

## YOURIKA CORP. ("YOURIKA") TYMORAPRO ONLINE SERVICES AGREEMENT

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**IMPORTANT! READ THIS AGREEMENT BEFORE USING ANY OF THE YOURIKA CORP. ("YOURIKA") TYMORAPRO ONLINE SERVICES. YOURIKA'S ONLINE SERVICES INCLUDE ORDER ENTRY AND ACCOUNT STATUS SYSTEMS, AND MARKET, TRADING AND GENERAL INFORMATION, INCLUDING QUOTES, CHARTS, NEWS, AND OTHER SERVICES THAT MAY BE ADDED FROM TIME TO TIME. THESE SERVICES SHALL BE HEREIN COLLECTIVELY REFERRED TO AS "TYMORAPRO". LICENSEE'S USE OF THE SYSTEM, OR SIGNED ACKNOWLEDGEMENT, INDICATES LICENSEE'S UNQUALIFIED ACCEPTANCE OF ALL OF THE TERMS OF THE AGREEMENT. IF THIS AGREEMENT IS UNACCEPTABLE TO LICENSEE, LICENSEE SHOULD IMMEDIATELY CEASE USING TYMORAPRO. YOURIKA CAN ONLY PROVIDE LICENSEE ACCESS TO TYMORAPRO IF LICENSEE AGREES TO BE BOUND BY THE TERMS DESCRIBED WITHIN THIS AGREEMENT.**

### Agreement to Terms of Service Amendments

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The following Terms of Service govern LICENSEE's use of the tymoraPRO service. "LICENSEE" and "LICENSEE's" refers to each account holder who enrolls to subscribe to the YOURIKA TYMORA service. In the case of an entity, "LICENSEE" and "LICENSEE's" refers to the entity, and by enrolling, the entity agrees that access to YOURIKA TYMORA shall be restricted to Authorized Representatives (as defined in the account agreement) for such entity and that the entity will be liable for all acts or omissions of such Authorized Representatives in violation of these Terms of Service. These Terms of Service incorporate all disclosures displayed on the YOURIKA website ([www.yourika.com](http://www.yourika.com)), including fees, and the supplement the tymoraPRO Client Relationship Agreement which LICENSEE is required to sign as well as LICENSEE's tymoraPRO Disclosure and Legal Disclaimer Agreements, as applicable, which otherwise remain in full force and effect. By using tymoraPRO, LICENSEE is representing to YOURIKA and its licensors and Information Providers that LICENSEE is at least 18 years old (or the minimum legal age in LICENSEE's jurisdiction).

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**tymoraPRO IS A PROFESSIONAL TRADING PLATFORM DESIGNED FOR INDIVIDUALS AND ENTITIES WHO POSSESS SUBSTANTIAL RISK CAPITAL AND UNDERSTAND AND ARE EDUCATED UPON THE NATURE AND THE ASSUMPTION OF RISK, WHICH, IF TRADING ON MARGIN, COULD INVOLVE LOSSES GREATER THAN THE AMOUNT OF MONEY INVESTED.**  
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### Subscriber's Representations and Warranties

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LICENSEE represents that all information supplied by LICENSEE to LICENSEE's Broker-Dealer's in connection with the opening of LICENSEE's brokerage account and YOURIKA in the YOURIKA TYMORA Subscriber Agreement is accurate and complete, and that we are legally entitled to rely on such information, and LICENSEE agrees to promptly report any material change in such information. LICENSEE represents to us that LICENSEE has read and understands all risk disclosure statements, if any, that have been provided to LICENSEE, and understand that all transactions effected for LICENSEE's account are at

LICENSEE's risk, and that LICENSEE is solely liable therefore under any and all circumstances. LICENSEE acknowledges that stock, futures, options, and foreign exchange trading is only suitable for persons who are financially able to withstand losses. Such losses may substantially exceed margins or other funds LICENSEE has deposited with the Broker-Dealer. LICENSEE agrees to immediately notify YOURIKA and LICENSEE's respective Broker-Dealers if LICENSEE is unable or no longer willing to sustain such potential financial losses.

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tymoraPRO DIRECT ACCESS ORDER EXECUTION/ROUTING AND ADVANCED DECISION  
SUPPORT ENVIRONMENT FOR PROFESSIONAL TRADERS  
SOFTWARE SUBSCRIBER LICENSE APPLICATION & AGREEMENT

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This Agreement is entered into by and between YOURIKA CORP. ("YOURIKA" or "Licensor"), a New York State Corporation, and ("LICENSEE" or "Licensee") whose personal business/home office is located at \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, LICENSEE desires to subscribe to the online service known as tymoraPRO® ("TYMORAPRO") offered by YOURIKA, and to have the tymoraPRO services installed in the business office and/or residence of LICENSEE. tymoraPRO and its corresponding components shall be collectively referred to as the "Licensed Product".

The Licensed Product provides, among other application features: Electronic Message Function in the form of order entry, order routing. Functions to receive, access and/or display market information consisting of securities prices, other information and other data (selectively "tymoraPRO Data") that is provided by certain Financial Exchanges, News, and other information sources (Selectively "Sources"). LICENSEE desires to be authorized by YOURIKA to use the Licensed Product tymoraPRO subject to the terms and conditions set forth in this agreement.

WHEREAS, YOURIKA is willing to provide such data processing service to LICENSEE on the terms and conditions set forth below,

NOW, THEREFORE, and in consideration of the terms and conditions, mutual promises and covenants exchanged herein, as set forth below, and other good and valuable consideration, the receipt, and sufficiency of which are hereby acknowledged, YOURIKA and Licensee agree as follows:

**AUTHORIZATION**

LICENSEE is authorized a non-exclusive, non-transferable license to use the Licensed Product and become a tymoraPRO subscriber on the terms and conditions that are contained in YOURIKA's then existing (professional or non-Professional) tymoraPRO Subscriber Agreement ("tymoraPRO Subscriber"). Nothing contained in this Agreement shall grant the LICENSEE the right to transfer Sub-licenses for Sub-Distribution Agreements. YOURIKA may change, modify, or add to or delete from the Licensed Product set forth on Schedule A at any time and pursuant to Scheduled releases, upgrades, and enhancements.

#### **ACCEPTANCE OF ORDERS AND GRANTING OF LICENSES BY YOURIKA**

LICENSEE shall submit to YOURIKA a tymoraPRO Subscriber Agreement signed by LICENSEE for acceptance or rejection by YOURIKA. YOURIKA shall have the right to accept or reject any tymoraPRO Subscriber Agreement submitted to it in YOURIKA's sole discretion. Access to the Licensed Product and/or tymoraPRO Data, either directly or indirectly shall not be provided until the customer has entered into an tymoraPRO Subscriber Agreement with YOURIKA, and the Initial Monthly Payment (as defined in the tymoraPRO Subscriber Agreement), has been remitted to YOURIKA. YOURIKA may change any of the terms and conditions of the tymoraPRO Subscriber Agreement upon notice to LICENSEE, and the terms and conditions of the version of the tymoraPRO Subscriber Agreement in effect on this Date of Acceptance by YOURIKA shall prevail. LICENSEE shall have no authority to obligate YOURIKA to provide the licensed product for access to the tymoraPRO Data under a warranty or guarantee of any kind.

