disclose only that portion of the Confidential Information that it determines, based on the advice of counsel, is legally required to be disclosed, and shall make all reasonable best efforts to obtain assurances that confidential treatment will be accorded such Confidential Information. Nothing contained in this Agreement shall prevent OTC Markets Group from using findings from audits conducted by its personnel or its agents to the extent such findings are used in the aggregate with other information and such aggregation does not specifically identify Distributor.

**11. LIMITED WARRANTIES AND DISCLAIMERS. OTC MARKETS GROUP WILL MAKE COMMERCIALY REASONABLE EFFORTS TO PROVIDE THE INFORMATION AS PROMPTLY AND AS ACCURATELY AS IS REASONABLY PRACTICABLE. NOTWITHSTANDING THE FOREGOING, DISTRIBUTOR ACKNOWLEDGES AND AGREES THAT THE INFORMATION, ANY AND ALL MATERIAL RELATED TO THE INFORMATION, AND ANY OTHER PRODUCT THAT OTC MARKETS GROUP DIRECTLY OR INDIRECTLY PROVIDES ARE PROVIDED "AS IS" WITH NO WARRANTIES EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.**

**IN THE EVENT THAT THE INFORMATION IS NOT AVAILABLE AS A RESULT OF A FAILURE BY OTC MARKETS GROUP TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, OTC MARKETS GROUP WILL ENDEAVOR, GIVING DUE REGARD FOR THE COST, TIME, AND EFFECT ON OTHER PERSONS, 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 A CONTINUOUS PERIOD OF FOUR (4) HOURS OR MORE DURING THE TIME THAT OTC MARKETS GROUP REGULARLY TRANSMITS THE INFORMATION, DUE TO THE FAULT OF OTC MARKETS GROUP (EXCEPT FOR A REASON PERMITTED IN THIS AGREEMENT), DISTRIBUTOR'S OR ANY OTHER INDIVIDUAL'S OR ENTITY'S EXCLUSIVE REMEDY AGAINST OTC MARKETS GROUP SHALL BE, AT OTC MARKETS GROUP'S OPTION, EITHER A PRORATED CREDIT OR A PRORATED REFUND OF ANY MONIES DUE TO OTC MARKETS GROUP FROM DISTRIBUTOR (LESS MONIES REFUNDED OR CREDITED TO DISTRIBUTOR'S RECIPIENTS AND ISSUERS) FOR THE INFORMATION AT ISSUE FOR THE PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL BE REQUESTED BY WRITTEN NOTICE TO OTC MARKETS GROUP WITH ALL PERTINENT DETAILS INCLUDED. IN THOSE CASES WHERE DISTRIBUTOR RECEIVES SAID CREDIT OR REFUND ON BEHALF OF ITS RECIPIENTS OR ISSUERS, DISTRIBUTOR SHALL PROMPTLY PROVIDE THE SAME CREDIT OR REFUND ON BEHALF OF OTC MARKETS GROUP TO DISTRIBUTOR INVOICED RECIPIENTS.**

**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, 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 PURPOSE).**

## **12. LIMITATION OF LIABILITY.**

**a. EXCEPT FOR OTC MARKETS GROUP'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN THIS AGREEMENT, OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS SHALL NOT BE LIABLE TO DISTRIBUTOR OR TO ANY OTHER PERSON FOR TRADING LOSSES, LOSS OF ANTICIPATED PROFITS, LOSS BY**

REASON OF SHUTDOWN IN OPERATION OR FOR INCREASED EXPENSES OF OPERATION, OR FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF OTC MARKETS GROUP OR ANY OF ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS SHALL NOT BE LIABLE TO DISTRIBUTOR OR TO ANY OTHER PERSON FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE INFORMATION THAT LASTS LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT OTC MARKETS GROUP REGULARLY TRANSMITS THE INFORMATION, OR IF THE INFORMATION IS MATERIALLY AFFECTED FOR LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT OTC MARKETS GROUP REGULARLY TRANSMITS THE INFORMATION.

