



Thank you for your interest in becoming a Track ECN subscriber. All forms you need are contained in this packet, streamlining the application process. As our firms proceed along the steps below, please call me with any questions.

I. You must complete the following three items:

- Track ECN Subscriber Contact Information Sheet (**pg. 1**)
- Track ECN Subscriber Agreement (**pg. 2, 7, 13 and 14**)

QSR (Qualified Special Representative), we have included the following forms for your clearing firm to complete:

- QSR Attachment 1, (**pg. 17**) and
- QSR Form 9b (Special Representative Consent) (**pg. 18**)

To expedite the process, you may fax the completed forms to me and mail them simultaneously. Once we receive the completed documents, we can proceed.

II. If applicable, we will send FIX specifications to your technical staff.

III. Our Communications Department will contact your technical department to determine what equipment you need. Please ensure that all requested contact information has been supplied.

IV. After testing, we will enable your firm for trading.

Sincerely,

Track ECN  
Tel: 718-260-4282

**Track ECN  
SUBSCRIBER CONTACT INFORMATION SHEET**

Firm Name: \_\_\_\_\_ MPID: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Tax ID: \_\_\_\_\_

Website: \_\_\_\_\_ Service Bureau/Trading Platform \_\_\_\_\_

FINRA Member? Yes \_\_\_\_\_ No \_\_\_\_\_ Drop Copies? Yes \_\_\_\_\_ No \_\_\_\_\_

Registered Market Maker? Yes \_\_\_\_\_ No \_\_\_\_\_ Drop Copies to \_\_\_\_\_

**Would your company like to be listed on Track ECN's website as an available company for individual/institutional investors or other broker-dealers to contact if they seek direct access to the Track ECN? Yes \_\_\_\_\_ No \_\_\_\_\_**

Clearing Broker(s): \_\_\_\_\_ Clearing #: \_\_\_\_\_

Clearing Contact: \_\_\_\_\_ E-mail: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax #: \_\_\_\_\_

Admin Contact: \_\_\_\_\_ E-mail: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax #: \_\_\_\_\_

Trading Contact: \_\_\_\_\_ E-mail: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax #: \_\_\_\_\_

P&S Contact: \_\_\_\_\_ E-mail: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax #: \_\_\_\_\_

Billing Contact: \_\_\_\_\_ E-mail: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax #: \_\_\_\_\_

Technical Contact: \_\_\_\_\_ E-mail: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax #: \_\_\_\_\_

Extended Hours Contact: \_\_\_\_\_ E-mail: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax #: \_\_\_\_\_

Approved by: \_\_\_\_\_  
*(Print name of registered principal)*

Signature: \_\_\_\_\_

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



**TRACK ECN**  
**SUBSCRIBER AGREEMENT**  
(For broker-dealer subscribers)

This AGREEMENT ("Agreement"), made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is entered and executed by and between \_\_\_\_\_ ("Subscriber"), with its principal offices at \_\_\_\_\_ and Track Data Securities Corp. ("TDS"), a Delaware corporation, with its principal offices at 95 Rockwell Place, Brooklyn, New York 11217, as the sponsor of the TRACK Electronic Communications Network ("TRACK ECN").

**WHEREAS** TDS has created an electronic communications network known as TRACK ECN and desires to allow certain registered broker-dealers, including Subscriber, to access its system under certain terms and conditions as set forth in this Subscriber Agreement (the "Agreement") and the rules and regulations of the United States Securities and Exchange Commission (the "SEC") and the Financial Industry Regulatory Authority ("FINRA");

**WHEREAS** TRACK ECN/TDS displays quotations through the market participant IDs ("MPID") of 'DATA' and 'TRAC'. Each maintains its own separate order book.

**WHEREAS** Subscriber is a registered broker-dealer, subject to the rules and regulations of the SEC and FINRA, and desires to utilize the services offered by TDS and access the TRACK ECN system as provided below:

**NOW, THEREFORE**, in consideration of the premises contained herein, the parties agree as follows:

1. **Term of the Agreement.** Subject to the possibility of early termination pursuant to the provisions of Section 11, below, the initial term of this Agreement shall be for a period of 12 (twelve) months. This Agreement shall thereafter be automatically extended month to month unless and until terminated by either party pursuant to the provisions of Section 11, below.
2. **Subject of the Agreement.** Subject to the terms and conditions set forth in this Agreement, TDS agrees to provide to Subscriber the necessary Services as described herein for use by the Subscriber.
3. **License and Services.**
  - a. License.
    - i. During the term of the Subscriber's Agreement, the Subscriber is granted a global nonexclusive, nontransferable (except as expressly provided herein) license to use the Services (described herein) to receive information with respect to orders received by the TRACK ECN and to communicate the orders of the Subscriber for execution by TDS through the TRACK ECN;

