

NASDAQ NETWORK OPERATOR TERMS

1. Definitions.

- 1.1 **"Affiliate"** means an entity that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, a party. For this purpose, "control" will mean the possession, direct or indirect, of the power to direct or cause the direction of management and policies of the party, whether through the ownership of voting securities, by contract, or otherwise.
- 1.2 **"Authorization Agreement"** and **"Agreement"** mean each Network Operator Authorization Agreement which references, and thereby incorporates, these Terms.
- 1.3 **"Authorized TNO"** means a TNO with which Nasdaq has a current Authorization Agreement in place with respect to a Co-Location Service Area.
- 1.4 **"Cable"** is a guided Media in the form of coaxial, copper, or Fiber.
- 1.5 **"Carrier Service(s)"** means Connectivity, Market Data and/or time synchronization distribution available from Vendor and/or its Affiliates for use by Nasdaq Clients via a CSC in a particular Data Center, as set out in an Agreement, and includes (but not by way of limitation) the operation, maintenance, repair and testing of such services.
- 1.6 **"Carrier Shared Cage"** or **"CSC"** means a meshed caged area or room in a Data Center, managed by Data Center Operator, which houses Vendor Equipment and may house equipment of other TNOs, and to which Nasdaq is able to connect Nasdaq Clients via Nasdaq-provided Media.
- 1.7 **"Co-Location Service Area"** means the area within a Data Center that is controlled by Nasdaq in which Nasdaq Clients are co-located and direct access to an Exchange is permitted.
- 1.8 **"Connectivity"** means bandwidth on a wired and/or wireless data communication network designed to connect various systems in order to communicate data among such systems.
- 1.9 **"Data Center"** means a data center or centers referenced in an Agreement.
- 1.10 **"Data Center Operator"** means the operator named in an Agreement as the operator of the relevant Data Center.
- 1.11 **"Effective Date"** with respect to an Agreement means the date on which such Agreement has been duly executed on behalf of each of Nasdaq and Vendor.
- 1.12 **"Equal"** when used herein with respect to any data communication network means having connections of the same Cable distance and Media type between Nasdaq-defined demarcation points (e.g. telecommunications connections or interfirm connections) within Nasdaq-defined requirements, and 'Equalized' will be construed accordingly.
- 1.13 **"Exchange"** means a securities exchange or market platform owned and/or operated (under the Nasdaq brand) by Nasdaq or any of its Affiliates in a Data Center.
- 1.14 **"Fiber"** means optical fiber cable.

- 1.15 **“Fiber Entry Point”** means Data Center operator-managed space where Data Center conduits provide external access to the Data Center campus and are terminated for purposes of bringing Cables to the Data Center
- 1.16 **“Force Majeure Event”** means any event or circumstance beyond a Party’s reasonable control, including but not limited to: (a) act of God; (b) extreme weather event or natural disaster; (c) accident; (d) war, hostilities, terrorism or civil unrest; (d) epidemic or pandemic; (e) government requisition, restriction, or regulation of travel, business operations, commodities, or supplies; (f) government sanction, order or law; (f) strikes, labor disputes or other industrial disturbances; (i) utility or internet service provider failure or delay, (j) denial of service attack or any other third party act, or any other cause beyond impacted Party’s reasonable control whether similar or dissimilar to any of the foregoing.
- 1.17 **“Market Data”** means securities, commodities and/or derivatives market prices, volumes and related information. By way of example and not limitation, Market Data may include opening and closing range prices, high-low prices, settlement prices, current bid and ask prices, last sale prices, price limits, requests for quotations, estimated and actual contract volume data, other market activity information, contract specifications, fast or late messages, and information regarding exchange-for related product and against actual transactions
- 1.18 **“Media”** means a system or substance that can mediate the propagation of signals for the purposes of telecommunication.
- 1.19 **“Nasdaq Client”** means a current co-location customer of Nasdaq and/or any of its Affiliates in a Co-Location Service Area.
- 1.20 **“NED”** means a Nasdaq extended demarc, which is a cabinet or patch panel located in or near the CSC controlled by the operator of the Data Center. The NED connects to hosted TNOs via an Equal single patch cable on one side and to the proximate sector NIDF on the other side.
- 1.21 **“Nasdaq Intermediate Distribution Frame”** and **“NIDF”** mean a meshed caged area in a Co-Location Service Area from which Nasdaq Clients may be connected to Carrier Services via Media.
- 1.22 **“Nasdaq”** means the Nasdaq entity named in the relevant Agreement in which these Terms are referenced.
- 1.23 **“Party”** means Nasdaq or Vendor, as the context requires, both together are the **“Parties”**.
- 1.24 **“Permissions”** means all regulatory and other approvals, consents, licenses and authorizations necessary or advisable for Vendor and/or its Affiliates to conduct its business in respect of the Carrier Services and provide Carrier Services contemplated by the Agreement.
- 1.25 **“Presentation Panel”** means a panel in a CSC from which Nasdaq-provided Cable will be in place connecting to the NIDF.
- 1.26 **“Telecommunication Network Operator”** or **“TNO”** means a provider of Carrier Services that, owns, controls, or has the appropriate rights to use, the infrastructure necessary to sell and/or deliver Carrier Services.

