

## MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (“Confidentiality Agreement”) is made by and between \_\_\_\_\_ (“Company”), whose principal place of business is located at \_\_\_\_\_, and The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) a Delaware corporation whose principal offices are located at One Liberty Plaza, New York, New York, 10006. NASDAQ OMX and its affiliates are collectively referred to as the “Corporations”. Any of the Corporations may disclose Confidential Information to Company pursuant to this Confidentiality Agreement.

In consideration of each party’s past, present, and/or future provision of access, from time to time, to certain confidential information by the other that is not disclosed pursuant to another agreement between Company and any of the Corporations (collectively, “Project”) and for other good and valuable consideration, the sufficiency of which is acknowledged, it is agreed as follows:

1. Each party may be provided with access to selected information (oral, written, or electronic) of the other (including of any of the Corporations) which helps meet a regulatory purpose or business need, including, but not limited to, that information which relates or refers to: business planning; internal controls; computer, data processing, or communications architectures or systems; electronic data processing architectures, applications, programs, routines, or subroutines; business affairs and methods of operation or proposed methods of operations, techniques or systems of a party (including of any of the Corporations) or any customer of a party (including of any of the Corporations); financial or other non-public information. Some of the information in each of these categories is confidential in nature or constitutes a trade secret. This information received from a party (including of any of the Corporations), either orally or in writing, during the course of the Project shall be deemed to be confidential information (“Confidential Information”) for purposes of this Confidentiality Agreement. Notes, documents, summaries or reports which are prepared from Confidential Information to the extent such specifically refer or relate to Confidential Information are themselves Confidential Information.

2. Each party acknowledges the sensitive and secret nature of the Confidential Information it will have access to during the term of the Project and agrees that it will treat such Confidential Information as strictly confidential and shall exercise the same degree of care in the protection of the Confidential Information as the receiving party exercises with respect to its own proprietary property and trade secrets, but in no event shall it be less than a reasonable degree of care given the nature of the Confidential Information.

3. Neither party shall disclose the Confidential Information received from the other to any person or entity, except its employees, officers, directors, independent consultants, and other agents (and, in the case of NASDAQ OMX, the employees, officers, directors, independent consultants, and other agents of any of the Corporations) involved in the performance of the Project, or to use the Confidential Information for any purpose other than fulfilling its obligations under the Project. Each party acknowledges and agrees that breach of this Confidentiality Agreement by the other and/or anyone employed by or otherwise associated with the other may also constitute a violation of the Insider Trading Act and/or other securities and other laws. Access to Confidential Information by the receiving party shall be limited to those employees, officers, directors, independent consultants, and other agents (and, in the case of NASDAQ OMX, the employees, officers, directors, independent consultants, and other agents of any of the Corporations) covered by a legal obligation with the receiving party that prohibits the disclosure or unauthorized use of confidential information deemed confidential by the receiving party (“Authorized Persons”). The existence of such an agreement shall not operate to relieve the receiving

party from liability for acts of such Authorized Persons that result in a breach of this Confidentiality Agreement.

4. Neither party shall make copies of the Confidential Information except for those copies required for use by Authorized Persons in the performance of the Project. Each copy, including its storage media, shall be marked Confidential, and also include all copyright, trademark and other proprietary notices which appear on the original. Each party agrees that all Confidential Information of the other party, including any copies thereof, shall be returned to the disclosing party or destroyed upon request or within ten (10) days of the expiration or other termination of this Confidentiality Agreement, *provided*, that either party and its Authorized Persons may retain Confidential Information to the extent it is required for such party to comply with applicable laws and/or regulations.

5. Notes and other documents referencing or relating to Confidential Information may be made and kept by the receiving party, but shall continue to be governed by this Confidentiality Agreement until they are destroyed.

6. All intellectual property rights associated with the Confidential Information, including without limitation, patent, trademark, copyright, trade secret rights, and moral rights shall remain with the disclosing party.

7. The obligation of non-disclosure shall not extend to information which is: (a) already in the possession of the receiving party (and, in the case of NASDAQ OMX, any of the Corporations) and not under a duty of non-disclosure; (b) generally known or revealed to the public other than by breach of this Confidentiality Agreement; (c) revealed to the receiving party (and, in the case of NASDAQ OMX, any of the Corporations) by a third party--unless such party is under a duty of non-disclosure; or (d) developed independently of the disclosure by the receiving party.

8. In the event that a party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information received from the other, the receiving party shall provide prompt actual notice to, in the case of NASDAQ OMX, the General Counsel of NASDAQ OMX, and, in the case of Company, to the General Counsel of Company, of such receipt, providing the party with a reasonable opportunity to intervene in the proceeding before the time that the other party is required to comply with such subpoena or other process. Notwithstanding anything otherwise set forth herein, the Corporations or Company may disclose Confidential Information: (a) to the extent revealed to a government agency with regulatory or oversight jurisdiction over one or more of the Corporations or Company; or (b) in the course of fulfilling any of the Corporations' regulatory responsibilities, including responsibilities over members and associated persons under the Securities Exchange Act of 1934 or other applicable law.

9. Each party acknowledges that the other (including, in the case of NASDAQ OMX, any of the Corporations), because of the nature of the Confidential Information, would suffer irreparable harm in the event of a material breach of the provisions of this Confidentiality Agreement in that monetary damages would be inadequate to compensate for such a breach, and that in the event of any material breach or threatened material breach by a party receiving Confidential Information from the other party of any such provisions, a party shall be entitled, in addition to such other legal or equitable remedies which might be available, to injunctive relief in any court of competent jurisdiction against the threatened material breach or continuation of any such material breach without showing or proving any actual damages sustained by it. This Confidentiality Agreement shall be governed by the laws of the State of New York, without reference to principles of conflicts of laws thereof.

10. The representations and obligations of each party relative to the Confidential Information shall survive the termination of this Confidentiality Agreement for a period up to three (3) years from the date of the completion or other termination of the Project.

11. This Confidentiality Agreement contains the full and complete understanding of Company and NASDAQ OMX with respect to the subject matter and supersedes all prior representations and understandings whether they be oral or written.

12. Company and NASDAQ OMX understand and agree that in the event any part, term or provision of this Confidentiality Agreement is held to be invalid or legally unenforceable, the validity of the remaining parts, terms or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Confidentiality Agreement did not contain the particular part, term, or provision held to be invalid.

13. The persons executing this Confidentiality Agreement warrant that they have the authority to bind NASDAQ OMX and the Company to the terms and conditions embodied in this Confidentiality Agreement.

Agreed and Accepted:

\_\_\_\_\_ (“Company”)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AUTHORIZED OFFICER

Date: \_\_\_\_\_

The NASDAQ OMX Group, Inc. (“NASDAQ OMX”)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AUTHORIZED OFFICER

Date: \_\_\_\_\_