

## **VENDOR's ATS DATA SUBSCRIBER PACKAGE DISCLOSURE – PLEASE READ**

Subscriber must sign a contract entitled ATS Transparency Data Subscriber Agreement (“ATS Data Subscriber Agreement”) in order to receive ATS Information and Data (see definition in Paragraph 1 of the ATS Data Subscriber Agreement) from Vendor. While all terms are important, ***please note the following***. The paragraph number cited refers to the paragraph number, in the ATS Data Subscriber Agreement, where more information can be found.

**RESTRICTIONS ON USES & TRANSFER:** Subscriber may not distribute the Information and Data externally and may only access the Information and Data for Internal Use. [Paragraph 3] Subscriber may not transfer the ATS Data Subscriber Agreement. [Paragraph 20] Professional Subscribers (see definition in Paragraph 1 of the ATS Data Subscriber Agreement) may only use ATS Information and Data for internal business use and/or personal use. [Paragraph 3]

**FEES:** Fees for the ATS Information and Data are as specified in FINRA Rule 4553. Fees are due and payable prior to Subscriber gaining access to the ATS Information and Data. Renewals are done on a yearly basis and, upon renewal; the then full Fee is due and payable. All Fees are non-refundable. [Paragraph 1 and 16] Upon early termination of the ATS Data Subscriber Agreement by any party, for any reason, as permitted under the terms of this Agreement, no refund, pro rata or otherwise, shall be due or payable to the Subscriber. [Paragraphs 1 and 16]

**MOST DAMAGES EXCLUDED, ANY REMAINING ARE LIMITED:** FINRA and its third party providers are not liable for trading losses, loss of opportunities, loss of anticipated revenues, loss of anticipated profits or incidental, consequential or other indirect, special or punitive damages, even if the ATS Information and Data is at fault. Other damages (if any) are strictly limited (in contract, tort, or otherwise) to a capped amount. [Paragraphs 6, 9, 10 and 11]

**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. ***Trading information might not be current, accurate or timely.*** [Paragraph 9]

**SUBSCRIBER PROVIDES INDEMNITY:** Subscriber indemnifies, defends and holds FINRA harmless for Claims or Losses (see [Paragraph 1] of the ATS Data Subscriber Agreement) resulting from Subscriber's breach of the ATS Data Subscriber Agreement, for Subscriber's infringement of a third party's intellectual property rights, or from a third party suit related to Subscriber's receipt, use or dissemination of the ATS Information and Data. [Paragraph 12]

**NEW YORK LAWS AND COURTS APPLY:** Everything relating to the ATS Data Subscriber Agreement is governed by the laws of the United States and the State of New York and any disputes can only be heard in New York. [Paragraph 21]

**NO ORAL AMENDMENT/ONLY FINRA MAY AMEND:** The ATS Data Subscriber Agreement may not be amended orally and may only be amended by FINRA pursuant to the ATS Data Subscriber Agreement. Failure by Subscriber to terminate the ATS Data Subscriber Agreement prior to or use of ATS Information and Data after the effective date and posting of an amended ATS Data Subscriber Agreement on the Website, will be presumed to be consent by Subscriber (or confirmation of earlier consent) to the ATS Data Subscriber Agreement as amended. [Paragraphs 4 and 20]

**VENDOR CAN IMPACT SUBSCRIBER'S RIGHTS BUT NOT FINRA'S RIGHTS:** Vendor does not have authority to change the ATS Data Subscriber Agreement. Vendor is obligated to provide notice of FINRA changes to Subscriber, but if Vendor does not, FINRA's notice to Vendor is still effective as to Subscriber, including notice of cancellation. [Paragraphs 1 and 15]

## VENDOR's ATS DATA SUBSCRIBER AGREEMENT

The Vendor's ATS Data Subscriber Agreement (*ATS Data Subscriber Agreement*) appears below. If you are at least 18 years old, execute it as a Professional Subscriber by signing your name on the "Signature" line in the appropriate signature part(s) below and at the end of this Agreement. If you intended to sign, click on "Signature Confirmed" in order to confirm your signature and the accuracy of the information below make a copy for your records. If you did not intend to sign it electronically or signed in error, click on "Cancel."

