

ALGORITHMIC ROUTING ACCESS AGREEMENT

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ALGORITHMIC ROUTING ACCESS AGREEMENT

This Algorithmic Routing Access Agreement (this “Agreement”) is entered into this _____ day of _____, _____ (the “Effective Date”), by and between _____ (“Provider”), located at _____, and NYSE Market (DE), Inc. (“NYSEM”), located at 11 Wall Street, New York, NY 10005, located at 11 Wall Street, New York, NY 10005.

RECITALS:

WHEREAS, NYSEM is an operating subsidiary of New York Stock Exchange LLC (“NYSE”), a registered national securities exchange;

WHEREAS, Provider desires to make certain of its proprietary and/or licensed computerized or electronic algorithms and related services (collectively, the “Algo Product”) available to certain Member Organizations over Exchange trading systems (1) to enable such Member Organizations to route parent orders for the purchase or sale of securities from Floor Broker handheld devices to Provider for processing by the Algo Product and (2) to enable Provider to receive and process and route resultant child orders through the Algo Product to execute the specified strategy to an applicable execution destination or destinations, which may include, without limitation, the Exchange, in each case by means of an interface between Provider’s servers and NYSEM’s electronic system, as applicable, and the other systems and hardware which enable the delivery of orders to Provider) (collectively, the “NYSE System”), in each case with the child orders reflecting on the Exchange as orders entered by Authorized Floor Brokers subject to all rights and privileges of orders entered by Authorized Floor Brokers; and

WHEREAS, the NYSEM desires to allow Provider to interface with the NYSE System and provide Authorized Floor Brokers with access to the Algo Product using the NYSE System on the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the agreements of the parties set forth below, NYSEM and Provider hereby agree as follows:

ARTICLE 1 DEFINITIONS.

- 1.01 “Affiliate” of an entity means any entity controlling, controlled by or under common control with such entity.
- 1.02 “Agreement” has the meaning set forth in the Preamble.
- 1.03 “Algo Product” has the meaning set forth in the Recitals.
- 1.04 “Algo Restrictions” has the meaning set forth in Section 2.02.
- 1.05 “Authorized Floor Broker” means a Floor Broker (other than a Designated Market Maker or DMM) that has elected to receive the Algo Product through a User Agreement with the Provider.
- 1.06 “Business Days” means days on which the Exchange is open for trading.
- 1.07 “Certification” has the meaning set forth in Section 4.01(c).
- 1.08 “Certification Criteria” has the meaning set forth in Section 4.01(b).
- 1.09 “Confidential Information” has the meaning set forth in Section 8.01.
- 1.10 “Contract Year” means each 12-month period commencing, in the case of the first Contract Year, on the Effective Date and thereafter upon the completion of the immediately preceding 12-month period.

1.11 “Customer” means a broker-dealer or non-broker dealer that sends orders to the Authorized Floor Broker.

1.12 “Designated Market Maker” or “DMM” means each individual who is registered as a member and employed by a DMM unit and permitted to conduct business for the DMM unit on the Floor of the Exchange, including entering orders and quotations for the account of the DMM unit, managing the auction process or otherwise making a market in certain securities.

1.13 “Effective Date” has the meaning set forth in the Preamble.

1.14 “Exchange” means NYSE.

1.15 “Exchange Premises” means any of 11 Wall Street New York, NY, or such additional, substitute, successor, contingency or emergency locations as NYSEM may designate from time to time.

1.16 “Exchange Rules” means the published Rules of NYSE, as approved by the Securities and Exchange Commission, as they may be amended from time to time.

1.17 “Failure Notice” has the meaning set forth in Section 5.02(b).

1.18 “Floor Broker” means a natural person associated with a Member Organization who has been approved by NYSE, as the case may be, and designated by such Member Organization to effect transactions as agent for customer orders on the applicable Trading Floor of the Exchange or any facility thereof.

1.19 “Intellectual Property” means any U.S. or foreign patents, patent rights, patent applications, trademarks, trade names, service marks, brand names, logos and other trade designations (including unregistered names and marks), trademark and service mark registrations and applications, copyrights and copyright registrations and applications, inventions, invention disclosures, protected formulae, formulations, processes, methods, trade secrets, computer software, computer programs and source codes, manufacturing research and similar technical information, engineering know how, customer and supplier information, assembly and test data drawings or royalty rights.

1.20 “Losses” has the meaning set forth in Section 7.01.

1.21 “Member Organization” has the meaning set forth in New York Stock Exchange Rule 2.