- ii. Subscriber may not sell, lease, sublicense, furnish or otherwise permit or provide access to the TRACK ECN to any other entity or to any individual who is not Subscriber's employee, customer, consultant or agent, and further conditioned upon Subscriber's reasonably commercial efforts that any such person(s) will comply with the terms of this Agreement;
  - iii. Subscriber shall not furnish or otherwise permit or provide access to the System from any place other than its offices which have been reported to the Central Registration Depository and/or FINRA or other places of business or locations which have been authorized, in writing, by TRACK ECN;
  - iv. Subscriber shall comply with all reasonable security specifications or requirements of TDS and TRACK ECN in writing in order to prevent TRACK ECN from being improperly used or accessed or the information and data from being improperly taken from any of Subscriber's places of business;
  - v. Subscriber hereby grants to TDS and TRACK ECN a license to use the information and data entered into the System by Subscriber solely to enable TDS and TRACK ECN to provide regulatory information to any regulatory or self-regulatory organizations and to any third party communications and data providers to the extent required by federal, state, or local laws, including the rules and regulations of FINRA. Subscriber shall not, except as provided herein, diminish or impair the acquisition, maintenance, and full enjoyment by TDS and TRACK ECN of such license in and to the information and data contained in the TRACK ECN System. TDS represents and warrants that such license to use the information and data and the Services will (a) comply with all reasonable security specifications or requirements of Subscriber and (b) meet laws and regulations applicable thereto with respect to security. TDS shall maintain for the term of this Agreement sufficient physical and electronic security (which procedures may be revised from time to time) to ensure that the Services and Subscriber's content, data and information are protected from unauthorized access and disclosure, including without limitation operating and maintaining the applicable server at a locked and secured location, maintaining adequate firewall protection and partitioning Subscriber's content, data and information on the designated server.
- b. Services.
- i. The Subscriber will provide, and is responsible for providing and maintaining all necessary electronic set-up for transmitting orders to the TRACK ECN, including, but not limited to, wiring, computer hardware equipment, and the communication line access and devices (in accordance with UL standards), including the installation of the necessary data communication lines, all pursuant to specifications set forth by TDS and the TRACK ECN;
  - ii. TDS may, if requested by Subscriber, install at Subscriber's offices TRACK ECN software and equipment required to utilize the TRACK ECN, subject to all the terms and conditions of this Agreement. In such event, TDS shall arrange for the installation of appropriate connectivity lines to Subscriber's offices, the costs of which will be borne exclusively by Subscriber. Subscriber may make a reasonable number of copies of any such Software and any documentation for

back-up, archival, training, testing and disaster recovery purposes. Subscriber agrees that all such TRACK ECN software and equipment (including any copies made pursuant to authority contained in this paragraph) remain the sole and exclusive property of TDS and will reasonably maintain all such software and equipment on its premises in good working order free from physical harm. Subscriber agrees that it will not move TDS equipment without prior written consent or supervision of TDS;

- iii. TDS shall provide the Subscriber access to the TRACK ECN, along with the ability to view orders on the TRACK ECN Order Book and for the ability to route orders for the types of securities traded on the TRACK ECN to the TRACK ECN for execution with a possible matching order and displaying such order on the Nasdaq Level II quote montage if such order is the best price on the TRACK ECN Order Book;
- iv. The Subscriber shall not be under any obligation to:
  - a. transact any minimum number of transactions on the TRACK ECN,
  - b. transmit any minimum number of orders to the TRACK ECN, or
  - c. solely utilize the TRACK ECN.

#### 4. **Subscriber's Use of Services.**

- a. **Representations and Warranties of Subscriber.** In order for the Subscriber to retain the right to utilize the Services on behalf of its customers, the Subscriber hereby represents and warrants that:
  - i. It is duly registered as a broker-dealer in securities with the SEC and, at all times it utilizes the TRACK ECN, shall remain a registered broker-dealer. Subscriber agrees to notify TDS immediately and cease using the TRACK ECN if its registration as a broker-dealer is either suspended or revoked;
  - ii. It is a member of FINRA, and at all times that it utilizes the TRACK ECN, shall remain a member of FINRA. Subscriber agrees to immediately notify TDS and cease using the TRACK ECN if its FINRA membership is either suspended or revoked;
  - iii. It is registered and/or qualified in those states and other jurisdictions where its business requires such registration and/or qualification (each, a "Required Jurisdiction") and at all times that it utilizes the TRACK ECN, shall maintain its registration and/or qualification in all Required Jurisdictions. Subscriber agrees to immediately notify TDS and cease using the TRACK ECN if its registration and/or qualification in any Required Jurisdiction is either suspended or revoked;
  - iv. It is in full compliance with the SEC's net capital rule and will notify the TRACK ECN of any net capital violation not later than 36 hours after it first submits a Notice to the SEC pursuant to Rule 17a-11 under the Securities Exchange Act of 1934 (the "Exchange Act");

