



## Nonprofessional Subscriber Policy

This document is intended to clarify the conditions under which an individual may qualify for the Nonprofessional Subscriber rates for NYSE Market Data products. Distributors are required to verify the status of any subscriber applying to receive data at the Nonprofessional Subscriber rate.

If NYSE finds that the vendor has incorrectly qualified a professional subscriber as nonprofessional, the vendor will be liable for retroactive fees billed by NYSE for the subscriber at the professional rate.

| DEFINITION   |   |
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| "Nonprofessional Subscriber" refers to any <b>natural person</b> who receives market data solely for his/her personal, non-business use and who is not a "Securities Professional," meaning that the person is:                      |   |
| a  | not registered or qualified with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange/association, or any commodities/futures contract market/association; and                            |
| b  | not engaged as an "investment advisor," as that term is defined in Section 202(a)(11) of the <a href="#">Investment Advisers Act of 1940</a> (whether or not registered or qualified under that Act); and   |
| c  | not employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt. |
| A person who works outside of the United States will be considered a "Securities Professional" if he or she performs the same functions as someone who would be considered a "Securities Professional" in the United States.         |   |
| Subscriber may not receive Market Data as a "Nonprofessional Subscriber" unless the vendor providing that data to Subscriber first determines that the individual falls within the above definition of "Nonprofessional Subscriber." |   |

| QUESTIONS  | POLICY CLARIFICATION  |
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| <b>A. CLARIFICATION OF "NON-PROFESSIONAL SUBSCRIBER" AND "SECURITIES PROFESSIONAL" DEFINITIONS</b>   |   |
| Is a natural person receiving market data solely for her personal, non-business use through an account in an organization's name classified as a Nonprofessional Subscriber? | <p>No, even though an individual natural person may be receiving market data only for her personal, non-business use, if the market data is received through an organization's account, this individual is classified as a Professional Subscriber. This is because the account through which the market data is received is not registered to a natural person.</p> <ul style="list-style-type: none"> <li>For example, if an individual who owns a business called Joe's Gas Station receives market data for personal, non-business use through a market data account that has Joe's Gas Station as the account holder, the vendor must report the individual as a Professional Subscriber because the account is not in a natural person's name.</li> <li>However, if the same individual opened an account in his own name, the individual may apply as a Nonprofessional Subscriber (as long as he is receiving the market data solely for personal, non-business use and is not a Securities Professional).</li> </ul> |

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| Are all bank employees “Securities Professionals”?                                    | <p>No, an individual is not classified as a Securities Professional simply because she is employed by a bank. Bank employees would be considered Securities Professionals under the following circumstances:</p> <ol style="list-style-type: none"> <li>1. If the bank is registered under Federal and/or state securities laws, the employee is a Securities Professional if such employee (a) is required to be registered or qualified with the SEC, the CFTC, any state securities agency, any securities exchange/association, or any commodities/futures contract market/association or (b) is engaged as an “investment advisor,” as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act). <ul style="list-style-type: none"> <li>• Therefore, a bank teller would not be a Securities Professional if she did not fall under (a) or (b) above and would qualify as a Nonprofessional Subscriber if the account was in her individual name and she received the market data solely for her personal, non-business use.</li> </ul> </li> <li>2. If the bank is exempt from registration under Federal and/or state securities laws, the employee is a Securities Professional if (x) the employee performs functions that would otherwise require her to be registered or qualified with the SEC, the CFTC, any state securities agency, any securities exchange/association, or any commodities/futures contract market/association, but (y) she is not required to be so registered or qualified because the bank is not registered under Federal and/or state securities laws (but the employee would otherwise have to be so registered or qualified if she worked for a registered bank).</li> </ol> |
| <b>B. TRUST POLICY CLARIFICATION</b>  |  |
| May the <b>Trust</b> itself qualify as a Nonprofessional?                             | No, the Trust is an organization, and by definition only natural persons can qualify as Nonprofessionals. A single, unpaid natural person associated with the Trust, who qualifies as a Nonprofessional Subscriber, may be reported as a Nonprofessional Subscriber if the reporting includes the name of the person. The name of the Trust may also be reported, but a report that includes only the name of the Trust would be qualified as a Professional.  |
| May a <b>Trustee</b> qualify as a Nonprofessional?                                    | Yes, if the Trustee is an unpaid natural person who qualifies as a Nonprofessional Subscriber.   |
| May the Trust have more than one <b>Trustee</b> ?                                     | Yes. A trust may have up to four Trustees and each of them may qualify as a Nonprofessional Subscriber, but only if all of them are unpaid persons who qualify as Nonprofessional Subscribers.   |
| May a <b>Beneficiary</b> of the Trust qualify as a Nonprofessional?                   | Yes, if the Beneficiary is an unpaid natural person who qualifies as a Nonprofessional Subscriber.   |
| May multiple <b>Beneficiaries</b> qualify as Nonprofessional?                         | Yes, if the Beneficiaries are unpaid natural persons who qualify as Nonprofessional Subscribers.   |
| May <b>Trustees</b> that receive compensation qualify as Nonprofessionals?            | No.  |
| May <b>Trustees</b> that receive professional assistance qualify as Nonprofessionals? | Yes, if the Trustee is an unpaid natural person who qualifies as a Nonprofessional Subscriber and the professional assistance is not discretionary management of the Trustee’s account.  |