1.22 “NYSE Indemnified Parties” has the meaning set forth in Section 7.01.

1.23 “NYSEM” has the meaning set forth in the Preamble.

1.24 “NYSE Matching Engine” means the system that receives, displays and executes orders.

1.25 “NYSE System” has the meaning set forth in the Recitals.

1.26 “Provider” has the meaning set forth in the Preamble.

1.27 “Provider System” has the meaning set forth in Section 3.01.

1.28 “Representatives” has the meaning set forth in Section 8.01.

1.29 “SEC” has the meaning set forth in Section 2.02.

1.30 “Service Hours” means the hours between 8:00 a.m. and 5:00 p.m. New York time on Business Days (or such other times as a Floor Broker may effect transactions on the applicable

Trading Floor of the Exchange or any facility thereof to the extent that NYSE Systems support such transactions).

1.31 “SFTI” means Secure Financial Transaction Infrastructure.

1.32 “Specifications” means the FIX Specifications and the Interface Specifications set forth in Exhibit A, as each may be amended by NYSEM from time to time upon notice to Provider.

1.33 “Term” has the meaning set forth in Section 5.01.

1.34 “Trading Floor” means NYSE’s trading facilities and support areas currently located at 11 Wall Street and 8-20 Broad Street, New York, NY, and any other emergency, contingency, additional or successor trading facilities and support areas from time to time designated by NYSEM. For the avoidance of doubt, “Trading Floor” includes areas designated for use by any exchange affiliated with NYSE.

1.35 “User Agreement” has the meaning set forth in Section 2.05.

ARTICLE 2 ACCESS; PROVISION OF ALGO PRODUCT; SUPPORT.

2.01 Access. NYSEM hereby grants to Provider the right to interface with, and make the Algo Product available to Authorized Floor Brokers over the NYSE System in each case only in accordance with the Exchange Rules and this Agreement. Authorized Floor Brokers and their Member Organizations continue to be bound by (a) all Exchange Rules, including but not limited to, Rule 95, 122, 134 and 411, (b) FINRA Rule 5320, (c) all federal securities laws, including but not limited to all applicable provisions of Securities and Exchange Commission (“SEC”) (including Section 11(a) of the Securities Exchange Act of 1934), and (d) all other applicable laws and regulations.

2.02 Restrictions. Provider’s provision of the Algo Product shall at all times be in accordance with the restrictions set forth in Exhibit C, as amended from time to time by NYSEM upon notice to Provider (the “Algo Restrictions”). The Algo Restrictions shall be applicable to Provider and all other similarly situated third parties whose algo products are made available to Floor Brokers through an agreement with NYSEM. Provider represents and warrants that it has adequate controls to ensure compliance with (a) the Algo Restrictions, (b) all Exchange Rules, including but not limited to, Rule 95, 122, 134 and 411, (c) FINRA Rule 5320, (d) all federal securities laws, including but not limited to all applicable provisions of the SEC (including Section 11(a) of the Securities Exchange Act of 1934), and (e) all other applicable laws and regulations. NYSE shall provide Provider writing notice of any amendments to the Algo Restrictions reasonably in advance of effectiveness, and Provider acknowledges and agrees that its provision of the Algo Product following receipt of notice of any amendments to the Algo Restrictions constitutes acceptance of such Algo Restrictions as amended. To the extent reasonably practicable and not prohibited by law, NYSEM will give Provider a grace period within which to comply with any amendments to the Algo Restrictions.

2.03 Non-Exclusive. Provider acknowledges that NYSEM may permit other service providers, including Affiliates of NYSEM, to offer and provide to its Member Organizations services similar to the Algo Product, and NYSEM acknowledges that Provider may provide services similar to the Algo Product to any third party; provided, however, that neither party uses any information in contravention of Section 4.03 or Section 8.01 of this Agreement.

2.04 Support. Provider shall be solely responsible for operating and supporting the Algo Product and for addressing Authorized Floor Broker issues relating to use of the Algo Product. In addition, Provider shall make its support operations available to NYSEM during Service Hours in order to respond to inquiries and requests relating to the Algo Product. Notwithstanding the foregoing, NYSEM and Provider shall each have the right to suspend any or all Authorized Floor Broker access to the Algo Product for any reason in its sole discretion.

