

Nasdaq CSD SE

TERMS AND CONDITIONS FOR WEB-BASED SERVICE ESIS

Effective Date:

06.11.2020

1. DEFINITIONS

1.1. The following definitions shall have the following meanings when used in these Terms and Conditions for Web-based Service ESIS (hereinafter - **the 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, also aggregates received information on the shareholders’ identities and contact details in accordance with the Shareholders disclosure process;

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 for users to application interface (U2A). The ESIS User Manual is available on the CSD’s website;

1.1.5. **“Message Usage Guidelines”** – the Shareholders Identification Disclosure Request Usage Guidelines aim to guide the Client towards details on how to access the ESIS for application to application interface (A2A) users. Message Usage Guidelines are available on participants’ secure area on the CSD’s website.

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

1.1.7. **“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), in the Republic of Estonia acting through its Estonian branch (registration number 14306553, legal address at Maakri 19/1, Tallinn, EE-10145, Estonia) and in the Republic of Iceland acting through its Icelandic branch (registration number 510119-0370, legal address at Laugavegi 182, 105 Reykjavík, Iceland);

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

1.1.9. **“EU Model Clause Agreement”** means an agreement made using the relevant EU Model Clauses as adopted by the EU Commission for the transfer of personal data to third countries;

1.1.10. **“EU Personal Data Legislation”** means (i) Relevant data protection law and (ii) GDPR;

1.1.11. **“GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC (General Data Protection Regulation), and any amendments made thereto;

1.1.12. **“Personal data”** shall have the same meaning as in EU Personal Data Legislation;

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

1.1.14. **“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 , the Republic of Lithuania and the Republic of Iceland in which the Parties are acting.

1.1.15. **“Regulatory Requirements”** means the privacy and personal data legislation applicable to the processing of personal data, including the EU Personal Data Legislation, such legislation as may replace the aforementioned legislation from time to time (and in case of discrepancies or contradictions between different rules or regulations, the one which provides the highest degree of privacy and/or information security shall apply);

1.1.16. **“Services”** means services provided by the CSD as described in clause 2.6 of the Agreement (including all associated services provided by the CSD, from time to time);

1.1.17. **“Shareholders disclosure process”** means operational processing of shareholder disclosure including the information flow throughout the chain of the relevant parties as well as key dates and their sequence as described in the document Nasdaq CSD Service Description: Shareholders disclosure process in accordance with the Shareholders Rights Directive (EU) 2017/828.

1.1.18. **“Shareholders Rights Directive”** means the Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and national laws transposing previously mentioned directive.

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

1.1.20. Unless otherwise stated herein, or clearly follows from the context in which it appears, the term "including" shall mean "including without limitation".

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. These 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 using U2A 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 using U2A 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 (hereinafter - **Services**):

2.6.1. submission of requests to the CSD;

2.6.2. release of data from ESIS;

2.6.3. aggregation of received information on the shareholders' identities in accordance with the Shareholders disclosure process;

2.6.4. other operations specified in the ESIS.

2.7. The ESIS will automatically aggregate received information on the shareholders' identities and contact details in accordance with the Shareholders disclosure process. The Shareholders disclosure process provides the general principles of shareholder disclosure processing for the Shareholders Rights Directive securities registered in the CSD.

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

3. DATA PROCESSING

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

3.2. The CSD is committed to protect Personal Data and to comply with applicable privacy requirements, therefore all Personal Data received by the CSD is processed according to this Agreement, [Nasdaq Privacy Policy](#) and [Privacy letter](#).

3.3. 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 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 these Terms and Conditions, the ESIS User Manual, Message Usage Guidelines, 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 the CSD for the disclosure of the data.

4.2.6. To ensure that the shareholders identification disclosure request in accordance with the Shareholders disclosure process will not be distributed to non-authorized parties.

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 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 as well as according to the Shareholders disclosure process.

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 or the Shareholders disclosure process.

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 Terms and Conditions or ESIS, please contact csd.ops@nasdaq.com.

ANNEX TO THE TERMS AND CONDITIONS FOR WEB-BASED SERVICE ESIS

STANDARD CONTRACTUAL CONDITIONS FOR PROCESSING OF PERSONAL DATA

1. BACKGROUND

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 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.