***BY SIGNING OR CLICKING ON "SIGNATURE CONFIRMED," YOU ARE AGREEING TO BE LEGALLY BOUND BY THE ATS DATA SUBSCRIBER AGREEMENT***

### **A. MANDATORY FOR ALL SUBSCRIBERS:**

*Subscriber:* \_\_\_\_\_

*Address:* \_\_\_\_\_

*Email:* \_\_\_\_\_

*Signature:* \_\_\_\_\_

*Date of Execution:* \_\_\_\_\_

### **B. AGENT USE ONLY (complete only if you signed on behalf of the Subscriber):**

*Print Name* \_\_\_\_\_ *(Enter Name of person signing for Subscriber)*

*Title:* \_\_\_\_\_ *(You must have actual legal authority to bind Subscriber in order to enter into this Agreement)*

***THE VENDOR, (INCLUDING ITS REPRESENTATIVES AND AGENTS) MAY NOT MODIFY OR WAIVE ANY TERM OF THIS ATS DATA SUBSCRIBER AGREEMENT. ANY ATTEMPT TO MODIFY THIS ATS DATA SUBSCRIBER AGREEMENT, IS VOID.***

### **1. Definitions and Usages.**

- a. **"FINRA"** means The Financial Industry Regulatory Authority, Inc. and its subsidiaries and affiliated entities.
- b. **"Affiliates and Subsidiaries"** means those entities, identified in Attachment A, that are controlled by or under common control with Subscriber or are otherwise agreed to in writing by FINRA. For the purposes of this definition, "control", along with any derivative thereof, means legal, beneficial, or equitable ownership, directly or indirectly, of 50 percent (50%) or more of the capital stock (or other ownership interest, if not a corporation) of any entity ordinarily having voting rights.

- c. **“ATS Information and Data”** means certain data and other information relating to trading, as described in FINRA Rule 4553, or relating to Persons regulated by FINRA or to activities of FINRA; or gathered by FINRA from other sources.
- d. **“Or”** includes the word “and”.
- e. **“Business Day”** means any week day, excluding weekends, which is not a Federal Holiday.
- f. **“Claims or Losses”** means 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 (1) indirect, special, punitive, consequential or incidental loss or damage, (including trading losses, loss of opportunities, loss of anticipated revenues, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, or other indirect loss or damage) and (2) administrative costs, investigatory costs, litigation costs, and auditors’ and attorneys’ and fees and disbursements (including, in each case, in-house personnel).
- g. **“Client”** means an individual or entity that Subscriber, its Affiliates or Subsidiaries are not legally required to provide with a W-2. Clients are not entitled to receive or access ATS Information and Data or Derived Data from Subscriber.
- h. **“Derived Data”** means ATS Information and Data which has been manipulated in any way whatsoever, so that it is not in the exact same format as it is transmitted from FINRA and further, that cannot be reversed engineered to arrive at the underlying ATS transaction information or used as a surrogate for ATS transaction information. Additional information regarding Derived Data can be found in FINRA Rule 4553 and the ATS Market Data Policy on-line via the Website.
- i. **“Data”** means both ATS Information and Data and Derived Data cumulatively.
- j. **“FINRA Rules”** means all applicable:
  - (i) laws (including intellectual property, communications, and securities laws), statutes and regulations, orders, decisions, interpretations, opinions, and other requirements whether promulgated by the United States or any other applicable jurisdiction;
  - (ii) the rules, interpretations, opinions, orders, regulations or other requirements of the SEC;
  - (iii) rules, disciplinary decisions, rule interpretations and regulations of FINRA or any other self-regulatory organization with jurisdiction over the Participant, including those requirements established by FINRA’s rule filings (with such SEC approval as may be required);
  - (iv) FINRA operating procedures, specifications, requirements and other documentation that is regulatory or technical in nature (including, but not limited to, user guides or other guidelines) made known to Participant or published on FINRA.org website or any other FINRA website accessible by and made known to Participant;
  - (v) obligations of Participant contained in any other agreements which are required in order for Participant to access or receive the Service;
 of or relating to the Service, the Product(s), the Participant and any information entered into the Product(s) or received from the Product(s); along with all successors of the components of FINRA Rules, as they may exist at the time.
- k. **“Including”**, “includes” or “include” shall mean “including, without limitation”.