1.27 **“Vendor Equipment”** means hardware and software owned by or leased to Vendor and/or its Affiliates which is located or to be located in a CSC to be used for the purpose of Carrier Services and for no other purpose.

2. Vendor Authorization to Provide Carrier Services.

2.1 Nasdaq and Vendor may enter into one or more Authorization Agreements with respect to various Data Centers (or specific areas within Data Centers). Each Authorization Agreement sets out the location-specific terms and conditions applicable to Nasdaq’s authorization of Vendor to provide Carrier Services to Nasdaq Clients in the Co-Location Service Area of the Data Center noted in that Authorization Agreement.

2.2 Subject to Vendor’s compliance with the Agreement:

- (a) Nasdaq will include Vendor’s name on Nasdaq’s authorized Connectivity vendors list for such Data Center on its website and on such other relevant marketing or informational materials Nasdaq may create from time to time, unless and until Vendor notifies Nasdaq that Vendor does not want its name so listed; and
- (b) where a Nasdaq Client (i) places an order with Nasdaq to interconnect to Vendor’s Carrier Services in the relevant Data Center, and (ii) provides Nasdaq with an appropriate Vendor letter of authorization which specifies Vendor’s cabinet location in the CSC and the rack unit of, and port allocation in, the patch panel, Nasdaq will establish an Equalized cross-connect between the Nasdaq Client and Vendor which Vendor may use in order to provide Carrier Services to such Nasdaq Client and for no other purpose, using Nasdaq-provided Media from Presentation Panels in the CSC in the Data Center identified in the Authorization Agreement.

2.3 Nasdaq may use Fiber spools in the NIDF to ensure Equalized cross-connects from each cabinet location within a CSC to the NIDF. All Fiber lengths are measured via an optical tester to be Equal.

2.4 For the sake of clarity, nothing in the Agreement will be construed to prevent Nasdaq from entering into similar agreements with other Carrier Services providers with respect to services that may be similar to or identical to the services provided by Vendor, or from using Nasdaq Media to connect other Carrier Services providers located in the CSC to Nasdaq Clients located in the Co-Location Service Area.

3. Vendor Obligations. Vendor will:

3.1 not provide any Carrier Services to Nasdaq Clients in the Nasdaq Co-Location Service Area other than via Nasdaq-provided connectivity infrastructure. It is Vendor’s responsibility to obtain, directly from the Data Center Operator, and maintain all rights and Permissions necessary for Vendor to establish and maintain a presence, and to receive space and power, within the Data Center and to install, access and maintain any Vendor Equipment in the CSC and otherwise comply with its obligations in the Agreement;

3.2 not host or install any equipment in the CSC other than (a) Vendor Equipment, and/or (b) hardware and software owned by or leased to another TNO that has signed an appropriate Authorization Agreement with Nasdaq and/or its Affiliates, which hardware and software is located or to be located in a CSC to be used for the purpose of Carrier Services and for no other purpose;

