

## Data Usage Agreement

### Exchange Data And Information

**The participating Stock & Option Exchanges place certain restrictions on the use of their quotes. In order to obtain Real Time Quotes you must agree to the following Subscriber Agreement.**

"INFORMATION PROVIDERS" FOR SECURITIES QUOTATIONS ON THIS SERVICE INCLUDE VARIOUS SECURITIES MARKETS SUCH AS THE NEW YORK STOCK EXCHANGE, AMERICAN STOCK EXCHANGE, NASDAQ STOCK MARKET, Inc. AND OTHER EXCHANGES, THEIR AFFILIATES, AGENTS, optionsXpress, Inc. ("optionsXpress"), AND OTHERS. BY USING THIS SERVICE, YOU AGREE THAT (I) MARKET QUOTES AND OTHER INFORMATION RECEIVED FROM INFORMATION PROVIDERS ARE SOLELY FOR YOUR OWN PERSONAL USE; (II) YOU SHALL NOT RE TRANSMIT OR OTHERWISE FURNISH MARKET DATA TO ANY OTHER PERSON; (III) YOU ACKNOWLEDGE THAT THE DATA IS AND SHALL REMAIN THE PROPERTY OF THE RESPECTIVE INFORMATION PROVIDERS OR OF THE MARKET ON WHICH A REPORTED TRANSACTION TOOK PLACE OR A REPORTED QUOTATION WAS ENTERED; AND (IV) YOU ACKNOWLEDGE THAT THE INFORMATION PROVIDERS ARE THIRD-PARTY BENEFICIARIES UNDER THESE PROVISIONS AND MAY ENFORCE THESE PROVISIONS AGAINST YOU.

### Disclaimer of Warranties, Terms and Liability

THE DATA AND INFORMATION ACCESSIBLE ON THIS SERVICE IS PROVIDED "AS IS" AND THERE MAY BE DELAYS, OMISSIONS OR INACCURACIES IN SUCH INFORMATION AND DATA. optionsXpress ITS AFFILIATES, AGENTS, INFORMATION PROVIDERS, AND LICENSOR CANNOT AND DO NOT GUARANTEE THE ACCURACY, SEQUENCE, COMPLETENESS, TIMELINESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE INFORMATION OR DATA MADE AVAILABLE THROUGH THE SERVICE OR BY ANY FORCE MAJEURE OR ANY OTHER CAUSE BEYOND THEIR REASONABLE CONTROL. NEITHER optionsXpress NOR ANY OF ITS AFFILIATES, AGENTS, INFORMATION PROVIDERS, OR LICENSOR SHALL BE LIABLE TO YOU OR TO ANYONE ELSE FOR ANY LOSS OR INJURY CAUSED IN WHOLE OR IN PART BY ITS NEGLIGENCE OR OMISSION IN PROCURING, COMPILING, INTERPRETING, EDITING, WRITING, REPORTING, OR DELIVERING ANY INFORMATION OR DATA THROUGH THIS SERVICE. IN NO EVENT WILL optionsXpress, ITS AFFILIATES, AGENTS, INFORMATION PROVIDERS, OR LICENSOR BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DECISION MADE OR ACTION TAKEN BY YOU IN RELIANCE UPON SUCH INFORMATION OR DATA OR FOR ANY CONSEQUENTIAL, SPECIAL OR SIMILAR DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, TRADING LOSSES, DAMAGES RESULTING FROM INCONVENIENCE, OR LOSS OF USE OF THE SERVICE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SERVICE MAY BE DISCONTINUED OR LIMITED AT ANY TIME.