1. ***“Internal Use”*** means use of the ATS Information and Data by an Internal User within Subscriber or its Affiliates and Subsidiaries’ organization.
- m. ***“Internal Users”*** means employees or those actually operating in an employee capacity and to whom a W-2 is legally required to be provided, of Subscriber or its Affiliates and Subsidiaries.
- n. ***“Person”*** means any natural person, proprietorship, corporation, partnership, or other entity whatsoever.
- o. ***“Non-Refundable Fees”*** shall mean that all Fees paid under this Agreement are fully earned by FINRA as of the time they are paid and there shall be no refunds whatsoever for any reason.
- p. ***“Professional Subscriber or Subscriber”*** means a natural person, as more specifically defined in Rule 4553, who is:
  - (1) registered or qualified in any capacity with the SEC, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association or is engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act (whether or not registered or qualified under that Act), or is an employee of any the foregoing, and uses the ATS Information and Data for other than personal, non-commercial use;
  - (2) employed by a bank, insurance company 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 any other employee of a bank, insurance company or such other organization referenced above and uses ATS Information and Data for other than personal, non-commercial use; or is
  - (3) engaged in, or has the intention to engage in, any redistribution of all or any portion of the ATS Information and Data.

A Professional Subscriber may create derivative works from the ATS Information and Data but ***may only use the ATS Information and Data and any derivative works thereof, internally (i.e. may not disseminate Data outside its organization).***

- q. ***“Vendor”*** means the party executing this Agreement as evidence by its signature below.
- r. ***“Vendor’s Service”*** means the service from a Vendor, including the data processing equipment, software, and communications facilities related thereto, for facilitating, accessing, receiving, processing, transmitting, using and disseminating the Data to or by Subscriber.
2. Subscriber is hereby granted the right to receive the ATS Information and Data under the terms stated herein and in the FINRA Rules. For Professional Subscriber, if any payment is due directly to FINRA under this ATS Data Subscriber Agreement, payment in full is due FINRA in immediately available U.S. funds by check or electronic funds transfer drawn against a United States bank or other financial institution acceptable to FINRA or by any other means mutually acceptable to the parties, within thirty (30) days of the date of an invoice, whether or not use is made of, or access is made to, the ATS Information and Data. Interest at the rate of one percent (1%) per month on any outstanding balance shall be due from the date thirty (30) days after the date of the first invoice where amounts remain outstanding to the time that the amount(s) that are due have been received by FINRA. Subscriber shall assume full and complete responsibility for the payment of all taxes, charges or assessments imposed on Subscriber or FINRA (except for U.S. federal, state, or local income taxes, if any, imposed on FINRA) 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 ATS Information and Data to Subscriber.

