

## **TERMS AND CONDITIONS OF USE OF STOCK-TRAK/SANEBULL MARKET DATA WIDGETS**

BY ACCESSING AND USING THE DATA DISPLAYED BY THE STOCK-TRAK/SANEBULL MARKET DATA WIDGETS (INCLUDING, WITHOUT LIMITATION, MARKET INDICES AND STOCK PRICES), YOU ARE AGREEING TO BE LEGALLY BOUND BY THESE TERMS AND CONDITIONS. IF ANY OF THESE TERMS AND CONDITIONS ARE UNACCEPTABLE TO YOU, YOU MAY NOT ACCESS OR USE THESE STOCK-TRAK WIDGETS.

### **PART 3 - Agreement to Use of NYSE/AMEX/NASDAQ Data**

To display data from the NYSE/AMEX and/or NASDAQ data

- (i)** You acknowledge that the displayed data is delayed at least 15 minutes.
- (ii)** You agree that you will make a visible disclaimer on the pages that you display the widgets that states that the market data is delayed at least 15 minutes.
- (iii)** You agree to comply with these provisions to the same extent as if you had entered into an agreement with the NYSE itself.

### **NYSE/AMEX AGREEMENT FOR RECEIPT AND USE OF**

#### **CONSOLIDATED NETWORK A DATA AND NYSE MARKET DATA**

PROPRIETARY INTERESTS - Customer understands and acknowledges, and shall assure that each Customer Affiliate and Service Facilitator (if any) understands and acknowledges, that each Authorizing SRO and Other Data Disseminator has a proprietary interest in the Market Data that originates on or derives from its markets or in its index information.

DELAYED LAST SALE PRICE INFORMATION SERVICES - If Customer elects to provide Delayed Last Sale Price Information Services, Customer shall:

- (i)** comply with any contract and fee collection requirements that NYSE may specify from time to time as to persons receiving Delayed Last Sale Price Information;
- (ii)** assure that each display of Delayed Last Sale Price Information conspicuously exhibits a statement indicating that the information has been delayed and the duration of the delay; and
- (iii)** assure that any advertisement, sales literature or other material promoting any Delayed Last Sale Price Information Service, and any agreement for that Service, includes such a statement in a conspicuous manner.

Customer shall assure that the statement is effected in a form and manner that makes it readily visible to any person viewing the display or promotional material. In addition, Customer shall comply, and shall use its best efforts to cause Subscribers to comply, with any other reasonable regulation that NYSE may adopt from time to time to assure that viewers of Delayed Last Sale Price Information are not misled as to its nature.

INSPECTION - Customer shall assure that any person authorized in writing by NYSE has access, at any reasonable time, to any premises of Customer, any Customer Affiliate, any Service Facilitator or any person to whom Customer provides Market Data. In the presence of officials in charge of the premises, the authorized person may (i) examine any component of equipment and software used for the purposes of this Agreement and located at the premises and (ii) observe the use of Market Data and all operations located or conducted at the premises, but solely to monitor compliance with this Agreement. This Paragraph does not require Customer to disclose any proprietary information.

#### SERVICE FACILITATORS AND CUSTOMER AFFILIATES

(a) SERVICE FACILITATORS - NYSE will determine in its sole discretion whether any person assisting Customer for the purposes of this Agreement is a "Service Facilitator" and, therefore, is excused from entering into a separate agreement with NYSE. NYSE will base its determination upon such criteria as (i) the nature and quantity of the Service-related functions that the person performs and (ii) the extent to which Customer owns, or is under common ownership with, the person. Customer shall not permit any person other than a common carrier to assist Customer in providing or performing any aspect of the Service unless (i) NYSE has determined the person to be a "Service Facilitator" and the person is acting in accordance with, and in the manner specified, in Exhibit A or (ii) the person has entered into an agreement with NYSE governing the assistance.

(b) CUSTOMER AFFILIATES - NYSE will determine in its sole discretion whether any "control relationship" between Customer and any person qualifies the person as a "Customer Affiliate" for the purposes of this Agreement. Subject to the charges to which Paragraph 10(a) refers and to the other applicable provisions of this Agreement, Customer may provide any Subscriber Service to partners or officers and employees of Customer Affiliates. For that purpose, any such partner, officer or employee is deemed "a partner, officer or employee of Customer".

(c) CUSTOMER'S GUARANTEE - Customer unconditionally guarantees that each Service Facilitator and Customer Affiliate (i) will fully comply with the provisions of this Agreement that protect against unauthorized access to Market Data, that relate to installation, maintenance and inspection, or that otherwise apply in respect of the Service Facilitator or Customer Affiliate to the same extent as if it had entered into this Agreement and (ii) will not cause Customer to fail to comply with this Agreement. Customer shall inform each Service Facilitator and Customer Affiliate of all relevant provisions of this Agreement and shall promptly provide NYSE with a full description whenever it learns that a Service Facilitator or Customer Affiliate has failed to so comply or has caused Customer to fail to comply.

(d) CURE AND DISCONTINUANCE OF ACCESS - Whenever NYSE notifies Customer in writing that it has determined that a Service Facilitator or Customer Affiliate has failed to act in accordance with, or in the manner specified in, this Agreement, Customer shall promptly cure the breach or rectify the failure. If NYSE so instructs, Customer shall discontinue giving Market Data access to the partners, officers and employees of the Customer Affiliate, or using the Service Facilitator, under this Agreement.