| <b>C. INVESTMENT CLUB POLICY CLARIFICATION</b>  |  |
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| May <b>Investment Club members</b> qualify as Nonprofessionals?   | Yes, if the Investment Club member is an unpaid natural person who qualifies as a Nonprofessional Subscriber.  |
| Must all <b>Investment Club members</b> qualify as Nonprofessionals for the Nonprofessional rates to apply?   | No. Each unpaid natural person associated with the Investment Club, who qualifies as a Nonprofessional Subscriber, may be reported as a Nonprofessional Subscriber.  |
| If the <b>Investment Club member</b> qualifies as a Nonprofessional, may its Nonprofessional members receive market data under the Investment Club's account? | The Investment Club is an organization, and by definition only natural persons can qualify as Nonprofessionals. Each unpaid natural person associated with the Investment Club, who qualifies as a Nonprofessional Subscriber, may be reported as a Nonprofessional Subscriber.  |
| May <b>Investment Club members</b> that receive compensation qualify as Nonprofessionals?   | No. In addition, compensation would disqualify the Investment Club as a Nonprofessional.   |
| May the <b>Investment Club members</b> that receive professional assistance qualify as Nonprofessionals?  | Yes, if, the Investment Club member is an unpaid natural person who qualifies as a Nonprofessional Subscriber and the professional assistance is not discretionary management of the Investment Club's account.  |
| <b>D. RETIRED &amp; INACTIVE PROFESSIONALS POLICY CLARIFICATION</b>   |  |
| Do <b>Retired</b> Professionals qualify as Nonprofessionals?  | Yes, Retired Professionals no longer providing services in a Professional capacity may qualify as Nonprofessionals if listed as Not-Registered with FINRA. To continue to receive the Nonprofessional rates, Subscribers must re-verify their Nonprofessional status semi-annually.  |
| Do <b>Non-working or Inactive</b> Professionals qualify as Nonprofessionals?  | Yes, Professionals no longer providing services may qualify as Nonprofessionals if listed as Not-Registered with FINRA. To continue to receive the Nonprofessional rates, Subscribers must re-verify their Nonprofessional status semi-annually.   |
| <b>E. LARGE TRADERS</b>   |  |
| Are Large <b>Traders</b> always qualified as Professionals?   | If a large trader otherwise meets the definition of "Nonprofessional Subscriber," the large trader does not lose his or her "Nonprofessional Subscriber" status merely because he or she falls within SEC Rule 13h-1(a)'s definition of "large trader".  |
| <b>F. DAY TRADERS POLICY CLARIFICATION</b>  |  |
| Can a <b>day-trader</b> qualify as a Nonprofessional?   | A day-trader can qualify as a Nonprofessional if he/she is managing his/her own money AND: <ul style="list-style-type: none"> <li>• Does not assist any other person with investment decisions, nor he/she share profits; and is not a "Securities Professional."</li> <li>• Is NOT receiving office space and equipment in exchange for her/his work as a financial consultant to a firm</li> <li>• Has NOT entered into a profit sharing agreement with an organization</li> </ul> |

This fact sheet is a summary document intended to set forth the highlights of PDP policy, rates, and procedures. Questions and/or circumstances not covered in this document should be referred to NYSE for the determination of applicable fees and procedures.