BY EXECUTING THIS AGREEMENT, AND/OR BY USING OR CONTINUING TO USE SUBSCRIBER AGREES (A) THAT IT HAS READ, AND AGREES TO BE BOUND BY, THE NASDAQ CONSOLIDATED SUBSCRIBER AGREEMENT, A COPY OF WHICH IS ATTACHED HERETO; (B) THAT VENDOR IS NOT AN AGENT OF NASDAQ AND IS NOT AUTHORIZED TO ADD TO OR DELETE FROM THE NASDAQ CONSOLIDATED SUBSCRIBER AGREEMENT AND IS NOT AUTHORIZED TO MODIFY ANY PROVISION OF THE NASDAQ CONSOLIDATED SUBSCRIBER AGREEMENT; AND (C) THAT NO PROVISION HAS BEEN ADDED TO OR DELETED FROM THE NASDAQ CONSOLIDATED AGREEMENT AND THAT NO MODIFICATIONS HAVE BEEN MADE TO IT. BOTH SUBSCRIBER AND THE PERSON EXECUTING ON BEHALF OF SUBSCRIBER WARRANT THAT SUBSCRIBER IS LEGALLY ABLE TO UNDERTAKE THE OBLIGATIONS SET FORTH IN, AND THE SIGNATORY IS DULY AUTHORIZED TO BIND SUBSCRIBER TO, THE NASDAQ CONSOLIDATED SUBSCRIBER AGREEMENT.

### NYSE TERMS FOR MARKET DATA DISPLAY SERVICES

**optionsXpress, Inc.** ("optionsXpress") agrees to make "Market Data" available to you pursuant to the terms and conditions set forth in this agreement. By manifesting your assent, you the "Subscriber" agree to comply with those terms and conditions. Section 1 sets forth terms and conditions of general applicability. Section 2 applies insofar as

Subscriber receives and uses Market Data made available pursuant to this Agreement as a Nonprofessional Subscriber.

## **SECTION 1: TERMS AND CONDITIONS OF GENERAL APPLICABILITY**

**1. MARKET DATA DEFINITION** – For all purposes of this Agreement, "Market Data" means (a) last sale information and quotation information relating to securities that are listed on a national securities exchange, (b) such bond and other equity last sale and quotation information, and such index and other market information, as United States-registered national securities exchanges and national securities associations (each, an "Authorizing SRO") may make available and as the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX") may from time to time designate as "Market Data"; and (c) all information that derives from any such information.

**2. PROPRIETARY NATURE OF DATA** – Subscriber understands and acknowledges that each Authorizing SRO and Other Data Disseminator has a proprietary interest in the Market Data that originates on or derives from it or its market(s).

**3. ENFORCEMENT** – Subscriber understands and acknowledges that (a) the Authorizing SROs are third-party beneficiaries under this Agreement and (b) the Authorizing SROs or their authorized representative(s) may enforce this Agreement, by legal proceedings or otherwise, against Subscriber or any person that obtains Market Data that is made available pursuant to this Agreement other than as this Agreement contemplates. Subscriber shall pay the reasonable attorney's fees that any Authorizing SRO incurs in enforcing this Agreement against Subscriber.

**4. DATA NOT GUARANTEED** – Subscriber understands that no Authorizing SRO, no other entity whose information is made available over the Authorizing SROs' facilities (an "Other Data Disseminator") and no information processor that assists any Authorizing SRO or Other Data Disseminator in making Market Data available (collectively, the "Disseminating Parties") guarantees the timeliness, sequence, accuracy or completeness of Market Data or of other market information or messages disseminated by any Disseminating Party. Neither Subscriber nor any other person shall hold any Disseminating Party liable in any way for (a) any inaccuracy, error or delay in, or omission of, (i) any such data, information or message or (ii) the transmission or delivery of any such data, information or message, or (b) any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay or omission, (ii) non-performance or (iii) interruption in any such data, information or message, due either to any negligent act or omission by any Disseminating Party, to any "force majeure" (e.g., flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, equipment or software malfunction) or to any other cause beyond the reasonable control of any Disseminating Party.

**5. PERMITTED USE** – Subscriber shall not furnish Market Data to any other person or entity and, subject to Paragraph 10, shall use Market Data only for its individual use in its business.

**6. DISSEMINATION DISCONTINUANCE OR MODIFICATION** – Subscriber understands and acknowledges that, at any time, the Authorizing SROs may discontinue disseminating any category of Market Data, may change or eliminate any transmission method and may change transmission speeds or other signal characteristics. The Authorizing SROs shall not be liable for any resulting liability, loss or damages that may arise therefrom.