3. The ATS Information and Data (including any Derived Data) is licensed only for the Internal Use and/or personal use by the Professional Subscriber. Professional 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 ATS Information and Data is received. Professional Subscriber may not sell, lease, furnish or otherwise permit or provide access to the ATS Information and Data 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 ATS Information and Data, or any part thereof, for any illegal purpose; or violate any FINRA Rule. Under no circumstances may a Professional Subscriber, or its Affiliates or Subsidiaries, provide or make available the ATS Data and Information, or Derived Data, to Clients. Professional Subscriber shall take all reasonable security precautions to prevent unauthorized Persons from gaining access to the ATS Information and Data, and Derived Data.
4. Subscriber acknowledges that FINRA, in its sole discretion, may from time to time make modifications to its system or the ATS Information and Data. 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 ATS Information and Data. FINRA shall not be responsible for such effects.
5. FINRA grants to Subscriber a nonexclusive, non-transferable, non-assignable right and license during the term of this ATS Data Subscriber Agreement to receive and use the ATS Information and Data transmitted to it by Vendor for any purpose not inconsistent with the terms of this ATS Data Subscriber Agreement or with the FINRA Rules. Subscriber acknowledges and agrees that FINRA owns all right, title and interest, including intellectual property and other proprietary rights in and to the ATS Information and Data and any further derivatives or compilations thereof which do not meet the definition of Derived Data. Subscriber further acknowledges and agrees that FINRA's third party providers own all right, title and interest, including intellectual property and other proprietary rights in and to their respective ATS Information and Data. In the event of any misappropriation or misuse, FINRA and its third party providers shall have the right to obtain injunctive relief for their respective materials, and Subscriber agrees that FINRA and each of its third party providers shall be a third party beneficiary of this ATS Data Subscriber Agreement for such purpose. Subscriber will attribute the source of the ATS Information and Data as appropriate under all the circumstances, and will not remove or modify any proprietary notices contained within the ATS Information and Data. Subscriber agrees not to use any trade or service mark that belongs to FINRA or any of FINRA's subsidiaries or affiliates, registered or unregistered, without the prior written permission of FINRA, and even after receiving written permission, in any way that would infringe upon such marks under applicable law. If FINRA so elects, Subscriber shall assign and shall ensure that all of its agents assign, all right, title and interest in and to any suit, including its subject matter, of or concerning the System, the ATS Information and Data or which otherwise arises out of or is related to this Agreement, to FINRA.
6. Subscriber acknowledges that: (a) FINRA is registered with the SEC as a registered national securities association pursuant to Section 15A of the Securities Exchange Act of 1934 (the *Act*); (b) FINRA has a statutory obligation to protect investors and the public interest and to make commercially reasonable efforts to ensure the integrity of ATS Information and Data (including the ATS Information and Data supplied to investors and the public); (c) Section 19(g)(1) of the Act mandates that FINRA, as a self-regulatory organization, comply with the provisions of the Act, the rules and regulations there under, and the FINRA Rules; and (d) FINRA has jurisdiction to enforce compliance with the Act, the rules and regulations promulgated there under, and the FINRA Rules over which it does in fact have jurisdiction,

over its members, Vendor and Subscriber. Subscriber acknowledges that FINRA, when required to do so in fulfillment of its statutory obligations, may by notice to Vendor or Subscriber unilaterally limit or terminate the right of any or all Persons to receive or use the ATS Information and Data, and that Vendor and Subscriber will immediately comply with any such notice and will terminate or limit the furnishing of the ATS Information and Data and confirm such compliance by notice to FINRA. Any affected Person will have available to it such procedural protections as are provided by the Act and applicable rules thereunder. FINRA shall not have any liability when complying with such statutory obligations.