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**EXHIBIT B**

**AGREEMENT FOR**  
**MARKET DATA DISPLAY SERVICES**  
**(Usage-Based Services/Nonprofessional Subscriber Status)**  
**(Printed Version)**

UOB KAY HIAN PTE LTD \_\_\_\_\_ [NAME OF VENDOR/BROKER DEALER] ("Vendor") agrees to make "Market Data" available to you pursuant to the terms and conditions set forth in this agreement. By executing this Agreement in the space indicated below, you ("Subscriber") agree to comply with those terms and conditions. Section 1 sets forth terms and conditions of general applicability. Section 2 applies insofar as Subscriber receives and uses Market Data made available pursuant to this Agreement as a Nonprofessional Subscriber.

**SECTION 1: TERMS AND CONDITIONS OF GENERAL APPLICABILITY**

**1. MARKET DATA DEFINITION** – For all purposes of this Agreement, "Market Data" means (a) last sale information and quotation information relating to securities that are admitted to dealings on the New York Stock Exchange ("NYSE"), (b) such bond and other equity last sale and quotation information, and such index and other market information, as United States-registered national securities exchanges and national securities associations (each, an "Authorizing SRO") may make available and as the NYSE may from time to time designate as "Market Data"; and (c) all information that derives from any such information.

**2. PROPRIETARY NATURE OF DATA** – Subscriber understands and acknowledges that each Authorizing SRO and Other Data Disseminator has a proprietary interest in the Market Data that originates on or derives from it or its market(s).

**3. ENFORCEMENT** – Subscriber understands and acknowledges that (a) the Authorizing SROs are third-party beneficiaries under this Agreement and (b) the Authorizing SROs or their authorized representative(s) may enforce this Agreement, by legal proceedings or otherwise, against Subscriber or any person that obtains Market Data that is made available pursuant to this Agreement other than as this Agreement contemplates. Subscriber shall pay the reasonable attorney's fees that any Authorizing SRO incurs in enforcing this Agreement against Subscriber.

**4. DATA NOT GUARANTEED** – Subscriber understands that no Authorizing SRO, no other entity whose information is made available over the Authorizing SROs' facilities (an "Other Data Disseminator") and no information processor that assists any Authorizing SRO or Other Data Disseminator in making Market Data available (collectively, the "Disseminating

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Parties") guarantees the timeliness, sequence, accuracy or completeness of Market Data or of other market information or messages disseminated by any Disseminating Party. Neither Subscriber nor any other person shall hold any Disseminating Party liable in any way 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 by any Disseminating Party, to any "force majeure" (e.g., flood, extraordinary weather conditions, 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 to any other cause beyond the reasonable control of any Disseminating Party.

**5. PERMITTED USE** – Subscriber shall not furnish Market Data to any other person or entity. If Subscriber receives Market Data other than as a Nonprofessional Subscriber, it shall use Market Data only for its individual use in its business.

**6. DISSEMINATION DISCONTINUANCE OR MODIFICATION** – Subscriber understands and acknowledges that, at any time, the Authorizing SROs may discontinue disseminating any category of Market Data, may change or eliminate any transmission method and may change transmission speeds or other signal characteristics. The Authorizing SROs shall not be liable for any resulting liability, loss or damages that may arise therefrom.

**7. DURATION; SURVIVAL** – This Agreement remains in effect for so long as Subscriber has the ability to receive Market Data as contemplated by this Agreement. In addition, Vendor may terminate this Agreement at any time, whether at the direction of the Authorizing SROs or otherwise. Paragraphs 2, 3 and 4, and the first two sentences of Paragraph 8, survive any termination of this Agreement.

**8. MISCELLANEOUS** – The laws of the State of New York shall govern this Agreement and it shall be interpreted in accordance with those laws. This Agreement is subject to the Securities Exchange Act of 1934, the rules promulgated under that act, and the joint-industry plans entered into pursuant to that act. This writing contains the entire agreement between the parties in respect of its subject matter. Subscriber may not assign all or any part of this Agreement to any other person. The person executing this Agreement below represents and warrants that he or she has legal capacity to contract and, if that person is executing this Agreement on behalf of a proprietorship or a business, partnership or other organization, represents and warrants that he or she has actual authority to bind the organization.

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**SECTION 2: NON PROFESSIONAL SUBSCRIBER**

**9. NON PROFESSIONAL SUBSCRIBER DEFINITION** - "Nonprofessional Subscriber" means any natural person who receives market data solely for his/her personal, non-business use and who is not a "Securities Professional." A "Securities Professional" includes an individual who, if working in the United States, is:

- (a) registered or qualified with the Securities and Exchange Commission (the "SEC"), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association.
- (b) engaged as an "investment advisor" as that term is defined in Section 202 (a) (11) of the Investment Advisor's Act of 1940 (whether or not registered or qualified under that Act), or
- (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him or her to be so registered or qualified if he or she were to perform such functions for an organization not so exempt.