#### **GRANT OF LIMITED LICENSE**

YOURIKA grants to LICENSEE, and LICENSEE accepts for the term of this Agreement, a personal, non-exclusive, non-transferable license for: (i) LICENSEE, and/or (ii) the number of users under the LICENSEE's authorization and control ("Authorized Users"), in accordance with the terms of this Agreement, to: (1) use the machine readable version of the software selected by LICENSEE as identified in Schedule A and any corresponding user manual(s) or other user documentation (collectively "Licensed Product") solely for LICENSEE's own internal business use within the Territories identified in Schedule A; and (2) use the Licensed Product to access YOURIKA's network for electronic message routing ("tymoraPRO Network").

License Restrictions. LICENSEE shall not copy, in whole or in part, the Licensed Product, except that LICENSEE has limited permission to make one (1) copy of the Licensed Product for archival or emergency backup purposes, provided that such copy shall be subject to the terms of this Agreement and shall bear the appropriate trademarks, copyright notices and other proprietary and confidentiality notices contained in versions of the Licensed Product licensed by YOURIKA under this Agreement. Except as expressly provided in this Agreement, LICENSEE and any Authorized User shall: (i) not use, copy, translate, modify, adapt, reverse compile, disassemble, reverse engineer or transfer the Licensed Product, in whole or in part; (ii) prohibit unauthorized disclosure or copying of the Licensed Product, and (iii) not use the Licensed Product to provide timeshare services, service bureau services, outsourcing services or consulting services, or for any unlawful purpose. LICENSEE shall be responsible and liable to YOURIKA and any third party for any use, display, or access of the Licensed Product through use of LICENSEE's access

granted under this Agreement by any person or entity who is not a party to or covered by this Agreement, including, without limitation, any direct or indirect use or access, whether authorized or unauthorized by Licensee.

## **LICENSOR AND LICENSEE RESPONSIBILITIES**

LICENSEE shall endeavor to maintain high standards of business conduct and shall conduct this business at all times in such a manner as will reflect favorably on YOURIKA and the Sources, as reasonably determined by YOURIKA and shall avoid in any way deceptive, misleading or unethical practices with respect to YOURIKA, the Licensed Product, and/or the tymoraPRO Data.

The rights granted LICENSEE pursuant to this agreement are conditioned upon LICENSEE's strict compliance with the provisions of this agreement and with all applicable federal, state and local laws, rules and regulations. By entering into this Agreement, YOURIKA warrants that it will conduct its business in strict compliance with the provisions of this agreement and with all applicable federal, state and local laws, rules and regulations.

LICENSEE's use of tymoraPRO acknowledges LICENSEE's acceptance of the then current TYMORA Subscriber Agreement.

If applicable, LICENSEE shall furnish to YOURIKA a written report regarding any change in the LICENSEE's authorized use address.

LICENSEE acknowledges that the Licensed Product may contain YOURIKA's Trade Marked Application features that may be accessed and used by LICENSEE and/or tymoraPRO Subscribers only through a registered Broker/Dealer ("Broker Dealer"). LICENSEE acknowledges that it shall be solely responsible for the management and oversight of any and all orders placed, taken and/or submitted through its tymoraPRO User ID, including, without limitation, the initiation or cancellation of any such orders and/or the opening and closing of any trading accounts. LICENSEE further acknowledges that YOURIKA has no control over or responsibility for managing, monitoring, overseeing and/or initiating or canceling any such orders and that YOURIKA is not a Broker/Dealer, and is not providing any investment advice, and is not executing, accepting or directing any trades for or on behalf of any person or entity, and is not providing any clearing services, and is not providing any trade or order confirmation, and is not providing any services which require licensing or registration with the NASD, SEC, or any other regulatory body or Exchange. LICENSEE shall at all times be responsible and liable for any trades, trading activity, trading confirmation, order-execution or securities related transaction.

LICENSEE acknowledges and agrees that YOURIKA and the Sources assume no responsibility and shall not be liable to LICENSEE or the tymoraPRO Subscribers for any decision made or action taken in reliance upon the Licensed Product, the tymoraPRO Data and/or any other information or data provided to the Licensed Product and/or tymoraPRO Data. If applicable, all orders and trades are the tymoraPRO Subscriber's responsibility and are placed, taken and/or submitted at tymoraPRO Subscriber's sole risk. LICENSEE acknowledges and agrees that the Licensed Product, the tymoraPRO Data and/or any other

information and Data provided through the Licensed Product and/or tymoraPRO Data are not intended to provide legal, investment, or tax advice and any tymoraPRO Subscriber requiring such advice should consult professional advisors.

## **PURPOSE**

The purpose of this Agreement is to set forth the terms and conditions governing the mutual rights, duties, and obligations of the parties hereto.

## **TERM**

This Agreement shall be effective on \_\_\_\_\_, 2003 (The "Engagement Date", or "Effective Date"). Cancellation of LICENSEE's subscription must occur before the 25<sup>th</sup> day of the current month for cancellation to be effected by the beginning of the next month. Any breach of the terms of this agreement shall be grounds for YOURIKA to terminate provision of the tymoraPRO service.

## **OBLIGATIONS UPON TERMINATION**

Immediately upon termination of this Agreement by YOURIKA or LICENSEE, LICENSEE shall cease to use all of the Software, Derivative Products, Services, and Documentation. Any and all clauses in this Agreement involving confidentiality, secrecy, and other relevant clauses, including any outstanding payment for service due, remain in full force after Termination of this Agreement.

## **TERMINATIONS and SURVIVAL**

In the event LICENSEE breaches any terms or conditions identified in this Agreement, YOURIKA shall have the right, in addition to any other remedies available under this Agreement, at law or in equity, to suspend access to the Licensed Product and/or the tymoraPRO Network and/or to terminate this Agreement, upon notice and without liability of any kind of YOURIKA to LICENSEE, to any Authorized User or to any person or entity claiming by or through or on behalf of LICENSEE, with respect to such termination or suspension. This Agreement shall terminate automatically in the event LICENSEE becomes insolvent or enters into bankruptcy, suspension of payments, moratorium, reorganization, an assignment for the benefit of creditors or any other preceding that relates to insolvency or protection of creditor's rights. Upon the termination or expiration and non-renewal of this Agreement for any reason, all rights granted to LICENSEE hereunder shall cease, and LICENSEE shall promptly: (a) purge the Licensed Product and terminate access to the tymoraPRO Network from all of LICENSEE's computer systems, storage media and other files; (b) destroy the Licensed Product and all copies thereof; (c) if requested, provide tymoraPRO with written statement certifying that LICENSEE has taken the actions set forth in subsections (a) and (b) above; and (d) pay any and all fees and charges incurred as of the date of termination including, without limitation, the costs of removing any equipment or software, and other components of the tymoraPRO Network from LICENSEE's premises and for canceling and/or removing the communication lines to the tymoraPRO Network (if applicable).

