
TERMS AND CONDITIONS FOR WEB-BASED SERVICES - ESIS

September, 2017

Nasdaq CSD SE
Effective date: 18.09.2017



1. Definitions

1.1. The following definitions shall have the following meanings when used in these Terms and Conditions:

1.1.1. **“Application form for ESIS Client”** – is the form by which the Client accepts these Terms and Conditions and provides information specified therein. The Application form is available on CSD’s website;

1.1.2. **“Agreement”** – these Terms and Conditions for use of the ESIS shall constitute an agreement between the CSD and the Client;

1.1.3. **“ESIS”** – electronic data exchange system based on web-based solution that provides querying and collection of securities owners information, using data stored in CSD’s systems which comprises of issuers and securities register and all securities accounts opened in the CSD;

1.1.4. **“ESIS User Manual”** – ESIS User Manual (Issuer, Issuer Agent, CSD Participant) and ESIS User Manual (Issuer and Issuer Agent) aim to guide the Client towards details on how to access and operate the ESIS. The ESIS User Manual is available on the CSD’s website;

1.1.5. **“Client”** – a legal person or other entity, which has been accepted by the CSD as a Client.

1.1.6. **“CSD”** – Nasdaq CSD SE, a company registered in the Republic of Latvia (registration number 40003242879, legal address at Valņu iela 1, Riga, LV-1050, Latvia), acting in the Republic of Lithuania through Lithuanian branch (registration number 304602060, legal address at Konstitucijos ave. 29, Vilnius, LT-08105, Lithuania) and in the Republic of Estonia acting through its Estonian branch (registration number 14306553, legal address at Tartu mnt. 2, Tallinn, EE-10145, Estonia);

1.1.7. **“CSD System”** – a set of hardware, software and other technical infrastructure components through which the CSD provides securities clearing, settlement and other services;

1.1.8. **“Personal data”** shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and;

1.1.9. **“Price List”** – contains up to date pricing information on the fees that are connected with ESIS and other services provided by the CSD;

1.1.10. **“Relevant data protection law”** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of the Personal data applicable to the CSD and the Client in the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania in which the Parties are acting;

1.1.11. **“Role in the ESIS”** – Each Client shall select its role in the ESIS: an Issuer, Issuer Agent or Account Operator. The Client is allowed to select several roles simultaneously;

1.1.12. **“Terms and Conditions”** – the Terms and conditions for web-based service ESIS.

1.1.13. Capitalized terms in these Terms and Conditions shall have the meaning ascribed to them in the Rules of Nasdaq CSD, unless expressly provided otherwise.

2. General provisions

2.1. These Terms and Conditions set forth the rights, obligations and liability of the CSD and the Client using the ESIS as well as constitute an agreement between the CSD and the Client for an unspecified term for the use of the ESIS. All manuals, application forms or other publications issued by the CSD shall be subject to these Terms and Conditions, except as may be specifically provided therein. The Terms and Conditions currently in force at any one time are available on CSD’s website.

2.2. The Agreement shall be deemed to have been concluded by means of the ESIS from the moment the Client provided a completed and duly executed Application form for ESIS Client and the CSD authorized the Client to access the ESIS (hereinafter – **Effective Date**). The Application form for ESIS Client shall be signed by a person duly authorized to sign on behalf of the Client.

2.3. The Client is additionally authenticated in the ESIS following the procedure laid down in the ESIS User Manual. Only authorized persons of the Client are entitled to access and use the ESIS. Authorized persons are a Client Administrator and a Client User (hereinafter – **Authorized persons**). Detailed instructions on the use of ESIS are laid down in the ESIS User Manual.

2.4. The Client appoints the Client Administrator as its agent to provide administrative services and operations in the ESIS, subject to these Terms and Conditions. The Client Administrator shall be appointed, changed or terminated by filling the Application form for ESIS Client. The Client Administrator shall have only such authority as granted expressly by these Terms and Conditions and the ESIS User Manual. The Client Administrator shall not have authority to make any agreement binding upon the Client.

2.5. The Client Administrator appoints the Client User as its agent to provide operations in the ESIS, subject to these Terms and Conditions. The Client User shall be appointed, changed or terminated by the Client Administrator in the ESIS and shall have only such authority as granted expressly by these Terms and Conditions and the ESIS User Manual. The Client Administrator is responsible for the Client User administration in the ESIS following the ESIS User Manual.

2.6. The ESIS shall be used in the data exchange between the CSD and the Client (hereinafter both referred to separately as **Party** or together as **Parties**) for the following data exchange operations:

2.6.1. submission of requests to the CSD or Client;

2.6.2. import of data to the ESIS;

2.6.3. release of data from the ESIS;

2.6.4. other operations specified in the ESIS User Manual.

2.7. The CSD is entitled to effect changes in the ESIS. Information about changes shall be published on the CSD's website.

