

*Last updated: April 18, 2017*

THIS SUBSCRIPTION AGREEMENT (“Agreement”) is made on \_\_\_\_\_ (“Effective Date”), by and between the Municipal Securities Rulemaking Board, with offices at 1300 I Street NW, Suite 1000, Washington, DC 20005 (the “MSRB”), and \_\_\_\_\_, with offices at \_\_\_\_\_ (“Subscriber”).

Subscriber desires to subscribe to market transparency services provided by the MSRB, through an electronic subscription feed comprised of the Public Documents and/or the MSRB Works (each as defined below, and collectively the “Service”), the Public Documents component of which, as applicable, is further described in Schedule A. Subscriber desires to subscribe to the Services set forth in the Order Schedule, which is attached hereto and incorporated herein by reference (hereinafter, the “Order Schedule”). In consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **1. Grant of Licenses; Ownership**

1.1. Subject to the terms and conditions of this Agreement, the MSRB hereby grants to Subscriber (a) a limited, non-exclusive, non-transferable (except as allowed herein), non-sublicensable, license to reproduce, distribute and create derivative works of the “MSRB Works” (which shall be deemed to include all works of authorship, data and/or information provided through the Service other than the Public Documents); and (b) a limited, non-exclusive, non-transferable (except as allowed herein), non-sublicensable, license to reproduce, distribute and create derivative works of the “Public Documents.” For purposes of this Agreement, the “Public Documents” shall only mean the Public Documents submitted through (i) the Continuing Disclosure Subscription Service (as further described and defined in the Order Schedule which is attached hereto and incorporated herein by reference); and (ii) the Primary Market Subscription Service (as further described and defined in the Order Schedule which is attached hereto and incorporated herein by reference). Any rights not expressly granted herein are hereby reserved by the MSRB.

1.2. Subscriber acknowledges and agrees the MSRB Works are original works of authorship and constitute “compilations” under 17 U.S.C. §§101 et. seq., that the MSRB owns all right, title and interest in and to the MSRB Works and all proprietary and intellectual property rights and goodwill associated therewith except as limited herein. Subscriber further acknowledges and agrees that in addition to the copyright represented by the MSRB Works, the MSRB has in the MSRB Works, and through the Service, created an intangible product through extensive time, labor, skill, and money (“Costs”) and that but for this Agreement, if Subscriber were to reproduce, distribute, alter or use the MSRB Works, or otherwise use the Service, it would gain a special advantage because Subscriber would not be burdened by such Costs. Subscriber would be unjustly enriched, and thus the MSRB would suffer damages causing irreparable harm. During the term of this Agreement, Subscriber will not directly challenge, or assist anyone else to challenge, (i) the MSRB’s ownership of the MSRB Works; (ii) the validity of the MSRB Works; or (iii) the MSRB’s right to enforce its rights in the MSRB Works against third parties. For the avoidance of doubt, the MSRB acknowledges that it does not have any proprietary, intellectual property rights or good will associated with the Public Documents, as applicable.

## **2. Use of the Service by Subscriber**

2.1. The Service shall be made available to Subscriber in accordance with the terms and conditions set forth in this Agreement and the applicable Order Schedule. Subscriber may use the Service for Subscriber’s internal business purposes and re-distribute the Service, subject to the limitations described in this Agreement. Subscriber may re-distribute the Service or portions thereof to Subscriber’s end user clients for their internal business purposes, including limited redistribution by Subscriber’s end user clients. End user shall mean any professional entity that utilizes the Service in the normal course of its business, which includes, the right of limited re-distribution of such information to their clients; provided however, the term does not include those users who re-distribute the Service or any portion thereof for a fee (other than customary printing, copying and similar charges) except as part of a derivative product produced by such end user that would not reasonably be expected to serve as a substitute for the Service so as to bypass any applicable MSRB

licensing or related fees. Subscriber is expressly prohibited from re-distributing the Service or any portion thereof to commercial vendors or other entities that are in the business of re-distributing data or information for re-distribution other than as set forth in the immediately preceding sentence. Except as stated above, no permission is granted for Subscriber to re-distribute the Service, or any portion thereof, to any party for the purpose of further re-distribution. Subscriber agrees to inform such clients of this restriction and to take commercially reasonable steps to prevent such clients from re-distributing the Service, or any portion thereof, in violation of this paragraph as soon as Subscriber is informed or otherwise becomes aware that such unauthorized re-distribution is occurring. Subscriber may use the Service to create derivative works, which shall be owned by Subscriber; provided, however, that Subscriber shall have no ownership rights to the Service, the MSRB Works, or any portion thereof, and may not use such derivative works to evade the restrictions on re-distribution described in this paragraph.

2.2. The Service includes third-party proprietary data ("Third-Party Data") described more fully below. Reproduction, use and distribution of this Third-Party Data is subject to specific limitations described herein. Subscriber specifically acknowledges that no license or permission is granted by this Agreement for reproduction, use and distribution of Third-Party Data for any purpose other than as an integral part of the Service. MSRB is required to notify Standard & Poor's CUSIP Global Services, a division of S&P Global Market Intelligence Inc. ("CGS"), in advance of the commencement of this Agreement, of the MSRB's intent to enter into this Agreement, in order for CGS to confirm that Subscriber has an active license with CGS, or that no license is required.

The Service includes CUSIP standard numbers ("CUSIP Numbers") and, in some cases, CUSIP standard securities descriptions ("CUSIP Descriptions"). Certain CUSIP Descriptions may be supplemented with information from other commercial information sources. In other cases, other commercial information sources may be the exclusive source of a securities description. The securities descriptions that are chosen or formed for use in the Service are referred to herein as the "Securities Descriptions."

CUSIP Numbers and CUSIP Descriptions are provided to the MSRB by CGS and are maintained by CGS under the authority of the American Bankers Association ("ABA"). CGS and the ABA assert that the CUSIP Numbers and CUSIP Descriptions are and shall remain valuable intellectual property of CGS and the ABA, and Subscriber acknowledges and agrees that except as expressly stated in this Agreement no proprietary rights are being licensed or transferred to Subscriber in such information.