2.05 User Agreements. Provider shall be responsible for obtaining from each Member Organization, or in the case of independent Authorized Floor Brokers, each Authorized Floor Broker, an executed services agreement relating to such Authorized Floor Broker’s access to and use of the Algo Product

(the “User Agreement”). The User Agreement shall contain, at a minimum: (a) a full disclaimer of NYSEM’s and its Affiliates’ liability in connection with the Algo Product; (b) a full disclaimer of NYSEM’s and its Affiliates’ obligation to support the Algo Product and detailed instructions for Authorized Floor Brokers to contact Provider, not any of NYSEM or its Affiliates, in the event of an issue or problem with respect to the Algo Product; and (c) a provision naming NYSEM as third party beneficiaries of the User Agreement with respect to the enforcement of such disclaimers. Where the Provider and Authorized Floor Broker’s Customer are the same entity or Affiliated entities, the User Agreement shall also provide that the Authorized Floor Broker is not liable to the Customer for errors caused by Provider’s Algo Product, notwithstanding the provisions of Rule 134 and 411. Provider shall provide NYSEM with at least 48 hours’ notice when a new Authorized Floor Broker becomes entitled to access the Algo Product and shall, upon request, make a copy of such User Agreement available to NYSEM for inspection. Provider shall provide NYSEM with notice when an Authorized Floor Broker’s entitlement is terminated. NYSEM will use reasonable efforts to provide access or cease to provide access to such Authorized Floor Brokers, as applicable, in accordance with Provider’s instructions. Notwithstanding the foregoing, Provider shall not be required to obtain an executed User Agreement from Authorized Floor Brokers when Provider is a Member Organization and Authorized Floor Brokers are employees of that Provider Member Organization.

2.06 Clearing and Routing. Provider acknowledges and agrees that NYSEM shall be responsible for submitting relevant comparison data only for trades that are routed to the Exchange.

2.07 Transaction Fees. Provider agrees and shall submit to NYSEM written documentation evidencing each Authorized Floor Broker’s agreement that transaction fees payable to NYSEM or its Affiliates for all trades executed by or on behalf of such Authorized Floor Broker through the Algo Product will be charged to the entering firm’s mnemonic. Notwithstanding the foregoing, if Provider is a Member Organization, Provider may elect to pay and be responsible for all such transaction fees directly, in which case it shall not be required to submit the documentation referenced above.

ARTICLE 3 ACCESS, SPACE AUDIT AND SECURITY PROCEDURES.

3.01 Connection to NYSEM. Provider shall be responsible for all hardware and software required to provide the Algo Product, including the communications equipment and connections (and the cost in relation thereto) that Provider uses to bring the Algo Product to Exchange Premises or, if applicable, to two or more SFTI access centers (such hardware and software, together with the Algo Product, the “Provider System”). Provider’s interface will comply with (a) a FIX Version 4.2 interface (as defined in the NYSE Broker Algorithm Provider FIX Specification set forth in Exhibit A) for the routing of algo orders from handheld devices utilized by Authorized Floor Brokers through the NYSE’s CBS system to the Algo Product and (b) a FIX Version 4.2 interface (as defined in the NYSE e-Quotes Proprietary and Vendor Systems Interface Specifications set forth in Exhibit A) for the routing of e-Quotes from the Provider to the NYSE’s Broker Algo Gateway systems. Where neither the Provider nor the Authorized Floor Broker's Customer, or Affiliate of either entity, is a Member Organization or Affiliate thereof, when required by NYSEM, the Provider must route orders through a Sponsored Access Risk management system that allows the Authorized Floor Broker to exercise appropriate intraday financial and regulatory controls. Such routing may be done through a system provided by the Authorized Floor Broker, a third party or the NYSE. (Use of the NYSE system requires a separate contractual agreement between Provider and NYSE or one of its Affiliates.)

Provider shall be responsible for any error in implementing such interfaces and for correcting any such errors, except to the extent such errors are caused by NYSEM. Provider will design the Algo Product to accept orders only from Authorized Floor Brokers, and NYSEM shall make the Algo Product available only to Authorized Floor Brokers. The Algo Product shall be capable of permitting an Authorized Floor Broker to route orders specifically to NYSE, as well as to route via various algorithms selected by an Authorized Floor Broker to other market centers as the Algo Product’s algorithms may determine. The Algo Product shall not be designed to route only to any other specific market (*i.e.*, other than NYSE). NYSEM will make available to Provider the information used to uniquely identify the firm and broker initiating the order.

3.02 Security Procedures. In the event any Provider personnel shall be given access to Exchange Premises or the NYSE System, such personnel shall comply with such security procedures relating to access to Exchange Premises, as the Exchange or any of its agents may reasonably impose, including but not limited to fingerprinting of all Provider personnel given unescorted access to Exchange Premises. While on Exchange Premises, Provider's personnel, contractors and subcontractors shall comply with all reasonable requests, rules and regulations of the Exchange regarding personal and professional conduct (including the wearing of identification badges and adhering to general safety and security practices or procedures) and shall otherwise conduct themselves in a businesslike manner.