- v. It will use such Services for purposes of allowing the Subscriber to access the TRACK ECN, transmit orders to the TRACK ECN, and to execute orders on the TRACK ECN;
  - vi. With respect to its use of the Services, it shall monitor and oversee its personnel using commercially reasonable efforts to comply with all applicable laws, rules and regulations, including those of any self regulatory organization or securities exchange of which the Subscriber and/or its personnel are members;
  - vii. If required by its business operations and if it connects to TRACK ECN via software supplied by TDS, it shall maintain connectivity to the TRACK ECN including, but not limited to, the operation and maintenance of the Subscriber's communication lines, devices, and equipment;
  - viii. It shall promptly notify the TRACK ECN if the Subscriber is experiencing any technical difficulty or unusual activity with the Services;
  - ix. It shall not submit any order to the TRACK ECN that would constitute an illegal short sale pursuant to applicable SEC and FINRA rules and regulations. If the Subscriber intends a sell order to be a short sale, the Subscriber must indicate the order as such, and shall take the necessary steps to comply with the applicable SEC and/or FINRA rules and regulations, including the proper locating, delivery, settlement, and clearance of such short sale;
  - x. As at the date of this Agreement, it does not have any outstanding amounts due to Track ECN or to TDS or, if any amounts are outstanding, Subscriber agrees to satisfy these amounts, in full, within thirty (30) days of the date hereof.
  - xi. It and its personnel shall comply with all of the TRACK ECN policies and procedures, provided that TRACK ECN shall have provided Subscriber with reasonable prior written notice of any and all policies and procedures; and
  - xii. It shall promptly notify the TRACK ECN in writing upon being aware of any material change in or to the Subscriber's clearing arrangements.
- b. **Settlement of Transactions.** The Subscriber agrees that, as between TDS/TRACK ECN and Subscriber, it is the Subscriber's absolute, unconditional, and unassignable obligation, in connection with each securities transaction effected with the TRACK ECN to ensure and verify the timely delivery of the subject securities and/or funds as well as any required remittance of interest, dividend payments and/or other distributions.
- c. **Confidentiality of Subscriber.** The TRACK ECN shall not disclose the identity of Subscriber to any of its other subscribers or to any third parties in connection with orders entered or executed by the Subscriber on the TRACK ECN, except as required by a court or regulatory or self regulatory authority with jurisdiction over the TRACK ECN or the Subscriber, to facilitate the clearance and settlement of a trade, or with written permission from the Subscriber. This Section 4(c) shall remain in effect after termination of this Agreement.

d. **Policy on Dispute Resolution.**

- i. **General.** TRACK ECN retains the right to break any trade if, in TRACK ECN's sole, but reasonably exercised discretion, such action is warranted including, but not limited to, reasons relating to credit, margin, operational or regulatory concerns. In such event, none of TDS, the TRACK ECN, nor any affiliated entities shall be liable, directly or indirectly, to the Subscriber for any trade broken by TRACK ECN.
- ii. **Subscriber disputes.** If Subscriber seeks to dispute any trade executed on the TRACK ECN, Subscriber should notify TRACK ECN (A) via telephone within ten (10) minutes following the execution of the trade and (B) should follow up the conversation with a confirming written statement (delivered by facsimile to TRACK ECN) within 30 minutes of the execution (TRACK ECN's "10-30 Rule"). TRACK ECN will confirm its receipt of the notice and agrees to resolve all trade disputes promptly by TRACK ECN. If Subscriber disagrees with TRACK ECN's resolution (the "TDS Notice"), it shall notify TRACK ECN of its objections within seven calendar days of its receipt of the TDS Notice. Unless so objected to by Subscriber, all dispute resolutions are final, binding, and non-appealable. If Subscriber has objected to the TDS Notice, it must initiate an arbitration proceeding, as provided in sub-section "e" below, within ninety days of the date of the TDS Notice. If Subscriber does not initiate such an arbitration proceeding within the time provided by this paragraph, it shall be deemed to have waived its objections and consented to the resolution as provided by TRACK ECN.
- iii. **Clearly Erroneous Policy.** Any party to a trade may request a review of the trade to determine if the "clearly erroneous" provisions of FINRA Rule 11890 apply to the reported execution. Once such a request is made, it cannot be withdrawn without consent of both parties to the trade. For purposes of this Agreement, references in Rule 11890 to the "Association" shall mean to "TRACK ECN."
  - a. **Trades executed on the TRACK ECN.** If Subscriber receives an execution on an order that may have been entered in error with regards to price, symbol, or quantity, the Subscriber may contact TRACK ECN and request that the trade be reviewed under the above referenced Clearly Erroneous Policy. If TRACK ECN determines that a material term of the order is clearly erroneous, TRACK ECN may break or modify the trade.
  - b. **Trades executed via any other method.** If Subscriber's order was executed on the TRACK ECN against a market maker or any other entity who accessed TRACK ECN through a Nasdaq system or any other firm's system, that execution may be broken pursuant to Nasdaq's clearly erroneous policy or that firm's clearly erroneous policy. Again, as with all trade disputes, the Subscriber must adhere to the TRACK ECN's 10-30 Rule in order to allow TRACK ECN to provide the trade details to Nasdaq Market Operations or another firm's operations for their review within the necessary time frame.