The MSRB is providing CUSIP Numbers and Securities Descriptions in the Service and to Subscriber solely for the purpose of identifying municipal securities issues as an integral part of the Service. No other use of CUSIP Numbers and Securities Descriptions is granted by the MSRB, CGS, the ABA, or the other commercial information sources that supply information used in the Securities Descriptions. Subscriber agrees that it will not use the CUSIP Numbers and Securities Descriptions contained in the Service for any other purpose and that, if Subscriber re-distributes the Service containing CUSIP Numbers and Securities Descriptions to other parties, Subscriber will take all reasonable precautions to ensure that recipients who obtain the Service directly or indirectly from Subscriber do not use CUSIP Numbers or Securities Descriptions for any other purpose.

THE MSRB IS NOT GRANTING TO SUBSCRIBER OR ANY OTHER RECIPIENT OF THE SERVICE ANY RIGHTS IN OR LICENSE TO CUSIP NUMBERS, CUSIP DESCRIPTIONS, OR OTHER CGS DATA, OTHER THAN THE RIGHT TO USE SECURITIES DESCRIPTIONS, CUSIP NUMBERS AND CUSIP DESCRIPTIONS FOR THE LIMITED USE NOTED ABOVE, SUBJECT TO SUBSCRIBER OBTAINING A VALID LICENSE FROM CGS IF REQUIRED BY CGS.

Subscriber specifically agrees that the use of the CUSIP Numbers and CUSIP Descriptions that may be included within the Securities Descriptions is not intended to create or maintain, and does not serve the purpose of the creation or maintenance of, a file of CUSIP Numbers or CUSIP Descriptions for itself or any other third party recipient of such information, and is not intended to create and does not serve in any way as a substitute for any CUSIP subscription services now or in the future being offered by CGS. Questions about permissible uses of CUSIP Numbers and CUSIP Descriptions other than the limited use noted herein should be directed to CGS.

Notwithstanding the foregoing, or anything to the contrary contained in this Agreement, the MSRB agrees that in the event that Subscriber does not have or at any time ceases to maintain a license for CUSIP Numbers, CUSIP Descriptions and/or other Third-Party Data included in the Service, and is unable to obtain such a license on commercially reasonable terms, the MSRB will use commercially reasonable efforts to (i) obtain any and all required regulatory approvals to offer the Public Documents in the absence of such CUSIP Numbers, CUSIP Descriptions and/or Third-Party Data; and (ii) develop the ability to distribute the Public Documents in the absence of such CUSIP Numbers, CUSIP Descriptions and/or

Third-Party Data, as applicable (hereafter, the “New Service”). As soon as practicable following the last to occur of the events described in subparagraphs (i) and (ii) above, the MSRB shall make the New Service available to Subscriber on terms and conditions no less favorable than those set forth in this Agreement (except as mandated by applicable law or regulation) but without any obligation on Subscriber to obtain or maintain any license(s) for Third-Party Data as a condition of receiving the Public Documents; provided, however, that the MSRB may change the fee for such service, from time to time, subject to the provisions of Sections 15B and 19(b) of the Securities Exchange Act of 1934.

2.3. Subscriber agrees that if the Service or any portion thereof is redistributed by Subscriber in its original form or in a derivative work, Subscriber will ensure that the Service or any portion thereof will be accurately re-distributed and will be updated promptly upon receipt of data feeds from the MSRB, to the extent Subscriber maintains an active subscription with MSRB. Subscriber agrees that the Service will not be re-distributed in a misleading manner, or in a manner likely to cause confusion, mistake or deception. Subscriber agrees the MSRB has no responsibility for or rights in any derivative work created by Subscriber hereunder, and Subscriber agrees to defend, indemnify and hold harmless the MSRB and its officers, directors, employees, agents, legal representatives, successors, and assigns as more fully described in Section 12 below.

2.4. Subscriber acknowledges the possibility of errors, omissions and failures in the delivery of the Service that may arise from a number of factors. Subscriber agrees that any use hereunder made of the Service, including any re-distribution, will be done in a reasonable and prudent manner taking into account these possibilities.

If Subscriber re-distributes the Service to its clients, in any format, Subscriber agrees to take adequate efforts to inform those parties of the possibility of such errors, omissions and lack of timeliness of the Service and to provide the disclaimer statement to all recipients of the Service in accordance with Section 3.1. Moreover, subject to Section 3.1, Subscriber agrees a disclaimer will be posted on any electronic media displaying the Service by Subscriber, with a prominence substantially equivalent to other disclaimers.

Subscriber acknowledges that, from time to time, it may experience system malfunctions or other situations which may cause incorrect data to be re-distributed. In such instances, Subscriber is expected to use commercially reasonable efforts to correct any mistakes in such data that was distributed via the Subscriber services and to inform users of any Subscriber services of problems Subscriber was unable to correct and which may result in the incorrect display of the Service, to the extent technically practicable and consistent with Subscriber’s standard policies and practices.

### **3. Re-Distribution**

3.1. Subscriber will use commercially reasonable efforts to ensure that the Service, or any portion thereof, it makes available is accurately reproduced. Subscriber agrees to include the following disclaimer in any agreement through which the Service, or any portion thereof, is made available or to incorporate the disclaimer in such agreement by reference to the electronic media where Subscriber posts the disclaimer. In any electronic media where the Service or any portion thereof is displayed, Subscriber shall display, with a prominence substantially equivalent to disclaimers of other vendors, and consistent with its policies and practices in displaying disclaimers of other vendors, the following:

“WE ARE PROVIDING CERTAIN DATA SUPPLIED TO US BY THE MUNICIPAL SECURITIES RULEMAKING BOARD (“THE SERVICE”) WITHOUT WARRANTIES OR REPRESENTATIONS AND ON AN “AS IS” BASIS. WE HEREBY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES (EXPRESS OR IMPLIED), INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING THE SERVICE. YOU SHALL BEAR ALL RISK, RELATED COSTS AND LIABILITY AND BE RESPONSIBLE FOR YOUR USE OF THE SERVICE. WE ASSUME NO RESPONSIBILITY FOR THE CONSEQUENCES OF ANY INTENTIONAL OR UNINTENTIONAL ERROR, OMISSION, INACCURACY, INCOMPLETENESS OR UNTIMELINESS IN OR WITH RESPECT TO THE SERVICE.