c. EXCEPT TO THE EXTENT THAT OTC MARKETS GROUP IS INDEMNIFYING THE DISTRIBUTOR AS SET FORTH IN THIS AGREEMENT, IF ANY OR EACH OF OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS ARE FOR ANY REASON HELD LIABLE TO DISTRIBUTOR, OR TO ANY OTHER PERSON, FOR CLAIMS ARISING FROM THE INFORMATION, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS, AS APPLICABLE, WITHIN A SINGLE YEAR OF THIS AGREEMENT (FROM THE EFFECTIVE DATE OF THIS AGREEMENT) IS LIMITED TO AN AMOUNT OF DISTRIBUTOR'S DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY DISTRIBUTOR IN REASONABLE RELIANCE, AND WHICH AMOUNT DOES NOT EXCEED AT OTC MARKETS GROUP'S OPTION, EITHER A PRORATED CREDIT OR A PRORATED REFUND OF ANY MONIES DUE TO OTC MARKETS GROUP FROM DISTRIBUTOR (LESS MONIES REFUNDED OR CREDITED TO DISTRIBUTOR'S RECIPIENTS AND ISSUERS) FOR THE INFORMATION AT ISSUE FOR THE PERIOD AT ISSUE. THIS SUBSECTION SHALL NOT RELIEVE OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.

d. EXCEPT TO THE EXTENT THAT OTC MARKETS GROUP IS INDEMNIFYING THE DISTRIBUTOR AS SET FORTH IN THIS AGREEMENT, IF ANY OR EACH OF OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS ARE FOR ANY REASON HELD LIABLE TO DISTRIBUTOR, OR TO ANY OTHER PERSON, FOR CLAIMS NOT ARISING FROM THE INFORMATION, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS, AS APPLICABLE, WITHIN A SINGLE YEAR OF THIS AGREEMENT (FROM THE EFFECTIVE DATE OF THIS AGREEMENT) IS LIMITED TO AN AMOUNT OF DISTRIBUTOR'S DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY DISTRIBUTOR IN REASONABLE RELIANCE, AND WHICH AMOUNT DOES NOT EXCEED, AT OTC MARKETS GROUP'S OPTION, EITHER A MONTH'S CREDIT OR A MONTH'S REFUND OF THE AVERAGE MONTHLY AMOUNT PAID TO OTC MARKETS GROUP CALCULATED OVER THE 12 MONTHS PRECEDING THE CLAIM. THIS SUBSECTION SHALL NOT RELIEVE OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.



**e. THE DISTRIBUTOR AND OTC MARKETS GROUP UNDERSTAND AND AGREE THAT THE PRICING FOR THE INFORMATION REASONABLY REFLECTS THE ALLOCATION OF RISK AND LIMITATION OF LIABILITY SET FORTH IN THIS SECTION.**

**f. OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS SHALL NOT BE LIABLE TO DISTRIBUTOR OR TO ANY OTHER PERSON FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION FROM OTC MARKETS GROUP'S THIRD PARTY INFORMATION PROVIDERS.**

**g. OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS SHALL NOT BE LIABLE TO DISTRIBUTOR OR TO ANY OTHER PERSON FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION OR DATA RECEIVED FROM A REDISTRIBUTOR OR FOR ANY ACTS OR OMISSIONS OF A REDISTRIBUTOR.**

**13. Force Majeure.** Notwithstanding any other term or condition of this Agreement, none of OTC Markets Group, its Third Party Information Providers (but not other distributors) or Distributor shall be obligated to perform or observe its respective obligations under this 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.