A person who works outside of the United States will be considered a "Securities Professional" if he or she performs the same functions as someone who would be considered a "Securities Professional" in the United States.

Subscriber may not receive Market Data as a "Nonprofessional Subscriber" unless the vendor providing that data to Subscriber first determines that the individual falls within Paragraph 9's definition of "Nonprofessional Subscriber."

**10. PERMITTED RECEIPT** - Subscriber may not receive Market Data from Vendor, and Vendor may not provide Market Data to Subscriber, on a "Nonprofessional Subscriber" basis unless Vendor first properly determines that Subscriber qualifies as a "Nonprofessional Subscriber" as defined in Paragraph 9 and Subscriber in fact qualifies as a "Nonprofessional Subscriber."

**11. PERMITTED USE** – If Subscriber is a Nonprofessional Subscriber, he or she shall receive Market Data solely for his or her personal, non-business use.

**12. PERSONAL AND EMPLOYMENT DATA** – As a prerequisite to qualifying as a "Nonprofessional Subscriber", Subscriber shall provide the following information:

Subscriber's name and address:

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Subscriber's occupations (list all occupations – including homemaker, student, retiree, etc.):

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Name(s) and address(es) of Subscriber's employer(s):

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Subscriber's title(s) and/or position(s):

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Subscriber's employment functions (description):

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In order to facilitate a decision as to whether Subscriber qualifies as a "Nonprofessional Subscriber," Subscriber shall answer the following questions:

- A. Do you use Market Data solely for your personal, non-business use?  
 Yes  No
- B. Do you receive Market Data for your business or any other entity?  
 Yes  No
- C. Are you currently registered or qualified with the SEC or the CFTC?  
 Yes  No
- D. Are you currently registered or qualified with any securities agency, any securities exchange, association or regulatory body, or any commodities or futures contract market, association or regulatory body, in the United States or elsewhere?  
 Yes  No
- E. Whether you are located within or outside of the United States, do you perform any functions that are similar to those that require an individual to register or qualify with the SEC, the CFTC, any other securities agency or regulatory body, any securities exchange or association, or any commodities or futures contract market, association or regulatory body?  
 Yes  No
- F. Are you engaged to provide investment advice to any individual or entity?  
 Yes  No
- G. Are you engaged as an asset manager?  
 Yes  No

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- H. Do you use the capital of any other individual or entity in the conduct of your trading?  
 Yes  No
  
- I. Do you conduct trading for the benefit of a corporation, partnership, or other entity?  
 Yes  No
  
- J. Have you entered into any agreement to share the profit of your trading activities or receive compensation for your trading activities?  
 Yes  No
  
- K. Are you receiving office space, and equipment or other benefits in exchange for your trading or work as a financial consultant to any person, firm or business entity?  
 Yes  No

Subscriber shall notify Vendor promptly in writing of any change in his or her circumstances that may cause him or her to cease to qualify as a Nonprofessional Subscriber or that may change his or her response to any of the preceding questions.

**13. CERTIFICATION** – By executing this Agreement, Subscriber hereby certifies that he or she falls within Paragraph 9's definition of "Nonprofessional Subscriber" and that the personal and employment information that he or she has included in Paragraph 12 is truthful and accurate.

\* \* \*

ACCEPTED AND AGREED: I, the "Subscriber" to which the preceding terms and conditions refer, acknowledge that I have read the preceding terms and conditions, that I understand them and that I hereby agree to comply with those terms and conditions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of \_\_\_\_\_, 20\_\_.

SUBSCRIBER

VENDOR

\_\_\_\_\_  
(Name of Subscriber)

UOB KAY HIAN PTE LTD  
\_\_\_\_\_  
(Name of Vendor)

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

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

Name:  
Title:  
Date:

Name:  
Title:  
Date:



# NASDAQ Subscriber

NASDAQ

## **DISCLOSURE**

Subscribers to NASDAQ and UTP real-time data must sign The NASDAQ Stock Market, LLC ("NASDAQ") Subscriber Agreement ("Agreement") or its equivalent in order to receive the Information (Refer to definition in [Section 13](#)). While all terms are important, NASDAQ asks that you pay particular attention to the following conditions. For additional information, refer to the sections referenced at the end of each condition.