*[INSERT APPROPRIATE ADDITIONAL DISCLAIMER(S) FROM SCHEDULE B ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE THAT CORRESPONDS TO EACH OF THE ITEMS INCLUDED ON THE ORDER SCHEDULE]*

The MSRB, its officers, directors, employees, agents, consultants and licensors shall not be liable or responsible to you or anyone else for any losses, injuries, damages, costs, expenses or claims caused by, arising out of or relating to the following: (a) acts, omissions, occurrences or contingencies beyond their control; (b) service interruptions or performance failures, such as those that result from the use of telecommunications facilities that are outside their control, including the Internet; (c) negligence, gross negligence or willful misconduct in procuring,

compiling, interpreting, editing, writing, reporting or delivering any of the content and material; (d) lost, stolen, late, corrupted, misdirected, failed, incomplete or delayed transmissions by anyone using the Service, including, but not limited to, any technical malfunctions, human error, computer viruses, lost data transmissions, omissions, interruptions, deletions, defects, hyperlink failures or line failures of any telephone network, computer equipment, software or any combination thereof; (e) damage to your computer systems, equipment, software, data or other tangible or intangible property resulting from or sustained in connection with your use of the Service; and/or (f) any disruption of business, lost sales or lost profits or any punitive, exemplary, indirect, special, incidental or consequential damages associated or in connection with, resulting from or arising out of any use of the Service or the content and material in the Service.

The MSRB and its officers, directors, employees, agents, consultants and licensors shall have no liability in tort, contract or otherwise (and as permitted by law, product liability) to you or anyone else for any reason associated or in connection with, resulting from or arising out of your use of the Service. The MSRB, its officers, directors, employees, agents, consultants and licensors make, and have made, no recommendations regarding any of the securities or other investment vehicles identified, referred to or described in the Service.

The Service is reproduced by permission of the MSRB under a non-exclusive limited license. The MSRB accepts no responsibility or liability for the accuracy of the reproduction of the Service or that such Service is current.”

Notwithstanding anything in this Agreement to the contrary (including this Section 3.1, Section 2.4 above, and Section 7.4 below), the MSRB agrees that as an alternative to displaying mandated disclaimers on electronic media where the Service (or any portion thereof) is displayed, Subscriber may provide the MSRB with a main contributor page on their Subscriber service, accessible by all users of such service, the prominence, content, format and layout of which shall be subject to Subscriber’s reasonable policies and practices administered with respect to principal contributors to such service, on which the MSRB may display such disclaimers.

#### **4. Subscriber Obligations**

4.1. Subscriber agrees and acknowledges that it shall be bound by the obligations set forth in this Agreement. In addition, Subscriber agrees with and acknowledges the following additional obligations:

- (a) To use commercially reasonable efforts to update the Service, other than the Public Documents, as applicable, distributed via the Subscriber services only with additions, deletions or changes received from the MSRB and to do so promptly after receipt of such information from the MSRB (it being understood that neither the foregoing nor anything else in this Agreement shall be interpreted as an obligation on Subscriber to distribute the Service, or any portion thereof, to its end user clients).
- (b) Not to make any changes to the Service, other than from MSRB authorized updates, or as specifically agreed to in writing by the MSRB, subject to the right to create derivative work as set forth in Section 2.1 (it being understood that the foregoing shall not be interpreted to preclude Subscriber in any way from receiving information from sources other than the MSRB or redistributing same to Subscriber’s end user clients).
- (c) To use commercially reasonable efforts to notify the MSRB immediately of any suspected inaccuracies in the Service of which the Subscriber is or becomes aware.
- (d) To bear all costs associated with the delivery of the Service to the Subscriber’s systems.

4.2. Should Subscriber not comply with the terms of Section 4 of this Agreement, the MSRB may notify the Subscriber of its failure to comply and provide the Subscriber with 5 business days to update the Service on Subscriber’s systems. Should the Subscriber not comply with the MSRB request to update the Service within 5 business days, the MSRB reserves the right to suspend Subscriber’s service until Subscriber complies with the MSRB request.

#### **5. Fees**

5.1. Subscriber agrees to pay fees to the MSRB for the Service as listed in the Order Schedule. The MSRB from time to time may modify fees, pursuant to the procedures established by statute, and in such cases will provide written notification to Subscriber pursuant to Section 17.4 herein. The MSRB will provide such notification at least thirty (30) calendar days prior to the new rate becoming applicable to Subscriber. After such notice is sent to Subscriber, if the

MSRB does not receive a written notice of termination within thirty (30) calendar days thereafter, the Subscriber shall have agreed to the new rates.

5.2. The MSRB will invoice Subscriber approximately 30 days before the beginning of each quarter, with each quarterly payment due on the first day of each quarter. Invoices will be prorated, as applicable, from the date that the Service is first provided. If the invoice is not paid by the first day of the quarter, Subscriber shall pay a monthly late fee of \$25 and a late fee on the overdue balance, computed according to the Prime Rate, until paid. If the invoice and accrued late fees remain unpaid for thirty days following the due date, the Service(s) will be subject to termination.

5.3. Subscriber has full responsibility for the payment of any taxes, charges or assessments imposed on Subscriber by any government or subdivision of government relating to the provision of the Service by the MSRB to Subscriber, and for the payment of any license or other fee payable by Subscriber pursuant to its license with CGS, to the extent CGS requires such license, in accordance with Section 2.2. The Subscriber's responsibility under this section does not include payment of any taxes, charges or assessments imposed on the MSRB by any government or subdivision of government relating to the MSRB's income, revenue, or operations.

5.4. Upon termination of this Agreement for any reason, the MSRB will not refund to Subscriber the pro-rata portion of any pre-paid fees.