**7. DURATION; SURVIVAL** – This Agreement remains in effect for so long as Subscriber has the ability to receive Market Data as contemplated by this Agreement. In addition, Vendor may terminate this Agreement at any time, whether at the direction of the Authorizing SROs or otherwise. Paragraphs 2, 3 and 4, and the first two sentences of Paragraph 8, survive any termination of this Agreement.

**8. MISCELLANEOUS** – The laws of the State of New York shall govern this Agreement and it shall be interpreted in accordance with those laws. This Agreement is subject to the Securities Exchange Act of 1934, the rules promulgated under that act, and the joint-industry plans entered into pursuant to that act. This writing contains the entire agreement between the parties in respect of its subject matter. Subscriber may not assign all or any part of this Agreement to any other person. The person manifesting assent to this agreement below represents and warrants that it has legal capacity to contract and, if that person is manifesting assent on behalf of a proprietorship or a business, partnership or other organization, represents and warrants that he or she has actual authority to bind the organization.

**ACCEPTED AND AGREED:** I, the "Subscriber" to which the preceding terms and conditions refer, acknowledge that I have read the preceding terms and conditions of this Section 1, that I understand them and that, by my receipt and use of such data, I hereby manifest my assent to, and my agreement to comply with, those terms and conditions.

## **SECTION 2: NONPROFESSIONAL SUBSCRIBER**

**9. NONPROFESSIONAL SUBSCRIBER DEFINITION** - "Nonprofessional Subscriber" means any natural person whom Vendor has determined to qualify as a "Nonprofessional Subscriber" and who is not: (a) registered or qualified with the Securities and Exchange Commission (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. (b) engaged as an "investment advisor" as that term is defined in Section 202 (11) (a) of the Investment Advisor's Act of 1940 (whether or not registered or qualified under that Act), nor (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him or her to be so registered or qualified if he or she were to perform such functions for an organization not so exempt.

**10. PERMITTED USE** – If Subscriber is a Nonprofessional Subscriber, he or she shall receive Market Data solely for his or her personal, non-business use.

**11. PERSONAL AND EMPLOYMENT DATA** – As a prerequisite to qualifying as a "Nonprofessional Subscriber", Subscriber shall provide the following information: Subscriber's name and address, Subscriber's social security number, Subscriber's occupations (list all occupations – including homemaker, student, retiree, etc.), Name(s) and address(es) of Subscriber's employer(s), Subscriber's title(s) and/or position(s), Subscriber's employment functions (description), Subscriber shall notify Vendor promptly in writing of any change in his or her circumstances that may cause him or her to cease to qualify as a Nonprofessional Subscriber.

**12. CERTIFICATION** – By clicking on the following box, Subscriber hereby certifies that he or she falls within Paragraph 9's definition of "Nonprofessional Subscriber" and that the personal and employment information that he or she has included in Paragraph 11 is truthful and accurate.

**ACCEPTED AND AGREED:** I, the "Subscriber" to which the preceding terms and conditions refer, acknowledge that I have read the preceding terms and conditions of this Section 2, that I understand them and that I hereby manifest my assent to, and my agreement to comply with, those terms and conditions.

## **The Nasdaq Stock Market, Inc. ("NASDAQ") Consolidated Subscriber Agreement**

1. The word "Corporations" means The Nasdaq Stock Market, Inc. and its affiliates. The word "Information" means certain data and other information: relating to securities or other financial instruments, products, vehicles or devices; or relating to Persons regulated by the Corporations or to activities of the Corporations; or gathered by the Corporations from other sources. The word "or" includes the word "and". The phrase "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, without limitation, (1) indirect, special, punitive, consequential or incidental loss or damage, (including, but not limited to, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, or other indirect loss or damage) and (2) administrative costs, investigatory costs, litigation costs, and auditors' and attorneys' and fees and disbursements (including in-house personnel). The word "Person" means any natural person, proprietorship, corporation, partnership, or other entity whatsoever. The phrase "Non-Professional Subscriber" means any natural person who is neither: (a) 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; (b) 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); nor, (c) 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. The phrase "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. The phrase "Vendor's Service" means the service from a vendor, including the data processing equipment, software, and communications facilities related thereto, for receiving, processing, transmitting, using and disseminating the Information to or by Subscriber.