3.03 Information Security. Provider shall comply with NYSEM's information security policies as in effect from time to time upon reasonable prior notice to Provider of any such policies and changes thereto. Provider shall reasonably cooperate with respect to NYSEM's inquiries regarding the environment supporting the Algo Product for purposes of conducting a security assessment.

ARTICLE 4 DEVELOPMENT AND MODIFICATIONS.

4.01 Testing and Certification

(a) *Development Environment*. NYSEM shall make a development test environment reasonably available to Provider during Business Days as coordinated with NYSEM in advance. Provider and NYSEM will mutually agree when the Provider System is ready to be submitted to certification testing.

(b) *Test Environment*. The Provider System must pass certification testing prior to NYSEM allowing Authorized Floor Broker access to the Algo Product over the NYSE Systems. Provider will provide NYSEM with FIX connectivity to the Provider test environment to support the certification testing of the Provider System. The Provider test environment should mirror the implemented production environment. The tests will be conducted and the environment made available as jointly scheduled, Monday – Friday between 8:30 AM and 5 PM or as otherwise agreed by the parties. NYSEM and Provider shall jointly perform certification testing at NYSEM's sites to verify compliance of the Provider System with the criteria, specifications and functionality and performance requirements, as set forth in Exhibit B, as it may be amended by NYSEM from time to time, and the terms of this Agreement, including the Algo Restrictions (collectively the "Certification Criteria") and shall review results with each other. Each party shall provide the other with any assistance and support reasonably required during such testing.

(c) *Certification*. Certification of the Provider System shall take place when, based on NYSEM's evaluation of the Provider System and the testing pursuant to this Section, NYSEM provides notice to Provider that the Provider System complies with applicable Certification Criteria ("Certification").

(d) *Audit*. NYSEM reserves the right to periodically audit the Provider System to verify continued compliance with the Certification Criteria on reasonable notice to Provider. Provider shall provide to NYSEM any assistance and support reasonably required by NYSEM during any such audit.

(e) *Corrections*. Upon notice from NYSEM, Provider shall correct any defects or non-conformities in the Provider System. NYSEM shall have no obligation to make the Algo Product available to Authorized Floor Brokers prior to NYSEM's Certification of the Provider System.

4.02 Modifications

(a) *By NYSEM*. Nothing in the Agreement shall preclude NYSEM from modifying the NYSE System architecture or any of its procedures or specifications in any manner, provided that all modifications are in compliance with applicable provisions of the SEC and Exchange Rules. After receipt of notice of any such modification, and within a time period that is reasonable under the circumstances, Provider shall either modify the Algo Product or the manner in which it provides the Algo Product as necessary to make the Algo Product and the manner of provision thereof compatible with the NYSE System and compliant with such procedures and specifications as so modified or decline to modify, upgrade or replace Provider software if it so notifies NYSEM

in a prompt manner. If Provider so declines, NYSEM may terminate this Agreement upon 10 days' notice to Provider.

(b) *By Provider.* Provided that Provider continues to be in compliance with applicable laws, Exchange Rules and the terms of this Agreement, and that such changes do not require modifications to NYSE Systems or result in a cost to NYSEM or its Affiliates, Provider may modify the Algo Product, including the strategies, in its discretion; provided, however, that Provider shall give prior, written notice to NYSEM of any changes that may affect the Provider's compliance with the Specifications and Exhibit B ("Compliance Changes"). NYSEM shall have the right to require retesting and recertification of any Compliance Changes in accordance with Section 4.01 prior to implementation on NYSE Systems. Written notice to implement Compliance Changes must be received and authorized by NYSEM no later than five (5) days prior to the scheduled work, provided that in exigent circumstances the parties shall use their reasonable efforts to implement such changes more quickly.

4.03 Intellectual Property.

(a) NYSEM acknowledges and agrees that as between NYSEM and Provider, Provider is the exclusive owner of all rights, title, and interest in the Algo Product and to all Intellectual Property rights, whether registered or unregistered, relating to the Algo Product, together with all documentation thereof. Provider acknowledges and agrees that NYSEM is the exclusive owner of all rights, title and interest in the Specifications, the NYSE portion of the interfaces and the NYSE System and to all Intellectual Property rights whether registered or unregistered, related to the Specifications, NYSE portion of the interfaces and NYSE System.