7. Professional Subscriber shall make its premises available to FINRA for physical inspection of Vendor's Service and of Professional Subscriber's access, receipt, processing and use of the ATS Information and Data (including review of any records regarding use of, or access to, the ATS Information and Data and the number and locations of all devices that receive ATS Information and Data), all at reasonable times, upon reasonable notice, to ensure compliance with this ATS Data Subscriber Agreement.
8. 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 deemed or considered to be, and Subscriber waives any right to represent or assert that any such exercise constitutes, an act or omission or an improper denial or limitation of access by FINRA to any service or facility operated by FINRA as contemplated in Section 11A of the Exchange Act, or any other provision of the Exchange Act, or any rule, regulation, or interpretation adopted thereunder.
9. NEITHER FINRA, NOR ANY OF THEIR THIRD PARTY INFORMATION PROVIDERS OR SUBSIDIARIES OR AFFILIATES OF EITHER MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY OF THE INFORMATION CONTAINED IN THE DATA. ALL SUCH MATERIALS ARE PROVIDED TO VENDOR ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS NEITHER FOR A PARTICULAR PURPOSE OR USE NOR WITH RESPECT TO THE RESULTS WHICH MAY BE OBTAINED FROM THE USE OF SUCH MATERIALS. NEITHER FINRA, NOR ANY OF THEIR THIRD PARTY INFORMATION PROVIDERS OR SUBSIDIARIES OR AFFILIATES SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY ERRORS OR OMISSIONS NOR SHALL THEY BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE LIABILITY OF FINRA, NOR ANY OF THEIR THIRD PARTY INFORMATION PROVIDERS OR SUBSIDIARIES OR AFFILIATES PURSUANT TO ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE FEE PAID BY VENDOR FOR ACCESS TO SUCH MATERIALS IN THE MONTH IN WHICH SUCH CAUSE OF ACTION IS ALLEGED TO HAVE ARISEN. FURTHERMORE, NEITHER FINRA, NOR ANY OF THEIR THIRD PARTY INFORMATION PROVIDERS OR SUBSIDIARIES OR AFFILIATES SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR DELAYS OR FAILURES DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.
10. FINRA'S LIMITATION OF LIABILITY.
  - a. EXCEPT AS MAY OTHERWISE BE SET FORTH HEREIN, NEITHER FINRA NOR ITS THIRD PARTY PROVIDERS SHALL BE LIABLE TO SUBSCRIBER, ITS VENDOR OR TO ANY OTHER PERSON FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE (INCLUDING TRADING LOSSES, LOSS OF

OPPORTUNITY, LOSS OF ANTICIPATED REVENUES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR INCREASED EXPENSES OF OPERATION, OR OTHER LOSS OR DAMAGE) OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF FINRA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

- b. NEITHER FINRA NOR ITS THIRD PARTY PROVIDERS SHALL BE LIABLE TO SUBSCRIBER, VENDOR OR ANY OTHER PERSON FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE DATA.
- c. IF FINRA OR ANY OF ITS THIRD PARTY PROVIDERS IS FOR ANY REASON HELD LIABLE, WHETHER IN TORT, CONTRACT OR OTHERWISE, THE AGGREGATE LIABILITY OF FINRA FOR ALL REASONS DURING THE TERM OF THIS AGREEMENT IS LIMITED TO THE LOWER OF: (1) IF SUBSCRIBER CONTINUES TO RECEIVE THE DATA OR ANY OTHER INFORMATION OFFERED BY FINRA, A PRORATED CREDIT OF ANY MONIES DUE TO FINRA FROM SUBSCRIBER FOR THE PERIOD AT ISSUE OR, IF SUBSCRIBER NO LONGER RECEIVES EITHER THE INFORMATION OR ANY OTHER DATA AND/OR INFORMATION OFFERED BY FINRA, A REFUND OF ANY MONIES DUE TO FINRA FROM SUBSCRIBER FOR THE PERIOD AT ISSUE; OR (2) U.S. \$500.00, WHICHEVER IS LESS.
- d. THIS SECTION SHALL NOT RELIEVE FINRA, ITS THIRD PARTY PROVIDERS OR SUBSCRIBER FROM LIABILITY FOR DAMAGES THAT RESULT FROM THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.
- e. SUBSCRIBER, VENDOR AND FINRA UNDERSTAND AND AGREE THAT THE TERMS OF THIS SECTION REFLECT A REASONABLE ALLOCATION OF RISK AND LIMITATION OF LIABILITY.
- f. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, FINRA SHALL NOT BE RESPONSIBLE FOR OR LIABLE TO SUBSCRIBER, OR ANY PERSON FOR ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF INFORMATION THAT IS NOT CAUSED SOLELY BY THE NEGLIGENCE OF FINRA.
- g. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, FINRA SHALL NOT BE LIABLE TO SUBSCRIBER OR ANY PERSON FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION FROM FINRA'S THIRD PARTY PROVIDERS, OR FOR THE INFRINGEMENT OF ANY PERSON'S INTELLECTUAL PROPERTY OR OTHER RIGHTS BY THE INFORMATION PROVIDED TO FINRA BY THIRD PARTY PROVIDERS.