**Restrictions on uses and transfers:** The subscriber ("Subscriber") may not provide access to information described herein ("Information") or transfer this Agreement to others. The Information is only for use as described by the Non-Professional or Professional Subscriber definitions. [[Section 1](#)]

**Most types of damages are excluded and remaining damages are limited:** NASDAQ is not liable for trading losses, lost profits or incidental, consequential or other indirect damages, even if the Information is untimely or incorrect. Other damages (if any) are strictly limited (in contract, tort or otherwise) to a capped amount. [[Section 6](#) and [Section 7](#)]

**No implied or statutory warranties or duties:** All warranties and duties (if any) are eliminated. There are no express warranties, except for a Limited Warranty regarding efforts only. Stock quotes might not be current and/or accurate. [[Section 7](#)]

**Subscriber provides an indemnity:** Subscriber indemnifies NASDAQ and holds NASDAQ harmless for any Claims or Losses (as described in [Section 13](#)) resulting from Subscriber's breach of the Agreement, from Subscriber's infringement of a third-party's intellectual property rights or from any third-party lawsuit related to Subscriber's use or receipt of Information. [[Section 9](#)]

**New York laws and courts apply:** Everything relating to this Agreement is governed by the laws of the United States and the State of New York. Any disputes can only be heard in New York. [[Section 12](#)]

**No oral amendments and only NASDAQ may amend:** The Agreement may not be altered orally and may only be altered by NASDAQ pursuant to an agreement procedure which includes notice to either the Subscriber or the Vendor. Failure to terminate the Agreement before, or use of Information thereafter, an amendment will be the Subscriber's consent (or confirmation of earlier consent) to the amendment. [[Section 10](#) and [Section 12](#)]

**Vendors can impact Subscriber's rights but not NASDAQ's rights:** A vendor does not have the authority to change the Agreement. Vendors are obligated to provide notice of NASDAQ changes to the Subscriber. However, if they do not, NASDAQ's notice to the Vendor is still effective, as to Subscriber including notice of cancellation. [[Section 8](#) and [Section 13](#)]

**NASDAQ Subscriber****NASDAQ****Signature Section**  
(Please print)

Please review the following terms and conditions of the NASDAQ Subscriber Agreement before you complete the Signature Section. You must be 18 years of age and must designate yourself as either a Non-Professional or Professional Subscriber in the following section, based on the definitions provided in [Section 13](#).

**By completing this section, I agree to the terms and conditions set forth in this NASDAQ Subscriber Agreement.**

**Subscriber Type:**  Individual – Complete section A.  
 Firm or Organization– Complete section B.

**A. Individual Subscriber Information:**

Subscriber Name: \_\_\_\_\_

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

**Subscriber Status:**  Professional  Non-Professional\**\*To qualify as Non-Professional Subscriber, you must meet all the terms set forth in [Section 13](#).***B. Organizational Subscriber Information:**

Subscriber Organization Name: \_\_\_\_\_

Representative Name: \_\_\_\_\_  
*person signing on behalf of organization*

Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title:  Chief Executive Officer  President  Senior Vice President  
 Chief Operating Officer  Vice President  Managing DirectorOther: \_\_\_\_\_  
*Use "Other" only if you have the same contracting authority as the listed titles.***Vendor Information (for Vendor or Data Provider Use Only)**

Vendor Name: \_\_\_\_\_

Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
*person signing on behalf of Vendor*

Representative Name: \_\_\_\_\_

Title:  Chief Executive Officer  President  Senior Vice President  
 Chief Operating Officer  Vice President  Managing Director

Other: \_\_\_\_\_

## NASDAQ Subscriber

NASDAQ

**The Vendor and its agents may not modify or waive any term of this Agreement. Any attempt to modify this Agreement, except by NASDAQ, is void.**

**1. USE OF DATA.** Subscriber may not sell, lease, furnish or otherwise permit or provide access to the Information to any other Person or to any other office or place. Subscriber will not engage in the operation of any illegal business use or permit anyone else to use the Information, or any part thereof, for any illegal purpose or violate any NASDAQ or Securities and Exchange Commission ("SEC") Rule. Subscriber may not present the Information rendered in any unfair, misleading or discriminatory format. Subscriber shall take reasonable security precautions to prevent unauthorized Persons from gaining access to the Information.