(b) Each party agrees not to (i) modify, adapt, translate, reverse engineer, disassemble or decompile the Intellectual Property of the other; (ii) recompile or modify any source code that may be provided to it by the other; (iii) use or run the other party's Intellectual Property except as explicitly permitted by this Agreement, or (iv) provide, disclose, divulge or make available to, or authorize use of the Intellectual Property of the other by any third party except as set forth herein.

ARTICLE 5 TERM AND TERMINATION.

5.01 Term. This Agreement shall commence on the Effective Date and shall continue until terminated pursuant this Article 5 (the "Term").

5.02 Termination by NYSEM. NYSEM may terminate this Agreement as follows:

- (a) as Article 4 provides;
- (b) if Provider is in material breach of this Agreement and fails to cure such breach within fifteen (15) days after NYSEM gives written notice of the failure (a "Failure Notice") to Provider, then NYSEM may terminate this Agreement in its entirety, upon notice to Provider, effective as of the 15th day following the date of the Failure Notice;
- (c) in the event Provider's Common Access Point ("CAP") agreement is terminated for any reason;
- (d) in the event Provider is adjudicated insolvent or bankrupt; becomes the subject of any proceedings under bankruptcy, insolvency or debtor's relief law; has a receiver or manager appointed; makes a general assignment for the benefit of creditors; or takes the benefit of any applicable law or statute in force for the winding up or liquidation of its business; or
- (e) in its discretion, upon at least thirty (30) days' notice to Provider.

5.03 Termination by Provider. Provider may terminate this Agreement in its discretion, upon at least thirty (30) days' notice to NYSEM.

5.04 Effect of Termination. Subject to any record retention requirements imposed by law or regulation, if this Agreement is terminated by either party for any reason, each party shall, to the extent

reasonably practicable, return to the other party or destroy and certify such destruction to the other party in writing all Confidential Information of the other party. For the avoidance of doubt, the foregoing does not require either party to retrieve or destroy information stored on computer back-up media, provided that with respect to such information it complies with its confidentiality obligations hereunder.

ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.01 Representations, Warranties and Covenants of Provider. Provider represents, warrants and covenants that:

(a) it is a [_____] duly organized, validly existing and in good standing in the jurisdiction of its organization;

(b) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it is not required to obtain any approval, authorization or consent of any governmental or regulatory authority that has not already been obtained in order for it to enter into and perform its obligations under this Agreement;

(d) in connection with providing the Algo Product, it shall comply with all applicable foreign, Federal, state and local laws and regulations, including Exchange Rules, and shall obtain all applicable permits and licenses, except for such permits and licenses the failure of which to obtain shall not, in the aggregate, have a material adverse effect on Provider's performance of this Agreement; and

(e) it will use reasonable commercial efforts during the Term to configure all infrastructure platforms and services (operating systems, database servers, firewalls, routers, etc.) used to provide Algo Product under this Agreement according to industry best practices and security configuration guides provided by reputable sources such as the US Government, the Center for Internet Security, CERT, SANS, and system Providers.

6.02 Representations, Warranties and Covenants of NYSEM. NYSEM represents, warrants and covenants that:

(a) NYSEM is a corporation duly organized, validly existing and in good standing in its jurisdiction of organization;

(b) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

(c) is not required to obtain any approval, authorization or consent of any governmental or regulatory authority that has not already been obtained in order for it to enter into and perform its obligations under this Agreement; and

(d) in connection with performing its obligations under this Agreement, shall comply with all applicable foreign, Federal, state and local laws and regulations, including NYSE Rules, and shall obtain all applicable permits and licenses, except for such permits and licenses the failure of which to obtain shall not, in the aggregate, have a material adverse effect on NYSEM's performance of this Agreement.

6.03 Disclaimer. NYSEM DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING THE NYSE SYSTEMS, THEIR PERFORMANCE, AND THE RESULTS OBTAINED BY THEIR USE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. REFERENCE TO A PARTICULAR INVESTMENT OR SECURITY OBTAINED IN CONNECTION WITH USE OF THE ALGO PRODUCT IS NOT A RECOMMENDATION TO ANY INDIVIDUAL TO BUY, SELL, OR HOLD SUCH INVESTMENT OR SECURITY. NYSEM DOES NOT GUARANTEE THE ADEQUACY, ACCURACY, TIMELINESS OR COMPLETENESS OF THE NYSE

SYSTEMS OR ANY RESULTS OBTAINED BY THEIR USE. PROVIDER USES AND ACCESSES THE NYSE SYSTEMS AT ITS OWN RISK, AND NYSEM AND ITS AFFILIATES SHALL NOT BE SUBJECT TO ANY DAMAGES OR LIABILITY FOR ANY ERRORS, OMISSIONS OR DELAYS IN CONNECTION WITH OR CAUSED BY THE USE OF THE ALGO PRODUCT OR THE TRADING RESULTS ACHIEVED THROUGH USE OF THE ALGO PRODUCT OR THE NYSE SYSTEMS.