## 11. THIRD PARTY PROVIDERS' LIMITATIONS OF LIABILITIES.

- a. FINRA'S THIRD PARTY PROVIDERS SHALL HAVE NO LIABILITY FOR THE INACCURACY, UNAVAILABILITY, INCOMPLETENESS OR INTERRUPTION OF, OR FOR DELAYS OR OMISSIONS IN, ANY OF THE INFORMATION OR SERVICES PROVIDED BY THEM. FINRA'S THIRD PARTY PROVIDERS SHALL HAVE NO LIABILITY FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE (INCLUDING TRADING LOSSES, LOSS OF OPPORTUNITY, LOSS OF

ANTICIPATED REVENUES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR INCREASED EXPENSES OF OPERATION, OR OTHER LOSS OR DAMAGE) OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF THE THIRD PARTY PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

- b. SUBSCRIBER AND VENDOR ACKNOWLEDGE AND AGREE THAT FINRA'S THIRD PARTY PROVIDERS HAVE EXCLUSIVE PROPRIETARY RIGHTS IN THEIR RESPECTIVE INFORMATION.
- c. SUBSCRIBER AND VENDOR AGREE THAT ACCESS TO THE INFORMATION OR SERVICES OF FINRA'S THIRD PARTY PROVIDERS IS SUBJECT TO FINRA'S RECEIPT OF THE INFORMATION OR SERVICES FROM SUCH THIRD PARTY PROVIDERS PURSUANT TO THE AGREEMENTS BETWEEN FINRA AND SUCH THIRD PARTY PROVIDERS AND THAT FINRA'S ACCESS TO AND RECEIPT OF SUCH INFORMATION OR SERVICES MAY BE DELAYED, TERMINATED OR OTHERWISE AFFECTED.

12. Subscriber will indemnify, defend and hold harmless FINRA and its employees, officers, directors, and other agents 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 Data, whether authorized or unauthorized under this ATS Data Subscriber Agreement including any claim of infringement or other violation of an intellectual property right by Subscriber, its actions or omissions, equipment, or other property; and (c) any defense of or participation by FINRA in any action, suit, arbitration, mediation, judicial or administrative proceeding, or any other proceeding involving any Claims or Losses described in this ATS Data Subscriber Agreement. The indemnification provided by this *Section 12* shall include FINRA's investigative and administrative costs relating to the detection of any material noncompliance by Subscriber as provided above, or any access, receipt, processing, use, transmission or dissemination of the ATS Information and Data by any other Person, *provided, however,* that such costs are not excessive as compared to the injury FINRA could suffer as a result of any such non-compliance.

13. Subscriber and Vendor agree that, in the event FINRA is not a signatory to this Agreement, FINRA may enforce the terms of this ATS Data Subscriber Agreement against any Person, whether or not Vendor or Subscriber is a party to any such action, or against Vendor or Subscriber, and Vendor and Subscriber agree that FINRA shall be a third party beneficiary of this Agreement for such purpose. In any action there shall be available injunctive relief or damages, with the prevailing party being awarded costs and attorneys' fees (including in-house counsel).

14. In the event of any conflict between the terms of this ATS Data Subscriber Agreement and of the Vendor's Agreement(s), the terms of this ATS Data Subscriber Agreement shall prevail as between FINRA and Subscriber.

15. Subscriber acknowledges and agrees that Vendor is not an agent of FINRA and is not authorized to add to or delete from this ATS Data Subscriber Agreement and is not authorized to modify any provision of this ATS Data Subscriber Agreement. Vendor is obligated to provide notice of FINRA changes to Subscriber, but if Vendor does not, FINRA's notice to Vendor is still effective as to Subscriber, including notice of cancellation.