**(A.) Non-Professional Subscriber** — For Non-Professional Subscriber, the Information is licensed only for personal use. By representing to Vendor that Subscriber is a Non-Professional or by continuing to receive the Information at a Non-Professional Subscriber rate, Subscriber is affirming to Vendor and to NASDAQ that Subscriber meets the definition of Non-Professional Subscriber as set forth in [Section 13](#) of this Agreement. A Non-Professional Subscriber shall comply promptly with any reasonable request from NASDAQ for information regarding the Non-Professional Subscriber's receipt, processing, display and redistribution of the Information.

**(B.) Professional Subscriber** — For Professional Subscriber, the Information is licensed for the internal business use and/or personal use of the Professional Subscriber. Professional Subscribers may, on a non-continuous basis, furnish limited amounts of the Information to customers in written advertisements, correspondence or other literature or during voice telephonic conversations not entailing computerized voice, automated information inquiry systems or similar technologies. Professional Subscriber shall make its premises available to NASDAQ for physical inspection of Vendor's Service and of Professional Subscriber's use of the Information (including review of any records regarding use of or access to the Information and the number and locations of all devices that receive Information), all at reasonable times, upon reasonable notice, to ensure compliance with this Agreement.

**2. PROPRIETARY DATA.** NASDAQ grants to Subscriber a nonexclusive, non-transferable license during the term of the Agreement to receive and use the Information transmitted to it by Vendor and thereafter, to use such Information as permitted under the terms of this Agreement and/or the NASDAQ Requirements. Subscriber acknowledges and agrees that NASDAQ has proprietary rights to the Information that originates on or derives from markets regulated or operated by NASDAQ and compilation or other rights to Information gathered from other sources. Subscriber further acknowledges and agrees that NASDAQ's third-party information providers have exclusive proprietary rights to their respective Information. In the event of any misappropriation or misuse by Subscriber or anyone who accesses the Information through Subscriber, NASDAQ or its third-party information providers shall have the right to obtain injunctive relief for its respective materials. Subscriber will attribute source as appropriate under all the circumstances.

**3. PAYMENT.** Subscriber shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on Subscriber or NASDAQ (except for U.S. federal, state or local income taxes, if any, imposed on NASDAQ) by any foreign or domestic national, state, provincial or local governmental bodies, or subdivisions thereof, and any penalties or interest relating to the provision of the Information to Subscriber. Interest shall be due from the date of the invoice to the time that the amount(s) that are due have been paid. To the extent permitted by applicable law, Subscriber acknowledges and agrees that the termination of the Vendor's Service for failure to make payments shall not be considered an improper limitation of access by NASDAQ. For Professional Subscribers, if any payment is due directly to NASDAQ under this Agreement, payment in full is due NASDAQ in immediately-available U.S. funds within thirty (30) days of the date of an invoice, whether or not use is made of, or access is made to, the Information.

4. **SYSTEM.** Subscriber acknowledges that NASDAQ, in its sole discretion, may from time-to-time make modifications to its system or the Information. Such modifications may require corresponding changes to be made in Vendor's Service. Changes or the failure to make timely changes by Vendor or Subscriber may sever or affect Subscriber's access to or use of the Information. NASDAQ shall not be responsible for such effects. NASDAQ does not endorse or approve any equipment, Vendor or Vendor's Service.
5. **EXCLUSIVE REMEDY.** NASDAQ shall endeavor to offer the Information as promptly and accurately as is reasonably practicable. In the event that the Information is not available as a result of failure by NASDAQ to perform its obligations under this Agreement, NASDAQ will endeavor to correct any such failure. If the Information is not available, is delayed, is interrupted, is incomplete, is not accurate or is otherwise materially affected for a continuous period of four (4) hours or more during the time that NASDAQ regularly transmits the Information due to the fault of NASDAQ (except for a reason permitted in this Agreement or in NASDAQ's agreement with the Vendor), Subscriber's or any other Person's exclusive remedy against NASDAQ shall be:
- (A.) If Subscriber or any other Person continues to receive the Information or any other data and/or information offered by NASDAQ, a prorated month's credit of any monies due, if any, for the affected Information directly to NASDAQ from Subscriber or, if applicable, from said other Person, for the period at issue; or
- (B.) If Subscriber or any other Person no longer receives either the Information or any other data and/or information offered by NASDAQ, a prorated month's refund of any monies due for the affected Information directly to NASDAQ from Subscriber or, if applicable, from said other Person, for the period at issue.