2. Subscriber is granted the right to receive from Nasdaq the Information under the terms stated herein or 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 the Corporations including, but not limited to, those requirements established by the Corporations' rule filings (with such SEC approval as may be required), the Corporations' decisions and interpretations and any User Guides, or successors of the components of the NASD Rules, as they may exist at the time. If any payment is due directly to Nasdaq under this Agreement, payment in full is due Nasdaq in immediately available U.S. funds, within 30 days of date of invoice, whether or not use is made of the Information. Interest shall be due from the date of the invoice to the time that the amount(s) that are due have been paid. Subscriber shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on Subscriber or Nasdaq (except for U.S. federal, state, or local income taxes, if any, imposed on Nasdaq) 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 use in the business 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 the Corporations 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 unfair, misleading, or discriminatory format. Subscriber shall take reasonable security precautions to prevent unauthorized Persons from gaining access to the Information.

4. Subscriber acknowledges that Nasdaq, 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. Nasdaq shall not be responsible for such effects.

5. Nasdaq grants to Subscriber a nonexclusive, non-transferable license during the term of the Agreement to receive and use the Information transmitted to it by Vendor and thereafter to use such Information for any purpose not inconsistent with the terms of the Agreement or with the NASD Rules. Subscriber acknowledges and agrees that the Corporations have proprietary rights in the Information that originates on or derives from markets regulated or operated by the Corporations and compilation or other rights in Information gathered from other sources. Subscriber further acknowledges and agrees that the Corporations' third party Information providers have exclusive proprietary rights in their respective Information. In the event of any misappropriation or misuse, Nasdaq or its third party information providers shall have the right to obtain injunctive relief for its respective materials. Subscriber will attribute source as appropriate under all the circumstances.

6. Subscriber acknowledges that Nasdaq, as a subsidiary of NASD, when required to do so by NASD in fulfillment of NASD's statutory obligations, may by notice to Vendor unilaterally limit or terminate the right of any or all Persons to receive or use the Information, and that Vendor will immediately comply with any such notice and will terminate or limit the furnishing of the Information and confirm such compliance by notice to Nasdaq. Any affected Person will have available to it such procedural protections as are provided by the Exchange Act and applicable rules thereunder. Neither Nasdaq nor NASD shall have any liability when complying with such NASD notice.

7. Subscriber will maintain such accurate and verifiable records regarding the use of the Information and including the number and location of all devices that receive the Information, as may be required, and will make these records available for a period of 3 years in a form acceptable to Nasdaq for inspection by Nasdaq's auditors upon reasonable notice. Subscriber shall make its premises available to Nasdaq for review of said records and for physical inspection of Vendor's Service and of Subscriber's use of the Information, all at reasonable times, upon reasonable notice, to ensure compliance with this Agreement.

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 Nasdaq to any service or facility operated by Nasdaq 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. NASDAQ'S WARRANTIES/DISCLAIMER OF WARRANTIES. NASDAQ SHALL ENDEAVOR TO OFFER THE INFORMATION AS PROMPTLY AND ACCURATELY AS IS REASONABLY PRACTICABLE. IN THE EVENT THAT THE INFORMATION IS NOT AVAILABLE AS A RESULT OF A FAILURE BY NASDAQ TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, NASDAQ 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 A CONTINUOUS PERIOD OF FOUR (4) HOURS OR MORE DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION DUE TO THE FAULT OF NASDAQ (EXCEPT FOR A REASON PERMITTED IN THIS AGREEMENT OR IN NASDAQ'S AGREEMENT WITH THE VENDOR), SUBSCRIBER'S OR ANY OTHER PERSON'S EXCLUSIVE REMEDY AGAINST NASDAQ SHALL BE (A) IF SUBSCRIBER OR ANY OTHER PERSON CONTINUES TO RECEIVE THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A PRORATED MONTH'S CREDIT OF ANY MONIES DUE, IF ANY, FOR THE AFFECTED INFORMATION DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM SAID OTHER PERSON, FOR THE PERIOD AT ISSUE OR, (B) IF SUBSCRIBER OR ANY OTHER PERSON NO LONGER RECEIVES EITHER THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A PRORATED MONTH'S REFUND OF ANY MONIES DUE FOR THE AFFECTED INFORMATION DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM SAID OTHER PERSON, FOR THE PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL, IF APPLICABLE, BE REQUESTED BY WRITTEN NOTICE TO NASDAQ WITH ALL PERTINENT DETAILS. 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 USE OR PURPOSE.