## **6. Order Schedule**

6.1. The MSRB shall permit the Subscriber to use or re-distribute the Service described in the Order Schedule in accordance with the terms and conditions of this Agreement. The Subscriber may add additional services offered by the MSRB, if the MSRB and the Subscriber each execute a new Order Schedule in the form attached hereto.

## **7. Term & Termination**

7.1. The initial term of this Agreement shall commence on the Effective Date and shall continue for one (1) year thereafter ("Initial Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term") unless either party elects not to renew the Agreement by giving at least ninety (90) days prior written notice of termination to the other party before the end of the then current term (the Initial Term and all Renewal Terms are collectively referred to as the "Term"). Notwithstanding the foregoing, the MSRB may elect to not renew the Agreement only in circumstances where the Service is no longer being offered generally to subscribers or where Subscriber is in breach of this Agreement.

7.2. Either party may terminate this Agreement upon written notice in the event of any breach of this Agreement by the other party, which breach is not cured to the reasonable satisfaction of the non-breaching party within thirty (30) days after written notice of such breach to the breaching party.

7.3. This Agreement shall automatically terminate in the event that (i) either party has a petition filed by or against it under any state or federal bankruptcy or insolvency laws (or their foreign equivalents) which petition has not been dismissed or set aside within sixty (60) days of filing, or (ii) either party dissolves or ceases business operations.

7.4. Upon termination of this Agreement, and provided the MSRB is still the official online repository for municipal securities disclosure documents, Subscriber agrees to include on any electronic media where such Public Documents, as applicable may be accessed by Subscriber's clients and/or employees the following disclaimer:

"Important Notice regarding Municipal Securities Disclosures

As of \_\_/\_\_/\_\_ Subscriber discontinued its subscription to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) Service. The discontinuation of this subscription means disclosure filings and notices required to be filed through EMMA under Rule 15c2-12 and MSRB Rule G-32 will not be provided to the Subscriber by the MSRB through EMMA as of such date. *[Clients using this service][Employees/Associates]* should review potential implications of the discontinuation of EMMA on the service."

## **8. Modifications**

8.1. The MSRB may, at any time, upon as much notice to Subscriber as is reasonably practicable under the circumstances, (i) modify or change the content, organization, format, frequency or timing of the Service provided by the MSRB (and in such event the MSRB will, to the extent reasonably practicable under the circumstances, provide Subscriber with information and cooperation regarding such Service modifications and changes as is reasonably required by Subscriber to make corresponding changes to its systems); (ii) modify or discontinue any part or all of the Service; or

(iii) modify other terms of this Agreement, upon ninety (90) days written notice; provided, in each case, that such modification or change is made with respect to all other recipients of the Service. Subscriber's failure to reject the modification of the Agreement thirty (30) days prior to the effective date of the modification shall be deemed to be an acceptance of the modification.

## **9. Representations & Warranties**

9.1. The MSRB represents and warrants that (i) it has the full right, power and authority to enter into this Agreement and to the best of its knowledge there is nothing which will prevent the MSRB from performing its obligations under the terms and conditions of this Agreement; (ii) this Agreement has been duly authorized by all necessary action and constitutes a valid obligation of the MSRB, binding on the MSRB and enforceable in accordance with the terms hereof; and (iii) it has all rights in, and licenses to, the Service as may be required to grant the licenses under this Agreement, subject to Section 2.2 above.

9.2. Subscriber represents and warrants that (i) it has the full right, power and authority to enter into this Agreement and to the best of its knowledge there is nothing which will prevent Subscriber from performing its obligations under the terms and conditions of this Agreement; (ii) this Agreement has been duly authorized by all necessary action and constitutes a valid obligation of Subscriber, binding on Subscriber and enforceable in accordance with the terms hereof; (iii) the execution and performance of this Agreement by Subscriber will not conflict with or violate any commitment, agreement or understanding Subscriber has or will have with any other person or entity; (iv) it will obtain and maintain any license required by CGS; and (v) to the best of Subscriber's knowledge, any Subscriber services in which the Service is used do not (in the absence of the Service) violate or infringe upon the rights of any third party, including but not limited to, confidential relationships, publicity rights, privacy rights, patents, trademarks, service marks, trade secrets, copyrights, or other proprietary or contractual rights.

## **10. Disclaimer of Warranties**

**10.1. SECTION 9.1 SETS FORTH THE ONLY REPRESENTATIONS AND WARRANTIES BY THE MSRB IN CONNECTION WITH THIS AGREEMENT. THE MSRB EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THIS AGREEMENT INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**10.2. SUBSCRIBER AGREES THE MSRB WILL NOT BE LIABLE FOR ANY ACTION TAKEN, OR ANY DELAY OR FAILURE TO TAKE ANY ACTION, HEREUNDER OTHER THAN FOR LOSSES CAUSED DIRECTLY BY THE MSRB'S WILLFUL MISCONDUCT, OR VIOLATION OF THE FEDERAL SECURITIES LAWS FOR WHICH THERE IS A PRIVATE RIGHT OF ACTION. THE MSRB WILL NOT BE LIABLE FOR THE ACTS, DELAYS, OMISSIONS, BANKRUPTCY OR INSOLVENCY OF ANY THIRD PARTY, UNLESS THE MSRB WAS ENGAGED IN WILLFUL MISCONDUCT, OR IN VIOLATION OF THE FEDERAL SECURITIES LAWS FOR WHICH THERE IS A PRIVATE RIGHT OF ACTION, IN SELECTING SUCH THIRD PARTY.**