## COOPERATION AS TO UNAUTHORIZED RECEIPT

(a) PREVENTION AND DISCOVERY - Customer shall use best efforts to assure that no "Unauthorized Recipient" obtains Market Data from Customer or from equipment and software that Customer uses for the Services. As to any Type of Market Data, an "Unauthorized Recipient" is any person other than a Data Recipient, Customer Affiliate or Service Facilitator in its authorized access to that Type of Market Data. If an Unauthorized Recipient does so obtain Market Data, Customer shall use its best efforts to ascertain the source and manner of acquisition, shall fully and promptly brief NYSE, and shall promptly pay the applicable amounts described in Paragraph 10. Customer shall otherwise cooperate and assist in any investigation relating to any unauthorized receipt of Market Data made available pursuant to this Agreement.

(b) CUSTOMER COOPERATION AND ASSIGNMENT - Any one or more Authorizing SROs may sue or otherwise proceed against any Unauthorized Recipient, including suing or proceeding to prevent the Unauthorized Recipient from obtaining, or from using, any Type of Market Data that it or they make available. If any one or more Authorizing SROs institute any suit or other proceeding against the Unauthorized Recipient, Customer, unless made a defendant in the suit or proceeding, (i) shall assure that it and Customer Affiliates and Service Facilitators (if any) cooperate with and assist the Authorizing SRO(s) in the suit or proceeding in all reasonable respects, provided that the Authorizing SRO(s) reimburse Customer for reasonable out-of-pocket expenses; and

(ii) if the one or more Authorizing SROs so elect in writing, shall assure that all of Customer's, Customer Affiliates' and Service Facilitators' right, title and interest in the suit or proceeding and in its subject matter will be assigned to the Authorizing SRO(s).

If the one or more Authorizing SROs elect the assignment, it or they shall indemnify, hold harmless and defend Customer against any cost, liability or expense (including reasonable attorneys' fees) that arises out of or results from the suit or proceeding.

(c) THIRD PARTY SUITS AGAINST CUSTOMER - If any person brings a suit or other proceeding to enjoin Customer, any Customer Affiliate or any Service Facilitator from refusing to furnish any Type of Market Data to any Unauthorized Recipient, Customer shall promptly notify NYSE. The Authorizing SRO(s) that make that Type of Market Data available may intervene in the suit or proceeding in the name of Customer, the Customer Affiliate or the Service Facilitator, as appropriate, and, through counsel chosen by the intervening Authorizing SRO(s), may assume the defense of the action on behalf of Customer, the Customer Affiliate or the Service Facilitator. Intervening Authorizing SROs shall jointly and severally indemnify, hold harmless and defend Customer against any loss, liability or expense (including reasonable attorneys' fees) that arises out of or results from the suit or proceeding.

(d) WITHDRAWAL OF RECIPIENT APPROVAL - If NYSE notifies Customer in writing that the Authorizing SRO(s) have terminated the right of any authorized recipient to receive any Type of Market Data, Customer (i) shall cease furnishing that Type of Market Data to the

person within five business days of the notice and (ii) shall, within ten business days, confirm the cessation, and inform NYSE of the cessation date, by notice.

(e) CUSTOMER INDEMNIFIED - If Customer refuses to furnish, or to continue to furnish, to any person any Type of Market Data solely because NYSE has notified Customer in writing that the Authorizing SRO(s) do not authorize, or no longer authorize, the person to receive that Type of Market Data, the Authorizing SRO(s) shall jointly and severally indemnify, hold harmless and defend Customer from and against (i) any suit or other proceeding that arises from the refusal and (ii) any liability, loss, cost, damage or expense (including reasonable attorneys' fees) that Customer incurs as a result of the suit or proceeding. The Authorizing SRO(s) shall have sole control of the defense of any such suit or proceeding and of all negotiations for its settlement or compromise. Customer's prompt notice to NYSE of any such suit or proceeding is a condition to Customer's rights under this Paragraph 9(e). Those rights do not apply when Customer ceases to furnish Market Data to a person, or in a manner, not authorized by NYSE.

PROHIBITED USE AND PATENT INDEMNIFICATION - Customer shall indemnify, hold harmless and defend each Disseminating Party from and against any suit or other proceeding at law or in equity, claim, liability, loss, cost, damage, or expense (including reasonable attorneys' fees) incurred by or threatened against the Disseminating Parties that arises out of or relates to (a) any use of Market Data other than as this Agreement provides by Customer, a Customer Affiliate or a Service Facilitator, or (b) any claim that either any component of the equipment and software used for the purposes of this Agreement (excluding any equipment and software Customer or Service Facilitators (if any) do not supply, install or make available to, or operate or maintain for, a Data Recipient) or the manner of the use made of the component or of Market Data provided pursuant to this Agreement infringes any United States or foreign patent or copyright or violates any other property right. NYSE's provision to Customer of prompt written notice of the suit or proceeding is a condition to Customer's obligations under the preceding sentence. Customer shall have sole control of the defense of the suit or proceeding and all negotiations for its settlement or compromise.

DATA NOT GUARANTEED - The Disseminating Parties do not guarantee the timeliness, sequence, accuracy or completeness of Market Data made available, or of other market information or messages disseminated, by any Disseminating Party. No Disseminating Party will be liable in any way to Customer or to any other person for (a) any inaccuracy, error or delay in, or omission of, (i) any such data, information or message, or (ii) the transmission or delivery of any such data, information or message, or

(b) any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay or omission, (ii) non- performance, or (iii) interruption in any such data, information or message,

due either to any negligent act or omission by any Disseminating Party or to any "Force Majeure" (i.e., any flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications

or power failure, or equipment or software malfunction) or any other cause beyond the reasonable control of any Disseminating Party.