10. CORPORATIONS' LIMITATION OF LIABILITY. (A) EXCEPT AS MAY OTHERWISE BE SET FORTH HEREIN, THE CORPORATIONS SHALL NOT BE LIABLE TO SUBSCRIBER, ITS VENDOR OR ANY OTHER PERSON FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE (INCLUDING, BUT NOT LIMITED TO, TRADING LOSSES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR INCREASED EXPENSES OF OPERATION, COST OF COVER, OR OTHER INDIRECT LOSS OR DAMAGE) OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF THE CORPORATIONS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. (B) THE CORPORATIONS SHALL NOT BE LIABLE TO SUBSCRIBER OR 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 NASDAQ REGULARLY TRANSMITS THE INFORMATION OR IF THE INFORMATION IS MATERIALLY AFFECTED FOR LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION. (C) IF ANY OR ALL OF THE CORPORATIONS ARE FOR ANY REASON HELD LIABLE TO SUBSCRIBER OR TO ANY OTHER PERSON, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF ALL OR ANY OF THE CORPORATIONS WITHIN A SINGLE YEAR (FROM THE EFFECTIVE DATE OF THE AGREEMENT) OF THE AGREEMENT, COMBINED WITH THE TOTAL OF ALL CLAIMS OR LOSSES OF SUBSCRIBER'S VENDOR, AND ANY OTHER PERSON CLAIMING THROUGH, ON BEHALF OF, OR AS HARMED BY SUBSCRIBER, IS LIMITED TO THE GREATER OF: (I) IF SUBSCRIBER OR ANY OTHER PERSON CONTINUES TO RECEIVE THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A PRORATED MONTH'S CREDIT OF ANY MONIES DUE DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM ANY OTHER PERSON, FOR THE PERIOD AT ISSUE OR, IF SUBSCRIBER OR ANY OTHER PERSON NO LONGER RECEIVES EITHER THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY NASDAQ, A REFUND OF ANY MONIES DUE DIRECTLY TO NASDAQ FROM SUBSCRIBER, OR, IF APPLICABLE, FROM ANY OTHER PERSON, FOR THE PERIOD AT ISSUE; OR (II) \$500.00. (D) THIS SECTION SHALL NOT RELIEVE ANY OR ALL OF THE CORPORATIONS, SUBSCRIBER OR ANY OTHER PERSON FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS. (E) SUBSCRIBER AND THE CORPORATIONS UNDERSTAND AND AGREE THAT THE TERMS OF THIS SECTION REFLECT A REASONABLE ALLOCATION OF RISK AND LIMITATION OF LIABILITY.

11. THIRD PARTY INFORMATION PROVIDERS' DISCLAIMERS OF WARRANTIES/LIMITATIONS OF LIABILITIES. NASDAQ'S THIRD PARTY INFORMATION PROVIDERS MAKE NO 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 USE OR PURPOSE AND THEY SHALL HAVE NO LIABILITY FOR THE ACCURACY OF, OR FOR DELAYS OR OMISSIONS IN, ANY OF THE INFORMATION PROVIDED BY THEM. NASDAQ'S THIRD PARTY INFORMATION PROVIDERS SHALL ALSO HAVE NO LIABILITY FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, WHETHER LOST PROFITS, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF THE SUBSCRIBER OR ANY OTHER PERSON SEEKING RELIEF THROUGH SUBSCRIBER, EVEN IF THE THIRD PARTY INFORMATION PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE LIABILITY OF THE THIRD PARTY INFORMATION PROVIDERS OR THEIR AFFILIATES TO SUBSCRIBER OR ANY OTHER PERSON SEEKING RELIEF THROUGH SUBSCRIBER PURSUANT TO ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE FEE PAID BY SUBSCRIBER OR ANY OTHER PERSON SEEKING RELIEF THROUGH SUBSCRIBER, AS APPLICABLE.

