



## UTP PLAN SUBSCRIBER AGREEMENT

The Nasdaq Stock Market LLC (“Nasdaq”), as Administrator of the UTP Plan (“UTP Plan Administrator”), requires all Subscribers to the information described herein (“Information”) to sign the UTP Plan Subscriber Agreement (“Agreement”), or its equivalent, in order to receive the Information. **By completing the below section, the Subscriber agrees to the terms and conditions set forth in this UTP Plan Subscriber Agreement.**

### SUBSCRIBER INSTRUCTIONS: Please sign and complete one of the two signature blocks below:

<input type="checkbox"/> <b>SUBSCRIBER FIRM</b> with Professional Subscribers	Subscriber Firm Name: _____ (Print Name of Subscriber Firm)  By: _____ (Signature)  Name of Signatory: _____ (Print Name of Person Signing)  Title: _____ Authorized Officer at Subscriber Firm  Date: _____, 20____
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<b>INDIVIDUAL SUBSCRIBER</b> <input type="checkbox"/> <b>PROFESSIONAL</b> Subscriber or <input type="checkbox"/> <b>NON-PROFESSIONAL</b> Subscriber (Only select if you qualify per the definition in <a href="#">Section 16</a> ).	By: _____ (Individual Subscriber Signature)  Name of Signatory: _____ (Print Name of Person Signing)  Date: _____, 20____
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<b>VENDOR INSTRUCTIONS: Please sign and complete the signature block below:</b> <b>VENDOR USE ONLY (for Vendor/Data Provider Use Only)</b>  Vendor: _____ (Print Name of Vendor Firm)  By: _____ (Signature)  Name of Signatory: _____ (Print Name of the Person Signing on Behalf of the Vendor)  Title: _____ Authorized Officer  Date: _____, 20____	
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## TERMS AND CONDITIONS

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 or other applicable law, rule or regulation. 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 Subscribers, the Information is licensed only for personal use. By representing to Vendor that Subscriber is a Non-Professional Subscriber, 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 16](#) 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 Subscribers, 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. Upon request, Professional Subscribers 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 UTP Plan 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 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 funds, in US Dollars by a check to Nasdaq, by electronic funds transfer to an institution of Nasdaq’s choosing, within fifteen (15) 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 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 shall have no liability for any damages for the accuracy of or for delays or omissions in any of the Information provided by them, whether direct or indirect, lost profits, 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. PERSONAL DATA.** Subscriber acknowledges that Nasdaq, in the course of providing services to Subscriber, may process Personal Data (as defined in the The Nasdaq Stock Market LLC Vendor Agreement for UTP Plan Services (“Vendor Agreement”)) in the performance of services or in support of its rights (including, but not limited to, its audit and usage review rights) under the Vendor Agreement. Subscriber shall provide to Vendor or its designee such Personal Data (including, but not limited to, information regarding Subscriber or, for Subscribers that are firms, information regarding individual users of the Information) as reasonably requested by Nasdaq to make Information available to Subscriber, perform Nasdaq’s services under the Vendor Agreement, and/or enforce Nasdaq’s rights (including, but not limited to, its audit and usage review rights) under the Vendor Agreement, and Vendor shall provide such information to Nasdaq or its designee. Provisions for the processing of such data are set forth in the Vendor Agreement. With respect to individuals whose Personal Data is processed by Nasdaq and/or its service providers, the current publicly-posted Privacy Policy identified on the UTP Plan website located at [www.utpplan.com](http://www.utpplan.com), or its successor website, shall apply to such processing. To the extent that the Subscriber is a legal entity established in the European Economic Area (“EEA”), transfers of Personal Data to a Vendor (or its designee) outside of the EEA in connection with this Agreement shall be governed by the Data Processing Addendum of the Vendor Agreement, which is incorporated herein by reference *mutatis mutandis*, with the personal data exporter being the Subscriber and the personal data importer being the Vendor. Transfers of personal data from Vendor to Nasdaq shall be governed by the relevant provisions of the Vendor Agreement.

**11. 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 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.

**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.

### **13. REQUIREMENTS OF SELF-REGULATORY ORGANIZATION; ACTIONS TO BE TAKEN IN FULFILLMENT OF STATUTORY OBLIGATIONS.**

(a) Subscriber acknowledges that in the United States: (i) Nasdaq is registered with the SEC as national securities exchanges pursuant to Section 6 of the Act, and FINRA is registered with the SEC as a national securities association pursuant to 15A of the Act; (ii) FINRA and Nasdaq have a statutory obligation to protect investors and the public interest, and to ensure that quotation information supplied to investors and the public is fair and informative, and not discriminatory, fictitious or misleading; (iii) Section 19(g)(1) of the Act mandates that FINRA and Nasdaq comply with the UTP Plan Requirements; (iv) Nasdaq has jurisdiction to enforce compliance with certain of the UTP Plan Requirements; (v) FINRA has jurisdiction to enforce compliance with certain of the UTP Plan Requirements; and (vi) Nasdaq is obligated to offer terms that are not unreasonably discriminatory between Subscribers, subject to applicable UTP Plan Requirements. Accordingly, Subscriber agrees that Nasdaq, when required to do so in fulfillment of its statutory obligations, may, temporarily or permanently, unilaterally condition, modify or terminate the right of any or all individuals or entities to receive or use the Information. Nasdaq shall undertake reasonable efforts to notify Subscriber of any such condition, modification or termination, and Subscriber shall promptly comply with any such notice within such period of time as may be determined in good

faith by Nasdaq to be necessary, consistent with its statutory obligations. Any Person that receives such a notice shall have available to it such procedural protections as are provided to it by the Act and the applicable rules thereunder.