Such credit or refund shall, if applicable, be requested in writing to NASDAQ with all pertinent details. Beyond the warranties stated in this section, there are no other warranties of any kind — express, implied, statutory (including without limitation, timeliness, truthfulness, sequence, completeness, accuracy, freedom from interruption), implied warranties arising from trade usage, course of dealing, course of performance or the implied warranties of merchantability or fitness for a particular use or purpose.

6. **LIMITATION OF LIABILITY.**

- (A.) Except as may otherwise be set forth herein, NASDAQ shall not be liable to Subscriber, its Vendor or any other Person for indirect, special, punitive, consequential or incidental loss or damage (including, but not limited to, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, cost of cover or other indirect loss or damage) of any nature arising from any cause whatsoever, even if NASDAQ has been advised of the possibility of such damages.
- (B.) NASDAQ shall not be liable to Subscriber or any other Person for any unavailability, interruption, delay, incompleteness or inaccuracy of the Information that lasts less than four (4) continuous hours during the time that NASDAQ regularly transmits the Information or if the Information is materially affected for less than four (4) continuous hours during the time that NASDAQ regularly transmits the Information.
- (C.) If NASDAQ is for any reason held liable to Subscriber or to any other Person, whether in tort or in contract, the liability of NASDAQ within a single year of the Agreement (one year from the effective date of the Agreement) is limited to an amount of Subscriber's damages that are actually incurred by Subscriber in reasonable reliance (combined with the total of all claims or losses of Subscriber's Vendor and any other Person claiming through, on behalf of or as harmed by Subscriber) and which amount does not exceed the lesser of:
- (I.) For Subscriber or any other person that continues to receive the Information or any other data and/or information offered by NASDAQ, a prorated month's credit of any monies due directly to NASDAQ from Subscriber or, if applicable, from any other Person, for the Information at issue during the period at issue, or if Subscriber or any other Person no longer receives either the Information or any other data and/or information offered by NASDAQ, a refund of any monies due directly to NASDAQ from Subscriber or, if applicable, from any other Person, for the Information at issue during the period at issue; or
- (II.) \$500.
- (D.) This section shall not relieve NASDAQ, Subscriber or any other Person from liability for damages that result from their own gross negligence or willful tortious misconduct or

from personal injury or wrongful death claims.

**(E.)** Subscriber and NASDAQ understand and agree that the terms of this section reflect a reasonable allocation of risk and limitation of liability.

- 7. DISCLAIMERS OF WARRANTIES.** NASDAQ and its third-party information providers make no warranties of any kind — express, implied or statutory (including without limitation, timeliness, truthfulness, sequence, completeness, accuracy, freedom from interruption), any implied warranties arising from trade usage, course of dealing, course of performance or the implied warranties of merchantability or fitness for a particular use or purpose or noninfringement.
- 8. THIRD-PARTY INFORMATION PROVIDERS' LIMITATION OF LIABILITY.** NASDAQ's third-party information providers, for the accuracy of or for delays or omissions in any of the Information provided by them, shall have no liability for any damages, whether direct or indirect, whether lost profits, indirect, special or consequential damages of the Subscriber or any other Person seeking relief through Subscriber, even if the third-party information providers have been advised of the possibility of such damages. In no event will the liability of the third-party information providers or their affiliates to Subscriber or any other Person seeking relief through Subscriber pursuant to any cause of action, whether in contract, tort or otherwise, exceed the fee paid by Subscriber or any other Person seeking relief through Subscriber, as applicable.
- 9. CLAIMS AND LOSSES.** Subscriber will indemnify NASDAQ and hold NASDAQ and its employees, officers, directors and other agents harmless from any and all Claims or Losses imposed on, incurred by or asserted as a result of or relating to: (a) any noncompliance by Subscriber with the terms and conditions hereof; (b) any third-party actions related to Subscriber's receipt and use of the Information, whether authorized or unauthorized under the Agreement. Each party warrants and represents and will indemnify and hold harmless (and in every case, NASDAQ shall be permitted to solely defend and settle) another party (including NASDAQ) and their officers, directors, employees and other agents, against any Claims or Losses arising from, involving or relating to a claim of infringement or other violation of an intellectual property right by the indemnifying party, its actions or omissions, equipment or other property. This right is conditioned on the indemnified party giving prompt written notice to the indemnifying party (as does not prejudice the defense) of the Claims or Losses and providing cooperation in the defense of the Claims or Losses (without waiver of attorney-client, work-product or other legal privilege, or disclosure of information legally required to be kept confidential).
- 10. TERMINATION.** Subscriber acknowledges that NASDAQ, when required to do so in fulfillment of statutory obligations, may by notice to Vendor unilaterally limit or terminate the right of any or all Persons to receive or use the Information and that Vendor will immediately comply with any such notice and will terminate or limit the furnishing of the Information and confirm such compliance by notice to NASDAQ. Any affected Person will have available to it such procedural protections as are provided by the Exchange Act and applicable rules thereunder. In addition to terminations permitted under the Vendor's agreement, this Agreement may be terminated by Subscriber with thirty (30) days written notice to Vendor and by NASDAQ with thirty (30) days written notice either to Vendor or Subscriber. NASDAQ may also alter any term of this Agreement with ninety (90) days written notice either to Vendor or Subscriber, and any use after such date is deemed acceptance of the new terms. In the event of Subscriber breach, discovery of the untruth of any representation of Subscriber, or where directed by the SEC in its regulatory authority, NASDAQ may terminate this Agreement with not less than three (3) days written notice to Subscriber provided either by NASDAQ or Vendor.
- 11. NOTICES.** All communications required to be given in writing under this Agreement shall be directed to:  
The NASDAQ Stock Market, LLC  
9600 Blackwell Road, Suite 500  
Rockville, MD 20850  
Attn: Manager, Market Data Distribution  
  