- c. **Confirmations.** The Subscriber may contact TRACK ECN to confirm a trade. Once a confirmation is requested, TRACK ECN will take the necessary steps to verify the transaction details, including contacting the contra-side of the transaction. A confirmed transaction cannot be broken.
  - d. **Trade Executions Outside the Market.** The Subscriber is aware that it is possible for trades to be executed outside Nasdaq National Best Bid/Offer.
  - e. **Arbitration.** Any controversy arising out of or relating to the Subscriber and the TRACK ECN shall be resolved and settled by arbitration conducted at FINRA in New York, New York. Judicial proceedings for the review of any arbitration decision or proceeding or of any other matter arising under the terms of this Agreement shall be brought solely in the federal or state courts of the State of New York, located in the City of New York.
5. **Changes in Services, Software and Equipment.** At the sole discretion of TRACK ECN or of its third party service provider, including but not limited to Nasdaq, regulatory entities, or communications providers, the Services, specifications, and communications facilities may from time to time be modified. The TRACK ECN shall make a reasonable effort to notify Subscriber prior to the effectiveness of such modification but in no event later than three (3) business days. Continued use by the Subscriber more than thirty (30) days after the notice provided to Subscriber by TRACK ECN constitutes Subscriber's acceptance of such modification.
6. **Fees.** The Subscriber shall pay TDS for use of the TRACK ECN for the usage of the Services provided as detailed on Schedule A. TDS shall pay to Subscriber such fees or rebates as are provided for in Schedule A. All fee and/or rebate schedules may be changed by TDS at any time and at TDS's sole discretion, and shall become effective thirty (30) days after notice of the change is provided to Subscriber. The Subscriber shall also remit to the TRACK ECN any Nasdaq charges, including but not limited to quote update charges and ACT charges, and any alternative trading system fees incurred by the TRACK ECN on its behalf.
- a. Subscriber shall be solely responsible for any and all telecommunications costs and all other expenses incurred in linking to, and maintaining its link to, the TRACK ECN.
  - b. The TRACK ECN shall bill the Subscriber on a monthly basis for the actual usage of the Services, and the Subscriber shall remit such payment within thirty (30) calendar days after the Subscriber receives such invoice, other than amounts which are, in good faith, disputed. All Invoices shall be sent to Subscriber at the following address:  


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or to such other address as Subscriber shall notify TRACK ECN as provided by Section 13.
  - c. Pricing is subject to change effective thirty (30) days after notice is provided to Subscriber.
  - d. Subscriber shall be solely responsible for any third party fees, if applicable, attendant to its connectivity to TRACK ECN through any third parties or any other similar services contracted for by Subscriber.

- e. Subscriber understands that charges and rebates herein apply, on a trade by trade basis, only to whichever of TRACK ECN's models {'rebate model' ("TRAC") or ("DATA")} is used for a particular trade.
- f. TRACK ECN currently offers a flat rate per share for routing Subscriber orders outside its book. TRACK ECN has the right to alter its charge per share for routing orders outside the book, upon one (1) day's notice to Subscriber. This charge may be altered on a subscriber by subscriber basis to reflect extensive use of TRACK ECN to access ECN's with high access fees, which would render our standard flat rate insufficient. In no event will charged fee be more than the total charges incurred by TRACK ECN plus the regular fee charged for removing liquidity through direct access to TRACK ECN. (Please note: Orders are only routed outside the book at Subscribers behest on an order by order basis. OTCBB orders are not entitled to the flat rate.)

## 7. WARRANTIES.

- a. EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN THIS SECTION, THE SERVICES THAT THE TRACK ECN OFFERS ARE PROVIDED AS IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, ANY IMPLIED WARRANTY ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND OF ANY OTHER WARRANTY OR OBLIGATION WITH RESPECT TO THE SYSTEM OR ANY SOFTWARE OR OTHER MATERIALS MADE AVAILABLE TO SUBSCRIBER AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.
- b. TDS represents and warrants to Subscriber that: (i) it has the right to furnish and Subscriber has the right to use the Services in accordance with the terms of this Agreement and free of all liens, claims, encumbrances, restrictions and third party rights, interests or fees; (ii) the license furnished by TDS and Subscriber's use of the Services does not and will not violate, infringe or misappropriate any third party's intellectual property or other similar proprietary right, including, without limitation, trademarks, service marks, patents, copyrights, and trade secrets ("Intellectual Property Rights"); and (iii) Subscriber's use of the Services shall not be adversely affected, interrupted or disturbed by TDS or any entity asserting a claim under or through TDS.
- c. The Software when used in accordance with its documentation shall perform and provide functionality in accordance with such documentation. Any documentation provided by TDS hereunder shall faithfully and accurately reflect the Software. Except as otherwise provided in this Agreement, changes or upgrades to the Software provided under this Agreement shall not materially degrade, impair or otherwise adversely affect the performance or operation of the Software. The Software media shall be free of defects.
- d. The Software does not and will not contain any computer code, programs or programming devices (a) intentionally designed to disrupt, modify, delete, damage, deactivate, disable, harm or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Software or any other associated software, firmware, hardware, computer system or network (sometimes referred to as "Trojan horses", "viruses" or "worms"), (b) that would disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies or advancement to a particular

date or other numeral (sometimes referred to as “time bombs”, “time locks” or “drop dead” devices), or (c) that would permit TDS to access the Software to cause such disablement or impairment (sometimes referred to as “traps”, “access codes” or “trap door” devices), or any other similar harmful, malicious or hidden procedures, routines or mechanisms that would cause such Software to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations (collectively “Destructive Elements”). In the event of TDS’ breach of this Section, TDS further agrees to use its best efforts to immediately eliminate any and all such Destructive Elements. TDS will test each element of the Software utilizing the most recent version and most recent data file of a reputable, commercially available anti-virus checking software program prior to delivery to Subscriber to ensure that it is free of Destructive Elements.