ARTICLE 7 INDEMNIFICATION AND LIABILITY.

7.01 Provider's Obligation to Indemnify. Provider shall indemnify defend and hold NYSEM, its Affiliates and all of their officers, agents and employees (the "NYSE Indemnified Parties"), harmless from and against any claim, loss, liability, damage or expenses (including reasonable attorneys' fees and expenses as incurred) ("Losses") arising out of or relating to any claim (a) that the Algo Product infringes upon the Intellectual Property rights of a third party; (b) of personal injury or death, or of any loss of, or damage to, tangible personal or real property resulting from the performance of Provider's obligations under this Agreement or due to the fault or negligence of Provider, its employees, contractors, agents or representatives; or (c) by an Authorized Floor Broker relating to the use of the Algo Product.

7.02 Indemnification Procedures. If any third party makes a claim covered by Section 7.01 against any NYSE Indemnified Party with respect to which such NYSE Indemnified Party intends to seek indemnification under Section 7.01, then NYSEM shall give notice of the claim to Provider as soon as reasonably practicable, including a brief description of the amount and basis for the claim, if known. Upon receipt of the notice, Provider shall defend the NYSE Indemnified Parties against the claim, and shall be entitled to assume control of the defense of the claim with counsel chosen by Provider, but reasonably satisfactory to NYSEM. NYSEM and the NYSE Indemnified Parties shall cooperate fully with and assist Provider in its defense against the claim. Provider shall keep the NYSE Indemnified Parties apprised as to the status of the defense. Notwithstanding the foregoing, the NYSE Indemnified Parties shall have the right to employ their own separate counsel in any such action. The fees and expenses of that counsel shall be at the expense of the NYSE Indemnified Parties unless Provider otherwise agrees in writing. Unless otherwise agreed in writing, Provider shall not be liable for any settlement of any action or claim effected without its consent. Notwithstanding the foregoing, until both (a) the NYSE Indemnified Parties receive notice from Provider that Provider will defend and (b) Provider assumes that defense, the NYSE Indemnified Parties may, at any time after 30 days from the date NYSEM gives notice of the claim to Provider, resist or otherwise defend the claim or, after consultation with and consent of Provider, settle or otherwise compromise or pay the claim. Provider shall pay all reasonable costs of the NYSE Indemnified Parties arising out of or relating to that defense and any such settlement, compromise or payment. The NYSE Indemnified Parties shall keep Provider fully apprised at all times as to the status of the defense.

7.03 Consequential Damages. **EXCEPT FOR LIABILITIES (a) SUBJECT TO INDEMNIFICATION PURSUANT TO THIS ARTICLE 7, (b) THAT MAY ARISE AS A RESULT OF A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH IN ARTICLE 8, OR (c) THAT MAY ARISE AS A RESULT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER NYSEM NOR PROVIDER SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, OR FOR DAMAGES TO A PARTY'S BUSINESS REPUTATION OR STANDARDS, REGARDLESS OF WHETHER EITHER OF NYSEM OR PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

ARTICLE 8 CONFIDENTIALITY.

8.01 Confidentiality. Provider and NYSEM each acknowledges and agrees that any and all information relating to the other parties' business, including, without limitation with respect to Provider, the Algo Product (and its libraries, underlying source code, systems architecture features, documentation, and concepts), and including, without limitation with respect to NYSEM, all information or data accessed through or