**10.3. SUBSCRIBER AGREES NEITHER THE MSRB, NOR ANY SUPPLIER, SHALL IN ANY WAY BE LIABLE TO SUBSCRIBER, OR ANY RECIPIENT OF THE SERVICE, REGARDLESS OF THE CAUSE OR DURATION, FOR ANY INACCURACIES, ERRORS, OMISSIONS OR OTHER DEFECTS IN, OR UNTIMELINESS OF, THE SERVICE OR FOR ANY DAMAGES RESULTING THEREFROM OR FROM ANY USE OF THE SERVICE, OR FOR ANY DAMAGE WHATSOEVER RESULTING FROM COLLECTING, COMPILING, TRANSCRIBING, TRANSMITTING, COMMUNICATING OR DELIVERING THE SERVICE, INCLUDING ANY INTERRUPTION OR DELAY IN DELIVERY, OR FOR ANY DAMAGES RESULTING FROM FORCE MAJEURE, WHICH SHALL BE DEEMED TO INCLUDE ANY CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF THE MSRB, OR FOR ANY DAMAGES, LOSSES, OR COSTS OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, (I) DIRECT, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY LOSS OR DAMAGE, CONSEQUENTIAL AND INCIDENTAL DAMAGES AND (II) LITIGATION COSTS, ATTORNEY'S FEES AND DISBURSEMENTS (COLLECTIVELY "DAMAGES"), ARISING THEREFROM OR OCCASIONED THEREBY EVEN IF THE MSRB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, OR COSTS. IF, NOTWITHSTANDING THE PREVIOUS SENTENCE, THE MSRB, OR ANY SUPPLIER, IS FOR ANY REASON HELD LIABLE, THEN THE LIABILITY OF THE MSRB, AND ANY SUPPLIER, IN ANY AND ALL CATEGORIES, WHETHER ARISING FROM CONTRACT, TORT, WARRANTY, OR OTHERWISE SHALL, IN THE AGGREGATE, IN NO EVENT EXCEED THE LESSER OF THE FEE ASSESSED FOR ACCESS TO THE SERVICE IN THE QUARTER IN WHICH SUCH CAUSE OF ACTION IS ALLEGED TO HAVE ARISEN OR \$5,000.**

## **11. No Third Party Beneficiaries**

11.1. This Agreement has been entered into solely between Subscriber and the MSRB, and no third-party beneficiaries are created hereby except as expressly otherwise provided herein.

## **12. Indemnification**

12.1. Except to the extent the MSRB has an indemnification obligation to Subscriber and its Affiliates (as listed in Exhibit 1) hereunder, Subscriber agrees to defend, indemnify and hold harmless the MSRB, its officers, directors, employees, agents, legal representatives, successors, and assigns (collectively, "MSRB Indemnitees") from and against any and all claims, actions, damages, costs, expenses (including reasonable attorneys' fees and litigation costs), losses or liabilities of any nature incurred or asserted against the MSRB Indemnitees to the extent arising from: (i) Subscriber's breach of this Agreement, including without limitation, its covenants, representations, and warranties hereunder; (ii) the fraud or willful misconduct of Subscriber, its personnel, or Subscriber's Affiliates, employees, agents, officers or directors; (iii) any third party claim that the Subscriber services (in the absence of the Service) infringe upon the intellectual property or other proprietary rights of that third party, or (iv) any third party claim regarding Subscriber's derivative work, but only to the extent such claim is not solely based on the Service. The MSRB Indemnitees shall promptly provide Subscriber with written notice of any such claim and reasonable cooperation, information, and assistance in connection therewith. Subscriber shall have sole control and authority with respect to the defense, settlement, or compromise thereof, at its sole cost and expense, so long as any settlement of such claim includes a full release for the MSRB Indemnitees.

12.2. Except to the extent Subscriber has an indemnification obligation to the MSRB hereunder, the MSRB agrees to indemnify, defend and hold harmless Subscriber, its Affiliates and their respective officers, directors, employees, agents, legal representatives, successors, and assigns (collectively, "Subscriber Indemnitees") from and against any and all claims, actions, damages, costs, expenses (including reasonable attorneys' fees and litigation costs), losses or liabilities of any nature incurred or asserted against the Subscriber Indemnitees arising from: (i) the MSRB's breach of this Agreement, including without limitation, its covenants, representations, and warranties hereunder; or (ii) the fraud or willful misconduct of MSRB, its personnel, employees, agents, officers or directors. The Subscriber Indemnitees shall promptly provide the MSRB with written notice of any such claim and reasonable cooperation, information, and assistance in connection therewith. The MSRB shall have sole control and authority with respect to the defense, settlement, or compromise thereof, at its sole cost and expense, so long as any settlement of such claim includes a full release for the Subscriber Indemnitees. For the avoidance of doubt, the MSRB's indemnification obligations under this Section 12.2 shall not be limited by anything to the contrary in this Agreement (including without limitation Section 10 above).

12.3. In addition to the indemnification obligation in Section 12.2 above, the MSRB agrees that it will defend and hold harmless Subscriber, its officers, directors, employees, agents, legal representatives, successors or assigns (collectively, the "Subscriber Indemnitees") from and against any and all claims, actions, damages, costs, expenses (including reasonable attorneys' fees and litigation costs), losses or liabilities of any nature incurred or asserted against the Subscriber Indemnitees arising from a claim or action based on a claim that the Service or the MSRB Works infringes on any intellectual property rights of any third party. The Subscriber Indemnitees shall promptly provide the MSRB with written notice of any such claim and reasonable cooperation, information, and assistance in connection therewith. The MSRB shall have sole control and authority with respect to the defense, settlement, or compromise thereof, at its sole cost and expense, so long as any settlement of such claim includes a full release for the Subscriber indemnitees. The limitations on liability and damages in Sections 10.2 and 10.3 of this Agreement do not apply to the indemnification obligation set forth in this Section 12.3.

12.4. A party required to provide indemnification under this Agreement shall reimburse the party entitled to such indemnification promptly for any legal or other expenses reasonably incurred by it in connection with providing evidence in or preparing to serve or serving as a witness with respect to, any lawsuits, investigations, claims or other proceedings arising in any manner out of or in connection with a matter for which indemnification is provided by the other party.

### **13. Publicity and Attribution**

13.1. Neither party shall use the name, trademarks, service marks, logos, or designs of the other party, in part or whole, except as expressly permitted hereunder without the other party's prior written approval which may be withheld in its sole discretion; provided, however, that , in addition to any obligation under Sections 2.4, 3.1 and 7.4 of this Agreement, Subscriber must provide the following language, acknowledging the MSRB as the source of the Service, on any electronic media displaying, or in printed materials containing, the Service, with a prominence substantially equivalent to other attribution provisions: "municipal securities trade data and/or disclosures provided with permission by the MSRB" or similar language approved, in writing and in advance, by the MSRB. Use of this MSRB attribution may be revoked, upon thirty (30) days written notice, at the sole discretion of the MSRB, upon its determination of misappropriation, misuse, or inaccuracy of the Service in a Subscriber's service or product.