## 8. LIMITATIONS ON LIABILITIES.

- a. Subscriber agrees that, in the absence of fraud, gross negligence or deliberate misconduct, none of TDS, TRACK ECN, nor their owners, subsidiaries, affiliates, officers, directors, employees, agents, any related persons and entities, nor any third party vendors (such as software, hardware, data and communications providers), shall be liable for any loss or claim, including without limitation, lost profits, loss of opportunity, loss of use, trading losses, loss of other costs or savings, nor for any damages suffered, or cost and expenses incurred by Subscriber, by any customer or account of Subscriber, or any third party, of any nature, or from any cause whatsoever, whether direct, special, incidental, or consequential, arising out of the furnishing, performance, maintenance or use of, or inability to use, the services, equipment, communication lines, software, databases, manuals and any other material furnished by or on behalf of TRACK ECN, notwithstanding that TDS or TRACK ECN may have been advised of the possibility that damages may or will arise in any given situation.
- b. Neither Subscriber nor any of its officers, employees and/or agents are employees, officers, agents or persons who have the authority or capacity to act for or on behalf of TRACK ECN.
- c. As between TDS and/or TRACK ECN and Subscriber, Subscriber agrees to be responsible and liable for any investment decisions or transactions in securities made or placed by Subscriber, on behalf of Subscriber, whether for Subscriber’s account and/or benefit or on behalf of any customer or account of Subscriber using the services equipment, communication lines, software, data bases, manuals and other materials furnished by or on behalf of TDS or TRACK ECN, notwithstanding that TDS or TRACK ECN has been advised of the possibility that damages may or will arise in any given situation.
- d. Except to the extent provided for in this Agreement, any and all terminals and/or equipment, computer programs, market and other data bases, manuals, and other materials and services are provided “as is”, without warranty of any kind, by TDS, TRACK ECN, and their owners, subsidiaries, affiliates, officers, directors, employees, agents, and any related persons and entities, including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose.
- e. Neither TDS, TRACK ECN, nor their owners, subsidiaries, affiliates, officers, directors, employees, agents, and any related persons and entities shall be liable in any way for (a) any inaccuracy, error, or delay in, or omission of the transmission or delivery of the

**Track ECN**

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Service; (b) any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay, or omission, (ii) non-performance, (iii) interruption of the Service due to any negligent act or omission by TDS, (iv) any loss, claim, error or delay attributable to any connectivity facility or device, including the failure of any third party-provided order or trade routing system unless connectivity is installed and maintained by TDS under this Agreement or (v) to any "force majeure" (including, but not limited to flood, extraordinary weather conditions, earthquake, or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications, power failure, or equipment or software malfunction) or any other cause beyond the reasonable control of TDS and the TRACK ECN.

- f. If the foregoing disclaimers and waiver of liability shall be deemed invalid or ineffective, TDS, TRACK ECN, their owners, subsidiaries, affiliates, officers, directors, employees, agent, and any related persons or entities shall not be liable in any and all events beyond the amount of an aggregate of the fees paid by Subscriber to TDS and/or TRACK ECN for the Services during the six months preceding the first such loss or damage.
- g. The limitations of liability contained in this section 8 shall not apply to either party's indemnification obligations, confidentiality obligations, fraud, gross negligence or willful misconduct.
- h. The provisions of this section 8 shall survive the termination of this Agreement for any reason and shall remain in full force and effect until the passing of any applicable statute of limitation or repose.

## 9. **Indemnification.**

- a. Subscriber agrees to indemnify and hold harmless TDS, TRACK ECN, their owners, subsidiaries, affiliates who are obligated to perform under this Agreement, officers, directors, employees, agents, from and against all expenses and costs and damages (including any legal fees and expenses), direct, consequential, and/or incidental in nature, claims, demands, proceedings, suits, and actions, and all liabilities resulting from, in connection with, or arising out of any failure by Subscriber, for any reason, fraudulent, negligent or otherwise, to comply with its obligations under this Agreement and for any loss or claim which may arise from a claim that one or more trades or orders in securities placed by Subscriber with the TRACK ECN were in violation of any state or federal securities law or regulation of FINRA.
- b. At no expense to Subscriber, TDS will defend, indemnify and hold harmless Subscriber, its affiliates and their respective successors, assigns, officers, directors and employees (collectively, "Subscriber Affiliates") from damage, loss, liability, costs and expenses of any kind (including reasonable attorneys' fees) relating to or arising out of any claim that any of the Services, Software or other materials or services provided hereunder (each of the foregoing, a "Product") or any portion thereof, and used within the scope of this Agreement, infringe or misappropriate any Intellectual Property Rights. In no event may TDS agree to any settlement of any claim or action for which it has agreed to provide indemnification under this Agreement that imposes any liability or obligation on the Subscriber or Subscriber Affiliates without Subscriber's prior written consent.