12. Notwithstanding any other term or condition of this Agreement, Nasdaq, its third party information providers or Subscriber shall not be obligated to perform or observe their respective obligations undertaken in 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 their control.

13. Subscriber will indemnify and hold harmless the Corporations and their 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 the Agreement.

14. Each party warrants and represents and will indemnify and hold harmless (and in every case, Nasdaq shall be permitted to solely defend and settle) another party (including the Corporations) and their officers, directors, employees, and other agents, against any Claims or Losses arising from, involving, or relating to a claim of infringement or other violation of an intellectual property right by the indemnifying party, its actions or omissions, equipment, or other property. This right is conditioned on the indemnified party giving prompt written notice to the indemnifying party (as does not prejudice the defense) of the Claims or Losses and providing cooperation in the defense of the Claims or Losses (without waiver of attorney-client, work-product or other legal privilege, or disclosure of information legally required to be kept confidential).

15. Subscriber agrees that Nasdaq may enforce the terms of this Agreement against any Person, whether or not Vendor or Subscriber is a party to any such action or against Subscriber itself. 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).

16. In the event of any conflict between the terms of this Agreement and of the Vendor's agreement, the terms of this Agreement shall prevail as between the Corporations and Subscriber.

17. In addition to terminations permitted under the Vendor's agreement, this Agreement may be terminated by Subscriber on 30 days written notice to Vendor and by the Corporations on 30 days written notice either to Vendor or Subscriber. Nasdaq may also alter any term of this Agreement on 60 days written notice either to Vendor or Subscriber, and any use after such date is deemed acceptance of the new terms. In the event of Subscriber breach, discovery of the untruth of any representation of Subscriber, or where directed by NASD in its regulatory authority, Nasdaq may terminate this Agreement on not less than three (3) days written notice to Subscriber provided either by Nasdaq or Vendor.

18. Nasdaq does not endorse or approve any equipment, Vendor, or Vendor's Service.

19. Natural persons executing this Agreement warrant and represent that they are at least eighteen (18) years of age. Subscriber and the Person executing this Agreement on behalf of Subscriber which 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 the Agreement on behalf of Subscriber.

20. All notices, invoices, and other communications required to be given in writing under this Agreement shall be directed to: Trading & Market Services, The Nasdaq Stock Market, Inc., 1735 K Street, NW, Washington, DC 20006, Attn.: Manager, Trading and Market Services, 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.

21. Except as otherwise provided herein, no provision of this Agreement may be amended, modified, or waived, unless by an instrument in writing executed by a duly authorized signatory of the party against whom enforcement of such amendment, modification, or waiver is sought. No failure on the part of Nasdaq or Subscriber 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 Person 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 Persons 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.

22. The terms of this Agreement apply to those obligations that survive any cancellation, termination, or rescission, namely, obligations relating to intellectual property, indemnification, limitation of liability, warranties, disclaimer of warranties, and Exchange Act related provisions.

23. This Agreement shall be deemed to have been made in the State of Illinois and shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Illinois, without reference to principles of conflicts of laws thereof. Subscriber hereby consents to submit to the jurisdiction of the courts of or for the State of Illinois in connection with any action or proceeding instituted relating to this Agreement.