2. DATA SUBJECTS AND CATEGORIES OF PERSONAL DATA

The Personal data processed concerning the categories of data subjects and categories the Personal data as described in the ESIS User Manual and the Agreement.

3. PURPOSE OF THE PERSONAL DATA PROCESSING, PROCESSING OPERATIONS AND DURATION

3.1. The purpose for the collection, processing and use of the Personal data is to enable provision of the Services as described in the Agreement, which forms an integral part hereof. The processing of the Personal data is necessary for compliance with a legal obligation¹.

3.2. The processing of the Personal data by the CSD shall take place within the framework of these Standard Conditions, Nasdaq Privacy Policy and Privacy letter.

3.3. The Personal data processing principles applicable to these Standard Conditions:

3.3.1. Purpose limitation: the 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;

3.3.2. Data quality and proportionality: the 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;

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

3.3.4. 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.

¹ Estonia - the Securities Register Maintenance Act and the Securities Market Act; Latvia – the Financial Instruments Market Law, Lithuania – the Law on Markets in Financial Instruments; Iceland - Act respecting the Security of Transfers Orders in Payment System.

3.4. The Personal data will only be processed following terms determined in the Regulatory Requirements.

4. SPECIAL UNDERTAKINGS OF THE PARTIES

4.1. Roles, ownership of Personal data, processing and purpose

4.1.1. The CSD shall be considered a data controller in respect of the Personal data collected and processed in respect of the Services in the ESIS system. The Client shall be considered as a separate data controller in respect of the Personal data provided to or released from the ESIS system.

4.1.2. The CSD may process the Personal data for the purpose and to the extent it is necessary for the fulfilment of the CSD's obligations under these Standard Conditions or the Agreement.

4.2. Obligations of the Client

4.2.1. The Client undertakes to:

- (a) ensure that there is a legal ground for processing the Personal data covered by these Standard Conditions;
- (b) ensure that the processing of the Personal data has been and will continue to be carried out in accordance with the provisions of the Regulatory Requirements;
- (c) provide the CSD with such cooperation (including access to its facilities) as the CSD may reasonably request.

4.3. Obligations of the CSD

4.3.1. The CSD undertakes to:

- (a) ensure that there is a legal ground for processing the Personal data covered by these Standard Conditions;
- (b) ensure that it has no reason to believe that the Regulatory Requirements 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 Client as soon as it is aware, in which case the Client is entitled to terminate the Agreement;
- (c) provide the Client with such cooperation (including access to its facilities) as the Client may reasonably request.

4.4. Sub-contracting

4.4.1. The CSD shall not subcontract its obligations under these Standard Conditions to a sub-contractor without the prior written consent of the Client unless such sub-contractor undertakes, by way of written agreement, substantively the same obligations as imposed on the CSD in these Standard Conditions and the Agreement.

4.4.2. The CSD shall remain responsible for all obligations performed and any omission to perform or comply with the provisions under this Standard Conditions by sub-contractors to the same extent as if

such obligations were performed or omitted by the CSD. The CSD shall also remain the Client's sole point of contact.

4.5. Transfer of Personal data outside the EU/EEA

4.5.1. When providing the Services, the CSD may need to process the Client's Personal data outside the EU/EEA. If the Personal data is to be transferred to and processed by a subcontractor located outside the EU/EEA, the CSD is obliged to ensure that the subcontractor accedes to the EU Model Clause Agreement entered into between the parties.

4.5.2. However, the above shall not apply if the jurisdiction in which the Client is established has been deemed by the EU as a jurisdiction with adequate protection for Personal data.

5. LIABILITY AND INDEMNIFICATION

Each Party shall indemnify and hold the other Party harmless from and against all losses due to claims from third parties resulting from, arising out of or relating to any breach by such first-mentioned Party of this Standard Conditions.

6. TECHNICAL AND ORGANIZATIONAL MEASURES

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

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

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

6.5. 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;

6.6. 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;

6.7. 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.

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

7. TERMINATION

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.

8. CONFIDENTIALITY

Any information of whatever kind (whether technical, commercial, financial, operational or otherwise) and in whatever form (whether oral, written, recorded or otherwise), including the 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.

9. **LAW APPLICABLE TO THE STANDARD CONDITIONS**

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