## 10. Proprietary Information.

- a. The information platform provided by the Services, including the format, database, programs, protocols, displays, and manuals are trade secrets proprietary and unique to the TRACK ECN, and Subscriber shall keep such information confidential, make reasonable efforts to maintain the confidentiality and secrecy of such information, and shall utilize such information solely for the use of the Subscriber for the transmission and handling of orders to the TRACK ECN.
- b. "Confidential Information" means any information obtained by a party to this Agreement (the "Receiving Party") as a result of this Agreement which relates to the past, present or future business activities of the other party (the "Disclosing Party"), their subsidiaries and affiliates or their respective employees, customers or third party contractors, including the terms of (including the identity of the contra party) any order placed or available on the TRACK ECN, and any information relating to the plans, pricing, methods, methodologies, processes, financial data, customer list or information, apparatus, statistics, programs, research, development, information technology, the terms and existence of this Agreement or related information.
- c. Confidential Information shall not include information that is (i) previously known to the Receiving Party, free from any obligation to keep it confidential as demonstrated by its written records maintained in the ordinary course of business or actual prior use, (ii) publicly disclosed by the Disclosing Party either prior to or subsequent to the receipt by the Receiving Party of such information, (iii) independently developed by the Receiving Party without any access to the Confidential Information of the Disclosing Party, or (iv) rightfully obtained from a third party lawfully in possession of the Confidential Information who is not under confidentiality obligations to the Disclosing Party. In the event that the Receiving Party is required under applicable law, rule or order to disclose any Confidential Information, the Receiving Party may do so, provided that the Receiving Party, where reasonably practicable and to the extent legally permissible, provides the Disclosing Party with prior written notice of the required disclosure. The Receiving Party shall hold all the Disclosing Party's Confidential Information in trust and confidence for the Disclosing Party, its subsidiaries and affiliates. Except as may be authorized by the Disclosing Party in writing, the Receiving Party shall not disclose to any person, firm or enterprise, or use for its own benefit, except in the ordinary course of business of either party, any such Confidential Information, and even when so authorized by the Disclosing Party, the Receiving Party shall limit access and disclosure to the Receiving Party's personnel but only as strictly required in order for the Receiving Party to perform its obligations hereunder. TDS agrees that Subscriber may disclose Confidential Information to its authorized consultants, agents, auditors, counsel and other representatives performing services for Subscriber's benefit, provided that such representatives are bound by non-disclosure obligations consistent with this Agreement.
- d. Each party further acknowledges and agrees that, in the event of a breach or threatened breach by it of the provisions of this Section, the Disclosing Party shall have no adequate remedy in money or damages and, accordingly, may be entitled to an injunction against such breach. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach of a provision of this Agreement.

- e. The provisions of this Section 10 shall remain in effect in perpetuity after termination of this Agreement.

## 11. Termination.

- a. TDS, at its sole discretion, may terminate this Agreement at any time without any liability as a consequence of such termination, conditioned upon:
  - i. on thirty (30) days' prior written notice if the Subscriber does not pay the undisputed (as provided for in this Agreement) amounts billed for Services provided hereunder, including amounts computed under Schedule A, by the due date; or
  - ii. immediately, if Subscriber shall, at any time, violate any of the representations or obligations contained in subsections i, ii, iii, iv or, if applicable, vii, of section 4 (a), above.
  - iii. at the end of any term (i.e., the initial term or any one month term thereafter) upon no less than ten (10) days notice of termination prior to the end of the relevant term.
- b. Subscriber may terminate at any time without liability, except for the payment of fees incurred prior to termination.
- c. In the event of any material breach of this Agreement by either party, the non-defaulting party may terminate this Agreement, in whole or in part immediately. Material breach of this Agreement by Subscriber giving rise to TDS' right to terminate shall be defined only as Subscriber's failure to pay undisputed, invoiced amounts as described in Section 11(a)(i).
- d. Either party may terminate this Agreement immediately upon notice if the other party (i) is liquidated, dissolved, or adjudged to be in a state of bankruptcy or receivership, (ii) is insolvent, unable to pay its debts as they become due, or makes an assignment to or for the benefit of its creditors, or (iii) ceases to conduct business for any reason on an on-going basis leaving no successor in interest.
- e. Upon termination, Subscriber agrees to return all TRACK ECN software and equipment to TDS.

- 12. **Assignment.** Neither this Agreement nor any part hereof may be assigned (whether by operation of law or otherwise) by either party without the other party's prior written consent and any such assignment shall be void provided, however, that Subscriber may assign this Agreement to its parent or any entity commonly controlled by its parent, and provide previous written notice of such assignment. Notwithstanding the foregoing, either party may assign this Agreement and any of its rights and/or obligations hereunder upon written notice to the other party, to any of its affiliated companies or to an entity with or into which it is merged or consolidated or to which it sells all or substantially all its capital stock or assets, without the consent of the other party. This Agreement shall be binding upon the parties' respective successors and assigns. TDS shall not subcontract the services to be provided hereunder

without Subscriber's prior written consent. Each party shall remain primarily liable for the performance of its obligations hereunder and agrees that it is responsible for the acts and omissions of its consultants, agents and subcontractors as if such acts and omissions were those of its employees, provided, however, that such liability does not apply to such acts and omissions that are grossly or willfully negligent.