## **SERVICES PROVIDED**

### **(a) Nature of the tymoraPRO Service**

tymoraPRO is designed for Clients who wish to self-direct their active intra-day trading in a brokerage account. YOURIKA does not provide any tax, legal or investment advice nor give any advice or offer any opinion regarding the suitability of any security, order or transaction in a brokerage account. No tymoraPRO research opinion nor any trade alert of any security (such as the InfoAlerts Window or WatchVU Screen stock selections) provided to Clients at large constitutes a recommendation to a specific subscriber to purchase or sell or trade any investment. LICENSEE agrees that any investments LICENSEE makes through LICENSEE'S brokerage firm, whether based on information obtained from tymoraPRO or otherwise, will be solely LICENSEE'S own decision and based on LICENSEE'S own evaluation of LICENSEE'S personal investment risk profile and LICENSEE'S investment objectives.

### **(b) YOURIKA will provide LICENSEE with the tymoraPRO Software Service.**

YOURIKA's services provided hereunder shall be available on each day that the New York Stock Exchange and NASDAQ markets are open for trading. On such days, YOURIKA shall make diligent efforts to provide YOURIKA services, reflective of the licenses issued, to LICENSEE and respond to system inquiries from LICENSEE. YOURIKA reserves the right to limit or curtail availability when necessary for system upgrades, adjustments, maintenance or other operational considerations, outside of normal NYSE and NASDAQ trading hours.

General enhancements to existing and licensed YOURIKA services provided hereunder shall be made available to LICENSEE, but any new features or services that may be developed by YOURIKA during the term of this Agreement, at YOURIKA's option, and subject to LICENSEE'S acceptance, may be made available to LICENSEE at YOURIKA's then current prices for such new features or services and upon such terms as YOURIKA reasonably deems appropriate. Enhancements to existing YOURIKA services requested by LICENSEE may be provided at YOURIKA's option and discretion. All enhancements to YOURIKA services and any new features or services introduced by YOURIKA, shall remain the exclusive proprietary property of YOURIKA.

## **Terms of Service Amendments**

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The following Terms of Service govern LICENSEE'S use of the tymoraPRO service. "LICENSEE" and "LICENSEE'S" refers to each account holder, who signs an enrollment form to subscribe for the YOURIKA TYMORA service. In the case of an entity, "LICENSEE" and "LICENSEE'S" refers to the entity, and by enrolling, the entity agrees that access to tymoraPRO shall be restricted to Authorized Representatives (as defined in the account agreement) for such entity and that the entity will be liable for all acts or omissions of such Authorized Representatives in violation of these Terms of Service. These Terms of Service incorporate all disclosures displayed on the tymoraPRO website ([www.tymora.net](http://www.tymora.net)), including our fees, and they supplement the tymoraPRO Client Relationship Agreement which LICENSEE are required to sign as well as LICENSEE'S tymoraPRO Disclosure and Legal Disclaimer Agreements, as applicable, which otherwise remain in full force and

effect. By using tymoraPRO, LICENSEE is representing to tymoraPRO and its licensors and Information Providers that LICENSEE is at least 18 years old (or the minimum legal age in LICENSEE'S jurisdiction).

YOURIKA reserves the right to add, delete or modify tymoraPRO's functionality and trading rules and to amend or supplement these Terms of Service upon notice, delivered by regular mail, by e-mail or by an on-screen alert on the YOURIKA tymoraPRO site. YOURIKA also reserves the right to terminate LICENSEE's enrollment in YOURIKA tymoraPRO at any time, for any reason whatsoever.

## **FEES**

(a) Licensee shall pay to YOURIKA the following on a monthly basis per terminal:

(i) User Fee. LICENSEE shall pay to YOURIKA the monthly user fee set forth on Schedule A.

(ii) Message Routing Fees. LICENSEE shall pay to YOURIKA the monthly Message Routing Fees set forth on Schedule A for electronic messages routed on a monthly basis. If a minimum Message Routing Fee is set forth in Schedule A ("Minimum Fee") Licensee shall be responsible for the payment to YOURIKA of the higher of the Minimum Fee or the actual Message Routing Fees incurred on a monthly basis. YOURIKA will use reasonable efforts to produce electronic message reports as a basis for billing Message Routing Fees. Should electronic message reports not be available for whatever reason LICENSEE shall produce acceptable reports from other sources, including the Destinations.

(b) Changes in Fees. YOURIKA may change any and all fees and charges, including, without limitation the User Monthly Fee and Message Routing Fees, at any time and from time to time upon notice to LICENSEE, according to the number of days set Forth in Schedule A and such fees and charges as changed shall be effective as of the next billing cycle. LICENSEE acknowledges, agrees, and accepts that such changes in fees would be transmitted by regular mail, by e-mail or by an on-screen alert on the tymoraPRO platform and/or website. In particular, tymoraPRO reserves the right to change its fees, to add fees for things that are not currently charge for and to institute an inactivity fee for periods in which there is no fee-generating activity in LICENSEE'S account.

(c) Taxes. All fees and charges, including User Monthly Fees and Message Routing Fees, are exclusive of any applicable taxes or assessments imposed by or pursuant to any government body or License division thereof on the services and transactions hereunder (collectively "Taxes"), except for any federal, state or local income taxes with respect to the services and transactions hereunder.

## **CREDIT INFORMATION AND INVESTIGATION**

LICENSEE authorizes YOURIKA and, if applicable, LICENSEE'S broker, in YOURIKA's or Broker-Dealer's discretion to investigate and release reports concerning LICENSEE's credit-standing and business-conduct. LICENSEE agrees that YOURIKA may hold and process by computer or otherwise any Information obtained about LICENSEE as a result of

LICENSEE's use of the YOURIKA services ("Personal Data") which may be used by us for risk-management and performance purposes; credit assessment; statistical, including behavior analysis; and to identify and provide LICENSEE with information concerning products and services (including those supplied by third parties) which may be of interest. LICENSEE agrees that we may disclose Personal Data, reflective of LICENSEE authorization, to licensed credit reference agencies; to any of our subcontractors, agents or Information Providers where necessary to provide LICENSEE with the Service; or if we have a right or duty to disclose or are permitted or compelled to do so by law. Personal Data will be deleted from the System as soon as possible after LICENSEE ceases to use the System, subject to applicable record keeping requirements. LICENSEE has the right to inspect LICENSEE'S Trading Records Data and to have incomplete or inaccurate information rectified. If LICENSEE wishes to exercise any of these rights or if LICENSEE does not want LICENSEE'S Trading Record Data used to provide LICENSEE with information concerning products and services, LICENSEE may inform YOURIKA in writing.