3. The Personal Data transfer

3.1. The Parties undertake to comply with the provisions of the Relevant data protection law specifying the Personal data protection with regard to the handling of the Personal data in the ESIS.

3.2. Being responsible for processing of the Personal data, the Parties confirm that from the moment the Client provided a completed and duly executed Application form for ESIS Client the Parties accepted the Standard Contractual Conditions for Processing of Personal Data, which constitute an integral part of these Terms and Conditions and is attached as an annex hereto.

4. Rights and obligations of the Client

4.1. The Client is entitled to provide or obtain via the ESIS data which it is legally entitled to access and which may be released using the ESIS functionality.

4.2. The Client hereby undertakes:

4.2.1. when performing data exchange operations by means of the ESIS, to be guided by the Terms and Conditions, the ESIS User Manual, relevant legislation and follow any other user instructions provided to this end by the CSD;

4.2.2. to ensure that the security features are used only by the Client or Authorized persons;

4.2.3. to ensure the lawful use of any data obtained from the CSD;

4.2.4. to ensure the due transmission of correct data to the ESIS;

4.2.5. preclude the disclosure to the public of any data obtained via the ESIS, except when prior written consent has been obtained from CSD for the disclosure of the data.

4.3. Where a change made by the CSD in the Terms and Conditions for accessing the ESIS necessitates the introduction of new security features, the Client hereby undertakes, upon a relevant request from the CSD, to perform, as per terms and procedure designated by the CSD, any actions required for the introduction of the new security features.

4.4. The Client, depending on the selected Role in the ESIS, shall pay a service fee to the CSD for data exchange operations performed via the ESIS in accordance with the fee rates set by the Price List. The CSD shall be entitled to change the fee rates unilaterally, making the proposed changes available via the CSD no later than 1 (month) prior to the changes taking effect. In the event of a delay having occurred in the payment of a service fee, the CSD shall be entitled to require from the Client interest on arrears of 0.1% on the amount not paid on time for each day past the payment due date.

5. Rights and obligations of the CSD

5.1. The CSD shall be entitled to receive data from the Client as per the terms and procedure agreed between the Parties.

5.2. The CSD shall be entitled to disclose any data transmitted to it via the ESIS unless suggested otherwise by legislation or an agreement between the Parties.

5.3. In relation to the ESIS, the CSD shall be entitled to unilaterally make any changes whatsoever, including such changes as a result of which the ESIS functionality, design, structure, access requirements, schedule of data exchange operations, user instructions, composition or scope of data or the like are changed, by notifying the Client of the relevant changes either via the ESIS.

5.4. The CSD shall be entitled to restrict access to the ESIS by the Client or Authorized persons concerning whom the CSD has grounds to believe that its security features have come into the possession of a person not entitled to use the ESIS. In case of suspicion, the CSD shall be entitled to conduct additional checks over the telephone on data exchange operations performed with the security features.

5.5. The CSD shall be entitled to unilaterally suspend the data exchange operations conducted via the ESIS with the Client if:

5.5.1. the Client has not paid the service fee on time for data exchange operations;

5.5.2. there are grounds to believe of the Client or Authorized persons that the security features used by them have come into the possession of a person not entitled to use the ESIS;

5.5.3. it becomes evident that the Client or Authorized persons do not use the ESIS for its intended purpose or if the continuation of data exchange operations jeopardizes the functioning of the ESIS as per its intended purpose;

5.5.4. the Client or Authorized persons breach an obligation provided in Clause 4.2.5;

5.5.5. the Client or Authorized persons breach the Agreement in a manner or to an extent that constitutes a substantial breach of legislation or the Agreement.

5.6. From the moment that the CSD has obtained information calling into question the validity of the security features of the Client or Authorized persons, the CSD shall preclude (block) the usability of invalid security features for the performance of data exchange operations via the ESIS.

5.7. The CSD hereby undertakes to make all reasonable efforts to ensure the uninterrupted functioning of the ESIS during the period set by CSD for the performance of data exchange operations.

6. Liability of the Parties

6.1. A Party shall be liable before the other Party for the loss and damages caused by the breach or inadequate performance of obligations under these Terms and Conditions to the extent of the loss and damages.

6.2. Each data exchange operation performed via the ESIS using the security features of the Client or Authorized persons shall be valid as an operation performed by the Client with respect to the CSD. The provisions in this Clause shall not extend to data exchange operations performed after CSD has become aware of a circumstance provided in Clause 5.5.2.

6.3. The Client shall be liable for the non-purposeful use of the ESIS, including deliberate overloading or a breach in any other manner whatsoever; similarly, the Client shall be responsible for the activity of the User acting on its behalf and/or at its expense.