- 3.3 not operate the Vendor Equipment or Carrier Services as a service bureau or sharing arrangement for, with or on behalf of any third party other than Vendor Affiliates;
- 3.4 not, from the CSC, conduct any financial instrument trading activity, nor provide or operate or facilitate any market competitive with any market operated by Nasdaq at the Data Center unless explicitly agreed by Nasdaq; it being understood that provision of Carrier Services in accordance with the Agreement, including to and from an exchange itself, is not “facilitation” of a market competitive with any market operated by Nasdaq;
- 3.5 maintain all Vendor Equipment in secured, robust and safe working condition and repair and obtain and maintain appropriate insurance on such Vendor Equipment;
- 3.6 comply and ensure that its personnel and agents comply with the terms in the Authorization Agreement and any associated and reasonable Nasdaq instructions of which Vendor has been made aware, including any policies, routines and security manuals issued by Nasdaq from time to time including those relating to connecting to Nasdaq connectivity at each Presentation Panel.

4. Representations and Warranties.

4.1 Vendor represents and warrants that:

- (a) Vendor has all rights and authority required to enter into and perform its obligations under the Agreement.
- (b) in performing its obligations under the Agreement, Vendor will comply, and will cause its personnel and Affiliates (as applicable) to comply, with the requirements of all applicable laws, ordinances, regulations, codes and executive orders.
- (c) Vendor has and will maintain in effect for the term of the Agreement, at its own expense, all Permissions that it needs to provide and maintain the Carrier Service(s) and to carry out its obligations under the Agreement.

4.2 EXCEPT AS EXPLICITLY STATED IN THE AGREEMENT, NASDAQ PROVIDES ALL SERVICES HEREUNDER ON AN “AS IS” BASIS AND MAKES NO REPRESENTATIONS, WARRANTIES, OR OTHER AGREEMENTS, EXPRESS OR IMPLIED, WITH RESPECT TO NASDAQ EQUIPMENT OR SERVICES INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

5. Fees and Expenses.

- 5.1 In consideration of Nasdaq enabling connectivity between Vendor and relevant Nasdaq Clients pursuant to any Authorization Agreement, Vendor will pay to Nasdaq a fee determined in accordance with the fees set forth in each Authorization Agreement. Unless otherwise provided in the Authorization Agreement, said fee will be payable within thirty (30) days of the date of Nasdaq’s invoice to Vendor with respect to such fee.
- 5.2 The fees set forth in any Authorization Agreement do not cover or include any sales and use taxes, duties, or charges of any kind imposed by any federal, state, or local governmental authority on fees payable by Vendor under the Agreement (“**Taxes**”). Vendor will pay all such Taxes when invoiced. If Vendor is based in the United States and is legally entitled to an exemption from any Tax, Vendor is

responsible for providing Nasdaq with a legally sufficient tax exemption certificate, resale certificate, or a copy of the direct pay permit for each applicable taxing jurisdiction. Nasdaq will apply the tax exemption to invoices generated after the date Nasdaq receives such documentation. If any fees are subject to withholding Tax in Vendor's jurisdiction, Vendor will inform Nasdaq that such Tax will be withheld and will cite the legal grounds for withholding. If Vendor requires from Nasdaq any Tax-related documents, Vendor will notify Nasdaq accordingly as soon as possible but in no event later than ten (10) days from the date of the applicable invoice. Where Vendor withholds any Tax, Vendor will provide Nasdaq with the original receipt issued by the applicable tax authority with respect to the Taxes and charges paid by Vendor to such authority.