## **tymoraPRO ELECTRONIC ORDER ENTRY & ACCOUNT ACCESS AGREEMENT**

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### **TYMORAPRO LICENSE GRANT AND RIGHT OF USE**

This Agreement sets forth the terms and conditions under which YOURIKA has access to terminal(s), including terminal access via the Internet to monitor the electronic transmission of orders via LICENSEE's Software license. This Agreement also sets forth the terms and conditions under which YOURIKA shall be permitted to electronically monitor the activity and positions in LICENSEE's account (collectively, The "Service"). tymoraPRO is a proprietary service offered by YOURIKA or via a third party system offered by a broker-dealer, vendor or Exchange. For purposes of this Agreement, the term "Service" includes all software and communication links. By this Agreement, YOURIKA is supplying LICENSEE with software for use in conjunction with LICENSEE's stock brokerage account, and we are granting LICENSEE a non-exclusive and non-transferable License to use such software subject to the terms hereof. LICENSEE may use the software solely for LICENSEE's own internal trading purposes. Neither the software nor the Service may be used to provide trading, third party training, virtual or actual research or as a service bureau for any third parties. If LICENSEE's account has been introduced to YOURIKA, all references to YOURIKA in this Agreement shall include LICENSEE's broker, and LICENSEE's broker shall enjoy all benefits and rights hereunder. Nothing in this Agreement alters or modifies the terms of any other agreement between YOURIKA and the LICENSEE. If a third party sponsors the Service, LICENSEE agrees that YOURIKA shall enjoy all of the rights and benefits under the terms of any agreements between the third party Service sponsor and LICENSEE as if YOURIKA were parties to such agreement.

### **ACCESS**

Where YOURIKA controls access, YOURIKA shall provide LICENSEE with access to the Service. If a third party sponsors the Service LICENSEE may need additional consents in order to access the Service. The Service may be used to transmit, receive and confirm execution of orders, subject to prevailing market conditions and applicable exchange rules and regulations. YOURIKA consents to LICENSEE's access and use in reliance upon



LICENSEE's having adopted procedures to prevent unauthorized access to and use of the Service, and in any event, LICENSEE agrees to any financial liability for trades executed through the Service. If permitted by the Service, LICENSEE may send and receive electronic mail, engage in tymoraPRO trading training conferences and chats, download and upload files and otherwise use the Service as permitted herein pursuant to YOURIKA'S policies, applicable law and, if a third party sponsored Service, the Service's terms of use and access agreement. Files that LICENSEE uploads and LICENSEE's activity in conferences and chats are subject to review, modification and deletion without notice to LICENSEE. YOURIKA reserves the right in its sole discretion to institute or change policies at any time, upon appropriate written or electronic notification being presented to LICENSEE. Files uploaded to a YOURIKA controlled and administered bulletin board may be subject to posted limitations on usage, reproduction and/or dissemination, and LICENSEE is responsible for adhering to such limitations if LICENSEE downloads them.

#### **ORDER ROUTING AND MESSAGING: WARRANTIES AND LIMITATION OF LIABILITY**

LICENSEE accepts responsibility for selection and use of the Service and for any trading and other decisions made by LICENSEE based on its use. LICENSEE shall not use any Password or ID we supply to LICENSEE for clearing any transaction with another broker. LICENSEE accepts responsibility for the monitoring and performance of LICENSEE's account. LICENSEE will immediately notify LICENSEE's broker-dealer and YOURIKA in writing if LICENSEE becomes aware of the following: (a) any loss, theft or unauthorized use of LICENSEE's Password(s), IDs and/or account number(s); or (b) any failure by LICENSEE to receive a message indicating that an order was received and/or executed. LICENSEE will immediately notify LICENSEE's broker-dealer if LICENSEE experiences (i) any failure by LICENSEE to receive an accurate confirmation of an execution; or (ii) any receipt of confirmation of an order and/or execution which LICENSEE did not place; or (iii) any inaccurate information in LICENSEE's account balances, positions, or transaction history.

#### **EXCHANGES – LIMITATION OF LIABILITY**

Exchanges offering an electronic trading or order routing system may have adopted rules to limit their liability, the liability of Broker-Dealers, and software and communication system vendors and the amount of damages LICENSEE may collect for system failure and delays. These limitations of liability provisions vary among the exchanges. LICENSEE should consult the rules and regulations of the relevant exchange(s) in order to understand these liability limitations. Each exchange's relevant rules are available upon request from the industry professional with which LICENSEE has an account. Some exchanges' relevant rules also are available on the exchange's Internet home page.

Before LICENSEE engages in transactions using an electronic system, LICENSEE should carefully review the rules and regulations of the exchange(s) offering the system and/or order routing options LICENSEE intends to utilize while trading.

#### **DIFFERENCES AMONG ELECTRONIC TRADING SYSTEMS**

Trading or routing orders through electronic systems varies widely among the different electronic systems. LICENSEE should consult the rules and regulations of the exchange offering the electronic system or order routed to understand, among other things, in the

case of trading systems, the system's order-matching procedure, opening and closing procedures and prices, error trade policies, and trading limitations or requirements. In the case of all systems, LICENSEE should familiarize oneself with the qualifications for access and grounds for termination and limitations on the types of orders that may be entered into the system. Each of these matters may present different risk factors with respect to trading on or using a particular system. Each system may also present risks related to system access, varying response times and security. In the case of Internet-based systems, there may be additional types of risks related to system access, varying response times and security, as well as risks related to service providers and the receipt and monitoring of electronic mail.

### **RISKS ASSOCIATED WITH SYSTEM FAILURE**

Trading through an electronic trading or order routing system exposes LICENSEE to risks associated with systems or component failure. In the event of system or component failure, it is possible that, for a certain time period, LICENSEE may not be able to enter new orders, execute existing orders, or modify or cancel orders that were previously entered. System or component failure may also result in loss of orders or order priority.

### **PAYMENT TERMS**

LICENSEE agrees to pay all subscription, service and usage fees, if any, for any orders executed through the System and agree that such fees may be changed without notice. LICENSEE agree to pay all costs (including attorney's fees), if any, incurred by YOURIKA in collecting overdue fees from LICENSEE.

YOURIKA will invoice LICENSEE on a monthly basis for the User Monthly Fees, and Message Routing Fees as set forth on Schedule A, which will be effectuated through automatic deduction from subscriber's brokerage account as agreed to in Exhibit 2. LICENSEE shall remit payment for each invoice within ten (10) calendar days of the date of each invoice or as otherwise specified in Schedule A. Failure to pay any fees or other charges or amounts (including Taxes) due to YOURIKA under this Agreement shall be a breach of this Agreement (a "Failure to Pay"). Notwithstanding language to the contrary, in the event of a Failure to Pay, YOURIKA may immediately terminate access to all or any of the Licensed Products and/or the tymoraPRO Network in addition to all other remedies available to YOURIKA. Upon a Failure to Pay, YOURIKA may assess a late charge at a rate of two (2%) percent per month or the highest rate permitted by law, whichever is less, on all unpaid amounts from the due date until paid in full. LICENSEE shall pay all, exchange fees, communication fees, personal property Taxes, sales or use taxes, SEC taxes, lease taxes, value-added taxes and LICENSEE's other third party charges with respect to all amounts that become due and owing under this Agreement. In cases in which YOURIKA is billed directly for the above fees and charges, such fees and charges shall be billed as "pass-throughs" on LICENSEE's monthly invoice along with supporting documentation. Licensee shall pay all reasonable attorney's fees and costs of collection incurred by YOURIKA in collecting any and all unpaid amounts hereunder.

### **OWNERSHIP / LICENSE USE**

LICENSEE acknowledges that all copies of the Software as well as any Intellectual Property, information, and data provided by YOURIKA and made available to LICENSEE are

the sole property of YOURIKA. LICENSEE shall not have any right, title or interest in or to any such Software or intellectual property or copies thereof except as provided in this Agreement, and further shall secure and protect all Software, Derivative Products, and Documentation consistent with maintenance of YOURIKA's proprietary rights therein.