#### **14. Indemnification.**

**a.** Distributor shall defend, be liable to, indemnify, and hold OTC Markets Group, its employees, directors, officers, Third Party Information Providers and other agents (collectively, "OTC Markets Group Indemnified Parties") harmless from and against any and all Claims or Losses imposed on, incurred by or asserted against any of the OTC Markets Group Indemnified Parties, as such Claims and Losses are incurred, to the extent that any such Claims or Losses result from or relate to (i) failure of Distributor, Distributor's Users, its employees, independent consultants/subcontractors, directors, and other agents to comply with the terms and conditions of this Agreement, (ii) failure of any Subscriber to comply with the terms and conditions of the Subscriber Agreement in the event that Distributor has failed to notify OTC Markets Group of such non-compliance within 10 days after Distributor knows of such non-compliance; (iii) any assertion of Claims or Losses relating to the subject matter or existence of this Agreement against any of the OTC Markets Group Indemnified Parties made by a person who receives the Information from Distributor (or any person relying upon the Information received by such person); (iv) any assertion of Claims or Losses against any of the OTC Markets Group Indemnified Parties by any Recipient, Issuer or Historical Information Recipient relating to OTC Markets Group's exercise of its remedies against any Recipient, Issuer or Historical Information Recipient pursuant to this Agreement; (v) breach of any warranty by Distributor; (vi) any defense or participation by the OTC Markets Group Indemnified Parties in any action, suit, arbitration, or judicial or administrative proceeding involving any Claims or Losses described in this section; (vii) the receipt or use of the Information (including representations about the Information) by Distributor, Users, or Distributor's employees, directors, and other agents; or (viii) Distributor's election to distribute the Information pursuant to subparagraph (iii) of the definition of "Subscriber Agreement" in Section 1 herein. Distributor's obligation to defend and indemnify under this subsection shall be conditioned on the following (but any limits on Distributor's obligations are only to the extent that OTC Markets Group's failure to comply with the following has caused a material harm to Distributor's ability to defend and indemnify): (1) OTC Markets Group shall promptly notify Distributor in writing of any claim, action or allegation (but, in any event, in a timely manner that does not prejudice the rights of Distributor or OTC Markets Group); (2) OTC Markets Group shall cooperate fully with Distributor in the defense thereof and Distributor shall be liable to OTC Markets Group for its reasonable expenses (excluding reimbursement for the time value of OTC Markets Group's employees, directors, and other agents in providing such cooperation); (3) Distributor shall have sole control of the defense and all related settlement negotiations, but, upon OTC Markets Group's request,

shall inform OTC Markets Group of the status of any proceedings or negotiations; *provided that* Distributor's right to defend shall be conditioned on (I) its demonstration to OTC Markets Group's satisfaction that it is financially able to defend such action and pay any judgment or settlement and (II) counsel retained by Distributor is reasonably satisfactory to OTC Markets Group. Distributor shall not settle any action against OTC Markets Group that in any way restricts or impairs OTC Markets Group's intellectual property rights.

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

c. OTC Markets Group shall not have the obligation to defend, indemnify and hold Distributor's Indemnified Parties harmless from any and all Claims and Losses imposed on, incurred by or asserted against Distributor, its employees, directors, other agents and affiliates by any fully adjudicated and non-appealable judgment or OTC Markets Group-negotiated settlement as a result of any allegation of infringement or misappropriation in the event that the System, Information or any Technical Specifications have not been used in accordance with this Agreement, or if Distributor uses the System, Information or any Technical Specifications subsequent to an OTC Markets Group's notice to Distributor of a potential or actual infringement claim or to the extent it is based on use of a superseded version of the System, Information or any Technical Specifications if such infringement or misappropriation would have been avoided by use of the current version of the System, Information or Technical Specifications or if the infringement or misappropriation claim, action, or allegation is the result of the combination, operation, or use of the System, Information or any Technical Specifications with hardware, software or materials if such infringement or misappropriation would have been avoided by the use of the System, Information or any Technical Specifications without such hardware, software or materials, or in the event that such infringement or misappropriation claim, action, or allegation relates to or results from Historical Information that was modified or altered in any way by a person or entity other than OTC Markets Group.

d. In the event of a claim, action or allegation of infringement or misappropriation or if, in OTC Markets Group's opinion, such a claim, action or allegation is likely to occur or if the use of the System, Information or of any of the Technical Specifications is enjoined because of infringement or misappropriation, OTC Markets Group may, at its sole option and expense, (i) procure for Distributor the right to continue using the System, Information or any Technical Specifications; (ii) replace or modify the System, Information or any Technical Specifications to be non-infringing, and require the return of the potentially infringing or misappropriating items, if applicable, without liability to Distributor or any other person; or (iii) terminate this Agreement immediately without liability to Distributor or any other person.

e. This section and Section 12 set forth the entire liability and the exclusive remedy of OTC Markets Group for the infringement or misappropriation of intellectual property.