6. Confidentiality.

- 6.1 If either Party or any of its Representatives (as defined below) discloses such Party's (as "**Disclosing Party**") "Confidential Information" (as defined below) to the other Party (as "**Receiving Party**") or any of the other Party's Representatives during the term of the Agreement, this Section 6 will govern the parties' rights and obligations with respect to such Confidential Information. The term "**Confidential Information**" means all information disclosed, whether orally, in writing, or otherwise, by or on behalf of Disclosing Party to Receiving Party, unless otherwise excluded below.
- 6.2 Confidential Information does not include information that: (a) is already, or becomes, available to the public other than as a result of unauthorized disclosure by Receiving Party or any of its Representatives to which Receiving Party discloses Disclosing Party's Confidential Information; (b) is, or was previously, received by Receiving Party or one of its Representatives on a non-confidential basis from a third party under no obligation to maintain the confidentiality of such information; (c) is already known by Receiving Party or one of its Representatives prior to disclosure of the same to Receiving Party or its Representatives by or on behalf of Disclosing Party and is not subject to any confidentiality obligation; and/or (d) was independently developed by Receiving Party or one of its Representatives without use of or reference to Disclosing Party's Confidential Information.
- 6.3 Receiving Party: (a) may only use Disclosing Party's Confidential Information to perform its obligations and/or exercise its rights under the Agreement; and (b) will use at least the same degree of care to protect Disclosing Party's Confidential Information as it uses to protect its own confidential information of like kind, but in any event no less than a reasonable degree of care under the circumstances. Receiving Party may disclose Confidential Information to any persons or entities; (i) as directed by Disclosing Party or its Representative; and/or (ii) to the directors, officers, employees, subcontractors, attorneys, professional consultants, third parties, auditors and agents (and employees of such) of Receiving Party or its Affiliates who reasonably need to have access to the Confidential Information for purposes specifically contemplated by the Agreement, as the case may be, (or, in the case of attorneys, auditors and agents, for the purpose of advising Receiving Party in relation to its business) and who are subject to confidentiality obligations on terms materially equivalent to those contained in this clause (collectively, "**Representatives**"). Receiving Party will have no liability to Disclosing Party or to any other person or entity for any loss or damages sustained by Disclosing Party as a result of breach of confidentiality by any person to whom Confidential Information is disclosed as directed by the Disclosing Party. A breach of Receiving Party's obligations under this Section 6 by any such Representative will be deemed a breach by Receiving Party.
- 6.4 In the event of any valid legal action or demand for Disclosing Party's Confidential Information made to Receiving Party or any of its Representatives under applicable law or regulation, Receiving Party or

such Representative may disclose such Confidential Information without liability hereunder; provided, however, that Receiving Party or such Representative: (a) to the extent legally permissible, gives Disclosing Party notice of the Confidential Information to be so disclosed as far in advance of its disclosure as is reasonably practicable; (b) furnishes only that portion of the Confidential Information that is requested and legally required; and (c) uses reasonable efforts to obtain assurance that confidential treatment will be accorded to the Confidential Information. Notwithstanding anything to the contrary in the Agreement, Receiving Party may disclose Confidential Information: (i) to the extent requested by any government agency or regulatory authority with regulatory or oversight jurisdiction over one or more of Receiving Party and its Affiliates; and (ii) in the course of fulfilling any of the regulatory responsibilities of one or more of Receiving Party and its Affiliates.

6.5 Each Party's obligation of non-disclosure and non-use will survive the termination or expiration of the Agreement. Immediately upon expiration or termination of the Agreement, the Receiving Party will cease using the Confidential Information and, upon request, destroy or return (at Receiving Party's option) all Confidential Information received from the other Party. Notwithstanding the above, Receiving Party may keep such Confidential Information or copies thereof (a) as necessary to comply with applicable laws and or appropriate document and data retention policies; and (b) where permitted by applicable law, as are contained in Receiving Party's automated electronic archiving or data back-up systems from which it is not reasonably practicable to delete Confidential Information provided, however, that the obligations of confidentiality and use restrictions in this Section 6 will continue to apply to all such retained Confidential Information and/or copies thereof.

6.6 The parties agree and confirm that the nature of Confidential Information shared pursuant to the Agreement is unique and that it may be impossible to measure the damages that would result to the Disclosing Party from violations by the Receiving Party of its obligations under this clause. Accordingly, in addition to any other remedies that the Disclosing Party may have at law or in equity, the parties agree that the Disclosing Party will have the right to seek preliminary and permanent injunctive relief to secure specific performance by the Receiving Party of its obligations in this Section 6 and to prevent a breach of this Section 6 by the Receiving Party without, in any case, proof of actual damages or the posting of any bond.