### **OWNERSHIP RIGHTS RESERVED**

No title or ownership of Intellectual Property rights in and of Licensed Product or the tymoraPRO Network or any copy, translation, compilation or other derivative works are transferred to LICENSEE or any third party hereunder. LICENSEE agrees that unauthorized copies or disclosure of the Licensed Product and other Intellectual Property of YOURIKA or the Sources will cause great damage to YOURIKA and/or the Sources, which damage shall far exceed the value of the copies or information involved. LICENSEE shall not assign, pledge, encumber, sell or otherwise transfer to any third-party its license to use the Licensed Product or the tymoraPRO Network, or any rights of LICENSEE under this Agreement. LICENSEE shall keep its license to use the Licensed Product and to use the Licensed Product to access the tymoraPRO Network and other property of YOURIKA and/or the Sources free and clear of any and all liens, levies and encumbrances.

### **LICENSE USE**

YOURIKA represents that it is the owner of the entire right, title, and interest in and to the Software, and that it has the sole right to grant licenses hereunder, and that it has not knowingly granted licenses hereunder to any other entity that would restrict rights granted hereunder except as stated herein. Subject to the terms and conditions of this Agreement, Licensor grants to LICENSEE, (where LICENSEE is a Broker-Dealer), and LICENSEE accepts from Licensor, a non-exclusive, non-transferable license to use the Software Package and services, solely for the following purposes:

(a) Use by all customers of LICENSEE who are trading at LICENSEE's principal place of business and at other locations operated by LICENSEE, each of which must be approved in advance by Licensor ("Licensed Location"), and

### **LICENSED LOCATION**

The Licensed Location(s) is currently located at, \_\_\_\_\_, which may be changed and amended to from time to time.

LICENSEE shall exercise all of LICENSEE's rights under the Subscriber Agreement to the extent such rights protect Licensor's rights, title, and interest in the Software Package and services. The Remote Location from which the LICENSEE will trade shall be fully disclosed and specified in his or her tymoraPRO Subscriber Agreement. LICENSEE shall not be permitted access to the Software Package or services until such Remote User has executed, either (i) electronically prior to the account being opened and in writing within 30 days of the account being opened, or (ii) in writing prior to the account being opened, LICENSEE's agreement to abide by the Subscriber Agreement. No license to sublicense the Source Code of the Software or any portion thereof included in any Derivative Products is granted hereunder. In addition, LICENSEE will not sublicense the Software or any

portion thereof included in any Derivative Product to customers of LICENSEE without a Sublicense Agreement, which includes, without substantive alteration, the terms and conditions set forth therein. LICENSEE agrees to inform YOURIKA of any known breach of LICENSEE'S obligations. YOURIKA shall have the right to enforce the terms of the LICENSEE Subscriber Agreement.

## **WEB DISCLOSURE**

### **BROADCASTS, TRANSMISSIONS, DISPLAYS, AND RESPECTIVE DISCLAIMERS AND LIMITATIONS OF LIABILITY THERETO:**

LICENSEE hereby acknowledges and affirms that it has completely read and fully understands both the meaning, intent, and spirit of the following Legal Notices and Disclaimers which appear on YOURIKA related and affiliated websites, and does further declare that they will revisit and review these sites on a frequent basis by which to receive updates and additions to information declared and disclosed (reflective of the Licensed Product, industry regulatory advisories, etc).

YOURIKA makes available information, materials, and products on the [www.tymora.net](http://www.tymora.net) and [www.yourika.com](http://www.yourika.com) web sites (the "Web Sites"), subject to the following terms and conditions: By accessing these sites, LICENSEE agrees to the terms and conditions as outlined in this legal notice. YOURIKA reserves the right to change these terms and conditions from time to time in its sole discretion. These sites are presented for informational purposes only. No offer or solicitation to buy or sell either investment or trading products of any kind -- or any type of investment advice or strategies -- is made or given herein.

### **Copyright -- Limited License**

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## **USE OF SOFTWARE**

The software and accompanying documentation that are made available to download from this website are the copyrighted work of YOURIKA. Use of the software is governed by the terms of the applicable license agreement.

## **USE OF THE WEB SITE INFORMATION**

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**TYMORAPRO'S AVAILABILITY AND RESPONSE TIME ARE SUBJECT TO MARKET CONDITIONS AND POSSIBLE UNSCHEDULED OUTAGES.**

### **QUOTES, NEWS AND RESEARCH**

Quotes, news and research data provided through tymoraPRO are obtained from sources believed to be reliable, but YOURIKA cannot guarantee the accuracy, timeliness or completeness of such information for any particular purpose. Such information and any tymoraPRO research opinions provided do not constitute investment advice, or a solicitation by YOURIKA for the purchase or sale of any securities, or a representation that any securities are suitable for LICENSEE. Such information is protected by copyright and other intellectual property laws and may only be used for personal and non-commercial use, and not for providing professional investment advice or for providing securities processing services or other similar back office functions. If LICENSEE downloads any information from tymoraPRO for LICENSEE'S personal reference, LICENSEE agrees that LICENSEE will not remove or obscure any copyright or other notices contained in any such information. Except as provided in the preceding sentence, LICENSEE agrees not to copy, reproduce, modify, sell, distribute, transmit, display, perform, circulate, transfer, broadcast, create derivative works from, publish, or use for any commercial or unlawful purpose any quotes, news, research or other information LICENSEE receives through tymoraPRO. YOURIKA and its licensors and Information Providers may change or discontinue any quotes, news, research or other information at any time provided within tymoraPRO.

### **USE OF PASSWORDS**

LICENSEE acknowledges, represent and warrant that: (a) LICENSEE has received a number, code or other sequence which provides access to the Service (the "Password"); (b) LICENSEE is the sole and exclusive owner of the Password; (c) LICENSEE is the sole and exclusive owner of any identification number, code or other sequence which allows access to the Service via computerized online service (The "ID"); and (d) LICENSEE accepts full responsibility for use and protection of the Password and the ID as well as for any transaction occurring in an account opened or display of tymoraPRO publicly exhibited, held or accessed through the ID or the Password. LICENSEE shall be legally bound by any electronic order entry and account access agreement with the Broker-Dealer upon clicking the "Transmit" button (or other similar indicia of acceptance) after entering the required Password or ID. LICENSEE represents, warrants and agrees that any individual who has possession of any Password or ID is LICENSEE's duly authorized representative, having the power and authority to legally bind LICENSEE in this manner. Such acceptance shall be deemed to be as effective as a written signature performed manually by LICENSEE and shall be deemed to satisfy any writings requirements of any applicable law despite being written and accepted electronically. YOURIKA's electronically or other properly-stored copy of any such agreement shall be deemed to be the true, complete, valid, authentic and enforceable copy of any such agreement. YOURIKA's electronically-stored record of the date on which LICENSEE accepts such an agreement shall be conclusive evidence as to the effective date. Except if there is obvious tampering or loss of data, LICENSEE shall not contest the admissibility or enforceability of our copy of any such agreement. (e) LICENSEE accepts full responsibility for monitoring



LICENSEE's account. Should LICENSEE become aware of any loss, theft or unauthorized use of LICENSEE's Access Codes, LICENSEE shall notify LICENSEE's broker-dealer immediately; (f) Any and all materials that YOURIKA provides to LICENSEE in connection with tymoraPRO are the property of YOURIKA and are intended for LICENSEE's sole and individual use. LICENSEE shall not resell or permit access to tymoraPRO to others and agrees not to copy any such materials for resale to others. LICENSEE further agrees not to delete any copyright notices or other indications of protected intellectual property rights from materials that LICENSEE prints or downloads from the System; (g) LICENSEE further agrees that use of tymoraPRO is at LICENSEE's own risk. LICENSEE shall be responsible for providing and maintaining the communications equipment and telephone or alternative services required for accessing and using the Service, and for all communications service fees and charges incurred by LICENSEE in accessing the Service. LICENSEE further assumes all risks associated with the use and storage of information on LICENSEE's personal computer required for accessing and using the tymoraPRO Service.