### **14. Relationship of the Parties**

14.1. The MSRB and Subscriber acknowledge and agree that nothing herein contained is intended to constitute them as employer/employee, franchisor/franchisee, joint venturers or partners.

### **15. Dispute Resolution**

15.1. All disputes, claims or controversies arising in connection with this Agreement, which are not settled by mutual agreement, shall be resolved by arbitration held in Washington, DC in accordance with the commercial rules of the American Arbitration Association ("AAA") then in effect, by a single arbitrator chosen by the parties from a list of arbitrators provided by the AAA. If the parties cannot agree upon an arbitrator from the AAA within thirty (30) calendar days of a written demand for arbitration, the arbitrator shall be chosen by the AAA in accordance with its rules. Each party shall bear its own costs for such arbitration regardless of outcome. Notwithstanding the foregoing, either party shall have the right to seek injunctive or equitable relief from any court of competent jurisdiction with respect to the Service. In addition, the MSRB agrees that the foregoing is not intended in any way to divest the Securities and Exchange Commission of any authority granted to it under the Securities Exchange Act of 1934, or otherwise, or to restrict Subscriber from seeking redress from any administrative, regulatory or other governmental agency, entity, authority, commission or instrumentality.

### **16. Access to Subscriber Services and Service Usage Report**

16.1. For the purpose of verifying Subscriber's compliance with the terms and conditions of this Agreement, and as long as the Agreement is in effect, MSRB will, at no charge, be provided with access to Subscriber's standard agreement(s) regarding the Service, or any portion thereof, and any electronic media displaying the Service, or any portion thereof, to allow the MSRB to review such agreements and systems, through which the MSRB Service is re-distributed by the Subscriber. Any such reviews shall be scheduled with the Subscriber upon giving advance written notice of at least fourteen (14) days.

16.2. Annually, Subscriber shall complete the Service Usage Report (which may be amended, from time to time, at the discretion of the MSRB), in the form of Exhibit 2. The Service Usage Report shall be completed by January 31 each calendar year and submitted to the MSRB as provided in Section 17.4 of this Agreement.

### **17. General**

17.1. Entire Agreement; Amendments. This Agreement represents the entire agreement between Subscriber and the MSRB with regard to the subject matter of this Agreement, and supersedes all other oral, written or electronic communications between the parties concerning the subject matter thereof. No waiver, modification, change or amendment of any provision of this Agreement shall be valid unless in writing and signed by authorized personnel of the party against whom such claimed waiver, modification, change or amendment is sought to be enforced.

17.2. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns; provided, however, that Subscriber may not transfer or assign its rights or obligations under this Agreement except to an Affiliate without the prior written consent of the MSRB. Notwithstanding anything to the contrary in this Agreement, any Affiliate of Subscriber is entitled to exercise the rights of Subscriber set forth herein on behalf of itself, Subscriber, or any other Subscriber Affiliate, including, but not limited to, rights to distribute the Service as set forth in this Agreement in products or services offered by Subscriber, such Affiliate or another Subscriber Affiliate. Subscriber and each Affiliate that utilizes the Service, or any portion thereof, shall be bound by this Agreement and Subscriber shall be liable for any breach of this Agreement by any such Affiliate to the same extent as if such breach were



committed by Subscriber directly. In addition, nothing in this Agreement shall preclude the MSRB from seeking redress for any breach of this Agreement by any Subscriber Affiliate directly against such Affiliate.

17.3. Governing Law. This Agreement is to be governed by, construed and determined under the internal, substantive laws of the District of Columbia for agreements to be wholly performed therein without reference to its conflicts of laws principles.

17.4. Notices. All notices or other communications required or desired to be sent to either party shall be in writing and sent by first class mail, postage prepaid, by next-day courier or by email, to the attention of the person identified below, at the address or email address shown below. Either party may change such address or email address by written notice to the other party. Notice shall be effective on (i) the fifth (5th) business day after mailing, (ii) the first (1st) day after the date of sending via next-day courier, or (iii) the date of the transmission if sent by email (provided that notice shall be effective on the first business day following the date of transmission if transmission is effected on a non-business day).

**SUBSCRIBER:**

Tel: \_\_\_\_\_

E-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

Copy to: \_\_\_\_\_

**MSRB:**

Municipal Securities Rulemaking Board  
Director, Product Strategy and Operations  
1300 I Street NW, Suite 1000  
Washington, DC 20005  
E-mail: SubscriberNotices@msrb.org

17.5. Headings. The headings of this Agreement are inserted merely for convenience and ease of reference and shall not affect or modify the meaning of any of the terms, covenants or conditions of this Agreement.

17.6. Severability. If any provision, any part of any provision or the scope of any provision of this Agreement is found to be contrary to law, invalid, illegal, unenforceable or unreasonable in any respect by any governmental authority, court of law or arbitrator(s) having competent jurisdiction over the subject matter of and over the parties to this Agreement, the remaining provisions, parts of such provision or reasonable scope of such provision shall be severable and in no way shall the validity, legality, enforceability or reasonableness of those remaining provisions, parts of such provision or reasonable scope of such provision be affected or impaired by that which was found to be contrary to law, invalid, illegal, unenforceable or unreasonable. Without limiting the foregoing, the parties shall discuss in good faith a replacement provision that gives effect to the parties' intentions.

17.7. Survival. The rights and obligations set forth in the Sections of this Agreement relating to the Grant of License, Use of the Service by Subscriber, Term & Termination, Representations & Warranties, Disclaimer of Warranties, Indemnification, and Publicity, shall survive termination or expiration of this Agreement.