## **Real Time Options Agreement**

**IMPORTANT NOTICE: THIS IS AN AGREEMENT BETWEEN YOU AND optionsXpress, Inc. FOR YOU TO RECEIVE INFORMATION PUBLISHED BY THE OPTIONS PRICE REPORTING AUTHORITY ("OPRA"). PLEASE READ THIS AGREEMENT CAREFULLY.**

By signifying your agreement to these terms, and/or by using our realtime quote data you are applying to receive from optionsXpress, Inc., 311 W. Monroe Street, Suite 1000, Chicago, Illinois 60606 ("Vendor") a dial-up computer or Internet-based market data service (the "Service") providing access to current options last sale information, current options quotation information and related information ("Options information") published by the Options Pricing authority ("OPRA") pursuant to a Plan declared effective by the Securities and Exchange Commission. The "OPRA Participants" are those national securities exchanges who, from time to time, are parties to this Plan. Those persons who act from time to time as data processors on behalf of OPRA are referred to herein as "OPRA's Processor."

For the purpose of this Agreement, you hereby represent and agree as follows:

1. Your full name and address is accurate and current as it has been submitted by you to optionsXpress, amended from time to time as necessary in writing and received and acknowledged by optionsXpress.
2. You shall receive the Service and the Options Information included therein solely for your own use, and you shall not retransmit or otherwise furnish the Options Information to any other person.
3. You acknowledge that the options Information is and shall remain the property of the respective exchange or other market on which a reported transaction took place or a reported quotation was entered.
4. **DISCLAIMER OF LIABILITY -- NEITHER optionsXpress, OPRA, OPRA'S PROCESSOR NOR ANY OPRA PARTICIPANT GUARANTEES THE TIMELINESS, SEQUENCE, ACCURACY OR COMPLETENESS OF ANY OF THE OPTIONS INFORMATION SUPPLIED TO YOU HEREUNDER AND NEITHER optionsXpress, Inc., OPRA,**

OPRA'S PROCESSOR NOR ANY OPRA PARTICIPANT SHALL BE LIABLE IN ANY WAY TO YOU OR TO ANY OTHER PERSON, FOR ANY LOSS, DAMAGES, COST OR EXPENSE WHICH MAY ARISE FROM ANY FAILURE OF PERFORMANCE BY digiTRADE, Inc., OPRA, OPRA'S PROCESSOR OR ANY OPRA PARTICIPANT, OR FROM ANY DELAYS, INACCURACIES, ERRORS IN OR OMISSIONS OF, ANY OF THE OPTIONS INFORMATION OR IN THE TRANSMISSION OR DELIVERY THEREOF, WHETHER OR NOT DUE TO ANY NEGLIGENT ACT OR OMISSION ON THE PART OF optionsXpress, Inc., OPRA, OPRA'S PROCESSOR OR ANY PARTICIPANT. IN NO EVENT SHALL optionsXpress, Inc., OPRA, OPRA'S PROCESSOR OR ANY PARTICIPANT BE LIABLE FOR DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, TRADING LOSSES, OR DAMAGES RESULTING FROM INCONVENIENCE OR LOSS OF USE OF THE SERVICE.

5. The terms and conditions of this Agreement may be modified at any time upon notice to you. If you do not assent to the terms of any such modified Agreement at or prior to the time you next attempt to access the Service, this Agreement shall automatically be terminated.

6. Your privilege of receiving the Options Information hereunder may be terminated by you or by Vendor upon 30 days written notice from the terminating party to the other party, and may be terminated immediately upon a determination by Vendor or OPRA that you are not in compliance with this Agreement.

7. Nothing herein shall be deemed to prevent or restrict OPRA, OPRA's Processor or any OPRA Participant from discontinuing to furnish Options Information for the dissemination or from making such changes in the speed of transmission, the characteristics to the electrical signals representing the Options Information or the manner of disseminating the same, as OPRA shall from time to time determine to be appropriate, with or without notice to you. You shall not hold OPRA, OPRA's Processor, or any OPRA Participant liable for any resulting liability, loss or damage that may arise therefrom.

8. You agree to inform Vendor promptly in writing at its address set forth above of any changes in information provided herein and to furnish Vendor any additional information requested by it in connection with your receipt of the Options Information.

9. The parties acknowledge and agree that this Agreement is for the express benefit of OPRA, OPRA'S Processor and each OPRA Participant.

10. The Provision of sections 3, 4 and 9 survive any termination of this Agreement and remain in full force and effect.

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