Direct communication to Subscriber at the last address known to the Vendor shall be considered given (a.) upon actual receipt via email or other or date of first refusal, or (b.) upon posting the notice or other communication on [www.NASDAQTrader.com](http://www.NASDAQTrader.com) or a successor site. Subscriber will promptly give written notice to Vendor of any change in the name or place of residence or place of business at which the Information is received.
- 12. AMENDMENTS/AGREEMENT.** Except as otherwise provided herein, no provision of this Agreement may be amended, modified or waived. No failure on the part of NASDAQ or Subscriber to exercise, no delay in exercising and no course of dealing with respect to any

right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege under this Agreement. If any of the provisions of this Agreement or application thereof to any individual, entity or circumstance is held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to individuals, entities or circumstances other than those as to which they are held invalid or unenforceable, shall not be affected thereby and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. In the event of any conflict between the terms of this Agreement and of the Vendor's agreement, the terms of this Agreement shall prevail as between NASDAQ and Subscriber. This Agreement shall be deemed to have been made in the United States in the State of New York and shall be governed by the laws of the State of New York. Subscriber hereby agrees to submit to the jurisdiction of the courts of the State of New York for any action relating to this Agreement.

### 13. DEFINITIONS.

- Claims or Losses — Any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, judgments, settlements and expenses of whatever nature, whether incurred by or issued against an indemnified party or a third party, including, without limitation, (a) indirect, special, punitive, consequential or incidental loss or damage, (including, but not limited to, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation or other indirect loss or damage), and (b) administrative costs, investigatory costs, litigation costs and auditors' and attorneys' fees and disbursements (including in-house personnel).
- Information — Certain data and other information relating to securities or other financial instruments, products, vehicles or devices; or relating to Persons regulated by NASDAQ or to activities of NASDAQ; or gathered by NASDAQ from other sources.
- NASDAQ — The NASDAQ Stock Market, LLC and its affiliates.
- NASDAQ Requirements — All applicable laws (including intellectual property, communications and securities laws), statutes and regulations, the rules and regulations of NASDAQ and the SEC, including, but not limited to, NASDAQ's rule filings, NASDAQ's decisions and interpretations and any User Guides or successors of the components of the NASDAQ Requirements.
- Non-Professional Subscriber — Any natural person who is NOT: (a) registered or qualified in any capacity with the SEC, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association or any commodities or futures contract market or association; (b) engaged as an "investment advisor" as that term is defined in [Section 202\(a\)\(11\) of the Investment Advisors Act of 1940](#) (whether or not registered or qualified under that Act); or (c) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.
- Or — Includes the word "and".
- Person — Any natural person, proprietorship, corporation, partnership or other entity whatsoever.
- Professional Subscriber — All other persons who do not meet the definition of Non-Professional Subscriber.
- Subscriber — When it appears alone, the word "Subscriber" encompasses all Non-Professional and Professional Subscribers.
- Vendor's Service — The service from a vendor, including the data processing equipment, software and communications facilities related thereto, for receiving, processing, transmitting, using and disseminating the Information to or by Subscriber.
- Vendor — For purposes of this agreement, "Vendor" shall mean "Distributor".

### **End of the NASDAQ Subscriber Agreement**