Some U.S. states and foreign countries do not allow the exclusion or limitation of implied warranties or liability for incidental or consequential damages. Therefore, the above limitations may not apply to LICENSEE, or there may be state provisions that supersede the above. Any clause of this Disclaimer declared invalid by the appropriate authority shall be deemed severable and shall not affect the validity or enforceability of the remainder. The terms of this Disclaimer are governed by the laws of the State of New York and may only be amended in writing if signed by a principal officer of YOURIKA.

LICENSEE EXPRESSLY AGREES THAT LICENSEE'S USE OF THE tymoraPRO SERVICE IS AT LICENSEE'S SOLE RISK. LICENSEE ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM USE OF, OR MATERIALS OBTAINED THROUGH, THE SERVICE. NEITHER YOURIKA NOR ANY OF OUR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AFFILIATES, THIRD PARTY VENDORS, FACILITIES, INFORMATION PROVIDERS, LICENSORS, EXCHANGES, CLEARING ORGANIZATIONS OR OTHER SUPPLIERS PROVIDING DATA, INFORMATION, OR SERVICES, INCLUDING BUT NOT LIMITED TO THE NEW YORK STOCK EXCHANGE, INC., NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASDAQ), ARCHIPELAGO (ARCA), BLOOMBERG TRADEBOOK (BRUT), INSTINET (INCA), ISLAND (ISLD) (EACH A "PROVIDER"), WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY OR WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE TIMELINESS, SEQUENCE, ACCURACY, COMPLETENESS, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICE, OR TRANSACTION PROVIDED THROUGH THE SERVICE. THIS AGREEMENT DEFINES LICENSEE'S SOLE AND EXCLUSIVE REMEDY.

NEITHER YOURIKA NOR ANY PROVIDER SHALL BE LIABLE IN ANY WAY TO LICENSEE OR TO ANY OTHER PERSON FOR: (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY SUCH DATA, INFORMATION OR MESSAGE, OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH DATA, INFORMATION OR MESSAGE; OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH DATA, INFORMATION OR MESSAGE, DUE EITHER TO ANY NEGLIGENT ACT OR OMISSION OR TO ANY CONDITION OF "FORCE MAJEURE" (SUCH AS BY FLOOD, EXTRAORDINARY WEATHER CONDITION, EARTHQUAKE OR OTHER ACT

OF GOD, FIRE, WAR, INSURRECTION, RIOT, LABOR DISPUTE, ACCIDENT, ACTION OF GOVERNMENT, COMMUNICATIONS OR POWER FAILURE, EQUIPMENT OR SOFTWARE MALFUNCTION) OR ANY OTHER CAUSE, WHETHER OR NOT WITHIN OUR OR ANY PROVIDER'S CONTROL. THE USE AND STORAGE OF ANY INFORMATION INCLUDING, WITHOUT LIMITATION, THE PASSWORD, THE ID, PORTFOLIO INFORMATION, TRANSACTION ACTIVITY, ACCOUNT BALANCES AND ANY OTHER INFORMATION OR ORDERS AVAILABLE TO LICENSEE THROUGH LICENSEE'S USE OF THE SERVICE IS LICENSEE'S SOLE RISK AND RESPONSIBILITY.

### **LIMITATIONS**

Notwithstanding any warranty provisions set forth in this Agreement, all of YOURIKA's obligations with respect to such warranties shall be contingent on LICENSEE's use of the Software in exact accordance with this Agreement and in accordance with YOURIKA's instructions as provided by YOURIKA in the Documentation, or as such instructions may be amended, supplemented or modified by YOURIKA from time to time. YOURIKA shall have no warranty obligations with respect to any failures of the Software, which are the result of inadequate or improper training, accident, abuse, misapplication, power surge or electromagnetic field.

### **REMEDY**

YOURIKA's entire liability and LICENSEE's remedy at its election shall be the repair or replacement of the Software at YOURIKA's expense within thirty (30) days of LICENSEE's written notification to YOURIKA or, in the alternative, termination of the Agreement by LICENSEE.

### **DISCLAIMER OF WARRANTIES**

YOURIKA DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE IS "BUG" FREE. YOURIKA DOES HOWEVER WARRANT THAT ALL ERRORS IN THE SOFTWARE WILL BE CORRECTED TO THE BEST OF ITS ABILITY AND PROGRAMMING KNOWLEDGE AND RESOURCES. THE WARRANTIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY YOURIKA. THERE ARE NO OTHER WARRANTIES RESPECTING THE SOFTWARE, DERIVATIVE PRODUCTS, DOCUMENTATION OR SERVICES PROVIDED HEREUNDER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF YOURIKA HAS BEEN INFORMED OF SUCH PURPOSE. NO AGENT OF YOURIKA IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF YOURIKA AS SET FORTH HEREIN.

### **LIMITATION OF LIABILITY**

YOURIKA'S SOLE LIABILITY AND OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY SHALL BE: (I) AS TO ANY CLAIM, SUIT OR PROCEEDING BROUGHT AGAINST YOURIKA ALLEGING THAT THE LICENSED PRODUCT OR TYMORAPRO NETWORK OR LICENSEE'S USE OF LICENSED PRODUCT OR TYMORAPRO NETWORK CONSTITUTES A MISAPPROPRIATION OF, OR INFRINGEMENT UPON, ANY UNITED STATES OF AMERICA PATENT OR COPYRIGHT OF A THIRD PARTY, THE REMEDIES STATED ABOVE; AND (II) IN