17.8. No More Favorable Terms. The MSRB represents, warrants, covenants, and acknowledges that the Subscriber relies on the representation, warranty, covenant, and that the MSRB has not entered into, and will not enter into, any agreement for the provision of the Public Documents, as applicable (or any portion thereof) on terms and conditions more favorable than those contained in this Agreement, except that the MSRB may waive fees listed in the Order Schedule for the Service for:

- (a) non-profit organizations, including institutions of higher education;
- (b) regulatory authorities, including, but not limited to, the U.S. Securities and Exchange Commission, Financial Industry Regulatory Authority, and Internal Revenue Service; and
- (c) any other person, pursuant to court or administrative order.

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, the parties hereto have executed this Subscription Agreement as of the date first above written:

**SUBSCRIBER**

**MUNICIPAL SECURITIES RULEMAKING BOARD**

\_\_\_\_\_

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

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

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

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

**Name:** Nanette D. Lawson

**Title:** Chief Financial Officer



## Exhibit 1: Subscriber Affiliates

## Schedule A: Order Schedule\* Rates

Continuing Disclosure Subscription Service, \$45,000

The subscription to EMMA's Continuing Disclosure Subscription Service will make available to all Subscribers all continuing disclosure documents, together with related indexing information, submitted to the MSRB pursuant to Exchange Act Rule 15c2-12 under the Securities Exchange Act of 1934 and otherwise, by issuers, obligated persons and their agents ("Public Documents"). Such Public Documents will be made available to Subscribers simultaneously with the posting thereof on the EMMA portal.

Primary Market Subscription Service, \$20,000

The subscription to EMMA's Primary Market Submission Service will make available to all Subscribers all official statements, preliminary official statements and advance refunding documents, together with related indexing information, submitted to the MSRB pursuant to MSRB Rule G-32, or otherwise, by brokers, dealers and municipal securities dealers, acting as underwriters, placement agents or remarketing agents and their agents ("Public Documents"). Such Public Documents will be made available to Subscribers simultaneously with the posting thereof on the EMMA portal.

Short-term Obligation Subscription Service, \$11,000

The subscription to EMMA's Short-term Obligation Submission Service will make available to all Subscribers information submitted by ARS program dealers or auction agents, or VRDO remarketing agents, to the MSRB pertaining to Auction Rate Securities (ARS) and Variable Rate Demand Obligations (VRDOs). Such information will be made available to Subscribers simultaneously with the posting thereof on the EMMA portal.

The service does not include primary market or continuing disclosure documents for ARS and VRDOs. Such documents are available through separate subscriptions.

Real-Time Transaction Data Subscription Service ("RTRS"), \$11,000

The subscription to EMMA's Real-Time Transaction Data Subscription Service will make available to all Subscribers a real-time stream of data representing municipal securities transaction reports made by brokers, dealers and municipal securities dealers ("dealer") to RTRS and related information. Modifications and cancellation messages submitted by dealers will also be distributed in real-time. After receipt of a trade report from a dealer, RTRS will automatically check the report for errors, ensure that it is a valid trade report for distribution, appropriately format the report, and make it available for immediate electronic transmittal to each Subscriber.

Comprehensive Transaction Data Subscription Service, \$5,500

The subscription to EMMA's Comprehensive Transaction Data Subscription Service will make available to all subscribers the following information: (i) trade reports for a specific trade date made available at approximately 6:00 a.m. on the business day following trade date ("T+1"), which display a notation that the par value is \$1 million or over, in lieu of the exact par value, where applicable; (ii) trade reports for a specific trade date made available five business days after that trade date ("T+5") showing exact par values for those transactions with a par value over \$1 million, showing all late trade reports made after the specified trade date, up until the date of distribution, and showing the effect of modifications or cancellations submitted by dealers after trade date; and (iii) trade reports for a specific trade date made available 20 days after that trade date ("T+20") showing the effects of any trade modifications or cancellations received since the T+5 report was produced.

**\*Please indicate which Service Subscriber would like to purchase.**

## **Schedule B: Additional Disclaimers Pursuant to Section 3.1 Hereof**

For each of the services ordered on the Order Schedule attached hereto as Schedule A, the corresponding additional disclaimers shall be included, as provided in Section 3.1 of the Agreement:

### **Continuing Disclosure Subscription Service**

The continuing disclosure documents and other information provided through the continuing disclosure service are submitted to the MSRB by issuers, obligated persons and their agents. Such documents may not exist for all municipal securities and such documents are not required to be submitted to the MSRB for certain types of offerings. There is the possibility of failures by submitters to submit required documents to the MSRB, or of errors or delays in the processing of such documents by submitters or the MSRB. The MSRB does not review information contained in such documents for accuracy, completeness or any other purpose, and does not warrant or guarantee the accuracy of any information contained in such documents.

### **Primary Market Subscription Service**

The official statements, preliminary official statements, advance refunding documents and other documents and information provided through the primary market disclosure service are submitted to the MSRB by broker-dealers and banks that underwrite offerings of municipal securities. Such documents may not exist for all offerings of municipal securities and such documents are not required to be submitted to the MSRB for certain types of offerings. There is the possibility of failures by underwriters to submit required documents to the MSRB, or of errors or delays in the processing of such documents by underwriters or the MSRB. The MSRB does not review information contained in such documents for accuracy, completeness or any other purpose, and does not warrant or guarantee the accuracy of any information contained in such documents.

### **Short-term Obligation Subscription Service**

The information about securities bearing interest at short-term rates, which include Auction Rate Securities (ARS) and Variable Rate Demand Obligations (VRDOs) that are provided through the Short-term Obligation Rate Transparency ("SHORT") Service are submitted to the MSRB by ARS program dealers or auction agents or VRDO remarketing agents. Such information may not exist for all securities bearing interest at short-term rates and certain items of information are not required to be submitted to the MSRB for certain ARS and/or VRDOs. There is the possibility of failures by submitters to submit required information to the MSRB, or of errors or delays in the processing of such information by submitters or the MSRB. The MSRB does not review information submitted by submitters for accuracy, completeness or any other purpose, and does not warrant or guarantee the accuracy of any such information.