**15. Corporate Names; Proprietary Rights.** Distributor acknowledges and agrees that OTC Markets Group has proprietary rights in certain names, including without limitation, "Pink Sheets", "OTC Link,"

"OTCQX," "OTCQB," "OTC Markets Group Inc." and "OTC Markets Group", and Distributor shall not use these names in any way that would infringe upon such names and shall not use these names in any advertising or marketing materials, except with OTC Markets Group's prior written consent. Distributor acknowledges and agrees that OTC Markets Group has proprietary rights in certain trademarks, servicemarks, copyrights or patents, registered or unregistered, and Distributor shall not use these trademarks, service marks, copyrights or patents, registered or unregistered, in any way that would infringe upon such marks, copyrights or patents. OTC Markets Group acknowledges and agrees that Distributor has proprietary rights in Distributor's name and OTC Markets Group shall not use the corporate name in any way that would infringe upon such name and shall not use the name in any advertising or marketing materials, without Distributor's prior written consent, which consent may be withheld in Distributor's sole discretion. OTC Markets Group acknowledges and agrees that Distributor has proprietary rights in certain trademarks, service marks, copyrights or patents, registered or unregistered, and OTC Markets Group shall not use these trademarks, service marks, copyrights or patents, registered or unregistered, in any way that would infringe upon such marks, copyrights or patents. Subject to, and not in limitation of the foregoing, upon prior written approval of the other party in each instance, (i) OTC Markets Group may include the name of Distributor in any publicity releases referencing Distributor distributing the materials via the Distributor's service, (ii) Distributor may include the name of OTC Markets Group in any publicity releases, and (iii) OTC Markets Group may reference that the Information is available through the Distributor's Services and hyperlink to Distributor's web site from OTC Markets Group's web site.

**16. Subsequent Parties; Limited Relationship.** This 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. Notwithstanding the foregoing, OTC Markets Group may assign this Agreement to any successor or affiliate without the consent of the other party. Nothing in this Agreement, express or implied, is intended to or shall (a) confer on any person 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.

**17. Entire Agreement.** This 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 the Distribution Agreement and the Attachments, the Distribution Agreement will prevail over the Attachments. 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. The word "or" includes the word "and". Section headings are included for convenience only and are not to be used to construe or interpret this Agreement. All references contained herein to sections or subsections shall refer to the sections or subsections of the Distribution Agreement, unless specific reference is made to the sections or subsections of another document.

**18. Claim Time Limit and Waiver of Claims.** In no event shall any claim, dispute, controversy or other matter in question be made against OTC Markets Group by Distributor or any person claiming by or through Distributor later than one year after the claim, dispute, controversy or other matter in question has arisen. Distributor and its employees, directors, and other agents expressly waive any claims, disputes, controversies, and other matters not brought within the period above.

**19. Applicable Law.** This Agreement and its validity, construction and performance shall be governed in all respects by the laws of the State of New York without giving effect to conflicts of law principles thereof. The parties hereto, their successors and assigns, consent to the jurisdiction of the courts of any court of the United States or the State of New York located in New York, New York with respect to any legal proceedings that may result from a dispute as to the interpretation or breach of any of the terms and conditions of this Agreement.

**20. Amendment; Waiver; Severability.** Except as may otherwise be set forth in this Agreement, OTC Markets Group may alter any term or condition of this Agreement on 90 days notice to Distributor, and any use of the Information after such date is deemed acceptance of the new term or condition. The means of notifying Distributor of such new term or condition may include, but shall not be limited to, emailing such term or condition to Distributor. No failure on the part of OTC Markets Group or Distributor to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under this 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. If any of the provisions of this Agreement, or application thereof to any individual, entity or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this 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 this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**21. Survival Of Provisions.** Notwithstanding the expiration or termination of this Agreement for any reason, Sections 1, 2 (except for OTC Markets Group's duty to provide the Information), 4 (except for the Distributor's right to continue to receive and use the Information), 5, 6, 7, 10, 11, 12, 14, 15, 16, 18, 19, 20 and 21, to the extent appropriate as determined by the context, and the obligations of Distributor to make payments to OTC Markets Group accrued prior to the date of termination, shall survive any termination of this Agreement.