7. Insurance.

7.1 Vendor will procure and maintain in full force and effect for the term of the Agreement (the "**Insurance Period**"), at its own expense, insurance policies with financially responsible insurance companies (having an A.M. Best's Rating of A-, Class VII or better), authorized to do business in the state in which the Data Center is located, covering property damage, bodily injury (including death) and claims arising out of Vendor's products and services in accordance with the minimum limits set forth below:

- (a) Commercial General Liability. Comprehensive commercial liability, including premises and operations, independent contractors, personal injury, contractual liability and products liability, completed operations and premise liability coverage with (A) a per occurrence combined single limit of no less than USD\$1,000,000 and (B) an aggregate limit of no less than USD\$5,000,000, which, in each case, may be satisfied by a combination of primary and excess (umbrella) insurance.

- (b) Professional Liability. Professional liability (errors & omissions) coverage, including copyright and trademark infringement, with limits of no less than USD\$5,000,000 per claim and in the aggregate, in combination with Privacy & Security liability insurance in (c) below.
- (c) Network Privacy and Security Insurance Cyber Liability Insurance. Privacy & Security liability insurance (or its equivalent “cyber/network security” insurance) covering liabilities resulting or arising from acts, errors, and/or omissions in connection with the services provided or permitted under the Agreement that are associated with any unlawful or unauthorized access to, or acquisition, use or disclosure of, PII, PHI, or payment card information, including cardholder data or sensitive authentication data (“PCI”), including any use or disclosure not permitted by the Agreement, and any breach, loss, or compromise of any PII, PHI, or PCI. Such insurance will provide coverage with minimum limits of no less than USD\$5,000,000 per claim and in the aggregate, in combination with Professional Liability insurance in (b) above. Costs and damages to be covered by such insurance policy will include (i) costs to notify individuals, including establishing a call center or similar process, (ii) costs to provide credit monitoring and identity restoration services to individuals; (iii) costs and damages associated with third party claims, including restoration expenses, revenue loss, litigation costs and settlement costs, and (iv) any investigation and enforcement costs, including any forensic investigation costs.

7.2 The insurance coverage requirements in this Section 7 will not limit Vendor’s liability under the Agreement.

7.3 Extended Coverage. If any insurance required by this section is written on a claims-made policy form, Vendor will ensure that such policy has a retroactive date prior to or coinciding with the Effective Date and will continue for the Insurance Period. In the event that a claims-made policy is canceled, terminated or non-renewed, Vendor will obtain an extended reporting period endorsement for the remainder of the Insurance Period, or obtain replacement coverage to ensure that there is no material gap in coverage at any time during the Insurance Period.

7.4 All insurance policies maintained by Vendor in accordance with this Section 7 will be primary and non-contributory to any insurance that may be carried by Nasdaq and its subsidiaries and include contractual liability in support of Vendor’s indemnification obligations set forth in the Agreement. Vendor will hold Nasdaq and its subsidiaries, including its and their respective Representatives, harmless from any liabilities that may arise from Vendor’s non-compliance with this section. Vendor will ensure that all of its subcontractors and other representatives who will have access to Vendor Equipment in the CSC are required to maintain appropriate insurance coverage for all of the categories noted above. Vendor agrees to indemnify Nasdaq, via its own insurance coverage or otherwise, for any losses and damages attributable to its use of, and loss and damage caused by, Vendor’s subcontractors or other representatives.

7.5 Within thirty (30) days following the Effective Date, and at any time thereafter on Nasdaq’s written request, Vendor will provide certificates of insurance evidencing the insurance policies satisfying the terms and minimum limits specified herein to Nasdaq. Vendor will provide at least thirty (30) days’ prior written notice to Nasdaq of cancellation of, or any material change in, coverage; in the event of any such cancellation, a replacement policy will be obtained by Vendor prior to the effective date of cancellation.