(b) If Subscriber is a member of a Nasdaq market, then Subscriber expressly acknowledges and agrees that (i) this Agreement does not limit or reduce in any way Subscriber's obligations and responsibilities as a member of any applicable Nasdaq market; (ii) this Agreement does not in any way alter the procedures or standards generally applicable to disciplinary or other actions taken by Nasdaq to enforce compliance with, or impose sanctions for violations of, the UTP Plan Requirements; and (iii) the nonpayment of amounts due under this Agreement could result in the suspension or cancellation of Subscriber's membership in a Nasdaq market in accordance with the UTP Plan Requirements.

**14. GOVERNING LAWS; CONSTRUCTION.** This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of New York, without reference to principles of conflicts of laws thereof. Any dispute that cannot be amicably settled that arises out of this Agreement shall be referred to arbitration and shall be conducted in accordance with the rules of the American Arbitration Association. All such proceedings shall be held in New York City, NY, and shall be conducted in the English language, which shall also be the language of the documents.

**15. NOTICES; NOTIFICATION OF CHANGES.** All notices and other communications (except for invoices) required to be given in writing under this Agreement shall be directed to the signatories or, in the alternative, to the individuals identified in subsections (a) and (b) below. Notices shall be deemed to have been duly given: (i) upon actual receipt (or date of first refusal) by the parties, or (ii) upon constructive receipt (or date of first refusal) if sent by certified mail, return receipt requested, or any other delivery method that actually obtains a signed delivery receipt, to the following addresses or to such other address as any party hereto shall hereafter specify by prior written notice to the other party or parties below, or (iii) upon posting the notice or other communication on the [www.utpplan.com](http://www.utpplan.com) website or a successor site. If an email address is provided, Nasdaq may, in lieu of the above, give notice to or communicate with Subscriber by email addressed to the persons identified in subsection (a) or to such other email address or persons as Subscriber shall hereafter specify by prior written notice. By providing an email address, Subscriber agrees that any receipt received by Nasdaq from Subscriber's service provider or internet computer server indicating that the email was received shall be deemed proof that Subscriber received the message. If Subscriber cannot see or printout all or any portion of the message, Subscriber agrees that it is Subscriber's responsibility to contact Nasdaq at (301) 978-8080.

(a) If to **Subscriber:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Email: \_\_\_\_\_

(b) If to **UTP Plan Administrator:**

UTP Plan Administrator  
805 King Farm Boulevard  
Rockville, MD 20850  
Phone: +1 301 978 8080  
[admin@utpplan.com](mailto:admin@utpplan.com)

With, in the event of notices of dispute or default,  
a required copy to:

\_\_\_\_\_  
\_\_\_\_\_

With, in the event of notices of default or dispute,  
a required copy to:

**The Nasdaq Stock Market, LLC**  
Office of General Counsel  
805 King Farm Boulevard  
Rockville, MD 20850

**16. DEFINITIONS.**

**Act** shall mean the Securities Exchange Act of 1934.

**Affiliate** shall mean any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association or other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such party.

**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** shall mean certain market data and other data disseminated that has been collected, validated, processed, and recorded by the System or other sources made available for transmission to and receipt from either a Vendor or from Nasdaq relating to: a) eligible securities or other financial instruments, markets, products, vehicles, indicators, or devices; b) activities of a Nasdaq Company; c) other information and data from a Nasdaq Company. Information also includes any element of Information as used or processed in such a way that the Information can be identified, recalculated or re-engineered from the processed Information or that the processed Information can be used as a substitute for Information.

**Nasdaq** shall collectively mean The Nasdaq Stock Market LLC, a Delaware limited liability company and its subsidiaries and Affiliates (collectively "Nasdaq").

**UTP Plan Requirements** — All (i) rules, regulations, interpretations, decisions, opinions, orders and other requirements of the SEC; (ii) the rules and regulations, disciplinary decision and rule interpretations applicable to UTP (iii) the decisions, policies, interpretations, operating procedures, specifications, requirements, and other documentation by Nasdaq, as Administrator of the UTP Plan, that is regulatory or technical in nature (including, but not limited to, user guides) published on the UTP Plan website located at [www.utpplan.com](http://www.utpplan.com) or another website accessible by and made known to Vendor; and (iv) all other applicable laws, statutes, rules, regulations, orders, decisions, interpretations, opinions, and other requirements, whether promulgated by the United States or any other applicable jurisdiction (including in the area of intellectual property); and (v) the successors, as they may exist at the time, of the components of the UTP Plan Requirements.

**Or** — Includes the word "and."

**Person** — Any natural person, proprietorship, corporation, partnership or other entity whatsoever.

**Subscriber** — When it appears alone, the word "Subscriber" encompasses all Non-Professional and Professional Subscribers. All Subscribers are deemed Professional unless they are qualified as Non-Professional.

- **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 adviser" 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); 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.
- **Professional Subscriber** — All other persons who do **not** meet the definition of Non-Professional Subscriber.

**System** shall mean any system Nasdaq has developed for the creation and/or dissemination of Information.

**Vendor** shall mean Vendor and its Affiliates as identified in writing to Nasdaq.

**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.