6.4. The CSD shall not be liable for any loss or damages or other consequences caused by the non-functioning or inadequate functioning of the ESIS if this is brought about by causes beyond the CSD's control, such as power failures, disruptions to communication lines, natural disasters, unforeseen faults in the hardware or software used at the ESIS.

7. Communication

7.1. The Parties hereby accept all queries/requests duly submitted and all data released and delivered via ESIS as being equivalent to documents bearing hand-written signatures by the Parties and/or their authorized representatives.

7.2. Any notice or communication under these Term and Conditions must be in writing. A Party may send a notice and other communication to other Party via e-mail according to the contact information indicated by the Client in the Application form for ESIS Client and by the CSD in these Term and Conditions. Such notice and other communication are deemed to have been received by the relevant Party as of the date of receipt of the respective e-mail. The receiving Party is entitled to require the sending Party to provide a copy of such notice or communication, if received via e-mail, to be also sent via mail, registered mail or currier, provided that such notice or communication shall be deemed received on the date when it was initially received according to this Clause.

7.3. The Client shall send any notices under these Term and Conditions (including breach notices) to the CSD at the following address csd.ops@nasdaq.com.

7.4. If the Client has changed contact or other details provided to the CSD, the Client shall immediately complete and submit Application form for ESIS Client providing changed contact or other details.

8. Other terms and conditions

8.1. The Client may not transfer rights and/or obligations under the Agreement for the use of the ESIS without the prior written consent of the other Party.

8.2. All intellectual property rights and technical solutions for the ESIS and any related services are the property of the CSD.

8.3. The CSD reserves the right to amend these Terms and Conditions, the ESIS User Manual or the Application form for ESIS Client at any time on unilateral basis. For these documents, the CSD shall notify the Client in writing by electronic means of any such amendment and of the effective date thereof. The amendments will be published through the CSD's web site.

8.4. The Parties shall be entitled to unilaterally terminate the Agreement for the use of the ESIS by notifying the other Party of this in writing at least 10 (ten) calendar days in advance.

8.5. If the Client breaches obligations under these Terms and Conditions for the use of the ESIS, the CSD shall be entitled to terminate the Agreement immediately and unilaterally notifying the Client of this termination.

8.6. The termination of the Agreement for the use of the ESIS shall not affect the validity and collectability of financial claims that have arisen prior to the termination of the Agreement. The CSD shall be entitled to transfer to a third party any financial claims that have arisen with respect to the Client under the Agreement for the use of the ESIS.

8.7. Any disputes over the Agreement for the use of the ESIS shall be resolved by agreement between the Parties. Failing agreement, the disputes shall be resolved in accordance with the legislation of the Republic of Latvia.

8.8. For any further questions, inquiries or comments regarding the ESIS or other business related issues, please contact:

Clients for the Lithuanian Securities Settlement System csd.lithuania@nasdaq.com;

Clients for the Latvian Securities Settlement System csd.latvia@nasdaq.com;

Clients for the Estonian Securities Settlement System csd.estonia@nasdaq.com.

**ANNEX TO THE TERMS AND CONDITIONS FOR WEB-BASED SERVICE ESIS
STANDARD CONTRACTUAL CONDITIONS FOR PROCESSING OF PERSONAL DATA****Details of the transfer**

1. The purpose of these Standard Contractual Conditions for Processing of Personal Data (hereinafter – **the Standard Conditions**) is to describe the process to be carried out by the CSD and the Client in relation with the processing of the Personal data in respect of the ESIS and other related services. These Standard Conditions shall be deemed to take effect from the Effective Date and shall continue in full force and effect until the termination of the Agreement.

The following definitions apply in these Standard Conditions:

“**Data exporter**” – shall mean the controller who transfers the Personal data. For the purposes of these Standard Conditions: (i) the CSD acts as the Data exporter for the Personal data transferred from the ESIS to an Issuer or Issuer agent; (ii) The Client, acting in the role of an Account operator, acts as the Data exporter for the Personal data transferred to the ESIS;

“**Data importer**” – shall mean the controller who agrees to receive from the Data exporter Personal data for further processing in accordance with these Standard Conditions, the Agreement or requirements of other legal acts. For the purposes of these Standard Conditions: (i) the CSD acts as the Data importer for the Personal data received in the ESIS from the Client, acting in the role of an Account operator; (ii) The Client, acting in the role of an Issuer or Issuer agent, acts as the Data importer for the Personal data received from the ESIS;

2. The purpose for the collection, processing and use of the Personal data is to provide the services as described in the Agreement, which forms an integral part hereof. The processing and use of the Personal data takes place in a member state of the European Economic Area. Any data transfer to a third country requires the prior approval of the Client.

3. The processing of the Personal data by the CSD and Client shall take place within the framework of these Standard Conditions and in relation with the Agreement. The CSD processes the Personal data on behalf of the Client and shall not use the Personal data for any other purpose as described in these Standard Conditions.