16. Notwithstanding any other language in this Agreement or any other Agreement between Vendor and Subscriber, Vendor may terminate this ATS Data Subscriber Agreement solely for a material breach of

this Agreement or in the event Vendor ceases to provide the ATS Information and Data to a particular class of individuals which includes Subscriber. Vendor may not terminate this ATS Data Subscriber Agreement under any other circumstances. Subscriber may terminate this ATS Data Subscriber Agreement for any reason or no reason on thirty (30) days written notice to Vendor. FINRA may terminate this Agreement on thirty (30) days written notice either to Vendor or Subscriber. In the event of Subscriber breach, discovery of the falsity of any representation or warranty of Subscriber, or where directed by FINRA in its regulatory authority, FINRA may terminate this ATS Data Subscriber Agreement on not less than three (3) days written notice to Subscriber provided either by FINRA or Vendor. All Fees are Non-Refundable and earned at the time of payment. In all cases of termination of the Agreement, whether by Subscriber, Vendor or FINRA, the fees paid or due and payable for the otherwise normal duration of the Current Term of the Agreement remain in effect, and shall be considered to be earned and no refund, pro rata or otherwise, shall be made.

17. FINRA does not endorse or approve any equipment, Vendor, or Vendor's Service.
18. Natural persons executing this ATS Data Subscriber Agreement warrant and represent that they are at least eighteen (18) years of age. Subscriber and the Person executing this ATS Data Subscriber Agreement on behalf of Subscriber that is a proprietorship, corporation, partnership or other entity, represent that such Person is duly authorized by all necessary and appropriate corporate or other action to execute this ATS Data Subscriber Agreement on behalf of Subscriber. All notices, invoices, and other communications required to be given to FINRA under this ATS Data Subscriber Agreement shall be in writing, and shall be directed to: Data Administrator, FINRA ATS Data Services at [FINRAOperations@FINRA.org](mailto:FINRAOperations@FINRA.org), or to Vendor at the address located on the signature page of this Agreement or to Subscriber at the last address known to the Vendor, and shall be deemed to have been duly given to any party hereto upon actual receipt by a party, or upon constructive receipt if sent by email or certified mail, postage pre-paid, return receipt requested, at such address or to such other address as any party hereto shall hereafter specify by written notice to the other party or parties hereto. Notwithstanding the foregoing, Notice of breach or default or termination of this Agreement must be sent and delivered in writing (email is not acceptable) to Financial Industry Regulatory Authority, Inc., 1735 K Street, N.W., 10th Floor, Washington, D.C. 20006-1500, Attn: FINRA Office of General Counsel – Sharon Guthrie, Esq., Commercial Contracts Group.
19. Subscriber shall not assign this ATS Data Subscriber Agreement (including by operation of law). Notwithstanding the foregoing, this ATS Data Subscriber Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.
20. Unless otherwise set forth herein, FINRA may modify any part of this ATS Data Subscriber Agreement on forty-five (45) days prior notice. FINRA shall notice Subscriber of any change in this ATS Data Subscriber Agreement by posting such change to the following <http://www.FINRA.org/licensing/ats>. Subscriber's failure to reject by written notice to Vendor the modification within thirty (30) days of the effective date of the modification, or Subscriber's continued use of the ATS Information and Data, shall be deemed to be an acceptance of the modification. Any rejection by Subscriber of any amendment made by FINRA in accordance with this *Section 21* shall result in termination of this ATS Data Subscriber Agreement. Except as otherwise provided herein, no provision of this ATS Data Subscriber Agreement may be amended, modified or waived unless by an instrument in writing executed on behalf of each of the parties by their respective duly-authorized officers.
21. This ATS Data Subscriber Agreement shall be deemed to have been made in the State of New York and shall be construed and enforced in accordance with the laws of the State of New York, without reference to principles of conflicts of laws thereof. Each party irrevocably agrees that any legal