### **Real-Time Transaction Data Subscription Service**

The transaction data provided through the Real-Time Transaction Data Subscription Service represents municipal securities transaction data made available by brokers, dealers and municipal securities dealers to the MSRB and related information. Such transaction data and/or related information may not exist for all municipal securities and may not be required to be submitted to the MSRB for certain types of municipal securities transactions. The MSRB does not review transaction data submitted by submitters for accuracy, completeness or any other purpose, and does not warrant or guarantee the accuracy of any such transaction data and/or related information.

### **Comprehensive Transaction Data Subscription Service**

The transaction data provided through the Comprehensive Transaction Data Subscription Service represents trade reports for specific trade dates: (i) made available at approximately 6:00 a.m. on the business day following trade date ("T+1"); (ii) made available five business days after that trade date ("T+5"); and (iii) made available 20 days after that trade date ("T+20"). Such data and/or related information may not exist for all municipal securities. The MSRB does not review the data for accuracy, completeness or any other purpose, and does not warrant or guarantee the accuracy of any such data.



**Exhibit 2: Market Transparency Subscription Usage Report**

# Market Transparency Subscription Usage Report

Pursuant to the MSRB Subscription Service Agreement, subscribers agree to submit annually information about their use of MSRB Market Transparency Subscription Service. The information is due to the MSRB by January 31.

- Subscriber Name: \_\_\_\_\_
- Type of Organization, if applicable
  - ▶ *Check all that apply.*
  - Broker-Dealer or Bank Dealer
  - Municipal Advisor
  - Information Vendor/Data Provider
  - Registered Investment Advisor/Asset Manager
  - Government, Regulator
  - Academic Institution/Not-for-Profit
  - Other
- Date: Information provided in this report is accurate as of \_\_\_\_\_(date)

## MSRB Market Transparency Subscription Usage Report

- Usage Reporting

- Provide all information requested for each service to which the organization subscribes.

MSRB Subscription Service	MSRB Transaction Data Subscription Service	MSRB Short-term Obligation Rate Transparency Subscription Service	MSRB Primary Market Disclosure Subscription Service	MSRB Continuing Disclosure Subscription Service
<b>INTERNAL USAGE</b>				
Check the box for each subscription service for which the subscriber uses MSRB Services internally for research, internal systems or other purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
For each applicable service, enter the estimated number of current internal users that access MSRB Services.	_____	_____	_____	_____
<b>RE-DISSEMINATION</b>				
Check the box for each subscription service for which the subscriber re-disseminates MSRB Services through a website or terminal.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
For each applicable service, enter average number of monthly visitors that access MSRB Services through the website or terminal.	_____	_____	_____	_____
<b>Types of Users</b> Check all that apply.	<input type="checkbox"/> Broker-Dealer <input type="checkbox"/> Municipal Advisor <input type="checkbox"/> Institutional Investor or Investment Manager	<input type="checkbox"/> Broker-Dealer <input type="checkbox"/> Municipal Advisor <input type="checkbox"/> Institutional Investor or Investment Manager	<input type="checkbox"/> Broker-Dealer <input type="checkbox"/> Municipal Advisor <input type="checkbox"/> Institutional Investor or Investment Manager <input type="checkbox"/> Retail Investor	<input type="checkbox"/> Broker-Dealer <input type="checkbox"/> Municipal Advisor <input type="checkbox"/> Institutional Investor or Investment Manager <input type="checkbox"/> Retail Investor



<b>MSRB Subscription Service</b>	<b>MSRB Transaction Data Subscription Service</b>	<b>MSRB Short-term Obligation Rate Transparency Subscription Service</b>	<b>MSRB Primary Market Disclosure Subscription Service</b>	<b>MSRB Continuing Disclosure Subscription Service</b>
	<input type="checkbox"/> Retail Investor <input type="checkbox"/> Municipal Securities Issuer <input type="checkbox"/> Other Municipal Professional <input type="checkbox"/> Other	<input type="checkbox"/> Retail Investor <input type="checkbox"/> Municipal Securities Issuer <input type="checkbox"/> Other Municipal Professional <input type="checkbox"/> Other	<input type="checkbox"/> Municipal Securities Issuer <input type="checkbox"/> Other Municipal Professional <input type="checkbox"/> Other	<input type="checkbox"/> Municipal Securities Issuer <input type="checkbox"/> Other Municipal Professional <input type="checkbox"/> Other
<b>CUSTOM PRODUCTS/SERVICES</b>				
Check the box for each subscription service for which the subscriber uses MSRB Services to produce custom products or services (e.g., derivative or value-added products).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Estimated number of current clients and individual users of custom products or services that include MSRB Services (e.g., derivative or value-added products).	_____	_____	_____	_____
<b>Types of Clients that purchase derivative works that incorporate MSRB Services</b> Check all that apply.	<input type="checkbox"/> Broker-Dealer <input type="checkbox"/> Municipal Advisor <input type="checkbox"/> Institutional Investor or Investment Manager <input type="checkbox"/> Retail Investor <input type="checkbox"/> Municipal Securities Issuer <input type="checkbox"/> Other Municipal Professional <input type="checkbox"/> Other	<input type="checkbox"/> Broker-Dealer <input type="checkbox"/> Municipal Advisor <input type="checkbox"/> Institutional Investor or Investment Manager <input type="checkbox"/> Retail Investor <input type="checkbox"/> Municipal Securities Issuer <input type="checkbox"/> Other Municipal Professional <input type="checkbox"/> Other	<input type="checkbox"/> Broker-Dealer <input type="checkbox"/> Municipal Advisor <input type="checkbox"/> Institutional Investor or Investment Manager <input type="checkbox"/> Retail Investor <input type="checkbox"/> Municipal Securities Issuer <input type="checkbox"/> Other Municipal Professional <input type="checkbox"/> Other	<input type="checkbox"/> Broker-Dealer <input type="checkbox"/> Municipal Advisor <input type="checkbox"/> Institutional Investor or Investment Manager <input type="checkbox"/> Retail Investor <input type="checkbox"/> Municipal Securities Issuer <input type="checkbox"/> Other Municipal Professional <input type="checkbox"/> Other

## Additional Information Market Transparency Subscription Usage Report

- Please provide any additional description of usage of MSRB Services not reported above.

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