13. **Notices.** All notices relating to this Agreement shall be in writing and delivered personally, by overnight delivery service or first class prepaid mail with return receipt requested to the parties at the addresses set forth in the beginning of this Agreement, to the attention of, in the case of Subscriber, \_\_\_\_\_, with a copy to the attention of \_\_\_\_\_ and in the case of TRACK ECN and/or TDS, to the Chief Operating Officer, with a copy to Robert P. Bramnik, Esquire, Duane Morris, 227 West Monroe Street, Suite 3400, Chicago, Illinois 60606. Any party may change the address for notices upon prior written notice to the other party delivered in the manner provided for herein. Notwithstanding the above language, changes to the fee schedule (i.e., Exhibit A) shall be effective thirty days after any amendment or change therein has been communicated to Subscriber via e-mail to Subscriber's regular business contacts. Additional copies of such notice(s) will be sent by TDS to others only if specifically requested by Subscriber.
14. **Compliance with Laws.** At its own expense, TDS will comply with all applicable laws, regulations, rules, ordinances and orders governing its activities related to this Agreement, including but not limited to all applicable requirements of Executive Order 11246, the Vietnam Veterans' Readjustment Assistance Act of 1974, as amended, the Rehabilitation Act of 1973, as amended, and the applicable implementing regulations and reporting requirements under each of the foregoing, each of which is incorporated herein by reference.
15. **Disaster Recovery.** TDS shall for the duration of this Agreement and in accordance with industry best practice, maintain detailed and comprehensive contingency plans against events which could affect the ability of TDS to perform and provide the Services in accordance with its understanding of industry custom and practice. TDS shall keep the plans under review and make such changes, from time to time, as shall be required in accordance with its understanding of industry best practice.
16. **Publicity.** TDS shall not use the name or marks, refer to, or identify Subscriber or any Subscriber affiliate in publicity releases, promotional or marketing materials, announcements, customer listings, testimonials, or advertising.
17. **Force Majeure.** Neither party to this Agreement shall be liable for delay or failure to perform its obligations hereunder caused by an event that is beyond the party's control; provided, however, that such party shall not have contributed in any way to such event.
18. **Severability.** Each provision of this agreement shall be deemed to be effective and valid under applicable law, but if any provision of this Agreement is determined to be invalid, void, or unenforceable under any law, rule, administrative order or judicial decision, that determination shall not affect the validity of the remaining provisions of this Agreement.
19. **Choice of Laws.** This agreement shall be deemed to have been made in the State of New York and shall be construed, and the rights and liabilities of the parties determined, in accordance with the laws of the State of New York.

20. **Remedy.** Except as expressly set forth herein, no remedy made available to either party hereunder is intended to be exclusive of any other remedy, and each and every remedy hereunder shall be cumulative and shall be in addition to every other remedy provided hereunder or available at law or in equity.
21. **Amendment; Waiver.** This Agreement cannot be amended or waived except by a writing signed by all of the parties. No failure or delay on the part of any party in exercising any right or remedy provided in this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of or failure to exercise any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy under this Agreement.
22. **Third Party Beneficiaries.** Except as expressly set forth herein, no person not a party hereto shall be a third-party beneficiary of any provision of this Agreement. Nothing contained herein shall be construed or deemed to confer any benefit or right upon any third party. It is agreed that affiliates included in the definition of Subscriber and permitted successors and assigns are not such excluded third party beneficiaries.
23. **Headings.** The headings in this Agreement are for purposes of reference only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof.
24. **Entire Agreement.** This Agreement is the entire agreement of the parties and supersedes all previous and contemporaneous communications, representations, agreements or prior proposals regarding the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For the avoidance of doubt, if the terms of the Documentation conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

**IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first written above.**

<b>Subscriber:</b>	_____	<b>Track ECN:</b>	Track Data Securities Corp.
<b>Signature:</b>	_____	<b>Signature:</b>	_____
<b>Printed Name:</b>	_____	<b>Printed Name:</b>	_____
<b>Title:</b>	_____	<b>Title:</b>	_____
<b>Firm CRD #</b>	_____	<b>Firm CRD #</b>	103802
<b>Date:</b>	_____	<b>Date:</b>	_____

## Schedule A

### **(“TRAC” model)**

*(Please check current pricing at [www.trackecn.com](http://www.trackecn.com))*

#### **I. Nasdaq securities:**

##### **Internal Execution**

- \$0.0022 (\$2.20 per 1,000) rebate per executed share for trades that add liquidity to the Track ECN book. (Any limit order, which at the time it is posted on the Track ECN order book, is not executed against an existing order.)
- \$.0023 (\$2.30 per 1,000) charge per share for removing liquidity from the book.
- \$0.0028 (\$2.80 per 1,000) (no contra-party pass-thrus) charge per executed share for orders routed outside the book.

##### **\*External Execution (Filled through NSX)**

- \$0.0024 (\$2.40 per 1,000) rebate for Nasdaq (\$0.0022 (\$2.20 per 1,000) rebate for NYSE, AMEX and Pacific per executed share for trades that add liquidity to the Track ECN book. (Any limit order, which at the time it is posted on the Track ECN order book, is not executed against an existing order.)

##### **Stocks Under \$1.00**

###### **Internal Execution**

- .25% of the \$ value for trades that add liquidity to the Track ECN Book.
- .3% of the \$ value charge for the trader that removes liquidity from the Track ECN Book.
- .3% of the \$ value charge for orders that are routed out.

###### **External Execution (filled through NSX)**

- .05% rebate of the dollar value for trades that add liquidity

#### **II. For All securities:**

- Payments received for less than the full amount of monthly invoices will be applied as an on account payment against the oldest open invoice. If a market participant is either delinquent in paying an invoice for thirty (30) days or notifies Track ECN that he will not pay or pay only partially, if such notification is sooner than thirty (30) days, all assessed charges will be re-billed at \$0.009/share. \$0.009/share will then remain the charge in force for said market participant's activity on Track ECN.
- No charge or rebate for any unexecuted orders.
- Any transaction fee imposed pursuant to Section 31 of the Securities Exchange Act of 1934, as amended.