8. Audit.

8.1 Vendor will keep and maintain complete and accurate records relating to its compliance with the Agreement, including (but not limited to) all Permissions, for the term of the Agreement plus one (1) year and will make such records available to Nasdaq on Nasdaq's reasonable request. Vendor will permit and facilitate Nasdaq (or its agent) reasonable access to any premises at which the foregoing types of records relating to the Agreement are kept and from which systems, Vendor Equipment, and services the subject of the Agreement are provided (including the CSC) and to all relevant documents, equipment, systems, controls, books and records. Access to such premises, equipment, documents, systems, controls and records will be provided by Vendor to Nasdaq (or its agent) for audit on Nasdaq giving Vendor at least 48 hours' notice, and will take place during Vendor's regular business hours, subject to all Vendor information disclosed being subject to the confidentiality provisions of the Agreement. Any such audit shall not unreasonably interfere with the conduct of Vendor's business.

9. Term, Suspension, Termination, and Survival.

9.1 This Agreement will commence as of the Effective Date and will continue thereafter for the period set out in the Authorization Agreement unless and until terminated in accordance with the Agreement. Notwithstanding the following, after initial connection to Nasdaq Connectivity, if Vendor has had no connection to Nasdaq Connectivity via the CSC at the relevant Data Center for ninety (90) consecutive days, either Party will have the right to terminate the Agreement by providing written notice to the other party.

9.2 Suspension. Nasdaq may suspend Vendor's right and ability to connect to the authorized Nasdaq demarcation point in the relevant CSC in any of the circumstances set out in Section 9.3 or Section 9.5, or:

- (a) if Nasdaq reasonably considers it prudent to do so in order to avoid immediate and ongoing harm to Nasdaq or others which might otherwise result; or
- (b) Vendor breaches a term of the Agreement; or
- (c) if, in Nasdaq's reasonable opinion, Nasdaq's facilitation of Vendor's connection to the Presentation Panel would cause Nasdaq or its Affiliates to be in breach of any law or regulation, or would violate any sanction; or
- (d) Nasdaq is required to carry out urgent unplanned or emergency maintenance on or replacement of any related Nasdaq Connectivity infrastructure.

In such case, Nasdaq will use reasonable endeavors to notify Customer of any such suspension as soon as reasonably practicable and, unless Nasdaq has terminated the Agreement pursuant to its rights hereunder, such suspension shall be lifted once the Vendor demonstrates to Nasdaq's reasonable satisfaction that such threat of immediate and ongoing harm is no longer present or that Vendor is satisfactorily meeting its obligations under the Agreement. Any fees payable by Vendor pursuant to Section 5 will continue to be payable during any such period of suspension. If Nasdaq has suspended pursuant to Section 9.2(a) or 9.3(a)(i), Nasdaq may refuse to reconnect Vendor until Vendor pays a reconnection fee.

9.3 Nasdaq, in its sole discretion, may terminate the Agreement without liability:

- (a) with immediate effect:

- (i) if, in Nasdaq's opinion, Vendor is intentionally engaged in activities that Nasdaq reasonably determines may be detrimental to the business, reputation, customers, systems or services of Nasdaq and its Affiliates, or could adversely impact any other customer; or
 - (ii) if any sanctions limitations affect Vendor's ability to provide Carrier Services under the Agreement or Nasdaq's ability to extend credit or collect fees under the Agreement, in which case Nasdaq will use commercially reasonable efforts to notify Vendor of termination as far in advance as possible and will retract such termination if the sanctions change.
 - (iii) if necessary for Nasdaq to comply with any applicable law or regulation, or any other legal proceeding, investigation or settlement to which Nasdaq or any of its Affiliates is a party or which may affect Nasdaq or any of its Affiliates; or
 - (iv) if Nasdaq or any of its Affiliates are required to terminate or modify the Agreement by the SEC, CFTC or any other regulatory body with jurisdiction over such entities and such requirement is within their authority to make or if Nasdaq is prohibited by law, regulation or otherwise from facilitating Vendor connectivity with Nasdaq Clients;
 - (v) if Nasdaq's or any of its Affiliates' underlying right to relevant space in the Data Center terminates; or
- (b) if Vendor breaches the confidentiality provisions of the Agreement; and
- (d) at the end of any then-current initial term or renewal term by giving Vendor at least ninety (90) days prior notice of termination

9.4 Vendor may terminate the Agreement:

- (a) at the end of any then-current initial term or renewal term by giving Nasdaq at least ninety (90) days prior notice of termination; or
- (b) immediately if Vendor is prohibited by law or regulation from providing Carrier Services in the Data Center or from connecting to Nasdaq Connectivity in the Data Center.

9.5 Either Party may terminate the Agreement, effective upon written notice to the other Party, if the other Party:

- (a) breaches the Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the other Party does not cure such breach within thirty (30) days after receipt of written notice of such breach;
- (b) becomes insolvent or admits its inability to pay its debts generally as they become due;
- (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing;
- (d) is dissolved or liquidated or takes any corporate action for such purpose;
- (e) makes a general assignment for the benefit of creditors; or

- (f) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

9.6 Upon expiration or termination of the Agreement for any reason:

- (a) Nasdaq will terminate Vendor's connection to Co-Location Service Area and de-list Vendor from Nasdaq's approved vendors list for relevant Data Center(s); and
- (b) Vendor will promptly:
 - (i) Provide reasonable cooperation and assistance to Nasdaq to transition Nasdaq Clients then receiving any Carrier Services from Vendor to an alternate service provider; and
 - (ii) Pay any outstanding fees due under the Agreement which will include, unless Vendor terminates the Agreement pursuant to Section 9.4(a), all fees due for the remainder of any initial or then-current renewal term set out in the Agreement, and Vendor agrees that such payment of fees due for the remainder of the term constitutes liquidated damages and is not a penalty.

9.7 The rights and obligations of the Parties set forth in this Section 9.7 and in Sections 1, 6, 8 (for the period stated therein), 9.6, 9.7, 10 11, 12, 13, 15, 16, 18, 20, 21, 22, and 23, and any right or obligation of the Parties in the Agreement which, by its nature, should survive termination or expiration of the Agreement, will survive any such termination or expiration of the Agreement.

10. Limitation of Liability; Indemnification.

10.1 EXCEPT WITH RESPECT TO A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, VENDOR'S INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT, AND VENDOR'S OBLIGATIONS TO PAY FEES:

- (a) IF NASDAQ IS FOR ANY REASON HELD LIABLE TO VENDOR PURSUANT TO THIS AGREEMENT, INCLUDING IN CONTRACT OR IN TORT, NASDAQ'S LIABILITY IS LIMITED TO THE GREATER OF (i) FEES PAID OR PAYABLE BY VENDOR TO NASDAQ DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM AND (ii) USD\$50,000, AND SUCH LIABILITY WILL BE IN THE AGGREGATE AND NOT PER INCIDENT.
- (b) NASDAQ WILL NOT BE LIABLE TO VENDOR FOR ANY LOSS OF PROFITS, REVENUES, TIME, GOODWILL, OR TRADES, OR COST OF COVER OR DOWNTIME, LOSS OF EQUIPMENT OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL LOSS OR DAMAGE OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- (c) IF VENDOR IS FOR ANY REASON HELD LIABLE TO NASDAQ PURSUANT TO THIS AGREEMENT, INCLUDING IN CONTRACT OR IN TORT, VENDOR'S LIABILITY IS LIMITED TO USD\$5,000,000, AND SUCH LIABILITY WILL BE IN THE AGGREGATE AND NOT PER INCIDENT.

10.3 THE LIMITATIONS IN THIS SECTION 10 WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

10.4 Vendor will indemnify, defend, and hold harmless Nasdaq and its officers, directors, employees, agents, Affiliates, successors, and permitted assigns (each an "Indemnified Party")

against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' and experts' fees, fees, and the costs of enforcing any right to indemnification under the Agreement, and the cost of pursuing any insurance providers, relating to/arising out of or in connection with (a) Vendor's use of or connection to Nasdaq Connectivity pursuant to the Agreement and (b) Vendor's customers' use of the Carrier Services and the negligence or willful misconduct of Vendor, its Affiliates and their respective directors, officers, employees, subcontractors, customers and agents. However, nothing contained in this Section shall be construed as Vendor's indemnification of an Indemnified Party against any loss, liability or claim to the extent arising from the gross negligence or willful misconduct of that Indemnified Party. Vendor will not enter into any settlement without Indemnified Party's prior written consent.