THE EVENT LICENSEE IS UNABLE TO ACCESS THE LICENSED PRODUCT OR THE TYMORAPRO NETWORK FOR LONGER THAN TWENTY FOUR (24) CONTINUOUS HOURS SOLELY DUE TO THE ACTS OR OMISSIONS OF YOURIKA IN BREACH OF THIS AGREEMENT, YOURIKA SHALL (AT YOURIKA'S SOLE ELECTION) EITHER: CREDIT SUBSCRIBER AGAINST FUTURE FEES PAYABLE UNDER THIS AGREEMENT IF SUBSCRIBER CONTINUES TO USE THE LICENSED PRODUCT, OR REFUND, A PRORATED AMOUNT EQUAL TO THE FEES ACTUALLY PAID TO YOURIKA FOR THAT NUMBER OF CALENDAR DAYS OF THE CALENDAR MONTH THAT THE LICENSED PRODUCT COULD NOT BE USED FOR OVER TWENTY-FOUR (24) CONTINUOUS HOURS, UPON LICENSEE'S WRITTEN REQUEST WITHIN TEN (10) CALENDAR DAYS OF THE DATE ON WHICH THE LICENSED PRODUCT COULD FIRST NOT BE USED. YOURIKA SHALL NOT HAVE ANY LIABILITY IF THE LICENSED PRODUCT CANNOT BE USED FOR LESS THAN TWENTY-FOUR (24) CONTINUOUS HOURS. DOWNTIME DOES NOT INCLUDE TIME THAT NASDAQ IS DOWN, WHEN CIRCUIT BREAKERS APPLY, IF INTERNET CONNECTIVITY IS DOWN OR IF THERE HAS BEEN A NEW TYMORAPRO UPGRADE INSTALLED. IF ANY OF THE ABOVE CONDITIONS OCCUR, THE AGGRIEVED PARTY HAS THE RIGHT TO TERMINATE THIS AGREEMENT.

#### **TIME FOR MAKING CLAIMS**

ANY SUIT OR ACTION BY LICENSEE AGAINST YOURIKA, ITS AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, BASED UPON ANY ACT OR OMISSION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR SERVICES PERFORMED HEREUNDER OR ANY ALLEGED BREACH THEREOF, SHALL BE COMMENCED ON THE DATE LICENSEE IS FIRST MADE AWARE OF ANY SUCH CLAIM OR BE FOREVER BARRED. THIS PROVISION DOES NOT MODIFY OR OTHERWISE AFFECT THE LIMITATION OF YOURIKA'S LIABILITY SET FORTH IN THIS AGREEMENT.

#### **DISPUTE RESOLUTION**

Any dispute between the parties arising out of or relating to this Agreement that cannot be resolved by the parties themselves shall be submitted to mediation in New York, New York, administered by and conducted in accordance with the Rules of Commercial Mediation of the American Arbitration Association. Each party will bear its own costs in the mediation, including attorneys' fees. The losing party shall be responsible for mediator fees.

Any dispute that remains unresolved after mediation will be resolved by final and binding arbitration in New York, New York in accordance with the Rules of Commercial Arbitration of the American Arbitration Association. Each party shall bear its own costs in the arbitration, including attorneys' fees. The losing party shall be responsible for the cost of the arbitration proceeding.

The arbitrator(s) shall have the authority to award such damages as are not prohibited by this Agreement.

Any party may apply to a court of general jurisdiction to enforce an arbitration award, and if enforcement is ordered, the party against whom the order is issued shall pay the costs and expenses of the other party in obtaining such order, including reasonable attorneys' fees.

## **USE OF tymoraPRO / LICENSED PRODUCTS**

All methods of data access to the tymoraPRO Network on any LICENSEE computer must be authorized by YOURIKA, and any unauthorized access of tymoraPRO Network data on any LICENSEE computer is explicitly prohibited.

LICENSEE agrees that it will use the services provided hereunder only in connection with its own personal activities, and it will not, without the express written permission of YOURIKA, sell, lease, or otherwise provide or make available YOURIKA services to any third party.

## **CONFIDENTIALITY**

LICENSEE hereby acknowledges and agrees that the Software, Derivative Products, and Documentation constitute and contain valuable proprietary products and intellectual trade secrets of YOURIKA, embodying substantial creative efforts and confidential information, ideas, and expressions. Accordingly, LICENSEE agrees to treat (and take substantive and extensive precautions to ensure that its principals, employees, and proprietary traders, treat) the Software, Derivative Products, and Documentation as confidential in accordance with the confidentiality requirements and conditions set forth below.

(a) LICENSEE acknowledges that it may come in contact with, receive, have access to or create confidential and proprietary information of YOURIKA in its performance of this agreement. LICENSEE shall take all reasonable precautions necessary to safeguard the confidentiality of the confidential information of YOURIKA, including at a minimum, those taken by LICENSEE to protect LICENSEE's own confidential information, which in no event, shall be less than a reasonable standard of care. LICENSEE shall not allow the removal or defacement of any confidentiality or proprietary notice placed on the Licensed Product, tymoraPRO Data, and/or other confidential information of YOURIKA. The placement of copyright notices or intellectual property warnings on these items shall not constitute publication or otherwise impair their confidential nature. LICENSEE shall maintain the confidentiality of the YOURIKA proprietary, intellectual property, and confidential information for the term of this agreement and for ten (10) years after the termination or expiration and non-renewal of this Agreement for any reason, and with respect to trade secrets, until such time as each such trade secrets cease to be trade secrets.

Disclosure. LICENSEE shall not disclose in whole or in part, the information that has been designated as confidential to YOURIKA by any individual or entity, except for use in accordance with this Agreement or as required by any applicable law or regulatory body. LICENSEE acknowledges that any unauthorized use or disclosure of the Licensed Product or tymoraPRO Data or the other confidential and proprietary information of YOURIKA may cause irreparable damage to YOURIKA. If an unauthorized use or disclosure occurs, LICENSEE shall immediately notify YOURIKA and at LICENSEE's expense, shall take all steps necessary to recover the Licensed Product, tymoraPRO Network Data and/or other confidential and proprietary information of YOURIKA from any unauthorized user and shall prevent subsequent unauthorized use or dissemination.

## **MAINTENANCE OF CONFIDENTIAL INFORMATION**

Each party agrees to keep confidential all proprietary information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof, in the same manner it protects the confidentiality of similar information and data of its own, at all times exercising at least a reasonable degree of care in the protection of confidential information; provided, however, that neither party shall have any such obligation with respect to the disclosure to others not parties to this Agreement of such information that: (a) has been known publicly; (b) has been known generally in the industry before communication by the disclosing party to the recipient; (c) has become known publicly, without fault on the part of the recipient, subsequent to disclosure by the disclosing party; (d) has been known otherwise by the recipient before communication by the disclosing party or (e) has been received by the recipient without any obligation of confidentiality from a source other than the disclosing party lawfully having possession of such information.

### **INJUNCTIVE RELIEF**

LICENSEE acknowledges that the unauthorized use, transfer or disclosure of the Software, Derivative Products, Documentation or copies thereof will (i) substantially diminish the value to YOURIKA of the trade secrets and other proprietary interests that are the subject of this Agreement; (ii) render YOURIKA's remedy at law for such unauthorized use, disclosure or transfer inadequate, and (iii) cause irreparable injury in a short period of time. If LICENSEE breaches any of its obligations with respect to the use or confidentiality of the Software, Derivative Products or Documentation, YOURIKA shall be entitled to equitable relief to protect its interests herein including, but not limited to, preliminary and permanent injunctive relief

### **SURVIVAL OF OBLIGATIONS**

LICENSEE's obligations under this Article will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

### **PROTECTION OF SOFTWARE**

LICENSEE shall use the following notice, or such other reasonable notice(s) as YOURIKA shall from time to time require, on each display of the Software. Such notice shall be loaded in the computer memory or LICENSEE's website for use, display or reproduction and shall be embedded in program source code and object code, in the video screen display, on the physical medium embodying the Software presentation and discussion, and on any Documentation and reference manuals:

Copyright © YOURIKA CORP. of New York, 2003. All rights reserved.

tymoraPRO software and documentation constitute an unpublished work and contain valuable trade secrets and proprietary intellectual and intelligence information and data belonging to YOURIKA. None of the foregoing material may be copied, duplicated or disclosed without the express written permission of YOURIKA.