action, suit or proceeding (other than entry or enforcement of an arbitration award or decision) brought by it in any way arising out of this ATS Data Subscriber Agreement must be brought solely and exclusively in the United States District Court for the Southern District of New York or in the state courts of the State of New York in New York County and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other party; provided, however, that this *Section 22* shall not prevent a party against whom any legal action, suit or proceeding is brought by the other party in the state courts of the State of New York in New York County from seeking to remove such legal action, suit or proceeding, pursuant to applicable Federal Law, to the district court of the United States for the district and division embracing New York County, and in the event an action is so removed each party irrevocably accepts and submits to the jurisdiction of the aforesaid district court. Each party hereto further irrevocably consents to the service of process from any of the aforesaid courts by mailing copies thereof by registered or certified mail, postage prepaid, to such party at its address designated pursuant to this ATS Data Subscriber Agreement, with such service of process to become effective thirty (30) days after such mailing. Each party hereby irrevocably waives their right to a jury trial.

22. No failure on the part of any party to exercise, no delay in exercising, and no course of dealing with respect to any right, power or privilege under this ATS Data Subscriber Agreement or at law or equity 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 ATS Data Subscriber Agreement or at law or equity.
23. If any of the provisions of this ATS Data Subscriber Agreement, or the application thereof to any Person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this ATS Data Subscriber Agreement, or the application of such terms or provisions to Persons or circumstances other than those as to which they are invalid or unenforceable, shall not be affected thereby, and each term and provision of this ATS Data Subscriber Agreement shall be valid and enforceable to the fullest extent permitted by law.
24. The section headings used in this ATS Data Subscriber Agreement are intended solely for convenience of reference and shall not in any way or manner amplify, limit, modify or otherwise be used in the interpretation of this ATS Data Subscriber Agreement. All personal pronouns used in this ATS Data Subscriber Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, if and where applicable. The use of the singular in this ATS Data Subscriber Agreement shall include the plural, and vice versa.
25. No party will be liable for delay or failure in performance of any of the acts required by this ATS Data Subscriber Agreement when such delay or failure arises from circumstances beyond its reasonable control (including acts of God, fire, flood, war, explosion, sabotage, terrorism, embargo, civil commotion, acts or omissions of any government entity, supplier delays, communications or power failure, equipment or software malfunction, or labor disputes), and without the gross negligence or willful misconduct of the party. If non-performance exceeds ten (10) calendar days, then the party to whom the performance is due will have the right to terminate this ATS Data Subscriber Agreement by giving notice five (5) calendar days before such date of termination.

26. This ATS Data Subscriber Agreement, including any attachments, if any, are an integral part hereof and materials referenced herein (collectively, *Attachments*) and the FINRA Rules, as any of these items may be added to, deleted from, or amended from time to time, constitutes the entire Agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, communications, writings and understandings with respect to the subject matter of this ATS Data Subscriber Agreement. In the event of any conflict between the provisions of this ATS Data Subscriber Agreement, the Attachments the ATS Data Vendor Agreement or the FINRA Rules, the order of preference shall be the FINRA Rules, the ATS Data Vendor Agreement, the Attachments and this ATS Data Subscriber Agreement.
27. This ATS Data Subscriber Agreement shall become effective on the date this Agreement is fully executed by Vendor or its authorized agent, or the date upon which FINRA, Vendor or either's agent first transmits or otherwise makes available ATS Information and Data to Subscriber, whichever is sooner.
28. This ATS Data Subscriber Agreement may be executed in one or more counterparts, which shall each be considered an original, but all of which together shall constitute one and the same ATS Data Subscriber Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this ATS Data Subscriber Agreement to be executed by their respective authorized officers.

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(“Vendor”)

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20 \_\_\_\_\_

a \_\_\_\_\_ (*insert type of entity*), incorporated, registered or formed in \_\_\_\_\_ (insert state, jurisdiction or country in which entity is incorporated or registered), which has its principal place of business located at \_\_\_\_\_.

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(“Subscriber”)

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20 \_\_\_, a \_\_\_\_\_ (*type of entity*), incorporated, registered or formed in \_\_\_\_\_ (jurisdiction or country in which entity is incorporated or registered), which has its principal place of business located at \_\_\_\_\_

## **Attachment A**

List of Vendor's Subsidiaries and Affiliated Entities: