**MARKET DATA FILE SUBSCRIPTION 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,** Subscriber, as identified on the applicable Order Form, 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.** 
   1. **“Affiliate”** shall mean any entity that, from time to time, is directly or indirectly controlling, controlled or under common control with Subscriber or OTC Markets Group, as applicable. “Control” means the power to direct or cause the direction of management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.
   2. **“Agreement”** shall mean this Market Data File Subscription Agreement and the Attachments, as added to, deleted from, or amended from time to time.
   3. **“Attachments”** shall mean any attachments, addenda, cover sheets, amendments, exhibits, schedules and other materials referenced herein, including, but not limited to any applicable Fee Schedule, Order Form, Technical Specification and Market Data Policies, as any of these items may be added to, deleted from or amended from time-to-time by OTC Markets Group, in its sole and absolute discretion.
   4. **“Authorized Canari User”** shall mean a User that Subscriber designates or otherwise allows to access Canari.
   5. **“Bankruptcy Code”** shall mean the bankruptcy laws of the United States codified in Title 11 of the United States Code, as amended.
   6. **“Canari”** shall mean OTC Markets Group’s System consisting of a web-based user interface owned and operated by OTC Markets Group, available at www.canari.otcmarkets.com, that enables Subscriber to access the Information.
   7. **“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.
   8. **“Clearing Firm”** shall mean a Broker-Dealer providing fully-disclosed clearing services for introducing Broker-Dealers, including custody of client accounts, receipt and execution of client instructions, preparation of trade confirmations and client investment statements, and delivery and settlement of securities transactions.
   9. **“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 Confidential Information 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.
   10. **“Custodian Bank”** shall mean a commercial bank providing custodial services for investment companies, pension funds, corporations, and investors, including safekeeping of third-party assets, collection of income on such assets, securities settlement processing, cash management, and related administrative services.
   11. **“Data File”** shall mean Information consisting of certain data files made available for download on the Data File Delivery Service, including, but not limited to, the Company Data File, Compliance Analytics Data File, Promotion Data File, Small Cap Listed Compliance Data File, Security Data File, Quote History Data File, Q Score Data File, Unsolicited Quote Security Data File and Blue Sky Data File and other Information, as further described in the applicable Order Form(s) and Technical Specification(s).
   12. **“Data File Delivery Service”** shall mean OTC Markets Group’s System consisting of a secured Application Programing Interface (API), File Transfer Protocol (FTP) or other service that enables Subscriber to receive and download the Data File and other Information.
   13. **“Data Protection Laws”** means laws and regulations that govern and restrict the collection, storage, processing, disclosure or use of Personal Data, including, but not limited to, the European Union General Data Protection Regulation 2016/679 (“**GDPR**”).
   14. **“Derived Data”** shall mean Information that has been modified to such a degree that without considerable expense and effort, cannot be reverse engineered or otherwise traced back to the Information, other than by the creator, without an extraordinary amount of time and effort.
   15. **“Derived Data Usage”** shall mean use of the Information in one or more applications or services that produce and distribute Derived Data, including applications or services that (i) produce derived pricing information, (ii) calculate Subscriber’s own prices, (iii) create indices or (iv) generate other Derived Data; *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.
   16. **“End-of-Day”** shall mean Information consisting of a snapshot of the best bid price and size and the best ask price and size for a security quoted in the Information taken at the close of regular trading hours.
   17. **“Expert Market”** shall mean an OTC Market Tier designation requiring limited distribution of the Information to certain Recipients.
2. **“External Display Usage”** shall mean display of the Information to Subscribers through one or more External Applications; *provided, that,* such External Applications do not permit further redistribution of the of the Information.
3. **“External Distribution”** shall mean distribution to Subscriber’s customers and other third parties via External Applications.
4. **“External Applications”** shall mean Subscriber’s applications that are accessible by persons other than Users.
5. **“Fee Schedule”** shall mean the prices for each license to access the Information or other services, made available at [www.otcmarkets.com](http://www.otcmarkets.com) or another website accessible by and made known to Subscriber.
6. **“Historical Information”** shall mean the Information after 12:00 a.m. Eastern Standard Time on the third (3rd) business day subsequent to the date on which such Information was first provided to Subscriber by OTC Markets Group.
7. **“Information”** shall mean the information and data, including information, goods and services provided to Subscriber by OTC Markets Group pursuant to this Agreement, as specified in the Attachments.
8. **“Information Plan”** shall mean a detailed description of the Subscriber’s intended use of the Information, including, without limitation, Subscriber’s intent to manipulate, process, store, transmit, reproduce and display the Information, including, but not limited to, the data processing equipment, software, and communications facilities related thereto and the persons to whom such Information will be made available, as and to the extent approved by OTC Markets Group.
9. **“Internal Applications”** shall mean Subscriber’s internal applications that are not available to any person that is not a User.
10. **“Internal Usage”** shall mean use of the Information by Users on Internal Applications for Subscriber’s own internal business use in the ordinary course of Subscriber’s business; *provided, that,* such Internal Applications do not permit further redistribution of the of the Information.
11. **“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.
12. **“Market Data Policies”** shall mean OTC Markets Group’s policies, interpretations, operating procedures, specifications, requirements and other documentation made available at www.otcmarkets.com or another website accessible by and made known to Subscriber, as may be amended from time to time.
13. **“Order Form”** shall mean any of the executed order form(s) specifying the Information to be provided to Subscriber pursuant to this Agreement.
14. **“OTC Market Tier”** shall mean a market tier designation assigned by OTC Markets Group.
15. **“OTC Markets Group”** shall mean OTC Markets Group Inc., a Delaware corporation, and its Affiliates.
16. **“OTC Markets Group’s System”** shall mean the system(s) used by OTC Markets Group to deliver the Information to Subscriber and shall include the Data File Delivery Service and Canari.
17. **“Personal Data”** shall have the meaning set forth in the GDPR (and as amended by any superseding legislation). For the purpose of this Agreement, Personal Data may include, but is not limited to, names, employers, employer addresses, titles, email addresses, phone numbers, and other information relating to an individual end-user usage of the Information.
18. **“Prime Broker”** shall mean a Broker-Dealer providing securities clearing and related services for hedge funds and other professional investors, including global custody, securities lending, securities clearing and financing, cash management, and technology, operational and administrative support services.
19. **“Recipient”** shall mean a User or any person, other than a User, that receives Information from the Subscriber.
20. **“RSS Feed”** shall mean Information made available in XML format and containing data related to issuers and links to applicable OTC Markets Group webpage(s), including an issuer’s name and symbol, and links to financial reports, as further specified in the applicable Technical Specifications.
21. **“Security Device”** shall mean any passwords, User identification numbers, certificates or other form(s) of authentication or security used in connection with the Data File Delivery Service, including, but not limited to third-party software.
22. **“Service Bureau”** shall mean any entity providing outsourced technology or business services for financial services companies, including software development, securities order management, securities trade data, securities trade processing, financial or trust accounting, or transaction, advisory, investment or trust administrative processes.
23. **“Services”** shall mean the goods or services provided by the Subscriber, whether internally or externally, that are based upon or use the Information or the Derived Data, or of which the Information or Derived Data is a part.
24. **“Subscriber”** shall mean the person or entity receiving the Information pursuant to this Agreement
25. **“Subscriber’s System”** shall mean a system of applications operated by the Subscriber that is used by the Subscriber to access the Information and distribute the Subscriber’s Services.
26. **“Technical Specifications”** shall mean the Integration and Display Requirements, Multicast Data Feeds Technical Specification, the Connectivity Specifications, Connectivity Manual, Data File User Guides or such other document that sets forth the technical specifications, guidelines, requirements, allocations of responsibilities and such other information related to Subscriber’s receipt and use of the Information, made available to Subscriber at www.otcmarkets.com, or another website accessible to Subscriber, as may be amended from to time in OTC Markets Group’s sole discretion.
27. **“Third Party Information Providers”** shall mean those individuals and entities that provide information, goods and services to OTC Markets Group for use in the Information.
28. **“Unauthorized Information”** shall mean Information inadvertently transmitted to Subscriber by OTC Markets Group other than the Information for which Subscriber has been authorized to receive pursuant to this Agreement and the applicable Order Form.
29. **“User”** shall mean an employee or consultant of Subscriber that is furnished the Information for Internal Usage. 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 Subscriber.
30. **License to Use the Information; Restrictions on Use of the Information.** 
    1. **Grant of License.** OTC Markets Group hereby agrees to provide the Information consisting of certain Data File(s) or other Information, as requested by Subscriber in the applicable Order Form(s) and other Attachment(s), to Subscriber via the Data File Delivery Service or Canari, subject to the terms and conditions set forth herein, and hereby grants to Subscriber a non-exclusive, non-assignable, non-transferable license to receive and use such Information, subject to the terms and restrictions specified in this Agreement, the applicable Order Form(s) and other Attachments.
    2. **Use of the Information.** Subscriber and Subscriber’s Users may use the Information for (i) Internal Usage, or (ii) External Display Usage, as specified on the applicable Order Form. Subscriber may use the Information for Derived Data Usage. Unless otherwise agreed to by OTC Markets Group, Subscriber may not permit Information, other than the RSS Feed, to be used for External Distribution. Subscriber agrees to use the Information as set forth in the Information Plan, as and to the extent such Information Plan is approved by OTC Markets Group. **Subscriber** **shall not use the Information for Investment Accounting, valuation, or settlement, clearing and custody***, provided, however,*Subscriber may use End-of-Day Information for Investment Accounting, valuation, settlement, clearing and custody, and research or analysis. For the purposes of determining the applicable license and fees for End-of-Day Information, OTC Markets Group shall have the sole and absolute discretion to determine whether Subscriber qualifies as a Custodian Bank, Clearing Firm, Prime Broker, or Service Bureau.
    3. **Use of Canari.** Subscriber receiving Information via Canari may permit Authorized Canari Users to view and use Canari, and the Information provided via Canari, for Internal Usage only. Subscriber will not copy, modify, adapt, translate, distribute, reverse engineer, decompile, or disassemble any aspect of Canari or reproduce, retransmit, re-post, distribute, sell, publish, broadcast, create derivative works from, or in any way commercially exploit any of the Information made available via Canari. To the extent Information made available via Canari is downloadable, Subscriber may furnish such Information for Subscriber’s own internal business use on a non-continuous, non-automated basis. Notwithstanding the foregoing, Subscriber agrees to take reasonable security precautions to prevent persons who are not Authorized Canari Users from gaining access to Canari and the Information available via Canari. Subscriber agrees not to permit any User or other third party that is not an Authorized Canari User to access Canari and shall promptly notify OTC Markets Group in the event that it becomes aware of any unauthorized use of Canari or the Information available via Canari. Subscriber shall be responsible under regulation, contract, tort or otherwise, for all actions or omissions of all Authorized Canari Users (including those that were to have been performed by an Authorized Canari User had one been named or available at the time). Subscriber represents and warrants that it has the power and authority to cause, and shall cause, each Authorized Canari User to comply with the terms of the Agreement and this Addendum.
    4. **Expert Market.** Subscriber may not transmit or disseminate Expert Market Information to any Recipient except as specified in the applicable Technical Specifications and Market Data Policies.
    5. **External Display Usage.** Subscriber receiving Data File(s) for External Display Usage, as indicated on the applicable Order Form, shall prominently display where the Information is made available to Recipients terms of service approved by OTC Markets Group that (i) identify OTC Markets Group as the owner of the Information, (ii) require each Recipient 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 (iii) provide 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.”
    6. **RSS Feed.** Subscriber receiving an RSS Feed from OTC Markets Group may use the RSS feed for External Distribution, subject to the following conditions:
       1. Subscriber shall not use the RSS Feed for commercial use and shall not charge any fees or issue any license or sublicense for the use of the RSS Feed or any Information contained in the RSS Feed;
       2. Subscriber shall not (i) edit or modify the text, content, links or any other Information in the RSS Feed or (ii) use the Information in the RSS Feed except in the form provided in the RSS Feed;
       3. Subscriber shall not (i) use the RSS Feed with any platform other than a platform from which a functional link is made available that, when accessed, takes the viewer directly to the display of the applicable OTC Markets Group webpage; (ii) display the Information contained in the RSS Feed in a manner that does not permit successful linking to, redirection to, or delivery of the applicable OTC Markets Group webpage; and (iii) insert an intermediate page, splash page or other content between the RSS Feed link and the applicable OTC Markets Group webpage;
       4. Subscriber shall identify OTC Markets Group as the owner of the Information contained in the RSS Feed by displaying “OTC Markets Group Inc.” in text as the source and owner of such Information; and
       5. OTC Markets Group reserves all rights in and to any and all copyrights, logos, trademarks and trade names contained in the RSS Feed. Subscriber’s right to use OTC Markets Group’s name is limited to providing the appropriate attribution in connection with the RSS Feed.
    7. **Other Use of the Information.** In the event that Subscriber desires to make any use of the Information in any manner not otherwise expressly permitted by the terms of this Agreement, Subscriber must obtain the prior written approval of OTC Markets Group for such use and agrees 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 Subscriber. Subscriber acknowledges that OTC Markets Group is not required to grant any such approval and may do so in its sole, absolute and unfettered discretion. Subscriber agrees that it acts at its own risk in developing Subscriber’s System any Services prior to receiving approval from OTC Markets Group.
31. **Subscriber’s Responsibilities; Subscriber Acknowledgement and Warranty.**
    1. **Information Plan.** Subscriber shall submit an Information Plan for OTC Markets Group’s approval prior to any use of the Information. Subscriber represents and warrants that the Information Plan is true, complete and not misleading. Subscriber may not sell, lease, furnish or otherwise permit or provide access to the Information in any manner not set forth in Subscriber’s Information Plan and previously approved by OTC Markets Group in writing. **Any use of the Information by Subscriber, Subscriber’s Affiliates or Users, unless expressly described in Subscriber's Information Plan and approved by OTC Markets Group, is prohibited.** In the event that Subscriber’s use of the Information is or becomes inconsistent with the Information Plan, Subscriber agrees to promptly notify OTC Markets Group and submit a revised Information Plan for approval by OTC Markets Group.
    2. **Compliance with Agreement.** Subscriber represents and warrants that it has the power and authority to cause, and shall cause, each User and any other person Subscriber permits to access the Information to comply with the terms of this Agreement. Subscriber shall be responsible under regulation, contract, tort or otherwise, for all actions or omissions of a User (including those that were to have been performed by a User had one been named or available at the time) and any other person Subscriber permits to access the Information.
    3. **Changes to the Information.** Subscriber acknowledges and agrees that nothing in this Agreement constitutes an undertaking by OTC Markets Group (i) to continue to provide the Information, OTC Markets Group’s System, the Data File Delivery Service, Canari, or any component or function thereof, in the present form or configuration or as specified in the Technical Specifications or Market Data Policies, or in a manner compatible with Subscriber’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 (a) the Information, OTC Markets Group’s System, the Data File Delivery Service, Canari, or any component or function thereof, (b) the Technical Specifications, (c) the Market Data Policies or (d) communications facilities or methods used by OTC Markets Group; *provided, however,* that OTC Markets Group will make commercially reasonable efforts to provide Subscriber with ninety (90) days’ notice of any such modification, addition or deletion that is material, except in the case of (1) OTC Markets Group’s System malfunction that requires modifications, additions or deletions on an accelerated basis, (2) an emergency that precludes the opportunity to provide such notice, or (3) 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, OTC Markets Group’s System, the Data File Delivery Service, Canari, the Technical Specifications or Market Data Policies, as applicable, inclusive of such modification, addition or deletion.**
    4. **Intellectual Property.** 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. Subscriber 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 OTC Markets Group’s Systems. Subscriber 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. Subscriber acknowledges that OTC Markets Group may, in its sole discretion and without notice, terminate Subscriber’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.
    5. **Unauthorized Information.** If Subscriber receives Unauthorized Information, Subscriber shall notify OTC Markets Group. Subscriber shall not knowingly furnish, or permit to be furnished, Unauthorized Information to any third party. Subscriber shall be liable to OTC Markets Group (including, without limitation, for the charges set forth in the Fee Schedule for use of such Unauthorized Information) in the event Subscriber knowingly makes use of the Unauthorized Information. Subscriber is considered to have knowingly used the Unauthorized Information if Subscriber undertakes any efforts to modify Subscriber’s Services or Subscriber’s System in order to accommodate the Unauthorized Information or undertakes any efforts to market Subscriber’s Services or Subscriber’s System that are based on, use, display or distribute the Unauthorized Information or of which the Unauthorized Information is a part. Unauthorized Information shall be considered as Information for all other purposes under this Agreement.
    6. **Display of the Information.** Subscriber acknowledges receipt of, and agrees to comply with, all applicable Technical Specifications and Market Data Policies, including, but not limited to, the Integration and Display Requirements. Subscriber shall display the Information on Internal Applications, External Applications and via Subscriber’s Service in the manner set forth in the applicable Technical Specifications and Integration and Display Requirements. Subscriber 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. Subscriber hereby agrees that it will not (i) format, display, or alter the Information in violation of this Agreement the Technical Specifications or the Market Data Policies (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. Subscriber 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. Subscriber will not interfere with or adversely affect any of the component parts or processes of the Information, the OTC Markets Group’s System, the Data File Delivery Service, or any use thereof by any other authorized individuals or entities, or the distribution or operation thereof. If Subscriber becomes aware of any potential unauthorized use of the Information, Subscriber shall notify OTC Markets Group immediately of such unauthorized use. Upon notice from OTC Markets Group, Subscriber agrees to provide OTC Markets Group with access to view the use of the Information on the Subscriber’s System and Subscriber’s Services for purposes of demonstrating that Subscriber’s Services and use of the Information is in accordance with the terms of this Agreement.
    7. **Qualification Requirements.** Subscriber acknowledges that OTC Markets Group may have different qualification requirements for different Recipients. Subscriber shall be solely responsible for the acts and omissions of each User and shall be responsible for enforcing any applicable restrictions on which Recipients are permitted to view or access the Information. Notwithstanding anything to the contrary contained herein, Subscriber 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.
    8. **Unauthorized Access; Security Devices.** Subscriber 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. Subscriber shall notify OTC Markets Group immediately when the Subscriber becomes aware of any breach in security procedures concerning the Information. Subscriber shall take reasonable security precautions to prevent unauthorized individuals or entities from gaining access to the Information, as follows:
       1. Users shall (i) not share, lend, sell, transfer or otherwise allow a Security Device to be used by any unauthorized person; (ii) change passwords or perform other actions that are necessary to prevent comprise of the Security Device; and (iii) not access any portion of the Data File Delivery Service that utilizes the Security Device after the User is no longer authorized to access the Data File Delivery Service for any reason.
       2. Subscriber shall not reverse engineer, decode, decompile, attempt to tamper with, evade, discover the method of operations or defeat any Security Device provided for use with the data File Delivery Service.
       3. Subscriber shall comply, at its own expense, with all reasonable security specifications or instructions of OTC Markets Group in order to prevent the Data File Delivery Service from being improperly used or accessed or the Information from being improperly taken from Subscriber or any User’s place of business or residence.
       4. In the event that Subscriber becomes aware of any material weaknesses in, or breach of, any Security Device, Subscriber shall immediately notify OTC Markets Group.
    9. **Virus Notification; Assumption of Risks.**  Subscriber acknowledges that it is possible to contract a virus, spyware, malware, ransomware or similar “disease” by using OTC Markets Group’s Systems or the Information made available therefrom. Subscriber will use, and update regularly, industry standard virus-checking, anti-malware or other vulnerability scanning software routinely when receiving the Information. OTC Markets Group makes no representation or warranty and cannot assure Subscriber that OTC Markets Group’s Systems or the Information will be virus or problem-free. By using OTC Markets Group’s Systems and the Information, Subscriber is assuming the risk of any unavailability, interruption, delay, incompleteness, or inaccuracy of OTC Markets Group’s Systems and the Information.
32. **Fees; Payment; Taxes.**
    1. **Fees.** Subscriber agrees to pay to OTC Markets Group or OTC Markets Group’s designee the charges set forth in the Fee Schedule, including, but not limited to, applicable fees based on the number of Users accessing the Information 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). The Fee Schedule and applicable fees may be amended from time to time by OTC Markets Group in its sole and absolute discretion upon thirty (30) days’ notice to Subscriber.
    2. **Payment.** Invoices are due upon receipt. Subscriber shall pay OTC Markets Group, on demand or upon invoice, interest on any amounts due to 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. 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.
    3. **Taxes.** Subscriber shall be responsible 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 relating to the provision of the Information by OTC Markets Group pursuant to this Agreement, and any related penalties or interest. If Subscriber is required by applicable law to deduct or withhold any such tax, charge or assessment from the amounts due to 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.
33. **Subscriber Audit.**
    1. 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 Subscriber’s (i) records relating to the Information, (ii) reports relating to the Information and payments to OTC Markets Group under this Agreement, and (iii) Subscriber’s System and Services (and all instruments and apparatus used in connection therewith) used to receive the Information and to provide the Service, to be reviewed by OTC Markets Group personnel and/or auditors of OTC Markets Group’s choice, subject to the provisions of this Section 5. For the avoidance of doubt, any such personnel or auditors shall not access, examine, observe, review or in any way gain disclosure to any information of Subscriber that is protected under applicable bank secrecy regulations. The review shall be scheduled upon reasonable notice to Subscriber, depending upon the circumstances and conducted in locations where Subscriber’s records are kept, Subscriber’s System is located or where Subscriber uses the Information, subject to Subscriber’s reasonable procedures and policies on facility access, *provided*, *however*, that nothing therein will limit OTC Markets Group’s ability to satisfy its obligations as set forth in this Section 5. 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. Upon reasonable request, Subscriber shall provide promptly information or materials in response to any request for information relating to the Information. Subscriber shall make available for examination all records, reports, payments, and supporting documentation, and Subscriber’s System and Services necessary in the reasonable judgment of OTC Markets Group’s audit personnel to reach a conclusion as to the accuracy and completeness of (a) Subscriber’s payments to OTC Markets Group, (b) the description set forth in the Subscriber’s Information Plan, and (c) compliance with applicable law and the terms of this Agreement.
    2. OTC Markets Group shall endeavor to ensure that, where reasonably practicable, Subscriber 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 Subscriber or, at Subscriber’s election, with Subscriber’s designee.
    3. After receipt of the preliminary audit response, Subscriber may then elect, at Subscriber’s sole discretion and 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 Subscriber.
    4. In the event that OTC Markets Group and Subscriber are not able to reach agreement concerning the preliminary audit response nor the subsequent review within ninety (90) days of Subscriber’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 Group’s determination shall be deemed conclusive (the “**Final Audit**”).
    5. In the event that the Final Audit determines that there is underpayment or other financial non-compliance with this Agreement, including but not limited to non-compliance with the Market Data Policies, (or discloses additional 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 Subscriber. In the event that the examination conducted by OTC Markets Group personnel and/or its auditors or Subscriber’s auditors reveals that there may be errors or omissions in Subscriber’s Information Plan, Subscriber 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 Subscriber’s auditors, following conclusion of the audit. In the event that the Final Audit reveals other non-compliance, Subscriber 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. Subscriber’s liability pursuant to this subsection for underpayment or other financial non-compliance, provided such underpayment or other financial non-compliance is a result of a good faith error by Subscriber, shall be limited to unpaid fees, together with interest, for the three (3) years preceding the earlier of the date that Subscriber, Subscriber’s auditors or OTC Markets Group first knew or determined that such underpayment or other financial non-compliance has occurred, plus any costs and expenses as set forth in subsection 5(f) below.
    6. In the event that the amount of 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 fees payable to OTC Markets Group hereunder, as the case may be, for any audited or unaudited period referred to herein, Subscriber shall, in addition to remitting the fees and applicable interest due relative to such 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 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 underpayment or other financial non-compliance.
34. **Term and Termination.**
    1. The original term of this Agreement shall commence on the earlier of (i) the date the Order Form or applicable Attachment is executed by OTC Markets Group, or (ii) the date the Information is first provided to Subscriber, (the **“Effective Date”**) and shall 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:
       1. 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;
       2. OTC Markets Group, immediately, in the event that Subscriber becomes insolvent; or Subscriber makes an assignment for the benefit of creditors; or Subscriber does not pay its debts as they become due or admits its inability to pay its debts when due; or Subscriber files or has filed against it any petition under any provision of the Bankruptcy Code or the bankruptcy code of any foreign jurisdiction, or an application for a receiver, trustee, or custodian is made by anyone or Subscriber becomes the subject of any proceedings of bankruptcy, insolvency, reorganization, dissolution, receivership, liquidation or arrangement, adjustment, or composition with creditors;
       3. OTC Markets Group, immediately, in the event that (a) Subscriber 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 Subscriber in this Agreement or in any other document furnished by Subscriber is, as of the time made or furnished, false or misleading; (c) Subscriber 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 Subscriber in connection herewith, after OTC Markets Group has notified Subscriber that such proposed action would constitute a default hereunder; (d) OTC Markets Group terminates for cause Subscriber’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) Subscriber 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 OTC Markets Group’s System or Information or is likely to cause disproportionate harm to OTC Markets Group’s interests; or
       4. OTC Markets Group, upon not less than fifteen (15) days prior written notice, in the event that any representation, warranty or certification made by Subscriber in this Agreement or in any other document furnished by Subscriber becomes untrue or inaccurate and is not made true or accurate within the notice period.
    2. Without limiting this Section 6, in the event that Subscriber fails, for a period of at least sixty (60) days, to pay to OTC Markets Group any amount payable hereunder, OTC Markets Group may, in its sole discretion, terminate or suspend indefinitely Subscriber access to any or all of the Information.
    3. Upon termination of this Agreement, or termination or suspension of Subscriber’s access to Information, Subscriber shall cease any and all use of the Information. The rights of termination and suspension set forth herein are 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.
35. **Confidentiality and Data Privacy.**
    1. OTC Markets Group acknowledges that it may obtain Subscriber’s Confidential Information, and Subscriber acknowledges that it may obtain OTC Markets Group’s Confidential Information. Each of OTC Markets Group and Subscriber 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.
    2. OTC Markets Group or Subscriber 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 Subscriber.
    3. The parties acknowledge that Data Protection Laws may apply to OTC Markets Group’s collection, storage, processing or use of Personal Data. OTC Markets Group may process Personal Data of Users and other end-users of the Information for the limited purpose of performing its obligations and exercising its rights under this Agreement. Subscriber agrees to provide OTC Markets Group with such Personal Data, as reasonably requested by OTC Markets Group for these limited purposes.
    4. OTC Markets Group’s current publicly-posted Privacy Statement (available at www.otcmarkets.com) (the “**Privacy Policy**”) shall apply to individuals whose Personal Data is collected, stored, processed, disclosed or used by OTC Markets Group. Subscriber agrees to refer any individual whose Personal Data may be processed by OTC Markets Group to the Privacy Policy with respect to the individual’s rights under applicable Data Protection Laws.
    5. Where Subscriber is incorporated or organized in any member state of the European Economic Area, the parties acknowledge that certain additional Data Protection Laws may apply to the transfer of Personal Data from Subscriber to OTC Markets Group and the parties may be required to enter into a Data Processing Addendum to this Agreement.
36. **LIMITED WARRANTIES AND DISCLAIMERS.**
    1. **OTC MARKETS GROUP WILL MAKE COMMERCIALLY REASONABLE EFFORTS TO PROVIDE THE INFORMATION AS PROMPTLY AND AS ACCURATELY AS IS REASONABLY PRACTICABLE. NOTWITHSTANDING THE FOREGOING, SUBSCRIBER 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.**
    2. **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), SUBSCRIBER’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 SUBSCRIBER (LESS MONIES REFUNDED OR CREDITED TO SUBSCRIBER’S RECIPIENTS) 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.**
    3. **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).**
37. **LIMITATION OF LIABILITY.**

**a**. **EXCEPT FOR OTC MARKETS GROUP’S (i) INDEMNIFICATION OBLIGATIONS AS SET FORTH IN THIS AGREEMENT OR (ii) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OTC MARKETS GROUP AND ITS LICENSORS, THIRD PARTY INFORMATION PROVIDERS AND SUPPLIERS SHALL NOT BE LIABLE TO SUBSCRIBER 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 SUBSCRIBER 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 SUBSCRIBER 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 SUBSCRIBER, 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 SUBSCRIBER’S DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY SUBSCRIBER 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 SUBSCRIBER 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 SUBSCRIBER 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 SUBSCRIBER, 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 SUBSCRIBER’S DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY SUBSCRIBER 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. SUBSCRIBER 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 SUBSCRIBER OR TO ANY OTHER PERSON FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION FROM OTC MARKETS GROUP’S THIRD PARTY INFORMATION PROVIDERS.**

1. **Force Majeure.** Notwithstanding any other term or condition of this Agreement, none of OTC Markets Group, its Third Party Information Providers or Subscriber 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.
2. **Indemnification.**
   1. Subscriber 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 or Losses are incurred, to the extent that any such Claims or Losses result from or relate to (i) failure of Subscriber, Subscriber’s Users, its employees, independent consultants/subcontractors, directors, and other agents to comply with the terms and conditions of this Agreement, (ii) 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 Subscriber (or any person relying upon the Information received by such person); (iii) any assertion of Claims or Losses against any of the OTC Markets Group Indemnified Parties by any Recipient relating to OTC Markets Group’s exercise of its remedies against any Recipient pursuant to this Agreement; (iv) breach of any warranty by Subscriber; (v) 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; or (vi) the receipt or use of the Information (including representations about the Information) by Subscriber, Users, or Subscriber’s employees, directors, and other agents. Subscriber’s obligation to defend and indemnify under this subsection shall be conditioned on the following (but any limits on Subscriber’s obligations are only to the extent that OTC Markets Group’s failure to comply with the following has caused a material harm to Subscriber’s ability to defend and indemnify): (1) OTC Markets Group shall promptly notify Subscriberin writing of any claim, action or allegation (but, in any event, in a timely manner that does not prejudice the rights of Subscriberor OTC Markets Group); (2) OTC Markets Group shall cooperate fully with Subscriberin the defense thereof and Subscribershall 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) Subscribershall 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* Subscriber’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 Subscriberis reasonably satisfactory to OTC Markets Group. Subscribershall not settle any action against OTC Markets Group that in any way restricts or impairs OTC Markets Group’s intellectual property rights.
   2. OTC Markets Group shall defend Subscriber, its employees, directors, other agents, and Affiliates ("**Subscriber’s** **Indemnified Parties**") against any and all Claims or Losses imposed on or asserted against Subscriber’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 OTC Markets Group’s System, the Information or the Technical Specifications of such third party's intellectual property rights. OTC Markets Group shall indemnify and hold Subscriber’s Indemnified Parties harmless from any and all such Claims or Losses imposed on, incurred by or asserted against Subscriber’s Indemnified Parties, by such judgment or settlement up to the amount paid by Subscriber for the Information. OTC Markets Group’s obligation to defend and indemnify under this subsection shall be conditioned on the following: (i) Subscriber 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 Subscriberor OTC Markets Group); (ii) Subscriber shall cooperate fully with OTC Markets Group in the defense thereof and OTC Markets Group shall be liable to Subscriber for Subscriber’s reasonable expenses (excluding reimbursement for the time value of Subscriber’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 Subscriber’s request, shall apprise Subscriberof the status of any proceedings or negotiations.
   3. OTC Markets Group shall not have the obligation to defend, indemnify and hold Subscriber’s Indemnified Parties harmless from any and all Claims or Losses imposed on, incurred by or asserted against Subscriber, 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 OTC Markets Group’s System, the Information or any Technical Specifications have not been used in accordance with this Agreement, or if Subscriber uses OTC Markets Group’s System, the Information or any Technical Specifications subsequent to an OTC Markets Group’s notice to Subscriber of a potential or actual infringement claim or to the extent it is based on use of a superseded version of OTC Markets Group’s System, the Information or any Technical Specifications if such infringement or misappropriation would have been avoided by use of the current version of OTC Markets Group’s 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 OTC Markets Group’s System, Information or any Technical Specifications with hardware, software or materials if such infringement or misappropriation would have been avoided by the use of OTC Markets Group’s System, Information or any Technical Specifications without such hardware, software or materials.
   4. 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 OTC Markets Group’s System, the 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 Subscriber the right to continue using OTC Markets Group’s System, the Information or any Technical Specifications; (ii) replace or modify OTC Markets Group’s System, the 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 Subscriber or any other person; or (iii) terminate this Agreement immediately without liability to Subscriber or any other person.
   5. This Section 11 and Section 9 set forth the entire liability and the exclusive remedy of OTC Markets Group for the infringement or misappropriation of intellectual property.
3. **No Advice or Solicitation.** Subscriber hereby acknowledges that, in providing OTC Markets Group’s System and the Information, OTC Markets Group is not providing legal, financial, tax, regulatory compliance or other professional advice nor recommending the purchase or sale of any security.
4. **Corporate Names; Proprietary Rights.** Subscriber acknowledges and agrees that OTC Markets Group has proprietary rights in certain names, including, without limitation, “Canari,” “OTCQX,” “OTCQB,” and "OTC Markets Group”, and Subscriber 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. Subscriber acknowledges and agrees that OTC Markets Group has proprietary rights in certain trademarks, servicemarks, copyrights or patents, registered or unregistered, and Subscriber 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 Subscriber has proprietary rights in Subscriber 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 Subscriber prior written consent, which consent may be withheld in Subscriber’s sole discretion. OTC Markets Group acknowledges and agrees that Subscriber 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 Subscriber in any publicity releases referencing Subscriber’s use of the Information and (ii) Subscriber 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 Subscriber’s Services and hyperlink to Subscriber’s web site from OTC Markets Group’s web site.
5. **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 Subscriber. 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.
6. **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 this Agreement and the Attachments, this Market Data File Subscription 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 this Agreement, unless specific reference is made to the sections or subsections of another document.
7. **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 Subscriber or any person claiming by or through Subscriber later than one year after the claim, dispute, controversy or other matter in question has arisen. Subscriber and its employees, directors, and other agents expressly waive any claims, disputes, controversies, and other matters not brought within the period above.
8. **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 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.
9. **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 ninety (90) days’ notice to Subscriber, and any use of the Information after such date is deemed acceptance of the new term or condition. The means of notifying Subscriberof such new term or condition may include, but shall not be limited to, emailing such term or condition to Subscriber. No failure on the part of OTC Markets Group 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 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.
10. **Survival Of Provisions.** Notwithstanding the expiration or termination of this Agreement for any reason, Sections 1, 2, 3 (except for OTC Markets Group’s duty to provide the Information and Subscriber’s right to continue to receive and use the Information), 4, 5, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18 and 19, to the extent appropriate as determined by the context, and the obligations of Subscriber to make payments to OTC Markets Group accrued prior to the date of termination, shall survive any termination of this Agreement.