4. Personal data processing principles applicable to these Standard Conditions:

4.1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in these Standard Conditions, the Agreement or subsequently authorized by the data subject;

4.2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The Personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed;

4.3. Transparency: Data subjects must be provided with information necessary to ensure fair processing, unless such information has already been given by the Data exporter;

4.4. Security and confidentiality: Technical and organizational security measures must be taken by the Parties that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, presented by the processing.

Obligations of the Data Exporter

5. The Data exporter agrees and warrants:

- 5.1. that the processing, including the transfer itself, of the Personal data has been and will continue to be carried out in accordance with the provisions of the Relevant data protection law;
- 5.2. that after assessment of the requirements of the Relevant data protection law, the security measures are appropriate to protect Personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- 5.3. that it will ensure compliance with the security measures specified in the Relevant data protection law;
- 5.4. that, in the event of sub-processing, the processing activity is carried out in accordance with these Standard Conditions by a sub-processor providing at least the same level of protection for the Personal data;
- 5.5. to provide the Data importer with such cooperation (including access to its facilities) as the Data importer may reasonably request.

Obligations of the Data importer

6. The Data importer agrees and warrants:

- 6.1. to process the Personal data only on behalf of the Data exporter and in compliance with its instructions and these Standard Conditions; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the Data exporter of its inability to comply, in which case the Data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- 6.2. that it has no reason to believe that the Relevant data protection law applicable to it prevents it from fulfilling the obligations under the Agreement and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided herein, it will promptly notify the change to the Data exporter as soon as it is aware, in which case the Data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- 6.3. that it has implemented the technical and organizational security measures specified in these Standard Conditions before processing the Personal data transferred;
- 6.4. that it will promptly notify the Data exporter about:
 - 6.4.1. any legally binding request for disclosure of the Personal data by a law enforcement authority unless otherwise prohibited;
 - 6.4.2. any accidental or unauthorized access;
- 6.6. that, in the event of sub-processing, it has previously informed the Data exporter and received his consent, to the extent otherwise provided in these Standard Conditions;
- 6.7. that the processing services by the sub-processor will be carried out in accordance with Relevant data protection law;
- 6.8. to provide the Data exporter with such cooperation (including access to its facilities) as the Data exporter may reasonably request.

Sub-processing

7. The Data importer shall not subcontract its obligations under these Standard Conditions to a sub-processor without the prior written consent of the Data exporter unless such sub-processor undertakes,

by way of written agreement, substantively the same obligations as imposed on the Data importer in these Standard Conditions and the Agreement. The Data importer shall inform the Data exporter of its intention to engage a sub-processor and the Data exporter shall have the right to reasonably oppose the appointment of a new sub-processor if the Data exporter shall have substantive and legitimate reasons for opposing the specific sub-processor and shall notify the Data importer of such objections in writing as soon as possible after receipt of the Data importer's notice relating to such sub-processor.

Technical and organizational measures in the ESIS

8. Data subjects, data categories and other information related to the Personal data subject to collection and processing under these Standard Conditions are indicated in the Agreement and ESIS User Manual.

9. The CSD shall ensure the implementation of the appropriate measures to:

9.1. Prevent unauthorized persons from gaining access to ESIS and other related data processing systems with which Personal data are processed or used;

9.2. Prevent data processing systems from being used without authorization;

9.3. Ensure that persons entitled to use a data processing system have access only to the Personal data to which they have a right of access, and that Personal data cannot be read, copied, modified or removed without authorization during processing or use and after storage;

9.4. Ensure that Personal data cannot be read, copied, modified or removed without authorization during electronic transmission or transport, and that it is impossible to check and establish to which bodies the transfer of Personal data by means of data transmission facilities is envisaged;

9.5. Ensure that it is possible to check and establish whether and by whom Personal data has been input into data processing systems, modified or removed.

10. Significant changes of the above technical and organizational measures shall be agreed by the Parties in writing.

Termination

11. The Parties agree that the termination of the Agreement at any time, in any circumstances and for whatever reason does not exempt them from the obligations and/or conditions under the Standard Conditions as regards the processing of the data transferred.

Confidentiality

12. Any information of whatever kind (whether technical, commercial, financial, operational or otherwise) and in whatever form (whether oral, written, recorded or otherwise), including Personal data, which may be disclosed in any form or matter by one Party to the other Party, with respect to, or as a result of these Standard Conditions, shall be deemed to be of a confidential nature.

Liability

13. Each Party shall be liable to the other parties for damages it causes by any breach of these Standard Conditions. Liability as between the Parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each Party shall be liable to data subjects for damages it causes by any breach of third party rights under these Standard Conditions.

Law applicable to the Standard Conditions

14. These Standard Conditions are governed by the law that governs the Agreement.