### **COPIES OF THE DISTRIBUTION CODE**

LICENSEE SHALL NOT COPY THE DISTRIBUTION CODE OF THE SOFTWARE EXCEPT FOR ARCHIVAL OR BACKUP PURPOSES, UNLESS AUTHORIZED SPECIFICALLY BY YOURIKA. LICENSEE MAY NOT MODIFY, COPY, REPRODUCE, REPUBLISH, UPLOAD, POST, TRANSMIT OR DISTRIBUTE IN ANY WAY CONTENT OR DISTRIBUTION FILES AVAILABLE THROUGH THE SERVICE AND ITS ASSOCIATED WEB SITES.

If YOURIKA, in its reasonable, good faith judgment, determines that there is a material risk of such unauthorized disclosure or use, it may demand immediate assurances, satisfactory to YOURIKA, that there will be no such unauthorized disclosure or use. In the absence of such assurance, YOURIKA may take such steps, as it deems necessary and may, in addition, terminate this Agreement. Nothing herein prohibits LICENSEE from challenging the propriety of any such termination through the process set forth herein or as otherwise permitted in this Agreement. The rights of YOURIKA hereunder are in addition to any other remedies provided by law.

## **GENERAL TERMS AND PROVISIONS**

### **WAIVER OF BREACH**

The fact that one party excuses or overlooks a breach of any provision of this Agreement by the other party does not mean that that party excuses any other breach or waives its right to remedy any other breach by the other party.

### **NON-ASSIGNMENT**

LICENSEE may not assign this Agreement without the prior written consent of YOURIKA, except that either party may, without the other's consent, assign this Agreement to a wholly-owned subsidiary of the assigning party, or to an affiliate of the assigning party that is wholly-owned by an entity that directly or indirectly controls the assigning party. In no case may LICENSEE assign this Agreement to any person or entity if such person or entity, its parent, any of its affiliates or subsidiaries, or any other entity that it directly or indirectly controls, is controlled by or is under common control with, such person or entity, or is in the business of providing services similar to YOURIKA. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.

### **NOTICES**

All notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if and when delivered by hand or mailed, certified or registered mail return receipt requested with postage prepaid, to the address of the LICENSEE or YOURIKA as set forth below, or to such other person or address as LICENSEE or YOURIKA shall furnish and designate in writing:

To LICENSEE: \_\_\_\_\_

## **SEVERABILITY**

This Agreement shall be applied and construed according to the laws of the State of New York. If any provision of this Agreement is found to be illegal or unenforceable, then, notwithstanding such finding, this Agreement shall remain in full force and effect and such provision shall be deemed stricken.

## **HEADINGS-SIGNIFICANCE AND MEANING**

The headings in this Agreement are for convenience only and shall not be used to alter or limit the interpretation of any provision hereof.

This Agreement, together with all Schedules, Exhibits and amendments hereto, constitute the entire agreement of the parties and supersede all prior discussion and correspondence between them with respect to the subject matter hereof. No modification of this Agreement shall be effective unless accepted by YOURIKA. If LICENSEE chooses not to accept any changes or amendments to this Agreement that are effected, LICENSEE should immediately discontinue using the tymoraPRO software.

## **CONFIDENTIALITY**

This Agreement, all schedules attached hereto, and all terms and conditions herein, are confidential and shall not be disclosed by LICENSEE except as required by law.

## **CONSTRUCTION**

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Whenever the context of this Agreement requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words herein shall include the singular and plural. All references to section numbers in this Agreement shall be references to sections in this Agreement, unless otherwise specifically indicated.

## **NO RELATIONSHIP**

It is expressly declared that this Agreement and the relationships between the parties established hereby does not constitute a partnership, joint venture, agency or contract of employment between them.

## **COUNTERPARTS**

This Agreement shall become binding when it has been executed and delivered by the parties. A telecopied facsimile of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms hereof. Each party furthermore agrees to

additionally evidence this agreement by returning to the other parties an original, duly executed original copy of this Agreement promptly after the delivery of a telecopied facsimile thereof.

## **MISCELLANEOUS**

a. All notices or approvals required or permitted under this Agreement must be given in writing and sent by mail to the addresses set forth in this Agreement. LICENSEE shall give prompt written notice to YOURIKA of any change of the name, nature or address of LICENSEE's business. The headings of the Sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement. No third party beneficiaries, neither public nor private, are contemplated by this Agreement, and specifically any tymoraPRO Subscriber shall not be deemed a third party beneficiary under or pursuant to this Agreement. Any waiver or modification of this Agreement shall not be effective unless executed in writing and signed by an authorized representative of YOURIKA and LICENSEE. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under this Agreement shall not be deemed to be a waiver or modification by the parties of any of their rights under this Agreement. If any provisions of this Agreement are held to be unenforceable by a court of competent jurisdiction, in whole or in part, such holding shall not affect the validity of the other provisions of this Agreement. The recitals appearing at the beginning of this Agreement are incorporated into its terms and conditions in full by this reference thereto. YOURIKA and LICENSEE represent that the signatories below are authorized to act in behalf of the respective parties.

b. This Agreement is made in LICENSEE's personal capacity and not on behalf of any firm, corporation, or other entity, unless LICENSEE's account is designated as such. LICENSEE agrees to use the information solely in connection with LICENSEE's investment activities and not in connection with any trade or business activities unless specifically authorized to do otherwise.

c. By signing this Agreement or using the tymoraPRO technology, LICENSEE represents that LICENSEE has read and understood the foregoing terms and conditions and agrees to be bound by them.

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Note: LICENSEE IS DIRECTED TO THOROUGHLY REVIEW ALL LEGAL DISCLOSURES, DISCLAIMERS, COPYRIGHT NOTICES, TRADEMARK DESIGNATIONS, TRADE SECRET and CONFIDENTIALITY WARNINGS. INDUSTRY REGULATORY ADVISORIES are governed by separate terms, conditions, and legal codicils and framework which are available in the [www.tymora.net](http://www.tymora.net) website, and are not governed by the above YOURIKA Terms of Service.

Usage of the tymoraPRO platform by LICENSEE automatically affirms LICENSEE's understanding and acceptance of the terms and conditions described within this Agreement.



**IN WITNESS WHEREOF, LICENSEE additionally affirms their understanding and acceptance of this Agreement below.**

**I have read, understand and agree to every section and subsection of YOURIKA's tymoraPRO SUBSCRIBER USAGE AGREEMENT.**

**Print Name** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Social Security Number:** \_\_\_\_\_

[Schedule A.](#)

***\$100/mo + message fees through tymoraPRO-Enabled Broker-Dealer Account (billed by Broker-Dealer)***

***\$250/mo to utilize with separate Broker-Dealer and non-tymoraPRO Order Execution Environment***

***special situations***