from the NYSE System and all transaction data to which Provider might have access in connection with providing the Algo Product over the NYSE System, is confidential and proprietary information of such party (“Confidential Information”). Each party agrees that it shall maintain the Confidential Information of the other party in strict confidence and shall take reasonable and effective steps, at least substantially equivalent to the steps it takes to protect its own Confidential Information, during the Term and thereafter, to prevent the disclosure of the Confidential Information, other than to its Affiliates, and their respective employees, officers, directors, consultants or agents (“Representatives”) as needed for the performance of such party’s obligations or the exercise of such party’s rights hereunder. Representatives of each party who are provided with access to the Confidential Information of the other shall be bound by substantially the same confidentiality obligations as are required of the parties hereunder, and each party shall be responsible for breach of any such obligations by its respective Representatives. Confidential Information shall not include such information that (a) is publicly known or generally known within the industry without obligation of confidentiality, or was known by the recipient or its Representatives prior to its receipt from the disclosing party without obligation of confidentiality; (b) is independently developed by the recipient or its Representatives without use or reference to the other party’s Confidential Information; (c) is rightly obtained by the recipient or its Representatives from a source other than the disclosing party without obligation of confidentiality. Confidential Information may be disclosed as required by law, regulation, or court order or request of a governmental or regulatory authority having jurisdiction over the party receiving such Confidential Information, provided that the recipient promptly notifies (to the extent legally permissible) the disclosing party of such requirement and discloses only that portion of the information that is required to be disclosed by law, regulation or court order.

ARTICLE 9 MISCELLANEOUS.

9.01 Injunctions. The parties acknowledge that a breach of any provision of Section 4.03(b), Article 8 or Section 9.05 may cause the other party irreparable injury and damage the exact amount of which would be difficult to ascertain, and that the remedies at law for any such breach may be inadequate. Accordingly, without limiting any other rights and remedies available, each party shall be entitled to seek equitable relief by way of injunction or otherwise without posting a bond or other security if the other party is in breach of or threatens to breach such provisions.

9.02 Notices. Except as otherwise specified in this Agreement, all notices, requests, approvals and consents and other communications required or permitted under this Agreement shall be in writing and sent by (i) courier; (ii) certified or express mail or by reputable overnight courier, postage prepaid and return receipt requested or (iii) e-mail with e-mail acknowledgement of receipt, to the address specified below:

In the case of NYSEM:

NYSE Market (DE), Inc.
11 Wall Street
New York, New York 10005
Attention: NYSE - Floor Operations Management
Email: NYSE-FloorOperationsManagement@theice.com

With copy in each case to:

NYSE Market (DE), Inc.
11 Wall Street, 19th Floor
New York, NY 10005
Attention: Office of the General Counsel
Email: ContractNotices@theice.com

In the case of Provider:

All notices shall be effective upon actual delivery on a Business Day, provided that if delivery occurs on a day other than a Business Day or after 5pm at the place of receipt, the notice will be deemed to have been received on the next Business Day. Either party may change its address for notification purposes by giving the other party notice of the new address and the date upon which it will become effective.

9.03 Relationship. The performance by Provider of its duties and obligations under this Agreement shall be that of an independent contractor and nothing contained in this Agreement shall create or imply an agency relationship between NYSEM and Provider, nor shall this Agreement be deemed to constitute a joint venture or partnership between NYSEM and Provider.

9.04 Severability and Waiver. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement shall remain in full force and effect. No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

9.05 Marks and Publicity. Except to indicate to existing and potential Customers, Authorized Floor Brokers and Member Organizations that the Algo Product is available over the NYSE System, NYSEM nor Provider shall use any trademark, trade name or service mark of the other or any Affiliate of the other without prior written consent. For the avoidance of doubt, NYSEM shall not include Provider's name in any customer list to be made available outside of the NYSEM's organization, unless required by law, regulation, court order or request of a governmental or regulatory authority having jurisdiction over a member of NYSE.

9.06 Entire Agreement. This Agreement and each of the Exhibits, and the agreements specifically contemplated by this Agreement, represent the entire agreement between the parties with respect to their subject matter, and there are no other representations, understandings or agreements between the parties relative to that subject matter. No amendment to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, change, waiver or discharge is sought to be enforced.

9.07 Governing Law and Venue. All matters arising out of or related to this Agreement shall be construed and enforced in accordance with, and any dispute arising out of or in connection with this Agreement, including any action in tort, shall be governed by, the laws of the State of New York without regard to its choice of law principles. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of or related to this Agreement must be brought solely and exclusively in the United States District Court for the Southern District of New York or in the state courts of the State of New York, New York County and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts *in personam*, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party; provided, however, that this section shall not prevent a party against whom any legal action, suit or proceeding is brought by the other Party in the state courts of the State of New York, New York County from seeking to remove such legal action, suit or proceeding, pursuant to applicable federal law, to the district court of the United States for the district and division embracing the place where the action is

pending in the state courts of the State of New York, New York County, and in the event an action is so removed each party irrevocably accepts and submits to the jurisdiction of the aforesaid district court.

9.08 Survival. The terms of Section 4.03, Article 7, Article 8, and Article 9 shall survive the termination of this Agreement for any reason.