11. Remedies.

11.1 Nothing in the Agreement will prevent either Party from seeking injunctive relief in any court of competent jurisdiction to prevent or restrain a breach or threatened breach of the Agreement, in addition to any other remedies available at law or in equity.

11.2 To the extent a Party is required to seek enforcement of the Agreement or otherwise defend against an unsuccessful claim of breach, the unsuccessful Party will be liable for all attorney's fees and costs incurred by the successful Party to enforce the provisions of the Agreement.

12. Entire Agreement. This Agreement, including and together with any related, exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

13. Conflicts. If there is any conflict between a term in these Terms and a term in an Authorization Agreement, the term in the Authorization Agreement will govern.

14. Amendment. Nasdaq reserves the right, at its sole discretion, to modify the Terms and the terms in Nasdaq's TNO Authorization Agreement forms (including any fees) from time to time by sending notice of changes to Vendor's email address indicated on the most recent Agreement signed by both Nasdaq and Vendor and by email to all other subscribed TNOs. The modified terms and/or fees will amend the Agreement and will become effective sixty (60) days after Nasdaq's notification. If Vendor does not agree to the Agreement and/or fees, Vendor may, within thirty (30) days of Nasdaq's notification, terminate the Agreement by supplying at least thirty (30) days' written notice to Nasdaq, without penalty for early termination, in which case Nasdaq will terminate Vendor's connection to Nasdaq Co-Location Service Area and de-list Vendor from Nasdaq's approved vendors list for relevant Data Center(s). Notwithstanding the above, any modification of Carrier Services to be provided by Vendor (as listed in the Authorization Agreement) must be agreed between Vendor and Nasdaq in a written amendment to the Agreement signed by each Party.

15. Notices. Except with respect to any notice of amendment sent by Nasdaq pursuant to Section 14, all notices, requests, consents, claims, demands, waivers, and other communications under the Agreement (each, a "**Notice**") must be in writing and addressed to the other Party at its address set forth in the Authorization Agreement (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (a) on

receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 15. Any Notice sent to Nasdaq will simultaneously be sent to Nasdaq, Inc. Office of General Counsel (ref. Access Services), 805 King Farm Blvd, Rockville, MD 20850.

16. Severability. If any term or provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the court may modify the Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

17. Waiver. No waiver by any Party of any of the provisions of the Agreement will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the Agreement will operate or be construed as a waiver thereof, nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

18. Assignment. Vendor will not assign, transfer, delegate, or subcontract any of its rights or obligations under the Agreement without the prior written consent of Nasdaq which consent will not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section 18 will be null and void. No assignment or delegation will relieve the Vendor of any of its obligations hereunder. Nasdaq may at any time assign or transfer any or all of its rights or obligations under the Agreement without Vendor's prior written consent.

19. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.

20. No Third-Party Beneficiaries. This Agreement benefits solely the Parties and their respective successors and permitted assigns and nothing in the Agreement, express or implied, confers on any third party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of the Agreement.

21. Force Majeure Events. Neither Party is liable for delay/failure in such Party's performance to the extent caused by a Force Majeure Event, excluding payment obligations. The impacted Party will promptly notify the other Party of, and use commercially reasonable efforts to mitigate, any Force Majeure Event. If a Force Majeure Event continues for 30 consecutive days, the other Party may terminate the Authorization Agreement on written notice.

Choice of Law. This Agreement and all related documents, and all matters arising out of or relating to the Agreement, whether in contract, tort, or statute are governed by, and construed in accordance with the laws of the State of New York, United States of America including its statutes of limitations, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of New York.

22. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to the Agreement, in a State or Federal court sitting in the County of New York in the State of New

York. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

23. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. Counterparts, Copies and Signature. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 15, a signed copy of the Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of the Agreement, and an electronic or digital signature will have the same force as a handwritten signature.