\* Please be advised that due to a change on NSX fee schedule for order delivery, Track ECN will no longer receive a rebate and will not pay rebates to subscribers on executions with NSX. Internal matches and routed out fees remain the same.

**Schedule A (continued)**  
**Execution Charges/Rebates**

***("DATA" model)***

Temporarily Not In Use.

**TRACK ECN**  
A DIVISION OF TRACK DATA SECURITIES CORP.  
95 Rockwell Place  
Brooklyn, NY 11217

National Securities Clearing Corporation  
55 Water Street  
New York, NY 10041  
**Attention: Membership Administration**

Ladies and Gentlemen:

**Track Data Securities Corp.** may in the future submit data to National Securities Clearing Corporation resulting from executions done for the undersigned on **Track Data Securities Corp.'s** automated execution system known as **Track ECN**. The undersigned hereby agrees to accept the terms of each such trade that is reported to the undersigned by **Track Data Securities Corp.** as having been executed on such System.

\_\_\_\_\_  
(Subscriber on whose behalf data will be submitted to NSCC)

By:

\_\_\_\_\_  
(Authorized Officer's Signature)

\_\_\_\_\_  
(Print Authorized Officer's Name)

\_\_\_\_\_  
(Authorized Officer's Title)

**NATIONAL SECURITIES CLEARING CORPORATION**  
**55 Water Street**  
**New York, NY 10041**

The undersigned hereby consents to **Track Data Securities Corp.** acting as a Special Representative for it pursuant to Rule 7, Section 2 and Rule 39 of the Rules of National Securities Clearing Corporation.

\_\_\_\_\_  
(Firm Name)

By: \_\_\_\_\_  
(Authorized Officer's Signature)

\_\_\_\_\_  
(Print Authorized Officer's Name)

\_\_\_\_\_  
(Authorized Officer's Title)

\_\_\_\_\_  
(Telephone Number)

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

**UNIFORM SERVICE BUREAU/EXECUTING BROKER AGREEMENT**

This Uniform Service Bureau/Executing Broker Agreement (“Agreement”) is for use by a FINRA member (“Participant”) using a facility of FINRA listed on Attachment A hereto, including a Trade Reporting Facility (“TRF”) approved by U.S. Securities and Exchange Commission, the Alternative Display Facility (“ADF”), or the OTC Reporting Facility (“Approved Facility(ies)”).

1. By executing this Agreement, the undersigned Participant hereby:
  - a. authorizes the Service Bureau/Executing Broker to add to or delete from the list of Approved Facilities attached hereto at Attachment A at any time and without Participant’s prior knowledge and/or approval; and
  - b. accepts and approves all trade reports submitted to the Approved Facilities on the Participant’s behalf by the Service Bureau/Executing Broker identified below.
2. By executing this Agreement, the undersigned Service Bureau/Executing Broker agrees:
  - a. to report to the Approved Facilities all give-up or other trades executed and/or reported by the Service Bureau/Executing Broker on behalf of the Participant; and
  - b. to observe and comply with the provisions of this Agreement, any agreements relating to the trades reported to the Approved Facilities, any other agreements relating to the Approved Facilities and all applicable FINRA Rules in submitting trade information to the Approved Facilities on the Participant’s behalf; and
  - c. that the Service Bureau/Executing Broker shall not report on behalf of or provide access to the Approved Facilities to any individual or entity that has not executed the appropriate documentation.

THE PARTICIPANT AND SERVICE BUREAU/EXECUTING BROKER (“PARTIES”) HEREBY UNDERSTAND, ACKNOWLEDGE AND AGREE THAT FINRA AND THE APPROVED FACILITIES ARE THIRD PARTY BENEFICIARIES OF THIS AGREEMENT AND THAT FINRA AND THE APPROVED FACILITIES HAVE RELIED ON THE STATEMENTS AND OBLIGATIONS OF PARTIES AS SET OUT HEREIN IN ALLOWING ACCESS TO APPROVED FACILITIES. IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS SERVICE BUREAU/EXECUTING BROKER AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORIZED OFFICERS EFFECTIVE AS OF THE DATE FIRST SET FORTH BELOW.

**SERVICE BUREAU/EXECUTING BROKER**

**PARTICIPANT**

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**Name of Firm** Track ECN \_\_\_\_\_

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**Name of Firm:** \_\_\_\_\_

**MMID or Executing Broker Sym.** DATA/TRAC

**MMID or Participant Sym.** \_\_\_\_\_

**ATTACHMENT A**

<b>NAME OF APPROVED FACILITY</b>	<b>DATE APPROVED FACILITY ADDED</b>	<b>MPID OF SERVICE BUREAU/EXECUTING BROKER</b>	<b>MPID NUMBER OF PARTICIPANT</b>
<b>NSX/FINRA</b>		<b>TRAC/0459</b>	
<b>NASDAQ/ FINRA</b>		<b>TRAC/0459</b>	
<b>NSX/ FINRA</b>		<b>DATA/0459</b>	
<b>NASDAQ/ FINRA</b>		<b>DATA/0459</b>	
<b>ADF/ FINRA</b>		<b>TRAC/0459</b>	
<b>ADF/ FINRA</b>		<b>DATA/0459</b>	