9.09 Force Majeure. Neither party will be liable for any failure or delay in its performance hereunder (other than for payment obligations) due in whole or in part to fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority, substantial technical failure of the internet, or any other cause beyond its reasonable control.

9.10 No Assignment. Provider may not assign this Agreement, or sublicense, assign or delegate any right or duty hereunder, by operation of law or otherwise, without the prior written consent of NYSEM, which consent shall not be unreasonably withheld.

9.11 Headings. The descriptive headings of the various sections of this Agreement are for convenience only and shall not affect the meaning or construction of any provisions hereof.

IN WITNESS WHEREOF, each of NYSEM and Provider have each caused this Agreement to be signed and delivered by its duly authorized representative as of the date first above written.

NYSE MARKET (DE), INC.

By: _____

By: _____

Name:

Name:

Title:

Title:

EXHIBIT A

NYSE SPECIFICATIONS

Please see attached.

EXHIBIT B

CERTIFICATION CRITERIA

Please see attached.

EXHIBIT C

ALGO RESTRICTIONS

1. Provider is authorized to generate and route e-quotes in an automated, computerized manner only in connection with an order routed from an Authorized Floor Broker to the Provider, and Provider shall not alter the Authorized Floor Broker's order or the chosen algorithmic strategy for any such order;
2. Only the Authorized Floor Broker submitting a parent order to the Algo Product shall be permitted to intervene with or alter the terms (e.g., side, size, price, symbol, strategy) of such parent order; provided, however, that the Provider's support desk may cancel an order at the direction and on behalf of an Authorized Floor Broker when the Authorized Floor Broker is unable to cancel the order via the handheld device.
3. In no event shall Provider use or disclose any information relating to orders routed from an Authorized Floor Broker to the Algo Product (including position information) for any activity other than (a) sending orders to NYSE Systems and other markets pursuant to the Authorized Floor Broker's chosen algorithmic strategy, (b) performing ancillary clearing, surveillance, compliance and analysis functions in respect of such orders and (c) assisting the Authorized Floor Broker in responding to regulatory requests.
4. Notwithstanding anything contained herein to the contrary, Provider will at all times maintain information barriers between the Algo Product and the Customer on whose behalf the Authorized Floor Broker submitted the order to the Algo Product even where the Provider is also the Customer or an Affiliate thereof. The Algo Product shall not accept directly from the Customer any orders that would be represented as e-quotes; provided, however, the Customer may provide the Algo Product information indicating solely whether Customer is long or short. The Algo Product shall not transmit directly to the Customer any information (including order and position information and reports) relating to orders received by an Authorized Floor Broker, even where the Customer is also the Provider, or an Affiliate thereof;
5. In no event shall the Provider's Algo Product communicate or share non-public or proprietary information, including order and position information, with any other system of Provider, or an Affiliate thereof, or any third party other than for purposes of executing orders submitted by the Authorized Floor Broker on the chosen algorithmic strategy;
6. Execution reports received by the Algo Product must be sent from the Algo Product only to the NYSE broker system in accordance with the Specifications;
7. Provider shall implement report aggregation as requested by NYSEM from time to time. NYSEM shall notify Provider in advance of all report aggregation requirements.
8. Provider shall not knowingly allow the Algo Product to route a child order from an Authorized Floor Broker to the NYSE matching engine while a child order routed by the Algo Product to the NYSE matching engine from another Authorized Floor Broker on behalf of the same principal, in the same symbol, on the same side, at the same price is resting in the NYSE Matching Engine. A child order is considered resting in the NYSE Matching Engine until the Algo Product receives an acknowledgment of either a cancellation or execution of such order.

9. Except as set forth in subsection 8 above, nothing in this Exhibit C shall be construed to prohibit Customer from directly instructing an Authorized Floor Broker, or to prohibit an Authorized Floor Broker from carrying out any instruction of the Customer, to cancel, or to cancel and replace, one or more orders.
10. Nothing in this Exhibit C shall be construed to limit or prevent the Customer from receiving directly from the Authorized Floor Broker information about Customer's orders that is usual and customary for customers to receive in the normal course of business, including without limitation reports of the status of open orders and reports of execution(s), even in such cases where the Provider is also the Customer or affiliate thereof.
11. For intraday trading, Provider shall not knowingly allow the Algo Product to enter a buy-side (sell-side) child order into the NYSE Matching Engine while there is a resting sell-side (buy-side) child order in the NYSE Matching Engine for the same symbol for the same principal. A child order is considered resting in the NYSE Matching Engine until the Algo Product receives an acknowledgment of either a cancellation or execution of such order.